

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

APPLICATION OF CIMAREX ENERGY COMPANY
FOR A NONSTANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO CASE NO. 14418

TRANSCRIPT OF PROCEEDINGS
Examiner Hearing
February 4, 2010
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Santa Fe, New Mexico 87504

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BEFORE: RICHARD EZEANYIM, HEARING EXAMINER
DAVID K. BROOKS, LEGAL ADVISOR

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1 MR. EZEANYIM: Let's go back into the
2 record and then call our last case for today. We're
3 doing quite well today. This case is on page 3, and
4 this is Case Number 14418, Application of Cimarex
5 Energy Company for a non-standard oil spacing and
6 proration unit and compulsory pooling, Eddy County,
7 New Mexico. Call for appearances.

8 MR. LARSON: Mr. Examiner, Gary
9 Larson of Hinkle, Hensley, Shanor & Martin on behalf
10 of Applicant Cimarex Energy, and I have three
11 witnesses with me.

12 MR. EZEANYIM: Thank you very much.
13 Any other appearances?

14 MS. MUNDS-DRY: Mr. Examiner, Ocean
15 Munds-Dry with the law firm of Holland & Hart here
16 representing Lynx Petroleum Consultants, Marbob
17 Energy Corporation, Larry Scott, and unless Bill Carr
18 comes back, Chaparral Energy, LLC.

19 MR. EZEANYIM: Any other appearances?
20 Do you have any witnesses?

21 MS. MUNDS-DRY: I have one witness.

22 MR. EZEANYIM: Okay. Any other
23 appearances? Okay. At this point, I would like all
24 the witnesses to stand up and then state your name to
25 be sworn in.

1 (Note: The witnesses were duly sworn.)

2 MR. LARSON: May I proceed?

3 MR. EZEANYIM: Go ahead.

4 MARK COMPTON

5 After having been first duly sworn under oath,
6 was questioned and testified as follows:

7 EXAMINATION

8 BY MR. LARSON:

9 Q Please state your full name for the
10 record.

11 A Mark Compton.

12 Q And where do you reside?

13 A Midland, Texas.

14 Q And by whom are you employed and in what
15 capacity?

16 A Cimarex Energy Corporation, petroleum
17 landman.

18 Q And have you ever testified before the
19 division before?

20 A No.

21 Q And how long have you been employed by
22 Cimarex?

23 A With Cimarex, about a year and a half.

24 Q And could you briefly summarize your
25 educational and oil and gas employment background?

1 A I have a degree in finance from the
2 University of Tennessee in Knoxville. I have been a
3 petroleum landman for about six and a half years, the
4 last five years in Lea and Eddy County.

5 Q In southeastern New Mexico?

6 A Yes.

7 Q And what is the focus of your
8 responsibilities in your position with Cimarex?

9 A I oversee brokers in the field who are
10 doing record checking for us, file oil and gas
11 leases, and acquire leasehold interests and prepare
12 the associated documents that go with those.

13 Q Is your focus with Cimarex on southeastern
14 New Mexico?

15 A Yes, exclusively.

16 Q And are you familiar with the land matters
17 pertaining to Cimarex' application?

18 A I am.

19 MR. LARSON: Mr. Examiner, based on
20 Mr. Compton's education and professional experience,
21 I move that he be qualified as an expert in land
22 matters.

23 MR. EZEANYIM: Any objection?

24 MS. MUNDS-DRY: No objection.

25 MR. EZEANYIM: Are you a certified

1 public landman?

2 THE WITNESS: I'm a registered
3 professional landman.

4 MR. EZEANYIM: Oh, very good. You
5 are very well qualified. Go ahead.

6 Q (By Mr. Larson) Mr. Compton, could you
7 describe the well that Cimarex proposes to drill in
8 the event that its application is approved in this
9 matter?

10 A We would begin to drill the Penny Pincher
11 21 Fed #1H in the west half of the west half of
12 Section 21 with an orthodox surface hole in the
13 northwest, northwest, and an orthodox bottom hole
14 location in the southwest, southwest of Section 21.

15 Q Will it be a horizontal well?

16 A Yes, in the Bone Spring formation.

17 Q I would direct your attention to Exhibit
18 Number 1. Could you identify that for the hearing
19 examiner?

20 A Yes. That circle around Section 21 is our
21 proposed well, and it would be the west half, west
22 half.

23 Q And this is a Midland land company map?

24 A Yes, sir.

25 Q And so it does depict the location of the

1 horizontal well that is the subject of the
2 application --

3 A Yes, sir.

4 Q -- inside that radius? And what is the
5 spacing in that Bone Spring formation?

6 A For the horizontal that we propose, it
7 would be every 40 acres that we would touch, which
8 would be all four 40-acre units in that west half,
9 west half.

10 Q And what are you seeking approval for in
11 this hearing today?

12 A We are seeking approval of a 160-acre
13 proration and spacing unit in the west half, west
14 half of Section 21, and a pooling of all mineral
15 interests in the west half, west half from 2,500 feet
16 subsurface to the base of the Bone Spring.

17 Q Now, I would direct your attention now to
18 Exhibit Number 2. Who prepared this exhibit?

19 A Michael Swain, a reservoir engineer for
20 Cimarex, and Lee Catalano, one of our geologists.

21 Q Both of whom will testify when --

22 A Yes.

23 Q -- your testifying is completed? And if
24 you will look at the area in Section 21 that has a
25 green border, do these depict each of the 40-acre

1 spacing units?

2 A Yes.

3 Q And could you explain to the examiner what
4 ownership interests Cimarex has in those four spacing
5 units?

6 A We have ownership in the north half of
7 that spacing unit, in the two -- in the northwest,
8 northwest, and the southwest, northwest.

9 Q But no ownership interest in the other two
10 40-acre units?

11 A No.

12 Q And hence your application to pool the
13 interest owners in those two 40-acre spacing units?

14 A Yes.

15 Q And how did you identify all of the
16 interest owners in the proposed 160-acre proration
17 unit?

18 A We retained the services of Shaw Interests
19 located there in Midland.

20 Q And did Shaw Interests perform its work
21 under your direction?

22 A Yes.

23 Q And I will next direct your attention to
24 Exhibit Number 3. And who prepared this exhibit?

25 A I did, with the information I was given

1 from Shaw Interests.

2 Q And what are those figures next to each
3 person or entity's name on the list?

4 A It shows their net mineral acres and the
5 proposed spacing unit and their working interest in
6 that spacing unit.

7 Q Does Exhibit 3 also indicate the gas
8 leases in the --

9 A Yes, it does. There are two.

10 Q And those are both federal leases?

11 A Yes.

12 Q And who do you seek to pool in this
13 proceeding?

14 A All of the persons listed in Exhibit 3.

15 Q And did you attempt to acquire any of the
16 leasehold interests in the west half, west half of
17 Section 21?

18 A Yes, we did.

19 Q And were those unsuccessful?

20 A Yes, sir.

21 Q And at least 30 days prior to the filing
22 of Cimarex' application, did you attempt to obtain
23 the voluntary joinder of the interest owners you seek
24 to pool?

25 A Yes, we did.

1 Q I will next direct your attention to
2 Exhibit Number 4, and could you identify that for the
3 record, please?

4 A That is the proposal -- the well proposal
5 letter that we sent to each of the interest owners.

6 Q So this one is directed to Lynx Petroleum.
7 The same identical letter would go to all the other
8 interest owners?

9 A Yes, sir.

10 Q And did you include any documents with
11 this letter --

12 A We did.

13 Q -- this Exhibit 4? What did you include?

14 A We included an AFE and a proposed
15 operating agreement.

16 Q And that went to all of the interest
17 owners?

18 A Yes.

19 Q Could you identify Exhibit Number 5 for
20 me?

21 A It is the AFE for the Penny Pincher 21 Fed
22 Com #1H.

23 Q Who prepared this AFE?

24 A Mark Audis, one of our Cimarex drilling
25 engineers.

1 Q Now, I would direct your attention to the
2 date at the top. It is November 30, 2009, which is a
3 different date from the notice letter, Exhibit 4.
4 And what is the reason those dates are different?

5 A When we sent out the original AFE, it did
6 not include the bottom hole location. And so under
7 the advisement of Jim Bruce, we added that to it,
8 dated it, and it was subsequently mailed to all
9 interest owners.

10 Q And other than adding the bottom hole
11 location, is everything in Exhibit 5 the same as the
12 original AFE you sent out?

13 A Yes, it is.

14 Q And is there any individual or entity
15 listed on Exhibit 3 that did not receive this
16 proposal package in November 2009?

17 A Yes.

18 Q And who would that be?

19 A Mr. Robert Bayless.

20 Q And why was Mr. Bayless not notified?

21 A He did not appear on the ownership report
22 that we received from Shaw Interests, but he did
23 appear on the title opinion from our attorney there
24 in Midland.

25 Q And when did you receive the title

1 opinion?

2 A It was approximately January 15 or 16.

3 Q And did you then send a proposal package
4 to Mr. Bayless?

5 A Yes, we did.

6 Q And did he receive it?

7 A Yes, he did. He signed for it at
8 approximately 9:45 on January 25.

9 Q Now, after sending this letter and the AFE
10 and the operating agreement, did you have any further
11 communication with the interest owners regarding your
12 proposal?

13 A Some of them.

14 Q And did that include negotiations over
15 price, over the terms of the operating agreement?

16 A Somewhat. It -- what negotiations there
17 were were mainly over price per acre.

18 Q And I assume those negotiations were also
19 unsuccessful?

20 A Yes.

21 Q In your opinion, has Cimarex made a good
22 faith effort to obtain the voluntary joinder of all
23 the interests owners in the proposed Penny Pincher
24 well?

25 A Yes.

1 Q I will direct your attention again to
2 Exhibit Number 5. Does it indicate the cost of the
3 Penny Pincher well?

4 A Yes, it does.

5 Q And what do those costs indicate?

6 A \$1,863,990 dry hole, completion of
7 \$1,823,071, for a total cost of a little over \$3.6
8 million.

9 Q And will Mr. Swain address those costs
10 during his testimony?

11 A Yes, he will.

12 Q And does Cimarex have prior experience in
13 drilling and completing directional wells in the Bone
14 Spring formation in this area of New Mexico?

15 A Yes, we do.

16 Q And how many wells have you drilled?

17 A In this immediate area, since May of '09,
18 we have drilled seven.

19 Q And are you currently drilling any wells
20 in this area?

21 A We currently have three rigs running.

22 Q And were you personally involved with the
23 development of any of those prior horizontal wells?

24 A Yes, four of us are.

25 Q In your experience, are the well costs set

1 out in the AFE in line with the costs of other
2 directional wells that Cimarex has completed in this
3 area?

4 A Yes, they are.

5 Q What entity are you requesting the
6 division to designate as the operator of the Penny
7 Pincher well?

8 A The Cimarex Energy Corporation of
9 Colorado.

10 Q And what is the relationship to Cimarex
11 Energy of Colorado to the applicant which is Cimarex
12 Energy Company?

13 A They are a wholly owned subsidiary.

14 Q Cimarex of Colorado is a wholly owned
15 subsidiary?

16 A Yes.

17 Q And do you have a recommendation for the
18 amounts which Cimarex should be paid for supervision
19 and the administrative expenses?

20 A Yes, we would request \$7,000 for the
21 drilling of the Penny Pincher and \$700 a month for
22 the producing well.

23 Q And are these amounts substantially
24 similar to those previously approved by the division
25 for directional wells of this depth?

1 A Yes, they are.

2 Q And do you request that this rate for
3 supervision and administrative expenses be adjusted
4 periodically as provided by the COPAS accounting
5 procedure?

6 A Yes.

7 Q And do you also request that the division
8 set a 200 percent charge for the risk of drilling and
9 completing the well?

10 A Yes.

11 Q Now, prior to filing its application with
12 the division, did Cimarex submit an application for
13 permit to drill to the BLM?

14 A Yes, we did.

15 Q And how did that happen?

16 A The Penny Pincher appeared on our rig
17 schedule, and at the very beginning of it, in trying
18 to meet the 12/31 farm-out deadline, our regulatory
19 department picked up on it and commenced to get it
20 approved.

21 Q Okay. And you are aware that the APD
22 should not have been submitted prior to the entry of
23 a division order approving the spacing unit and the
24 pooling of interests?

25 A Yes, we are.

1 Q What did you do when you realized that
2 this APD had been sent to the BLM?

3 A We notified them, and we had it cancelled.

4 Q Okay. I will direct your attention to
5 Exhibit 6. Could you identify that for the record?

6 A Yes. That is a letter from Zeno Farris,
7 head of our regulatory department, requesting that
8 the Penny Pincher APD be cancelled.

9 Q And has the BLM acknowledged the
10 withdrawal?

11 A They have.

12 Q And how did they acknowledge that?

13 A They sent an e-mail to Zeno saying that
14 they had gotten it, and they had cancelled that
15 permit.

16 Q And did Cimarex provide written notice of
17 today's hearing to the interest owners listed in
18 Exhibit 3?

19 A Yes.

20 Q And I will direct your attention to
21 Exhibit 7 and ask you to identify that for the
22 record.

23 MR. EZEANYIM: Mr. Larson, on Exhibit
24 6, why were you requesting that the APD be cancelled?
25 I am confused. What is going on there? You don't

1 want to drill the well anymore or what?

2 MR. LARSON: I would prefer for the
3 witness to answer that.

4 THE WITNESS: We wanted to wait for
5 the division's ruling before we had a permit, and so
6 we cancelled that permit because we were in the
7 middle of this process and we thought that was the
8 procedural thing to do.

9 MR. EZEANYIM: No, you can get an APD
10 before you come to hearing. There is nothing that
11 says you can't, is there?

12 MR. BROOKS: Generally, no, but this
13 situation is somewhat different from the general, and
14 I don't think the issues that it raises have been
15 resolved.

16 MR. EZEANYIM: Which I don't
17 understand.

18 MR. BROOKS: Well, it's a little more
19 complicated that I recognized it to be at first.

20 MR. EZEANYIM: Okay. All right. You
21 guys thought it appropriate to cancel the APD, get
22 this order approved before you go back?

23 THE WITNESS: Correct.

24 MR. LARSON: Are you finished?

25 MR. EZEANYIM: Yeah, for whatever

1 reason, I don't know but that is not appropriate, and
2 maybe there are some things I don't understand, you
3 know, that made you do that.

4 Q (By Mr. Larson) And if the division issues
5 an order approving our application, you will then
6 resubmit the APD to BLM?

7 A Yes, we will.

8 MR. EZEANYIM: Okay. I am saying
9 this might -- I don't know. I don't want to go
10 there. Go ahead.

11 Q (By Mr. Larson) Okay. Could you identify
12 Exhibit 7 for the record?

13 A It is an affidavit by Jim Bruce, our
14 attorney, that he had sent out the notice of this
15 hearing to all of the interest owners.

16 Q And did Mr. Bruce send the notice --

17 MR. EZEANYIM: I thought Gary Larson
18 is your attorney.

19 THE WITNESS: I'm sorry?

20 MR. EZEANYIM: I thought he is your
21 attorney.

22 MR. LARSON: Mr. Bruce prepared the
23 application and sent out the notice letters, and I am
24 appearing on Cimarex' behalf for purposes of the
25 hearing. He previously represented Cimarex in this

1 matter.

2 MR. EZEANYIM: And later withdraw?

3 And later withdrew from --

4 THE WITNESS: Yes. He was asked to
5 recuse himself by one of the other working interest
6 owners.

7 MR. EZEANYIM: Oh, okay.

8 MR. LARSON: He had a conflict of
9 interest.

10 MR. EZEANYIM: Okay.

11 Q (By Mr. Larson) And did Mr. Bruce prepare
12 and send the notice letters to the interest owners at
13 your direction?

14 A Yes.

15 Q And do you know if he sent a notice of
16 hearing to Mr. Bayless?

17 A No, he did not. By the time these notices
18 had gone out, we did not know Mr. Bayless was a
19 working interest owner, so Mr. Bayless did not get a
20 notice of this hearing.

21 Q And do you know if Ben Alexander, who is
22 one of the interest owners, returned his certified
23 mail receipt for notice of the hearing?

24 A I understand that he did.

25 Q He didn't?

1 A It was returned from what I understand.

2 Q Okay. So you don't have a -- we don't
3 have a document acknowledging his receipt of it?

4 A No, we do not. We do know that he did
5 receive his packet with the well proposal, AFE, and
6 operating agreement because I did get a return
7 receipt for that.

8 Q So your best information, the letter was
9 sent to a good address?

10 A Yes, it was.

11 Q I next ask you to identify Exhibit Number
12 8.

13 A These are the offset owners around the
14 west half, west half of Section 21.

15 Q And what does the plat on page 2 depict?

16 A It reflects those tracts that are offset
17 to the west half, west half of 21.

18 Q And did Mr. Bruce prepare this document?

19 A Yes, he did.

20 Q At your direction?

21 A Yes.

22 Q And did Cimarex also send notice of
23 today's hearing to the individuals and entities
24 listed on Exhibit 8?

25 A Yes, we did.

1 Q I direct your attention to Exhibit 9.

2 Could you identify that for the record?

3 A That, again, is an affidavit by Mr. Bruce
4 that he has notified by certified mail all of the
5 offset operators of this area.

6 Q And could you address the farm-out
7 agreement that Cimarex has with -- is it Devon?

8 A Yes, it is with Devon Energy. They came
9 to us last fall and asked if we would be interested
10 in getting a farm-out of their interests on the north
11 half of Section 21. It had originally come out of
12 OXY and went to Pitch and Marbob, and it worked its
13 way down to Devon. It original -- when the original
14 deadline for it was, Devon had it extended three
15 times. We went back to OXY and got it extended again
16 through March 31 where it stands right now.

17 Q So would it be a benefit to Cimarex if you
18 received a division order before that March 31
19 deadline?

20 A Yes, it would.

21 Q Would that help you in the negotiation in
22 extending that deadline out?

23 A Sure. Yes.

24 Q And in your opinion, Mr. Compton, would
25 the granting of Cimarex' application serve the

1 interests of conservation and prevention of waste?

2 A Yes.

3 MR. LARSON: I pass the witness at
4 this time.

5 MR. EZEANYIM: Do you want anything
6 done with your exhibits?

7 MR. LARSON: I was going to ask for
8 the admission at the end of all the testimony.

9 MR. EZEANYIM: Oh, okay.

10 MS. MUNDS-DRY: I have a few
11 questions, Mr. Ezeanyim.

12 MR. EZEANYIM: Okay. Go ahead.

13 EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q Mr. Compton, you mentioned at the
16 beginning of your testimony that Cimarex planned to
17 locate the well in an orthodox location. Do you have
18 footages for the surface and bottom hole location?

19 A Yes, we do. I believe they are on the
20 front of the AFE. Approximately 660 from the north
21 line, 990 from the west line, and in the bottom hole,
22 330 from the south and 330 from the west.

23 Q And Cimarex proposes to drill to Bone
24 Spring --

25 A Yes, ma'am.

1 Q -- completion? Why the 660 setback?

2 A I'm probably not qualified to answer that.

3 Q Okay. You also mentioned, I believe, Mr.
4 Compton, that you're seeking to pool from a depth of
5 2500 feet to the base of the Bone Spring?

6 A Yes, ma'am.

7 Q I just want to make sure I understand that
8 because I believe your application is from the
9 surface to the Bone Spring. Is there some confusion
10 there?

11 A Not that I'm aware -- I will let -- not
12 that I'm aware of.

13 Q Do you have an interest then already from
14 surface to 2500 feet?

15 A No, ma'am. Our farm-out from Devon is
16 from 2500 feet subsurface in the north half.

17 Q Okay. And Mr. Compton, let me make sure I
18 understand the nature of your interests. In the west
19 half of the southwest quarter, Cimarex does not
20 currently have an interest?

21 A No, we do not.

22 Q Okay. And if I understand correctly from
23 your testimony, you have -- Cimarex has a farm-out
24 from Devon for the north half of Section 21?

25 A Correct.

1 Q And is that the entire extent of Cimarex'
2 interests in Section 21 at this time?

3 A It is at this time.

4 Q And you have proposed a stand-up project
5 area here in the west half of the west half?

6 A Yes, ma'am.

7 Q Why not do a lay-down since you have that
8 farm-out in the north half?

9 A Again, that would probably be better
10 answered by a geologist and engineers.

11 Q Okay. Fair enough.

12 MS. MUNDS-DRY: That's all I have for
13 Mr. Compton. Thank you.

14 MR. BROOKS: Mr. Compton, I'm looking
15 at your Exhibit Number 2. I want to understand the
16 situation fully because I didn't coming in here. The
17 area outlined in green is the area you're trying to
18 force pool; is that correct?

19 THE WITNESS: Yes, sir.

20 MR. BROOKS: And that's four spacing
21 units?

22 THE WITNESS: Yes, sir.

23 MR. BROOKS: And the two of those
24 that are the northwest, northwest, and the southwest,
25 northwest, are the only ones in which Cimarex owns an

1 interest; is that correct?

2 THE WITNESS: Yes, sir.

3 MR. BROOKS: And the other two
4 spacing units that are in the south half of Section
5 21, Cimarex owns no interest in?

6 THE WITNESS: That is correct.

7 MR. BROOKS: Now, understanding I
8 suppose that we -- you're not the man to answer why
9 from a technical standpoint where you're drilling
10 this well in this particular --

11 THE WITNESS: That would be correct.

12 MR. BROOKS: But -- well, I guess
13 then that's really all I had to say, but when we were
14 talking about the question of the APD and your
15 withdrawal of the APD, there was some little
16 controversy between Cimarex and Chesapeake over this
17 issue, whether you can get an APD to drill into a
18 spacing unit that you don't own any -- to drill
19 laterally into a spacing unit you don't own an
20 interest in; is that not correct?

21 THE WITNESS: I would have no
22 knowledge of any controversy between Cimarex and
23 Chesapeake.

24 MS. MUNDS-DRY: Actually, COG and
25 Chesapeake are in that controversy. I don't

1 believe --

2 MR. BROOKS: Oh, Cimarex is not
3 involved in it?

4 MS. MUNDS-DRY: So you can let them
5 off the hook.

6 MR. BROOKS: Well, I get all of these
7 people with their lateral wells, the horizontal wells
8 mixed up. We've just got a few horizontal folks.

9 MR. LARSON: Yeah, but we knew about
10 that.

11 MR. BROOKS: Yeah, I suspected that
12 you knew about it. It seemed like it might have
13 crossed your mind in dealing with this. Okay. Well,
14 I will save the other questions, the other piercing
15 questions that I have for the people that have the
16 relevant knowledge.

17 MR. EZEANYIM: Okay. Anything
18 further from you, Ms. Munds-Dry?

19 MS. MUNDS-DRY: Nothing further.

20 MR. EZEANYIM: Okay. Let's go back.

21 MR. BROOKS: Oh, I'm sorry. I did
22 have one other question, Mr. Chairman.

23 MR. EZEANYIM: Okay.

24 MR. BROOKS: The interests that are
25 outstanding here, are they unleashed mineral

1 interests?

2 THE WITNESS: No, sir, this is all
3 HBP.

4 MR. BROOKS: So all of these people
5 are working interest owners?

6 THE WITNESS: Yes, sir.

7 MR. BROOKS: All the people listed on
8 Exhibit 3 are working interest owners?

9 THE WITNESS: Yes, sir.

10 MR. BROOKS: Okay. Thank you.
11 That's all I have.

12 MR. EZEANYIM: Okay. I want to
13 clarify something I think was brought up by Ms. Ocean
14 Munds-Dry. Go back to that Exhibit Number 2 that the
15 legal examiner was asking you questions, and let us
16 try to clarify what you guys want. Because first of
17 all, there is nothing we can do until we understand
18 what you want.

19 First of all, you want to pool
20 northwest, northwest quarter on the vertical well,
21 right? You want to pool the -- are you the person --
22 because you are the land, you're the landman, I
23 think. I can ask you that question unless your
24 geologist -- I can have the question for the
25 geologist, but I think for land, you should know who

1 you are pooling.

2 According to your application number
3 1, you said you want to pool the northwest quarter,
4 northwest quarter of Section 21, okay? And that
5 means the vertical well, okay? Now, number 2, you
6 want to pool -- actually, number 1, you want to pool
7 from surface to the base of the --

8 THE WITNESS: Bone Spring.

9 MR. EZEANYIM: -- yeah, that Bone
10 Spring. To answer her question is on that particular
11 40 unit, 40 acres, that surface location of the well,
12 on the vertical well, you want to pool that 40 units?
13 I'm just telling you what you're asking me to
14 approve. You want us to approve the compulsory
15 pooling of the northwest quarter, northwest quarter
16 from the surface to the base of the Bone Spring.

17 Then number 2, you want us to pool
18 the west half, west half of that section to 5,000
19 feet to the base of the Bone Spring. That's to
20 answer your question. The forced pooling on the
21 northwest, northwest is for the surface to the base
22 of the Bone Springs. The second west half, west half
23 of 160-acre is to the base of the Bone Springs, and
24 that creates some ownership issues that we're going
25 to have to resolve.

1 So as their land person, you have
2 notified everybody that holds interest in that
3 northwest quarter, northwest quarter, that -- I think
4 40-acres I think is Unit D is the northwest quarter,
5 northwest quarter from the surface to the base of the
6 Bone Springs. You also notified everybody from 2500
7 feet to the base of the Bone Springs in the west
8 half, west half?

9 THE WITNESS: Correct.

10 MR. EZEANYIM: You already have to
11 tell me where your target, your primary target, your
12 secondary target is in relation to the 2500 feet on
13 that west half, west half, and how many people we are
14 pooling on the northwest quarter, northwest quarter.
15 Is that what you're asking? You're asking for that;
16 is that true? Is that what you're asking?

17 MR. LARSON: I have a copy of the
18 application. Can I show it to the witness?

19 MR. EZEANYIM: Yes, show it to him
20 because that's where I got the information.

21 MR. LARSON: Exactly.

22 THE WITNESS: That's correct.

23 MR. EZEANYIM: So you see what you're
24 asking -- you're asking, (i) northwest quarter,
25 northwest quarter, and (ii) you're asking for west

1 half, west half. The number (i) is from the surface
2 to the base of the Bone Springs, and (ii) is from
3 2500 feet to the Bone Springs.

4 THE WITNESS: Yes, sir.

5 MR. EZEANYIM: So your geologist
6 would be prepared to tell me what your primary
7 targets are, what your secondary targets are, so we
8 know how to decide because you're asking for two
9 things there, and they are -- ownership is different
10 in each case. Ownership in the vertical well might
11 be different from the ownership in the horizontal
12 well. So we need to sort this out to be able to
13 approach what you're asking. Do you see my point?

14 THE WITNESS: I see your point.

15 MR. EZEANYIM: Okay. So on that
16 basis, we then can continue because the next question
17 is -- anyway, it's considered APD. So that's why I
18 stopped for the land person, and the next one may be
19 going with the geologist or the engineer whenever
20 they come up. Based on my comments, do you have any
21 other comments you want to -- before we excuse this
22 witness?

23 MS. MUNDS-DRY: No, sir.

24 MR. EZEANYIM: Anything more?

25 MR. BROOKS: I believe not. Thank

1 you.

2 MR. EZEANYIM: Okay. You may be
3 excused. Call your next witness, Mr. Larson.

4 MR. LARSON: I call Mr. Lee Catalano.

5 LEE CATALANO

6 After having been first duly sworn under oath,
7 was questioned and testified as follows:

8 EXAMINATION

9 BY MR. LARSON:

10 Q Please state your full name for the
11 record.

12 A Lee Catalano.

13 Q And where do you reside?

14 A Midland, Texas.

15 Q And by whom are you employed and in what
16 capacity?

17 A Cimarex Energy for the past four and a
18 half years as a senior geologist.

19 Q And what experience do you have with oil
20 and gas operations in southeastern New Mexico?

21 A I have been involved in it over 30 years
22 now and exclusively the last five years in southeast
23 New Mexico.

24 Q And what experience do you have with the
25 drilling of horizontal wells?

1 A A lot. That's basically all we drill now,
2 and all I have been involved in in the last two
3 years.

4 Q And are you familiar with the geologic
5 aspects of Cimarex' application in this case?

6 A Yes.

7 Q And have you previously testified in a
8 division hearing?

9 A Yes, I have.

10 Q And at that time, were you qualified as an
11 expert in petroleum geology?

12 A Yes.

13 MR. LARSON: Mr. Examiner, I move for
14 Mr. Catalano's qualification as an expert in
15 petroleum geology for purposes of this case.

16 MS. MUNDS-DRY: No objection.

17 MR. EZEANYIM: Mr. Catalano is well
18 qualified.

19 Q (By Mr. Larson) And did you have a hand in
20 Cimarex' analysis of the prognosis for the proposed
21 Penny Pincher well?

22 A Yes.

23 Q I will direct your attention to Exhibit
24 Number 10. Could you identify that, please?

25 A Yes. This is a -- just a production plat

1 showing the different producing zones in the area
2 around the proposed Penny Pincher 21 #1, color coded
3 to signify the different producing intervals, one of
4 which is the Bone Spring.

5 Q And did you prepare this exhibit?

6 A Yes.

7 Q And I will next direct your attention to
8 Exhibit Number 11. Could you identify that for the
9 record, please?

10 A Yes. Exhibit Number 11 is a structure map
11 on the top of the second Bone Spring sandstone,
12 100-foot contour interval, and what it shows is a
13 general dip to the south, southeast through the
14 prospect area.

15 Q And did you also prepare this exhibit?

16 A Yes, I did.

17 Q I will next direct your attention to
18 Exhibit Number 12. Did you prepare this exhibit?

19 A I did.

20 Q Could you describe what this exhibit is
21 intended to depict?

22 A Yes. First, I will explain how I made
23 this. This is a second Bone Spring sandstone, net
24 porosity isopach map. I contoured at 25-foot
25 intervals, and I used a 10 percent density porosity

1 cutoff to create this map. The green circles you see
2 on the map are vertical second Bone Spring sand
3 producing wells. The purpose of this map was to
4 determine the trend of the reservoir within this
5 area.

6 Q Okay. And you have identified these four
7 green areas, circular areas as other wells?

8 A Yes, those are vertical second Bone Spring
9 sand producing wells, which is a target for our
10 horizontal well.

11 Q Did you have occasion to review well data
12 concerning those four wells?

13 A Yes, public data.

14 MR. EZEANYIM: Mr. Larson, just a
15 moment, please. Go back to Exhibit Number 11 or
16 Exhibit Number 10. It is very hard -- Number 10.
17 What are you trying to show on Exhibit Number 10? I
18 see Penny Pincher plus a bunch of wells. What are
19 you trying to indicate there? What is the purpose of
20 that exhibit?

21 THE WITNESS: Of this map, the
22 purpose of this is to show the different producing
23 horizons out here, one of which is the Bone Spring.
24 And there's little orange circles on the map around
25 the wells. There's one up to the northeast of the

1 proposed well. There's a well at Section 20, another
2 well over in Section 17, and then one down in Section
3 27.

4 MR. EZEANYIM: Okay. I'm sorry. Go
5 ahead.

6 MR. LARSON: That's okay.

7 Q (By Mr. Larson) And what is the
8 significance of using a -- excuse me, I'm back on
9 Exhibit Number 12. What is the significance of using
10 a 10 percent density porosity cutoff?

11 A Based upon our experience, that's the
12 porosity necessary to be productive out here.

13 Q In the Bone Spring formation?

14 A In the second Bone Spring sand, yes. And
15 I have -- the way the contours are on this map, what
16 it shows -- what it's meant to show is the thick of
17 the channel. It appears being the west half, coming
18 in from the northwest, and comes through the west
19 half of Section 21 along the path of the proposed
20 horizontal well.

21 Q And did that influence your
22 decision-making on doing a north, south direction for
23 the horizontal well?

24 A Yes. That's exactly why we proposed it.

25 Q I will next direct your attention to

1 Exhibit Number 13. And did you also prepare this
2 exhibit?

3 A I did, yes.

4 Q And can you describe what it's intended to
5 depict?

6 A This is a structural cross-section north
7 to south through the proposed location. There's a
8 little inset map on the southeast corner of the
9 exhibit there that shows a line of the cross-section,
10 and they were on the previous exhibits, also. What
11 it does, it's tied together the nearby wells to where
12 we're drilling our well, and I have identified the
13 horizontal lateral target zone by the green arrow on
14 the cross-section.

15 Q And Mr. Catalano, in your opinion, are all
16 of the four 40-acre spacing sections to be included
17 in the proposed 160-acre proration unit prospective
18 in the Bone Spring formation?

19 A Yes. I think they are all equally
20 prospective.

21 Q And is that opinion supported by your
22 cross-section, which is Exhibit Number 13?

23 A The map, the isopach map actually in
24 conjunction with the cross-section, yes.

25 Q And in your opinion, are the reserves in

1 each of the 40-acre spacing units substantially
2 similar?

3 A I believe they will be, and our engineer
4 will testify about that next.

5 Q And in your opinion, will the granting of
6 Cimarex' application serve the interests of
7 conservation and prevention of waste?

8 A Yes.

9 MR. LARSON: Pass the witness at this
10 time.

11 MR. EZEANYIM: Thank you, Mr. Larson.
12 Ms. Munds-Dry?

13 MS. MUNDS-DRY: Thank you.

14 EXAMINATION

15 BY MS. MUNDS-DRY:

16 Q Mr. Catalano, am I saying that correctly?

17 A Yes.

18 Q I have a difficult last name so I want to
19 make sure I'm saying it correctly.

20 A That's correct.

21 Q Were you involved in determining what the
22 footage of the surface location should be for the
23 well?

24 A Actually, the bottom hole, I was. The
25 surface hole, we acquired the original permit from

1 Marbob. They had permitted a vertical Morrow well
2 there called the Penny Pincher 21 #1.

3 Q I see. So that would explain the --

4 A So we utilized that surface location to
5 eliminate that part of the permitting process. We
6 knew that was a good approved location, yes.

7 Q If we could turn to your Exhibit Number
8 12, please. It appears here that in Section 20 --
9 I'm not sure of the well name, but it shows I think
10 96 million barrels of oil?

11 A 96,000.

12 Q 96,000 barrels of oil?

13 A Uh-huh.

14 Q And then here in Section 27, you also
15 depict another well that shows 56,000 barrels of oil?

16 A That's correct.

17 Q And those appear to -- of the wells you
18 have indicated in your map, they appear to be the
19 best producers. Do you agree?

20 A They have the best cums for the vertical
21 well.

22 Q I also note here that you show -- the
23 contours are 75 -- the contours, you have one here
24 that covers essentially the west half of Section 21?

25 A Uh-huh.

1 Q And then you have another contour in the
2 northeast quarter of the section. Is that what I'm
3 seeing here?

4 A Yes.

5 Q So the same question I had asked Mr.
6 Compton, why not drill a north half, north half well?

7 A From our experience in the area, these
8 sands -- the orientation of these channels coming off
9 the shelf are basically north to south, and our
10 objective is to place our horizontal lateral in the
11 thickest portion of the channels. And so going along
12 that depositional strike of the way this is contoured
13 would be the best way to encounter the most pay.

14 MS. MUNDS-DRY: Okay. Thank you.
15 That's all the questions I have.

16 THE WITNESS: Thank you.

17 MR. EZEANYIM: Questions?

18 MR. BROOKS: Yes, I do have some
19 questions. Thank you. Mr. Larson asked you if
20 granting of this application would be in the interest
21 of prevention of waste, and I think we've gotten
22 accustomed to that being sort of a rogue question
23 that's asked in OCD cases, but this case is a little
24 bit different. And I would like for you to explain
25 specifically why if we said, the OCD were to say,

1 "You have to confine your well to your own acreage,"
2 acreage in which you had an interest, and you
3 couldn't drill down into this acreage that you don't
4 own, in this particular context, what oil would be
5 wasted and why?

6 THE WITNESS: That's a good question.
7 My best guess is that the majority of the reserves
8 are going to be based upon the way I've got it
9 mapped. It could be in the west half of this
10 section. And two wells placed in that west half
11 would probably produce more oil than drilling east,
12 west, because of the way I said -- talked about going
13 down to the access of the depositional channel.

14 MR. BROOKS: Now, in this formation,
15 does a well have to be a mile long, or does the
16 horizontal have to be a mile long to be economic?

17 THE WITNESS: You know, that's a
18 function of cost, a function of price. That's kind
19 of open-ended. It may or may not be.

20 MR. BROOKS: So you don't have an
21 opinion as applied to this specific situation, if you
22 could drill a well that was only a half mile long in
23 the north half?

24 THE WITNESS: What I would say is
25 that a well a mile long would be much better than a

1 well half a mile long. The more -- our experience in
2 the horizontal areas is that the more reservoir you
3 can contact as you're drilling the well, the much
4 better well.

5 MR. BROOKS: Do you know -- do you
6 have an opinion as to whether or not Cimarex would
7 drill -- if they were confined to the north half,
8 whether or not they would drill this prospect?

9 THE WITNESS: Ultimately, probably.

10 MR. BROOKS: Probably would or
11 wouldn't?

12 THE WITNESS: We would have to rank
13 it with our other prospects that we're drilling, but
14 quite honestly, we would probably drill it, although
15 we think it would be a better way of drilling it
16 north, south.

17 MR. BROOKS: But you're not telling
18 us then that you have to have that one mile lateral
19 or it would be oil left to the ground? It would
20 never be produced?

21 THE WITNESS: If it's never drilled,
22 it won't be produced.

23 MR. BROOKS: Well, I understand that,
24 but that's not what you're telling us, right? You're
25 telling us that in all probability, it eventually

1 would be?

2 THE WITNESS: I don't know that, but
3 I think by drilling this horizontal well this
4 direction, it will be a much better well than
5 drilling east, west.

6 MR. BROOKS: Thank you. I think
7 that's all I have.

8 MR. EZEANYIM: Do you want to make
9 comment before I --

10 MS. MUNDS-DRY: No. I was just
11 eagerly waiting the answer.

12 MR. EZEANYIM: Because I'm going to
13 -- you know, that's one of my questions I wanted to
14 ask. I think you've done an excellent job in asking
15 that. We note in the north half, you have interest
16 in the north half of that section, right?

17 THE WITNESS: Correct.

18 MR. EZEANYIM: You have interest in
19 the northwest quarter and northeast quarter, correct?

20 THE WITNESS: Correct, yes.

21 MR. EZEANYIM: And then I think the
22 opposing counsel said, why, you know, or what she was
23 asking you why not drill from the west to the east
24 where you have interest, and you said -- your answer
25 was that if you drill north, south, you get more

1 result than if you drill northeast -- I mean, west,
2 east, right?

3 THE WITNESS: That would be my best
4 guess, yes.

5 MR. EZEANYIM: Okay.

6 THE WITNESS: My best estimate.

7 MR. EZEANYIM: Okay. And I want to
8 explore the question and get your answer on the
9 record. Could you drill a west, east well? Can you
10 do that and be profitable? Do you know that, or is
11 there anybody that can answer that question? I don't
12 know --

13 THE WITNESS: I think our engineer
14 when he gets up, he is going to talk more about the
15 actual reserves and whatnot we expect to encounter.

16 MR. EZEANYIM: Okay. I think we are
17 on the same boat, but we want to make sure we
18 don't -- you know, east, west, if that's what you are
19 doing. But we are going to do it equitably, you
20 know, and that is the purpose of your questions.

21 MR. BROOKS: Exactly.

22 MR. EZEANYIM: Yeah. So anyway,
23 first of all, how did you come up with this name
24 Penny Pincher?

25 THE WITNESS: That is a Marbob name.

1 I don't know. You have to ask -- again, we acquired
2 that -- they assigned that permit to us.

3 MR. EZEANYIM: Okay. I know it's
4 very, very interesting how you come up with names. I
5 hope you make a whole lot of money instead of
6 pinching pennies. Okay. Are you going to tell me
7 about -- are you the person going to tell me about
8 the production targets you are trying to target in
9 this compulsory pooling? Or is there anybody here
10 who is going to answer that question?

11 For example, if I look at the lands
12 you are trying to pool -- I tried to ask your
13 landman, but I think I may ask the geologist. Maybe
14 you would know better. You are pooling two different
15 units like I mentioned. If you go back to that
16 Exhibit Number 2 where you have that west half, west
17 half?

18 THE WITNESS: Yes.

19 MR. EZEANYIM: Because this is the
20 crux of the matter. If you look at that west half,
21 west half, it makes 1,000 barrels -- each of them
22 makes 1,000 barrels. For that northwest half,
23 northwest half, you are pooling from the surface to
24 the base of the Bone Springs on the vertical well,
25 right?

1 THE WITNESS: I think what that
2 should have read was from 2500 feet.

3 MR. EZEANYIM: For both of them?

4 THE WITNESS: Yes, because we don't
5 have an interest in the shale, and I'm not the land
6 guy. My understanding is that that's what it should
7 be if that would clear that up.

8 MR. EZEANYIM: Okay. So you are
9 telling us to pool both units from 2500 down to the
10 Bone Springs?

11 THE WITNESS: Yes.

12 MR. EZEANYIM: Okay. Not from the
13 surface, okay. Then what are your primary target?
14 Your primary target is the Bone Springs I assume?

15 THE WITNESS: Yes.

16 MR. EZEANYIM: What are your
17 secondary targets?

18 THE WITNESS: In that area, the
19 Delaware sand could be prospective also.

20 MR. EZEANYIM: And you know that
21 Delaware sand may be prospective. They are not going
22 to be included in the Bone Springs. So the last year
23 of ownership now on the vertical well and the
24 Delaware sands and on the horizontal well of the Bone
25 Springs, right? That would be the last year of

1 ownership, right, on the Bone Springs?

2 THE WITNESS: I'm not sure how that
3 would be set up, if by pooling the interests would be
4 spread equally for the vertical and the horizontal or
5 for what.

6 MR. EZEANYIM: I'm just trying to
7 understand why you want to pool the northwest half,
8 northwest half. I want somebody to explain to me why
9 you want to do that.

10 THE WITNESS: I wasn't involved in
11 all of the stuff leading up to that, so I don't know.

12 MR. EZEANYIM: Are you withdrawing
13 the application to pool the northwest half, northwest
14 half? Because if you withdraw that, we can look at
15 your horizontal well, you know, but I want to get the
16 information on the northwest half, northwest half.
17 You know, this is a contested case. I wanted to make
18 sure we understand what we're doing.

19 THE WITNESS: I can't answer that
20 question.

21 MR. BROOKS: You're referring to the
22 northwest quarter, northwest quarter?

23 MR. EZEANYIM: Yeah, yeah.

24 MR. BROOKS: You're talking about the
25 northwest half, and they're thinking about Texas.

1 MR. EZEANYIM: I'm sorry. I'm
2 talking about for the record the northwest quarter,
3 northwest quarter. I'm sorry. I am talking about
4 that. So I want someone to tell me why you want to
5 pool that 40-acre unit.

6 MR. LARSON: Mr. Examiner, I think I
7 can huddle with my team and be able to answer that if
8 you could just give me a minute or two off the
9 record.

10 MR. EZEANYIM: How long is it going
11 to take you?

12 MR. LARSON: Just a minute or two.

13 MR. EZEANYIM: Okay. Let's give you
14 at least three minutes to -- somebody tell me what is
15 happening with that.

16 MR. LARSON: Sure. Just a couple of
17 minutes. Any objection?

18 MS. MUNDS-DRY: No objection.

19 (A recess was taken.)

20 MR. EZEANYIM: Now, let's go back
21 into the record, and then my earlier question was I
22 want to hear from the applicant why they want to pool
23 the northwest quarter, northwest quarter, that
24 40-acre unit on the vertical path of the well, you
25 know, from now, which I change from 2500 feet.

1 MR. LARSON: Mr. Examiner, are you
2 looking at the application?

3 MR. EZEANYIM: I'm not looking at the
4 application. I just asked that from your
5 application. You have different thing to tell me?

6 MR. LARSON: Just for the record, I
7 am referring to page 2 of the application under the
8 request for relief wherefore applicant requests, and
9 under paragraph B(i) it is asking for pooling all
10 mineral interests in the northwest, northwest quarter
11 of Section 21. We now withdraw that from our
12 application.

13 MR. EZEANYIM: Okay. So you are
14 not -- you don't want us to grant you a compulsory
15 pooling order on the northwest quarter, northwest
16 quarter of that section?

17 MR. LARSON: From the surface --

18 MR. EZEANYIM: So you --

19 MR. LARSON: -- up to 2500 feet.

20 MR. EZEANYIM: Okay. Now, so what
21 you're asking now as the record will reflect is just
22 the west half, west half of that section on the
23 horizontal well?

24 MR. LARSON: That's correct.
25 2500 feet to the base of the Bone Spring formation.

1 MR. EZEANYIM: On the horizontal
2 well?

3 MR. LARSON: Yes, exactly.

4 MR. BROOKS: I missed -- I assume you
5 asked because you said you were going to, but I
6 missed the question so I will ask the witness again.
7 Is there a prospective formation between 2500 and the
8 top of the Bone Springs that is of any interest to
9 this well and this location?

10 THE WITNESS: I haven't mapped up a
11 prospect, but I know there's Delaware sands that
12 produce nearby in a well or two. Nothing economical.

13 MR. BROOKS: Okay. So you're really
14 only interested in the Bone Springs at this point?

15 THE WITNESS: Yes.

16 MR. BROOKS: And if we were to limit
17 this order to the west half of the west half of the
18 section in the Bone Springs formation only, that
19 wouldn't really offend you?

20 THE WITNESS: No. No, sir.

21 MR. EZEANYIM: That will make my work
22 easier now because I have been struggling with that
23 northwest quarter, northwest quarter, and it was
24 helpful to ask you about that, so I am glad, you
25 know, we do it unless you really want it. If you

1 want it, tell me why you want it, but now you
2 withdraw it, that's very good. You know, I mean, we
3 can then look at the west half, west half and the
4 consideration and maybe that will lighten the load on
5 the opposing parties, I don't know, but we proceed.

6 Where are we now? Now, we know what
7 we are pooling now, west half, west half of that --
8 what section is this? Section --

9 THE WITNESS: Twenty-one.

10 MR. EZEANYIM: Section 21, yeah,
11 okay. So now you answered that question. The only
12 primary target you have is the Bone Springs. There
13 is no other target above Bone Springs you're
14 interested? You're not interested in any other
15 target except the Bone Springs?

16 THE WITNESS: Correct.

17 MR. EZEANYIM: Okay. Excellent. So
18 I am going to cancel this one and don't look at this
19 one. Let me try to see if I can get your actual
20 location of -- the surface is located -- I don't
21 know. Do you have it in your application? Do you
22 know the surface location?

23 THE WITNESS: I don't recall the
24 exact location offhand. I can look on -- it's on the
25 AFE, I believe.

1 MR. EZEANYIM: It's not here. I need
2 to have -- you said it was going to -- I need to have
3 the surface location. I need to know the entry point
4 and the bottom hole location.

5 THE WITNESS: It's on here. I will
6 find it.

7 MR. LARSON: It will be on the AFE, I
8 think. Exhibit 5.

9 THE WITNESS: It is in Exhibit 5.

10 MR. EZEANYIM: It is in there? Both
11 the location?

12 MR. SCOTT: Also on the bottom of
13 Exhibit 1.

14 THE WITNESS: The surface hole
15 location is 660 from the north, 990 from the west.
16 And the bottom hole location is 330 from the south
17 and 330 from the west.

18 MR. EZEANYIM: Yeah, I need the entry
19 point.

20 THE WITNESS: An entry point? Okay.

21 MR. EZEANYIM: Is the entry point top
22 of the location?

23 THE WITNESS: It will be a legal -- I
24 mean, both the surface and the bottom hole are legal.

25 MR. EZEANYIM: I understand, I

1 understand, but what I need to know what point it is.
2 What point does it penetrate the top of the Bone
3 Springs? Is that vertical well going to be
4 determined at 660 and 990? I mean, I don't know,
5 because this way, you read these wells. Your surface
6 location may be different from your entry point, so I
7 needed to know where the entry point -- do you have a
8 plat to show me what the producing area is?

9 THE WITNESS: When our engineer
10 testifies, we have a directional plan as one of our
11 exhibits that will show all of that.

12 MR. EZEANYIM: Okay. Excellent. We
13 will get that then. Okay. Very good. I am going to
14 have to recall somebody, but go ahead. Mr. Larson, I
15 don't know, because this was compulsory pooling, I
16 know your landman, I needed to ask questions on
17 the -- maybe the legal -- on the notice requirements,
18 what are your newspaper advertisements, whether we
19 need the escrow for all of this. I don't know.

20 I shall ask that question of the
21 landman, or can I ask the question to him about this?
22 Can you answer the questions on the notice
23 requirements and whether you did all of those due
24 processes?

25 MR. LARSON: I can't answer that

1 question.

2 MR. EZEANYIM: Who can answer that
3 question?

4 MR. LARSON: Our land guy.

5 MR. EZEANYIM: Okay. Maybe he will
6 be recalled later, but let's hear from the engineer.

7 MR. LARSON: I would be glad to bring
8 Mr. Compton back up.

9 MR. EZEANYIM: Okay. But let's hear
10 from the engineer first.

11 MS. MUNDS-DRY: Mr. Ezeanyim, I have
12 just a few follow-up questions, and I also have a few
13 questions from Chaparral since Mr. Carr had to leave
14 for his other meeting.

15 MR. EZEANYIM: Okay. Very good. Go
16 ahead.

17 MS. MUNDS-DRY: I will try to
18 separate these so you understand the different
19 questions, where they are coming from.

20 EXAMINATION

21 BY MR. MUNDS-DRY:

22 Q Mr. Catalano, I think you talked about
23 this and this kind of follows up on what Mr. Brooks
24 and Mr. Ezeanyim were asking you. How many
25 horizontal wells has Cimarex drilled in the Bone

1 Spring in this area?

2 A About seven.

3 Q Seven?

4 A Uh-huh.

5 Q And how many of them have run in a north,
6 south direction?

7 A Three that I can recall.

8 Q And then the rest of them ran in an east,
9 west direction?

10 A Uh-huh.

11 MR. LARSON: Mr. Catalano, you have
12 to do a verbal yes or no for the court reporter.

13 A Yes. Sorry.

14 Q (By Ms. Munds-Dry) And -- okay. Thank you.
15 That helps me follow up on that question. Let me
16 turn to these questions from Chaparral. You
17 understand that Chaparral is an offset owner? I
18 believe they are in Section 20.

19 A That is my understanding.

20 Q And you previously testified that you will
21 be at a standard location. In fact, you will be even
22 more set back because you're at a gas location
23 essentially?

24 A Correct.

25 Q For your surface location?

1 A Correct.

2 Q And your bottom hole location; is that
3 correct?

4 A Yeah, they are 330 off the southwest
5 corner.

6 Q So you don't expect that you would be
7 draining Chaparral in the offsetting, do you?

8 A No.

9 Q So Cimarex being at a standard setback
10 doesn't gain any advantage on Chaparral, correct,
11 being in the offset?

12 A No, huh.

13 Q Would Cimarex then have any objection to a
14 horizontal well being drilled in the same manner from
15 the standard setback from Chaparral in the offsetting
16 acreage?

17 A As long as it's a legal location like
18 ours, sure.

19 MS. MUNDS-DRY: Okay. Thank you.

20 That's all the questions I have. Thank you,
21 Mr. Examiner, for indulging me there. I had to wear
22 two different hats.

23 MR. EZEANYIM: Okay. Thank you.

24 Anything further?

25 MR. LARSON: I have nothing further

1 at this time for Mr. Catalano.

2 MR. BROOKS: Nothing further for this
3 witness.

4 MR. EZEANYIM: Thank you. You may
5 step down then.

6 THE WITNESS: Thank you.

7 MR. EZEANYIM: Call your next
8 witness.

9 MICHAEL SWAIN

10 After having been first duly sworn under oath,
11 was questioned and testified as follows:

12 EXAMINATION

13 BY MR. LARSON:

14 Q Sir, could you please state your full name
15 for the record?

16 A Michael Swain.

17 Q And where do you reside, Mr. Swain?

18 A Midland, Texas.

19 Q And you're also employed by Cimarex?

20 A Yes, as a senior reservoir engineer.

21 Q And do you have experience with oil and
22 gas operations in southeastern New Mexico?

23 A Yes, sir. For the last two years, I've
24 worked exclusively in southeast New Mexico.

25 Q In your role as an engineer?

1 A Yes.

2 Q And do you have any personal experience
3 with the drilling of horizontal wells in this area of
4 New Mexico?

5 A Yes, sir. In the past two years, I have
6 been involved with 35 different horizontals in
7 southeast New Mexico.

8 Q And did you have a role in preparing
9 Cimarex' application that is the subject of this
10 hearing?

11 A Yes.

12 Q Have you previously testified before the
13 division?

14 A Yes, I have.

15 Q And were you qualified as an expert in
16 petroleum engineering?

17 A Yes, I was.

18 MR. LARSON: Mr. Examiner, I move
19 that Mr. Swain be qualified as an expert in petroleum
20 engineering for purposes of this hearing.

21 MS. MUNDS-DRY: No objection.

22 MR. EZEANYIM: What is your name?

23 THE WITNESS: Michael Swain.

24 MR. EZEANYIM: Michael Swain, okay.

25 Do you have a degree in petroleum engineering?

1 THE WITNESS: No, sir, I do not.

2 MR. EZEANYIM: What is your degree
3 in?

4 THE WITNESS: Actually, I don't have
5 a degree in petroleum engineering. I don't have a
6 degree.

7 MR. EZEANYIM: No chemical
8 engineering?

9 THE WITNESS: No, I went to petroleum
10 engineering, and I was a semester short of getting my
11 degree. I was forced to leave college, and I have
12 been working as an engineer since college. Worked
13 for five years for SDE Energy as an engineer, and I
14 have worked for Cimarex for the last five years as a
15 senior reservoir engineer.

16 MR. EZEANYIM: You did that without a
17 degree?

18 THE WITNESS: Yes, sir.

19 MR. EZEANYIM: Okay. And you've been
20 working for five, six years?

21 THE WITNESS: Ten years in total.

22 MR. EZEANYIM: Okay. And you are
23 working, what do you do as a reservoir engineer?

24 THE WITNESS: Planning of horizontal
25 wells, assigning reserves, planning the drilling

1 completions of all the wells we have, and economics
2 of all the wells we drill.

3 MR. EZEANYIM: So you just learned on
4 the job?

5 THE WITNESS: Yes, sir, sure have.

6 MR. EZEANYIM: Okay. Well, anyway, I
7 think Mr. Swain is qualified to testify. Okay.
8 Let's go ahead.

9 MR. LARSON: Thank you, Mr. Examiner.

10 Q (By Mr. Larson) You heard Mr. Catalano's
11 testimony that all four of the 40-acre spacing units
12 in the west half, west half of Section 21 are
13 prospective in the Bone Spring formation?

14 A Yes, sir.

15 Q You do you agree with that testimony?

16 A Yes, I do.

17 Q Why do you agree?

18 A Because of the way it is mapped, all
19 40 acres have ample quantities of reservoir rock that
20 are capable of producing oil and gas.

21 Q I will direct your attention to Exhibit
22 Number 14.

23 MR. EZEANYIM: Which exhibit are you
24 talking about? Number 14?

25 MR. LARSON: Number 14.

1 MR. EZEANYIM: Okay.

2 Q (By Mr. Larson) And did you prepare this
3 exhibit, Mr. Swain?

4 A Yes, sir, I did.

5 Q And why did you generate this data that
6 appears on Exhibit 14?

7 A To calculate the recovery for a 40-acre
8 tract on the west half, west half of Section 21.

9 Q Was this calculation done before you --
10 Cimarex submitted its application?

11 A Yes. This is a standard type volumetric
12 spreadsheet that we run before we drill any
13 horizontal well in New Mexico.

14 Q And based on your calculations, how many
15 barrels has Cimarex recovered in each 40-acre spacing
16 unit?

17 A 71,000 barrels.

18 Q I will refer you now to Exhibit Number 2,
19 which should be in that stack there.

20 A Yes.

21 Q And Mr. Compton testified that both you
22 and Mr. Catalano had a hand in creating this exhibit.

23 A Yes, sir.

24 Q What part of it did you create?

25 A I put the green boxes basically with the

1 71,000 barrels labeled on it on the west half, west
2 half.

3 Q And what is the significance of the number
4 71?

5 A That is the recoverable reserves per
6 40-acre that we are going to find in this area on
7 this horizontal well.

8 Q And in your opinion, are there any
9 significant differences in reservoir quality --

10 A No, sir.

11 Q -- in any -- let me finish -- in any of
12 the 40-acre spacing units?

13 A No, sir.

14 Q And I will refer you now to Exhibit 5,
15 which is the AFE. Do you have it in front of you
16 now?

17 A Yes, sir.

18 Q And did you have a hand in the preparation
19 of the AFE?

20 A Yes, I did.

21 Q And did you calculate the well costs?

22 A No. That was calculated by another
23 engineer, Mark Audis.

24 Q And based on your experience with these
25 types of wells in New Mexico and in your professional

1 experience, are the costs stated in the AFE for
2 drilling and completing the Penny Pincher well in
3 line with the costs of other directional wells that
4 Cimarex has drilled and completed in this area?

5 A Yes.

6 Q I believe you also heard Mr. Compton's
7 testimony about the proposed administration and
8 supervision costs.

9 A Yes.

10 Q And in your opinion, are those proposed
11 costs reasonable and in line with the costs for
12 similar horizontal wells in New Mexico?

13 A Yes.

14 Q I will next direct your attention to
15 Exhibit 15.

16 MR. EZEANYIM: Before you go there,
17 let me look at that AFE. The AFE was produced by
18 somebody else, right?

19 THE WITNESS: Yes, sir.

20 MR. EZEANYIM: So I can't really ask
21 you a question on that because you didn't prepare it?

22 THE WITNESS: I was involved in
23 preparing the AFE.

24 MR. EZEANYIM: Is there any reason
25 why the person who prepared it couldn't show up

1 today? The person who prepared, why didn't he show
2 up today in case I have a question to ask?

3 THE WITNESS: They wanted me to
4 answer the questions asked about the AFE.

5 MR. EZEANYIM: Okay. Then go ahead.

6 Q (By Mr. Larson) And you were involved in
7 the process of calculating these costs?

8 A Yes, sir, I was.

9 Q Even though the actual document was
10 prepared by another engineer at Cimarex?

11 A Yes, sir.

12 Q So you have personal knowledge of those
13 costs?

14 A Yes, sir, I do.

15 MR. EZEANYIM: Okay.

16 MR. LARSON: Any more questions?

17 MR. EZEANYIM: No. I have a lot of
18 questions, but go ahead.

19 Q (By Mr. Larson) I will now direct your
20 attention to Exhibit 15. Could you identify that
21 exhibit?

22 A This is a drilling prognosis for the Penny
23 Pincher 21 Fed 1H.

24 Q And did you generate this exhibit?

25 A No, I did not, but I was involved in

1 generating this.

2 Q Okay. So you had input into it --

3 A Yes, sir, I did.

4 Q -- would that be fair to say?

5 A Yes, sir.

6 Q And this is a Cimarex business record that
7 was generated in the process of evaluating this well?

8 A Yes, sir, it was.

9 Q And could you briefly explain what the
10 purpose of this document is?

11 A Yes. It depicts the horizontal well that
12 we're going to drill in the west half, west half of
13 Section 21. Operational, I can tell you what this
14 entails is drilling a vertical well down to 91 --
15 approximately 9100 feet to penetrate the second Bone
16 Spring sand. Log the sand, kick back or set a cement
17 plug, kick out the cement plug, and drill a 4500 foot
18 lateral in the second Bone Spring sand.

19 After we're done drilling the well, set a
20 completion liner with ports and packers and frac the
21 well in ten stages and flow the well back until the
22 reservoir pressures drop enough that we can put the
23 well and pump and produce the well.

24 Q I will direct your attention to Cimarex'
25 last exhibit, which is Number 16. Would you identify

1 that document for us?

2 A This is a directional survey prepared by
3 Baker Inteq, which is a contractor contracted by
4 Cimarex for the Penny Pincher 21.

5 Q And what will Baker's role in the process
6 be?

7 A They will be the directional company hired
8 for the drilling of the well.

9 Q And did Baker create this document under
10 your direction?

11 A Yes.

12 Q Under your supervision?

13 A Yes, they did.

14 Q In anticipating a question that you might
15 get asked, what are the economics of drilling a well
16 in two 40-acre spacing units as opposed to drilling
17 it in four 40-acre spacing units?

18 A The well basically would be deemed
19 noneconomic for an 80-acre lateral versus a 160-acre
20 lateral due to the smaller reserve number for the
21 well.

22 Q Total reserve number?

23 A Yes, sir.

24 Q But is that your decision to be made as to
25 whether you do 80 acres as opposed to 160, or is that

1 a management level decision at Cimarex?

2 A It would ultimately be a management
3 decision. The team's recommendation would be not to
4 drill the 80-acre lateral.

5 Q Based on the economics?

6 A Yes, sir.

7 Q Have you looked at the feasibility of
8 completing and testing the proposed horizontal well
9 in 40-acre stages?

10 A Yes, sir, I have.

11 Q And how would that affect your drilling
12 plan?

13 A It would cause us to basically change the
14 AFE from going to a ported packer system to a
15 cemented cased system, which would add costs and time
16 to the well.

17 Q And have you estimated the additional
18 costs that would be involved?

19 A Yes. It would be about \$1 million more.

20 Q And how much longer would it take, do you
21 estimate?

22 A It would add around a year to the
23 completion of the well.

24 MR. EZEANYIM: Excuse me, Mr. Larson.
25 To do what? I'm sorry. It skipped my memory.

1 MR. LARSON: The question I asked,
2 Mr. Examiner, is if Cimarex were to complete the well
3 in each 40-acre spacing unit, what would that add to
4 the costs and time to drill the well.

5 MR. EZEANYIM: Oh, okay.

6 MR. LARSON: As opposed to drilling
7 it throughout the west one-half at the same time.

8 MR. EZEANYIM: Okay. And the answer
9 was \$1 million more?

10 THE WITNESS: Yes, sir.

11 MR. EZEANYIM: Okay. Now, was there
12 a calculation to demonstrate that?

13 THE WITNESS: I don't have that
14 provided.

15 MR. EZEANYIM: Okay. Go ahead.

16 Q (By Mr. Larson) Okay. In your opinion,
17 will the proposed horizontal drilling technique yield
18 higher economics than drilling vertical wells within
19 the 160 acres?

20 A Yes, they would.

21 Q And why is that?

22 A We've seen large increases in recoveries
23 from the four horizontals that we've completed in the
24 area as opposed -- as to looking at vertical offset
25 wells.

1 Q And in your opinion, will the horizontal
2 drilling technique recover oil that would not
3 otherwise be recoverable?

4 A Yes, it would.

5 Q Why is that?

6 A Again, the prior four horizontal wells
7 that we drilled, we have seen higher recoveries from
8 those tracts penetrated due to the horizontal
9 drilling technique.

10 MR. LARSON: That's all I have on
11 direct for Mr. Swain. And at this time, I move the
12 admission of Cimarex Exhibits 1 through 16.

13 MR. EZEANYIM: Any objection?

14 MS. MUNDS-DRY: No objections.

15 MR. EZEANYIM: Exhibits 1 through 16
16 will be admitted into the record.

17 (Exhibits 1 through 16 admitted.)

18 MR. EZEANYIM: Ms. Munds-Dry?

19 EXAMINATION

20 BY MS. MUNDS-DRY:

21 Q Mr. Swain, I just want to make sure I
22 understand how Cimarex has proposed to drill the
23 well.

24 A Okay.

25 Q And I'm looking at Exhibit 15 and Exhibit

1 16.

2 A Yes.

3 Q So if I understand this correctly, on
4 Exhibit 15, you plan to drill vertical I understand
5 to 9100 feet, but you're coming back up and kick off
6 about 8700 feet; is that correct?

7 A Yes.

8 Q Okay. And then if I look here at Exhibit
9 16, you will get horizontal after you build your
10 curve at about 189 feet; is that correct?

11 A Yes.

12 MS. MUNDS-DRY: Okay. Great. That's
13 all the questions I have. Thank you.

14 MR. EZEANYIM: Okay. Thank you.

15 Mr. Brooks?

16 MR. BROOKS: Well, we may get an
17 answer to questions about this from someone who knows
18 more about it than I do, but I am following up a
19 little bit on what you say about the economics of
20 drilling horizontal wells. First of all, the east,
21 west versus north, south decision, you make -- that
22 is made primarily on the geologist's recommendation;
23 is that correct?

24 THE WITNESS: Yes, sir, it is.

25 MR. BROOKS: Okay. Now, I was

1 looking at -- and this may be something I should have
2 asked the geologist, but I was looking at Exhibit
3 Number 12, the isopach. And, of course, I realize
4 that formation thickness is just one criteria that
5 goes into making these kinds of decisions, but
6 looking at that, I thought, well, maybe if I were the
7 owner of the south half, I might think it would be
8 better to drill a horizontal well in the north half,
9 south half versus having a half interest in the one
10 on the west half of the west half. So do you have
11 any comments on that?

12 THE WITNESS: I can't comment what
13 someone would do, you know, an interest owner in the
14 south half would do.

15 MR. BROOKS: Well, but the geologist
16 I guess would be the one that would know about any
17 other considerations that might go into that other
18 than what is shown just on here?

19 THE WITNESS: Yes, sir. In my
20 opinion, reservoir continuity is very important to
21 the economics of a horizontal well, and we planned
22 this well to maximize the reservoir continuity, and
23 the directions drilled maximizes that for us
24 basically, which enhances -- basically, makes the
25 well economic in my opinion.

1 MR. BROOKS: Okay. Let me ask you
2 then a little bit more about your testimony about a
3 160-acre versus an 80-acre -- or a mile long versus a
4 half mile long --

5 THE WITNESS: Yes, sir.

6 MR. BROOKS: -- horizontal. The
7 way -- what I've understood about the way corporate
8 entities make these kinds of decisions, and I am sure
9 every one is different -- each one is different, has
10 their own internal procedures, but generally
11 speaking, my understanding, they have a cutoff point
12 below which they would say that this is not a
13 prospect a company would be interested in based on
14 the calculations that the engineers do. And, of
15 course, I also understand that even if you've got a
16 prospect that is above the cutoff point, of course,
17 whether it is actually going to be drilled or not is
18 going to depend on the budgetary considerations
19 because you've got one that's going to yield a 40
20 percent return and you've got one that's going to
21 yield a 20 percent return and you don't have enough
22 money to drill both of them, you're going to drill
23 the one that yields the 40 percent return.

24 Is that basically in general terms
25 kind of a generally accurate way to -- descriptions

1 of the way these decisions -- the way you go about
2 making these decisions?

3 THE WITNESS: Yes, sir, it is.

4 MR. BROOKS: Okay. When you tell us
5 that you think the 160 -- that a half mile long
6 horizontal in this situation would be uneconomic, are
7 you saying that it would be unprofitable, or that it
8 would fall below the company's criteria, or that it
9 would just be less desirable than a mile long
10 lateral? That's a three-part question.

11 THE WITNESS: With the reserves I
12 have calculated?

13 MR. BROOKS: Yeah.

14 THE WITNESS: In the AFE costs to
15 drill the 80-acre lateral, in my opinion, the well
16 would be noneconomic. It would not be drilled.

17 MR. BROOKS: Okay. Very good. I
18 will accept that answer. I think that's all I have.

19 MR. EZEANYIM: Anything further?

20 MS. MUNDS-DRY: No.

21 MR. EZEANYIM: Okay. Mr. Swain,
22 let's go to Exhibit Number 14. Did you generate that
23 exhibit? Have you got Exhibit Number 14?

24 THE WITNESS: It's right here.

25 MR. EZEANYIM: Okay. Did you

1 generate those data?

2 THE WITNESS: Yes, I did.

3 MR. EZEANYIM: You did, okay. What
4 was the method of calculation? Volumetric? What did
5 you use?

6 THE WITNESS: Volumetric assumption.

7 MR. EZEANYIM: How did you acquire
8 the data? From logs?

9 THE WITNESS: I used the offset
10 vertically producing wells to get the reservoir
11 parameters for the spreadsheet and used the map
12 provided by the geologists for the 40 acres.

13 MR. EZEANYIM: Okay. And then apply
14 it volumetrically. On that west half, west half,
15 assuming continuity, the reservoir is homogeneous,
16 right?

17 THE WITNESS: Yes, sir.

18 MR. EZEANYIM: So in all those four,
19 the parameters would be like this, right?

20 THE WITNESS: Yes, sir.

21 MR. EZEANYIM: That's why you
22 estimate 71,000 barrels, you know, from that,
23 recovery from each of them?

24 THE WITNESS: Yes, sir.

25 MR. EZEANYIM: I'm really

1 uncomfortable asking you questions about Exhibit 15
2 since you didn't prepare it yourself, but -- and then
3 Number 16 --

4 MR. LARSON: Mr. Examiner, I believe
5 he testified he did prepare Number 15.

6 MR. EZEANYIM: He did?

7 THE WITNESS: No.

8 MR. LARSON: Oh, I'm sorry. It was
9 another employee of Cimarex.

10 MR. EZEANYIM: He did Number 14,
11 which is okay. I will accept that, you know. All I
12 need to do now is to check the number, but he said
13 somebody else prepared this one on the -- he was
14 there, present.

15 MR. LARSON: That's correct.

16 THE WITNESS: Yes.

17 MR. EZEANYIM: And I was wondering
18 why the question, who prepared it couldn't show up
19 today. I asked that question. What was the answer?
20 What happened he couldn't show up today? I mean, to
21 be able to defend what he did. Do you know why?
22 He's sick or couldn't come, or do you know why the
23 person who prepared those two exhibits couldn't show
24 up today? Do you know why?

25 MR. SCOTT: No, sir, I do not.

1 MR. EZEANYIM: Okay. Somebody is
2 going to give me the entry point for this well,
3 right? Do you know the entry point for the well?

4 THE WITNESS: Yes, sir, I can give
5 you -- the entry point of the Bone Spring?

6 MR. EZEANYIM: Yeah, or the top
7 perforations or --

8 THE WITNESS: The top of the Bone
9 Spring entry point would actually be the surface hole
10 location.

11 MR. EZEANYIM: Oh, it's the same
12 thing, surface hole?

13 THE WITNESS: Yes. The top of the
14 Bone Spring. The actual target formation, which is
15 down in the Bone Spring --

16 MR. EZEANYIM: Okay.

17 THE WITNESS: -- that is going to be
18 depicted --

19 MR. EZEANYIM: On that? Okay. Yeah.

20 THE WITNESS: -- Exhibit 16.

21 MR. EZEANYIM: Yeah. Even on page 1,
22 if you are claiming that the surface hole location is
23 the same as the -- I mean, entry point, okay.

24 THE WITNESS: Yes, sir, it is in the
25 Bone Spring section, the same.

1 MR. EZEANYIM: Let me see if I have
2 anything else for you before you go. I think at this
3 point, we would like to recall the land person. You
4 are excused.

5 MR. BROOKS: Given your last
6 question, I would like to ask one other question just
7 to clarify if I might.

8 MR. EZEANYIM: Okay.

9 MR. BROOKS: The way this diagram
10 looks, Exhibit Number 15, it seems that -- is it a
11 correct interpretation of this, the lateral is going
12 to be open hole, that you show only casing down to
13 the point, to the kickoff point?

14 THE WITNESS: After we drill the
15 horizontal well, we will actually go in and run a
16 completion liner --

17 MR. BROOKS: Okay.

18 THE WITNESS: -- in the hole, and its
19 an open hole completion liner with external casing
20 packers and ports to isolate the different stages.

21 MR. BROOKS: Okay. So is the -- is
22 there going to be a point at which the formation
23 of -- the part that is unorthodox in the location is
24 going to be insulated in some way so you won't be
25 producing from that, or are you going to be producing

1 all the way from the entry point?

2 THE WITNESS: Every part of the
3 lateral is going to be an orthodox -- it's going to
4 be a standard location from the offsets.

5 MR. BROOKS: Okay. I thought the
6 surface hole was at a nonstandard location, or is
7 it --

8 THE WITNESS: The surface hole is --

9 MR. BROOKS: I thought I heard that.
10 Is the surface hole in an orthodox location?

11 THE WITNESS: Yes, sir, it is.

12 MR. BROOKS: Okay. I will withdraw
13 all of those questions then.

14 MR. EZEANYIM: Yeah, the surface hole
15 location is the same as the entry point. I am not
16 really interested in the surface hole location. I am
17 interested in the entry point and the bottom hole
18 location.

19 MR. BROOKS: Right.

20 MR. EZEANYIM: So I assume that's
21 what they are going to do. That is a good point that
22 the well -- about the horizontal, but I assume you
23 just showed me what they are going to do. This is
24 Cimarex, right?

25 THE WITNESS: Yes, sir.

1 MR. EZEANYIM: Okay. Another thing,
2 I don't have the plat here. Before we call the
3 landman, I don't have the plat here to demonstrate
4 the project area and the producing area. Do we
5 have -- I don't have a plat here. Do we?

6 MR. BROOKS: I didn't see one.

7 MR. EZEANYIM: I don't see a plat. I
8 need a plat that demonstrates -- it's very important,
9 Form C-102, where you're claiming the west half, west
10 half, the project area and the producing area
11 indicate -- that plat is very important. Are you
12 going to provide that?

13 MR. LARSON: We certainly can.

14 MR. EZEANYIM: And while we are here
15 and you agree that you're going to produce a plat,
16 during the testimony, somebody -- I think the counsel
17 asked whether -- I don't know -- mentioned about you
18 need an order by March 31, 2010. Is that -- did I
19 hear -- is that correct?

20 MR. LARSON: I'm sorry. I didn't --

21 MR. EZEANYIM: He said that -- you
22 were asking somebody whether you needed an order by
23 March, by March 30 or something.

24 MR. LARSON: I would rather Mr.
25 Compton testify to that. I mean, I could tell you

1 the reason, but it would be his testimony.

2 MR. EZEANYIM: Okay. Who is Mr.
3 Compton? Is that the landman?

4 MR. LARSON: He's the landman.

5 MR. EZEANYIM: Okay. Now you're
6 excused. Now, we recall the land person, and then
7 you state your name. You are still under the oath,
8 so everything you say is still on the record.

9 MARK COMPTON

10 After having been previously duly sworn under
11 oath,

12 was questioned and testified as follows:

13 MR. EZEANYIM: Can I go ahead and ask
14 questions?

15 MR. LARSON: Certainly, certainly.

16 MR. EZEANYIM: Okay. One of them is,
17 first of all, we need a plat, Form C-102.

18 THE WITNESS: We filed a plat with
19 the original permit, and obviously we've pulled that
20 permit. We can get that plat.

21 MR. EZEANYIM: Okay. For the
22 hearing, we need a plat to -- the way you indicate
23 your project area and your producing area, your
24 surface location, exit point, and your bottom hole
25 location. Okay. When you were here, we didn't

1 examine whether due process was carried out here.
2 Now, you have limited the first request of northwest
3 quarter, northwest quarter. That is gone now. So
4 anything you did there is out of the question.

5 Now let's concentrate on the west
6 half, west half and see whether you did due process
7 to be able to compulsory pool that 160 acres. Did
8 you make good faith effort to contact everybody?

9 THE WITNESS: We -- everybody except
10 Mr. Bayless received a timely packet, which was the
11 proposal letter, the AFE, and the operating
12 agreement. Those were mailed out mid November. The
13 earliest owner, the guy got it on November 23, and
14 everybody, based upon the return receipts I got from
15 the U.S. Postal Service, received them in about a
16 ten-day period starting on November 23.

17 Mr. Bayless is the only interest
18 owner that we did not even know was an owner until
19 the middle of January, so Mr. Bayless has not -- was
20 not given the ample time before we filled for the
21 application to review both the proposal, the
22 operating agreement, and the AFE.

23 MR. EZEANYIM: So what is he saying
24 -- what is Mr. Bayless saying right now? That he
25 didn't get timely notification? What is going on

1 with him?

2 THE WITNESS: I have left a message
3 with Mr. Bayless. I have not talked to him
4 personally. I do know that since the 25th of
5 January, he has received the packet of our intention
6 to drill the Penny Pincher.

7 MR. EZEANYIM: Okay. Apart from Mr.
8 Bayless, was there somebody that you couldn't locate?

9 THE WITNESS: We got return receipts
10 on everybody on the original packet.

11 MR. EZEANYIM: So everybody that is
12 proposed to be noticed got notice? Except your late
13 notice to Mr. Bayless, right?

14 THE WITNESS: Correct. And from what
15 I understand from Mr. Bruce as it related to the
16 notice of this hearing, the only one he got returned
17 to him was Mr. Alexander, which was sent to the same
18 address that I sent the original packet for which I
19 have a return receipt for.

20 MR. EZEANYIM: And it was returned
21 unclaimed?

22 THE WITNESS: Correct.

23 MR. EZEANYIM: Okay. So you couldn't
24 locate that person then?

25 THE WITNESS: We located him to send

1 him an AFE, a well proposal, and an operating
2 agreement.

3 MR. EZEANYIM: Now, did you put this
4 in the newspaper of general circulation in the area?

5 THE WITNESS: Yes, we did. Mr. Bruce
6 did that under my direction.

7 MR. EZEANYIM: Okay. So is it in
8 this form of the exhibits here? That newspaper
9 notification? I don't see it.

10 THE WITNESS: It appears Mr. Bruce
11 did not include that in his affidavit.

12 MR. EZEANYIM: Okay. So what does
13 that mean?

14 THE WITNESS: We will get the
15 division a copy of that.

16 MR. EZEANYIM: So it was really done?

17 THE WITNESS: Yes. Mr. Bruce told me
18 personally that he put -- made notice.

19 MR. EZEANYIM: Okay. So a couple of
20 things that I am requesting before we go today. You
21 provide Form C-102, the plat, and your proof of
22 newspaper publication that you say you did.

23 THE WITNESS: Sure.

24 MR. EZEANYIM: Okay. On the question
25 of late notice to Mr. Bayless, is there anything you

1 want to know about that?

2 MR. BROOKS: On what?

3 MR. EZEANYIM: A late notice to one
4 of the parties he's supposed to notify, but they did
5 it late.

6 MR. BROOKS: So the notice was sent
7 to one of the parties less than 20 days before today?

8 THE WITNESS: Yes, sir.

9 MR. BROOKS: I think we should
10 probably continue the case for two weeks -- continue
11 it for two weeks, even though I recognize that that
12 would be a consent docket because the vast
13 probability is we won't get another opposition, but
14 if we do get another opposition, then we can continue
15 it again to the next regular docket.

16 MS. MUNDS-DRY: Mr. Examiner, we can
17 probably clear up the issue of Mr. Bayless'
18 interests, and there probably wouldn't be any need
19 for any further continuance.

20 MR. BROOKS: Okay.

21 MS. MUNDS-DRY: Mr. Scott can testify
22 to the nature of Mr. Bayless' interests.

23 MR. BROOKS: If that is true, that
24 would be okay.

25 MR. EZEANYIM: So what are you

1 telling me? What are you saying?

2 MS. MUNDS-DRY: I'm saying that I
3 don't think it is an issue that Mr. Bayless didn't
4 get notice because he doesn't own an interest, and
5 Mr. Scott can clarify this for you when he testifies.

6 MR. BROOKS: Oh, okay. Yeah, what I
7 was assuming was that the testimony of -- what you're
8 saying is the testimony of Mr. Scott will render this
9 point moot if that is true. Then if it does, then we
10 don't have to continue the case.

11 MS. MUNDS-DRY: I think it will.

12 MR. BROOKS: Okay.

13 MR. EZEANYIM: And actually, you
14 don't want to continue the case. If they want an
15 order by March 30, you know, I don't know why -- are
16 you -- do you have your lease expire? Why do you
17 want it so quickly?

18 THE WITNESS: Well, we want to make
19 sure we've got ample time to give the division time
20 to review it and render an order before we have to go
21 back -- which we've already done. I've already gone
22 back to OXY and said, we're now in the regulatory
23 phase of this. We've sent out all of the notices.
24 We filed the forced poolings, and now -- we have been
25 contested, so now it has been knocked back. We're

1 trying to not have to go back to OXY and say in order
2 to drill a well, it has to be extended.

3 They have from -- two separate people
4 have said, you continue to show that you're making a
5 good faith effort to drill this well, and as it needs
6 to be extended, we will extend it.

7 MR. EZEANYIM: Okay. So there are no
8 really extenuating circumstances that if you don't
9 get the order by March 30, you will be in a limbo?
10 Is that --

11 THE WITNESS: We would simply then
12 contact OXY and go, we have not -- we had our hearing
13 on the 4th. We have not gotten an order yet. We
14 need you to extend it. And right now, we're talking
15 with them July 1.

16 MR. EZEANYIM: Extend what?

17 THE WITNESS: Extend the original
18 assignment which went from OXY to Pitch and Marbob to
19 Devon to then us.

20 MR. EZEANYIM: Oh, okay.

21 THE WITNESS: And that has been
22 extended, I think, four times at this point. Three
23 times by Devon and once by us.

24 MR. EZEANYIM: And by March 30, if
25 you don't get an order, it has to be extended again?

1 THE WITNESS: That's correct.

2 MR. EZEANYIM: That's why you wanted
3 the order before then?

4 THE WITNESS: The original assignment
5 has been extended because it hasn't been perpetuated
6 because of performance.

7 MR. EZEANYIM: Okay. I understand.

8 MR. BROOKS: When does it terminate
9 under the latest extension?

10 THE WITNESS: March 31, 2010.

11 MR. EZEANYIM: Now I understand why
12 you wanted it by then. Let's make sure we don't have
13 any questions so we don't get you a third time. So
14 actually, we're not going to -- since you noticed
15 everybody, we're not going to require you to submit
16 some escrow for this compulsory pooling because you
17 notified everybody. We need to establish some escrow
18 under this compulsory --

19 THE WITNESS: We found everybody.

20 MR. EZEANYIM: Okay.

21 THE WITNESS: We know who the owners
22 in the north half are. We know who the owners in the
23 south half are. Based on a title opinion, we have
24 sent everybody a notice, a notice of hearing. I
25 don't believe we need to escrow.

1 MR. EZEANYIM: Okay. Now, why did we
2 do this, prepare an advertisement then?

3 THE WITNESS: I'm sorry?

4 MR. EZEANYIM: Why do we publish it
5 in the newspaper?

6 THE WITNESS: I think Jim does that
7 as a normal course of business.

8 MR. EZEANYIM: Okay. You know, I
9 don't want to leave somebody out. That's why I'm
10 asking.

11 THE WITNESS: Based on the
12 information we have both on the ownership report from
13 Shaw Interests, based on the title opinion from the
14 Chappell Firm in Midland, everything matched up to
15 our ownership report with the exception of Mr.
16 Bayless. I then contacted Shaw and said, we have a
17 discrepancy -- I contacted the attorney and said,
18 you're showing somebody I am not showing. I need a
19 copy of that assignment. And it was a 2003
20 assignment from Lynx to Mr. Bayless giving him three
21 percent in the south half. That was enough for me to
22 prove that Mr. Bayless was, in fact, an owner. And
23 at that point, we adjusted Lynx' percentage down,
24 adjusted Mr. Bayless' up, and within two days sent
25 Mr. Bayless a packet, and that was about the middle

1 of January.

2 MR. EZEANYIM: This case is so
3 convoluted, but that's okay. Anybody have anything
4 for this witness?

5 MR. BROOKS: You got return receipts
6 from everybody except the one person that you got the
7 returned envelope from; is that correct?

8 THE WITNESS: I have return receipts
9 from everyone for the well proposal letter, the AFE,
10 and the proposed operating agreement.

11 MR. BROOKS: I thought I heard some
12 testimony about somebody that you sent one to and he
13 got it and --

14 THE WITNESS: That was Mr. Bruce got
15 an undeliverable on one of the people that I had
16 actually gotten a receipt back at the same address.
17 Jim got it returned undeliverable on Mr. Alexander.

18 MR. BROOKS: But you have gotten
19 receipts that prove that all of your addresses are
20 good?

21 THE WITNESS: Yes.

22 MR. BROOKS: Thank you.

23 MR. LARSON: And if I could just
24 clarify for the record, Mr. Bayless was not sent a
25 written notice of the hearing; is that correct?

1 THE WITNESS: That is correct.

2 MR. EZEANYIM: Okay. Good. Have
3 anything? You may be excused. Do you have anything
4 further?

5 MR. LARSON: I did have one
6 statement, but I am going to hold that in my pocket
7 until I hear about Mr. Scott's testimony about Mr.
8 Bayless.

9 MR. EZEANYIM: Okay. Why don't we do
10 that. Okay.

11 MS. MUNDS-DRY: I would like to call
12 my first witness.

13 MR. EZEANYIM: Okay. You may take
14 the stand.

15 LARRY SCOTT

16 After having been first duly sworn under oath,
17 was questioned and testified as follows:

18 EXAMINATION

19 BY MS. MUNDS-DRY:

20 Q Would you please state your name for the
21 record?

22 A Larry R. Scott.

23 Q Mr. Scott, where do you reside?

24 A Hobbs, New Mexico.

25 Q And by whom are you employed?

1 A I am the president of and a partner in
2 Lynx Petroleum Consultants, Incorporated.

3 Q And what are the various hats that you
4 wear for Lynx?

5 A I wear all of the hats. As a small
6 company, I am an engineer, chief geologist, part-time
7 landman, and frequently a regulatory clerk.

8 Q Have you previously testified before the
9 division and were your credentials as a petroleum
10 engineer made a matter of record?

11 A On many occasions, both as an engineer and
12 as a practical oil man, I believe.

13 Q Are you familiar with the application that
14 has been filed by Cimarex?

15 A Yes, I am.

16 Q And have you made an engineering study of
17 the area that is the subject of the application?

18 A I am familiar with the area, that's
19 correct.

20 MS. MUNDS-DRY: Mr. Examiner, we
21 would tender Mr. Scott as an expert in petroleum
22 engineering.

23 MR. EZEANYIM: Mr. Scott is so
24 qualified.

25 MR. LARSON: No objection.

1 MR. EZEANYIM: Okay. Go ahead.

2 Q (By Ms. Munds-Dry) Mr. Scott, would you
3 briefly summarize for the examiner the basis for
4 Lynx' objection today? Give us an overview of why we
5 are here.

6 A We have multiple objections to this
7 application beginning with the fact that Cimarex owns
8 no interest in the west half, southwest quarter. If
9 you will allow me to use their Exhibit 3 --

10 MR. EZEANYIM: Which one?

11 A Their Exhibit 3.

12 MR. EZEANYIM: Okay.

13 A I am here today speaking for Lynx
14 Petroleum and Harvey Yates on the first page of that
15 exhibit, everyone on the second page of that exhibit,
16 and myself on the third page of the exhibit. From
17 the joint operating agreement exhibit and the
18 compulsory pooling exhibits that were given to us,
19 all of the interest holders that were known to us in
20 the west half, southwest quarter were noticed
21 indicating to us that Cimarex owned no interest in
22 the acreage.

23 As I have been given to understand
24 compulsory pooling, it allows an owner of an interest
25 in a proration unit to develop their minerals,

1 regardless and perhaps over the objections of the
2 other owners in the tract, but that would not seem to
3 be applicable in this case. At least in our opinion,
4 it was not.

5 The second objection we had, and my
6 structure and isopach map would be similar to the one
7 previously presented with the pay isopach more
8 oriented toward the two best wells in the vicinity,
9 being the well with the 96,000 barrel cum west of us
10 and the well that I operate back to the southeast
11 with the 56,000 barrel cum. I wasn't quite as
12 optimistic with the gross pay numbers as Cimarex, but
13 I felt like there was a pretty good chance of 50 feet
14 being developed across the south half of Section 21.

15 That leads to my second objection, which
16 was a location in the north half starting in goat
17 pasture horizontal drilling back to acreage that I
18 considered more prospective.

19 My third objection was just the gross
20 interval exposed to the pay. Their surface location
21 starts 660 feet from the north line and then bends
22 out another 200 feet before encountering the second
23 Bone Spring sand leaving a lot more of my acreage
24 exposed to the pay sand than their acreage.

25 My third objection would be, again -- and

1 there is I think not enough substantial control in
2 the area to determine conclusively what the
3 orientation of those sands are. I have seen Bone
4 Spring horizontal wells oriented both north to south
5 and east to west. My own sand appears to be a
6 northwest, southeast orientation, and it would be my
7 opinion based on that that an east, west horizontal
8 well would be perhaps a more attractive project on
9 the north, south. Those are the, I believe, the four
10 issues that we had with the application.

11 Q Let's go through those each then,
12 Mr. Scott, in a little bit more detail. First, I
13 think you've identified here from Cimarex' Exhibit
14 Number 3 the interest owners that you are
15 representing here today, but let's go through that in
16 a little bit more detail. First, what is just the
17 Lynx entity's ownership in the proposed project area?

18 A Well, we would own 50 percent plus or
19 minus of the west half of the southwest quarter
20 making us owners of 25 percent plus or minus of the
21 project area.

22 Q Okay. And you stated in your overview
23 that you represented the interests of various other
24 parties. Have you discussed this application with
25 other interest owners in the west half, southwest

1 quarter?

2 A Absolutely. Virtually every one on the
3 list.

4 Q And who, if you could go through that
5 list, are you specifically authorized to speak on
6 behalf of today?

7 A That would be Lynx Petroleum Consultants,
8 Harvey Yates -- we don't typically speak for the Bass
9 group. In this case, I am speaking for Marbob,
10 Jalapeno, Ben Alexander, Seven Rivers, Yates Energy.
11 With regard to the Robert Bayless interest, there
12 appears to be a paperwork snafu in that Lynx
13 Petroleum purchased that interest back from Bayless
14 approximately two years ago, and I don't know if we
15 missed it getting it recorded, but that interest now
16 belongs to Lynx.

17 Powder Horn Investments, TNK, DASCO
18 Energy, Watson Truck, Fonay Oil & Gas, EGL Resources,
19 Kent Gabel, McVay Drilling, and on the last page,
20 myself.

21 Q So virtually all of the interest owners in
22 that west half, southwest quarter you have spoken to
23 and understand that they have the same objection --

24 A That is correct.

25 Q -- as Lynx? And, of course as you

1 understand, Marbob has entered its appearance in this
2 case and has an objection to this application?

3 A I believe that is also correct.

4 Q Let's turn to what we have marked as Lynx
5 Exhibit Number 1, and let's first review this for the
6 examiner, and then we will turn to and try to compare
7 that with the similar Cimarex application.

8 A That exhibit is a structure map on top of
9 the third Bone Spring sand, which I have found to be
10 a somewhat more consistent pick in the area rather
11 than the second sand because occasionally the second
12 sand will have lobes develop that are not contiguous
13 across fairly large areas. In addition in the red is
14 an isopach of the second sand, which shows the best
15 two producers in the area, which are my Federal HJ 27
16 and the well to the west of Section 21 and cumulative
17 recovery bubbles to go with those wells.

18 Q And I believe you've also depicted here
19 Cimarex' proposed well location?

20 A Both the surface and the bottom hole
21 location. I couldn't in advance develop the setback
22 footages because they did not include the radius of
23 curvature of the build in any of the proposals that
24 we saw.

25 Q And you have also here drawn in a box with

1 green stripes. What does that represent?

2 A Well, that is the interest that they are
3 seeking to pool with this application.

4 Q Okay. If you could -- I believe you have
5 Cimarex' exhibits up there with you.

6 A Yes.

7 Q And if you could take out Exhibit Number
8 12 -- I think Exhibit Number 2 is basically the same
9 thing as well, either one of those exhibits -- and
10 compare your exhibit with the Cimarex exhibit.

11 A Well, this is -- actually, Exhibit 12 is
12 an isopach, and I have both an isopach and a
13 structure on mine. They substantially have the
14 orientation of the sands similar to my orientation,
15 perhaps a little more north, south rather than mine
16 is east, west.

17 Q And on Exhibit Number 12 for Cimarex, it
18 looks like they used the same controls, the same well
19 controls here?

20 A I believe that was -- I believe the
21 testimony was their isopach was on porosity greater
22 than ten percent, and that's the same parameters that
23 I used for mine. I discounted somewhat the sand
24 quality to the north as we were participants with
25 Marbob in the well that was drilled in Section 16.

1 The sand was tested and noncommercial.

2 Q So in short, what does this show then?

3 Where is the pay located in Section 21?

4 A In my map, it is in the south half.

5 Q And it doesn't seem to indicate from your
6 map that there is much in the northwest quarter?

7 A It would be less prospective.

8 Q Does it appear then, Mr. Scott, based on
9 your data and what you submitted here as an exhibit,
10 that the Lynx acreage holds greater reserves than the
11 Cimarex acreage?

12 A I am in agreement with that statement,
13 yes.

14 Q What effect then, sir, does this have on
15 your correlative rights?

16 A Well, a wellbore that is allocating
17 production based strictly on acreage in this instance
18 is unfair. Well, the first point that I made was
19 with regards to the net horizontal footage exposed to
20 the wellbore, and that we've got more footage exposed
21 in the pay to the wellbore in the south half than
22 there is in the north half. If my map is correct, 70
23 to 80 percent of the production from the total
24 horizontal wellbore could be attributed to the west
25 half of the southwest.

1 There is no way to know that based on the
2 limited data that is available because you put three
3 geologists in a room and all three will come up with
4 slightly different interpretations of this data. The
5 control points are so far apart that it is unable to
6 say with certainty exactly what gross thickness or
7 quality of sand is available here.

8 Q And Mr. Scott, backing up to something you
9 mentioned there, your estimate of how much pay is on
10 each acreage, you have reviewed Cimarex' Exhibits 15
11 and 16?

12 A Yes, I did.

13 Q And so now you have a better understanding
14 of how they propose to drill the well; is that
15 correct?

16 A Yes, I do.

17 Q So your basis for that percentage, if you
18 could show us then how you calculated that based on
19 Cimarex Exhibits 15 and 16?

20 A Well, it's geometry, yeah.

21 Q And so that looking -- do you have those
22 in front of you? Let's just take a quick look at
23 those.

24 A Yes. By my back-of-the-envelope
25 calculation, they were going to encounter the second

1 Bone Spring sand approximately 850 feet plus or minus
2 from the north line and 990 feet plus or minus from
3 the west line.

4 Q Okay. Now, let's change gears a little
5 bit and go to one of your other objections. Are you,
6 Mr. Scott, generally familiar with the division's
7 spacing rules?

8 A Yes.

9 Q And what is your understanding of how
10 spacing for a well is established?

11 A Well, absent special pool rules, the oil
12 well is normally allocated on 40-acre spacing and
13 that is based on long experience that that is
14 approximately a square box you can draw around the
15 drainage radius of the wellbore. A gas well is
16 afforded a greater acreage allotment. Because of
17 permeability issues, it is easier to push gas through
18 rock than it is oil.

19 Q And what is your understanding of how
20 acreage and interests are presumed to contribute to a
21 spacing unit?

22 A Well, on a spacing unit in a vertical
23 wellbore, there is no practical way to determine what
24 is contributing what outside of making the assumption
25 that everything in the 40 acres is equally

1 productive, or in the situation of a gas well,
2 everything in the 320 is equally productive.

3 Q What about in the instance of a horizontal
4 well?

5 A Well, the technology to test individual
6 zones, or perhaps better spoken, individual
7 horizontal intervals in a horizontal wellbore is very
8 well developed. It would add cost to a project, but
9 from an operational standpoint, it's absolutely
10 doable.

11 Q So in your opinion, it is technically
12 possible --

13 A Absolutely.

14 Q -- I'm sorry, to test each of the spacing
15 units that forms a project area for a horizontal
16 well?

17 A Yes, it is.

18 Q If the division finds that Cimarex'
19 application should be granted, based on your
20 testimony, what do you propose would be a condition
21 of the order?

22 A I would like to see each individual tract
23 tested by itself for a period of time sufficient to
24 develop that tract's probable contribution to the
25 total production of the wellbore. Flush production

1 off it, it could be accomplished in probably four to
2 six months per tract.

3 Q And once we have established then what the
4 actual contribution from each spacing unit is, how do
5 you propose that the allocation for the well will be
6 determined?

7 A All future allocations would be based on
8 those tests, and win, lose, or draw, I am willing to
9 live with the result.

10 Q And if these conditions were placed in the
11 order, would that then help to -- assuming that the
12 order is granted, would this help to satisfy your
13 concern about your correlative rights being violated
14 and your adjustment for the whole share being
15 diminished?

16 A It would, in fact.

17 Q Mr. Scott, in your opinion, did Cimarex
18 conduct good faith negotiations with you?

19 A I had several conversations with Mr.
20 Compton, and there was a certain level of
21 gamesmanship going on here that we felt like they had
22 no interest acquired in that west half, southwest
23 quarter, yet representations were made to some of my
24 interest owners that they, in fact, had acquired
25 interest in the tract in an effort to gather up their

1 cooperation. I guess gamesmanship is the strongest
2 word that I am willing to use.

3 MR. EZEANYIM: What is that?

4 THE WITNESS: Gamesmanship.

5 MR. EZEANYIM: I don't understand.

6 How does -- how do I understand it? Did they make
7 good faith effort or not? What is your answer?

8 THE WITNESS: I would say they made a
9 marginally good faith effort.

10 MR. EZEANYIM: Is that what you call
11 gamesmanship?

12 THE WITNESS: Yes, sir, it is.

13 MR. EZEANYIM: All right. I don't
14 know. I don't understand, but anyway, I understand
15 what you mean now. Go ahead.

16 Q (By Ms. Munds-Dry) Mr. Scott, was Lynx
17 Exhibit Number 1 prepared by you or prepared under
18 your direct supervision?

19 A Yes, it was.

20 MS. MUNDS-DRY: That concludes my
21 direct examination of Mr. Scott.

22 MR. EZEANYIM: Thank you very much.
23 Do you want that in the record?

24 MS. MUNDS-DRY: Yes, sir. We move
25 the admission of Exhibit Number 1, Lynx Exhibit

1 Number 1 into evidence.

2 MR. EZEANYIM: Any objection?

3 MR. LARSON: I'm sorry. I got
4 interrupted.

5 MS. MUNDS-DRY: I was just moving my
6 exhibit into evidence.

7 MR. LARSON: No objection.

8 MR. EZEANYIM: Lynx Exhibit will be
9 admitted, Exhibit Number 1, I guess.

10 (Exhibit 1 admitted.)

11 MR. EZEANYIM: Okay. Mr. Larson?

12 MR. LARSON: Can I ask for a five- or
13 ten-minute break to confer with my witnesses about
14 cross?

15 MR. EZEANYIM: That will be fine.

16 (A short recess was taken.)

17 MR. EZEANYIM: Let's go back into the
18 record and continue with Case Number 14418. You may
19 continue.

20 MR. LARSON: Thank you.

21 EXAMINATION

22 BY MR. LARSON:

23 Q Mr. Scott, I believe you testified that
24 you represented the interests of virtually all of
25 those individuals and entities identified on Exhibit

1 3?

2 A In number, most of those individuals to
3 this acreage position, and they are commonly what we
4 call Lynx, et al, yes, sir.

5 Q In what capacity are you representing
6 their interests?

7 A Well, we have the south half of Section 21
8 and other substantial acreage in this immediate
9 vicinity under joint operating agreements with that
10 same group.

11 Q Is there any reason representatives or
12 attorneys for those other entities aren't here today?

13 A They authorized me to speak for them.

14 Q Do you have any personal experience in
15 drilling and completing horizontal wells?

16 A Only as a nonoperator.

17 Q And I believe you testified that if the
18 application were granted, you would like to see the
19 well completed and tested in each 40-acre spacing
20 unit?

21 A Yes, sir, I would.

22 Q And how would you propose that that
23 testing be done?

24 A Perforate, stimulate, plug back,
25 perforate, stimulate, plug back.

1 Q And I believe you testified that would add
2 18 to 24 months onto the drilling completion through
3 the entire 160-acre unit?

4 A Depending on how many tracts you have to
5 test. In this instance, I believe the ownership in
6 the west half, southwest is the only tract that is
7 being contested, so that would be a six-month
8 extension.

9 Q Okay. If I am hearing you correctly, you
10 wouldn't care about testing in the north half?

11 A Well, my preference would certainly be to
12 have each individual tract tested, and you are
13 correct in that you would have to test my acreage
14 separately from your acreage, which would lead you to
15 one year before both intervals could be commingled.

16 Q And do you have any reason to dispute
17 Mr. Swain's testimony that it would add -- to test
18 all four would add approximately \$1 million to the
19 cost of the well?

20 A I don't have any information one way or
21 the other on what those additional costs would be.

22 Q Do you think it is reasonable to add \$1
23 million onto the cost of the well?

24 A Well, I do believe that is unreasonable.
25 However, you have not addressed the cash flow

1 situation with regard to the time value of money on
2 production coming back to the expenditures. However,
3 it is my understanding that correlative rights are
4 not subject to economic convenience.

5 Q And maybe you misunderstood my question.
6 My question was do you think it is reasonable to add
7 \$1 million onto the cost of the well?

8 A No, I do not. I think that is too much.

9 Q Based on Mr. Swain's cost or -- I mean, it
10 seems to me what you're asking for, if Mr. Swain's
11 number is correct, is adding another \$1 million onto
12 the cost of the well.

13 A I question Mr. Swain's number.

14 Q Okay. You just told me that you had no
15 basis to question.

16 A As a nonoperator. I am experienced with
17 paying bills on horizontal wells from other
18 operators.

19 Q And have you ever paid a bill on testing a
20 160-acre unit well each 40 acres?

21 A That, I have not, no.

22 Q So you really don't have any basis to say
23 his \$1 million is not a correct number?

24 A When you put it that way, that is correct.

25 Q And I understand you're not an attorney,

1 but you said you have been qualified as a landman and
2 petroleum engineer. Are you aware of any provision
3 in the Oil and Gas Act that would prevent the
4 division granting the relief that Cimarex requests?

5 A I am not aware of any.

6 Q And a similar question of are you aware of
7 any division rule that would prevent the division
8 from granting the application?

9 A I am not aware of any.

10 Q And I would follow that with asking you
11 then what is your basis for saying because you
12 represent a group of interest owners in the south
13 half, that you don't think a 160-acre well would be
14 appropriate?

15 A Well, because all of the interest owners
16 in the south half don't want to participate with
17 Cimarex in the drilling of that well.

18 Q And why is that?

19 A I suppose you might have to ask them
20 individually.

21 Q Well, you're here representing them.

22 A And my opinion is that Cimarex is abusing
23 the compulsory pooling regulations to acquire acreage
24 at below market rates through the compulsory pooling
25 process as opposed to negotiation and the sublease

1 process.

2 Q That's your personal opinion?

3 A That is my personal opinion and the
4 opinion that I am representing for the other interest
5 owners in this project.

6 Q Based on what they have told you?

7 A Pardon me?

8 Q I believe you're saying that you are
9 testifying as to your personal opinion, but that all
10 the other interest owners share that opinion. Do I
11 understand that correctly?

12 A That would be substantially correct.

13 Q Have any of them directly expressed that
14 to you?

15 A Yes.

16 Q And have you ever proposed a vertical well
17 in the south half of the west half, west half of
18 Section 21?

19 A We have proposed the Malibu Federal 21 #1.
20 That APD expired about two years ago.

21 Q So you then never drilled a well?

22 A Pardon me. That wasn't in the west half
23 of the southwest. That was in the west half of the
24 southeast as I recall.

25 Q Okay. So let's focus in on this

1 160 acres.

2 A We have never proposed a well in the west
3 half.

4 Q And why not?

5 A Well, we are a small company. You see the
6 working interest owners that I am -- our drilling
7 budget is not unlimited, and we currently are
8 developing this acreage block or acreage in this area
9 with other projects. I believe we will eventually
10 get around to the south half of Section 21.

11 Q And in these long-term plans, have you
12 looked at an east, west horizontal well?

13 A Actually, I have not proposed any specific
14 project in the south half of 21 beyond that
15 previously mentioned Malibu 21.

16 Q So you have made no attempt to capture any
17 of the resources in the south half?

18 A Not so far.

19 Q When would you be doing that?

20 A When economics and its ranking against the
21 other projects that we have available permit.

22 MR. LARSON: Pass the witness.

23 MR. EZEANYIM: Thank you, Mr. Larson.

24 Cross-examine?

25 MS. MUNDS-DRY: I just have one

1 redirect question based on a question from
2 Mr. Larson.

3 EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q Mr. Scott, Mr. Larson asked you if you had
6 proposed a well in the south half of the section, and
7 whether you specifically had proposed an east, west
8 drill in that southwest section. As related to that,
9 do you have an opinion as to whether an east, west
10 proposed well in the north half would make better
11 sense on Cimarex' acreage?

12 A Well, I mean, their own mapping indicates
13 approximately 75 feet of pay across the north half of
14 Section 21, and it would eliminate the need for all
15 of these proceedings.

16 MS. MUNDS-DRY: Thank you. That's
17 all I have.

18 MR. EZEANYIM: Mr. Brooks?

19 MR. BROOKS: Yes. Mr. Scott, we have
20 met before?

21 THE WITNESS: Yes, we have,
22 Mr. Brooks.

23 MR. BROOKS: Last time was at the pit
24 rule hearing if I recall.

25 THE WITNESS: Yes, sir, it was.

1 MR. BROOKS: Well, hopefully we're on
2 a little more friendly basis than we were there.

3 MS. MUNDS-DRY: Let's not bring that
4 up, Mr. Brooks.

5 MR. BROOKS: Well, I am not going to
6 ask you legal questions, but I am -- want to preface
7 my question that I am going to ask you, which I think
8 you've already answered, but I want to get it on the
9 record on a legal definition. And I am going to read
10 you the definition so you have a basis to answer.
11 This is from Section 70-2-33 of the New Mexico
12 statutes as Subsection H.

13 And it says, "Correlative rights
14 means the opportunity afforded so far as it is
15 practicable to do so to the owner of each property in
16 a pool to produce without waste his just and
17 equitable share of the oil or gas or both in the pool
18 being an amount so far as can practicably be
19 determined and so far as can practicably be obtained
20 without waste," and here we come to the important
21 part, "substantially in proportion to that quantity
22 of recoverable oil or gas or both under the property
23 -- substantially in proportion that the quantity of
24 recoverable oil or gas or both under the property
25 bears to the total recoverable oil or gas or both in

1 the pool and for such purpose to use his just and
2 equitable share of reservoir energy."

3 Based on that definition, Mr. Scott,
4 and maybe you don't understand it, if you don't, tell
5 me, but having been in the oil industry as long as
6 you have, I think you probably understand it.

7 THE WITNESS: Yes, sir.

8 MR. BROOKS: If this application were
9 granted, is it your opinion -- are you stating the
10 opinion -- is it your opinion that if this
11 application were granted, you and the other owners in
12 the south half of Section 21 would be denied your
13 correlative rights?

14 THE WITNESS: Yes, sir, I agree with
15 that statement.

16 MR. BROOKS: I thought that was your
17 position. I just wanted to clarify that that was on
18 the record based on the legal definition. That's
19 all.

20 THE WITNESS: One thing we did not
21 address in our previous conversation was that --

22 MR. LARSON: Mr. Examiner, is there a
23 question on the table?

24 MR. BROOKS: Was there anything else
25 you would like to say on the subject, Mr. Scott?

1 THE WITNESS: If you would allow me,
2 sir, the application asked for the pooling of the
3 interests from 2500 feet, which by the way, is a
4 depth segregation issue with regards to ownership in
5 Section 21, from 2500 feet to the base of the Bone
6 Springs. The horizontal -- the vertical portion of
7 that wellbore evaluated and developed that interval
8 between 2500 feet and the -- I suppose the base of
9 the second Bone Spring sand.

10 The horizontal portion of that
11 wellbore doesn't evaluate or develop anything but the
12 second Bone Spring sand, and that is another reason
13 that the application is in error in that once the
14 casing is run out into that horizontal section, that
15 wellbore is in the second Bone Spring sand, and the
16 first sand, the first and third carbonates, the third
17 sand in the Delaware will no longer be available to
18 the pools' interests when, in fact, it wasn't
19 evaluated or developed with the wellbore.

20 MR. BROOKS: Thank you. That's all I
21 have.

22 MR. EZEANYIM: Based on that
23 definition that he just read to you, you said that
24 your interests and all of those you represent would
25 be impacted. Is that just you saying it, or do you

1 have anything to show that your interests would be
2 impacted? Based on that definition because I think I
3 understand what that correlative right is trying to
4 define. So based on that, let's say, for example,
5 well orientation may cost a little more and you get a
6 surer fit than if you orient it the other way, and
7 that's how the definition is done. What can you tell
8 me now to tell me that your correlative rights are
9 impacted in that south half of the west half,
10 whatever, northeast, that you're asking? Or you just
11 assume that they are going to be impacted with the
12 rest of the project?

13 THE WITNESS: Well, Mr. Examiner, I
14 think I demonstrated with several pieces of my
15 testimony there that allocating production in a
16 compulsory pool on the basis of four 40-acre tracts
17 is not equitable. That it is not fair to the pools'
18 interests.

19 MR. EZEANYIM: Because?

20 THE WITNESS: Well, because 100
21 percent of the production from that wellbore may well
22 come from the west half of the southwest quarter.

23 MR. EZEANYIM: Okay. So if you would
24 look at Exhibit Number 2 from Cimarex, you are
25 objecting to that demonstration there? That 71,000

1 would come from each unit? That's what they
2 indicated there.

3 THE WITNESS: Oh, absolutely. At
4 this point in the process, that's what we in the
5 industry call a wild ass guess.

6 MR. EZEANYIM: Okay. So you
7 don't agree with the notion that based on this
8 geology, that the reservoir is homogeneous across
9 that west half, west half? You don't agree with
10 that?

11 THE WITNESS: No, sir, I don't.

12 MR. EZEANYIM: Okay. Did you do any
13 of the calculation to report those -- did you do any
14 calculation in the -- in the southwest half to
15 demonstrate that the recovery may be different than
16 what they showed there?

17 THE WITNESS: No, sir, I did not. My
18 isopach was about one-third below --

19 MR. EZEANYIM: Yeah, I see that.

20 THE WITNESS: -- their maximum
21 numbers, and I don't have any issue with the
22 reservoir calculations that were developed, just
23 multiply them by 66 percent.

24 MR. EZEANYIM: But as a petroleum
25 engineer you have to calculate on those two units

1 that you are talking about with your interest group
2 to demonstrate, say, okay, these are all we think
3 we're going to get there, unless it is substantially
4 different from 71,000 that they are demonstrating. I
5 mean, that you would be making a point there.

6 Although you asked me to ask that each unit be
7 tested, but you could have ran a calculation on that.
8 I don't have all of the data. The only thing that we
9 have is on that northwest, northwest half, which I am
10 not sure how good it is, but if you have done a
11 calculation to demonstrate that production from those
12 two units?

13 THE WITNESS: I have not performed
14 that calculation.

15 MR. EZEANYIM: My problem is there
16 they could have done some calculations. You know, if
17 I look at that lease, there is Marbob, there is Lynx,
18 there is a lot of operators who have engineers to do
19 that calculation. For the purpose of this testimony
20 or for this hearing, you could come back without you
21 knowing what is even here and say, okay, we
22 calculated in those two units 120,000 for each of
23 them. Therefore, you demonstrate that it is going to
24 be different from what is coming from the north half.

25 THE WITNESS: Well, Mr. Examiner, if

1 you will allow me to use Cimarex' calculations, I can
2 come up with that number in about 30 seconds.

3 MR. EZEANYIM: I know you could, but
4 I don't know if they will allow you to do that.
5 Well, anyway, I know they will. Okay. Let's not do
6 the calculation yet because I don't know how good the
7 numbers are. If you had done that calculation, that
8 would have limited the part to test each of those
9 40-acre units.

10 THE WITNESS: Well, of course, with
11 the limited control that is in the area, my map may
12 be wrong, which makes all of the calculations subject
13 to very significant probabilities of error. There is
14 just no way to know with the limited amount of
15 control that's in this vicinity what is down there.

16 MR. EZEANYIM: Yeah. On this lease
17 you have here that you are speaking on behalf of,
18 what, all of them, and your counsel asked you if this
19 application were to be approved, would you allow a
20 test of each of those units and then allocation
21 depends on those tests, right?

22 THE WITNESS: I believe that is a
23 reasonably fair way to accomplish what I seek to
24 accomplish.

25 MR. EZEANYIM: And all of these

1 people here will agree with what you're saying?

2 THE WITNESS: I believe that would be
3 correct, yes.

4 MR. EZEANYIM: Did you discuss it
5 before you came over here today, or are you just
6 speaking on them thinking that they will believe you?

7 THE WITNESS: I have discussed it
8 with approximately half of that group. I don't think
9 I talked to every one in the group specifically with
10 regard to that issue.

11 MR. EZEANYIM: You agree with
12 counsel, testing each of those units is substantive?
13 You know, it might be less than \$1 million? It might
14 be more than \$1 million? You agree testing those
15 units would cost some money, right? You agree with
16 that? Okay. You agree with that?

17 THE WITNESS: Yes, sir. It would add
18 cost to the project to test those units individually.

19 MR. EZEANYIM: And then those costs
20 would be shared among all the parties?

21 THE WITNESS: That is affirmative.

22 MR. EZEANYIM: Are you -- I think
23 this question has been asked. Are you -- Lynx and
24 the rest of them, are you planning to drill a
25 vertical well or a horizontal well in that south half

1 portion?

2 THE WITNESS: Mr. Examiner, I have no
3 immediate plans to drill there, but we are active in
4 the immediate neighborhood.

5 MR. EZEANYIM: Okay. So you are
6 planning in the future to drill a well there?

7 THE WITNESS: Yes, sir.

8 MR. EZEANYIM: Okay. You mentioned
9 in your testimony that the northwest half of that 21
10 is less prospective than the southwest -- I mean,
11 northwest quarter, southwest quarter?

12 THE WITNESS: Yes, sir.

13 MR. EZEANYIM: How did you come up
14 with that proposition?

15 THE WITNESS: Well, the two best
16 wells in a large area are the well immediately to the
17 west, that being the northwest of the southeast of
18 the adjoining section to the west, and my Federal HJ
19 27, which is in the southwest of the northwest of
20 Section 27. And my isopach and structure map have
21 cumulative recovery bubbles on those, and they factor
22 two or more better than any other well in the
23 immediate vicinity.

24 MR. EZEANYIM: So they will agree
25 like you said if the well is oriented from that unit

1 D to A, it would produce less than if you orient it
2 from unit A to whatever that is? You know, I mean,
3 north, south. That's what you're proposing. That's
4 what would happen if we -- your orientation is west
5 to east than north to south?

6 THE WITNESS: Based on my mapping, a
7 well east to west across the south half of Section 21
8 would be in a more advantageous location than a well
9 north to south across the west half of 21.

10 MR. EZEANYIM: Can you repeat that?
11 It just crossed my head. What is --

12 THE WITNESS: On my map, a well east
13 to west across the south half, south half of Section
14 21 would be more advantageous than a well north to
15 south across the west half, west half of Section 21.

16 MR. EZEANYIM: Okay. But not across
17 the north half, north half?

18 THE WITNESS: I don't own any acreage
19 in the north half.

20 MR. EZEANYIM: Okay. So that's
21 why -- okay. I understand.

22 MR. BROOKS: I had one more question
23 in following up on this. I am looking at your --
24 well, a couple more questions, I guess. I was
25 looking at your exhibit. The well that is up in the

1 section to the north of 21, that looks like a dry
2 hole marker; is that correct?

3 THE WITNESS: It is for a fact.

4 MR. BROOKS: And was that tested in
5 the Bone Springs?

6 THE WITNESS: It was in the second
7 sand.

8 MR. BROOKS: So that kind of tends to
9 reinforce your opinion that the better sands are to
10 the south rather than to the north?

11 THE WITNESS: Yes, sir, it does.

12 MR. BROOKS: And I'm assuming that
13 this is a structure map, right? Not an isopach?

14 THE WITNESS: The purple lines are
15 structure on top of the third Bone Spring sand. The
16 bright red lines are isopach on the Bone Spring
17 second sand.

18 MR. BROOKS: Okay.

19 MR. EZEANYIM: They all seem purple
20 to me.

21 MR. BROOKS: Well, that's what I was
22 thinking, but I think -- I don't see any that look
23 red, but I see some that maybe are orange. And so I
24 am assuming that the ones that go down and have a
25 wide spot at 27 and a little -- a smaller wide spot

1 up in Section 20 and the channel between the two,
2 that that is your isopach. Is that a correct
3 assumption?

4 THE WITNESS: That would be correct,
5 sir.

6 MR. BROOKS: Anyway, the purple hose
7 lines -- the purple hoses that go across there, are
8 those the high -- are those highs, structural highs?

9 THE WITNESS: Actually, our structure
10 maps don't differ a whole lot. There is a very
11 gentle dip northwest to southeast with, oh, kind of a
12 wide spot there across the south half of Section 21,
13 a flat spot, if you will.

14 MR. BROOKS: Anyway, your map to my
15 untrained eye does clearly support your testimony,
16 and I understand that a geologist's map is no better
17 than the day that it is drawn on.

18 THE WITNESS: Mr. Brooks, all maps
19 particularly with the control that is available here
20 are subject to very significant amounts of
21 interpretation.

22 MR. BROOKS: Thank you, Mr. Scott. I
23 have nothing further.

24 MR. LARSON: Nothing further.

25 MS. MUNDS-DRY: Nothing further.

1 MR. EZEANYIM: Nothing further. All
2 right. That's good.

3 MR. BROOKS: I do have a question for
4 Ms. Munds-Dry, but I assume they are going to call
5 for argument, so.

6 MS. MUNDS-DRY: Yes, Mr. Ezeanyim, I
7 have a closing statement.

8 MR. EZEANYIM: I know we're going to
9 the statement, but I want to know if anybody has
10 anything for this witness.

11 MS. MUNDS-DRY: I have nothing
12 further for Mr. Scott.

13 MR. EZEANYIM: Do you have any
14 questions to ask before --

15 MR. LARSON: Nothing for the witness.

16 MR. EZEANYIM: Okay. Closing
17 statement --

18 MR. LARSON: I actually would like to
19 call one rebuttal witness. Mr. Compton.

20 MR. EZEANYIM: Okay. Who do you want
21 to call?

22 MR. LARSON: Mr. Compton.

23 MR. EZEANYIM: Okay. Mr. Compton,
24 you have been sworn, and the testimony you're going
25 to give is still under oath. Go ahead.

1 MARK COMPTON

2 After having been previously duly sworn under
3 oath,

4 was questioned and testified as follows:

5 EXAMINATION

6 BY MR. LARSON:

7 Q Mr. Compton, you had conversations with
8 several of the entities listed on Exhibit 3 after you
9 sent out the proposal --

10 A I did.

11 Q -- materials? And who specifically did
12 you have conversations with?

13 A I initially started with the Bass group
14 for obvious reasons. They are 40 percent of the
15 south half, just to stay on their line. Asked them
16 if they got a proposal. They had. Since the time
17 that they received it on 11/23 of '09, I have spoken
18 with their landman, Brad Glasscock, no less than a
19 dozen times. As late as Monday of this week before I
20 got on a plane in Midland, they indicated that they
21 wanted to participate in the Penny Pincher 21 Fed
22 #1H.

23 They've said that all along. They've
24 never wavered. It passed their -- and this is Brad
25 speaking directly to me. It has passed their geology

1 department. It is now with their engineering, but
2 they intend to participate in the Penny Pincher 21
3 Fed #1H with their 40 percent of the south half.

4 I then started leaving messages with the
5 Lynx group. I don't recall who I talked with first.
6 I do know I spoke with Ross Duncan at Marbob, at
7 which point he asked me, do you have interest in the
8 south half? I don't think there is any question I
9 implied I did because that's the impression I got
10 from the Bass group, we're going to participate in
11 the Penny Pincher.

12 And because of some other circumstances,
13 they now are opposing us. But at one point, Marbob
14 was in the mix. I have spoken with Wes Perry at EGL
15 who said, I don't have time to be force pooled. Send
16 me an executable farm-out and an executable term
17 assignment. I will execute one of them and send it
18 back to you.

19 I, again, have no reason to believe Wes is
20 not going to do that. I talked to Wes last week. He
21 was now going to let Larry represent his interests.
22 I spoke with Gary Fonay of Fonay Oil & Gas. Gary,
23 amongst saying some other things, said -- and I had
24 not spoken to Gary before this and from the time he
25 got his packet -- will you make me the same original

1 offer that you made Larry Scott? And it surprised me
2 that he would even know.

3 I said, are you talking about the \$400 an
4 acre two-year term assignment? He said, yes. I
5 said, absolutely, we will. He said, you know what?
6 I don't own much. Cash is not -- it wouldn't be --
7 let me think about it. I said, fine. Next thing I
8 know, Gary is now letting Larry represent his
9 interests. I -- this is not going to be a backhanded
10 compliment at all. I compliment Larry and his
11 ability to circle the wagons because there is no
12 question that, number 1, contrary to what he said up
13 here, not all the owners in the south half are
14 opposed to this well. I am speaking on a weekly
15 basis with 40 percent of them. And as of four days
16 ago, they still want to participate in the Penny
17 Pincher.

18 But he did a heck of a job. But when
19 people tell me one thing, I have no reason to believe
20 that they are not going to do it, and I was
21 specifically told at one time by Marbob, at one time
22 by EGL, and one time Gary didn't say it but he
23 implied, I don't have time to be forced pooled, I
24 have no reason to believe that they are not going to
25 do what they say they are going to do.

1 Again, I will compliment Larry. He
2 circled the wagons. To characterize my actions as
3 being gamesmanship is not only erroneous, it is
4 insulting, so --

5 Q We may have a -- how should I say it? -- a
6 failure to communicate here in terms of what we're
7 talking about an interest because it seems to me we
8 could have a legal interest or we could have
9 interests in participating in the well. I believe
10 Mr. Scott testified that you represented that you had
11 a legal interest in the south half. Did you
12 represent that, or did you represent that you had
13 interests from other interest owners in participating
14 in the well?

15 A I specifically would speak to one person
16 and specifically tell them what the previous person
17 told me. I spoke to Marbob second, and Ross asked
18 me, do you have an interest? I said, I have spoken
19 with Bass, Bass indicates they want to participate.

20 Q Okay. So an interest in participating in
21 the well? Not --

22 A For them specifically, participating in
23 the well. Some of the others didn't -- Gary didn't
24 say one way or the other. Wes goes, I am more apt to
25 do a farm-out or assignment. Send me one or the

1 other. I will let you keep one and send it back to
2 you. I knew then he wasn't going to participate. He
3 was simply -- he was going to make a trade. But in
4 no way did I specifically tell somebody in order to
5 influence their decision, we have an inked operating
6 agreement which gives us contractual interest in the
7 south half.

8 Q And you didn't state that you had a legal
9 interest in the south half, legal ownership interest?

10 A Yeah, people knew we didn't have a legal
11 ownership interest in the south half.

12 Q That was understood from the beginning?

13 A Yeah, everybody that I've talked to knows
14 how we got our interest, and it is 84 percent in the
15 north half that we got from Devon. And even when I
16 spoke with Larry the first time and I offered him
17 \$400 an acre and he said, I am thinking \$4,000, you
18 know, I went through how we got it.

19 I am familiar with all of that. I know
20 where you got it. So everybody understands how we
21 got our position and where it was. It is not in the
22 south half. It is in the north half. But they
23 are -- under no circumstances did I imply, other than
24 to state, this particular person said they either
25 want to participate or this particular person said

1 they were going to do a deal.

2 MR. LARSON: Pass the witness.

3 MR. EZEANYIM: What is your name
4 again?

5 THE WITNESS: I'm sorry?

6 MR. EZEANYIM: What is your name
7 again?

8 THE WITNESS: My name is Mark
9 Compton.

10 MR. EZEANYIM: The geologist or the
11 landman?

12 THE WITNESS: Landman.

13 MR. EZEANYIM: Okay. As you are
14 talking, I hope you're not angry.

15 THE WITNESS: No, no -- well, no. I
16 think anybody gets irritated when somebody
17 characterizes them or their actions as being at best
18 gamesmanship because that goes against the ethics of
19 the American Association of Professional Landmen, and
20 anybody who is a landman knows how we do business,
21 and we have a level that we ascribe to.

22 MR. EZEANYIM: Yeah, that is good
23 because in this administrative hearing, we don't want
24 to be angry.

25 THE WITNESS: No, I am not angry at

1 all.

2 MR. EZEANYIM: If it is angry, we
3 strike it off the record.

4 THE WITNESS: And I like Larry, and I
5 meant this absolutely positively, Mr. Examiner, he
6 absolutely circled the wagons I think maybe better
7 than anybody I have ever seen.

8 MR. EZEANYIM: Cool down. Cool down.
9 I don't you to get angry. That's how -- that's okay.
10 Sometimes we are agitated. I do that, too,
11 sometimes. When I don't get what I want, I get
12 agitated, but in this business, you have to cool
13 down.

14 THE WITNESS: Sure.

15 MR. EZEANYIM: I understand what you
16 mean. Based on this testimony, do you have anything
17 to say?

18 EXAMINATION

19 BY MS. MUNDS-DRY:

20 Q Mr. Compton, I just want to make sure I
21 understand that at this time, you don't have a deal
22 with anybody in the west half, southeast?

23 A We have no signed operating agreement with
24 any member from the south half.

25 Q I know Mr. Larson made a distinction

1 between legal interests or what I would maybe
2 characterize as a contractual interest. You don't
3 have any other legal interest or a contractual
4 interest in that section now?

5 A We have no signed documents which give us
6 a legal, contractual interest in the south half
7 today.

8 MS. MUNDS-DRY: Okay. Thank you, Mr.
9 Compton. I have nothing further.

10 MR. EZEANYIM: Anything further?

11 MR. LARSON: Nothing further.

12 MR. EZEANYIM: Do you have any
13 questions for the witness?

14 MR. BROOKS: No questions for the
15 witness.

16 MR. EZEANYIM: You may step down.
17 Okay. Now I go back to closing statements.
18 Mr. Larson?

19 MR. LARSON: Can I clear up a couple
20 of procedural things --

21 MR. EZEANYIM: Okay, please.

22 MR. LARSON: -- before I make my
23 statement? I just want to be clear you would like us
24 to submit a plat of the project area, a C-102 type
25 plat?

1 MR. EZEANYIM: Yeah.

2 MR. LARSON: And how should we do
3 that? Should I just file it with Ms. Davidson or --

4 MR. EZEANYIM: However you want to do
5 it. You can send it directly to me, or Ms. Davidson
6 will give it to me. However you want to do it. But
7 those documents, one is from C-102, the plat, and the
8 second is the newspaper advisement that is not
9 included in the packet here today. So you can get it
10 to Ms. Davidson, and she will get it to me.

11 MR. LARSON: Understood. And then
12 the issue of notice to Mr. Bayless of the hearing, we
13 have acknowledged that he did not get notice of the
14 hearing, and I was prepared to say that he could not
15 be forced pooled, but based on Mr. Scott's testimony,
16 I think that's a moot point. He does not presently
17 own an interest, and therefore, there was no reason
18 to send him notice of the hearing.

19 MR. EZEANYIM: Okay. So my
20 understanding from Mr. Scott's testimony is that they
21 bought his interests, right?

22 MR. SCOTT: That is correct, sir.

23 MR. EZEANYIM: So he doesn't own any
24 interest; therefore, wouldn't be required to get any
25 notice?

1 MR. BROOKS: I think we should ask
2 Mr. Scott to provide us with a copy of the
3 reassignment.

4 MR. SCOTT: Mr. Brooks, I believe we
5 could do that.

6 MR. EZEANYIM: Okay. Now, I'm going
7 to write down that you're going to give us that
8 assignment because that will -- once you said that, I
9 circled it and said it is moot because they provided
10 a notice, you know, which they are not supposed to
11 do. Okay. So you're going to give us -- what did
12 you call it?

13 MR. BROOKS: The assignment. I
14 gather it's an assignment. Not merely a contract?

15 MR. SCOTT: That is correct.

16 MS. MUNDS-DRY: We will provide that
17 to you.

18 MR. LARSON: Do you know if it was
19 filed on record?

20 MR. SCOTT: I am virtually positive
21 that it was, but that was part of a very large
22 acreage acquisition from the Bayless group, and while
23 it was intended to convey everything in what we call
24 the west block, the south half of 21 may have gotten
25 overlooked in the acreage description.

1 MR. LARSON: And the only reason I
2 asked is that that comes on our contractor who may
3 have missed it.

4 MR. BROOKS: Yeah. I was going to
5 say I don't think there's any difference from our
6 point of view in the absence of -- an indication that
7 Bayless has assigned it to someone else, whether it
8 is recorded or not.

9 MR. EZEANYIM: Okay. Very good. So
10 please provide that assignment to Ms. Davidson so she
11 can get it back to me as soon as possible, all those
12 documents.

13 MR. LARSON: Okay. Mr. Examiner, I
14 would state that the three witnesses proposed by
15 Cimarex have provided more than adequate evidence to
16 establish that their application for a 160-acre
17 proration unit in the west half, west half of Section
18 21 and the force pooling of all the interest owners
19 should be granted. I don't believe that Mr. Scott
20 has sustained his burden of establishing a purpose
21 for denying the permit application.

22 I understand he believes that somehow
23 Cimarex is abusing the Oil and Gas Act, but to the
24 contrary, they are acting on the provisions of the
25 act, the provisions, rules, and I would ask that with

1 the exception of the pooling in the northwest
2 quarter, northwest quarter, that all of the relief in
3 the application be granted.

4 MR. EZEANYIM: Okay. Thank you very
5 much.

6 MR. BROOKS: Well, I believe that
7 there was a question about whether -- about 2500 feet
8 versus Bone Springs, and I understood you to say that
9 all you're asking for specifically now is the
10 establishment of a nonstandard unit in the Bone
11 Spring.

12 MR. LARSON: That's correct.

13 MR. BROOKS: Okay.

14 MR. LARSON: That's the pooling in
15 the northwest quarter, northwest quarter with surface
16 to 2500.

17 MR. BROOKS: But you had also asked
18 for pooling of the entire west half of the west half
19 from 2500 to the base of the Bone Springs. Well, I
20 understand 2500 is above the top of the Bone Spring,
21 but I also understood the testimony of your geologist
22 to say that there was nothing you were interested in
23 between 2500 to the top of the Bone Spring.

24 MR. LARSON: Not for purpose of this
25 application.

1 MR. BROOKS: Okay.

2 MR. EZEANYIM: And that was my
3 understanding. We're going to give -- if the
4 application is ever approved, it has to be in the
5 Bone Springs, nowhere else, a horizontal well. Is
6 that --

7 MR. LARSON: That's correct,
8 Mr. Examiner.

9 MR. EZEANYIM: Because even if I said
10 from 2500 to Bone Springs, it is moot because the
11 only place you're going to get access to is the Bone
12 Springs. Is that okay?

13 MR. SWAIN: Yes.

14 MS. MUNDS-DRY: Thank you,
15 Mr. Examiner. Lynx opposes this application because
16 it believes there are significant differences between
17 the reservoir quality between each of the 40-acre
18 spacing units that Cimarex proposes to create for
19 this project area for the well. Accordingly, the
20 basis that Mr. Scott testified to for denial of this
21 application is because Lynx' and the other interest
22 owners' that he represents correlative rights will be
23 denied.

24 It is the duty of this division, as
25 you are well aware, to protect correlative rights.

1 And Section 70-2-17 of the Oil and Gas Act provides
2 that it is your duty to require on all orders and all
3 rules and all statutes of the division that so far as
4 it's practicable to do so, each interest owner should
5 be afforded its just and equitable share of the oil
6 and gas. And Mr. Brooks was kind enough to read the
7 definition of correlative rights, which happens to
8 coincide with 70-2-17 of the Oil and Gas Act, and
9 that's what Mr. Scott's basis for denial of this
10 application absolutely rests on.

11 The problem we have here is that the
12 pooling statutes and rules are and were based on
13 pooling for a spacing unit as we all know. And now
14 with the advent of horizontal wells, the division has
15 allowed an operator to form a nonstandard spacing
16 unit to form a project area. The problem is that
17 really doesn't fit because we know it is not really a
18 nonstandard spacing unit. It was, might I say, a
19 convenient or expedient way to allow an operator to
20 form a project area for a horizontal well. But that
21 doesn't mean that just because it is convenient or
22 expedient, that the division then gets to put aside
23 the matter of correlative rights. It just doesn't.
24 So Lynx, as the first proposition, requests that this
25 application be denied.

1 Now, if the division finds that it
2 should grant the application of Cimarex, we suggested
3 this alternative to put conditions in the order in
4 order to allow each interest owner to get their just
5 and equitable share. And this is why we say this,
6 and this is why we think a nonstandard spacing unit
7 is really not appropriate here.

8 As you're aware, forming project
9 areas is really more akin to when you unitize an
10 area. And in that situation, then you get -- every
11 interest owner gets to determine their tract
12 participation factor in that unit. You all get to
13 agree whether it is voluntarily or statutory, if you
14 have a waterflood and that sort of thing, you agree
15 to whatever the allocation factor is. But the point
16 is is that everybody gets to agree to whatever those
17 factors are when you have disparate interests in a
18 unit.

19 A nonstandard spacing unit and on top
20 of forced pooling takes all those options away so
21 that there is no opportunity to establish
22 contribution to the unit area and a participation
23 factor and an allocation factor, so that is why we
24 propose this alternative. Lynx proposes to you that
25 because it is technically feasible, as it is

1 practicable to do so which is your jurisdiction and
2 your authority under the Oil and Gas Act to require a
3 condition in the order that Cimarex be required to
4 test each spacing unit for a sufficient period of
5 time so that contribution to the overall project area
6 is determined.

7 Once that contribution is determined
8 from the project area, then we also ask that the
9 condition -- another condition or a related condition
10 in the order allow for allocation to be determined
11 based on that contribution test. That is the basis
12 for -- in a nutshell, for Lynx' objection, and what
13 we would ask and order that all of the correlative
14 rights of the interest owners in this proposed
15 project area be protected. Thank you, Mr. Ezeanyim.

16 MR. EZEANYIM: Thank you.

17 MR. BROOKS: Okay. Ms. Munds-Dry, I
18 want to ask you a question and I wondered if you were
19 going to argue for Mr. Scott's alternative solution,
20 but that raises this question. Section 70-2-17 says
21 in part, "A portion of the production allocated to
22 the owner or owners of each tract or interest
23 included in a well spacing or proration unit formed
24 by a pooling order shall when produced be considered
25 as if produced from the separately owned tract or

1 interest by a well drilled thereon."

2 Now, I'm not sure -- I'm wondering --
3 I'm not really fully prepared because there's more to
4 this section than that sentence, and that sentence
5 doesn't really get where I was thinking this section
6 got. So I apologize for launching you into this, but
7 I am doubtful once we create a spacing unit, whether
8 we have the authority to require -- we certainly have
9 the authority to allocate the costs, but whether we
10 have the authority to allocate production in any way
11 other than proportionately, I'm not certain of. So
12 if you would read this over and give me a -- give me
13 your take on that subject, I would appreciate it.

14 MS. MUNDS-DRY: Mr. Brooks, I can
15 tell you this. I think that section doesn't speak to
16 this situation is the bottom line.

17 MR. BROOKS: You think there is
18 nothing in the section that speaks to the allocation
19 of production?

20 MS. MUNDS-DRY: No, I don't think
21 there is. I think that because those rules were
22 written with vertical wells in mind --

23 MR. BROOKS: Well, I concede those
24 rules were written with vertical wells in mind. I
25 was under the impression it was in there and I

1 thought I had found it scanning it, but I realized
2 when I read it, that it doesn't really address that
3 issue.

4 MS. MUNDS-DRY: It doesn't really
5 address allocation. I know it addresses well costs
6 and how you -- that you can challenge that, but in
7 terms of allocation, I don't think it is contemplated
8 in there.

9 MR. BROOKS: Well, okay. Very good.
10 I will review it and see if I agree with that because
11 you had more leisure than I had in this course of the
12 hearing. Very good.

13 MS. MUNDS-DRY: Okay.

14 MR. EZEANYIM: Okay. One comment I
15 have -- maybe I am making this comment out of
16 ignorance. I think that's a rule in our books. It
17 used to be Rule 1-11 that said an operator come from
18 a project area, you know. I will listen to what
19 you're saying and I think you're right, but I think
20 we have opted to have authority to form a project
21 area. Then the question becomes how to form it is
22 the question. That's why the case is here.

23 But regarding the question whether we
24 have the power to form that, yeah, they can form it,
25 you know. But I don't know the legal around this

1 about whether they have an interest to form it in
2 their unit or not, and that was the question we have
3 to answer. But regardless of how well they could
4 form that, yeah, they can form it. And that is
5 designed to, you know, preserve what we're talking
6 about.

7 And then a comment to what you were
8 asking assuming it's approved, which we don't know
9 right now, assuming it is approved to allocate
10 production on the basis of what tests on each unit,
11 and now we all agree that those well tests on the
12 horizontal well would cost money, and that money
13 would be borne by each of those interest owners,
14 right?

15 MS. MUNDS-DRY: I think that is
16 right.

17 MR. EZEANYIM: Now the question
18 becomes if we do that, are we -- because waste is not
19 only waste of hydrocarbons. You can reduce waste by
20 performing needed tests that might even, you know,
21 double what you need to do to drill a vertical well
22 there. I don't know. I am just saying it out there
23 so everybody -- because this is a contested case, so
24 that's what I am thinking is if the cost of the tests
25 is going to be very substantial in that area, then do

1 we then say, well, we drill that well or do something
2 else? So I am trying to put it out there for your
3 consumption, you know.

4 And that would be our duty then to
5 determine that. I'm not sure I know what the answer
6 is now because I haven't done any cost analysis here.
7 And then also the question of whether we are even
8 authorized to meddle in your -- in the cost
9 allocation in such circumstances that he mentioned,
10 so to do that equation would be the answer.

11 MR. BROOKS: Well, while you were
12 speaking, chief, I found the sentence in 70-2-17 that
13 I thought was in here, but I was in the wrong place.

14 MR. EZEANYIM: Okay. Good.

15 MR. BROOKS: It says, "For the
16 purpose of determining the portions of production
17 owned by the persons owning interests in the pooled
18 oil or gas or both, such production shall be
19 allocated to the respective tracts within the unit in
20 the proportion that the number of surface acres
21 within each tract bears to the number of surface
22 acres included in the unit."

23 Now, that would seem to me to deprive
24 us of the discretion to allocate production, although
25 we may have discretion to allocate costs. I think we

1 do have discretion to allocate costs, but that seems
2 to deprive us of the discretion to allocate
3 production once we have decided what constitutes a
4 unit. Now, based on what the Supreme Court said, I
5 think we have -- in the case which I always called
6 the Bartles & Jaymes case, although I know that's not
7 the right name of it, but it's something and
8 something, based on what the Supreme Court said in
9 that case, it seems to me we have so far till the
10 Supreme Court speaks again essentially unlimited
11 discretion to create a nonstandard unit for whatever
12 boundaries we want to as long as it is defended on
13 the basis of prevention of waste and protection of
14 correlative rights.

15 MR. EZEANYIM: And as long as they
16 are contiguous, right?

17 MR. BROOKS: I would assume they have
18 to be contiguous. I don't think I've ever read
19 anything that said so, but noncontiguous spacing
20 units are a rather strange idea.

21 MR. EZEANYIM: Okay. Any further
22 comments from anybody?

23 MR. LARSON: Nothing, Mr. Examiner.

24 MS. MUNDS-DRY: Nothing further.

25 MR. EZEANYIM: Thank you.

1 MR. SCOTT: It's my understanding,
2 Mr. Examiner, that these rules regarding horizontal
3 spacing units are still in a state of development,
4 and the paragraph that Mr. Brooks just read certainly
5 applies to a vertical wellbore when there is no other
6 way to allocate outside of surface acreage.

7 MR. EZEANYIM: Can I address that?

8 MR. BROOKS: Sure.

9 MR. EZEANYIM: Are you talking
10 about -- when you say in the process of development,
11 are you talking about the one that the MOGA is
12 working on the Wolfe Camp? Is that what you are
13 talking about?

14 MR. SCOTT: Well, it's my
15 understanding that Mr. Carr is currently charged with
16 developing some recommendations with regards to these
17 horizontal operations that would be considered by --

18 MR. EZEANYIM: That's only the Wolfe
19 Camp.

20 MS. MUNDS-DRY: No, sir.

21 MR. BROOKS: I think no. I think
22 that's we asked somebody to produce some pool rules
23 in the Wolfe Camp, but nobody ever did it. Wolfe
24 Camp seems to have sort of exhausted itself about
25 now, but my understanding is that the MOGA committee

1 is working on amendments to the statewide rules,
2 which I agree are needed because both the statutes
3 and the rules were written at a time when oil wells
4 were horizontal -- were vertical or close to
5 vertical.

6 MR. EZEANYIM: It is frustrating that
7 the MOGA is dependent on that, you know. I mean,
8 over three years now, we have mandated them to do
9 that, but we haven't gotten any draft. So if we had
10 a draft, you know, if the rule is in effect now,
11 maybe it helps with this case. But since we don't
12 have that, we have to go with whatever is in the rule
13 currently, so we don't have that rule yet.

14 MR. BROOKS: We have to do these
15 things case by case until we get a rule adopted.

16 MS. MUNDS-DRY: I will pass that
17 along to Mr. Carr.

18 MR. BROOKS: It also does not help in
19 my judgment, but Mr. Carr is familiar with my
20 sentiments on this subject, that the local MOGA does
21 not feel at liberty to consult to us about what ought
22 to be in the rule.

23 MS. MUNDS-DRY: We hope to change
24 that, Mr. Brooks, very soon.

25 MR. EZEANYIM: We hope you do. Okay.

1 Any comments further? Further comments from anybody?
2 Okay. Then at this point, Case Number 14418 will be
3 taken under advisement.

4 MS. MUNDS-DRY: Thank you,
5 Mr. Examiner.

6 MR. EZEANYIM: That concludes the
7 hearing today.

8 (The hearing concluded at 3:35 p.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14418
heard by me on 2/21/10

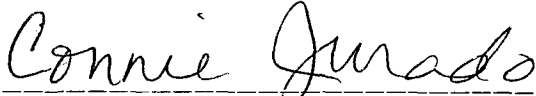

Examiner
Oil Conservation Division

1 REPORTER'S CERTIFICATE

2
3 I, CONNIE JURADO, do hereby certify that I
4 reported the foregoing case in stenographic shorthand
5 and
6 transcribed, or had the same transcribed under my
7 supervision and direction, the foregoing matter and
8 that the same is a true and correct record of the
9 proceedings had at the time and place.

10 I FURTHER CERTIFY that I am neither
11 employed by nor related to any of the parties or
12 attorneys in this case, and that I have no interest
13 whatsoever in the final disposition of this case in
14 any court.

15 WITNESS MY HAND this 4th day of February,
16 2010.

17
18
19
20 
21 Connie Jurado, ECR, RPR
22 New Mexico CCR No. 254
23 Expires: December 31, 2010
24
25