

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

IN THE MATTER OF THE HEARING CALLED)
BY THE OIL CONSERVATION DIVISION FOR)
THE PURPOSE OF CONSIDERING:) CASE NOS. 11,310
) 11,311
APPLICATION OF YATES PETROLEUM) (Consolidated)
CORPORATION FOR COMPULSORY POOLING,)
EDDY COUNTY, NEW MEXICO)
)
APPLICATION OF NEARBURG EXPLORATION)
COMPANY FOR COMPULSORY POOLING)
EDDY COUNTY, NEW MEXICO)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

RECEIVED

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October 5th, 1995

Oil Conservation Division

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, October 5th, 1995, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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October 5th, 1995
 Examiner Hearing
 CASE NOS. 11,310, 11,311 (Consolidated)

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 12:45 p.m.:

3 EXAMINER STOGNER: At this time I'll call Case
4 Number 11,310.

5 MR. RAND CARROLL: Application of Yates Petroleum
6 Corporation for compulsory pooling, Eddy County, New
7 Mexico.

8 EXAMINER STOGNER: At this time I'll call for
9 appearances.

10 MR. ERNEST CARROLL: Mr. Examiner, I'm Ernest
11 Carroll of the Artesia law firm of Losee, Carson, Haas and
12 Carroll, and I'm here today representing Yates Petroleum.

13 I have the same three witnesses -- Since this is
14 a reopened hearing, I have the same three witnesses that we
15 had at the original hearing.

16 EXAMINER STOGNER: Any other appearances in this
17 matter?

18 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
19 the Santa Fe law firm of Kellahin and Kellahin. I'm
20 appearing today on behalf of Nearburg Exploration Company.

21 EXAMINER STOGNER: Any other appearances in this
22 matter?

23 Let's see, before we get started I need to refer
24 to, I believe, a letter or a notification in which, Mr.
25 Carroll, if I remember right, Yates has requested that

1 their case be continued -- I mean reopened for additional
2 matters. That's a letter dated August 31st from me --

3 MR. ERNEST CARROLL: That's correct, sir.

4 EXAMINER STOGNER: -- which referred to your
5 letter of August 23rd and to Mr. Kellahin's response on
6 behalf of Nearburg by letter dated August 28th.

7 After considering Yates' motion to reopen Case
8 11,310 to the Examiner's hearing scheduled for September
9 21st to consider changes to be made in this Application and
10 the overall effects to both cases, at this time the
11 Division shall accept Yates' motion and cause 11,310 to be
12 reopened and readvertised, which would necessarily cause
13 Nearburg's Application to be reopened.

14 And, if desired, Nearburg may or may not present
15 any additional testimony. Since these matters parallel
16 each other and one order will be submitted in both
17 responses, I thought it best to continue both cases, or
18 reopen both cases, until today's date.

19 So at this time I'm going to call Case 11,311.

20 MR. RAND CARROLL: Application of Nearburg
21 Exploration Company for compulsory pooling, Eddy County,
22 New Mexico.

23 EXAMINER STOGNER: Other than Yates and Nearburg,
24 are there any other appearances in this matter?

25 Okay. Before we get started, is there any

1 necessity for some opening remarks?

2 MR. ERNEST CARROLL: I have none. I think the
3 letter wherein we asked for it to be re-opened, we
4 expressed the reason, and that is still the primary reason,
5 and so I have no other comments, other than I do have some
6 evidence that needs to be put on through the three
7 witnesses to clarify the situation.

8 EXAMINER STOGNER: Okay, Mr. Kellahin?

9 MR. KELLAHIN: No, I'm here to listen to their
10 evidence, Mr. Examiner.

11 EXAMINER STOGNER: Okay. I'm going to ask the
12 witnesses to stand again at this time so we can swear them
13 in.

14 (Thereupon, the witnesses were sworn.)

15 EXAMINER STOGNER: Okay, Mr. Carroll, you may
16 proceed.

17 MR. ERNEST CARROLL: All right.

18 JANET RICHARDSON,

19 the witness herein, after having been first duly sworn upon
20 her oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. ERNEST CARROLL:

23 Q. Would you please state your name for the record?

24 A. Janet Richardson.

25 Q. And how are you employed?

1 A. I'm a landman for Yates Petroleum Corporation in
2 Artesia, New Mexico.

3 Q. Are you the same Janet Richardson that testified
4 at the time that this case was first called for hearing
5 several weeks ago?

6 A. Yes.

7 Q. Would you briefly, for the record, state the
8 reason why Yates Petroleum asked that the hearing be
9 reopened, and then we'll go into your new exhibits?

10 A. We have asked for the hearing to be reopened.
11 After we had the last hearing, we had some correspondence
12 with Unit Petroleum Company, and they had requested that
13 instead of the location being -- our location was the
14 northwest quarter of the southeast quarter of Section 16.
15 Nearburg's location was the southeast quarter of the
16 southeast quarter of Section 16.

17 Unit came back, and they own 24.443924 percent of
18 the southeast quarter, and they requested that -- or said
19 they would join the operator who would propose a well in
20 the southwest quarter of the southeast quarter of Section
21 16. And our evidence is just going to show that we had
22 finally agreed to come -- you know, change the location,
23 and we need to --

24 Q. All right.

25 A. -- rehear it.

1 Q. Now, you have prepared some additional exhibits,
2 then. The first Exhibit is Exhibit 13?

3 A. Yes, Exhibit 13, and these are continued on from
4 the last case.

5 MR. ERNEST CARROLL: All right. We picked up
6 numbering with our last exhibit, Mr. Stogner.

7 EXAMINER STOGNER: Okay.

8 Q. (By Mr. Ernest Carroll) Now, Exhibit 13, would
9 you identify it for the record?

10 A. Exhibit 13 is a land plat showing the nine
11 sections including and surrounding Section 16. The
12 coloring is yellow. Solid yellow is where Yates owns 100
13 percent of the acreage. Outlined in yellow is where they
14 only own a partial interest.

15 The southeast quarter spacing unit is outlined in
16 red. And the new location, the southwest quarter of the
17 southeast quarter, is outlined in -- also circled in red.

18 Q. All right, this is identical to the Exhibit 1
19 that was entered previously, except showing the new
20 location, which Unit Petroleum asked Yates to agree to and
21 which Yates did agree to propose to the Commission?

22 A. Yes, it is.

23 Q. All right, what -- Would you, for the record,
24 identify what Exhibit Number 14 is?

25 A. Exhibit Number 14 is the letter that Unit wrote

1 to Yates Petroleum, requesting that we drill their
2 preferred location, being in the southwest quarter of the
3 southeast quarter of Section 16. It also shows where it
4 was approved by John A. Yates as attorney in fact of Yates
5 Petroleum Corporation.

6 Q. It is this correspondence, then, that prompted
7 the request for reopening of this hearing?

8 A. Yes, it is.

9 Q. All right. Would you turn to Exhibit 15 and
10 identify that for the record?

11 A. Yes, Exhibit 15 is the proposal letter that we
12 sent out after we had agreed to drill Unit's -- or the
13 location that Unit preferred, just again sending it to all
14 the same working interest owners and reproposing the well
15 at the new location.

16 Q. All right. Now, this -- On the second page of
17 this Exhibit 15 is the same list of working interest owners
18 which were identified by -- in an exhibit in the earlier
19 hearing; is that correct?

20 A. Yes, it is.

21 Q. And this particular letter was to advise the
22 people of the proposal of drilling at the new location, the
23 one preferred by Unit and agreed to by Yates?

24 A. Yes.

25 Q. All right. The group of people that are listed

1 on this addressee list, that is the same people to whom
2 notice was sent, as exemplified by an earlier exhibit in
3 this hearing that notice was given of the force-pooling
4 hearing; isn't that --

5 A. Yes, it is.

6 Q. -- the same people? All right.

7 Would you identify Exhibit 16 for the record?

8 A. Exhibit 16 is a copy of all the certified
9 receipts to all the different people that it was sent to.

10 The back page shows two people that we did not
11 receive the green card back on. We also did not receive
12 the packet back from -- you know, from the Post Office.
13 These are addresses that we've used before for these
14 people, and they have received them. We just took it that
15 the Post Office just did not pull off the green card
16 whenever they delivered it.

17 Q. Now, these two individuals were given notice of
18 the force-pooling hearing, and green cards were received
19 back, so you know that they were receiving that -- at least
20 notice of the hearing in earlier packages of information?

21 A. Yes.

22 Q. Would you identify Exhibit 17?

23 A. Exhibit 17 is the letter from Unit where they
24 have executed -- You know, it's their participation letter.
25 They have executed the AFE which is attached to the letter,

1 and they've also executed the signature page to the
2 operating agreement, which is also attached. So this just
3 shows that they have agreed to participate.

4 Q. All right. Would you identify Exhibit 18?

5 A. Yes, Exhibit 18 is the interest ownership on the
6 Boyd "X" State Com Number 10. It just shows that -- all
7 the owners that are in there, and who have joined and who
8 have not joined. The parties that have joined constitute
9 62.158646 percent, and the non-joinders at this point are
10 37.841354 percent.

11 Q. And all of those persons that have not joined --
12 And in fact the largest interest is Nearburg; is that
13 correct?

14 A. Yes, it is.

15 Q. All of those persons have received earlier
16 information, have they not --

17 A. Yes.

18 Q. -- concerning the force pooling going on within
19 this proration unit?

20 A. Yes, they have.

21 Q. Did they -- Did any of those persons shown as not
22 joined, did they indicate a desire to join to the earlier
23 proposal, or had they withheld any decision? Maybe I -- It
24 looks like I've confused you.

25 Basically what I'm asking you, Ms. Richardson,

1 is, some of the -- The people that have not joined, they
2 didn't join any of the earlier proposals, did they?

3 A. We -- yes -- I would have to check on that for
4 the previous proposed well. There are a couple of them who
5 usually join but have not at this point on this well.
6 Ernie Bello seems to sign his things and just send them in
7 very regularly. Mr. Van Vranken at the bottom usually
8 seems to sign his. There are several in the middle that we
9 do not seem to get any response from at all.

10 Q. All right. And in fact, some of these people,
11 when you examined the exhibits prepared by Nearburg at the
12 earlier hearing, some of these people joined both AFEs,
13 both Nearburg's proposed well and Yates' proposed well?

14 A. Yes, they did.

15 Q. All right. Would you identify Exhibit 19?

16 A. Exhibit 19 is just a copy of the operating
17 agreement that we sent out and proposed. It's, I believe,
18 identical except for the location as to the one that we
19 sent out on the other well we proposed in the northwest
20 quarter of the southeast quarter.

21 Q. Now, what was the overhead charges that were
22 specified in this joint operating agreement?

23 A. The drilling well rate is \$4500 and the producing
24 well rate is \$450.

25 Q. That was the same overhead rate which you asked

1 at the earlier hearing to be approved?

2 A. Yes, it is.

3 Q. Now, that rate is generally under what is
4 normally charged in this area, is it not?

5 A. Yes, it is.

6 Q. And again, would you tell the Examiner the reason
7 for Yates' recommending a lesser amount than is normally --

8 A. Yes, this is an amount that we had agreed upon
9 earlier when we started drilling with Nearburg. It was
10 just a mutual agreement, and we have just continued on with
11 that amount.

12 Q. Would you identify Exhibit 20?

13 A. Exhibit 20 is the authority for expenditure that
14 we sent out to all the parties, and it just shows
15 everybody's working interest, and it also shows the dryhole
16 and completed well costs.

17 Q. Now, the amounts on this particular AFE differ
18 from the one that was introduced earlier; is that not true?
19 This is a new AFE, in other words?

20 A. This is a new AFE, yes.

21 Q. All right. And the reason for the differences --
22 Well, the differences are the difference that Mr. Fant
23 testified to at the earlier hearing, that there was a --
24 the original AFE was drawn up with the thought that there
25 would be a prior well and already have facilities, a tank

1 battery and that, in place at the time that well would be
2 drilled, or this well?

3 A. Yes.

4 Q. But since Unit Petroleum made the offer to -- and
5 requested that its preferred location be drilled, Yates has
6 gone ahead and prepared an AFE with the correct number
7 showing this -- showing it as the first well to be drilled
8 in the proration unit?

9 A. Yes.

10 Q. Would you identify Exhibit 21?

11 A. Exhibit 21 is the affidavit prepared by our
12 attorneys, showing that notice of the compulsory pooling
13 has been sent out to all the parties.

14 Q. At the time of the original hearing, there was
15 one working interest owner that we had not received a
16 return receipt card back --

17 A. Oh, yes.

18 Q. -- is that correct?

19 A. Yes, I'm sorry.

20 Q. And this affidavit certifies to our research to
21 make sure that that particular packet or notice of the
22 force pooling hearing had in fact been picked up by the
23 addressee and the return receipt card being lost?

24 A. Yes, that is correct.

25 Q. And Ms. Haldeman is my secretary?

1 A. Yes.

2 Q. Is there anything else that you -- that I've
3 neglected to ask you about that you need to explain to the
4 Examiner?

5 A. I think that's it.

6 MR. ERNEST CARROLL: Okay. Mr. Examiner, I'd
7 move at this time the admission of Yates' additional
8 Exhibits numbered 13 through 21.

9 EXAMINER STOGNER: Are there any objections?

10 MR. KELLAHIN: No objection.

11 EXAMINER STOGNER: Exhibits 13 through 21 will be
12 admitted into evidence at this time.

13 MR. ERNEST CARROLL: I pass the witness.

14 MR. KELLAHIN: I have no questions.

15 EXAMINATION

16 BY EXAMINER STOGNER:

17 Q. Ms. Richardson, in Exhibit Number 13 -- and I
18 failed to address this when we first heard this case -- is
19 this a divided interest? Is this going to be a
20 communitized unit?

21 A. Yes, this will be a communitized unit. There are
22 two state leases.

23 Q. Two state leases?

24 A. Yes, one lease covers that west half of the
25 southeast and the southeast of the southeast, and the other

1 covers the northeast of the southeast.

2 Q. So there's essentially two tracts?

3 A. Yes.

4 Q. Now, I take it that there are different owners in
5 the different tracts?

6 A. Yes, there are.

7 Q. So this is an undivided interest -- I mean, I'm
8 sorry, a divided interest, per se?

9 A. Yes.

10 Q. Now, this letter of August 16th from Unit
11 Petroleum Company, was this the first mention from Unit, or
12 did Yates propose to Unit to change the well location?
13 What -- We've got this round of communications going.

14 A. As I recall, Unit called -- I believe actually
15 they had called in the afternoon of -- and I'm not sure if
16 it was either the day of the hearing while we were up here
17 or the day right before. They had called and said that
18 they did not want to approve either one of those, but if we
19 had picked an alternate location, then they might be
20 interested in going with that.

21 Then I believe just during that next week there
22 were several telephone conversations between Unit and the
23 Yates people about this. But it was Unit that approached
24 us with the idea.

25 EXAMINER STOGNER: I have no questions of Ms.

1 Richardson.

2 MR. ERNEST CARROLL: I have no other questions.

3 EXAMINER STOGNER: No other questions, she may be
4 excused.

5 Mr. Carroll?

6 MR. ERNEST CARROLL: Brent May.

7 BRENT MAY,

8 the witness herein, after having been first duly sworn upon
9 his oath, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ERNEST CARROLL:

12 Q. Would you state your name and occupation for the
13 record?

14 A. Brent May, geologist with Yates Petroleum in
15 Artesia, New Mexico.

16 Q. Are you the same Brent May that has testified
17 previously in this case?

18 A. Yes, I am.

19 Q. And at that earlier hearing you had prepared four
20 exhibits; is that correct?

21 A. Yes, that's correct.

22 Q. With respect to your first two exhibits, which
23 was a cross-section and a mud log, is there -- and I think
24 that would be Exhibits 8 and 9, respectively -- do you have
25 any additional testimony that you wish to render with

1 respect to those two exhibits because of this changed
2 location?

3 A. No, I do not.

4 Q. You have prepared two new exhibits, a structure
5 map and a net isopach map, which are basically in exchange
6 for the two earlier exhibits that you have presented; is
7 that correct?

8 A. That's correct.

9 Q. If you would start with, first, Exhibit, 22, the
10 structure map, would you please orient the Examiner to it
11 and how you're -- and any differences in testimony with
12 respect to the testimony you have rendered earlier?

13 A. Basically, the main reason for both Exhibits 22
14 and 23 was to show the different location.

15 And also, new wells that have been drilled since
16 the first hearing have been added. Those new wells were
17 added up in Section 8 and 9 and Section 10. I will state
18 right now, they did not change the picture in any ways down
19 in the southeast quarter of Section 16.

20 On Exhibit 22, the structure map, the Yates
21 location is shown with the blue circle. That is the
22 location that we're asking for today. The original
23 location was up in the northwest of the southeast corner.

24 And on Exhibit 23 the location we're asking for
25 today is shown in a yellow circle.

1 Q. As -- Comparing the two locations, the one
2 originally proposed by Yates and the one now proposed by
3 Yates, in which Unit Petroleum has joined in promoting, is
4 there any difference with respect to location structurally
5 in this field?

6 A. There's just a little bit of difference
7 structurally between the original Yates location and the
8 location asked for today, maybe about five or ten feet
9 structurally, in which the orange location would have been
10 just a little bit higher in structure. But the original
11 location would have been a direct offset, where the
12 location we're asking for now would be more of a diagonal
13 offset.

14 Q. Is there a reason in your mind that you can give
15 to the Examiner why this location is better than the old
16 proposed location, or it's the same?

17 And would you also deal with the act and compare
18 this new proposed location to that proposed by Nearburg in
19 their competing Application?

20 A. Geologically, I don't change my testimony from
21 earlier. I still believe the original Yates location
22 geologically would be the first that I would prefer to
23 drill. But because of the land situation discussed
24 earlier, that's not possible.

25 I still believe, and I stated in the first time

1 around, that I thought all four locations in this proration
2 unit would probably be drilled. I still stand by that.
3 But my preference would be to drill the original location
4 first.

5 The location we're asking for today would be
6 probably a second location, and the original Nearburg
7 location proposed would probably be third or fourth. I do
8 prefer the two Yates locations over the Nearburg location.

9 Q. So you feel, at least structurally, there is an
10 advantage to drilling this new location as opposed to the
11 proposed Nearburg location?

12 A. There is a slight advantage, yes.

13 Q. With respect to the Exhibit 23, your net isopach
14 of the Canyon dolomite, would you discuss for the Examiner
15 any difference, if there is any, between the original
16 location proposed and this new location?

17 A. There's a little bit of a difference in the
18 thickness of the dolomite between the two locations. The
19 location today would have a thicker section of dolomite, as
20 compared to the original location.

21 But, as I believe I stated in the original
22 hearing, thickness in this immediate area of Dagger Draw is
23 not a big concern because there's wells in the north half
24 of Section 16 that have even less dolomite than anything in
25 the southeast quarter would have, and those two -- and

1 especially the well in the northeast-northeast and the well
2 in the northwest of the northeast of Section 16 are
3 excellent wells.

4 So really the thickness is not playing a major
5 factor here.

6 Q. All right. Do you feel that there is an
7 advantage of the Yates location over the proposed Nearburg
8 location, based on any evidence you can draw from this
9 Exhibit?

10 A. From the thickness, no, not really.

11 Q. Is it still your professional opinion as a
12 petroleum geologist that the approval of the proposed --
13 this proposed -- the new proposed location in the southwest
14 of the southeast, that it would be the most advantageous
15 location as between the two locations proposed by Yates and
16 Nearburg?

17 A. With -- Considering that the -- what's gone
18 before, yes.

19 Q. Do you feel that the granting of the Yates
20 Application and the denial of the Nearburg Application
21 would be in the interests of conservation and the
22 prevention of waste and also the protection of correlative
23 rights?

24 A. Yes, I do.

25 Q. Is there any other statements that you would like

1 to make with respect to these new exhibits or any exhibits
2 previously presented by you to the Commission?

3 A. I think that's all.

4 MR. ERNEST CARROLL: Mr. Examiner, I would move
5 admission of Yates' new Exhibits 22 and 23 at this time.

6 EXAMINER STOGNER: Exhibits 22 -- Sorry, are
7 there any objections?

8 MR. KELLAHIN: No objection, Mr. Examiner.

9 EXAMINER STOGNER: Exhibits 22 and 23 will be
10 admitted into evidence.

11 MR. ERNEST CARROLL: I pass the witness.

12 EXAMINER STOGNER: Thank you, Mr. Carroll.

13 Mr. Kellahin?

14 MR. KELLAHIN: Thank you.

15 CROSS-EXAMINATION

16 BY MR. KELLAHIN:

17 Q. Mr. May, your exhibits today, the Exhibits 22 and
18 23, appear to be identical to those equivalent displays you
19 introduced on August 10th, with the exception now that
20 you've shown the Yates location to have changed, obviously?

21 A. With -- In the southeast quarter of Section 16,
22 that's true, and what we're concerned with today that's
23 true.

24 On the north side of the map it is a little bit
25 different because of the new data points. But that does

1 not affect what we're talking about today.

2 Q. All right. Is the contouring on either of these
3 maps different?

4 A. Just in the north, in Sections 8, 9 and 10. The
5 contouring did not change in Section 16.

6 Q. And those data points are removed far enough from
7 this particular issue that in your conclusion they have not
8 changed the interpretation as it affects Section 16?

9 A. That is correct.

10 Q. You have not re-presented your cross-section from
11 the August 10th hearing; you still adopt your conclusions
12 and stand by that exhibit?

13 A. Yes, sir, I do.

14 Q. If I remember correctly, on the August 10th
15 hearing it was of importance to you that in Section 16
16 there was that -- Aparejo? How do you say that?

17 A. Aparejo, yes.

18 Q. Aparejo Number 3?

19 A. Yes, sir, that's in the north half of Section --

20 Q. All right. If we look at just -- Because these
21 wells are not identified by well name, let's look on
22 Exhibit 23.

23 A. Okay.

24 Q. In Section 16 there is a value of 239?

25 A. That's correct.

1 Q. That's the Aparejo 3 well, is it not?

2 A. Yes, sir, that's correct.

3 Q. And that had the initial potential of 607
4 barrels, if I remember your testimony?

5 A. If I remember off the top of my head, that's
6 probably in the ballpark, yes.

7 Q. And that was important to you then, because
8 within Section 16 it had the highest initial oil potential
9 of those wells?

10 A. That's correct, and what I was trying to point
11 out is that the thickness of the dolomite is not a big
12 issue in this localized area of Dagger Draw, because it has
13 such a smaller thickness of dolomite than what we will see
14 in the southeast quarter of 16, and it's a very good well.

15 Q. In the southeast of 16. Let's put on some names
16 on these wells. The original well location was the Boyd
17 "X" 9, I think, was the well name that I recall?

18 A. Yes, sir, that's correct.

19 Q. And that would have been Unit Letter J?

20 A. Yes, sir.

21 Q. And then the Unit P, which was the Nearburg well,
22 they had named that the Arroyo 16 Number 1?

23 A. I believe that's correct, yes.

24 Q. And your new location, now, in Unit Letter O, if
25 I remember, it's the Boyd "X" 10?

1 A. Yes, sir, that's correct.

2 Q. All right. One of the advantages, as I
3 understand it, back in August 10th for the Boyd "X" 9
4 location, the original location, is that you were closer to
5 the well in the section with the highest potential than the
6 Nearburg location?

7 A. Well, I'm not sure I alluded to it that way, but
8 the main gist of talking about the Aparejo was that the
9 thickness was not a big concern.

10 What I was -- I believe what you're getting at
11 and what I was saying in the first hearing is that the Boyd
12 "X" Number 9 was closer to production.

13 In other words, it was a direct offset to
14 production, and I like that more so because you are not
15 taking as much risk by a stepout.

16 Q. We talked about structure then, you've mentioned
17 it now.

18 The structural difference, I think, among any of
19 these wells is somewhere between 10 and 15 feet?

20 A. Yes, yes, that is --

21 Q. And you concluded then that it was not of
22 significance --

23 A. No.

24 Q. -- in deciding this matter?

25 A. That's correct, it's not a big factor.

1 Q. And that is still your conclusion today?

2 A. Yes, sir.

3 Q. When we looked at thickness back in August, I
4 think you told me the thickness at your original location
5 was like 290 gross feet of reservoir?

6 A. That would probably be pretty close, yes.

7 Q. And that when you get to the Nearburg location,
8 it was 150 feet?

9 A. Well, if I did --

10 Q. I'm sorry, I misspoke. 350 feet?

11 A. Okay. Yes, sir. Yes, sir.

12 Q. 350 feet, all right. When you see the new Yates
13 location --

14 A. Yes, sir.

15 Q. -- give us a footage for that thickness.

16 A. Probably around 345.

17 Q. And when you talked about thickness, I believe
18 you said that the thickness in here was sufficient at any
19 of these locations, in your judgment, to provide you an
20 opportunity for a Cisco/Canyon producer?

21 A. Yes, sir, that's correct.

22 Q. And that of all the issues that you are worried
23 about, the biggest problem is that you didn't want to move
24 too fast towards the disposal wells?

25 A. That was one of them, yes, sir.

1 One of the things was, we didn't want to step out
2 away from known production, and we also wanted to take our
3 time and be conservative moving towards those disposal
4 wells.

5 Q. So the testimony you made back on August 10th
6 when the Examiner reviews that record is your same
7 conclusions you have now?

8 A. Yes, sir.

9 Q. And bigger than structure and bigger than
10 thickness was not moving too quickly towards the two Osage
11 disposal wells down in Section 21?

12 A. That's correct.

13 Q. All right. You're doing now, Mr. May, what you
14 didn't want to do last month. How come?

15 A. That's out of my hands. If I had my way based on
16 geology, we'd be drilling the Number 9.

17 But because of land considerations, it's out of
18 my hands and we are drilling the Number 10.

19 MR. KELLAHIN: All right, sir.

20 I don't have any further questions, Mr. Examiner.

21 EXAMINER STOGNER: Thank you, Mr. Kellahin.

22 Mr. Carroll?

23 MR. ERNEST CARROLL: No further.

24 EXAMINER STOGNER: No questions.

25 MR. ERNEST CARROLL: We next call Mr. Bob Fant.

1 much in the tangibles to account for that.

2 When you look at the AFE that was presented by
3 Ms. Richardson, which is Exhibit Number 20 presented today,
4 it shows the total to be \$655,700, as a gross total, which
5 is almost perfectly in line with statistically what Yates
6 drills and completes wells for.

7 Q. Okay. And you presented a single exhibit at the
8 last hearing, which actually showed a comparison of AFEs --
9 actual drilling costs, excuse me, of wells drilled by Yates
10 as operator and wells drilled by Nearburg as operator; is
11 that correct?

12 A. Yes, sir, I did.

13 Q. Anything since that time? Any new information?
14 Has any new information come to your attention that would
15 change your testimony with respect to the earlier exhibit?

16 A. Well, there's been a little bit of new
17 information. My testimony still stands, basically. Yates
18 Petroleum statistically drills wells for significantly less
19 than Nearburg.

20 There's been one addition that I know of to -- I
21 only had four wells that Nearburg drilled in which we had
22 participated -- we, Yates Petroleum -- and there has been
23 one additional well to add to that pool, and that was the
24 Fairchild 24 Number 1, which by what -- on the basis of
25 what we were charged for the well, puts the cumulative well

1 cost on that one at \$823,152, which is significantly above
2 any of the others that they had drilled. It would actually
3 move the average for Nearburg up by approximately \$20,000.

4 But other than that, I still stand by the
5 testimony at this time.

6 Q. The AFE that is shown in Exhibit 20, the new
7 Exhibit 20, do you feel that that is a fair AFE for a well
8 of this kind to be drilled in the area that is proposed to
9 be drilled in?

10 A. Absolutely, sir. I feel it's right on line with
11 what Yates Petroleum spends.

12 Q. And do you feel that this AFE has been drafted
13 fairly, taking into consideration actual experiences of
14 Yates in drilling these kinds of wells?

15 A. Yes, I do.

16 Q. Now, at the earlier hearing testimony was
17 presented wherein it was requested that a penalty of 200
18 percent be adopted by the Commission, and I think that both
19 Nearburg and Yates both advocated that penalty rate.

20 Is there anything that has come to your attention
21 since this hearing which would dictate the changing or the
22 recommendation of a change of that requested amount for the
23 penalty?

24 A. No, sir.

25 Q. So it's still Yates' position that for those who

1 do not join, elect to join in, that cost plus 200 percent
2 should be the penalty factor to be considered?

3 A. Yes, sir, that's still our recommendation.

4 Q. Now, Mr. Fant, you were present when Mr. McDonald
5 testified in the last hearing, were you not?

6 A. Yes, sir, I was.

7 Q. Mr. McDonald advocated certain reasons why he
8 thought Nearburg would -- the choosing of Nearburg over
9 Yates would be wiser as -- that they could actually be a
10 better operator. Did you agree with those statements of
11 Mr. McDonald?

12 A. In general, no, sir.

13 Q. Are there any particular points which you wish to
14 stress with the Examiner that you feel were unfounded?

15 A. Well, there was a statement made that Nearburg
16 had drilled two wells, two most recent wells, at under
17 \$700,000. I don't challenge the statement that they may
18 have drilled some wells and the costs were under \$700,000.
19 I simply want to make the point that we have never had
20 evidence of that. No evidence has been presented to that
21 fact, other than his testimony.

22 And Yates Petroleum has never participated in a
23 well here they spent that little -- well, on average. They
24 have drilled wells for that amount, but statistically, on
25 average, they don't.

1 It was a little disconcerting to us that the
2 inference seemed to come across that when they owned 100
3 percent of the well, it was drilled cheaper than when
4 partners owned higher percentages, and that was just a
5 little disconcerting to us as a potential partner if they
6 had been designated operator in the -- that's --

7 Q. Anything else that you can think of that you
8 would like to add to your testimony?

9 A. No, sir.

10 Q. And is it -- In your professional opinion, Mr.
11 Fant, do you believe that the granting of the Yates
12 Application as opposed to the Nearburg Application, that
13 such would be in the interest of protecting correlative
14 rights and the prevention of waste?

15 A. Yes, sir, I think it would be.

16 MR. ERNEST CARROLL: Mr. Examiner, I have no new
17 exhibits to tender, and I would pass the witness.

18 EXAMINER STOGNER: Thank you, Mr. Carroll.

19 Mr. Kellahin?

20 MR. KELLAHIN: No questions, Mr. Examiner.

21 EXAMINER STOGNER: I have no questions.

22 MR. ERNEST CARROLL: That, Mr. Examiner,
23 concludes the case.

24 I think I moved admission of all of our new
25 exhibits which -- that we needed to present today.

1 EXAMINER STOGNER: Are there any need for closing
2 statements at this point?

3 MR. KELLAHIN: I have a statement, Mr. Examiner.

4 EXAMINER STOGNER: Mr. Kellahin?

5 MR. KELLAHIN: Mr. Examiner, you know I'm opposed
6 to the process we've just completed. I was opposed to
7 reopening this matter. Had this been an adjudication in
8 district court, it would be my position that what you have
9 seen occur here could not have occurred there.

10 If you want to take any guidance from what
11 happens in district court, a district judge, after
12 adjudicating a matter, would not have allowed Yates to come
13 in and re-adjudicate it in the in the matter that they've
14 chosen to.

15 The Rules of Civil Procedure are quite clear that
16 in order to open a case based upon newly discovered
17 evidence, those are facts that must have been in existence
18 at the time of the first trial. These facts were not in
19 existence at the time of the first trial. They represent a
20 change in position by a defaulting party.

21 This is an adjudication by you. The Division has
22 recently established a precedent for rule-making cases in
23 which Phillips Petroleum was denied the opportunity to open
24 a case that had been heard, to present new evidence, in the
25 Enserch matter. And we contend it is even more serious in

1 this case to have adjudicated it and then to reopen it. No
2 party should be allowed to renew and readjudicate every
3 time there's an adjustment in the percentages of the
4 parties to participate.

5 What you have before you is Unit, who, in our
6 case, was provided appropriate notice and chose to stay
7 away from the hearing process and were in default on August
8 10th. You remember both land personnel at that hearing
9 testified that they had contacted Unit, either the day
10 before or the morning of the hearing, and to the best of my
11 recollection Unit was willing to let you discuss this
12 matter. Yates provided them notice and they defaulted, and
13 we adjudicated this for three and a half hours.

14 Only afterwards does Unit come forward and decide
15 that they want another location. Where were they on August
16 10th? If they cared enough, where were they?

17 The importance to you is, I think, that Nearburg
18 is still entitled to be declared the operator of the
19 spacing unit.

20 The fact that there has been a change in the
21 percentage means that the parties cannot be allowed to
22 shift their position during the course of the process.
23 They were in default, and they have to remain in default.
24 If you disagree with that position I would contend that,
25 changing their position, Yates has now been inconsistent

1 with the position they've taken before you on August 10th.
2 That was that they wanted to stay farther away from the two
3 saltwater disposal wells.

4 The Division has heard about the saltwater
5 disposal wells in the context of several hearings. But Mr.
6 May's testimony is very clear today, and back on August
7 10th it was very clear. The preference, the technical
8 preference, is to stay away from those disposal wells and
9 only to move towards them as he develops producing Cisco
10 oil wells.

11 We believe that it's inconsistent positions taken
12 by Yates in this matter, and as a consequence Nearburg
13 ought to be afforded the right to operate the property.
14 And in order to have a conclusion to this matter, you
15 should not establish a new precedent of rehearing and
16 reopening pooling cases every time a percentage changes.

17 We have relied upon the technical evidence
18 presented back to you on August 10th. We believe it is
19 persuasive in this matter and ask you to review that
20 transcript. And upon conclusion of that review, we think
21 you'll agree with me that Nearburg deserves to be awarded
22 the operatorship of this spacing unit, and we would ask you
23 that you enter an order doing that.

24 Thank you.

25 EXAMINER STOGNER: Mr. Carroll?

1 MR. ERNEST CARROLL: Mr. Stogner -- Mr. Examiner,
2 I believe Mr. Kellahin is totally incorrect and misses the
3 point of his very -- the pillar upon which he founds his
4 argument. That mistaken position is that this case has
5 been adjudicated.

6 This case has not been adjudicated. This case
7 was taken under advisement. No decision was made.
8 Therefore, his argument and his statement that this case
9 was adjudicated for three and a half hours -- That's not
10 correct. It was -- Evidence was put on for three and a
11 half hours.

12 I would also agree, after having spent 20 years
13 trying cases, more in the district court than here, that
14 prior to a decision, if a new situation had arisen, I am
15 quite confident that I could bring that to the attention of
16 a district court judge prior to his making a decision and
17 getting that evidence taken into account.

18 But in particular it's more important here,
19 because these are not a district court proceeding. This is
20 an administrative proceeding. And I think you have to look
21 for guidance to the very rules which govern force pooling
22 applications.

23 If you will -- And one of the very important
24 questions that I have heard this Examiner in today's
25 hearings, in cases earlier which were proposing force

1 poolings, was the Examiner's concern, which has been always
2 the Commission's concern, is, has there been attempts to
3 find some middle ground between the differing owners in a
4 section which is being proposed for force pooling?

5 This Commission has always stressed work with
6 everybody. You reach a compromise. And I think the
7 Commission knows, sometimes you have to compromise in order
8 to obtain that kind of agreement between parties.

9 This is a very -- Some states don't even allow
10 for force pooling, such as we have. This is an extreme
11 measure. It does affect the rights of individuals. And
12 this Commission has always taken the position that you
13 don't do it lightheartedly. You don't do it with just the
14 flick of your hand and you ignore the feelings of these
15 people.

16 Yates Petroleum, in trying to follow the spirit
17 of the Commission and its rules and the examinations that
18 have been for many years looked at, when this proposal was
19 made by Unit -- And frankly, it irritates Yates that they
20 stood back that long, but at least we're trying to do what
21 I think Mr. LeMay has asked us to do at even *de novo*
22 hearings, is that, Come on, guys, you're all out there, you
23 need to work together.

24 Yates Petroleum presented evidence today which
25 basically says that as to the two locations, this one is a

1 little bit less desirable, but it's not as undesirable as
2 the Nearburg. It's still within the testimony, it's still
3 within the reasons earlier presented as to why it is more
4 preferred than the Nearburg Application.

5 And it is still farther away. If you'll recall,
6 there are two saltwater wells. One of them is the Yates
7 Osage well in the section directly below it, which is
8 Section 21, and the other one is in Section 22. This
9 proposed location by Yates is still, when compared to the
10 Nearburg location, farther away from the effect -- or any
11 possible effect of the two wells.

12 Therefore, I think the evidence is quite clear
13 that Yates, based on its geology, at either of its two
14 locations, is entitled to be appointed operator and the
15 force pooling given the effect pursuant to its application.

16 And furthermore, the objection raised by Mr.
17 Kellahin as to this as setting a dangerous precedent
18 because it's coming in and readjudicating, that's not
19 correct. There has been no adjudication. It has been an
20 attempt when another party who -- And maybe it would be
21 different if this was a party that had a half a percent.
22 But we're not. We're talking about someone in excess of 20
23 percent, very close to the same, almost a third, like the
24 Yates and Nearburg.

25 I think it's only fair, and in an administrative

1 hearing and in the Commission trying to administer the
2 rules that it has always done in force pooling hearings, a
3 party that came in and at least tried to work with the
4 other parties and two of them have gotten together, that
5 should be given credence.

6 And we would therefore ask that Yates'
7 Application be the preferred application and that it be
8 granted.

9 EXAMINER STOGNER: Thank you, Mr. Carroll.

10 If I remember right, the last time I asked for
11 rough draft orders. Again, I'm going to request rough
12 draft orders.

13 MR. ERNEST CARROLL: What is the time frame that
14 you would like those to be presented, Mr. Stogner?

15 EXAMINER STOGNER: Well, I'd like them within
16 about a -- before the next hearing, which would be October
17 19th. Say the week of October 19th?

18 MR. ERNEST CARROLL: That will work.

19 EXAMINER STOGNER: Does anybody else have
20 anything further in either of these cases?

21 These cases will be taken under advisement.

22 (Thereupon, these proceedings were concluded at
23 1:35 p.m.)

24 * * *

25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

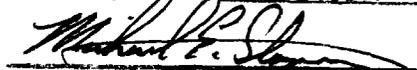
WITNESS MY HAND AND SEAL, October 15th, 1995.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998

I do hereby certify that the foregoing is a complete record of the proceedings in the in camera hearing of Case Nos. 11310 and 11311 heard by me on 5 October 1995.



, Examiner

Oil Conservation Division

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