

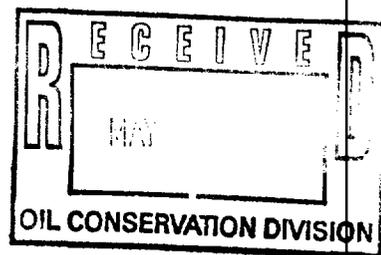
STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

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

CASE NO. 11,528

APPLICATION OF DOYLE HARTMAN AND )  
MARGARET HARTMAN, D/B/A DOYLE HARTMAN, )  
OIL OPERATOR, AND JAMES A. DAVIDSON TO )  
RESCIND DIVISION ADMINISTRATIVE ORDER )  
NSL-3633, AS AMENDED, AND FOR AN ORDER )  
CONTRACTING THE RHODES (OIL) POOL AND )  
EXTENDING THE RHODES YATES-SEVEN RIVERS )  
GAS POOL, LEA COUNTY, NEW MEXICO )

ORIGINAL



REPORTER'S TRANSCRIPT OF PROCEEDINGS

PREHEARING MOTIONS

BEFORE: DAVID R. CATANACH, Hearing Examiner

April 25th, 1996  
Santa Fe, New Mexico

These motions came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, April 25th, 1996, 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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## I N D E X

April 25th, 1996  
Examiner Hearing  
CASE NO. 11,528

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 10:03 a.m.:

3           EXAMINER CATANACH: At this time let me call this  
4 proceeding to order.

5           This is a motion hearing, a motion -- a  
6 proceeding of some kind in Case Number 11,528, which is  
7 currently on the Division docket for May 2nd.

8           I'm David Catanach, Examiner. With me is Rand  
9 Carroll, Division Attorney.

10           We've got several motions that have been filed  
11 concerning this case and concerning an administrative order  
12 issued by the Division, NSL-3633, and we are here today to  
13 hear arguments regarding these motions from the parties  
14 involved.

15           Let me have the parties identify themselves at  
16 this time.

17           MR. CONDON: I am Michael Condon for the parties  
18 who are now the Applicants, Doyle and Margaret Hartman,  
19 doing business as Doyle Hartman, Operator, and James A.  
20 Davidson.

21           MR. CARR: May it please the Examiner, my name is  
22 William F. Carr with the Santa Fe law firm Campbell, Carr,  
23 Berge and Sheridan.

24           We represent Texaco Exploration and Production,  
25 Inc., in this matter.

1 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of  
2 the Santa Fe law firm of Kellahin and Kellahin, appearing  
3 on behalf of Meridian Oil, Inc.

4 MR. BRUCE: Mr. Examiner, Jim Bruce from the  
5 Hinkle law firm in Santa Fe, representing Permo Oil, Inc.

6 I think at this time I'll request UN-observer  
7 status, and I'll sit back here so I'm not caught in the  
8 crossfire.

9 MR. CONDON: I thought by definition if you were  
10 a UN observer you took that risk.

11 MR. CARR: May it please the Examiner, before we  
12 begin, I think I should announce one fact that may impact  
13 the argument.

14 I can advise the Division that Texaco Exploration  
15 and Production, Inc., and Doyle Hartman have reached an  
16 agreement concerning the development of the southwest  
17 quarter of Section 23, whereby Mr. Hartman will be the  
18 operator of that property; Texaco, as soon as the JOA is  
19 executed -- and that may occur today -- will be withdrawing  
20 its compulsory-pooling application.

21 MR. CONDON: Mr. Examiner, just a follow-up on  
22 that.

23 Hartman's Application will still remain pending,  
24 because there are some very minor interest owners who would  
25 be affected by the drilling.

1           We anticipate asking for a continuance of that  
2 application from the May 2nd hearing date to May 16. I am  
3 confident that by May 16 we will either have the other  
4 interest owners on board, in which case we won't need a  
5 force-pooling hearing, or a decision may be made to carry  
6 those interest owners without penalty, again, in which case  
7 we would not need a force-pooling hearing.

8           But I will get you a -- We'll both, I believe,  
9 get you something in writing by the first part of next week  
10 to confirm that.

11           MR. CARROLL: Apparently we have at least four  
12 motions to be heard today. One is Meridian's motion to  
13 dismiss, another is a motion for discovery, another is a  
14 motion for stay, and another one is a motion for recusal.

15           Any others?

16           MR. CONDON: I think that's it. I mean, I think  
17 the stay is a request to shut in the well, that Texaco  
18 filed, I know we concurred in. But I think that's it.

19           MR. CARROLL: Have the parties agreed as to the  
20 order of argument here?

21           MR. KELLAHIN: I'm not sure. I have not talked  
22 to Mr. Condon about it.

23           I spoke to Mr. Carr in the vehicle yesterday. I  
24 have talked to him on occasion and we did discuss the  
25 order, and I'm certainly comfortable in using part of my 30

1 minutes first, and if that's acceptable to opposing  
2 counsel, then I'm proposed [sic] to discuss the issues in  
3 total with regards to all these items and then let the  
4 other parties have their opportunity and then let you  
5 decide what to do.

6 MR. CARROLL: Is that all right with you, Mr.  
7 Condon?

8 MR. CONDON: Well, yeah, we obviously don't agree  
9 with the basis advanced for the motion to dismiss, but I  
10 don't have any problem with hearing that first.

11 MR. CARROLL: Mr. Carr?

12 MR. CARR: I agree.

13 EXAMINER CATANACH: Thank you.

14 Mr. Kellahin?

15 MR. KELLAHIN: Mr. Examiner, let me provide you  
16 with simply locator map. It is not intended as evidence,  
17 but I have done my best to give you a visual illustration  
18 of the relationship of the sections, the wells, and what I  
19 understand to be the location that Hartman, et al., have  
20 proposed in the southwest quarter of 23, and it might serve  
21 to expedite my explanation to you of what I think is  
22 occurring and ought to occur. So let me take a moment and  
23 distribute these.

24 Here's what you have before you today, Mr.  
25 Examiner. The plat before you is checkerboarded on 40-acre

1 tracts. There is a hached line horizontal, above which are  
2 the words "two pool boundary line". North of that line,  
3 the Division rules established the Rhodes Gas Pool.

4 When you look at the black dot in the northwest  
5 of the southwest, that is my understanding of where Hartman  
6 has proposed the well location for a gas well in the Rhodes  
7 Gas Pool, as docketed in Case 11,528, and that's that  
8 compulsory pooling case Mr. Condon and Mr. Carr just  
9 described. That's the southwest quarter of Section 23.

10 South of that, and south of this boundary line,  
11 you are now in the Rhodes Oil Pool. This pool boundary was  
12 established in 1982, and that is the boundary that's  
13 existed since then.

14 What we've got in Unit Letter C of Section 26,  
15 which is the northeast of the northwest, there's a well  
16 symbol, and you can make out the words "Rhodes 7 'B'".  
17 That's the Meridian well that's the subject of the  
18 unorthodox well location for Administrative Order 3633.  
19 That well is located in the ground 330 feet from the common  
20 boundary between the pools.

21 The Rhodes 7 "B" is in the oil pool. It is a gas  
22 well with an allowable restriction of 800 MCF a day. It is  
23 on a 40-acre spacing unit, and my position is, it is at a  
24 standard location as to that common boundary, and it is  
25 permitted to produce as a gas well in an oil pool, subject

1 to a gas allowable, based upon the depth bracket oil  
2 allowable of 80 barrels of oil a day, times the GOR of  
3 10,000 to 1, gives you 800 MCF a day. And that's what we  
4 have.

5           Until this morning, we also had a squabble  
6 between Texaco and Hartman over what happens for operations  
7 and well locations in the gas pool for a 160-acre gas  
8 spacing unit in the Rhodes Gas Pool, proposed to be the  
9 southwest quarter of Section 23.

10           The Rhodes Gas Pool is not a prorated gas pool.  
11 Gas wells can produce unrestricted. The rules require that  
12 a standard well be located not closer than 660 to the side  
13 boundary of a spacing unit.

14           Mr. Hartman wants a well location, as I  
15 understand it, in the force-pooling Application, to be  
16 located up in the northwest of the southwest, 1980 feet  
17 north of the common boundary between the two pools. And  
18 that's what you have.

19           The question is now, what does Mr. Hartman want?

20           We have filed a protective order for discovery.  
21 I filed a motion to dismiss. I would expect, and I know  
22 that you have read all this material, and I'm not going to  
23 repeat those discussions. What I want to try to tell you  
24 during my time this morning is what I think this case is  
25 all about.

1           Quite frankly, I do not know what Mr. Hartman  
2 wants. First, Mr. Hartman attacks anything and everything  
3 with regards to anything done in this case. My problem is,  
4 I believe he's inconsistent.

5           He is disputing the processing and approval of  
6 the location for the Rhodes 7 "B" well, and I would take  
7 that to mean that he is concerned about drainage, because  
8 if it's anything else, I can't think of what it is. He is  
9 concerned about drainage, as I understand it.

10           And if this issue for you as an expert, using  
11 your expertise, is a drainage case, then why, in order to  
12 protect his correlative rights, which is simply the  
13 opportunity to share in this production, has he chosen to  
14 move so far away in order to protect himself?

15           We have been buried by reams of paper complaining  
16 about the administrative approval process. I will tell  
17 you, that is not important to deciding this case. That has  
18 occurred, it is over with, and the matter for you is to  
19 decide what if any consequences are occurring for those  
20 owners of the gas in the southwest quarter of 23. That is  
21 the issue for which you need to apply your expertise.

22           Mr. Hartman complains about a property right.  
23 What he has is an opportunity to share in potential  
24 production. It must be predicated upon his assumption that  
25 the Rhodes 7 "B" well, regardless of what pool you name it

1 to be in, is producing out of the gas interval for which he  
2 is somehow unable to compete equitably if he is to put a  
3 gas well 160 feet away from the common boundary, and to be  
4 unrestricted if he does so. That is really all this is  
5 about. It is a drainage case.

6 It is not an absolute property right. As you  
7 know, and as Mr. Carr and I have told you for 15 years --  
8 well, maybe not that long -- ten -- it's simply the  
9 opportunity to share in potential production. And the real  
10 question is, when are we going to stop squabbling over the  
11 paperwork, and when is he going to exercise his right to  
12 access this reservoir that he thinks he ought to be in?  
13 It's a fleeting opportunity, and regardless of what any of  
14 us do, until he puts a wellbore in the reservoir, he ought  
15 to stop complaining and go drill the well.

16 Apparently Texaco and Hartman have made some step  
17 in some direction that has resolved the dispute in the  
18 southwest quarter. Up until now, you did not have a duly  
19 authorized operator in the southwest quarter. They were  
20 asking you to decide that, and I assume that is going to be  
21 moot soon if they sign the joint operating agreements and  
22 have finally decided who of these two companies is going to  
23 be the operator. And so now we're going to have an  
24 operator, and the Division will duly approve a designation  
25 of operator for the spacing unit.

1           The New Mexico Supreme Court has recognized the  
2 special expertise of the Oil Conservation Division in these  
3 kinds of matters, and I propose to bring to you a geologist  
4 and engineer, and we're going to talk about the drainage  
5 issue, and that's really what we're here to do. We're  
6 going to talk about whether or not under the current  
7 practice and procedure of having a gas well in an oil pool  
8 with a restricted allowable is somehow unfair to the  
9 interest owners in the southwest quarter of 23, if and when  
10 they ever drill their gas well, and we're going to bring  
11 some scientists and let you use your special expertise to  
12 decide that issue. We're going to decide if it's still  
13 okay to do that. I don't have any quarrel with that really  
14 being the fundamental issue. And if it's not fair, let him  
15 come prove that it is not.

16           What does he ask for, though? When you look at  
17 the Application, he's asking to adjust the pool boundary.  
18 It simply begs the question.

19           He is contending that there is a relationship  
20 between the oil and the gas pool that has to do with the  
21 gas-oil contact, and his solution is to gerrymander the  
22 pool boundary.

23           Presume we do that. How does that help us  
24 resolve the issue of what happens to the correlative rights  
25 in the southwest quarter of 23 in relation to the Rhodes 7

1 "B" well? We haven't gotten there yet, and the issue ought  
2 to be, what happens under the current practice as these two  
3 wells compete with each other for reserves if they're in  
4 fact correlative and when in fact they're going to locate  
5 their well, and where's it going to be?

6 We've argued in the motion to dismiss the issue  
7 of standard. That's as clearly as I can describe it to  
8 you. I'm happy to repeat part of it. If I don't repeat it  
9 all, it's not because I don't care passionately about what  
10 I said. I think Mr. Stogner was absolutely correct in how  
11 he handled administrative order NSL-3633. I find no  
12 quarrel or no fault with what he did. But I will tell you  
13 that I don't think that matters anymore. It absolutely  
14 does not matter. That wellbore is in the ground, and we  
15 need to deal with where it is.

16 If you want to step back and look at the  
17 processing, under the old rules we had an oddity where  
18 within the spacing unit, even if you are moving away from  
19 or diagonal to offset operators, you send them notice.  
20 Well, it's nonsense. It was a waste of effort.

21 My position is, there is no operator in the gas  
22 pool adjoining this spacing unit, and therefore no one to  
23 notify. When you look at the definition of "operator", you  
24 find that it's very precise. It doesn't mean working  
25 interest owners and lessees; it means a duly authorized

1 operator. And we can quibble about that all you want to.

2 I wrote it as clearly as I can say to write it to you.

3 The notice to Texaco and Hartman was not  
4 necessary. In fact, it did occur. And quite frankly, as a  
5 reality, Mr. Hartman had filed before Examiner Stogner  
6 several letters objecting to this matter, and quite  
7 frankly, I think Examiner Stogner was correct in simply  
8 rejecting them as not having appropriate standing. If  
9 you're looking at the old rules, there was no notice  
10 required to those parties.

11 If you look at the new rule, the new rule is more  
12 appropriate in that it says you notify those parties  
13 towards whom you're moving. In the first priority you  
14 notify the operator. There is no operator other than  
15 Meridian in the oil pool for the gas rights. We know that.  
16 That's -- I don't think there's any contest on that issue.

17 What is the advantage of notifying Texaco as to  
18 the oil rights? There is none. It doesn't matter, we're  
19 not affecting them, and it's not necessary.

20 When you look at the definition, it talks about  
21 notice to the parties in the pool. The pool is the oil  
22 pool, not the gas pool, and so it's not necessary.

23 Be that as it may, the issue before you is not to  
24 be distracted with the quibble over the permitting or  
25 deciding how to focus your time and energy on that

1 business. I will tell you that, in my opinion, we ought to  
2 focus our time and energy on the expertise that you apply  
3 to this Division, and that's -- bring the geologists and  
4 the engineers in here, and let's look to see if there's an  
5 adverse consequence to the circumstances that exist.

6 I'm proposing to you that you grant my motion to  
7 dismiss the dispute over the administrative order. I'm  
8 asking for you that you protect us from this discovery, and  
9 that we move forward on that portion of Mr. Hartman's  
10 Application that deals with the adjustment of the pool  
11 boundary.

12 I think that is poorly positioned in terms of  
13 defining the issue for you, but if it comes to you in terms  
14 of a pool-boundary case, I think we can get to the heart of  
15 the matter, which is really to look at the relationship of  
16 the 7 "B" well as it exists with the opportunity to produce  
17 gas reserves if they do exist in the southwest quarter of  
18 23.

19 Mr. Hartman is demanding discovery and arguing  
20 that we need depositions, interrogatories, production, all  
21 of this occurring prior to an Examiner hearing. This is  
22 absolutely unnecessary, and I'm going to tell you why.

23 First, Mr. Hartman fails to understand how  
24 marvelously effective, efficient, the OCD process is for  
25 resolving these technical disputes. He has overlooked what

1 I think is a far superior discovery and proceeding process  
2 than he ever enjoys in district court.

3 What happens in district court? You get one, and  
4 only one, evidentiary trial before a district judge. After  
5 that, you're into appeal format, and you're done, my  
6 friends, you are through with your evidentiary problems.

7 Why is it so compelling in a district court  
8 setting, then, to have pretrial discovery? And what is  
9 pretrial discovery in district court? It's nothing more  
10 than taking sworn evidence under oath before an examining  
11 attorney and building a record. That's what you're doing.  
12 And why do you want to do that? Because you need that  
13 information to go to the final evidentiary hearing that's  
14 about to occur. It's necessary and it's essential to do so  
15 in a district court proceeding.

16 Isn't it marvelous that in the OCD process, that  
17 you get not one evidentiary trial but two? I think it's  
18 brilliant. It's masterful. What a terrific way for this  
19 industry to be able to meet the time crises they all deal  
20 with in terms of expiring leases, availability of money and  
21 the absolute compelling necessity to have their disputes  
22 resolved effectively and efficiently and timely.

23 Because time delayed is opportunity lost. There  
24 is no opportunity in this industry to spend months and  
25 years in prehearing discovery to get to an evidentiary

1 hearing. Because look at what we have. We have witnesses  
2 coming before you under oath to provide sworn testimony for  
3 examination by lawyers.

4 In addition, we have the marvelous opportunity to  
5 have this dispute prejudged by you, and then again, get to  
6 do it all over, *de novo*, before a Commission, using -- free  
7 of cost, unfortunately, Steve -- the transcripts that he's  
8 doing for us, without expense, where all these people  
9 gather before you and we discuss this matter. I think it's  
10 absolutely marvelous.

11 All right, there's no risk of failure.

12 What I propose to do at that evidentiary hearing  
13 is, I'm going to bring a geologist and engineer and we're  
14 going to talk about the reservoir. I will make available  
15 to Mr. Condon and Mr. Carr Leslyn Swierc, Donna Williams,  
16 and if they want to spend their time and energy talking to  
17 the land people about that permit, they can ask them all  
18 day long. But I'm going to take my energy and talk about  
19 the reservoir and see if this well really matters to  
20 anybody when we look at where it is and what it does.

21 Mr. Hartman criticizes me for not understanding  
22 Constitutional law. He says it's a fundamental right, a  
23 matter of due process that he absolutely has, prehearing  
24 discovery before he comes to an Examiner hearing.

25 Let me give you a list of some distinguished

1 attorneys who have superior knowledge in oil and gas law,  
2 far more capable than anybody in this room, that over the  
3 50 years have appeared before this agency: Judge Oliver  
4 Seth, Seth Montgomery, Governor Jack Campbell, Dick Morris,  
5 Howard Bratton and Jason Kellahin. There is not a lawyer  
6 in this room, on his best day, that can compete with any of  
7 those lawyers on their worst day. They are comprehensive,  
8 talented, district court and trial formats, and before this  
9 agency is a model for all of us.

10 And do you think any of them would have practiced  
11 before this agency for 50 years and not raised this  
12 discovery issue if they thought there was a Constitutional  
13 problem with it? I can't imagine it. I simply can't  
14 imagine it. This system is not challenged before, because  
15 there is no basis for challenging it. That's my whole  
16 point.

17 I am more than happy to go to Midland and spend  
18 the day talking to Leslyn about paperwork. Quite frankly,  
19 I need the money. But I don't need the distraction of  
20 trying to spend my energy on that issue when my client  
21 wants this dispute resolved on the merits.

22 I will also tell you why Mr. Carr and I, for the  
23 better part of 20 years, are willing to come before this  
24 agency on Thursday morning, having looked at a technical  
25 case the afternoon before: because there's no risk of

1 failure, gentlemen, absolutely no risk. He and I, for the  
2 better part of two decades have used the Examiner process  
3 for discovery. Isn't it wonderful that it works so well?  
4 And if he's disappointed or I'm disappointed or if any  
5 party is upset over any matter resolved in that forum, you  
6 get to bite the apple again, you get to start over before a  
7 Commission of new judges who do not know and have not been  
8 involved in the process. The Director, in fact, signs the  
9 order, but we all know that he uses you, Mr. Catanach, and  
10 Mr. Stogner, to resolve that dispute, and he comes into the  
11 *de novo* process fresh with regards to the issues that  
12 matter.

13 I propose that we move through this mess and that  
14 we get to where we ought to be, and that is a technical  
15 case with the geologist and the engineer talking about what  
16 this well does in relation to whatever gas may exist. And  
17 if we fool around, Mr. Hartman has wasted his opportunity.  
18 Texaco, if they fool around, have wasted their chance.  
19 Let's get on with the business that you do so well.

20 I propose to you, sir, that you schedule an  
21 evidentiary hearing on May 9th. That is two weeks from  
22 now. It is on a docket that doesn't interfere with any  
23 other docket. I will bring to you my experts, and we will  
24 sit here and we will do this till it's done.

25 I will suggest to you that the business about the

1 force-pooling case is inherently tied in to the dispute  
2 resolution about the Rhodes 7 "B" well, and it makes no  
3 sense to have that matter heard by any other examiner than  
4 one examiner. Mr. Catanach, you've not been involved in  
5 this process. I would suggest that you're not disqualified  
6 in any way and that you ought to decide whatever happens  
7 with regards to the location of the Hartman-Texaco well in  
8 relation to the Rhodes 7 "B", and let's get on with  
9 something else.

10 Thank you, Mr. Examiner.

11 EXAMINER CATANACH: Mr. Condon?

12 MR. CONDON: Thank you.

13 Mr. Examiner, let me start by answering one of  
14 Mr. Kellahin's, and apparently Meridian's, questions. What  
15 does Hartman want? It's really fairly simple. I thought  
16 we had said it in the pleadings, but let me just state this  
17 right here so that there's no misunderstanding.

18 What we want is compliance with the rules and  
19 regulations of the Division, compliance with the statutes  
20 of the State of New Mexico, and equal treatment for all  
21 similarly situated gas wells in the area of the boundary  
22 between Section 23 and 26.

23 What Meridian has presented today is an argument  
24 that essentially says we've gotten what we wanted, which is  
25 a gas well in the gas pool, and I will address that issue.

1 And I realize that right now, Section 26 is designated as  
2 the Rhodes Oil Pool, which occurred in 1982. But I will  
3 discuss with you briefly here today -- and we're certainly  
4 prepared to put on evidence at the hearing to support  
5 this -- that in fact, the section where Meridian has  
6 located its Number 7 well is in the gas pool, should be  
7 treated as in the gas pool.

8 And in fact, while I'm discussing this let me  
9 just give you -- I've prepared a map also -- Mr. Stogner --  
10 that I can present to you to kind of just give you some  
11 idea of what we're talking about here, and there will be  
12 more detailed maps, as you can imagine, that will be  
13 prepared for use at the hearing.

14 But if you look in Section 26, the area that is  
15 surrounded by the dotted blue line is the area for which we  
16 have sought extension of the Rhodes Gas Pool in order to  
17 comply with what we believe is the geologic reality in the  
18 area, based in part on geology, but perhaps based in more  
19 significant part on Meridian's own production history,  
20 which Meridian is fully well aware of.

21 The Lineberry "B" Federal Number 1 well, which  
22 Meridian drilled -- I believe it was in 1995 -- and for  
23 which the Application, we have included that as an exhibit  
24 in some of our pleadings here, when Meridian filed their  
25 application for that well, they filed for a gas well in the

1 Rhodes Gas Pool. When they filed their original  
2 application for the Number 7 well, they filed for a gas  
3 well in the gas pool.

4 I would submit to you that Meridian was fully  
5 well aware of why they did that, because they knew they  
6 were going to get a gas well.

7 If you look at that area, you don't see any oil  
8 wells. And there's a reason that you don't see any oil  
9 wells, which is, of course, part of the basis for our  
10 Application. That should not be treated as in the oil  
11 pool. When you get further south and west, you do see oil  
12 wells popping up.

13 And some of the wells that Meridian drilled  
14 during 1995, apparently as part of a drilling program, were  
15 gas wells and probably should be treated as gas wells in  
16 the oil pool, because when you look at them, they're  
17 surrounded by oil wells. That is a perfectly legitimate  
18 basis for considering a well as a gas well in the gas pool.

19 But when you get up close to Section 23, you find  
20 that there are no oil wells. And of course part of our  
21 Application is, it makes no sense to treat this Number 7  
22 well as a gas well in the oil pool under the geologic  
23 conditions that exist down here, and particularly given  
24 Meridian's own knowledge, from its own production history,  
25 that when you drill in this area, you're going to get a gas

1 well.

2           So what Meridian does is, they come to you and  
3 they say, we've gotten what we want, which is a gas well  
4 located as close to the boundary of Section 23 as we can  
5 get it. Now, you are supposed to say, We won't question  
6 that, we will take that as a given, and we will proceed  
7 from here, no harm, no foul. Meridian's gotten what we  
8 want, so let's not look at the issues that are presented by  
9 Hartman's Application, which of course the Commission has  
10 directed you to set for Examiner hearing, but let's just  
11 look at this as a drainage problem.

12           That brings us to the second thing that we want.  
13 We want an examination of what Meridian knew at the time  
14 that it filed its original application, when it sought  
15 approval for a gas well in the gas pool. We want to know  
16 why Meridian located that well where it did. We believe  
17 that Meridian's internal documents will show that they  
18 located that well for, among other things, purposes of  
19 maximizing drainage from Section 23, and we want to know if  
20 Meridian was fully well aware that the gas pool  
21 geologically extends into the area for which we have sought  
22 extension of the pool boundary.

23           And I think that's relevant for a very important  
24 reason. I don't think that the Division or the Commission  
25 can say in this case, Well, Meridian already has its well

1 there, so we can't do anything about that. Well, I take  
2 exception to that, because I think if the evidence shows  
3 that Meridian was well aware what it was doing, if it  
4 located that well in part to maximize drainage from Section  
5 23, if it knew that it was going to get a gas well, if it  
6 in fact -- if its internal documents show that it is aware  
7 that the gas-oil contact line is further south and west  
8 from the Number 7 well, if it knows, as its internal  
9 documents may show, that this is the gas pool in geologic  
10 reality, that there ought to be a penalty assessed against  
11 an operator who goes in and drills a well and then seeks to  
12 come to the Division and say, Well, we've already got our  
13 well in, it's already been approved by an administrative  
14 order, so let's not listen to any of the concerns or the  
15 complaints that other operators have who are going to be  
16 producing from the same pool, from the same common source  
17 of supply, and let's take our unfortunate and perhaps  
18 illegal placement of our well as a given and go on from  
19 there.

20           What we are doing is challenging the location of  
21 that well and the treatment of that well as a gas well in  
22 the oil pool. We believe that geology is going to show  
23 that it should be treated as a gas well in the gas pool.  
24 And in fact -- and we are -- you all probably know this  
25 better than we do -- the Division on its own motion in the

1 past has extended pool boundaries, based upon production  
2 history, in order to make sure that similarly situated  
3 wells are treated equally. That is, that we don't create  
4 this classification of gas wells in the oil pool and gas  
5 wells in the gas pool.

6 Now, part of our problem with that -- and I  
7 realize that -- and I -- we don't mean to impugn the  
8 general way that the Division does business. We recognize  
9 that in 999,999 cases out of 10,000 -- or 100,000,  
10 whichever I said -- that in most cases, the Division's  
11 process of informal, no discovery, come to the hearing,  
12 decide the issues -- Things work perfectly.

13 I think this is an unusual case. I think the  
14 fact that you all had to set this matter for a motions  
15 hearing -- two motions filed by Meridian, motions filed by  
16 Hartman and Texaco -- indicates that this is not a typical  
17 case.

18 And what we're asking is not that you change the  
19 whole way the Division does business, but just that you  
20 look at this case and you say, There have been problems  
21 here, the Commission has ordered that we hold a hearing on  
22 this Application, let's look at this particular case, and  
23 recognize that we may have to do things a little bit  
24 differently here today in order to try to resolve the  
25 dispute between the parties.

1           And I don't think Meridian's no-harm, no-foul  
2 argument goes anywhere. I don't think the Division should  
3 be swayed by that. I think that we are entitled to present  
4 evidence at a hearing to show what Meridian knew when it  
5 tried to place that well where it did, and whether there  
6 were improper motives in the placement of that well. And  
7 if the documents show and the evidence shows that that is  
8 the case, we are going to ask that the Division take  
9 action, which may be inconsistent with the Division's  
10 policy as stated in Mr. LeMay's latest letter of not  
11 shutting in a well.

12           I don't think a party can come into the Division,  
13 and if the evidence shows that there were improper motives  
14 and improper intent to place a well -- say, Well, now that  
15 we've got the well in there, there's nothing you can do  
16 about it, I think that there is something you can do about  
17 it, and if the evidence shows that, I think you should, and  
18 I think that's what the hearing is for, and I think that we  
19 ought to proceed on that basis, as well as on the drainage  
20 issue that Mr. Kellahin raises.

21           I just -- I do object to the attempt to  
22 characterize this as nothing more than a drainage question,  
23 because, in effect, what Meridian says is, we've now got  
24 our well where we want it, so Hartman and Texaco should  
25 have to decide where they want to place their well on their

1 property in response to us.

2 And our position is, what Meridian should have  
3 done from the git-go is place that well 660 feet from the  
4 property boundary in an area that we believe geologically  
5 we will show is more properly in the gas pool.

6 Now, Mr. Kellahin asks in the motion to dismiss  
7 that the Division essentially dismiss every aspect of this  
8 case but the request for the extension of the pool  
9 boundaries, as if that is somehow going to eliminate a  
10 number of issues that the Division will have to consider in  
11 this matter.

12 I have three responses to that.

13 Number one, the Commission has directed that this  
14 matter be set for hearing, and I don't think the Division  
15 has the jurisdiction to circumvent the Commission order and  
16 say, We're going to limit these things in a way that the  
17 Commission has not directed us to limit it. I think that  
18 what the Commission did in saying there ought to be a  
19 hearing here, have the parties bring in their witnesses and  
20 let's hear all issues, was exactly the right thing to do  
21 under these circumstances, and I don't think there's any  
22 reason not to do that.

23 All that the Division would be doing, by trying  
24 to limit the issues, based on Meridian's motion, is  
25 compounding due-process concerns and problems and inviting

1 another level of inquiry, actually, making more work for  
2 the Division, more work for the Commission and more work  
3 for the parties.

4           Why not just do this once? That's what we're  
5 trying to do here. Let's do it once, let's get all the  
6 issues out in the open, let's get all the witnesses here,  
7 let's have an Examiner hearing on all these issues, let  
8 Meridian's file see the light of day, and let's see what  
9 the facts really are and what it was that prompted the  
10 location of that Number 7 well where it was located.

11           I think Meridian is dead wrong in arguing that  
12 Hartman, Davidson and Texaco have no standing. I think  
13 that argument assumes what this hearing that the Commission  
14 has directed be held is meant to determine.

15           And that ties in with the question of the  
16 application that requests an extension of the pool  
17 boundaries. If in fact the pool boundary is where we  
18 believe it should be, and if the Division ultimately  
19 decides to grant our Application to extend the Rhodes Gas  
20 Pool boundary and contract the Rhodes Oil Pool boundary,  
21 Meridian will have a gas well in the gas pool, with only 40  
22 acres to dedicate to it, not on a 160 square spacing, as  
23 the Division has previously told Meridian is the way we  
24 want you to operate down in the Rhodes Gas Pool.

25           And I would cite you to Order Number R-9870 --

1           Mr. Stogner was the Hearing Examiner on that  
2 case. The order is dated March 18, 1993. I have copies of  
3 this for you too. This was a Meridian application. I  
4 believe it was for a nonstandard proration unit.

5           -- where Mr. Stogner entered a couple of findings  
6 on the second page, Findings 4 and 5, which indicates to me  
7 that the policy of the Division, at least as of 1993, was  
8 to disallow simultaneous dedication of gas spacing units of  
9 more than one well in unprorated gas pools, and to be  
10 rather leery of requests for nonstandard proration units  
11 which were not formed on 160-acre square spacing.

12           We believe that the process by which this  
13 Meridian application ultimately came to be amended to  
14 reflect a request for a gas well in the oil pool is, in  
15 part, an attempt by Meridian after the filing of the  
16 original application to deal with those kinds of problems.

17           The problem that we originally asked for a gas  
18 well in the gas pool, but we don't have more than 40 acres  
19 to dedicate to the well, and we don't have essentially a  
20 160-square-acre proration unit for that well, and that  
21 somewhere along the way, under circumstances that we do not  
22 know, someone decided to change that application to an  
23 application for a gas well in the oil pool. And of course,  
24 this is one of the issues on which we've requested  
25 discovery.

1           If our Application is granted as to the pool  
2 boundary extension and contraction, then Meridian will have  
3 to deal with these issues. We will have to sit down and  
4 say, What is fair? Why did you do this? What can we do so  
5 that the parties are treated equally, so that Hartman and  
6 Texaco don't have to try to change their preferred location  
7 for a gas well from the gas pool in Section 23 based upon  
8 the fact that Meridian has now gotten a gas well that is  
9 going to be producing from the gas pool closer to the  
10 boundary line than they should have been entitled to do?

11           I also have for you some definitions, because I  
12 think that these are important for the Division to keep in  
13 mind in dealing with the issues that are presented here.  
14 Those are Division definitions, as well as definitions from  
15 Williams and Myers, that talk about pools' common sources  
16 of supply.

17           It is clear that in general a pool boundary is  
18 established where there is some geologic barrier that  
19 prevents migration across boundary lines, that prevents  
20 communication between reserves underlying different tracts.

21           I don't think there's anybody who has any  
22 familiarity with this area who's going to be able to come  
23 in and present any testimony to you that there is in fact a  
24 geologic barrier between the boundary of Section 23 and  
25 Section 26, which demarks a clear distinction between the

1 oil pool and the gas pool in this area.

2 And so essentially Meridian is going to have to  
3 come in here, if they want you to deny this application,  
4 and present to you some kind of geologic evidence which  
5 does not exist. And I don't think they're going to be able  
6 to do that.

7 And at that point, I believe that we're going to  
8 be in a situation of dealing with a gas well in a gas pool.  
9 All of these wells -- Texaco and Hartman's proposed well,  
10 Meridian's Number 7 well, the Lineberry Federal Number 1  
11 well -- ought to be treated equally. There shouldn't be  
12 separate rules for separate wells, because somebody went in  
13 and filed an administrative application, which, I might  
14 add, was based on these topographic conditions which have  
15 never yet been addressed. There's not a scintilla of  
16 evidence in this record that justifies the topographic  
17 location.

18 What happened with the administrative order, of  
19 course, is that it dealt with that problem by saying we  
20 don't have to look at it, because we're going to treat this  
21 as a gas well in the oil pool, and therefore you're  
22 standard under those circumstances, so we don't have to go  
23 into the substance of your justification for the unorthodox  
24 location as Meridian originally presented this matter to  
25 the Division -- That is, when Meridian first filed this

1 application, they thought they had to get approval for an  
2 unorthodox location. They thought they were asking for  
3 approval of a gas well in the gas pool. Something happened  
4 along the way. That is part of what we want discovery on.

5 And if I can address the discovery issue for just  
6 a second, last week I wrote counsel for Meridian and I  
7 asked if there was any discovery Meridian was willing to  
8 agree to in this matter, in order to expedite this and  
9 perhaps prevent the Division from having to address the  
10 issue. The only response I received from Meridian was the  
11 motion to dismiss.

12 What we are prepared to suggest today is, if the  
13 Division will order the production of the documents we have  
14 requested and answers to the interrogatories that we have  
15 propounded, then we will not need to take depositions so  
16 long as Meridian agrees to bring witnesses who may have  
17 knowledge about the application process, who may have  
18 knowledge about Meridian's knowledge about the gas-oil  
19 contact line and the geology of the area and the decision  
20 about where to locate this well and why it was done,  
21 whether any other locations were staked.

22 And of course there's another issue in this case,  
23 because prior to last year, Meridian took the position that  
24 it was entitled to operate a gas well in the southwest  
25 quarter of Section 23.

1           Isn't it interesting that as soon as Meridian got  
2 a title opinion indicating that Hartman was an interest  
3 owner in that tract, that discussion and demands by  
4 Meridian that it be allowed to operate a gas well in that  
5 section ceased, and the next thing we see is a proposed  
6 location for a gas well 330 feet from the boundary between  
7 the two tracts? I don't think that's pure coincidence, and  
8 I think that's another issue on which we need discovery in  
9 this case.

10           The evidence in this case is going to show that  
11 Meridian and Hartman-Texaco are going to be producing from  
12 the same pool with these gas wells, they're going to be  
13 producing from the same common source of supply. They  
14 ought to be treated the same. And if that poses problems  
15 for Meridian, that is something that the Division can do by  
16 restricting production on the well, that is, taking 25  
17 percent of deliverability, because they would only have 40  
18 out of the standard 160 acres. Take a deliverability test  
19 and give them perhaps 25 percent of deliverability.

20           Now, I realize that in issuing administrative  
21 order NSL-3633, the Division did what it believed was a  
22 fair and equitable result under the circumstances.

23           Now, we obviously take exception to the result  
24 that came out of administrative NSL-3633. And part of the  
25 problem is just a very simple due-process problem, which

1 is, we are going to be affected by Meridian's Number 7  
2 well.

3 As an affected party, whether you're under old  
4 Rule 104, whether you're under new Rule 104, or even if  
5 there wasn't a Rule 104, given Constitutional due-process  
6 protections, we should have been entitled to a hearing on  
7 the merits before the location of that well was approved.  
8 And that is our complaint here.

9 We think there are issues based upon the limited  
10 public record knowledge that we have that indicate that  
11 there may have been improper motives in the attempt to  
12 locate that well where it was located and that there may be  
13 other problems too.

14 That is why we've asked for discovery. It's  
15 limited discovery. It's discovery which I believe the  
16 Division has the authority right now to grant, that you  
17 don't have to take a year and go through a rule and  
18 regulation adoption process in order to authorize that  
19 discovery. It's limited. We would propose that you  
20 authorize the discovery in terms of requests for production  
21 and interrogatories, answers, and we won't need to do  
22 depositions. We'll be able to cross-examine those people  
23 based upon the documents.

24 My concern with a procedure that would call for  
25 the production of documents on the hearing date is that all

1 you're going to do is waste administrative resources and  
2 the resources of the parties.

3           What I would ask for is that the documents be  
4 produced a week before the hearing to give us a chance to  
5 review them, so that Meridian doesn't walk in here on the  
6 date of the hearing and say, Here are three boxes of  
7 documents, and then we have to say, Well, we need a  
8 continuance of three or four hours so that we can look  
9 through these documents.

10           We have asked for documents that pertain to the  
11 Number 7 well, the application process, Meridian's  
12 knowledge and internal documents which show Meridian's  
13 location of the gas-oil contact line in this area,  
14 questions about how this application that Meridian  
15 originally filed as a gas well in the gas pool came to be  
16 amended to reflect a gas well in the oil pool, whether they  
17 staked other locations for this well, why they decided on  
18 the location they decided on, which Meridian  
19 representatives were involved in that process. That's the  
20 gravamen of our discovery request.

21           It's not -- We're not seeking all the Meridian  
22 documents in the world pertaining to the Rhodes unit or  
23 this area in general. We want limited discovery on this  
24 particular well, this particular application process,  
25 whether Meridian knew that its location was designed to

1 drain the southwest quarter of Section 23.

2 Finally, let me just address real briefly the  
3 question of our request that someone other than Mr. Stogner  
4 hear this matter, and I don't mean to impugn motives to Mr.  
5 Stogner in that request. I think that what he did in  
6 issuing Administrative Order NSL-3633 was to say, Under  
7 these circumstances I'm going to try to do what I think is  
8 fair, and this is how I want to treat it.

9 We do take exception to the fact that it was  
10 treated as a gas well in the oil pool, rather than looking  
11 at the application, looking at the production history of  
12 the Lineberry and looking at what the Number 7 well was  
13 intended to be, and the fact that the Division at that  
14 point did not say to itself, perhaps we have a boundary  
15 question of whether this should be treated as in the gas  
16 pool or the oil pool. The Division has done that on its  
17 own application in the past and has extended boundaries.

18 Rule 5 of the Miscellaneous Rules gives the  
19 Division the power, and I think the obligation from time to  
20 time, to redefine boundaries. And given all the evidence  
21 that was coming in, the objections from Hartman, Davidson  
22 and Texaco, that there should have been a determination  
23 made at that point in time, is this really the Rhodes Gas  
24 Pool or is it the Rhodes Oil Pool?

25 Are we going to rely on a decision that the

1 Division made in 1982 in setting the boundary between  
2 Section 23 and 23, when there was no gas production in  
3 Section 26, that would allow the Division in 1982 to have  
4 made a more precise boundary designation?

5 Are we going to rely on that and just keep  
6 saying, It's the Rhodes Oil Pool, it's the Rhodes Oil Pool,  
7 it's the Rhodes Oil Pool, and if we say it enough times  
8 like a mantra, it becomes the Rhodes Oil Pool?

9 We think that there should have been an  
10 examination at the point in time of the application that  
11 said, What is it? Where is the gas-oil contact line?  
12 Should the gas pool be treated as in the gas pool or the  
13 oil pool?

14 And with all due respect to Mr. Stogner, I  
15 believe from the documents that we have seen, that he has  
16 made his best shot at reaching a decision on this point and  
17 that he has reached a decision and that that decision is  
18 that the Division is going to treat it as a gas well in the  
19 oil pool. That is part of the reason for our Application.  
20 That is one of the issues the Commission has set for  
21 Examiner hearing.

22 And we would simply say, I don't think it's fair  
23 to Mr. Stogner to put him in the position of being the  
24 Examiner at the hearing on this matter, where he's already  
25 on record as saying, Here is my best analysis of this

1 issue, here's what I think, and then put him in the  
2 position of having to essentially decide, was I right or  
3 was I wrong? It's just a cleaner process to have somebody  
4 else hear this matter, make the decision from the Division  
5 perspective. I hope -- I hope we don't have to use the  
6 two-bites-of-the-apple process.

7 I would also like to point out in making my  
8 presentation that in March of this year, Mr. Hartman wrote  
9 Meridian, proposing a land swap of a number of properties  
10 that are the subject of the three Division proceedings --  
11 the Seymour, the Britt and the Rhodes -- to try to resolve  
12 the issue, to just say, you go your way, we'll go our way,  
13 let's just get out of each other's hair and agree on a  
14 swap.

15 We have had no formal response from Meridian to  
16 that proposal, and I think the reason is pretty clear.  
17 Right now Meridian has exactly what it wants. It has a  
18 well, located as close to the boundary of Section 23 as it  
19 can get, that it is producing from the same common source  
20 and supply as Hartman and Texaco will be producing.

21 Why should Meridian sit down at the table under  
22 those circumstances, when the Commission issued its March  
23 19 decision and said, We're going to stay Administrative  
24 Order NSL-3633, which even Mr. LeMay in his latest  
25 correspondence recognized? That should have meant that the

1 well be shut in. Meridian continued to operate the well.

2 Right now, Meridian has no incentive to  
3 compromise. And I would hope that out of this process,  
4 setting all matters for hearing on the merits with  
5 evidence, with witnesses, with exhibits, with documents,  
6 with an opportunity for us, because we are now put in the  
7 position of having to prosecute this application, if the  
8 Division had originally said, Meridian, we're not going to  
9 grant the administrative application, we're going to set  
10 this matter for hearing, the burden would have been on  
11 Meridian to come before you and to justify the application.

12 Now, because of Administrative Order NSL-3633,  
13 that process has been partially flipped and reversed to  
14 where we as the objecting parties are required to prosecute  
15 an application and to convince you that you should do  
16 something with Administrative Order NSL-3633, and we've  
17 asked that it be withdrawn.

18 If we're going to have that burden, if the  
19 Division is going to look at this as Hartman, Davidson and  
20 Texaco have the obligation to prove something to us,  
21 because we've already granted administrative approval for  
22 this well, then we ought to have access to all the  
23 documents that Meridian has access to, that relate to this  
24 well, that relate to the application process, that relate  
25 to how the application came to be amended, that relate in

1 any way and reflect in any way on whether it was proper  
2 procedure for Meridian to, number one, seek administrative  
3 approval for that well, move the application through the  
4 administrative-approval process, drill the well, and  
5 produce the well before they had administrative approval --  
6 we believe the records will show that also -- and then  
7 continue to produce the well, notwithstanding the  
8 Commission order staying the effect of Administrative Order  
9 NSL-3633.

10 Thank you.

11 EXAMINER CATANACH: Mr. Carr?

12 MR. CARR: Mr. Catanach, Texaco Exploration and  
13 Production, Inc., adopts the arguments advanced here this  
14 morning on behalf of Mr. Hartman.

15 In addition, we would agree with Mr. Kellahin  
16 when he characterizes this situation as a mess. It is.  
17 And it becomes a greater mess every day this agency doesn't  
18 take it under control and tell the parties how these issues  
19 are going to be resolved.

20 I was, I guess, surprised to learn that when we  
21 come over here on Thursdays, we have no risk of failure,  
22 that we have a second bite at the apple. And I guess you  
23 should take heart in that, because maybe you won't have to  
24 hear complaints about the results that come down after  
25 Examiner hearings. I frankly don't view it that way.

1 I think our system here works as it does because  
2 in most causes an Examiner hearing is all that is required.  
3 And an Examiner hearing and that Examiner process works  
4 when the parties are fully prepared and make a full  
5 presentation to the Examiner.

6 That can't occur when the information is not  
7 available to one party the day he has to stand up and go  
8 forward at the Examiner level. And that's why we believe  
9 in certain circumstances, in an unusual case like this,  
10 discovery is not only important, it's required.

11 I want to talk to you a little bit today about  
12 procedures that are used in proceedings before the Oil  
13 Commission. I want to talk to you briefly about the  
14 standing issue, about Texaco's request for a stay of the  
15 administrative order. I want to provide our thoughts on  
16 why a change in Examiner is necessary, and then ask you to  
17 do certain things.

18 Mr. Kellahin stood before you -- I'm going to  
19 talk first about the procedural issues.

20 Mr. Kellahin said, We shouldn't be here quibbling  
21 over the permitting. He says that standing doesn't matter.

22 I take issue with those things, because what Mr.  
23 Kellahin characterizes as quibbling, as matters that don't  
24 matter, are really issues that are rooted in  
25 Constitutionally protected property rights. You can't just

1 cast them away because you're standing on weak ground.

2 Now, I have to go back, and this irritates my  
3 every-Thursday opponent, but I think you have to go back  
4 and look at the real basis for Oil Conservation Division  
5 actions, if we're going to retrack where we are.

6 And I think you have to remember that this agency  
7 is a creature of statute, that your actions are based in  
8 Constitutional rights and principles, that your actions are  
9 based on the Oil and Gas Act. And if you forget this, you  
10 sort of lose your way.

11 And I think that is exactly what has happened  
12 here. And you can invoke the name of Oliver Seth or Pete  
13 Porter or anyone you want, but I will tell you without one  
14 doubt that if you put every one of the men Mr. Kellahin  
15 cited in this room, they would sit right there and say,  
16 When you enter an order you need to keep in mind that your  
17 actions are going to be evaluated, not in the context of,  
18 is this is a quibble or is -- They're going to be evaluated  
19 based on Constitutional rights that you must protect and on  
20 the Oil and Gas Act that you must uphold. And I submit  
21 that here, we're straying dangerously far from those  
22 principles.

23 You need to remember that this application was  
24 filed under old Rule 104. That rule was not pool-specific.  
25 It said that if your well location is encroaching on an

1 offsetting operator, you give that individual notice,  
2 period. That's it.

3           There's no doubt we operate the offsetting  
4 property. We were not given notice; there's no doubt about  
5 that. And to come and say, Well, they're not an operator,  
6 because the OCD hasn't designated an operator, means there  
7 would never be an owner of an operating right in an  
8 offsetting tract, if you hadn't approved an APD, who would  
9 be entitled to notice under your rule. That argument is  
10 absolutely idiotic.

11           There are operators and operating rights -- I  
12 hate to tell you -- independent of your determination or  
13 approval. They spring from contract and they're not  
14 dependent on this regulatory system.

15           But if we look at the new Rule 104 and we adopt  
16 the interpretation being placed on it by its author, Mr.  
17 Kellahin, it says, Forget it, it's a different pool.  
18 Forget giving notice or protecting Constitutional rights,  
19 because it isn't an operator under your rules. And I  
20 submit if that's the interpretation this agency takes, that  
21 rule will stand until the first party takes it to the  
22 courthouse, and there it will fail.

23           And I want you also to note that the way we are  
24 characterizing -- Meridian is characterizing an operator,  
25 is, they talk about operators being only parties duly

1 authorized. Mr. Kellahin adds, By the Commission or by the  
2 Division. That's not in the rule. A person is operated by  
3 private contract, by a lease, and you are only  
4 acknowledging something that has been done by the parties  
5 in a private contractual text.

6 They then go on, and we talk about the procedures  
7 followed, and you say, Well, they're not entitled to  
8 notice, we approved the unorthodox location, and that now  
9 stands. And you can't even correct your error without a  
10 notice in the hearing, an error that you committed without  
11 noticing in the hearing.

12 And I would suggest the cart's before the horse.  
13 When you act to violate a Constitutionally protected  
14 property right without a hearing, you must correct that,  
15 and you can't engage in some circumvented reasoning that  
16 says, Well, we did it wrong, but now you have to come  
17 disprove us before we can correct something that was wrong  
18 in the beginning.

19 And how do you explain it? Well, Mr. LeMay  
20 writes us and he says the Division policy is against  
21 shutting in wells where any subsequent -- any subsequent --  
22 order could correct any overproduction or the impairment of  
23 correlative rights.

24 I hope that's not the Division's policy, because  
25 if that is I guess we don't have to worry about you; we

1 drill wells, we turn them on, and they're not going to be  
2 shut in if any subsequent order could correct it. I think  
3 that's a dangerous first step, and I think that's one of  
4 the things that this Division has to consider as we march  
5 forward in the context of this particular case.

6           What about standing? I've already addressed  
7 that. We own the offsetting property rights, the well was  
8 encroaching on us, and we objected. Now, we have reached  
9 an agreement with Mr. Hartman, and he can develop that  
10 acreage. It doesn't take standing issue out of this case,  
11 because standing is the threshold point in terms of the  
12 validity of this administrative order. We had a right to  
13 object. When we finally got notice, we did object.

14           And if you read either old or new Rule 104, both  
15 of those rules provide that once you receive notice and  
16 once there is an objection, the application is no longer  
17 subject to approval administratively. You're outside your  
18 rules when you approve this application. We have standing  
19 to object, we did object, the entry of this order was  
20 inevitable.

21           Now we came in and we've asked for a stay. Mr.  
22 Kellahin says, Well, we can't even come into the case  
23 because we're not adversely affected, albeit we own the  
24 offsetting property interests; that we're not entitled to  
25 notice, although under Rule 104 as it originally stood we

1 certainly were; we're not an operator because you haven't  
2 determined we are, although we have the operating rights.

3 And then we come along and we ask for a stay.  
4 And we ask for a stay because we would like to maintain the  
5 status quo out there until these issues are resolved,  
6 however they're resolved.

7 Our concern is obviously a concern about  
8 drainage. And you know what? Mr. Kellahin today sat right  
9 here and admitted that we're being drained, because Mr.  
10 Kellahin said we had to get a well out there, because this  
11 was a fleeting opportunity. That's a quote. I don't know  
12 what's -- could be a fleeting opportunity, other than the  
13 fact that our reserves are being drained by a well that was  
14 drilled pursuant to an order that was entered outside your  
15 rules on correlative rights being impaired. I can find no  
16 other interpretation of that phrase that Mr. Kellahin uses,  
17 "fleeting opportunity".

18 That's why we have asked for a stay. Instead of  
19 saying, Oh, well, maybe some day we can correct this with a  
20 subsequent order, maybe you ought to say, There's no harm  
21 that's going to result from holding things in a status-quo  
22 posture until we get these issues resolved. And that's all  
23 we're asking you to do. And Mr. Kellahin has admitted that  
24 in the meantime our fleeting opportunity is slipping away,  
25 our reserves are being drained.

1           As to discovery, I think the dead-bottom, worst  
2 suggestion in all of this mess is that you stop, sit down  
3 and develop your own rules of procedure. That flies right  
4 in the face of the way this agency has operated for -- for  
5 decades. We're able to turn things around on a relatively  
6 fast time frame, because this industry acts on a relatively  
7 short time frame.

8           You start developing rules, the rules are going  
9 to go to court, they're going to be challenged, we're going  
10 to be here forever. Rules and procedures are then going to  
11 be evaluated by the court, they're going to be rewritten by  
12 the court, and the great strength of this agency is going  
13 to slip away.

14           We have a unique case here. What is needed is  
15 discovery so that the hearings can be meaningful. You can  
16 do that in the context of this case. Your rules provide  
17 that you operate under the rules of evidence, although  
18 those are relaxed to the extent you need to, to meet the  
19 ends of justice.

20           And here I suggest that you can proceed under the  
21 rules of the district court, you can accelerate the time  
22 frame, you can carve out something that is specific to this  
23 case, that gets the data on the table so that the hearings  
24 can be meaningful.

25           And then you need to act on an expedited basis,

1 because every time this situation is more like a moth being  
2 drawn to a flame, and that flame is a situation where  
3 somebody other than the OCD is going to start determining  
4 how we do our business over here.

5 And in this situation taking the advice of  
6 Meridian and doing what they've told you to do is causing  
7 you to act farther and farther outside what you're required  
8 to do under the Constitution and under the Oil and Gas Act.  
9 And you're getting more and more into a situation every  
10 single day, I believe, where this case is going to be  
11 significant, not because of the boundary between the Rhodes  
12 Oil Pool and the Rhodes Gas Pool, but because the agency  
13 didn't grab it and do something with it, and now we have  
14 somebody else, other than this agency, developing its rules  
15 and procedures.

16 Our position is very, very simple. We think what  
17 you must do is deny Meridian's motion, stay the order that  
18 approved this well, and set an expedited discovery schedule  
19 and get this case to hearing.

20 It must come to hearing before you. I know  
21 you're delighted to hear that, but it isn't a reflection on  
22 what Mr. Stogner did. He did what we've always done, an  
23 administrative application, one party needing to do one  
24 thing, and he talked with them, and they discussed it and  
25 they tried to get the thing to work.

1           When there were objections, it changes posture.  
2           It's then a contested case, *ex parte* communication has to  
3           stop. And all of the proper communications before have the  
4           effect of tainting the appearance of fairness if the person  
5           who says yes today is being asked by someone to say no  
6           tomorrow.

7           And so you -- It's very simple, you just -- It's  
8           not a reflection on the parties, it's not a reflection on  
9           the Examiner, it's not a reflection on the process. It's  
10          just something you do to be sure that your process appears  
11          to be what I believe it is, fair, and that's all there is  
12          to this, and that's what we're asking.

13          EXAMINER CATANACH: Thank you, Mr. Carr.

14          MR. KELLAHIN: Mr. Catanach, I've reserved six  
15          minutes. I'd like to respond to a couple comments.

16          EXAMINER CATANACH: All right.

17          MR. KELLAHIN: Neither Mr. Carr nor Mr. Condon  
18          have raised issues that I have not already addressed, so  
19          let me focus on a couple of items that I think are  
20          important.

21          First of all, with regards to whether Meridian  
22          had the best intentions in the world with regards to Rhodes  
23          7 or absolutely the worst intentions in the world with  
24          regards to that well, quite frankly, that information does  
25          not matter at this point. The well is in the reservoir and

1 it is producing.

2 The issue for you is to examine the issue of  
3 drainage. And whether it was good or bad or otherwise, the  
4 fact is, the well is in the reservoir. And if the evidence  
5 demonstrates that there are gas zones in the gas pool for  
6 which Meridian's well at its location with regards to the  
7 common boundary has some unfair advantage, you need to  
8 consider that issue. The issue of drainage is in fact the  
9 main issue.

10 Mr. Carr asked you to take the extraordinary  
11 action of shutting in this gas well. That is an  
12 extraordinary action. And despite his worrying of the  
13 fleeting opportunity to get gas out of the southwest  
14 quarter, it is absolutely inconsistent to be concerned  
15 about drainage when we know that Texaco and Hartman are  
16 proposing to move as far away as they can.

17 They're going 1980 away from the common boundary.  
18 And if they truly believe that this well imposed a risk to  
19 them, then why are they not offsetting it in an appropriate  
20 way?

21 What they're suggesting to you is somehow, this  
22 well gets penalized, its spacing unit is gerrymandered,  
23 it's put in the gas pool, it gets a 40-acre allowable in a  
24 160-acre spacing unit, and then it gets hit with another  
25 penalty.

1           We're going to get to those issues in an odd way.  
2     Hartman is suggesting we adjust the pool boundary. But  
3     when you see the evidence, you're going to see evidence of  
4     structure, cross-sections, reservoir data, and then you can  
5     make a decision. And the fact is that you're going to be  
6     able to decide, based upon that information, what to do in  
7     the event there exists uncompensated drainage with regards  
8     to this issue.

9           I see no evidence or indication that you should  
10    take the extraordinary action of shutting this well in when  
11    in fact Hartman and Texaco are running as far away as they  
12    can from exercising the opportunity to protect correlative  
13    rights.

14           We would ask that you deny discovery, that we  
15    move forward with a technical hearing on the geology and  
16    the reservoir engineering, that this well be allowed to  
17    produce, and that we see you in two weeks and get started  
18    with that process.

19           MR. CONDON: Mr. Examiner, I believe I just have  
20    a couple of minutes left, and I would just like to take one  
21    minute to just respond real quickly.

22           This is a classic shell game that Meridian is  
23    playing here. It's "Let's put the blame on Hartman and  
24    Texaco for the fact that they're not responding to our  
25    location better."

1 I don't know, is Texaco suggesting that they  
2 would approve a location for a gas well 330 feet from the  
3 boundary of Section 26? I don't know. Meridian hasn't  
4 taken a position, they just keep throwing these things out  
5 to you.

6 Is Meridian denying that they're producing from  
7 the same common source and supply? No.

8 Has Meridian identified a single harm, real or  
9 imagined, that Meridian would suffer if that Number 7 well  
10 were shut in pending a final determination by the Division?  
11 No.

12 All you hear is, it would be an extraordinary  
13 effort on your part, it would be extraordinary for you to  
14 do this. Well, maybe this is the extraordinary case where  
15 you ought to do it, where there's harm that will befall  
16 Meridian.

17 If it turns out that they're illegally operating  
18 that well, we're the ones who will be harmed by the  
19 continued operation. If it turns out that Meridian is  
20 justified in locating the well where it did and they're  
21 able to produce, then they turn the well back on, they're  
22 out nothing.

23 You should not allow a party's action in  
24 improperly locating a well to then dictate whether you will  
25 or will not impose what is a very reasonable request by

1 Texaco in this case to shut in that well, pending the  
2 ultimate disposition of this matter.

3 We would ask that everything be set for hearing,  
4 that Meridian's motion to dismiss be denied, that our  
5 motion for discovery as amended here today be granted, that  
6 we be given the documents a week before the hearing. I'm  
7 not sure that I can commit to May 9th at this time, but I  
8 will certainly check with my client and see if that's  
9 possible.

10 Certainly, if Meridian is going to agree to  
11 produce the documents a week before May 9th, we would  
12 require that as a prerequisite to bring to any hearing  
13 date.

14 But we join Mr. Carr and Texaco in asking that  
15 this matter be expedited, that we go there under the status  
16 quo of not being drained in the interim by Meridian's  
17 Number 7 well, put everything on the table, and let the  
18 Division and an Examiner make a determination.

19 MR. CARROLL: Mr. Carr, anything else?

20 MR. CARR: I just note that while Mr. Kellahin  
21 was talking about the extraordinary act that would result  
22 if this Division were to shut in this well, that what he  
23 seems to be doing while screaming "extraordinary" is  
24 somehow, I guess, finding a Constitutional principle  
25 something akin to possession is nine-tenths of the law.

1 I mean, just because a well is there is not the  
2 reason that you let the thing produce, when it is obvious  
3 by -- from Meridian's own admission that it is draining  
4 reserves.

5 MR. KELLAHIN: May we have a short break? I need  
6 aspirin. I've been with Mr. Carr for 16 hours out of the  
7 last 24, and I do need a break.

8 MR. CARR: I would submit to you that perhaps  
9 it's not aspirin but the amount of coffee that Mr. Kellahin  
10 has been drinking this morning that's causing the request.

11 MR. CARROLL: Hold on -- Mr. Bruce, do you have  
12 anything?

13 (Off the record)

14 EXAMINER CATANACH: Let's stay on the record  
15 here.

16 MR. CONDON: Well, I'm not sure there's even a  
17 reason for a break. Are you going to take this under  
18 advisement and give us a written decision or --

19 MR. KELLAHIN: That would be fine with me. Do  
20 you want to call us or write us or fax us?

21 MR. CARROLL: I think we have a few questions  
22 here.

23 (Thereupon, a recess was taken at 11:23 a.m.)

24 (The following proceedings had at 11:30 a.m.)

25 EXAMINER CATANACH: Okay, let's call this

1 proceeding back to -- I'm going to turn it over to Mr.  
2 Carroll at this point. He has some questions.

3 MR. CARROLL: Regarding the motion for discovery,  
4 does Meridian have any confidentiality objections or other  
5 objections to the production of evidence, either before the  
6 hearing or at the hearing, that was requested by Hartman  
7 and Texaco?

8 MR. KELLAHIN: There's -- If I remember the  
9 requests for information, there was a rather generalized  
10 request for economic reserve information with regards to  
11 the general area.

12 If I've characterized that correctly, that would  
13 be proprietary, and I'm not -- I would have to look to see  
14 which one of those requests dealt with that topic, but I  
15 believe there's a numbered item later in the request to  
16 produce documents that deals with that topic.

17 MR. CARROLL: Yeah, I'm looking at it. I don't  
18 see it right here.

19 MR. KELLAHIN: All right.

20 MR. CONDON: It is in Request Number 3.

21 And we'll drop the request for reserve  
22 calculations. What we're really interested in, in that  
23 request, is just that we get anything that Meridian has  
24 that is kind of a depiction of the drainage that they  
25 expect from that well. And, you know, we believe that some

1 of those are going to be reflected on the internal AFEs and  
2 authorization and approval process.

3 So in the next-to-last line of Request Number 3,  
4 you can cross out reserve calculations. I don't have a  
5 problem with omitting that.

6 I was not by that request trying to find out  
7 confidential information about what they expect the  
8 reserves to be. I'm trying to get every document that I  
9 can -- that will show what Meridian expects the drainage of  
10 that well to be.

11 MR. KELLAHIN: Let me comment on that issue,  
12 then. If that's the purpose, normally what has occurred is  
13 that if all parties have the basic data -- the production  
14 information, that kind of data, the log data -- then each  
15 expert prepares his own hearing presentation from that  
16 data. We suggest that that's the appropriate way to go  
17 about the technical data.

18 If the issue is our -- the parties in advance of  
19 the evidentiary hearing to exchange technical hearing  
20 exhibits before the hearing so that each expert can look at  
21 those, that's a different topic.

22 But if I am being asked to give my expert's work  
23 product that goes ultimately to the drainage issue, which  
24 is what I think this case is about, then I am at a  
25 disadvantage unless that information is shared at the same

1 time among the experts.

2 I don't think it's necessary to go back through  
3 the internal documents of Meridian if any of these things  
4 in fact do exist, to get us to the point of using the  
5 current data and making calculations with regards to the  
6 potential effect of the Rhodes 7 "B" well, wherever it may  
7 be in the reservoir.

8 MR. CONDON: Could I just respond real quickly?

9 I mean, work product is normally something that  
10 you prepare in anticipation for litigation. We're not  
11 asking for something that Mr. Kellahin's experts might  
12 prepare in anticipate of the hearing here; all I'm asking  
13 for is, what do you have in your files now? What did you  
14 have in your files when you got approval for this well?  
15 What did you have in your files when you were deciding  
16 where to try to locate the well, so that we can know why  
17 you did what you did, if we're going to have to prosecute  
18 this administrative application seeking withdrawal of the  
19 administrative order?

20 We think that if we come in here and say -- and  
21 show the Division that Meridian knew darn well what it was  
22 doing, knew that it had a gas well in the gas pool and  
23 tried to locate this well as close to the property boundary  
24 as they could in order to maximize drainage from Section  
25 23, we're going to ask you to take action in response to

1 that.

2 And we can't prove that case without Meridian's  
3 internal documents. Again, not what they're going to  
4 prepare for their experts for the hearing, but what their  
5 internal, normal business operation documents are that they  
6 have in connection with the application process and  
7 approval process for this well that are going to show how  
8 much drainage they expected to get.

9 MR. KELLAHIN: My concern is that that is not  
10 relevant. It is of no consequence to you how that process  
11 was done with regards to -- with regards to any well.

12 The point is -- The point is that we're looking  
13 at drainage calculations based upon the well, where in fact  
14 it is. And to go through that other stuff -- I don't know  
15 if it exists or not. I'm just telling you as a point of  
16 procedure, I can't imagine that is useful or relevant. And  
17 it's well intended, bad intended, sloppy or perfect, it  
18 truly doesn't matter. If we're going to talk about  
19 drainage, let's get to the experts in here and look at the  
20 end result of the calculations, if we're all using the same  
21 data.

22 MR. CARROLL: Then I have a question regarding  
23 burden of proof. There seems to be more than one issue  
24 with a burden of proof.

25 If we go to hearing on May 9th or May 16th and it

1 is shown that proper notice was not given and that the  
2 Division ignored the fact that proper notice was not given,  
3 it seems to me that burden of proof would then shift to  
4 Meridian to show why that order should not be rescinded.

5 But there's also the issue of redrawing the pool  
6 boundaries.

7 MR. CONDON: We have that burden, I believe.

8 MR. CARROLL: Okay.

9 MR. CONDON: And part of our objection in this  
10 case, of course, is that the Division didn't do that on its  
11 own, or that Meridian didn't do that on its own, when its  
12 production history was showing that these were gas wells in  
13 the gas pool.

14 But we recognize that we're the ones who have  
15 filed the Application for redefinition; we assume we're  
16 going to have the burden on that issue.

17 MR. KELLAHIN: I would cut to the chase. I don't  
18 think burden of proof is particularly important in this  
19 agency, quite frankly. What you're going to have is two  
20 different sets of experts talking about gas-oil contacts,  
21 and you're going to get the information anyway.

22 And quite frankly, I think you can get to where  
23 Mr. Condon wants you to consider in a roundabout way. If  
24 it truly is that this well under its current producing  
25 allowable is a problem, then you certainly have

1 jurisdiction to fix it.

2 MR. CARROLL: That's all I have.

3 EXAMINER CATANACH: Mr. Condon, I had a question  
4 regarding shutting in the Meridian well.

5 MR. CONDON: Yes.

6 EXAMINER CATANACH: If the case is ultimately  
7 heard and a determination is ultimately made that the  
8 Meridian well should be in some form or fashion penalized  
9 or maybe even shut in to make up some overproduction that  
10 they've accumulated to this point, can you demonstrate that  
11 that's -- that letting the well produce at this time would  
12 be -- would cause irreparable harm to you, or your clients?

13 MR. CONDON: Well, of course, my understanding  
14 was, this was not going to be an evidentiary hearing, as  
15 per our phone conversation with you, so I did not prepare a  
16 witness or bring a witness on that issue. That's why what  
17 we have argued is the legal issue of what is the easiest  
18 thing to do to maintain the status quo now, so that nobody  
19 is ultimately injured.

20 And from our perspective, the easiest thing to do  
21 is to shut it in, because there's no harm that's going to  
22 be caused Meridian by shutting it in for a period of time,  
23 until this matter gets heard. And at that time, if it's  
24 determined that they can produce at 800 MCF a day or  
25 whatever they're entitled to produce at, they can turn it

1 on and produce. There's no harm to Meridian in shutting in  
2 the well.

3 The potential harm -- and you know, perhaps, the  
4 experts will say that there is an irreparable harm, perhaps  
5 they won't. I was not prepared to offer that at the  
6 hearing today, in part because of our conversation earlier  
7 this week and the Division's determination that this was  
8 not going to be an evidentiary hearing, with which I  
9 agreed.

10 So I think it's just really a question of what  
11 can you do to keep the status quo?

12 MR. KELLAHIN: One comment, Mr. Examiner. Your  
13 rules require, to change an administrative order you have  
14 to take evidence on the issue. And if we're going to get  
15 to a shut-in order, we need some evidence. And quite  
16 frankly, the evidence is going to be very much like what  
17 we're going to get on the ultimate evidence, and if we're  
18 going to hearing shortly, I think we're going to get there  
19 pretty quick anyway.

20 MR. CARR: In that regard, I would simply suggest  
21 that I believe that rule is premised on the notion that the  
22 administrative order was properly obtained.

23 MR. CONDON: And let me just say for the record  
24 that I'm glad that Meridian recognizes that there are due-  
25 process concerns in issuing orders that affect property

1 owners and producers and operators.

2 MR. KELLAHIN: We've gone full circle again. I  
3 think we're done.

4 EXAMINER CATANACH: Is that all?

5 MR. CONDON: Go full circle.

6 MR. KELLAHIN: We've got closure.

7 EXAMINER CATANACH: I think we probably need some  
8 time to digest the arguments. I would suggest that we --  
9 Mr. Carroll and I would probably issue a written decision  
10 on the motions --

11 MR. CONDON: -- this afternoon?

12 EXAMINER CATANACH: -- by Monday, I would submit.

13 MR. CONDON: Just kidding.

14 Could I just, then, ask -- And maybe while we're  
15 all here, we could talk about this, and I don't care if  
16 it's on the record or not.

17 (Thereupon, these proceedings were concluded at  
18 11:40 a.m.)

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I do hereby certify that the foregoing is  
a complete and correct transcript of the proceedings in  
the Examination hearing of Case No. 11528,  
heard by me on 4/25 1996.

David M. Catnach, Examiner

Oil Conservation Division

## 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 April 30th, 1996.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 1998