

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

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IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:

APPLICATION OF CIMAREX ENERGY CO. FOR CASE NO. 14368  
APPROVAL OF A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.

and

APPLICATION OF CIMAREX ENERGY CO. FOR CASE NO. 14369  
APPROVAL OF A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.

and

APPLICATION OF CIMAREX ENERGY CO. FOR CASE NO. 14370  
APPROVAL OF A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.

and

APPLICATION OF CIMAREX ENERGY CO. FOR CASE NO. 14372  
APPROVAL OF A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
CHAVEZ COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING  
September 3, 2009  
Santa Fe, New Mexico

BEFORE: TERRY WARNELL: Hearing Examiner  
DAVID BROOKS: Technical Advisor

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This matter came for hearing before the New Mexico  
Oil Conservation Division, Terry Warnell Hearing Examiner,  
on September 3, 2009, at the New Mexico Energy, Minerals  
and Natural Resources Department, 1220 South St. Francis  
Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: PEGGY A. SEDILLO, NM CCR NO. 88  
Paul Baca Court Reporters  
500 Fourth Street, NW, Suite 105  
Albuquerque, NM 87102

1 HEARING EXAMINER: Let's go back on the record.

2 And we're going to hear all four cases?

3 MR. BRUCE: Correct.

4 HEARING EXAMINER: Case 14371, Application of  
5 Cimarex Energy Company for Nonstandard Oil Spacing and  
6 Proration Units and Compulsory Pooling, Chavez County,  
7 New Mexico.

8 MR. CARR: May it please the Examiner, my name  
9 is William Carr of the Santa Fe office of Holland and  
10 Hart. I'm appearing here today with my partner Michael  
11 Feldewert.

12 We represent in these cases -- we're going to  
13 ask that all the cases for which we have filed motions to  
14 dismiss be consolidated.

15 But we represent Hyde Oil and Gas Corporation,  
16 Me-Tex Supply Company, that now has become Me-Tex Oil and  
17 Gas, Dew Products, Inc., and Pear Resources. I do not  
18 have witnesses, I do have an argument.

19 HEARING EXAMINER: Okay. Now for the record,  
20 we're going to be talking here about Cases 14368, 14369,  
21 14370?

22 MR. BRUCE: Yes, and the first one you called,  
23 14372 -- or --

24 MR. CARR: 361.

25 MR. BRUCE: Not 361, 372.

1 HEARING EXAMINER: And 14372. Okay.

2 MR. CARR: I am also going to be presenting  
3 argument on Case 14361. I understand from Mr. Brooks that  
4 an order has been entered in that case.

5 MR. BROOKS: That is correct.

6 MR. CARR: It involves this well, and then  
7 negotiations overlap with the other three wells, and  
8 certain e-mails address all of them at once. And we are  
9 preparing to file a motion or an application to rescind  
10 that Order.

11 But to be able to explain the argument as it  
12 relates to the other three wells proposed in Section 34, I  
13 also have to discuss part of what has gone before, because  
14 they were all proposed in an overlapping fashion and I  
15 can't carve one out and give my argument without doing  
16 that.

17 MR. BRUCE: Well, with respect to 14361, if  
18 Mr. Carr wants to go ahead and argue, I have not had time  
19 to respond to that motion yet. I would say that we can  
20 reargue it. I would like to talk to my client and see if  
21 that one can't be resolved without having a decision  
22 issued in 14361.

23 MR. BROOKS: Because the motion asked to reopen  
24 a case in which an order had already been entered,  
25 although it's apparent that counsel prepared a motion

1 probably unaware of the previous order already having been  
2 entered -- because it asked to reopen a case in which an  
3 order had been entered, I had instructed the division  
4 administrator to place it on the next available docket,  
5 which would be the October 1st docket.

6           However, Mr. Feldewert called me and indicated  
7 that he wanted to argue it today. Which -- I don't know  
8 if he or his assistant Mr. Carr will be arguing it today,  
9 but in any event, they want to talk about it. And we're  
10 not going to make a ruling.

11           MR. BRUCE: Okay. And that's fine with me.

12           MR. BROOKS: You can talk about it or not.

13           MR. BRUCE: Like I said, I just didn't have time  
14 to deal with that one.

15           MR. BROOKS: Okay.

16           MR. BRUCE: And like I said, I would prefer to  
17 talk to my client about it. It might obviate any  
18 objection they might have.

19           MR. BROOKS: Okay. Very good. You may proceed.  
20 You may --

21           HEARING EXAMINER: You may proceed.

22           MR. BROOKS: I'm sorry. I'm not conducting --

23           HEARING EXAMINER: You're doing a fine job,  
24 Mr. Brooks.

25           MR. CARR: May it please the Examiners, we're

1 here today on several motions to dismiss various  
2 applications filed by Cimarex Energy Company. And they  
3 are similar applications. By my count, there are at least  
4 nine of these similar applications on today's docket.

5 Each of these cases involves the creation of a  
6 nonstandard spacing unit -- which is actually a horizontal  
7 well project area -- comprised of four standard 40 acre  
8 oil spacing units.

9 In each, Cimarex also seeks an Order force  
10 pooling uncommitted interest owners in these standard  
11 spacing units.

12 To obtain a pooling order, an operator has to  
13 meet certain preconditions. These include a proper well  
14 proposal and a good-faith effort to reach voluntary  
15 agreement with those interest owners who are subject to  
16 pooling.

17 The motions before you today that I have filed  
18 address five applications filed by Cimarex. Four of them  
19 -- and I understand one will not be ruled on here today --  
20 involve the possible development of two sections of land  
21 in Lea County, and the other one involving Me-Tex Oil and  
22 Gas Corp., is a stand-alone application in Chavez County.

23 Now, the facts in each of these cases vary  
24 somewhat, but the issues in each of these cases are the  
25 same. And the issues are whether or not Cimarex properly

1 proposed these wells and whether or not, as they have gone  
2 forward with this effort to develop an area, whether or  
3 not they undertook good-faith negotiations with the  
4 interest owners who have not committed their interests to  
5 these spacing units.

6           These requirements are based on the language of  
7 the Oil and Gas Act, and they're based on the longstanding  
8 practice of the Division in one respect. And within the  
9 last couple of weeks, we have had the Division remind us  
10 what those longstanding practices are.

11           In the dispute between COG and Chesapeake, two  
12 orders were entered, Order No. R13154 and 55. And I think  
13 it's important what the Division reminded all operators  
14 who come before them what the Division told them and  
15 reminded them they must do before they can obtain a  
16 pooling order.

17           And it said that the Division's longstanding  
18 practice requires operators to furnish interest owners a  
19 well proposal prior to filing a pooling application.

20           You see, what that says is, that you have to  
21 have a well proposal -- you have to propose and tell the  
22 other guy you're going to drill. And you have to do this  
23 early in the process before you invoke the police power of  
24 the OCD so your negotiations go forward where you, the  
25 proposing party, don't, in essence, have a gun to the

1     guy's head you're trying to negotiate with.

2                   And the other thing that the Division found in  
3     those orders, it noted that the Division has dismissed  
4     applications for compulsory pooling when they're not filed  
5     30 days after the pooling -- the applicant has furnished  
6     to all owners in the proposed unit a formal well proposal  
7     including a proposed form joint operating agreement and an  
8     authorization for expenditures, an AFE, setting forth the  
9     estimated cost for the well proposed on such application.

10                  MR. BROOKS: I don't recall that we went into  
11     all that detail in --

12                  MR. CARR: I think if you look at the orders --

13                  MR. BROOKS: But I just don't remember. So.

14                  MR. CARR: Well, the orders are R13155, and the  
15     other order, 13154, and they were rendered August 11th,  
16     and did reference the 30 days.

17                  MR. BROOKS: Well, I know it references the 30  
18     days, I don't remember that -- And I did draft those  
19     orders. I don't remember that I went into that much  
20     detail about exactly what a proposal consists of. Perhaps  
21     I did.

22                  MR. CARR: It says, quote, "... has furnished to  
23     all owners in the proposal unit a formal well proposal,  
24     including a proposed form of joint operating agreement and  
25     an authorization for expenditures."

1 MR. BROOKS: Is that a quote from the prior  
2 order?

3 MR. CARR: It is a quote from Order No. R13155.

4 MR. BROOKS: Okay. Thank you for reminding me.  
5 I just wanted to be sure exactly what I said.

6 MR. CARR: And I want you to remember. The 30  
7 day time figure is a convenient time frame, it's in  
8 essence an arbitrary way that an agency can judge if good  
9 faith, in fact, has occurred.

10 But it is an arbitrary time. And we submit that  
11 during that 30 days, you must act in good faith. You must  
12 tell the truth, you've got to be willing to talk, you've  
13 got to provide data when it is requested, and Cimarex in  
14 these cases, did not meet the 30 day time frame.

15 But even if it had, its actions have been  
16 untruthful. They have been unwilling to talk, and they  
17 have not provided data in a timely fashion when it has  
18 been requested.

19 We submit they have not properly proposed the  
20 well, that the purpose of a pooling statute before you can  
21 act to take my interest away, is they have to propose a  
22 well they intend to drill and that they not use the Rule  
23 simply to force negotiations with another party to join  
24 into an operating agreement covering a long tract of  
25 land, lock up that property with no firm plans to drill.

1           We submit here they didn't engage in good-faith  
2 negotiations and they have not conducted themselves in  
3 accord with the longstanding practice of this Division.  
4 They have been doing, after they filed, what they are  
5 required to do before they file.

6           And this isn't inconsequential because it  
7 affects our ability to negotiate and it affects our  
8 rights.

9           Hyde Oil and Gas Corporation is involved in four  
10 of these cases, the one that was heard and three others  
11 that are before you today.

12           As Mr. Bruce noted in his responses, he did not  
13 look at Case 14361, the first one in which an order has  
14 been entered. As I noted, we're filing to rescind that  
15 ~~application~~.

16           But it doesn't remove it from the argument,  
17 because as I had indicated, the success and the plans of  
18 Cimarex for the rest of the development of this area  
19 depends on that well.

20           And the facts in the negotiations overlap in  
21 that well and the other three in that section and they  
22 follow virtually an identical pattern.

23           In its applications that it filed seeking these  
24 pooling orders, Cimarex states, and I quote, that it had  
25 made a -- had, in good faith, sought to obtain the

1 voluntary joinder of all other mineral interest owners in  
2 the proposed spacing unit.

3 It also said it had -- and I quote, "Attempted  
4 to obtain voluntary agreements from all mineral owners to  
5 participate in the drilling of the well or to otherwise  
6 commit their interest to the well."

7 Then it said, and I quote, "Certain interest  
8 owners have failed or refused to join in dedicating their  
9 interest."

10 And we challenge these statements, because those  
11 statements and applications were filed before negotiations  
12 had actually been taken place. Those statements are not  
13 true.

14 The facts in this case show that early in  
15 July, Hyde was contacted by a landman for Cimarex, and  
16 Hyde advised that they didn't want to farm out all their  
17 interest in Section 34, the oil wells, the ones that are  
18 still pending before the Division. It said it would  
19 consider a farmout on a well-by-well basis. And this is  
20 all supported in the affidavit of Mr. Hamburg which is  
21 attached to the motion.

22 Cimarex said it would schedule a meeting to  
23 discuss development, and then cancelled the meeting. It  
24 said it would e-mail the other operators. There has been  
25 no e-mail, there has been no meeting.

1           And on the 17th of July, Hyde received AFEs for  
2           the three wells that are still pending before the Division  
3           and the wells that are addressed in our main motion to  
4           dismiss.

5           That was July 17th. On August 3rd, they filed  
6           applications to pool the first well. But they had never  
7           proposed the first well to Hyde. August 17th, three days  
8           before the August 20th pooling hearing on the first case,  
9           Hyde received applications to pool three other wells  
10          having never heard about the first one. And they were set  
11          for September 13th.

12          So on that day, August 17th, Hyde called Cimarex  
13          and it stated -- and this is from the affidavit of  
14          Mr. Hamburg, that said, quote, that Hyde was, quote,  
15          "confused because the paperwork we received thus far from  
16          Cimarex or on their behalf, combined with the previous  
17          conversations, has not been clear as to Cimarex's plans,  
18          therefore making it difficult for us to make a decision."

19          Cimarex responded. I want to hand you -- and  
20          this is an e-mail page that was attached to the motions,  
21          this is a copy of an e-mail dated August 17th. It is  
22          Cimarex's reply to Hyde's statement that they were  
23          confused.

24          Now, attached to Mr. Tresner's affidavit that  
25          was filed in support of their opposition to this motion,

1 Mr. Tresner stated that his affidavit had attached to it  
2 his e-mail correspondence with the interest owners. We  
3 presumed he meant all of his e-mail.

4 But if you will compare the affidavit of  
5 Mr. Tresner to this e-mail, you will see that this e-mail  
6 was not included. Mr. Tresner did not include an  
7 affidavit, which I submit to you puts the whole issue  
8 between Cimarex and other operators squarely before you  
9 and explains why all of these operators are unhappy.

10 I'm going to go through this, but just -- I want  
11 to go to the most obvious thing. If you'll look at this  
12 e-mail and look at the postscript, it says, "I'm going to  
13 inform our regulatory attorney that I did not propose the  
14 reentry to you and ask him to continue the hearing." This  
15 was August 17th.

16 On August 20th, Cimarex went to hearing on this  
17 application.

18 MR. BROOKS: This is -- the one that was heard  
19 on August 20th was the Mallon 34 Federal 16?

20 MR. CARR: Yes, sir.

21 MR. BROOKS: Okay. I thought that was correct,  
22 but I wasn't certain.

23 MR. CARR: It was to be continued, but three  
24 days later, they went to hearing. How do you negotiate  
25 with someone who treats you like this? The case was

1 presented to you on the affidavit of Mr. Tresner. He  
2 identifies Hyde as a party.

3 And he states in his affidavit that was  
4 presented in this case before you, quote, "Copies of the  
5 proposal letters sent to all uncommitted interest owners  
6 are attached hereto as Exhibit B. Curiously, no proposal  
7 letter to Mr. Hyde or Hyde Oil was attached.

8 In the affidavit presented to you, Mr. Tresner  
9 also states, "Cimarex Energy has made a good-faith effort  
10 to obtain the voluntary joinder of the uncommitted  
11 interest owners in this well." Well, they certainly have  
12 not done that for Hyde, so the statement is untrue.

13 Following the pooling hearing, August 26th, this  
14 affidavit is included in Mr. Tresner's material. They  
15 advise Hyde that a pooling hearing had occurred.

16 And then on September 1, we got another e-mail  
17 just the day before yesterday from Tresner, and it's  
18 interesting in that it ignores the prior e-mail and the  
19 representations that they would continue the case. I have  
20 copies of that. It just came in. I'll be happy to mark  
21 it as Exhibit 2.

22 But if you look at this -- and they're out order  
23 because that's how they came off the computer -- on the  
24 second page, Tresner, with no negotiation and a pooling  
25 order that they got in a hearing they said they were going

1 to continue, again comes back to Hyde and says, "I don't  
2 know how long I can convince my management to do a deal  
3 after an order was entered," an order and hearing that was  
4 improperly brought before you.

5 We're going to file to rescind this Order  
6 because we think it's time to do it right. But why was  
7 this well important as it relates to the remaining wells  
8 in Section 34?

9 And as to those wells, I would submit that the  
10 August 17th e-mail again tells the whole story. This  
11 e-mail explains Cimarex's plans for the development of  
12 Sections 34 and 35.

13 What they want is all interest owners to come in  
14 and enter a JOA that cover all interests in eight spacing  
15 units. They say they're willing to farm out your interest  
16 in two sections.

17 Look at the first sentence here. It says, "In  
18 regard to our telephone conversation today, and also in  
19 response to your e-mail of this date, attached is our  
20 proposal for the reentry of the Mallon 34 16 well." And  
21 this was interesting. "Which will be the first of three  
22 wells that we will possibly drill in Section 34."

23 Doesn't say, "We're going to drill these  
24 wells," they're not proposing that. "We're going to  
25 possibly drill them."

1           And then it goes on and it notes that they're  
2 proposing more wells in Section 35. And then if you look  
3 at the second paragraph, I think this tells the rest of  
4 the story. Thus far we have everyone but Hyde committed  
5 to either farm out their interest in both sections or  
6 participate in the entry by entering into an operating  
7 agreement covering all of Section 34.

8           We know from the motions we filed today that  
9 this is not true. Fuel Products hasn't committed or  
10 signed, Pear Resources hasn't committed or signed.

11           And then it says, "Obviously, once your interest  
12 is under contract, we will retract our proposals for the  
13 grassroots wells in Section 34 which will be proposed at a  
14 later date after the results of the reentry have been  
15 evaluated under the operating agreement."           They  
16 are not proposing to drill a well, they are proposing to  
17 tie up a large block of land in which people like  
18 Hyde, Fuel Products, Pear, Me-Tex own significant  
19 interests. They want to bank these and they want to drill  
20 them if the first well is good.

21           That's what they're talking about. This isn't a  
22 well proposal. This is using the rules of this Division  
23 to force someone to sign a joint operating agreement. And  
24 none of us, not Fuel Products, not Pear, not Hyde want to  
25 enter in an agreement.

1           And they draft these affidavits saying, "We want  
2 to go well by well." We don't want a take it or leave it  
3 on a two-sections proposal. And guess what? Cimarex  
4 doesn't either. They want to evaluate it and then  
5 repropose based on what they know later. This is not a  
6 well proposal that comports with what this agency has  
7 expected of people for decades.

8           Here we are with a situation in this e-mail that  
9 underscores the problem we have with a take-it-or-leave-it  
10 proposition. Here we are where in fact there have been no  
11 negotiations with Pride, there have been no negotiations  
12 on the normal kinds of things. Well location, length of  
13 wellbore. They say, "Give us your two sections or the  
14 application we've already filed we'll take to hearing."

15           They're not proposing to drill. Certainly not  
16 to Hyde. They're using the rules to force negotiations,  
17 and I submitted to you, that's improper and you're the  
18 only people who can say that.

19           And they do it with affidavits that are wrong  
20 and misleading from the beginning saying that Fuel  
21 Products and Pear have already signed up. They have not.  
22 These statements are not true.

23           MR. BROOKS: Were those statements in the  
24 affidavit or in the letters that you've given me here?

25           MR. CARR: The statement is in the e-mail.

1 MR. BROOKS: That's what I thought, I just  
2 wanted to clarify, because I didn't recall.

3 MR. CARR: On August 26th, following the  
4 hearing, Hyde gets a new e-mail and it advises them that  
5 they have gone forward with the pooling cases. And again,  
6 it only says, "Unless you farm out your interest, we're  
7 going to go to hearing." It's again, a take-it-or-  
8 leave-it sort of a proposal.

9 You know, I don't know how you judge good faith.  
10 To make a determination on good faith, you've got to know  
11 what the different parties' interests are, what their  
12 economics, all kinds of things.

13 So I think that's why we use a 30 day benchmark  
14 number. Because it's hard to see good faith sometimes  
15 when it's there. But I don't think you can apply that to  
16 bad faith, I think you know it when you see it. When  
17 you're negotiating and someone is making -- I will call  
18 them untrue statements and misrepresentations, that have  
19 to be willful.

20 MR. BROOKS: It's sort of like pornography.

21 MR. CARR: Is it sort of like pornography, and I  
22 may -- I may not know art when I see it, but I think I  
23 know pornography when I see it, and I think I know bad  
24 faith when I see it.

25 MR. BROOKS: All of these cases should be

1 dismissed. If not, we're going to have as many hearings  
2 as we did have in the prior case. We'll have our  
3 application to rescind and we're going to recite all these  
4 facts, we're going to send it to a whole bunch of people  
5 saying bad things about Cimarex, we're going to call  
6 Mr. Tresner -- we'd prefer not to do that. We'd like to  
7 have the clock set back and say, "You're going to go do  
8 this and you're going to do it right."

9 As to Fuel Products, there you have a situation  
10 where they didn't provide timely data to them, they didn't  
11 engage in real negotiations until the very, very last  
12 moment. The affidavit from Mr. Beall shows that on July  
13 21st, they received proposals for three wells in Section  
14 34.

15 They had send an incomplete JOA. On August  
16 18th. And that JOA covered all of Section 34. And they  
17 were surprised by that because they had been involved in  
18 the first well, the well that you've already entered an  
19 order on. And it was our understanding that they would  
20 receive proposals and a JOA on an individual well basis.

21 On August 13th, they filed pooling applications  
22 that were received by Fuel Products on August 21st. After  
23 filing the pooling application and before we received it  
24 on August 18th, they e-mailed an operating agreement  
25 covering all of the section with the statement that the

1 ownership schedule was incomplete and needed work.  
2 Nothing further has come concerning an operating agreement  
3 from Cimarex.

4 On August 25th were the first serious  
5 negotiations. Mr. Tresner came and they met with Fuel  
6 Products. Nine days before the hearing.

7 We submit to you that there has never been a  
8 proper well proposal, there was no timely providing us of  
9 a joint operating agreement, and there are still, by their  
10 own admission, ownership issues, that the documents they  
11 submit are incomplete, even though we have requested  
12 documents, there were no good-faith negotiations until at  
13 least nine days prior to hearing and it is still a  
14 take-it-or-leave-it proposal.

15 The application we file has to be -- and  
16 contains misrepresentations, because if it says, "We  
17 refuse to commit." We didn't even have any documents by  
18 which we could commit at that time. I don't think this  
19 complies with longstanding Division practice.

20 Pear Resources, same issue. Failed to make a  
21 proper proposal 30 days in advance. It was a  
22 take-it-or-leave-it proposal. And it says we refused in  
23 the pooling application before we even really had an  
24 opportunity to join or join in -- I guess we didn't know,  
25 join in what?

1 Me-Tex is a little different, it's a stand-alone  
2 thing, it's not part of Section 34. Me-Tex owns 50  
3 percent of the proposed spacing unit. We would submit  
4 again, there was no proper proposal, there was no JOA  
5 until our prehearing statements were filed and until we  
6 had filed to dismiss.

7 And after the close of business seven days  
8 before this hearing, they faxed us a joint operating  
9 agreement. What they faxed us is attached to the  
10 affidavit I filed of Ash Roan, the vice president.

11 The operating agreement they filed doesn't even  
12 identify the property, and the signature page shows Mack  
13 Chase files it. It's clearly something they yanked out of  
14 the file and just lopped over because we were filing a  
15 motion to dismiss for failure to do that.

16 It's not just a question here of complying with  
17 the 30 day time period, although they didn't do it. The  
18 affidavit of Mr. Roan shows that on July 28th, they  
19 requested a farmout and said, "We'd like to discuss this  
20 with you." And the only response they got was an August  
21 13th pooling application and the August 27th JOA after we  
22 filed to dismiss.

23 We don't think we have a proper well proposal in  
24 this case. We do own 30 percent of the acreage. We  
25 requested data, we didn't timely get it. We're before you

1 today in this case -- they're before you trying to take  
2 the working interest in 80 acres of land with an AFE that  
3 doesn't tell us where in the spacing unit they're going to  
4 locate the well, a JOA that we only received after we  
5 moved to dismiss that really is only signed by Mack Chase  
6 that doesn't identify the problem.

7           And I don't know if this is willful, I don't  
8 know if this is just sloppy work. But I submit to you  
9 that this Division must expect more of someone who wants  
10 to invoke the police power and take my interest and let  
11 them operate it. They must do more before you should  
12 enter that order.

13           The problem is, Cimarex is just out of step with  
14 long-standing division problems it's doing after they file  
15 to pool what they should have done before. They're not  
16 providing a proper proposal, they're not sending a  
17 completed AFE, they're not providing an appropriate form  
18 operating agreement, and certainly not 30 days before they  
19 filed their application.

20           They haven't been willing to negotiate on  
21 anything but take it or leave it, and they're own e-mail  
22 shows they don't want a take-it-or-leave-it proposal  
23 either. They want us to elect today so they can elect  
24 later, and they want to tie us up in the meantime.

25           They have no property interest at risk. They

1 should be told to go back and do it right. And we  
2 shouldn't in that process have to beg for data. We  
3 shouldn't have to negotiate with them with a gun to our  
4 head and a pooling order hanging over our heads.

5 And may it please the Examiners, this isn't just  
6 bickering, this is a question of our correlative rights.  
7 You know, we're guaranteed a right to develop our property  
8 interests, and you do that by drilling a well, or you do  
9 that by entering into an agreement with someone else.

10 And we submit that our correlative rights are  
11 impaired if someone can pool us, take over our property  
12 interests without engaging in real negotiations, without  
13 providing us appropriate data, and that they shouldn't  
14 invoke the police power of the State to take these  
15 interests.

16 Yesterday Mr. Tresner again e-mailed us, and it  
17 is part of the e-mail I passed out a few minutes ago. And  
18 if you'll note on the first page, that after he asks us to  
19 sign an agreement again covering all of our interests in  
20 Sections 34 and 35, he states, and I quote -- it's  
21 highlighted, "At the rate we're going, Cimarex could not  
22 get anything done if we waited to propose each well. We  
23 want to be able to drill the wells when needed."

24 I don't think this is how pooling works. I  
25 think you're required to propose a well, not a possible

1 well or one that you might repropose at a later date after  
2 you are forced to pass your ownership to us, or leveraging  
3 that, you have to provide data on the proposed well. You  
4 have to do it and provide on AFE and a JOA.

5 And Mr. Bruce says that's new policy. I don't  
6 think it's new policy if it's asking for the information  
7 and you don't give it to them. You need to do it 30 days  
8 before the hearing so your negotiations take place when  
9 the playing field is level.

10 And more than anything else, you have to tell  
11 the truth, you have to communicate and you have to tell  
12 the truth. That's not going on here. You try to reach a  
13 good-faith agreement and you have to do all of those  
14 things. And you do those before you invoke the police  
15 power of the State to take our interest. All of that is  
16 absent here.

17 Cimarex's applications in these cases should be  
18 dismissed, they should be required to comply with the same  
19 longstanding Division practices as other operators. They  
20 should go back and be told to do it right. And you're the  
21 only people who can do that.

22 MR. FELDEWERT: Mr. Examiner, I need to correct  
23 one thing for the record.

24 HEARING EXAMINER: Okay.

25 MR. FELDEWERT: Mr. Carr was kind enough to

1 cover for me this morning because I had a doctor's  
2 appointment. So he did a very good job of presenting  
3 Hyde's concerns here. One misstatement is that Larry  
4 Hamburg who filed these affidavits is the president of the  
5 company, and she's a woman, and so I know he referenced  
6 Mr. Hamburg a number of times.

7 MR. BROOKS: Yes, I was aware of that actually  
8 because Ms. Hamburg had presented -- had left some phone  
9 messages for me, however I never spoke with her.

10 MR. FELDEWERT: And let me -- I spoke with her,  
11 and let me -- She called the Division first, as her  
12 affidavit points out, because she was not very familiar  
13 with the pooling proceedings here in New Mexico and found  
14 it very surprising that they were holding this gun to her  
15 head. And so, she was directed to our firm.

16 And the best example of where her concerns lie  
17 is in this e-mail that Mr. Carr gave to you. And we got  
18 it yesterday. Because what she says here in the middle,  
19 which is on the second page, is that she asked Cimarex,  
20 "What exactly is it --" and I'm reading from the second  
21 page of this e-mail of September 2nd, it's at the top,

22 "What exactly is it that Cimarex  
23 is looking for from Hyde Oil and Gas at  
24 this point in time? I like to be very  
25 clear before making a decision as things

1 are currently quite confusing given the  
2 inconsistent farmout offers, AFEs, operat-  
3 ing agreements, and pooling applications  
4 your company has recently forwarded.

5 "Cimarex's proposed farmout agreement  
6 covers Sections 34 and 35 and lists numerous  
7 tracts and wells, many of which we have  
8 never discussed."

9 See, they haven't asked her to enter a farmout  
10 that covers two entire sections of land. They don't want  
11 to do that.

12 We have received AFEs without footage locations,  
13 as pointed out in our motions. They send out these AFEs,  
14 they don't even give footage locations for the wells. And  
15 pooling applications for these reentry of Wells 16 and  
16 Wells 18, 19, and 20, which I now know will be new drills.

17 "On August 17th, you told me that  
18 the pooling proceedings would be con-  
19 tinued. On August 18th, you provided  
20 a draft operating agreement covering all  
21 of Section 34. On August 26th, you informed  
22 me that the pooling proceedings had gone  
23 forward and that if we did not agree to a  
24 farmout covering both Sections 34 and 35,  
25 we will be forced pooled and no longer have

1 options over our interests."

2 She then goes on. My point here is that as she  
3 sets out in her affidavit and her e-mail, they did not get  
4 the proper well proposals to her, they did not talk to  
5 her, did not attempt to reach an agreement prior to going  
6 into all of these pooling proceedings, and that's why they  
7 should be dismissed.

8 MR. BROOKS: Thank you, gentleman. Do you want  
9 to -- I'm sorry --

10 HEARING EXAMINER: Go ahead. I'm going to need  
11 you on this one anyway. Mr. Bruce?

12 MR. BRUCE: Well, Mr. Examiner and Mr. Examiner,  
13 I guess my counter argument can be summed up in one word:  
14 Baloney.

15 Mr. Carr is shocked that forced pooling is being  
16 used to force people into making a decision. That's  
17 precisely what it's for. If they won't farm out, if they  
18 won't enter into an operating agreement, or if they won't  
19 respond to anything, yes, you file a forced pooling  
20 proceeding to force them into it.

21 I'm afraid my opponents are in essence asserting  
22 that their clients are helpless invalids who can't look  
23 after their own interests. Frankly, all these parties  
24 have been in the oil and gas business for decades, and  
25 they know the procedure.

1           Mr. Carr started off by saying you must meet  
2 certain preconditions in well proposal negotiations, et  
3 cetera, well first of all, Mr. Brooks, I agree with Mr.  
4 Carr that your order in our 13155 does in the finding part  
5 say that a well proposal should include an AFE and a JOA.  
6 However, there has never been a requirement for a JOA to  
7 be submitted before. Never.

8           And your Order did not cite any precedent. The  
9 reason is, there is no precedent. If you'll look at 99  
10 percent of the forced pooling proceedings over the last 15  
11 years, what you have, and I think Mr. Carr and I  
12 originally argued this point in a hearing between  
13 Mewbourne Oil Company and Devon Energy Company probably in  
14 the early '90s, maybe the late '80s, and what -- I  
15 couldn't dig up the Order, but what it basically said is  
16 what you have to do is send a proposal letter with an AFE  
17 proposing a specific well.

18           And that's what people have been doing for the  
19 last 20 years, they send a proposal with an AFE. Now, as  
20 to well locations, I'll get into the Me-Tex one in a  
21 minute, but there is no requirement that you give a  
22 footage for the locations. There never has been.

23           As a matter of fact, for 25 years I've always  
24 told my clients to -- when they are proposing a  
25 well, state that it's at an orthodox location. And it's

1 gotten worse and worse over the years, because when you  
2 propose a well at 660 and 660 from the north and east  
3 lines, and all of a sudden the BLM says no, you have to  
4 move it 1,000 feet, then you have to start over again.

5 MR. BROOKS: Well, you would agree with me,  
6 would you not, that when you propose a well under a  
7 standard form of joint operating agreement, you have to  
8 give --

9 MR. BRUCE: That is correct, Mr. Examiner.

10 MR. BROOKS: Okay. Continue.

11 MR. BRUCE: But -- and I have also asked the  
12 Division many times not to put a specific location in a  
13 pooling order -- I mean, I don't mind it if you limit it  
14 to a quarter quarter section, but I've had to come back a  
15 number of times because the well location was changed  
16 either to satisfy the surface owner where there's  
17 irrigation, or to satisfy the BLM, or whatever. And I  
18 don't see any problem in proposing a well at an orthodox  
19 location in a particular section.

20 And with respect to horizontal wells, I don't  
21 see the problem there either. Obviously, the people are  
22 going to try to maximize the horizontal wellbore length.  
23 And so most of these things end up being from more or less  
24 330 feet off a section line to 330 feet off the other  
25 section line, or something like that.

1 I just really do not see the problem or the  
2 issue there. If that's what the Division is going to  
3 require, fine, but that is another new requirement that is  
4 not in keeping with past practice.

5 Now, with respect to the Me-Tex well proposal  
6 which I'll go into first, the affidavit here and my  
7 response in the affidavit, Me-Tex was -- and Anadarko,  
8 were given a well proposal with an AFE on June 17th.  
9 That's two and a half months ago, almost three months ago  
10 now, and they just refused to respond. Mr. Carr says, "We  
11 don't have a well location."

12 Well actually, the pooling application did put  
13 in a specific well location. And the reason is, Me-Tex or  
14 anyone could have gone to the Division's website and  
15 pulled off a C-102 for that well.

16 Now, just because Me-Tex doesn't want to do  
17 anything, doesn't want to enter into a farmout agreement,  
18 doesn't want to enter into a JOA, doesn't mean it can't be  
19 forced pooled.

20 Now, was the JOA and a proposed farmout  
21 agreement sent later? Yes, they were. But they -- as the  
22 affidavit of Mr. Tresner shows, he's had several -- he's  
23 had approximately five telephone discussions with Ash  
24 Roan, the landman for Me-Tex, I guess he's an officer  
25 there, he sent the well proposal, they've gotten the

1 pooling application, frankly, I don't know what more they'  
2 need.

3 With respect to Hyde Oil and Gas, in looking at  
4 this, yes, there might be a problem on the 34 16 well, the  
5 one where the order was already entered, but Pear  
6 Resources, Fuel Products and the others were involved in  
7 that application and they're not objecting to that well.

8 But if you look at Mr. Carr's Exhibit 2, the  
9 recent e-mails, first of all, it says that Cimarex has  
10 been in negotiations with Hyde since last fall and they  
11 still don't have a commitment.

12 Starting last fall, negotiating? Well, I'm  
13 guessing there's been good faith or at least substantial  
14 negotiations which would constitute good faith trying to  
15 get them to join in the well.

16 Mr. Carr also highlighted a proposed farmout  
17 agreement that covers Section 35. What's wrong with that?  
18 I don't think there's any requirement that a farmout  
19 proposal or a JOA simply cover one well.

20 With respect to the other parties involved, the  
21 materials attached to my response show that Cimarex did  
22 propose the wells to all of the interest owners in July.  
23 By now, almost two months have passed. If you look at the  
24 e-mails attached, the parties have been in discussions  
25 since early June or mid June on all of these matters.

1           Again, what's good faith? Well, if you have a  
2 half dozen e-mails, if you have a half dozen phone calls,  
3 if you provide people with a farmout agreement, if you  
4 provide people with an operating agreement, if you give  
5 them an AFE, that's a lot more than most people do. That  
6 satisfies the prior requirements of the Division.

7           And again, I would point out that in the COG/  
8 Chesapeake matters, that the August 11th order came out --  
9 And again, that was where COG had sent no proposal letter  
10 to Chesapeake, and I think Devon Energy was also involved  
11 in that case before the pooling applications were filed.

12           And again, I would reiterate that there has  
13 never been an order issued saying you have to send an  
14 operating agreement with a well proposal. Now, if that's  
15 the requirement --

16           MR. BROOKS: Until the one I wrote.

17           MR. BRUCE: Until the one you wrote. Now, if  
18 that's the requirement, that's fine. The operators will  
19 comply with that. But what Mr. Carr wants to do is to  
20 make that requirement retroactive to proposals sent before  
21 August 11th. I think that's improper.

22           The final point I want to make is, apparently  
23 these parties are offended that Cimarex is looking at  
24 drilling a number of wells. Again, I fail to see the  
25 outrage.

1           If you'll look at Cimarex's history, since it  
2 moved in into the state about five years ago, that's what  
3 they do, they drill wells. They drill a lot of them.  
4 They go out and prospect and put packages together, and  
5 then they start drilling.

6           And that's the reasonable and economic way to do  
7 it. If they've got a rig out there, why drill one well  
8 and move the rig out and spend the money to move the rig  
9 back on? As a result, that is why they propose in some of  
10 these areas a joint operating agreement or a farmout  
11 covering lots of acreage.

12           And frankly, if the parties would simply sign a  
13 JOA, they would be able to make their election on a  
14 well-by-well basis, they could negotiate language that --

15           MR. BROOKS: Well, yeah, I was going to ask that  
16 very question. Because it's my understanding that the --  
17 the proposal of a well under a JOA, if a nonoperator  
18 elects to participate, that does not create a contractual  
19 obligation on the operator to drill a well, it only gives  
20 the operator an option. Am I correct in my understanding?

21           MR. BRUCE: What usually happens is a well  
22 proposal is made, and people have 30 days to elect, and  
23 then they have, I think, an additional 90 days to  
24 commence --

25           MR. BROOKS: Yeah, I was thinking it was 90

1 or 120 --

2 MR. BRUCE: It's generally 90.

3 MR. BROOKS: I believe under some of the forms  
4 that have been written, it's 90 with an option under  
5 certain circumstances to extent it for an additional 30,  
6 but that's something that's technically -- But anyway,  
7 that's my understanding. The operator's not obligated to  
8 actually drill the well.

9 So the operator could come in -- and if I'm  
10 stating this wrong, Mr. Carr, please set me right, but  
11 it's my understanding, the operator under a JOA can  
12 propose several wells, and if he doesn't get around to  
13 drilling all of them during the 90 days, then he has to  
14 repropose them, but he's not obligated to drill those  
15 wells.

16 MR. BRUCE: That is correct.

17 MR. BROOKS: Okay. Go ahead.

18 MR. BRUCE: All I'm saying is, you know, Fuel  
19 Products, et. al., are the masters of their own destinies.  
20 What do they want to do? I haven't seen the affidavit --  
21 I wasn't provided with the affidavit of Tom Beall, but  
22 what you see there is negotiations are ongoing, but  
23 whether it's Hyde, or Fuel Products, or Pear Resources,  
24 they just don't -- they haven't decided how they want to  
25 do it, whether they want to farmout, whether they want a

1 joint operating agreement, whether they want to  
2 participate in any of the wells.

3 Well, that's fine and dandy, but as the  
4 affidavits of Mr. Tresner show, they have plans to drill  
5 eight or so wells in these areas and they want to get  
6 moving. And I see nothing wrong with that. All of the  
7 well proposals, in my opinion, are valid, they've  
8 discussed these with the parties.

9 I don't think it's proper to dismiss these  
10 cases, continue them if you will for a certain period of  
11 time, two weeks, four weeks, and let the parties continue  
12 their negotiations, but there is no reason to dismiss  
13 these applications.

14 MR. BROOKS: We obviously have to -- I'm sorry,  
15 are you through?

16 MR. BRUCE: Yes, sir.

17 MR. BROOKS: We obviously have to continue them  
18 because --

19 MR. BRUCE: And Cimarex has no objection to  
20 that.

21 MR. BROOKS: Because there are no witnesses here  
22 to present them, as I understand it.

23 MR. BRUCE: That is correct.

24 MR. BROOKS: Okay.

25 MR. BRUCE: Mr. Carr and I agreed we would not

1 present any evidence.

2 MR. BROOKS: Yeah. I guess I better let the  
3 presiding Examiner preside, and then if he calls on me to  
4 answer questions, I will do so.

5 MR. CARR: I would like to briefly respond.

6 MR. BROOKS: All right, go ahead.

7 HEARING EXAMINER: Mr. Carr, go ahead.

8 MR. CARR: Years ago I had a case, I was  
9 opposing Texaco and one of the witnesses said -- I said,  
10 "Why would you think we would agree to this?" And he  
11 said, "Well, your client wrote me a letter and he said he  
12 did." And I said, "Can you provide me with that letter?"  
13 And Texaco did. Very sad. And I had no argument. And I  
14 wish I had known all I needed to do was say, "Baloney."

15 Because that is a copout. Yes, a compulsory  
16 pooling application is designed to make people make a  
17 decision about a well. It's not to be held over people's  
18 head to force them on the front end of a large project  
19 convey away a large property interest because somebody  
20 might possibly want to drill it.

21 It's one thing for us today to say Mr. Tresner  
22 wants to drill eight to ten wells, but what he said is  
23 they may possibly be drilled. We will withdraw  
24 applications, we will seek if we want to drill, and we  
25 don't want to be put in a take-it-or-leave-it posture long

1 before they have to be in that position.

2 Jim said, "I guess there's been good faith."  
3 Well, I don't think we should have to guess. And I don't  
4 think he should be doing that. I think good faith  
5 requires, whether or not your order has a retroactive or  
6 only a prospective application, I don't think there is  
7 anything new about any negotiation that asks for an  
8 agreement from the other side, they are expected to  
9 provide it and expected to do it timely.

10 And they're expected not to just send you into  
11 many cases after you've already planned and filed to  
12 dismiss. And we shouldn't be out saying, "I wonder what  
13 they're doing. We better go look in the well file. They  
14 won't talk to us, maybe we can figure it out."

15 It's their duty, because they're the ones asking  
16 you to take -- prompt us the right to operate certain  
17 property. And just saying that there have been two months  
18 of communication, what more do they want, they have to  
19 look at what those communications were.

20 Hyde, "We'll have a meeting." We cancelled the  
21 meeting. "We'll talk to our management. We'll send you  
22 an e-mail." Nothing. They don't even propose the well.

23 With Me-Tex, we asked for a farmout agreement.  
24 We get nothing but a pooling application and Mack Chase's  
25 operating agreement. We shouldn't have to be guessing at

1 what they want to do. There are certain things they have  
2 to do and they have to do it themselves because they're  
3 the ones invoking the police power through you to take our  
4 interests.

5 Masters of our own destiny. We need to decide.  
6 Well, we'd like to do that but we need data, we need  
7 information, we need discussions, we have not had those.

8 And a continuance doesn't do it, because we will  
9 continue with pooling applications improperly filed saying  
10 we have refused to agree hanging over our heads. And we  
11 looking to you to dismiss these cases, Mr. Examiner.

12 HEARING EXAMINER: Mr. Bruce, any anything else?

13 MR. BRUCE: Well, I would just -- with respect  
14 to Mr. Carr's long comment, when he referred again to the  
15 e-mail, I think he's misinterpreting it. He said once  
16 Hyde is under a farmout order JOA, then they'll pull the  
17 prior -- the two month old well proposals and go under  
18 that agreement. I think that's all that's getting at.

19 MR. CARR: No, it says that we will decide after  
20 we get data on the well that's already been approved.  
21 We're not ready to commit now.

22 MR. BRUCE: And that's exactly what all these  
23 parties seem to want, drill the first well, and then move  
24 forward.

25 HEARING EXAMINER: Okay.

1 MR. BROOKS: Do you want to examine counsel, or  
2 do you want me to do it?

3 HEARING EXAMINER: Please.

4 MR. BROOKS: Okay. There has been a lot of  
5 factual representations in the course of this argument and  
6 we don't have a record that we're relying upon, so I want  
7 to make sure that we know what the facts are when we're  
8 ruling on the motion.

9 My understanding from the motion I gleaned --  
10 and that's all I knew before we came here this morning,  
11 that each of these wells had been proposed but without --  
12 with a proposal and an AFE but without specific footage  
13 locations; is that a correct statement?

14 MR. CARR: That is correct.

15 MR. BROOKS: Okay. Now, the representations  
16 stated in here that they would continue the case applies  
17 only to the case that was heard on August 20th, so it  
18 doesn't affect any of these other cases. I assume that's  
19 also correct?

20 MR. CARR: Except it's indicative of the way  
21 they are negotiating on all the wells.

22 MR. BROOKS: Okay. Now, I was a little  
23 surprised when you quoted to me the Order that I drafted  
24 to the director in the Chesapeake/COG case because I did  
25 not recall that I included the requirement for a proposed

1 form of joint operating agreement, and I'm not really  
2 clear on whether that is actually a part of what the  
3 Division has required in the past.

4 Mr. Stagner and Mr. Katanach are no longer  
5 available to consult on that issue. So. Is it your  
6 understanding, Mr. Carr, that the Division has required  
7 that in the past, or is Mr. Bruce correct in saying that  
8 it --

9 MR. CARR: My understanding is that in the past,  
10 the Division required a written well proposal with an AFE.

11 MR. BROOKS: That's what I thought also.

12 MR. CARR: It's my understanding that in the  
13 past, if somebody asked for one, they got it.

14 MR. BROOKS: Okay now, I -- when you say other  
15 data, I'm much more unclear on my other data than I am on  
16 the joint operating agreement, because I'm not at all sure  
17 whether we have ever addressed the other data issue, and  
18 certainly an operator may have a lot of relevant data that  
19 one may want and another may not want to give. Mr. Bruce,  
20 do you have an understanding --

21 MR. BRUCE: Well, I don't think there's any  
22 specific Division order. I do believe -- and again, I've  
23 always told my clients not to send a JOA, simply because  
24 putting together a JOA can be kind of a chore, but if --  
25 to put in the proposal letter that if you would like a

1 JOA, please let me know and I will send you one. Or if  
2 you are interested in a farmout, please let me know and I  
3 will send you one.

4 So I think it's more -- and I would say both  
5 Mr. Carr's clients and mine have been more or less along  
6 that same line over the years.

7 MR. BROOKS: Well, as I say, I was a little  
8 surprised when Mr. Carr read the Order that I wrote a few  
9 weeks ago, and I have to admit that it --

10 There was an anecdote that Professor Charles  
11 Allen Wright told me when I studied federal procedure  
12 under him 40 years ago to the effect that a letter that  
13 Mr. Justice Bradley of the Supreme Court had written in  
14 which he stated, "I can't believe I said that in the  
15 opinion unless I was stupider than I usually am." Because  
16 I really do not know if there has been a Division  
17 procedure to require JOAs.

18 I know there has been a Division procedure to  
19 require well proposals, and I know there has been a  
20 Division procedure to require AFEs. And I also -- while I  
21 understand that there's been an ongoing fight about  
22 footage locations, I've also been on the side of requiring  
23 them, and the attorneys have always been on the other  
24 side. Yes, sir?

25 MR. CARR: My observation is, if -- We're

1 dealing with horizontal wells here?

2 MR. BROOKS: Yeah.

3 MR. CARR: These are horizontal wells? The  
4 footages are very important. I mean, I don't understand,  
5 for example, how you can undertake good-faith efforts to  
6 reach an agreement when you send out nothing more than an  
7 AFE that says, "We're going to drill a horizontal well at  
8 a standard location covering the north half of the south  
9 half of Section 34." They have much better comment on  
10 what the policy has been in the past.

11 All I can tell you is, if I'm trying to  
12 negotiate with somebody in good faith and I'm advising a  
13 client on that, let's give them an agreement, let's give  
14 them a well to work off of. Let's not throw something out  
15 there that's vague, and then that's all we do and file our  
16 pooling application.

17 Because we all know when you're filing a pooling  
18 application, you got to say, "I propose the well, and I  
19 enter into good-faith efforts to reach an agreement."  
20 It's a requirement in every application that you make that  
21 statement. Which means that you're supposed to have done  
22 that beforehand. Beforehand.

23 And I don't know how you can engage in  
24 good-faith efforts to reach an agreement if I haven't  
25 proposed a specific well under a specific agreement. I

1 think what you said in the COG case makes a lot of sense  
2 to me. Now, if you want to back off of that, you know,  
3 it's your prerogative, but it makes a lot of sense to me.

4 Also, you know, with a horizontal well, it would  
5 be nice to know how much horizontal well you want to  
6 drill. I think that's essential. Because then you can  
7 get everybody in the hole. Then you can get everybody in,  
8 you can say, "This is what we think should happen."

9 You may not reach an agreement, but at least  
10 you've gotten everybody's input when you finally get to  
11 the point of filing the pooling application. That should  
12 be the last resort.

13 MR. BROOKS: Well, it looks like you're being  
14 double-teamed here, Mr. Bruce. Do you want to respond?

15 MR. BRUCE: Well -- and again, I go back -- And  
16 I think there might be a slight difference between these  
17 horizontal wellbores. And as I said, let's look at the  
18 case of a well location for a Morrow well if you have a  
19 north half unit. I think there is an issue if the well is  
20 proposed at an orthodox location in the northeast  
21 northeast and then they decide to drill in the northwest  
22 northwest. I mean, with Morrow geology, I think you'd  
23 really have to question that.

24 And going back to Mr. Stagner, he said in one --  
25 I don't think it's in an order, he said at one hearing,

1 "Does it really matter whether a well is going to be  
2 located 330 feet either way from a proposed location?  
3 Does the geologist really know that much?"

4           And I think if you look at all of these  
5 horizontal wellbore applications, these or any -- there  
6 have been plenty of them over the last two and a half  
7 years. They all seek to maximize the horizontal wellbore  
8 length.

9           Unless you're reentering an existing well, they  
10 all seek to maximize a horizontal wellbore. And most of  
11 them are somewhere around 330, 350 feet from each section  
12 line at the entry point and the terminus.

13           So I don't, frankly -- I don't think -- again,  
14 whether it's going to be moved 330 feet one way or the  
15 other north and south, say, or east and west, I don't  
16 think that's a big issue to at least get the parties  
17 negotiating.

18           MR. BROOKS: Very good. I'm going to advise my  
19 client over here that we take a break so I can discussed  
20 the issues with him.

21           HEARING EXAMINER: That's a good idea.

22           MR. CARR: Mr. Examiner, I'd like to say  
23 something, and it doesn't relate to the argument, but Jim  
24 scared me yesterday when he said, "I'm waiting for an  
25 affidavit," or something like this from this person.

1           So I very quickly did another one of my frantic  
2 things, and I put together a couple of affidavits, one  
3 from Tom Beall and one from Ash Roan from Me-Tex. They  
4 simply provide by affidavit support for various statements  
5 that I made.

6           MR. BRUCE: And I know Mr. Carr will give them  
7 to me, I just I haven't seen them.

8           MR. CARR: I haven't give them to you today  
9 because I simply forgot. But I would like to move them as  
10 exhibits.

11          MR. BRUCE: That's fine.

12          MR. CARR: So that you just have them so that --  
13 because it just provides a sworn statement that supports  
14 the allegations in the motion.

15          MR. BROOKS: Let me ask you, if we continued  
16 this case, when would we be continuing it to?

17          MR. BRUCE: Well, Mr. Carr and I agreed to argue  
18 these motions without presenting testimony today.  
19 Frankly, I don't have a problem with continuing them for  
20 four weeks.

21          MR. BROOKS: Yeah, we have to continue them if  
22 don't dismiss them.

23          MR. BRUCE: Yeah.

24          MR. BROOKS: Because otherwise, we're going to  
25 put you in the position of having to send new notices

1 which we would follow if we dismissed the case but not  
2 ought to follow if --

3 MR. BRUCE: Four weeks would be acceptable to  
4 me.

5 MR. BROOKS: Okay. Thank you.

6 HEARING EXAMINER: Let's take a ten minute break  
7 then.

8 MR. BROOKS: We maybe ought to take 15.

9 HEARING EXAMINER: Okay. Let's come back at  
10 10:45. We'll break for lunch at 11:45.

11 MR. BROOKS: Thank you, Mr. Examiner.

12 (Note: A break was taken.)

13 HEARING EXAMINER: We'll go back on the record.  
14 I appreciate the break that allowed my legal advisor and  
15 me to discuss a few issues. I think for clarity, it would  
16 be better now if David would go ahead and present what we  
17 decided.

18 MR. BROOKS: Okay. The decision of the Examiner  
19 after consulting legal counsel is that the motions to  
20 dismiss in the four cases in which the motions were  
21 presented today will be taken under advisement. *David B.*

22 The cases will be reset to the October 15th  
23 docket. The reason for doing that is, that if the  
24 decision of the Director should be to overrule the motions  
25 to dismiss, it will still have the option of requiring

1 that specific documents be furnished 30 days in advance of  
2 the hearing, which would not be possible if we continued  
3 the hearing for 28 days. So that's what we're going to  
4 do.

5 Once again, the motions to dismiss the four  
6 cases will be taken under advisement. The cases will be  
7 reset on the merits for the October 15, 2009 docket.

8 MR. CARR: May it please the Examiner, I've  
9 provided you with copies of two affidavits. And I just  
10 provide them because they do support with affidavit  
11 testimony a backdrop against which those motions were  
12 presented. And I believe Mr. Bruce doesn't object.

13 MR. BRUCE: I have no objection to the admission  
14 of that into the record.

15 MR. BROOKS: Okay, very good. They will be so  
16 admitted. As I stated at the beginning of this hearing,  
17 no ruling will be made in the case involving the Mallon  
18 34 No. 16, as that matter has been concluded by Order and  
19 a motion to reopen has not yet been sent.

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I hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. \_\_\_\_\_  
heard by me on \_\_\_\_\_  
\_\_\_\_\_, Examiner  
Oil Conservation Division

1 STATE OF NEW MEXICO )  
2 COUNTY OF BERNALILLO ) ss.  
3 )  
4 )

5 REPORTER'S CERTIFICATE

6  
7 I, PEGGY A. SEDILLO, Certified Court  
8 Reporter of the firm Paul Baca Professional  
9 Court Reporters do hereby certify that the  
10 foregoing transcript is a complete and accurate  
11 record of said proceedings as the same were  
12 recorded by me or under my supervision.

13 Dated at Albuquerque, New Mexico this  
14 10th day of September, 2009.

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21 License Expires 12/31/09  
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