

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date

JANUARY 16, 1997

Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
W. Kellahan	Kellahan & Kellahan	Santa Fe
William A. Fay	Fay, Smith, Foy & Gordon	Santa Fe
Yark Wheeler	Penwell Energy, Inc.	Midland
John Thomas	" "	" "
Bill Pierce	" "	" "
Markus Thomerson	Burlington Resources	Midland
Doug Seams	" "	" "
Leslyn Swiere	" "	" "
Gene Daul	Santa Fe Energy Res	Midland
D. Lovel		Arlene
H. STRATTON W	BRANCO, ET AL	ABQ.
GREGG PIZZELLO	" "	ABQ
Bobby Hickman	<del>Br</del> Mitchell Energy	Woodlands, TX.

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: )  
) )  
APPLICATION OF BURLINGTON RESOURCES OIL ) CASE NOS. 11,613  
AND GAS COMPANY FOR COMPULSORY POOLING, )  
LEA COUNTY, NEW MEXICO )  
) )  
APPLICATION OF PENWELL ENERGY, INC., FOR ) and 11,622  
COMPULSORY POOLING, LEA COUNTY, )  
NEW MEXICO ) (Consolidated)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
WILLIAM WEISS, COMMISSIONER  
JAMI BAILEY, COMMISSIONER

January 16th, 1997  
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Thursday, January 16th, 1997, 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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## A P P E A R A N C E S

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By: W. THOMAS KELLAHIN

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Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:12 a.m.:

3           CHAIRMAN LEMAY: Call Case Number 11,613 and  
4 11,622, which are the Application of Burlington Resources  
5 for compulsory pooling and the Application of Penwell  
6 Energy for compulsory pooling.

7           These conflicting Applications, of course, will  
8 be consolidated for the purposes of the record and for  
9 purposes of issuing orders.

10           Appearances in these cases?

11           MR. KELLAHIN: Mr. Chairman, I'm Tom Kellahin of  
12 the Santa Fe law firm of Kellahin and Kellahin, appearing  
13 on behalf of the Applicant in Case 11,613, which is  
14 Burlington Resources Oil and Gas Company.

15           I have three witnesses to be sworn.

16           CHAIRMAN LEMAY: Thank you.

17           MR. CARR: May it please the Commission, my name  
18 is William F. Carr with the Santa Fe law firm Campbell,  
19 Carr, Berge and Sheridan. We represent Penwell Energy,  
20 Inc., and I have four witnesses.

21           CHAIRMAN LEMAY: Thank you, Mr. Carr.

22           Will those witnesses that will be giving  
23 testimony please stand and raise your right hand?

24           (Thereupon, the witnesses were sworn.)

25           CHAIRMAN LEMAY: We shall begin.

1 Mr. Kellahin?

2 MR. KELLAHIN: Thank you, Mr. Chairman.

3 Members of the Commission, this case was  
4 consolidated with -- these two cases were consolidated for  
5 hearing before Examiner Stogner, who heard this matter on  
6 October 3rd, 1996.

7 After the presentation of that case, on November  
8 26th of 1996 he entered Order R-10,709, which approved  
9 Burlington's application and denied Penwell's application.

10 I'm going to give you a copy of his decision in  
11 that matter, because there are some basic statements of  
12 fact for which he's reached some conclusions that give us  
13 an outline of what we're about to show you today.

14 In early 1995, the ownership in this 40-acre oil  
15 spacing unit -- we're looking at Delaware oil wells; they  
16 are on occasion drilled to Bone Springs, but the production  
17 in here is Delaware oil wells -- in the spring of 1995, the  
18 ownership in the 40-acre tract is arranged such that a  
19 gentleman by the name of Prince owns about 50 percent, a  
20 gentleman by the name of C.W. Trainer has about 31 percent,  
21 Burlington -- at that time, I think, they were called  
22 Meridian -- had 13.5 percent, and Mr. Jerry Losee's two  
23 daughters, Ann and Elizabeth, split 5 percent, so each of  
24 them had 2.5.

25 This is in an area where Burlington and Pogo were

1 developing Delaware oil wells in what is called the Red  
2 Tank area. Burlington referred to them as their Checkmate  
3 wells.

4 At that time, Burlington was interested in having  
5 a well drilled in this spacing unit, and this was a federal  
6 oil and gas lease area, and so in February of 1995 they  
7 filed an APD with the BLM.

8 In April, then, they proposed to these other  
9 interest owners, Mr. Trainer, Prince and the Losee sisters,  
10 the drilling of this Delaware well.

11 A month or two goes by, and Mr. Trainer counters  
12 with an AFE that's slightly lower than the AFE proposed by  
13 Burlington. Burlington, with 13 percent, provides Mr.  
14 Trainer the opportunity to drill the well first. He has  
15 obtained the agreement on his AFE of Mr. Losee on behalf of  
16 his daughters, Mr. Prince on behalf of his interests, and  
17 Mr. Trainer, then, has been authorized by Burlington to  
18 proceed to drill the well. This occurs in about May of  
19 1995.

20 And then from May of 1995 to August 14th of 1996,  
21 despite repeated efforts by Burlington, Trainer does not  
22 commence the well.

23 By August of 1996, Burlington is now convinced  
24 that Mr. Trainer has no probable intentions of commencing  
25 this well in the near, foreseeable future, and so they

1 repropose the well.

2           The well is reproposed, we're talking about an  
3 AFE of about \$652,000. And they propose it to the same  
4 interest owners who are holding the interests at that time.  
5 It's Mr. Trainer, Mr. Prince and the Losee sisters.

6           A few days later, Mr. Trainer meets with  
7 Burlington and he says he doesn't have any trouble with  
8 having the well drilled. There apparently is no  
9 substantial disagreement on the costs of the well, there's  
10 no dispute about the location of the well, it's a well that  
11 needs to be drilled. But he's not prepared to do it, and  
12 yet he doesn't want Burlington to drill it.

13           Burlington recognizes that that obstacle cannot  
14 be overcome, and so a few days later, on August 26th of  
15 1996, in their behalf, I file a compulsory pooling  
16 application.

17           Mr. Trainer is served on -- four days later, on  
18 August 30th, and after he is served then he begins to find  
19 a way to escape the consequences of force-pooling, and he  
20 contacts Penwell. He says, I'm about to be pooled; will  
21 you take my interest? And for a hundred dollars an acre  
22 and a small override, he assigns his interest to Penwell.

23           Penwell consolidates the Prince interest, the  
24 Trainer interest, and I think he has had the approval of  
25 Mr. Losee on behalf of his two daughters, that Penwell now

1 wants to drill the well.

2 That is the basic fact situation with regards to  
3 the ownership dispute.

4 It is Burlington's position that it is now their  
5 turn to drill the well. They have provided for more than  
6 17 months the opportunity to those interest owners with a  
7 majority to drill the well, and they failed to do so. And  
8 so we re-propose the well, and in order to avoid the force-  
9 pooling, they go out and find someone else.

10 The issue for you to decide is, does it really  
11 matter if Burlington drills it or if Penwell now drills it?

12 Our reservoir engineer will tell you it matters  
13 significantly. This is an area where these Delaware wells  
14 are not very prolific, the costs are sensitive, and it's  
15 very important to have experienced operators develop this  
16 resource. And if this was a dispute with Burlington and  
17 Pogo, it would go away and you would never hear it, because  
18 those are the two experienced operators in this pool.

19 The evidence will demonstrate to you that Penwell  
20 has no operations within miles of this pool, and yet they  
21 want to come in at the last minute and be designated the  
22 operator. We think that is inappropriate in the  
23 circumstances involved in this case, and that you ought to  
24 award the opportunity to Burlington to use their expertise  
25 that they have developed in the last few years in this

1 area, and to go ahead and drill this well for the benefit  
2 of all the interest owners.

3 You'll find that it becomes very interesting when  
4 you look at the percentages. The testimony from the  
5 witnesses will talk about the percentages involved in this  
6 well.

7 Penwell asserts that they have the overwhelming  
8 majority of the gross working interest and that for that  
9 fact, and perhaps that fact alone, you ought to let them  
10 drill.

11 I invite you to pay close attention, though, to  
12 who is going to pay actually how much of this well. The  
13 testimony before Examiner Stogner was that Penwell is going  
14 to pay 12.236 percent of this well and that Burlington is  
15 going to pay 13.4 percent. When it gets down to cutting  
16 the check, Burlington, in fact, is going to pay more.

17 We believe that at the conclusion of the hearing,  
18 after you hear our geologic presentation, our engineering  
19 expertise with regards to how we have operated in this  
20 area, and when you hear our land presentation, you will  
21 conclude, as Mr. Stogner concluded, that Burlington ought  
22 to be awarded the right to drill and operate this well.

23 Thank you very much.

24 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

25 Mr. Carr?

1 MR. CARR: May it please the Commission, the  
2 owners of 86.6 percent of the working interest in this  
3 spacing unit, in compliance with the provisions of the  
4 compulsory pooling statutes, have reached a voluntary  
5 agreement for the development of this acreage, and they  
6 have agreed that Penwell should operate the well.

7 Penwell came and entered the scene in August of  
8 last year, 1995 [sic]. And yet, the evidence will show  
9 that for 18 months prior to that time, Burlington was  
10 anxious to drill a well. And they will whine and complain  
11 about what happened, but the bottom line is, they stand  
12 before you today screaming, It's our turn. And for 18  
13 months it was their turn, and they did not drill the well.

14 They'll contrive all sorts of arguments about  
15 how, well, somebody else said they might. But the bottom  
16 line is, they have the right to drill, they could have, and  
17 they did not.

18 So when they talk about it being their turn,  
19 they're trumping up a false issue, they're misleading you.

20 Penwell entered the scene in August of this last  
21 year, and within one month, 86.6 percent of the working  
22 interest was committed to a well, if it would be drilled by  
23 them, and they were ready to go forward.

24 Burlington will play games with the numbers and  
25 they'll say, Well, Penwell pays 12 percent. But if you

1 even look at Mr. Stogner's order, you can see that Penwell,  
2 and its partner in every single venture in which it's  
3 involved in New Mexico, CoEnergy Central, together --  
4 together they pay 80-percent-plus of the costs of the well.  
5 And no matter what you do with the numbers for Burlington,  
6 they pay 13 percent.

7 But the fact of the matter is, we stand before  
8 you with the vast majority of the working interest owners,  
9 those who will pay the cost of the well, we've complied  
10 with the statute, we have a voluntary agreement, and we are  
11 now prepared to go forward to drill the well that for a  
12 year and a half Burlington could not get off the drawing  
13 board.

14 And what we have, yes, are competing pooling  
15 applications. And we came before an Examiner, and the  
16 Examiner order set aside the agreement of those of us who  
17 will pay the vast majority of the costs associated with  
18 developing the property, and they gave operations to  
19 Burlington. And I will tell you, there is one issue here,  
20 and that is who will operate the well. And in so doing, in  
21 giving operations to Burlington, they designated someone  
22 that 86.6 percent of the ownership did not want; they  
23 designated an operator unacceptable to the other owners.

24 The order that we are asking you to overturn, the  
25 Examiner order, we will show you, is factually incorrect.

1 It is legally wrong. And we're here today to ask you to  
2 correct that order, to honor the agreement that was  
3 voluntarily reached by 86.6 percent of the owners, and to  
4 let them develop this acreage and pay the costs to the  
5 operator they believe can best develop the property.

6 CHAIRMAN LEMAY: Thank you, Mr. Carr.

7 You may proceed, Mr. Kellahin.

8 MR. KELLAHIN: I'd like to call Leslyn Swierc to  
9 the stand. Ms. Swierc is a petroleum landman with  
10 Burlington Petroleum. She resides in Midland, Texas. She  
11 spells her last name S-w-i-e-r-c.

12 CHAIRMAN LEMAY: S-w-i-e-r- --

13 MR. KELLAHIN: -- -c.

14 CHAIRMAN LEMAY: -- -c.

15 LESLYN M. SWIERC,

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

18 DIRECT EXAMINATION

19 BY MR. KELLAHIN:

20 Q. Ms. Swierc, for the record, ma'am, would you  
21 please state your name and occupation?

22 A. My name is Leslyn Swierc. I'm a senior staff  
23 landman for Burlington Resources.

24 Q. And where do you reside?

25 A. I reside in Midland, Texas.

1 Q. On prior occasions have you qualified before the  
2 Division Examiner as an expert in matters of petroleum land  
3 management?

4 A. Yes, I have.

5 Q. Give us a short history of your experience with  
6 petroleum landman's work.

7 A. I began doing independent work in 1983. I worked  
8 as a broker, checking records, curing title, buying leases,  
9 for approximately five years.

10 I worked for two years for Gruss Petroleum, and  
11 Gruss Petroleum sold out completely, at which time I began  
12 working for Meridian Oil in 1989, which became Burlington  
13 resources.

14 During that time, I was involved in examining  
15 title, curing title, buying leases, negotiating contracts,  
16 preparation for drilling of wells, basically everything  
17 that involved normal petroleum land management.

18 Q. And for, I think, the -- at least the last year,  
19 you've been involved in this particular area, and  
20 specifically involved in this effort to get a well drilled  
21 in the spacing unit that's the subject of the hearing?

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

23 MR. KELLAHIN: Mr. Chairman, we tender Ms. Swierc  
24 as an expert landman.

25 CHAIRMAN LEMAY: Her qualifications are

1 acceptable.

2 Q. (By Mr. Kellahin) Let me have you turn to what  
3 we've marked as Exhibit 1. Let's take a moment to show the  
4 Commission the color today of what you're trying to  
5 illustrate here.

6 A. What this plat is attempting to illustrate to you  
7 today is an area where we are active in drilling.

8 If you'll note Section 24, where it's got the  
9 yellow color coding, the blue and the green together, the  
10 yellow represents acreage which Burlington owns 100  
11 percent. The blue acreage is the acreage which is the  
12 subject of this hearing today; it's owned by Burlington,  
13 Penwell and Mr. Losee's daughters. The green acreage  
14 represents acreage which is owned by Pogo Producing  
15 Company.

16 And then the pink, when you look further south in  
17 Section 25, is acreage that's owned jointly by Pogo and  
18 Burlington in this area.

19 Q. When we look at the 40-acre tract in Section 24,  
20 we're dealing with the northwest quarter of the southeast  
21 quarter of that section?

22 A. That is correct.

23 Q. To your knowledge, what type of oil and gas lease  
24 covers that 40-acre tract?

25 A. It's a federal oil and gas lease.

1 Q. Have you had title work done to determine at  
2 various points in time who were the interest owners of that  
3 federal oil and gas lease?

4 A. Yes, sir, I have.

5 Q. Let's turn to Exhibit 2 and look at the various  
6 points in time in which you have concluded what the  
7 interests were with regards to that spacing unit. Let's  
8 start with Exhibit 2, the first page, August 12th of 1996.  
9 What were you able to conclude?

10 A. On August 12th of 1996, I had David Logan, who's  
11 an independent broker working out of Midland, Texas, check  
12 the county and the BLM records, and his compilation of the  
13 ownership is as follows: Frederick Prince owned 50 percent  
14 of the working interest. Mr. Trainer owned 31 percent.  
15 Meridian, now Burlington, owned 13.4. Ann Losee owned 2.5  
16 percent, and Elizabeth Losee owned 2.5 percent.

17 Q. Are those percentages consistent with data at  
18 Burlington's office to show what the interests were in  
19 January of 1995?

20 A. Yes, sir, they are.

21 Q. So from January of 1995 through August 12th of  
22 1996, those interests remained unchanged?

23 A. That's correct.

24 Q. Okay. Have you subsequently had those interests  
25 checked to see what the status is?

1           A.    Yes, sir, I did.  As of January the 14th, I had  
2 Federal Abstract run another check of those records for the  
3 same oil and gas lease.  They checked the federal records,  
4 and the federal records are showing that the operating  
5 rights, as of January 14th, were owned by:  C.W. Trainer,  
6 81 percent; Meridian, 13.4 percent; Elizabeth Losee, 2.5  
7 percent; and Ann Losee, 2.5 percent.

8           Q.    All right.  So as of yesterday, the federal  
9 records show those interest still to be held in the same  
10 percentages?

11          A.    Yes, sir, they do.

12          Q.    All right.  Let's start chronologically with  
13 Meridian, now Burlington's, efforts to get the well drilled  
14 in the 40-acre tract, and let's go back to early 1995 and  
15 start at that point.

16                If you'll turn with me to Exhibit Number 3, let's  
17 take a moment and talk about the application for permit to  
18 drill.

19          A.    Okay.

20          Q.    What are we seeing here?

21          A.    In February of 1995, as you stated, Meridian did  
22 file an application for permit to drill the Checkmate 24  
23 Federal Number 1.

24                It was approved, and we subsequently filed for a  
25 sundry notice, and that sundry notice was -- granted

1 Meridian, or Burlington, an extension until May 4th of  
2 1997, in which to get this well drilled.

3 Q. To the best of your knowledge is this application  
4 for a permit to drill still in full force and effect,  
5 having been approved by the BLM for operations by Meridian,  
6 now Burlington?

7 A. Yes, sir, it is.

8 Q. Having satisfied yourself that you could, in  
9 fact, get the BLM to permit a well in this 40-acre tract,  
10 did Burlington attempt to consolidate, then, the interest  
11 owners so that they would have an opportunity to  
12 participate in that well?

13 A. Yes, sir, they did.

14 Q. And how did that happen?

15 A. Well, prior to -- You'll see my next exhibit,  
16 Number 4, is a letter dated April 21st, 1995, where Trey  
17 Shepherd, the landman that was working this area prior to  
18 my taking over, proposed the drilling of a 9000-foot Bone  
19 Spring test, to be drilled in the northeast -- excuse me,  
20 the northwest quarter of the southeast quarter of Section  
21 24.

22 Prior to that time -- I want to take you back to  
23 1992 -- Burlington was also in the process of trying to  
24 purchase additional interests in that area and had made  
25 offers to all the individuals at that time and was able to

1 acquire that 13.4 percent that we currently owned.

2 So prior to the time of proposing the well,  
3 Burlington had tried to purchase the interests out there,  
4 and 13.4 percent was the amount that they were successful  
5 at purchasing.

6 Then in April of 1995, Burlington then proposed  
7 the drilling of the Bone Spring test, to the parties whom  
8 it could not purchase.

9 Q. A search of Burlington's records reflects what,  
10 as the next significant event, Ms. Swierc?

11 A. The next significant event, if you'll turn with  
12 me to Exhibit Number 5, is a letter that was received by  
13 Mr. Trey Shepherd from C.W. Trainer.

14 In this letter, Mr. Trainer is stating that he is  
15 returning Meridian's original AFE, and he is submitting a  
16 subsequent AFE. The location is the same, and the  
17 objective depth is the same; but he's returning  
18 Burlington's AFE, stating that he would prefer that he  
19 would operate, therefore he's resubmitting his AFE to take  
20 the place of Meridian's AFE.

21 Q. The two proposal AFEs at this point are about,  
22 oh, \$24,000 apart, I assume?

23 A. That's correct.

24 Q. What happened then, after receiving Mr. Trainer's  
25 counter-proposed AFE, that he now be authorized to go ahead

1 and drill the well that you originally proposed?

2 A. We were excited about the results of a test well  
3 that had been drilled in the area, and we were anxious to  
4 get the well drilled.

5 So in June, then, of 1995, which is Exhibit  
6 Number 6, if you'll turn with me, in June of 1995, Meridian  
7 executed Mr. Trainer's AFE, returned it to him, and asked  
8 that we be notified as soon as he was prepared to drill the  
9 well.

10 Q. What had you thought Meridian had achieved at  
11 this point, then?

12 A. We thought that we had achieved a voluntary  
13 agreement by the majority of the parties and that we were  
14 going to get a well drilled.

15 Q. And who was going to do that well?

16 A. And Mr. Trainer was going to drill that well.

17 Q. What happened next?

18 A. Nothing really occurred with the drilling of the  
19 well, so in September of 1995, if you'll turn with me,  
20 please, to Exhibit Number 7 --

21 Q. All right.

22 A. -- on September 7th of 1995, Trey Shepherd wrote  
23 a letter to the working interest partners, and he basically  
24 went through the chronology again, that we had proposed the  
25 well to the partners on April 21st of 1995.

1           On May 4th, Mr. Trainer returned our AFE and  
2 submitted his own.

3           On June 15th, we returned his AFE, stating that  
4 we were ready to drill, but as of this date, in September,  
5 no drilling operations had begun.

6           So he made a proposal in this letter to purchase  
7 the interest of all the parties for \$500 per acre, if the  
8 well were not going to be drilled.

9           Q.    Did that effort result in Mr. Trainer commencing  
10 the well at that time?

11          A.    No, sir, it did not.

12          Q.    What does a search of Meridian's records show  
13 with regards to the next significant event?

14          A.    If you'll please turn with me to Exhibit Number  
15 8, it's a memo, an internal memo that was generated by Mr.  
16 Trey Shepherd, again, stating that -- this is in, now,  
17 December of 1995 -- that he had had a telephone  
18 conversation with Mr. C.W. Trainer concerning the drilling  
19 of this well, and also the purchase of the interest.

20                Mr. Trainer made it clear to Mr. Shepherd that he  
21 would sell his interest in this acreage and that he also  
22 spoke for Mr. Prince in the selling of this acreage, but he  
23 wanted \$4000 per acre to sell his interest to Burlington.

24                Mr. Shepherd told Mr. Trainer that the price was  
25 outrageous and that we couldn't purchase the interest for

1 \$4000 per acre; it simply would not meet our economic  
2 parameters.

3 And Mr. Trainer then stated that he would proceed  
4 with the drilling of this well sometime in 1996, after he  
5 had lined up certain financial obligations and concluded  
6 other obligations that he had on his plate.

7 Q. From December, 1995, to August of 1996, did Mr.  
8 Trainer act to get the well drilled?

9 A. No, sir, he did not.

10 Q. In August of 1996, did you take action to  
11 repropose the well to the parties?

12 A. Yes, sir, I did.

13 Q. Let's turn to Exhibit 9 and have you describe  
14 what you did.

15 A. Exhibit 9 is a letter dated August 14th, 1996. I  
16 had taken over this area in January of 1996, and in August,  
17 then, repropose the same well at the same location to the  
18 same objective depth, to the working interest owners at  
19 that time, being Frederick Prince, C.W. Trainer, Ann Losee  
20 and Elizabeth Losee.

21 And we also submitted our AFE for \$651,000, which  
22 was less than our previous AFE for \$699,000.

23 Q. What's your perception, as a landman, as to  
24 what's happening to these estimated costs? What's driving  
25 them down?

1           A.    The experience that we have in the area has shown  
2 that there are significant operational pieces to the  
3 business that can control costs, and as a landman what I  
4 see is that, as we continue to drill more wells, we find  
5 ways that we can further reduce costs, simply by experience  
6 and correcting mistakes as we go along.

7           Q.    Who are the primary technical people on your team  
8 that are analyzing those details for you and looking at  
9 operations, engineering aspects and the geology?

10          A.    The reservoir engineer that's working this area  
11 is Doug Seams, the geologist that's working the area is  
12 Markus Thomerson. We also have a geophysicist that's  
13 working the area; his name is Mr. Hugh Hayes. We have a  
14 facilities engineer, Mr. Ralph Castille, that works the  
15 area, and a production engineer, Jack Gevecker, that works  
16 the area as well.

17                And all of these individuals are involved on a  
18 daily basis. Part of our job at Burlington Resources is  
19 working to reduce costs, and --

20          Q.    As you get these revised AFEs and as the costs  
21 are re-analyzed, you're distributing those cost AFEs to the  
22 interest owners that would participate in the well?

23          A.    That is correct.

24          Q.    What happened following the August 14th, 1996,  
25 submittal to these parties? You said you sent this letter

1 to Prince, Mr. Trainer and Mr. Losee's daughters.

2 A. Yes, sir.

3 Q. What happened then?

4 A. On August 23rd, Mr. Trainer -- Actually, it was  
5 the day before, Mr. Trainer called and suggested that we  
6 have a meeting to discuss this well.

7 And on the next day, on August 23rd, Mr. Trainer  
8 came to Meridian's office and sat down with us and he had  
9 another proposal that he wanted to show us. We discussed  
10 the previous -- or his proposal, and then we discussed the  
11 drilling of this well.

12 Mr. Trainer told us that at that point that he  
13 agreed with the location, he agreed with the objective  
14 depth, he agreed that the well needed to be drilled, that  
15 he was in the process of trying to line up additional  
16 financing so that he could get the well drilled, but that  
17 he would prefer that he operated, and that he would not  
18 sign Burlington's AFE because simply he preferred to  
19 operate.

20 Q. The next exhibit is Exhibit 10?

21 A. Exhibit 10.

22 Q. Yes, ma'am. What's the point of this letter?

23 A. The point of this letter is to -- after the  
24 letter -- or the meeting on August 23rd, it was evident  
25 that Mr. Trainer and Mr. Prince were not going to sign

1 Burlington's AFE, and at that time I instructed you to go  
2 ahead and file for compulsory pooling.

3 On August 27th, it's a letter to the partner  
4 stating that we had applied for compulsory pooling, however  
5 we were still going to allow the partners their full 30  
6 days to make an election.

7 Q. Following that letter, did you have subsequent  
8 conversations with Mr. Trainer with regards to his  
9 intentions concerning the compulsory pooling matter?

10 A. No, sir, I did not.

11 Q. Mr. Trainer was served with a copy of the  
12 compulsory pooling application on August 30th, 1996; I  
13 believe the record reflects that?

14 A. Yes, sir.

15 Q. Did you have any conversations with Mr. Trainer  
16 after that time?

17 A. No, sir, I did not.

18 Q. Let's turn to Exhibit 11. Would you identify and  
19 describe what this is?

20 A. This is an application by Penwell Energy for  
21 compulsory pooling, and I think that application is dated  
22 September 10th.

23 Q. Yes, ma'am, it's hard to read, but the records  
24 confirm here that it was filed on September 10th.

25 At the time Penwell filed its compulsory pooling

1 application on September 10th, had Penwell given you a  
2 letter and an AFE inviting you to participate in the well  
3 if they should drill it?

4 A. No, sir.

5 Q. You got that after they had filed for force-  
6 pooling?

7 A. Yes, sir, I got it the next day.

8 Q. All right. Let's look at that. It's what?  
9 Exhibit 12?

10 A. Exhibit Number 12.

11 Q. All right. What is Penwell now proposing back to  
12 Burlington?

13 A. Penwell is now proposing that they drill the same  
14 well at the same location to the same objective depth, but  
15 rather they're submitting their AFE and proposing that they  
16 operate, and they're also telling us that they have filed  
17 for compulsory pooling.

18 Q. Did you talk to Mr. Mark Wheeler of Penwell with  
19 regards to the competing efforts of Burlington and Penwell  
20 to operate the well?

21 A. Yes, sir, we did.

22 Q. Did you receive any communication from Mr.  
23 Wheeler with regards to how he happened to obtain the  
24 interest from Trainer and Prince that he was contending  
25 gave him the right now to be a party that could propose the

1 well?

2 A. Yes, sir, Mr. Wheeler was very cooperative in  
3 telling me that he was, in fact, dealing with Mr. Trainer  
4 and Mr. Prince, and he provided me a copy of a letter, also  
5 dated September 10th, which is Exhibit Number 13, where he  
6 had an agreement in principle with Mr. Trainer and Mr.  
7 Prince to purchase their interests.

8 The thing that's interesting to note, in  
9 paragraph number 7 of this letter, Penwell stated that it  
10 had -- in the case that it was unsuccessful in gaining  
11 operations of this well, that it had the right to withdraw  
12 from this obligation to purchase the interest from Mr.  
13 Trainer and Mr. Prince.

14 Q. What concern did you have on behalf of your  
15 company as to whether Penwell was going to go forward and  
16 drill the well, based upon this type of agreement?

17 A. The concern that I had with the experience in  
18 dealing with Mr. Trainer in the past, and the concern was  
19 whether or not this deal was actually going to close or  
20 not.

21 So if it didn't, would Burlington find itself in  
22 the same situation it had been in 17 months prior, where  
23 Trainer-Prince still owned the interest, and we're no  
24 closer to getting the well drilled now than we were at that  
25 previous time.

1 Q. Paragraph number 2 of that letter, on the first  
2 page, references the verbal agreement which apparently  
3 commits Penwell to commence the well on or before November  
4 15th. Do you see that?

5 A. Yes, sir.

6 Q. Did you have any conversations with Mr. Wheeler  
7 as -- about when Penwell intended to commence the well?

8 A. Yes, sir, we talked to Penwell and asked them if  
9 they could guarantee a well would be drilled by October  
10 15th. They said they would use their best efforts but that  
11 they could not guarantee that a well would be drilled by  
12 that time.

13 Q. Okay. Let's turn now to the next item of  
14 correspondence you're submitting. It's Exhibit 14.  
15 Identify and describe that for us, please.

16 A. Exhibit 14 is a letter dated September 13th, from  
17 Penwell Energy, and they're sending us a revised AFE. The  
18 AFE that they submitted on September 10th contained a  
19 mathematical error, and their price for the AFE had  
20 increased to \$649,000.

21 Q. Prior to Burlington's filing its compulsory  
22 pooling case on August 26th, 1996, do you have an opinion  
23 as to whether or not you had exhausted all efforts to get  
24 Trainer, Prince and the Losee daughters to voluntarily join  
25 in this effort?

1           A.    Yes, sir, I think we had. We had had numerous  
2           conversations, and when I say "we", I'm referring to the  
3           reservoir engineer and myself that were working the area.  
4           At the time it was Mr. Billy Juroska.

5                     Mr. Juroska had numerous conversations with Mr.  
6           Trainer on unrelated issues but would always ask Mr.  
7           Trainer, When are you going to get our well drilled, when  
8           are you going to get our well drilled?

9                     And Mr. Trainer would always respond, As soon as  
10          I can get the financing, as soon as I can get a rig lined  
11          up. I mean, he was always very cordial, but had a reason  
12          -- but had never started the well.

13                    In one of those conversations, I was in Mr.  
14          Juroska's office and asked him again if he would be  
15          interested in selling his interest, and he said yes, for  
16          the going rate of \$4000 per acre.

17                    And we kind of laughed, and --

18                    Q.    That was outside of your budget, wasn't it?

19                    A.    That was outside our budget.

20                    Q.    Yeah. By August 26th of 1996, then, in your  
21          opinion, there was no opportunity to get these parties to  
22          agree with you?

23                    A.    No, sir.

24                    Q.    And they, in fact -- Mr. Trainer had the full  
25          right to commence drilling a well?

1 A. That is correct.

2 Q. After he was served with the force-pooling  
3 application, then, Penwell surfaced on the scene?

4 A. Yes, sir.

5 Q. Let's turn to the next item of correspondence.  
6 It's the Exhibit 15. Would you identify and describe for  
7 us what you're showing here?

8 A. Yes, sir, on November 27th, I sent a ballot to  
9 all the parties.

10 Q. This is after the compulsory pooling order has  
11 been issued by the Division?

12 A. Yes, sir, it is.

13 Q. And you're providing them their elections under  
14 the order?

15 A. That is correct.

16 Q. All right. Exhibit 16, Ms. Swierc, what's this?

17 A. Exhibit 16 is a letter dated December 20th.

18 As we stated in the previous hearing before  
19 Examiner Stogner, Burlington had an internal committee  
20 where we were working to reduce costs in this area because  
21 of the cost-sensitivity and the very nature of trying to  
22 reduce costs in this area. We promised that we would do  
23 what we could to reduce our costs even further.

24 So based on the findings of that committee, a new  
25 AFE was able to be generated, and we reduced our costs from

1 \$651,000 to \$618,000 and provided that revised AFE to all  
2 of the parties.

3 Q. Do you have a recommendation to the Commission  
4 concerning proposed overhead rates, should the Commission  
5 affirm Examiner Stogner's order?

6 A. Yes, sir, we do. We're proposing \$5000 per well-  
7 month for a drilling well rate, and we're proposing \$500  
8 per well month for a producing well rate. That rate is  
9 commensurate with rates that we're currently charging in  
10 the area, and it's also commensurate with rates that Pogo  
11 was charging in the area where we are a nonoperator and  
12 paying those rates.

13 Q. To the best of your knowledge, Ms. Swierc, does  
14 Burlington have a rig available to commence the timely  
15 drilling of this well, should the Commission allow us to  
16 proceed?

17 A. Yes, sir, we do. We've got a rig available that  
18 has just completed drilling one well. It's moving to  
19 another well that's just offsetting this, and we'll be  
20 prepared to move that rig down to this well.

21 MR. KELLAHIN: Mr. Chairman, that concludes my  
22 examination of Ms. Swierc.

23 We move the introduction of her Exhibits 1  
24 through 16.

25 CHAIRMAN LEMAY: Without objection, Exhibits 1

1 through 16 will be admitted into the record.

2 Mr. Carr?

3 MR. CARR: Thank you, Mr. Chairman.

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Ms. Swierc, let's go to Exhibit Number 1. If I  
7 understand your testimony, what we're talking about here  
8 today is the development of the blue acreage in the  
9 southeast quarter of Section 24; is that right?

10 A. That's correct.

11 Q. And in that tract, Burlington owns slightly over  
12 13 percent of the working interest ownership; is that  
13 right?

14 A. That's correct.

15 Q. And after two years of trying to reach voluntary  
16 agreement for the development of that tract with the other  
17 86.6 percent, you have not been able to get one other  
18 interest owner to join with you; is that a fair statement?

19 A. Yes, sir.

20 Q. Now, if a well is drilled as you propose on that  
21 tract, and you're operator, Burlington will only pay  
22 slightly over 13 percent of those costs; is that not right?

23 A. That's correct, if all the other parties  
24 participate.

25 Q. And if they don't, then you would still be able

1 to collect their share out of production later on, you  
2 assume?

3 A. Yes, sir.

4 Q. Plus a penalty?

5 A. Yes, sir.

6 Q. What future plans does Burlington have for the  
7 development of the blue acreage in Section 24?

8 A. We have plans to develop it the same that we have  
9 developed the other acreage in the area. We drill a well,  
10 we evaluate it, operate it prudently, and depending on the  
11 success of that well, then we drill development wells based  
12 upon that.

13 Q. And you take them one at a time?

14 A. Yes, sir, we do.

15 Q. You don't come forward with a number of them and  
16 force people to make elections on a group of wells at a  
17 time?

18 A. No, sir, I don't think that would be a wise  
19 decision.

20 Q. Have you staked any locations in the acreage in  
21 Section 24?

22 A. We've staked the first location.

23 Q. Other than the one we're talking about?

24 A. No, sir, we have not.

25 Q. Have you made formal proposals of any additional

1 wells in that acreage?

2 A. No, sir, we have not.

3 Q. If I understood your testimony, you looked in the  
4 public records back in August, on August the 12th, and,  
5 based on your search of the federal records, ascertained  
6 that Mr. Trainer and Mr. Pierce -- or Mr. Prince --

7 A. Prince, yes, sir.

8 Q. -- actually had the operating rights; is that  
9 correct?

10 A. That's correct.

11 Q. And again, you checked yesterday, and the federal  
12 records indicated that those individuals still owned the  
13 operating rights?

14 A. That's correct.

15 Q. Have you filed assignments of operating rights  
16 with the federal government, the BLM?

17 A. Yes, sir.

18 Q. It's fair to say that there is a period of time  
19 that it takes before those things actually are approved and  
20 find their way into the record?

21 A. That is correct.

22 Q. And so just because there has not in the BLM  
23 records been a transfer of these rights to Trainer and  
24 Prince, it isn't your testimony -- or intent of your  
25 testimony here today to suggest that Penwell doesn't own an

1 interest in the property?

2 A. No, sir, that's not my testimony at all.

3 Q. Did you check the records of Lea County, New  
4 Mexico, to determine whether or not they had an interest  
5 recorded in this property?

6 A. Yes, I had a broker check that, and unfortunately  
7 I was not able to speak to him before I came today.

8 Q. So we don't know yet what that is?

9 A. That's correct.

10 Q. Burlington became interested in developing this  
11 particular property because of an offsetting well drilled  
12 in 1994; isn't that right?

13 A. Yes, sir.

14 Q. And because of that, in April of 1995  
15 Burlington/Meridian proposed -- made the initial proposal  
16 to the other interest owners for a well to test the  
17 Delaware in this area?

18 A. That's correct. Actually, to test the Bone  
19 Spring.

20 Q. At the time you proposed that well in April,  
21 Meridian/Burlington owned operating rights in the tract; is  
22 that not correct?

23 A. Yes, sir.

24 Q. And you could have filed a force-pooling  
25 application back in 1995, could you not?

1           A.    Yes, sir.

2           Q.    And you did not do that because of negotiations  
3 with Mr. Trainer and Mr. Prince; is that the reason for not  
4 going forward with the well under Burlington's name?

5           A.    That's correct.  And Mr. Carr, I believe you even  
6 stated that the statute requires us to try to reach a  
7 voluntary agreement, and I think that's what we were trying  
8 to do during that time period.

9           Q.    Do you normally allow 15 to 18 months to reach  
10 voluntary agreement?

11          A.    Sometimes it takes over a year to reach voluntary  
12 agreement, yes, sir.

13          Q.    And is that, in your opinion, a prudent thing to  
14 do when you're anxious to drill a well because of  
15 offsetting production?

16          A.    I think the prudent thing to do is to make a wise  
17 decision with respect to the production from the well and  
18 how it affects your economics.

19                Obviously, I said that we were very excited about  
20 drilling the well when the test well was drilled, because  
21 the production was so high.

22                But significant changes occurred.  The production  
23 fell off, and we began to see that cost savings was going  
24 to be very significant in this area, because the wells were  
25 not as prolific as we had initially thought.

1 Q. And one of the reasons you've testified that  
2 Burlington would like to be designated operator of the well  
3 is because of your experience in the area; isn't that  
4 right?

5 A. Yes, sir.

6 Q. And yet for 15 months you were willing to have  
7 Mr. Trainer drill the well; is that correct?

8 A. Yes, sir.

9 Q. Do you have any idea how many wells to the Bone  
10 Spring or Delaware in the area Mr. Trainer has recently  
11 drilled?

12 A. No, sir, I don't.

13 Q. That decision, I guess, had nothing to do, or do  
14 you know if it had anything to do with the expertise of Mr.  
15 Trainer?

16 A. That had nothing to do with the expertise of Mr.  
17 Trainer. We were trying to cooperate with Mr. Trainer.

18 Q. And that started by -- in May of 1995, with an  
19 AFE and an agreement for Mr. Trainer to drill the well?

20 A. Yes, sir.

21 Q. And then you took no activity other than  
22 contacting him and encouraging him for 15 months; is that  
23 right?

24 A. Yes, sir.

25 Q. Now, on August 15 of 1995, if I understood your

1 testimony, you again proposed the well; is that right?

2 A. I beg your pardon?

3 Q. August 15th of 1995, was that when you again  
4 proposed the well? I'm sorry --

5 A. No, it --

6 Q. -- 1996.

7 A. August 14th of 1996, yes, sir.

8 Q. And it was, then, on the 26th of August that a  
9 compulsory pooling application was filed by Burlington; is  
10 that right?

11 A. Yes, sir.

12 Q. Did not Penwell contact you and request a  
13 continuance of the original hearing date on the compulsory  
14 pooling application?

15 A. Yes, sir.

16 Q. And you declined to grant that continuance or  
17 agree to it; is that not right?

18 A. That's right.

19 Q. And wasn't it at that time that you were advised  
20 by Penwell that if you couldn't give them a continuance,  
21 they would have to file a companion pooling cases?

22 A. I suppose, yes, sir.

23 Q. And that was filed on September the 10th,  
24 correct?

25 A. Yes.

1 Q. And that's why we're here today, right?

2 A. That's correct.

3 Q. When did you learn Penwell was actually involved  
4 in the effort to develop this acreage?

5 A. I think it was -- I don't recall the exact date,  
6 but I think it was around the end of August.

7 Q. At that time you knew Penwell was trying to  
8 negotiate with Mr. Trainer, did you not?

9 A. Yes, sir.

10 Q. And you basically agreed not to get in the way of  
11 those negotiations?

12 A. That is correct, I told Mr. Wheeler that we would  
13 not do anything to try to query his deal [*sic*] with Mr.  
14 Trainer.

15 Q. You were hoping it would be easier for them,  
16 perhaps, to reach an agreement with Mr. Trainer?

17 A. Certainly.

18 Q. And you knew that it was really -- what Penwell  
19 was proposing was really the same proposal that you were  
20 proposing?

21 A. The same well?

22 Q. Yes.

23 A. Yes.

24 Q. Same location?

25 A. The same objective depth.

1 Q. And isn't it fair to say here, the one question  
2 presented to the Commission today is simply who is going to  
3 be entitled to operate this well?

4 A. Yes, sir, I would say so.

5 Q. Now, you talked about negotiations with Penwell  
6 and stated that you asked if they could guarantee that a  
7 well would be drilled in October of 1995?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. And they agreed to do the best they could; isn't  
12 that right?

13 A. Right.

14 Q. If another operator comes to Burlington and says,  
15 Will you guarantee a well on a certain date, is that the  
16 kind of guarantee you normally make?

17 A. We will do the best we can.

18 Q. And that's just what Penwell agreed to do, the  
19 best they could, right?

20 A. Right.

21 Q. Back in October of last year, you were aware that  
22 Penwell was going forward with a drilling title opinion,  
23 did you not?

24 A. Yes, sir.

25 Q. Did you have one at that time?

1 A. A drilling title opinion?

2 Q. Yes.

3 A. I had one on offsetting acreage. The lease was  
4 common, and I did not have one on this tract of land.

5 Q. Have you prepared a drilling title opinion on  
6 this tract as of this date?

7 A. No, sir, I have not.

8 Q. Back in October, there was concern on your part,  
9 or expressed, that Burlington might lose its funding if  
10 this well was not drilled by the end of 1996. I assume  
11 from your presence today that's no longer an issue?

12 A. Actually, that did occur. We -- The reason that  
13 it was so imperative that we get the well drilled by  
14 October 15th of 1996 is that internally, Burlington's vice  
15 president -- or our division's vice president, wants all of  
16 our capital spending either done or commenced by October of  
17 any given year, and that's why we were very anxious to get  
18 it done. The fact that the well was going to be drilled  
19 within that year, we were able to say that we were  
20 committed and we were able to keep that funding.

21 At the end of that year, of 1996, we did lose  
22 that funding. But because we had received a favorable  
23 order from the Commission, we were able to go ahead and  
24 capture funding for next year.

25 Q. Now, that favorable order was entered by the

1 Division on November 26th, was it not?

2 A. That's correct.

3 Q. And on November 27, did not Burlington send an  
4 additional AFE to the parties involved in this case?

5 A. Yes, sir.

6 Q. And was not that the identical AFE that had been  
7 presented at the time of the Examiner hearing?

8 A. Yes, sir, it was.

9 Q. And then it was about two weeks later that the  
10 new AFE that we're looking at today was then sent to the  
11 parties?

12 A. That's correct.

13 Q. Was that AFE prepared because of this hearing?

14 A. No, sir, we were in the process of working our  
15 cost reduction methods at that time, but it was my intent  
16 to get the clock started as quickly as I could on the 30-  
17 day election period, because we knew that the end of the  
18 year was coming up, we knew we had to get a rig, we knew  
19 that time was of the essence. Therefore, I wanted to get  
20 the ball rolling.

21 Concurrently with that, our engineers were in  
22 house working up a new AFE, getting bids so that we could  
23 get our cost reductions.

24 Q. And when you sent that initial AFE out right  
25 after the hearing, did you know that the case was going to

1 be taken to a Commission de novo hearing?

2 A. No, sir, I did not.

3 Q. And it was after you learned that, that the lower  
4 AFE was then --

5 A. Perhaps.

6 Q. It was mailed, in fact, on December the 20th, was  
7 it not?

8 A. Yes, sir.

9 Q. What negotiations did you have with Mr. Losee or  
10 his daughters?

11 A. I spoke with Mr. Losee on one occasion, and in  
12 that conversation Mr. Losee stated that he would like to  
13 see the well drilled, but that he was concerned about some  
14 accounting issues that he had with Burlington and he did  
15 not want to support Burlington as operator due to those  
16 accounting issues.

17 Q. Did this occur back in April of 1995?

18 A. No, sir, the conversation I had with Mr. Losee, I  
19 believe, was the end of August of 1996.

20 Q. And had you talked with Mr. Losee or his  
21 daughters back in April of 1995 when you initially proposed  
22 the well?

23 A. No, sir, I did not. Trey Shepherd worked the  
24 area at that time.

25 Q. Are you aware of any of the background on the

1 problems that Mr. Losee had had with accounting issues with  
2 Burlington?

3 A. I'm not fully aware of the facts. I think that  
4 he was concerned about not being paid.

5 Q. Did he tell you he had been paid for oil at the  
6 wrong price?

7 A. No, sir.

8 Q. Did he tell you that there had been substantial  
9 delays in getting payment?

10 A. Yes, sir, he did.

11 Q. Did he tell you that he had been unable to figure  
12 out the statements that came with his checks?

13 A. No, sir, he didn't state that.

14 Q. Did he talk to you about efforts that he had to  
15 undertake to get these matters corrected?

16 A. No, sir, we didn't go into those details.

17 Q. Did he talk with you to determine whether or not  
18 payments, including royalty, had been made in accordance  
19 with the -- based on the proper pricing?

20 A. No, sir.

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

22 CHAIRMAN LEMAY: Thank you, Mr. Carr.

23 REDIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q. Ms. Swierc, with regards to Mr. Losee, have you

1 made inquiry to determine whether the appropriate  
2 accounting people are attempting to address Mr. Losee's  
3 concern with regards to these issues which involve other  
4 properties?

5 A. Yes, sir, I have. I've contacted our accounting  
6 group, and they say that they are making every effort to  
7 correct any problems that Mr. Losee has with our  
8 accounting.

9 Q. In fact, Mr. Losee is due a refund check, I  
10 believe, that's being processed as we speak?

11 A. That is correct.

12 MR. KELLAHIN: All right, no further questions.

13 CHAIRMAN LEMAY: Commissioner Weiss?

14 COMMISSIONER WEISS: I have no questions.

15 CHAIRMAN LEMAY: Commissioner Bailey?

16 EXAMINATION

17 BY COMMISSIONER BAILEY:

18 Q. The \$500-per-acre offer --

19 A. Yes, ma'am.

20 Q. -- that you made to Mr. Trainer, and then his  
21 \$4000 counteroffer --

22 A. Yes, ma'am.

23 Q. -- how do those compare with the comparable  
24 prices in the field at that time?

25 A. At that time, the \$500 per acre was a very fair

1 price. I think the \$4000 per acre in the area is very  
2 outrageous.

3 Q. Meridian had bought their interest in 1992. Do  
4 you recall what that price was when you bought it?

5 A. I don't recall the exact price, no, ma'am. But I  
6 know it was nowhere close to \$4000 per acre.

7 Q. Was it close to \$500 per acre?

8 A. Yes. I can get that exact number.

9 COMMISSIONER BAILEY: That's all I have.

10 EXAMINATION

11 BY CHAIRMAN LEMAY:

12 Q. Going into this lease, Ms. -- Swierc, is it?

13 A. Swierc.

14 Q. Swierc.

15 A. Yes, sir.

16 Q. -- you picked it up in 1989. I'm just curious  
17 how Mr. Prince acquired the lease. Was this a KGS tract,  
18 or was it a federal filing tract way back, or do you know  
19 anything about the origin of the lease?

20 A. I'm uncertain. I just -- I know that we  
21 purchased our interest in 1992, and I think it's just a  
22 competitive lease that he purchased. I don't even have the  
23 exact date of the lease now. Let me see. A competitive  
24 lease, 1989.

25 Q. You have it 7-1-89. So --

1           A.    Right.

2           Q.    -- was it your idea that Mr. Prince was the  
3 purchaser of that lease?

4           A.    Actually, I think Mr. Trainer purchased the  
5 lease, and then it was standard practice that he assigned a  
6 portion of it to Mr. Prince.

7           Q.    Mr. Prince has the largest percentage of the  
8 lease.

9           A.    Yes, sir.

10          Q.    And in your negotiations with Mr. Trainer, did  
11 you ever negotiate with Mr. Prince separately, or was Mr.  
12 Trainer always the spokesman for Mr. Prince?

13          A.    Mr. Trainer just was always the spokesman for Mr.  
14 Prince. I have spoken with Mr. Prince. He's in  
15 Washington, D.C., and very difficult to reach, and Mr.  
16 Trainer primarily spoke for Mr. Prince.

17          Q.    So in you offer, you offered the \$500 an acre to  
18 all parties, but Mr. Trainer was the respondent and spoke  
19 for all parties concerning the \$4000-per-acre counteroffer?

20          A.    He spoke for Mr. Trainer and for Mr. Prince. He  
21 did not speak for the Losees.

22          Q.    Was there anything in between -- discussed  
23 between \$500 an acre and \$4000 an acre?

24          A.    No, sir, actually there was not. Mr. Trainer was  
25 adamant about what he wanted for his acreage.

1 Q. Did you offer anything above \$500 an acre?

2 A. I asked him what he would take, and he said \$5000  
3 [sic] per acre.

4 Q. You talk back in excess override, anything  
5 besides cost per acres?

6 A. Oh, yes, sir, we discussed numerous -- numerous  
7 terms.

8 Q. Were there any other offers on the table, that  
9 you know of, that didn't have to do just cost per acre but  
10 had to do with equity interest in the farmout?

11 A. No, sir. Equity interest in the farmout --

12 Q. Well, in terms of -- Many deals or constructed  
13 not only on cost per acre --

14 A. Right.

15 Q. -- but there could be a back-in involved --

16 A. Right.

17 Q. -- after payout, there could be additional  
18 override --

19 A. Right.

20 Q. -- convertible after payout or before payout.

21 There's lots of deals. Cost per acre isn't necessarily the  
22 only way to make a trade.

23 A. You're exactly right, and in those negotiations  
24 there was a net revenue associated with those costs per  
25 acre. We have certain economic parameters that we have to

1 meet internally in order to be able to justify paying a  
2 certain thing per acre.

3 And I don't -- Not only is it a cost per acre,  
4 but it's a certain net revenue level that we have to have.  
5 And also back-ins after payout affect our economics in a  
6 way that we have to look at each one of those individually.

7 Q. Was the 85-percent net revenue -- is that what  
8 you offered --

9 A. Yes, sir --

10 Q. -- what you wanted, obviously?

11 A. -- that's what we wanted, but we were willing to  
12 accept a lower net revenue interest, and I told him that.

13 Q. But that was never negotiated any further?

14 A. In conversations, just the fact that we would  
15 accept a lower net revenue interest. I asked him if he  
16 would sell the interest at an 80-percent net and keep that  
17 override.

18 But he was pretty adamant about the \$4000 per  
19 acre.

20 CHAIRMAN LEMAY: There will be additional  
21 testimony concerning the prospect and the area. There's  
22 some geology --

23 MR. KELLAHIN: Yes, sir.

24 CHAIRMAN LEMAY: -- and engineering --

25 MR. KELLAHIN: Yes, sir.

1 CHAIRMAN LEMAY: -- from that point of view?

2 That's all I had.

3 Mr. Weiss?

4 COMMISSIONER WEISS: No additional questions.

5 CHAIRMAN LEMAY: Okay. Thank you, you may be  
6 excused.

7 THE WITNESS: Thank you.

8 MARKUS D. THOMERSON,

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

11 DIRECT EXAMINATION

12 BY MR. KELLAHIN:

13 Q. Mr. Thomerson, for the record, sir, would you  
14 please state your name and occupation?

15 A. Yes, my name is Markus Thomerson. I am the  
16 petroleum geologist for Burlington Resources. My primary  
17 area of responsibility right now is southeast New Mexico.

18 Q. Does that area include this Checkmate area in the  
19 Delaware oil wells that are being developed in this Red  
20 Tank Pool?

21 A. Yes, sir, it does.

22 Q. Where do you reside, sir?

23 A. Midland, Texas.

24 Q. Give us a short summary of your involvement with  
25 regard to this particular activity.

1           A.    Okay.  My tenure with Burlington Resources -- or  
2   at that time it was Meridian Oil -- started in 1993,  
3   specifically in the Delaware Basin.  My particular time  
4   frame with this lease started in May of 1995.  I've had  
5   total responsibility for all geological interpretation in  
6   this area since then.

7           MR. KELLAHIN:  We tender Mr. Thomerson as an  
8   expert petroleum geologist.

9           CHAIRMAN LEMAY:  Mr. Thomerson's qualifications  
10  are acceptable.

11          Q.    (By Mr. Kellahin)  Mr. Thomerson, if you'll turn  
12  to what's marked as Burlington Exhibit 17, before we talk  
13  about the interpretation, give us a way to understand the  
14  color codes and --

15          A.    All right, sir.

16          Q.    -- that type of detail in the legend.

17          A.    Okay, this is a structure map that is based on a  
18  marker, a regional marker that we use  It's the top of the  
19  basal Brushy Canyon.  That particular marker is marked in  
20  red on the type log, which you see on the right-hand side  
21  of the map.

22                The map itself, again, as I said, is a structure  
23  map.  I'm using a color fill, which indicates -- the hotter  
24  colors, the reds and the yellows, are indicating higher  
25  structural positions.  The cooler colors, the blues,

1 purples and so forth, are lower structural positions.

2 Q. Does structure matter in this pool?

3 A. Structure matters with regard to the basal Brushy  
4 Canyon, which are all of the dots you see in red.

5 Excuse me, let me rephrase that. With the  
6 Delaware. Not all of the red dots are specifically Brushy  
7 Canyon. There are some dots in there that are Cherry  
8 Canyon as well as Bell Canyon.

9 But with regard to this structure map in the  
10 basal Brushy Canyon, yes, the structure has great  
11 importance. With regard to the Bone Springs or the upper  
12 Bone Springs, it doesn't have any significance.

13 Q. In terms of structural position, give us a  
14 perspective on the Checkmate 24 Federal 1, the subject  
15 well, its location and what's occurring around it.

16 A. Okay, the Checkmate 24 Federal Number 1, as you  
17 can see, which is the highlighted well that we're talking  
18 about today, the pool that is directly to the west of you  
19 is the Red Tank Delaware field. Okay, this field is  
20 producing primarily from the basal Brushy Canyon. That is  
21 overlying a deeper Paleozoic structure.

22 And in this particular map, Exhibit 17 is a  
23 structure map based on that. The well in question is in a  
24 flank position with regard to that structure.

25 Q. What about the blue-dotted wells in the upper

1 Bone Springs? How does that fit together?

2 A. Okay, all of the blue-dotted wells are currently  
3 producing wells from the upper Bone Spring. And as you can  
4 see, these are all occurring on a flank position, on the  
5 eastern flank of this structure. Again, this structure is  
6 present-day structure with regard to the basal Brushy  
7 Canyon.

8 Q. The well has been targeted for a total depth  
9 sufficient to test the upper Bone Springs for production?

10 A. That is correct.

11 Q. Between that Bone Springs and the Delaware, which  
12 is your better prospect?

13 A. The better horizon, in my opinion, is the upper  
14 Bone Spring sand. The Delaware at the basal Brushy Canyon  
15 will be a secondary objective.

16 Q. All right. Let's turn to Exhibit 18 and have you  
17 identify and describe that display.

18 A. Okay, Exhibit 18 --

19 Q. Give us a chance to unfold it here.

20 A. Oh, I'm sorry.

21 Q. All right, sir, I have it in front of me. Same  
22 kind of color coding as on the prior display?

23 A. Yes, sir, that is correct. The numbers are  
24 different, however the color scheme remains the same, where  
25 the hotter colors, the reds and yellows, are indicating

1 thicker sands.

2 Q. You've moved into an isopach presentation at this  
3 point?

4 A. That is correct, sir. This is a net sand map.

5 Q. All right.

6 A. It is based on a porosity cutoff of 12 percent.

7 This comes from the density log.

8 Q. Let's look at the type log, so you can show us  
9 the interval that's being mapped on the isopach.

10 A. Okay, the interval we're looking at, again, the  
11 type log on the right-hand side, you see a red line that's  
12 marked on the "K2" sand. This is an informal designation.  
13 It does not have any stratigraphic significance beyond us.

14 And this is the main pay that we find in the Red  
15 Tank field, which is the Delaware field, again, that I'm  
16 talking about. It's due west of where we are right here.

17 And what we're looking at, the porosity cutoff is  
18 based on the density log, which is the green curve in track  
19 3 of that type log.

20 Q. All right. Let's put Section 24 and the proposed  
21 location in perspective with regards to the net pay sand.

22 A. Yes, sir. What you're seeing, again, is with  
23 regard to that structural position from Exhibit 17, you see  
24 that the thicker sands in the basal Brushy Canyon are  
25 occurring in the middle of the Red Tank field.

1           Our Checkmate 24 location is not only in a  
2           structurally flank position or downdip position, but the  
3           sands in that area are going to -- in the basal Brushy  
4           Canyon, are going to be quite thin. In this instance here,  
5           I'm expecting sands anywhere from 15 to 20 feet thick.  
6           That's net sand.

7           Q.    When we look at the area where, back in early  
8           1995, there was the well that had the nice initial  
9           potential of about 400 barrels a day --

10          A.    Yes, sir.

11          Q.    -- where is that well?

12          A.    That -- If you look at the Checkmate 24 Federal  
13          Number 1 location, the well that is due southwest -- it  
14          would be one location to the southwest of that -- is the  
15          Pogo Red Tank 24 Number 1. That is the well that we've  
16          been referring to that had a very high IP out of the upper  
17          Bone Spring sand.

18          Q.    Since then, have subsequent wells been able to  
19          achieve that level of initial potential?

20          A.    Not with -- Not to my knowledge, sir. Most of  
21          them have been less, as far as reported. You're always  
22          going to have hearsay.

23          Q.    Let's move to the next display, then. If you  
24          give us a minute to unfold Exhibit 19, we're now going to  
25          turn to look at the structure, when you map the top of the

1 upper Bone Spring sand?

2 A. Yes, sir.

3 Q. Again, find on the type log the point in the  
4 structure that you're mapping, and then we'll go to the  
5 left side of the display.

6 A. All right, sir. The type log, again, on the  
7 right-hand side of the map, we're looking at the structural  
8 -- present-day structural top of the upper Bone Spring  
9 sand. That's in the lowermost part of the type log. It's  
10 highlighted in red, in the same color-fill scheme, with the  
11 hotter colors being the higher structure, cooler colors  
12 being down on the flank.

13 You'll notice that there is a strong structural  
14 nose now occurring over Section 25, which is pretty well  
15 the heart of this play at this point in time, and of course  
16 that is the acreage that's currently owned by Pogo, which  
17 we have a small interest in.

18 And structurally, the Checkmate 24 Federal Number  
19 1 is in a downdip position. However, in working this area,  
20 the structural component of the upper Bone Spring does not,  
21 to the best of my knowledge, have anything to do with your  
22 ability to make a commercial reservoir. It is entirely  
23 dependent upon the amount of reservoir-quality sand that  
24 you're going to obtain.

25 Q. And your geologic method to interpret the amount

1 of reservoir-quality sand is to construct a net-pay  
2 isopach?

3 A. Yes, sir, that is correct. That would be the  
4 next exhibit.

5 Q. Let's look at that. All right, sir, would you  
6 identify and describe Exhibit 20?

7 A. Yes, sir. This is a net sand map. Again, it is  
8 based on a 12-percent porosity cutoff. This cutoff is from  
9 the density log.

10 If you look at the type log, we're looking at the  
11 same density curve, which would be in track 3. What I have  
12 here is, anything less than 12 net feet of sand is not  
13 colored in, reason being, in the wells that we have been  
14 involved with, with Pogo, as well as the wells that we  
15 operate in Section 36, which are also producing from this  
16 horizon, we have determined that 12 feet is pretty well an  
17 economic limit. Anything below that, you're not going to  
18 have what we would term to be a commercial well.

19 Q. When you look at this particular upper Bone  
20 Spring sands, is there a component of risk that you have to  
21 accept concerning the fact that a well can be commercial  
22 and have sufficient sand thickness and yet be a 40-acre  
23 location away from a well that is not commercial?

24 A. Yes, sir, there is significant risk involved  
25 here. This map is probably the best map you can look at

1 with regard to this reservoir.

2 As you can see, there are numerous wells that  
3 have substantially thick sections of this upper Bone Spring  
4 sand, some in excess of 20 feet, 25 feet. And you can move  
5 one 40-acre location away, and you're down to less than 12  
6 feet.

7 So you're looking at a very rapid change within  
8 your reservoir quality. So there's a substantial risk,  
9 geologic risk, based on that.

10 Q. When we focus specifically on Section 24, your  
11 immediate control is to the west, and you have an absence  
12 of control north and south, and then to the east?

13 A. Yes, sir, that is correct. There is one well up  
14 in Section 13 -- Excuse me, there are three wells in  
15 Section 13 that establish the northern limit.

16 That one particular well, which is in the  
17 northeast quarter, is a Morrow test. It has, I think, 13  
18 feet of sand in it. The other two wells that are located  
19 in 13 do not have less than the 12 feet of sand, so they're  
20 not mapped.

21 But that is the extent of my control to the  
22 north.

23 Q. The well density in this area is one well per 40  
24 acres; and these are oil wells, right?

25 A. Yes, sir.

1 Q. When we look at how to go about developing the  
2 southeast quarter of Section 24, where in your opinion is  
3 the best place to put the first well?

4 A. At this point in time, the way I've got it  
5 contoured, I think the Checkmate 24 Federal Number 1  
6 location, as well as our Jackalope location, which is a  
7 well to the north that we're currently in the process of  
8 moving to.

9 Q. As an exploration geologist, is this a reservoir  
10 that's suitable for development by drilling multiple wells  
11 concurrently in the southeast quarter of Section 24?

12 A. No, sir. I think you need to evaluate these one  
13 at a time. We found that out in working with Pogo down in  
14 Section 25, and that is called the Covington lease. And  
15 again, we moved that very quickly, because you're looking  
16 at a reservoir that can change so radically from one  
17 location to the next. You drill your well, put your data  
18 in, and see where you -- and make sure that your next  
19 location is actually going to fit with your model.

20 Q. Give us a general summary, Mr. Thomerson, of how  
21 you and Pogo have developed expertise and experience as you  
22 continue to drill and produce wells in this pool.

23 A. Well, from the geologic standpoint, we have  
24 cooperated, not only because we own an interest, but it's  
25 in everybody's best interest, you know, from a geologic

1 standpoint, to cooperate with one another, to get the best  
2 and most efficient use of this reservoir. And that comes  
3 back to sharing of data and so forth.

4 Q. Despite that cooperation, do you have a  
5 recommendation to the Commission as to the risk factor  
6 penalty to assess in this pooling case?

7 A. Yes, sir, I believe 200 percent.

8 Q. And that was your opinion and recommendation to  
9 Examiner Stogner?

10 A. Yes, sir, it was.

11 Q. And you have not changed that opinion?

12 A. No, sir, I have not.

13 Q. Are we looking at the same displays that Mr.  
14 Stogner looked at?

15 A. These have been slightly modified. There have  
16 been several wells that have been drilled in the area, none  
17 in Section 24, obviously.

18 But in Section 25, obviously, there have been  
19 three other wells drilled there. Two of those wells were  
20 not deep enough to penetrate the upper Bone Spring sand.  
21 And if you go to the extreme south edge of the map, there  
22 below Section 35, Yates has done quite a bit of drilling  
23 down there also.

24 Q. Does the new information developed since the last  
25 presentation cause you to change your opinion about the

1 risk factor penalty?

2 A. No, sir, it does not. It actually enhances it.

3 MR. KELLAHIN: That concludes my examination of  
4 Mr. Thomerson.

5 We move the introduction of his Exhibits 17  
6 through 20.

7 CHAIRMAN LEMAY: Without objection, Exhibits 17  
8 through 20 will be admitted into the record.

9 Mr. Carr?

10 MR. CARR: I have no questions of this witness.

11 CHAIRMAN LEMAY: Commissioner Weiss?

12 EXAMINATION

13 BY COMMISSIONER WEISS:

14 Q. Yes, sir, Mr. Thomerson, on your isopach, Bone  
15 Springs isopach --

16 A. Yes, sir.

17 Q. -- are these computer-generated contours?

18 A. Yes, sir, they are. They are -- Actually what I  
19 do, to make this very short, is, they're hand-contoured at  
20 first. Some of the contours are digitized in, other  
21 contours that are outside of that, I allow the computer to  
22 take the -- I manipulate the gridding algorithm.

23 In a case where you've got such dense well  
24 control, the computer does a very good job.

25 Q. What algorithm is that?

1           A.    In this particular method here, I'm using -- the  
2 program we're using is called Geographics, and I'm using an  
3 adaptive fitting algorithm. And essentially what that  
4 does, that is a -- it generates a variogram through the  
5 data. And since I'm dealing with porosity data, I know  
6 that this data can change radically very quickly. This  
7 variogram fits that best curve to that, and that's how you  
8 get a -- It does a very good job with this type of data.  
9 I've used other algorithms, and I wasn't very happy with  
10 the output that I got from them.

11                   And that is a proprietary algorithm, Geographics.  
12 I mean, that's about the extent of my knowledge of it, or  
13 that they'll tell me about.

14           Q.    That was my only question. I just didn't see the  
15 control there.

16           A.    Well, the reason the control is not there, sir,  
17 is, I -- in using a color fill -- and this is probably, I  
18 guess, a limitation of the program -- the control points  
19 tend to get washed out when you put the overlay of the  
20 colored dots to indicate the wells, as well as the color-  
21 fill in the contours. You get a very busy map.

22                   COMMISSIONER WEISS: That's my only question.  
23 Thank you.

24                   CHAIRMAN LEMAY: Commissioner Bailey?

25                   COMMISSIONER BAILEY: No, I don't have any

1 questions.

2 EXAMINATION

3 BY CHAIRMAN LEMAY:

4 Q. I have one. Just -- Mr. Thomerson, on your  
5 Exhibit Number 18, which I think is the upper Brushy Canyon  
6 isopach -- basal Brushy Canyon, actually. You call it the  
7 "K2" sand?

8 A. Yes, sir.

9 Q. Do you know if that sand also has designation "L"  
10 sand by other geologists? Have you ever looked at the  
11 terminology?

12 A. If the "L" -- If you're referring to the "L"  
13 sand, say, that's referred to by Strata --

14 Q. Yes.

15 A. -- or some of the others, okay, yes, sir, that is  
16 a lower sand.

17 Q. That's lower than the "K2" you show there?

18 A. Yes, sir, that is correct.

19 Q. Okay. Do you happen to know if those offset  
20 wells, that you show -- I guess there's a -- Again on your  
21 Exhibit 18, they're Bone Spring producers. One's a --  
22 looks like a slightly west, northwest offset; the other is  
23 a southwest offset --

24 A. Number 1, I believe, has a commingling order  
25 present on it now, and it is commingling the Bone Spring

1 with the Delaware.

2 Q. There was a Delaware completion on that?

3 A. Yes, sir, it's commingled. I don't know when  
4 that administrative order came down, but it was several  
5 months ago.

6 Q. Your exhibit shows it only producing from the  
7 Brushy Canyon.

8 A. Yes, sir, you're right, and that is a  
9 limitation -- how I was able to make this map up, if we go  
10 forward in Exhibit 21, that is the current production at  
11 this point --

12 Q. The Red Tank 24 Number 1 is a good well?

13 A. We've got -- The problem we've had out here --  
14 I'm stretching my expertise here, but a lot of these wells  
15 we haven't had on line that long because of a lot of  
16 problems getting production. So there has been some  
17 problems with establishing what the EURs are going to be  
18 out of these wells because of the short time that we've had  
19 production data on them.

20 However, that well -- we've had it on quite a  
21 while, but -- and I could not tell you off the top of my  
22 head.

23 CHAIRMAN LEMAY: That's all I have.

24 Any other questions? If not, thank you, Mr.  
25 Thomerson. You may be excused.

1 Let's take about a 15-minute break.

2 (Thereupon, a recess was taken at 10:26 a.m.)

3 (The following proceedings had at 10:45 a.m.)

4 CHAIRMAN LEMAY: Mr. Kellahin, you may continue.

5 MR. KELLAHIN: Thank you, Mr. Chairman.

6 My next witness is Doug Seams. He spells his  
7 last name S-e-a-m-s. Mr. Seams is a petroleum engineer.

8 DOUG SEAMS,

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

11 DIRECT EXAMINATION

12 BY MR. KELLAHIN:

13 Q. Mr. Seams, for the record, sir, would you please  
14 state your name and occupation?

15 A. Good morning. My name is Doug Seams. I'm a  
16 senior petroleum engineer, employed by Burlington  
17 Resources.

18 Q. And where do you reside, sir?

19 A. I live in Midland, Texas.

20 Q. Were you Burlington's engineering witness before  
21 Examiner Stogner when this case was heard at the Division  
22 level?

23 A. Yes, I was.

24 Q. Give us a short summary of your experience with  
25 regards to this particular project in the Red Tank area.

1           A.    I became active in this area as the engineering  
2    -- When I say I became active, I moved into this area of  
3    southeastern Lea and Eddy County, including this Red Tank  
4    area, in June of 1996.  I then have been involved very  
5    actively in this project through this date.

6           Q.    Was it your effort to get Ms. Swierc and other  
7    members of the team to re-examine what was specifically  
8    happening concerning this well that Burlington had  
9    authorized Mr. Trainer to proceed to drill?

10          A.    Yes, it was.

11          Q.    And what caused you to have this item come to  
12    your attention?

13          A.    What caused this item to come to our attention  
14    is, we actively track our capital spending throughout the  
15    year.  And as Leslyn mentioned earlier, our vice president,  
16    who is the head of our divisional office, very much likes  
17    all the capital to be spent by mid-October, which is a  
18    fairly early deadline for us.

19                So in the midsummer portion of the year, we were  
20    very much reviewing our capital projects, those of which we  
21    had on the queue to be done, and those which -- projects  
22    that we needed to do in order to capture that total pot of  
23    capital.

24                Well, the Checkmate 24 Federal Number 1 was very  
25    much in the queue but did not have a firm timeline on it.

1 Q. Now, you separate out your activities in terms of  
2 those wells that Burlington is going to operate and drill,  
3 versus the nonoperated Burlington interests, do you not?

4 A. Yes, we do.

5 Q. And this was in the schedule of the nonoperated  
6 Burlington wells, because Mr. Trainer had been authorized  
7 to drill the well?

8 A. Yes, it was.

9 Q. Okay. Let's talk about what's happened in the  
10 pool. If you'll start with Exhibit 21, let's look at the  
11 way to code how these wells are being carried in terms of  
12 where they're producing. What's the color code?

13 A. Yes, Exhibit 21 represents the Checkmate 24  
14 Number 1 area, and as you can see, that well is noted there  
15 near the top. Now, the wells with a red dot represent the  
16 existing Delaware sand production, and the wells with the  
17 blue dots represent the existing upper Bone Spring sand  
18 production.

19 And back to a question that was led to Markus,  
20 is, there are some wells out here that are commingled. We  
21 didn't have the opportunity, using our computer system, to  
22 show both the Delaware and the Tresnor. What we showed was  
23 to be the last completed interval.

24 Q. You have participated, then, with Mr. Thomerson  
25 as the technical team that analyzes the reservoir and looks

1 at further opportunities to drill wells?

2 A. Yes.

3 Q. And we're about to look at your work product and  
4 your recommendations and opinions to the Commission?

5 A. Yes, we are.

6 MR. KELLAHIN: Mr. Chairman, at this time I would  
7 tender Mr. Seams as an expert petroleum engineer.

8 CHAIRMAN LEMAY: His qualifications are  
9 acceptable.

10 Q. (By Mr. Kellahin) Is there a way that you as an  
11 engineer can illustrate the relative initial potential of  
12 those wells, so that the Commission can see the comparison?

13 A. Yes, there is, and I'd like to point out to  
14 Exhibit Number 22 in order to show that.

15 Q. What are we looking at here?

16 A. Exhibit Number 22 is an initial potential map,  
17 and it's a qualitative -- or quantitative map, in that the  
18 larger the green dot, the larger the initial daily oil  
19 potential of these wells.

20 As you can see, the well that was southwest  
21 offset of the Checkmate 24 Federal Number 1, which is  
22 called the Red Tank 24 Federal Number 1, has the largest  
23 green dot and hence the highest IP of 449 barrels today.  
24 But you can also see noted there in the red numbers just to  
25 the left, and you can see the potential of the wells as

1 they fall down there to the south.

2 Q. Let me have you look at Mr. Thomerson's Exhibit  
3 19, which is his -- I'm sorry, that's the wrong one. I  
4 need the isopach on the upper Bone Springs. Which one is  
5 it?

6 Let's look at Exhibit 20, and I want to compare  
7 it to your IP bubble map.

8 A. Okay, we're looking at the same general area  
9 between the IP bubble map and using the exhibit that Markus  
10 Thomerson had shown on the net sand isopach.

11 Q. My question for you, sir, is, when Mr. Thomerson  
12 uses his best geologic judgment in how to give you an  
13 opportunity to pick the next best location, he's using a  
14 thickness map, and unfortunately it appears that the  
15 initial potential of the wells in that sand don't directly  
16 correlate to thickness?

17 A. This is true.

18 Q. Explain to us why this is such a complicated  
19 challenge for you and Mr. Thomerson and others in terms of  
20 where you locate and drill wells.

21 A. This is a very complex reservoir in the upper  
22 Bone Spring sand. In fact, through our continuous  
23 development of this sand, in partnership with Pogo, we've  
24 developed some methods in order to -- not mitigate, not get  
25 rid of risk, but in order to minimize the risk.

1           And as you can see, even with that there's still  
2 variations of quality of wells within the sandbodies.

3           You would expect your Red Tank 24 Federal Number  
4 1, which has the largest IP dot of 450 barrels of oil per  
5 day to also be located in the very best spot on the  
6 reservoir. But if you look at the Exhibit Number 20 that  
7 was shown by Markus, this well has only slightly greater  
8 than 14 feet of pay.

9           So even within a constant pay thickness, you can  
10 have differences in pay quality that can give you better or  
11 worse wells.

12           Q.    Would you propose to attempt to drill or propose  
13 multiple wells in the southeast quarter of 24, or would you  
14 simply drill them one at a time?

15           A.    I would very much drill them one at a time, due  
16 to the complexities of this reservoir.

17           Q.    Do you concur with Mr. Thomerson's assessment of  
18 the geologic risk that, from an engineering perspective,  
19 the 200-percent maximum risk factor penalty is appropriate  
20 in this case for this well?

21           A.    Yes.

22           Q.    Let's turn to Exhibit 23, Mr. Seams, and have you  
23 identify and describe that display.

24           A.    Exhibit Number 23 shows the extent of Burlington  
25 Resources' operations in this immediate area. The green

1 dots, of which there's 27 total, show the current  
2 Burlington Resource-operated producing wells. The red dots  
3 show the current Burlington Resources wells that are  
4 operated by Pogo but that we have a significant working  
5 interest in.

6 So once again, we have 27 direct-operated wells  
7 in the area, and we also have a significant working  
8 interest in 14 additional wells that are operated by Pogo.

9 Q. Are there any other operators in the pool?

10 A. There are two other operators in the pool. There  
11 are two minor wells operated to the south by Strata, and  
12 one lone well operated by Maralo, and -- Let me correct  
13 that. Between the difference between the October 3rd  
14 hearing and now, there's also three wells at the very  
15 bottom that do not have green dots on them. It would be  
16 the 3, going from left to right, the 1 and the 1. Those  
17 are all Yates wells.

18 Q. Mr. Seams, if this dispute about operations would  
19 be between you and Pogo, between Burlington and Pogo, would  
20 we be here today?

21 A. No, we would probably -- In fact, we would allow  
22 Pogo to go ahead and drill, complete and equip the well.

23 Q. Well, why are you so concerned, then, about  
24 having Penwell be the operator of the well?

25 A. Well, the comparison between Pogo and Penwell

1 here is not a fair comparison. Pogo has extensive  
2 operations in this area, and we have worked jointly with  
3 Pogo to both reduce costs and also high-grade our geologic  
4 assessment of this area in order to minimize risk.

5 Q. Are there additional components that distinguish  
6 the Burlington operations in this immediate vicinity from  
7 any that Penwell might undertake?

8 A. Yes, there are.

9 Q. To the best of your knowledge, does Penwell have  
10 any operations in this immediate area?

11 A. The nearest operations that Penwell has to this  
12 are approximately four miles to the north in what's called  
13 their Diamondtail area. They have two wells there that are  
14 recently drilled.

15 Q. Let's talk about the operational aspects. If  
16 you'll turn to Exhibit 24 with me, help us understand the  
17 diagram that you're illustrating.

18 A. Exhibit 24 shows, number one, in the dotted red  
19 line, shows the current active Burlington Resources-  
20 operated leases.

21 There to the far south at the bottom of the page  
22 is our Mule Deer State lease, where we currently have six  
23 operated wells and one currently completing, which would be  
24 the Mule Deer State Number 7.

25 And then as we move to the northwest or up to the

1 top of the page, the largest lease there is called our  
2 Checkerboard federal lease. And then on top of that would  
3 be the Red Tank federal lease and the Red Checker federal  
4 lease.

5 And to bring you back to a common point of  
6 reference as you move east of those leases is the Checkmate  
7 24 Federal Number 1, denoted by the red, or maybe a purple,  
8 arrow.

9 Also shown on here are the active producing wells  
10 with the black spots and the well number. And then those  
11 lines noted by them are the active roads that we use in  
12 order to service those wells.

13 Q. What's the plan for taking production and  
14 produced water from the Checkmate 24 Federal 1 well if  
15 you're allowed to operate the well?

16 A. As you look at the Checkmate 24 Federal Number 1  
17 well, with Burlington Resources as operator, we would then  
18 take this fluid down through a flow line and take it to our  
19 Checkerboard federal tank battery.

20 There's a couple things I'd like to bring up  
21 about having an existing tank battery here to process the  
22 fluid. Both -- Not only having a tank battery, we also  
23 have a LACT unit, and if you look to the north, up in our  
24 Red Tank federal lease, we also have our own proprietary  
25 saltwater disposal well.

1           Now, there's two key issues here of having our  
2 own tank battery when it comes to cost. The first key  
3 issue is that water trucking in the area costs on average  
4 about \$1.40 to both truck and dispose of that water. With  
5 our saltwater disposal, we can dispose of this water for  
6 approximately 35 cents a barrel. Now, if we encounter a  
7 well that averages 50 barrels of water per day for the  
8 entire year, that's a savings of nearly \$20,000 a year on a  
9 gross basis.

10           Now, the advantage of having a LACT unit is both  
11 from safety, environmental and cost. We receive a 25-cent-  
12 a-barrel premium on the price of crude here, due to having  
13 a LACT unit, because it alleviates the expense of trucking.

14           So with a, once again, a 100-barrel-a-day well  
15 for a year, we would then increase the revenue from that  
16 well by nearly \$10,000 gross.

17           On the safety/environmental, once again we're  
18 able to keep the tank levels much lower by having a LACT  
19 unit continuously drain the tanks and not having to fill  
20 these tanks to full volume and then call out for a  
21 transport load to haul the oil off.

22           Q. If the Commission decides that Penwell should  
23 operate the well, then you will still have an interest in  
24 that production. Would you not, then, allow a nonoperated  
25 well to have access to your disposal system and other

1 facilities?

2 A. No, we would not allow the disposal of  
3 nonoperated water into our saltwater disposal system.

4 Q. Well, are you just being ornery, or is there a  
5 good reason?

6 A. We have a significant amount of operations  
7 directly in the area and a very significant amount of water  
8 that goes into that saltwater disposal. Without having the  
9 direct control or operations over that produced water, we  
10 can't control the quantity or quality of that water that's  
11 going into our saltwater disposal. And we don't want to  
12 expose ourselves to the liability of losing that saltwater  
13 disposal, which really is able to maintain such low LOE  
14 base and able to continue production down to lower levels.

15 Q. What happens to produced water for wells that are  
16 not operated by Burlington? What is the alternative source  
17 for disposal?

18 A. Pogo also has their own saltwater disposal. The  
19 smaller operators in the area must truck their water.

20 Q. Okay, let's turn to the photographs, if you will.  
21 Let's take a few minutes and look at the illustrations that  
22 are displayed on the photographs, starting with 25. What  
23 are we looking at, and what does this mean?

24 A. The next four exhibits will all be photographs of  
25 the Red Tank federal area. And if I can, just looking back

1 quickly at Exhibit Number 24, we showed the roads. These  
2 will be located up in the northern part, in the Red Tank  
3 federal lease.

4 In fact, all of these exhibits will be located  
5 around that blue triangle, that saltwater disposal. The  
6 pumping unit will be the Number 1 well there, and the tank  
7 battery listed right there will also be some pictures that  
8 we'll look at.

9 This is an example of some of Burlington  
10 Resources' operations directly in the area.

11 Q. All right. Exhibit 25 then?

12 A. Back to Exhibit 25, this is the Red Tank Federal  
13 Number 1 pumping unit. This is a Mark 456 pumping unit.  
14 As you can see, we've got a chemical containment vessel and  
15 then the safety measures, such as belt guards.

16 Q. Exhibit 26?

17 A. Exhibit 26 is a picture of the row of oil tanks.  
18 These are three 500-barrel, all-welded steel chrome-bottom  
19 oil tanks. And you can see, once again, for some of the  
20 environmental and safety aspects, we have some spill  
21 containment vessels out in front.

22 Q. Exhibit 27?

23 A. Exhibit 27 is the separation facilities at our  
24 Red Tank federal battery. And going from left to right,  
25 you see that we've got a 4-foot-by-20-foot and a 6-foot-by-

1 20-foot heater treater for the separation of oil and water.

2 And then as we move over to the right, in the  
3 background is a 30-inch-by-10-inch gas separator. And then  
4 in front of that is a horizontal free water knockout.

5 Q. And Exhibit 28?

6 A. The final picture is a good example of our  
7 proactiveness on managing this lease. The white box on the  
8 right is an electronic flow measurement device, which  
9 basically calculates the amount of gas sales that flows  
10 from this battery.

11 More importantly to me, when it comes to  
12 operations, is the box on the left. The box on the left is  
13 our facility alarm monitor. This monitors the entire tank  
14 battery for abnormally high or low levels and also power  
15 outages. And when it senses those, it uses the telemetry  
16 there at the top, and automatically calls the field  
17 supervisors or field foreman to come out and look at this  
18 battery for any potential problems.

19 Q. Let me have you help us put in perspective the  
20 time line, if you will, starting in 1993, so -- and going  
21 through 1997, so the Commission can see what's occurring in  
22 this area in terms of when the wells were drilled and what  
23 kind of initial potential they achieve.

24 If you'll do so by turning to Exhibit 29, help us  
25 illustrate that with your description.

1           A.     Exhibit 29 is a bar graph of initial daily  
2 potentials based on the earliest wells drilled, being on  
3 the left, to the latest wells drilled, on the right.

4           The scale of this initial potential goes from  
5 zero to 500 barrels per day, with the highest of the bar  
6 graphs being, once again, that Red Tank Federal 24 Number 1  
7 well, with an IP of nearly 450 barrels a day.

8           At the time that we initially submitted this AFE  
9 to C.W. Trainer, you can see that we had climbing IPs up to  
10 the 450 barrels a day, and we were very excited about this  
11 prospect.

12           Over the period of negotiations with C.W.  
13 Trainer, signified by the blue line at the top, you can see  
14 that we reached a period of 100-to-200 barrel-a-day-type  
15 IPs, with some variation within that.

16           And then over in the most recent time you can see  
17 that we've become very concerned about the economic  
18 sensitivity of this play with the declining well  
19 productivity.

20           Q.     What, if any, concerns do you have as a petroleum  
21 engineer that if Penwell is allowed to operate the well,  
22 that these sensitivities of cost would be compromised?

23           A.     We are concerned that with a higher well cost  
24 that, would Burlington not have an economic, viable  
25 project, we may lose what value that we feel is inherently

1 there with the higher well costs. We feel that these are  
2 very much -- very cost-sensitive projects. And with the  
3 higher costs, both within the LOE and the capital side, we  
4 could lose that benefit of return.

5 Q. Let's turn to Exhibit 30 and look at some of the  
6 items of cost savings that you are examining, some of which  
7 I believe you've already initiated.

8 A. This is an exhibit that we also presented in  
9 front of Mr. Stogner, and this is an active program that we  
10 started in the summer of 1996, in order to further reduce  
11 our costs in the upper Bone Springs sand.

12 Now, we did this because we saw that we had to  
13 become very cost-sensitive in this area in order to  
14 maintain the economic viability of these.

15 At the time, our AFE costs that we also had sent  
16 to Penwell, was approximately \$650,000. We then did  
17 detailed research in partnership with Pogo to find that we  
18 felt that we could reduce that AFE by another \$74,000, thus  
19 extending the limits of the field and helping continue  
20 development.

21 Q. Does the AFE exchange between Burlington and Mr.  
22 Trainer back in 1995 come at a point in time before you and  
23 Pogo were examining and attempting to initiate cost savings  
24 in the pool?

25 A. Yes, it did.

1 Q. Let's -- We as lawyers talk with you as engineers  
2 about AFEs and their estimates, and things change, and  
3 whatever the actual costs, in fact, are going to be what's  
4 paid. Let's turn to that relationship, if you will. Let's  
5 look at Exhibit --

6 A. -- Number 31.

7 Q. -- 31, yeah, and let's talk about costs and how  
8 they're relating to this AFE discussion we're having.

9 A. Exhibit Number 31 shows with the red bar graphs  
10 -- These are the AFEs that we have submitted over time on  
11 the Checkmate 24 Number 1. At the far left is the original  
12 AFE that we had sent to C.W. Trainer for \$699,000. As we  
13 go through time, going to the right, the next red bar chart  
14 in August of 1996 is the AFE that we had sent to Penwell  
15 for \$652,000.

16 Now, in that period of time, we've since captured  
17 some of our cost savings plan, and I will tell you, we did  
18 not capture all \$74,000. But we are on a plan to get to  
19 that target. We've since reduced that cost by an  
20 additional \$32,000, to where our most recent AFE for this  
21 well is \$618,000.

22 Now, can we do that in practice? The blue bar  
23 charts represent that in practice. To the south is our  
24 Mule Deer lease, and we have six existing wells there that  
25 are very similar to the Checkmate 24 Number 1 in both

1 target, depth, and pumping and stimulation. Our initial  
2 Mule Deer well cost \$762,000. Now, as we went from the  
3 Mule Deer 1, down through the 2, 3, 4 and all the way over  
4 to the right, to the final well, the Mule Deer Number 6,  
5 you can see that our final completed well cost is \$565,000.

6 Q. In your opinion, is Penwell going to be able to  
7 achieve this success of cost reduction if they're allowed  
8 to operate?

9 A. My opinion is, they will not. This success is  
10 garnered from the history of being able to drill multiple  
11 wells in a common area and learn.

12 Q. Let's turn to Exhibit 32. What are you  
13 illustrating here, Mr. Seams?

14 A. Exhibit 32 is a detailed examination of any  
15 variation between Penwell's \$649,000 AFE and Burlington  
16 Resources' most recent \$618,000 AFE.

17 Now, all of the items on the AFE are not listed  
18 here. If the variance between identical items was less  
19 than \$1000, I did not include those. I just wanted to show  
20 the items that did vary.

21 Now, these items are sorted from the highest  
22 variance -- From Penwell to Burlington, for instance, the  
23 highest variance is, Penwell has AFE'd nearly \$31,000 in  
24 contingency, where Burlington has zero. Where, if you go  
25 to the bottom, it shows the highest positive variance for

1 Burlington, where we have approximately \$19,000 charged out  
2 for our man-hours, to drill, complete and equip this well,  
3 but Penwell has approximately \$2400.

4 Now, I won't bring out any specific point on this  
5 as being important, other than the sum total of all those  
6 variations is about \$32,000, which boils out to be about  
7 the difference between those two AFEs.

8 I did take a very detailed look in this to see  
9 where those costs would vary and potentially why.

10 Q. The biggest accountable difference is the use of  
11 the contingency by Penwell of \$30,000 and Burlington's  
12 practice of not using a contingency in the AFEs; is that  
13 right?

14 A. Yes, it is.

15 Q. Why have you chosen -- or why does Burlington  
16 choose not to use a contingency in its AFEs?

17 A. Originally, on some of our first wells, we would  
18 use some contingency. As we went through and we learned  
19 about these wells, of what exactly it would take to spend  
20 for these wells, we now have alleviated the contingency and  
21 feel very confident that the items we put down on the AFE  
22 are the actual items that will be spent, with very little  
23 over and above that.

24 Q. Is rig availability in the current market an  
25 issue of concern for engineers that are seeking to have

1 their wells drilled?

2 A. It's very much an item of concern these days.

3 Q. And why is that so?

4 A. Rig availability has become a very difficult item  
5 to manage. The rigs are very much tied up, due to the  
6 effect of having significant higher oil and gas prices here  
7 recently.

8 Q. Do you have the good fortune at Burlington to  
9 have a rig available that can drill this well?

10 A. We do.

11 Q. And why is that so?

12 A. We have just completed drilling of our Mule Deer  
13 Number 7, and we are now drilling the well northeast of the  
14 Checkmate 24, and we would very much like to take that rig  
15 and drill the Checkmate 24 after it finishes drilling the  
16 northeast offset.

17 Q. Let me afford you an opportunity now, Mr. Seams,  
18 to summarize your conclusions from your engineering  
19 perspective and discuss with the Commission why you desire  
20 to have Burlington awarded operations, as opposed to  
21 Penwell.

22 A. I'd very much like to see Burlington awarded  
23 operations on the basis of two items, and those items would  
24 be minimizing risk, number one, and then lowering costs,  
25 number two.

1           We've proven throughout the history of our  
2 cooperation with Pogo that we can minimize the geological  
3 risk and high-grade these projects for all of the working  
4 interest owners.

5           On the object of costs, not only can we lower the  
6 capital cost of the AFE, but we can lower the cost of the  
7 daily operating expense on the LOE. We can get a little  
8 bit of revenue increase from having the ability to have our  
9 own LACT unit.

10           MR. KELLAHIN: That concludes my examination of  
11 Mr. Seams.

12           We move the introduction of his Exhibits 21  
13 through 32.

14           CHAIRMAN LEMAY: Exhibits 21 through --

15           MR. KELLAHIN: 21 through 32.

16           CHAIRMAN LEMAY: -- 21 through 32 will be  
17 admitted without objection.

18           Mr. Carr?

19                           CROSS-EXAMINATION

20 BY MR. CARR:

21           Q. Mr. Seams, could you tell me approximately how  
22 many Delaware/Bone Spring wells Burlington operates in this  
23 area?

24           A. In this immediate area?

25           Q. Yeah.

1 A. Twenty-seven.

2 Q. Twenty-seven. And those are the wells from which  
3 you've acquired this experience --

4 A. Uh-huh.

5 Q. -- is that right?

6 A. In this immediate area, yes.

7 Q. Prior to June of 1966 [sic] when you started  
8 working this area, what area did you work?

9 A. I worked -- I was the engineering liaison between  
10 Coastal Management, who operates the Waddell Ranch in  
11 central Crane County, and Meridian Oil.

12 And if I can just take a second to explain why  
13 that would be, we are the operator of record for the  
14 Waddell Ranch, yet we contracted out the daily operations  
15 to Coastal Management, and I was the engineering liaison to  
16 make sure that those ties were strong.

17 Q. And what formations were being developed out in  
18 that Waddell Ranch area?

19 A. There was multiple formations. There was 46  
20 individual oil and gas pools within the Waddell Ranch, and  
21 I've watched individual formation, I would say 13-plus. We  
22 found two new ones while I was there.

23 Q. And how long were you on that project?

24 A. I was on that project for just a little over  
25 three years.

1 Q. If we look at Exhibit Number 21, how many of the  
2 wells actually on this exhibit -- on how many of those  
3 wells were you the engineer?

4 A. Approximately three.

5 Q. And who was the engineer responsible for this  
6 project before you?

7 A. The engineer prior to me for this project was  
8 Billy Juroska, and that would be the reservoir engineer.

9 Q. So -- And your experience has been on three wells  
10 drilled out here since June of 1996; is that right?

11 A. Could you repeat your question?

12 Q. Your experience on these three wells are wells  
13 that have been drilled since June of 1996?

14 A. My experience on these wells is both the records  
15 that we have, Mr. Carr. Now, as far as the wells that have  
16 been drilled during my tenure, yes, three wells.

17 Q. All right. Now, in drilling those -- If I look  
18 at your new AFE, you have reduced the size of tubular goods  
19 being used?

20 A. Yes, we have.

21 Q. How many of those three wells did you use the  
22 program that you're proposing with the new AFE, the  
23 slimholes?

24 A. The Mule Deer Number 6, which if it would please  
25 the Examiners, would be the foremost southern well in

1 Section 36, we have reduced ID tubulars.

2 If I might expound a bit --

3 Q. Let me ask you --

4 A. Go ahead.

5 Q. I mean, Mr. Kellahin can have you expound.

6 My question is really, have you used the  
7 identical casing program in that well that you're proposing  
8 now?

9 A. Yes, we have.

10 Q. Did you use 13 3/8 surface casing?

11 A. Yes, we did.

12 Q. Did you use -- I'm sorry, 9 5/8 surface casing?

13 A. Well, we have a very short string of 13 3/8,  
14 going to 9 5/8, yes.

15 Q. And did you use 8 3/4 intermediate casing --

16 A. I'm not sure --

17 Q. -- for an intermediate hole?

18 A. I'm not sure about that particular point.

19 Q. Did you use a 7 5/8 intermediate casing?

20 A. Once again, you're asking the same question. I'm  
21 not sure about that particular question.

22 Q. And do you know, was that a well on a federal  
23 tract?

24 A. Yes, it is.

25 Q. Okay --

1           A.    Actually, no, that's a state tract, on the Mule  
2 Deer state.

3           Q.    All right.  If we go to Exhibit Number 22, I  
4 believe, referring to this exhibit, you stated that what  
5 you prefer to do is drill one well at a time; is that  
6 right?

7           A.    Let me get Exhibit 22, please.  Okay, go ahead,  
8 please.

9           Q.    I think you testified while looking at this  
10 exhibit that what you do is drill one well at a time; is  
11 that right?

12          A.    Yes.

13          Q.    Then you evaluate that well?

14          A.    Uh-huh.

15          Q.    You get reserve information and decline  
16 information on the well; is that right?

17          A.    No, it's not.  Very much what we're looking for  
18 there is the geological interpretation.  The time to gain  
19 the reserve and the production information is significant  
20 enough that if it's on the borderline, we'll wait for that  
21 data.

22                    But very much if we get the geological data that  
23 we look for and we get a positive completion, we go with  
24 that.

25          Q.    And so you would go forward without being able to

1 estimate reserves or decline?

2 A. We feel pretty confident about estimating  
3 reserves from the open-hole logs, so we would have that  
4 number.

5 Q. And when -- You say you drill them one at a time.  
6 What are you talking about in terms of timing, drilling  
7 these individual wells? Do you drill them one right after  
8 another, just move the rig from one location to the next?

9 A. We have done that at times, yes.

10 Q. And is that how you typically go about developing  
11 the properties in this area?

12 A. What we typically do is, when we get a very  
13 positive response to a well, if we find a very good zone,  
14 we will immediately go to the next offset well. If we do  
15 find something is borderline or less than, then we will try  
16 to re-evaluate our direction.

17 Q. Ms. Swierc was talking about what you consider  
18 prudent, drilling one well at a time.

19 A. Uh-huh.

20 Q. That means that you drill one well and you might  
21 move the rig immediately to the next location; isn't that  
22 right?

23 A. Pending the results of the well that we just  
24 drilled, Mr. Carr.

25 Q. And it's not to suggest that you always sit back

1 and take a look at the well. You just keep moving; isn't  
2 that fair?

3 A. Yes.

4 Q. If we look at Exhibit 23, you made reference to  
5 certain wells that were drilled by Yates. Could you  
6 identify those for me again?

7 A. I sure could. In fact, if we can look at Exhibit  
8 22, it may be a bit clearer on there --

9 Q. Okay.

10 A. -- for the Examiners, please.

11 The three small green dots located there at the  
12 bottom, these are the Yates wells that has an IP of 108,  
13 going from left to right, 9 and 111, that would be the  
14 Thyme Number 3, the Thyme Number 1 and the Coriander AOC  
15 Number 1.

16 Q. The initial potentials, as shown on this bubble  
17 map, are what again? I'm sorry, Mr. Seams, I didn't hear.

18 A. The initial potentials shown on this bubble map  
19 are in barrels of oil per day.

20 Q. Okay, and they are what numbers?

21 A. For the Thyme Number 3, Mr. Carr, would be 108  
22 barrels of oil per day.

23 Q. Okay, and then 9 on the next one and 111 on the  
24 next one --

25 A. Yes.

1 Q. -- is that what you're -- Is 111 a fairly good  
2 well?

3 A. That is something that's getting into the, what I  
4 would call borderline, for our economic evaluation. We get  
5 concerned at that level.

6 Q. Let's go to Exhibit 24. If I understand your  
7 testimony, what you're proposing to do is take production  
8 from the proposed well off lease and meter it over at your  
9 LACT unit; is that correct?

10 A. We wouldn't meter it at the LACT unit; we would  
11 meter it prior to entering the main tank battery  
12 facilities.

13 Q. Would it be on the lease?

14 A. It would be metered at the tank battery.

15 Q. And where is the tank battery? Is it on the  
16 lease?

17 A. The tank battery is located right there on the  
18 Number 2 location, which is on that lease, yes.

19 Q. Okay. Now, if under the joint operating  
20 agreement -- and I can tell you that the interest owners  
21 who haven't joined are intending to take their production  
22 in kind --

23 A. Uh-huh.

24 Q. -- will this facility work to permit them to take  
25 their production in kind?

1           A.    It would depend on the type of contract that they  
2 signed for the LACT unit.  If they intended on taking their  
3 production in kind through transport, we would need to add  
4 some additional costs for tankage.

5           Q.    And that tankage isn't reflected in this  
6 proposal?

7           A.    No.  Now, if they did sign a contract that  
8 allowed them to take their production in kind to the LACT  
9 unit, it would be covered in there, yes.

10          Q.    But if they were not willing to do that -- and I  
11 can tell you they are not -- then it would require  
12 additional tanks; isn't that right?

13          A.    Yes, it would.

14          Q.    Now, 86.6 percent of the saltwater produced from  
15 this well is saltwater attributable to other interest  
16 owners in the property; isn't that right?

17          A.    Yes, it is.

18          Q.    And it's not going to be taken and disposed of in  
19 your facility free of cost, is it?

20          A.    We are going to charge 35 cents a barrel for a  
21 saltwater disposal fee, yes.

22          Q.    And how will that cost be charged?  Just as a  
23 separate billing back to these operators?

24          A.    Yes.

25          Q.    And does that fee include revenue to offset the

1 costs of setting up the facility?

2 A. No.

3 Q. The facility will be made available free of cost,  
4 just a standard fee for use of that facility?

5 A. Yes.

6 Q. And how do you set that per-barrel figure? Do  
7 you know?

8 A. We set that per-barrel figure on the estimated  
9 cost that it takes for us to dispose of a barrel of water  
10 in this area, plus the annual maintenance that's involved  
11 with maintaining that system and well.

12 Q. And when you talk about cost for disposing a  
13 barrel, does that include any cost for the actual disposal  
14 well itself?

15 A. For the actual drilling and completion of it, Mr.  
16 Carr?

17 Q. Yes.

18 A. No.

19 Q. And those are billed outside and in addition to  
20 the overhead and administrative costs that are assessed by  
21 the operator?

22 A. Yes.

23 Q. Now, by using this facility, you testified that  
24 there would be, because of these facilities that you have,  
25 a savings; isn't that right?

1 A. Yes, I did.

2 Q. To whom do you sell the oil in the area?

3 A. I do not know the actual oil purchaser.

4 Q. You don't know whether or not it's sold to EOTT?

5 A. No, I do not.

6 Q. Do you know the prices received?

7 A. No, I do not.

8 Q. If the prices were substantially below what other  
9 operators could get for the product, wouldn't that be  
10 something you'd factor in before you decide that it's more  
11 economically desirable to sell through than to have you  
12 produce --

13 A. Very much so. It's not my capacity, though, as a  
14 reservoir engineer.

15 Q. Did you testify that if you were not the  
16 operator, that you would not make the disposal facilities  
17 available to Penwell; is that right?

18 A. Yes, I did.

19 Q. And so if you were not the operator you would  
20 bear your 13 percent of the trucking costs to dispose of  
21 the water; is that correct?

22 A. Yes, I did.

23 Q. And it's not because there would be any damage to  
24 your facility by making it available; isn't that right? I  
25 mean, you're not concerned about that?

1           A.    We're very much concerned about that.

2           Q.    And why are you concerned about it?

3           A.    We're concerned about that -- Without direct  
4 control in the operations of the quality of the water that  
5 goes into that disposal well, we could potentially put that  
6 disposal well in inoperable use, which would provide a  
7 great amount of damage for other operations that are  
8 directly in the area that have very large volumes of water  
9 produced along with this.

10          Q.    What do you do to the water that you produce  
11 before you inject it in your well?

12          A.    We send it through our separation facilities for  
13 treatment.

14          Q.    Again, if we look at all the paragraphs of the  
15 kind of equipment you have out there, if the operator -- if  
16 the owners have got 86 percent of the production from this  
17 well, require separate tankage, these facilities wouldn't  
18 work for that, would they?

19          A.    Within the AFE, Mr. Carr, is an additional  
20 separation component that would augment this, so I want to  
21 tell you that, yes, they will work. I'll tell you that  
22 within the AFE we have additional separation facilities  
23 that has metering on the back side of it, that would then  
24 meter both the oil, the gas and the water volumes, that  
25 would then send it to the tankage --

1 Q. And so --

2 A. -- the sales.

3 Q. -- you would use this facility, and then you  
4 would add additional tankage?

5 A. If those owners wanted to sell through tankage.

6 Q. And I'm telling you that they do.

7 A. Okay.

8 Q. And you would add additional tankage, and then  
9 you would use these facilities; is that what you're telling  
10 me?

11 A. Plus additional separation facilities.

12 Q. So we would have additional separation  
13 facilities, as well as the tankage?

14 A. Okay.

15 Q. Is that what you're telling me?

16 A. Yes.

17 Q. If we go to your Exhibit Number 30 --

18 A. Uh-huh.

19 Q. -- and we look at this exhibit, these are  
20 potential savings, correct?

21 A. Potential savings --

22 Q. That's what they're styled. They're potential,  
23 they're not actual savings.

24 A. Please repeat your question.

25 Q. The savings that you indicate on this exhibit --

1 A. Uh-huh.

2 Q. -- the caption says they are potential; isn't  
3 that right?

4 A. Yes, it does.

5 Q. You may or may not be able to achieve them; isn't  
6 that right?

7 A. Yes, it is.

8 Q. And if we look at the casing and the \$25,000  
9 savings you're attributing to that, to get that savings you  
10 would have to be able to use the slimhole completion as  
11 reflected in your AFE; is that not right?

12 A. That's correct.

13 Q. Have you reviewed the federal requirements for  
14 drilling wells with the completion that you have proposed  
15 as a slimhole in this AFE?

16 A. I want to tell you that I personally have not. A  
17 member of our team in the drilling engineering group has.

18 Q. Do you realize that the intermediate casing would  
19 have an outside diameter of 8 1/2 inches?

20 A. I have not drawn that conclusion, no.

21 Q. Do you know that an intermediate hole of 3 1/4  
22 inches with intermediate casing with an outside diameter of  
23 8 1/2 inches only allows a quarter-inch clearance between  
24 the casing and the hole?

25 A. Once again, Mr. Carr, I haven't drawn that

1 conclusion.

2 Q. Do you know that that's not allowed by federal  
3 regulations?

4 A. I haven't drawn that conclusion, Mr. Carr.

5 Q. If we go down to tubing, it talks about utilizing  
6 2 3/8 production tubing on Delaware wells. We're talking  
7 about Delaware and Bone Spring?

8 A. Yes, we are.

9 Q. And it says IV Pronghorn. What does Pronghorn  
10 mean?

11 A. Pronghorn is a recent wildcat test that we had  
12 approximately three or four miles south of here that also  
13 utilized that slimhole-type design.

14 Q. If we go to, now, Exhibit 32 --

15 A. Uh-huh.

16 Q. -- that's the comparison.

17 A. Yeah, thank you.

18 Q. Do you know if that Pronghorn well is on a state  
19 or a federal lease?

20 A. I do not.

21 Q. I think you testified as a lead-in to this  
22 exhibit, the cost comparison, that you felt that your  
23 experience had caused you to bring the AFE costs down?

24 A. Yes, we very much did.

25 Q. If we go back to 31, the exhibit immediately

1 before, it's your original AFE, was for \$699,200, correct?

2 A. Yes.

3 Q. And then if we go back to last August and we look  
4 at the AFEs that were being proposed at that time, your AFE  
5 was \$651,700; is that right?

6 A. Yes.

7 Q. At that time, in fact, Penwell's AFE was even  
8 lower than the Burlington AFE; isn't that right?

9 A. By about \$2000, yes.

10 Q. And your AFE figures have continued to come down?

11 A. Yes, they have.

12 Q. But as of August last year, in fact, even Penwell  
13 was coming in with an AFE that was comparable to what you  
14 were proposing for the well?

15 A. Yeah, and that's very interesting. That's why we  
16 built that detailed AFE variance sheet.

17 Q. Okay. And so if we go to the comparison of the  
18 AFEs --

19 A. Uh-huh.

20 Q. -- and we look at the first line, there's a zero  
21 contingency in your AFE, and \$30,000 in the Penwell AFE,  
22 right?

23 A. That's correct.

24 Q. And as Mr. Kellahin indicated, here again, we're  
25 just talking about estimates?

1 A. Uh-huh.

2 Q. And that if a contingency fee is in an AFE and  
3 nothing happens that would require using those funds, then,  
4 in fact, the operator would not ultimately pay anything,  
5 right? It's just a cushion?

6 A. It is a cushion.

7 Q. And there is none in yours?

8 A. There is none in mine, that's correct.

9 Q. Now, have you ever had a situation where you've  
10 had to bill back an owner for, say, an escalation in water  
11 costs?

12 A. Yes, we have.

13 Q. And that's not covered in the AFE, is it?

14 A. No, it's not.

15 Q. That would be over and above it, correct?

16 A. Yes, it is.

17 Q. And if you had a contingency, that's where it  
18 would fall, correct?

19 A. Yes, it is.

20 Q. And without a contingency, it would just be an  
21 extra charge after the fact, right?

22 A. It would be an extra charge after the fact, but  
23 with our basis in the history of the wells that we've had,  
24 and seeing that we haven't encountered this extra charge,  
25 we have since concluded that we don't need to add that type

1 of contingency for the extra charges you're alluding to.

2 Q. Okay, but if that occurred, you would have to  
3 bill it? It wouldn't be within a contingency?

4 A. Yes.

5 Q. And actually, what we're ultimately going to do  
6 is, whether Burlington is the operator or Penwell is the  
7 operator, we're going to pay on actual well costs, correct?

8 A. Yes.

9 Q. Fracture treatments. Have you had to, while  
10 completing a well, add additional money for a fracture  
11 treatment?

12 A. Yes, we have.

13 Q. And that would be something that's not reflected  
14 in your AFE, right?

15 A. In fact, sometimes gladly we have, where we  
16 encounter much more zone than we anticipated.

17 Q. And you're happy, but it isn't in the AFE, is it?

18 A. No, it's not.

19 Q. And you have to then charge that?

20 A. Uh-huh.

21 Q. Okay. If you -- I mean, we all know that an AFE  
22 is really your best guess, isn't it?

23 A. No. An AFE is your best guess, but it should be  
24 more than that; it should be an engineering estimate. And  
25 that's what we're trying to show here, is that the detail

1 in the work that we've gone to has gone long -- far from a  
2 best guess. It's gone to a detailed engineering estimate  
3 of what it's going to take to drill, complete and produce  
4 the Checkmate 24 Number 1.

5 Q. But whether or not one operator thinks they  
6 should put a contingency and then another operator does not  
7 and would have to bill those things, that really doesn't  
8 determine whether that operator is prudent or imprudent,  
9 does it?

10 A. I think that, in its own right, does not  
11 determine prudence.

12 Q. You've got a number of zeros here. You've got a  
13 zero in your AFE for geological engineering. Are you going  
14 to have geological engineering on this well if you drill  
15 it?

16 A. We very much do.

17 Q. And that will be an in-house charge, will it not?

18 A. That would come out on what would be the G-and-A  
19 charge, yes.

20 Q. And what is the G-and-A charge?

21 A. It would be the administration and overhead that  
22 was alluded to with Ms. Swierc.

23 Q. It would be these overhead and administrative  
24 charges?

25 So just because it is zero on your comparison

1 doesn't mean it's not going to be billed to Penwell and the  
2 other -- and the owners of the other 86 percent of the  
3 interest in the well?

4 A. That's true.

5 Q. If we look at title curative, again we have a  
6 zero. Will that be done in-house?

7 A. Yes.

8 Q. Okay. And so again, that would be an overhead  
9 and administrative cost?

10 A. Yes, it is.

11 Q. What are your overhead and administrative costs  
12 that you are proposing for this well?

13 A. If I could give that question back to Leslyn.

14 MR. CARR: Was that testified to earlier?

15 MR. KELLAHIN: Yeah, it was \$5000 and \$500.

16 Q. (By Mr. Carr) \$5000/\$500? Do you know what is  
17 being proposed by Penwell?

18 A. We're somewhere in the \$400 range and somewhere  
19 in the \$4000 range.

20 Q. Somewhat less?

21 A. Uh-huh.

22 Q. And so if we're going to try and determine what  
23 you're billing to the nonoperators, as opposed to what  
24 Penwell might bill to the nonoperators, we have to look at  
25 more than the AFE; we have to compare those other costs too

1 do we not?

2 A. Uh-huh.

3 MR. CARR: That's all I have. Thank you.

4 CHAIRMAN LEMAY: Okay, thank you.

5 Commissioner Weiss?

6 EXAMINATION

7 BY COMMISSIONER WEISS:

8 Q. Yes, sir, Mr. Seams. Let's see, I have a  
9 question on the amount of water produced from the -- not  
10 the Delaware but this current zone in the Bone Springs, the  
11 sand, the upper sandbed.

12 A. The average production -- I thought this would be  
13 a good point to discuss. The average production for the  
14 Delaware wells in this area -- and I took the entire  
15 sampling of Delaware wells in this area, which was 68 of  
16 them -- is about 27 barrels of oil per day -- and this is  
17 today -- and 51 barrels of water.

18 Now, the average production for the existing  
19 upper Bone Spring sand wells is right at 27 barrels a day,  
20 also, out of a sampling of 20 wells, but only has about 5  
21 barrels a day of water production.

22 Q. And then on your Exhibit 22, the bubble map, are  
23 the bubbles there proportional to the expense of the frac  
24 job?

25 A. I would like to say yes, but they're not. It

1 really is -- The bubbles are in direct proportion to the  
2 size of the IP.

3 If the question is alluding to, does a bigger  
4 frac give you a larger IP, it's really much more related to  
5 the quality of the sand. We've had significant frac jobs.  
6 It's not part of this hearing, but in our Pronghorn well we  
7 had a much less IP.

8 Q. Okay. So are the frac jobs generally the same  
9 out here or --

10 A. The frac -- I'm sorry, go ahead.

11 Q. Go ahead, yes.

12 A. The average frac job out here has evolved from  
13 about 20,000 to 25,000 gallons to about 25,000 to 30,000  
14 gallons.

15 Part of that is, we're learning better where to  
16 find the sweet spots of the field or the higher thick pay.  
17 And so those are going to garner a little bit higher volume  
18 frac job than the thinner spots.

19 And a little bit is, too, is, we get a little bit  
20 better well with a little more fracture fluid.

21 Q. And then you haven't addressed correlative  
22 rights. If we look at Exhibit 1, I guess that's the lease  
23 ownership, right?

24 A. Yes, sir.

25 Q. Is the green lease -- or -- Go ahead and find it.

1 A. Thank you.

2 Q. In Section 24, the green lease to the west of  
3 your proposed location there --

4 A. Yes, sir.

5 Q. -- is that draining the proposed location?

6 A. We don't estimate that these wells completely  
7 drain. They're 40-acre proration units, so we very much  
8 try to put these wells on -- within standard location  
9 parameters.

10 Q. So what's -- Answer my question, please. Is --

11 A. No, we don't feel that it's drained. In fact,  
12 that's very much why we'd like to drill it. We feel if we  
13 do, we'll find unique reserves and original reservoir  
14 pressure.

15 Q. So correlative rights is not an issue in this  
16 case?

17 A. No, I don't feel that it is.

18 COMMISSIONER WEISS: It's a business case, that's  
19 what I was trying to say.

20 Thank you, that's the only question that I had.

21 THE WITNESS: Thank you.

22 CHAIRMAN LEMAY: Commissioner Bailey?

23 EXAMINATION

24 BY COMMISSIONER BAILEY:

25 Q. With the offset well production, do you see any

1 -- what is your estimated life expectancy of these wells?

2 A. Which one in particular?

3 Q. You said that the one to the west --

4 A. Uh-huh. Okay. The two wells to the west of the  
5 Checkmate 24 Number 1 would be the Red Tank Federal 24  
6 Number 2, which is due west, and then the Red Tank Federal  
7 24 Number 1, which is to the southwest.

8 The Red Tank Federal 24 Number 1 is actually a  
9 very good well. It had the highest IP in the upper Bone  
10 Spring sand, and it was later commingled with the Delaware.  
11 And to my last knowledge, it's been producing pretty well  
12 flat for about three years between the 40- and 50-, 60-  
13 barrel-a-day range, but I can't recall the exact number.  
14 But I would estimate its life to be greater than ten years.

15 The 2 is a little bit lesser quality of a well,  
16 and I would estimate its life to be somewhat less than ten  
17 years.

18 Q. Which is the one that Ms. Swierc was referring to  
19 when she said that production was decreasing to -- on those  
20 offset wells?

21 A. The ones, I think, that Ms. Swierc was alluding  
22 to has to do with the IP bar chart, if I can find that. It  
23 would be Exhibit Number 29. And if I'm recalling her  
24 testimony right, you can see that we had initial high IPs  
25 during the initial development of this field, and over the

1 period of time you can see how the initial potentials  
2 declined, especially here in the later period of the field,  
3 we became very concerned about the economic viability.

4 Does that answer your question?

5 Q. I'll have to go back to transcript to see exactly  
6 what --

7 A. Okay, my apology if I didn't catch it right.

8 Q. So as I understand it, the expertise that's  
9 required is in the field operations, that there is no  
10 question about proprietary drilling or completion  
11 techniques that may or may not cause damage to the  
12 reservoir?

13 A. Yes.

14 Q. Referring to Exhibit 31, the comparable Mule Deer  
15 actual costs --

16 A. Yes, ma'am.

17 Q. -- why would the AFE for the Red Tank actually be  
18 \$90,000 more in your AFE for August than what the actual  
19 costs were from the Mule Deer?

20 A. Okay, is that comparing our initial AFE estimate  
21 to the highest Mule Deer cost well?

22 Q. I'm looking at the February Mule Deer costs at  
23 \$584,000 --

24 A. Yes.

25 Q. -- and the August, 1996, AFE at \$651,000. So why

1 is there such a discrepancy in what the actual costs are  
2 that you have in comparison to your AFEs?

3 A. On our Mule Deer Number 5, which would have been  
4 the \$584,000 well, that well actually did take a little bit  
5 smaller stimulation, and these wells also did not require  
6 the facilities that the Checkmate 24 would require, due to  
7 the differences in ownership.

8 The Checkmate 24 would require an extensive flow  
9 line and additional separation facilities that would add to  
10 that cost.

11 COMMISSIONER BAILEY: That's all I have.

12 EXAMINATION

13 BY CHAIRMAN LEMAY:

14 Q. Mr. Seams, I'm trying to get a fix on the Bone  
15 Spring production, upper Bone Spring sand. You say the  
16 ultimate primary recovery correlates pretty well with the  
17 initial potential?

18 A. I would probably say more loosely. There are  
19 some very high-IP wells that decline very rapidly, and then  
20 there are some very high-IP wells that do very well. But  
21 there is a loose correlation. It takes a high IP to make a  
22 good well eventually.

23 Q. What would you estimate recovery on that west  
24 offset to the high-IP well?

25 A. The direct west offset -- I'm sorry, the

1 southwest offset would be the 450-barrel well. I'd  
2 estimate that to be over 100,000 barrels out of the  
3 Tresnor, which we call the upper Bone Spring sand.

4 Q. And how about the west offset?

5 A. The west offset, with a 141-barrel-a-day IP,  
6 declined very rapidly. I don't have the exact numbers on  
7 that, but I would estimate that to be somewhere around  
8 50,000 barrels or less.

9 Q. How much does the Delaware contribute in terms of  
10 reserves to those wells if you commingle them, would you  
11 say?

12 A. The Delaware varies, but if you look at the  
13 average to the trend, the average in the trend is about  
14 80,000 barrels from the upper Bone Spring sand and about  
15 40,000 barrels in the Delaware.

16 But as you move east or west that can flip,  
17 because you get more Delaware as you move west, more upper  
18 Bone Spring sand as you move east.

19 Q. So here you're not anticipating much from the  
20 Delaware, more in the low range of Delaware contribution,  
21 and at the proposed location you're estimating low ranges  
22 of Delaware contribution?

23 A. Yeah, we're not estimating a very high chance of  
24 finding a prolific Delaware well.

25 Q. You're looking at how much of this proposed

1 location? 100,000 barrels or -- You'd be happy with  
2 100,000?

3 A. Yes, with our reduced costs, we would be happy  
4 with 100,000 barrels.

5 Q. You say -- When could you get a rig on location?  
6 You're drilling a north offset now?

7 A. Uh-huh. Yes, we are.

8 Q. You're move --

9 A. We're moving the rig currently, sir.

10 Q. How long does it take to drill a well?

11 A. It's going to take about 18 to 19 days.

12 Q. You could skid that rig south?

13 A. Yes.

14 Q. You would skid that rig south if you got  
15 operations?

16 A. Well, if we got operations, we would try to hold  
17 that rig in some shape, form or fashion to drill the  
18 Checkmate 24 Federal Number 1. If we had a significant  
19 delay in there, we are having requests from Pogo, the  
20 northern operator, if they can take that rig for a well  
21 while we waited on the time for the 24 Number --

22 Q. I guess the reason why I asked the question, I've  
23 heard -- We were just out in the oil patch, and they said  
24 you can't even get a rig until after April. I don't know -  
25 - the tightness out there, the infrastructure because of

1 the high prices, I guess.

2 A. We've had this rig tied up since calendar year  
3 1996, and we haven't wanted to let it go very much, due to  
4 that reason.

5 Q. Let me pose a couple hypothetical questions to  
6 you.

7 You indicated that you have no problem with Pogo  
8 drilling the well, had they been the -- say, the opposing  
9 force-pooling application. What would happen if --  
10 hypothetically, if Pogo was given -- hypothetically, was  
11 given operations, but after 12 months they still didn't get  
12 the well drilled? Would you still feel the same way about  
13 Pogo?

14 A. We would begin to feel some frustration with the  
15 teamwork that we had established with them. We'd have to  
16 re-evaluate that. You have a good question.

17 Q. So you wouldn't necessarily support Pogo if there  
18 was a 12-month delay?

19 A. With a 12-month or longer delay, we would try to  
20 work to a solution.

21 Q. Which would involve what? Compulsory -- Would  
22 you want operations then, or would you --

23 A. It depends a lot, Mr. LeMay, on the conditions  
24 that go into it. If there's significant geological  
25 evidence that supports not drilling that well, then we'd

1 like to evaluate it in teamwork fashion with them.

2 If there's evidence that Pogo just doesn't want  
3 to drill the well, yeah, we would go to force-pooling.

4 Q. But as far as the attractiveness of the location,  
5 has it varied through time, or has it always been an  
6 attractive location for the past -- whatever, 18, 12, 15  
7 months?

8 A. It's been a very attractive location for the past  
9 year-plus. There hasn't been a lot of activity up in this  
10 area due to that leasing situation.

11 Q. But in your estimation, has it been drillable as  
12 a prospect all this period of time?

13 A. Yes.

14 CHAIRMAN LEMAY: That's the only questions I  
15 have.

16 Any additional questions?

17 If not, you may be excused. Thank you very much.

18 Let's break for lunch.

19 MR. KELLAHIN: What time would you like to come  
20 back?

21 CHAIRMAN LEMAY: One o'clock.

22 COMMISSIONER WEISS: Bill?

23 CHAIRMAN LEMAY: Yeah?

24 MR. CARR: My first witness will be Jerry Losee,  
25 and --

1 CHAIRMAN LEMAY: Yeah.

2 MR. CARR: -- Mr. Losee has a conflict. He's  
3 trying to leave.

4 CHAIRMAN LEMAY: Well, let's take Jerry then. If  
5 you don't mind. Are you through, Mr. Kellahin?

6 MR. KELLAHIN: Yes, sir.

7 CHAIRMAN LEMAY: Okay, let's -- You can start  
8 your case and Mr. Losee can present his testimony, and then  
9 we'll break for lunch.

10 MR. LOSEE: Appreciate it.

11 CHAIRMAN LEMAY: You bet.

12 JERRY LOSEE,

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

15 DIRECT EXAMINATION

16 BY MR. CARR:

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

18 A. Jerry Losee.

19 Q. And where do you reside?

20 A. Artesia, New Mexico.

21 Q. Mr. Losee, are you a working interest owner in  
22 the acreage that is the subject of the captioned cases?

23 A. My daughters are actually the working interest  
24 owners.

25 Q. And what is your role in regard to these

1 properties?

2 A. Well, as I explained to Penwell, the girls  
3 through me will actually participate in drilling the well  
4 if Penwell is operator. If not, they will farm it out to  
5 Penwell on the same basis that Mr. Trainer and Mr. Prince  
6 did.

7 Q. Have you been present for the testimony here  
8 today?

9 A. Yes.

10 Q. Initially, could you provide --

11 A. I've been -- That's not true, not all of it, but  
12 I've been present when Ms. Swierc testified about the --

13 Q. Could you provide the Commission with a brief  
14 history of your involvement with this lease?

15 A. Yes. C.W. Trainer contacted and asked some of us  
16 to participate with him in trying to buy this lease. It  
17 was competitive sale, and I believe 1989, you mentioned. I  
18 think the price was about \$125 an acre, and a bunch of his  
19 friends or people he had promoted, including Prince, who  
20 incidentally lives in New York City, I understand, he used  
21 part of the money himself, and I bought an interest of  
22 5.024, which is what it ended up.

23 A year or two later, or three, when it looked  
24 like it might be developed, I conveyed it to my two  
25 daughters, all of whom are at this point in their forties,

1 or both of whom are. And when -- Well, Trainer then, the  
2 first thing about the acreage, I can't remember -- I'm  
3 going to guess it was 1992 or 1993. It got much hotter.  
4 There were some wells out of it that had been producing.  
5 They had got Delaware wells and also some Bone Springs.

6 And so he came up with a proposal to checkerboard  
7 80s. The lease originally was in 23 and 24, and my  
8 recollection, it was nearly 1000 acres. He put the  
9 checkerboards out at \$1250 an acre with a net 80-percent  
10 lease.

11 I told him that I was not interested, or the  
12 girls were not interested, in securing the money. My plan  
13 at that time was that they obtain an interest in  
14 production, which I hoped would last far longer than the  
15 money would.

16 And he sold the checkerboard 80s in Section 23 to  
17 Meridian, and I believe at the \$1250 price, with the  
18 reservation of -- or an 80-percent net lease. He sold one  
19 80. He had only one bid over in Section 24, is my  
20 recollection, and that was Pogo, and that's the price they  
21 paid for the lease, as I understand it.

22 Q. \$1250?

23 A. \$1250 an acre, yes, sir.

24 Q. Yes.

25 A. Eighty percent net.

1 Q. Was there a subsequent sale of the interests in  
2 this area?

3 A. Well, one outside of the girls' interest, and my  
4 interest later on, somewhere in 1984 -- if I said 1984,  
5 that's wrong. 1994. If I've been using "eighty", that's  
6 the wrong period. It's ninety.

7 Somewhere earlier, I think Meridian had offered  
8 Trainer \$4000 an acre, and probably an 80-percent, although  
9 I don't have a recollection of that. Trainer decided he  
10 didn't want to sell. When he would get an offer, he would  
11 convey it to me.

12 By then, I think Meridian had purchased its 13-  
13 percent interest in all of the acreage, who were Trainer's  
14 original partner, and Trainer had purchased some, to bring  
15 his interest up to the 30-some-odd percent.

16 I told him I wasn't interested in selling, and I  
17 don't think he was, at the \$4000 price. And maybe it was  
18 in 1993.

19 In 1994, as Meridian started drilling the wells  
20 and I guess Trainer either looked at his financial  
21 condition or looked at the wells, he took him up on the  
22 offer, with the rest of his acreage in Section 23. And  
23 it's my recollection that the price he got was the \$4000 an  
24 acre, plus the 7.5 percent.

25 In the summer of 1994, after -- well, in 1993 --

1 Let me back up, I'll relate the -- In 1993, when Meridian  
2 proposed to drill the initial well, which actually turned  
3 out to be the Checkerboard Number 2, and it was, I believe,  
4 in the southeast quarter, southwest quarter, the girls  
5 farmed out their interest to Meridian for the best deal we  
6 could get, which was 1/8th override, gave them a 75-percent  
7 lease.

8 After that well was drilled -- and it was drilled  
9 to the Bone Springs, and I think they initially produced  
10 out of it. I think somewhere along the line they've  
11 plugged back, or maybe they've commingled. I do not know.

12 They proposed the Number 1, and the girls farmed  
13 out their interests to me, with a 75-percent interest, plus  
14 a back-in for 50 percent. The 1 -- 3 -- 1 well, Number 1,  
15 was drilled in 1993. It was completed sometime in May or  
16 June of 1993. Towards the end of 1993, they started the 3.  
17 They drilled successively, one right after the other, I  
18 believe, pretty close to it at any rate, the 3, 4, 5 and 6,  
19 in Section 23, Checkerboard wells.

20 Q. Did you participate in those wells?

21 A. I participated in those wells by signing the  
22 AFES. And based on my conversation with Don Davis, and  
23 actually based on the correspondence, I would pay the  
24 actual cost of drilling. I did not -- I refused to sign a  
25 JOA without some material changes, and we never got one

1 signed.

2           And the last of those wells, I think, the Number  
3 6, say, was completed, I want to say, in May or June of  
4 1994. And, you know, my relations with Don went extremely  
5 well. He would say, We're moving the rig and I'll get you  
6 an AFE. Do you want to join? And I said yes.

7           When he got around to the 6 I said, You know, I  
8 may farm that out to you. And then I disappeared on  
9 vacation. And then the next thing I know, I get back and  
10 the AFE is there and the well is actually down. And I had  
11 seen the logs on it; they sent me the logs. And I said,  
12 I'll do what you want. I told you I'd farm it out to you  
13 at 75 percent. I believe after payout their interest  
14 reduced to 70, or the girls' would. And it ended up, we  
15 decided to go ahead and participate.

16           Then along in July I had about \$200,000 in the  
17 operation at that point, which is more than I would want to  
18 get in it, and I talked to Trey Shepherd, who -- I think  
19 that's probably the first time I visited with him. We  
20 talked about a farmout.

21           And then a few days later I got a letter, which I  
22 looked at the other day, going through my file. It was  
23 about August 1. He said, Here's the AFEs on the 7, 8, 9,  
24 10 and 11, which we proposed to drill in this year, 1994.

25           I really wanted to wait and see what -- Some of

1 these wells had already indicated they were falling off  
2 pretty good, and I kind of wanted to see if they were going  
3 to stabilize and get some estimate as to the reserves that  
4 might be under them. I thought if I went to the banker, he  
5 would kind of want to know that.

6 And when I became convinced that was their  
7 program, there wasn't anybody else in any of these wells,  
8 working interest owner, just Meridian and the Losees, and  
9 so I talked to him about selling it.

10 I reached an agreement with Trey -- maybe Don, I  
11 don't remember -- whereby I sold all of the working  
12 interest in the wells, my girls sold all of the back-in  
13 rights in the wells and reduced their override to 7.5  
14 percent, and then they sold all of the rest of their  
15 acreage, undrilled acreage, in Section 23.

16 Q. And Mr. Losee, at this time do you own anything  
17 in the Checkerboard 23, 1, 3, 4, 5 and 6?

18 A. I own nothing. My girls own an override  
19 throughout that section of 7.5 percent, or their reduced  
20 portion of 7.5 percent.

21 Q. When were you asked to participate by Burlington  
22 in the proposed well?

23 A. I have no disagreement with Ms. Swierc's -- Do I  
24 pronounce it right, Swierc?

25 MS. SWIERC: Yes.

1 THE WITNESS: -- testimony as to, you know, you  
2 going back a year or so, and that's close enough to the  
3 dates.

4 Q. (By Mr. Carr) You also were asked to participate  
5 with Penwell, were you not?

6 A. Yes.

7 Q. And you have elected to go with Penwell?

8 A. Yes.

9 Q. Had you had problems with Burlington concerning  
10 well expenses?

11 A. Yes.

12 Q. What were those?

13 A. Well, I guess the first problem in realizing it  
14 was only the second well they had actually drilled, at  
15 least on the Checkerboard acreage.

16 The Number 1, which was the second one, the first  
17 well I participated, the AFE was about \$845,000, and I knew  
18 it had exceeded the AFE tremendously. I refreshed my  
19 memory by looking at the file, and through December of  
20 1993, the tangible and intangible costs of that well were  
21 \$1.2 million.

22 I cannot tell you about how close the  
23 expenditures came on the 3, 4, 5 and 6, because by the time  
24 I got out, I was still getting invoices on those wells.

25 Q. Mr. Losee, I believe you testified you did not

1 have a joint operating agreement for these wells with  
2 Meridian. Were there any conditions on your willingness to  
3 participate in the wells?

4 A. Well, my willingness was, I would pay the actual  
5 cost, plus a reasonable supervision charge.

6 Q. Were you actually billed the actual cost?

7 A. Well, I did not ever see the invoices. The only  
8 thing that I as a lay person in the area could determine is  
9 that the pipe charges were considerably higher, and if you  
10 go by a COPAS rate, they're going to be higher, simply  
11 because the COPAS rate for pipe is based on the east mill  
12 prices plus transportation. And I don't know anybody in  
13 our area, at least that I'm familiar with -- They buy their  
14 pipe off the west coast, Korea.

15 And the pipe charges on the Number 1 had exceeded  
16 -- oh, the surface pipe, by 15 or 20 percent. We got down  
17 to the production string, and it was, I think, 8 1/4 they  
18 had. And I looked at a couple of AFEs, as a matter of  
19 fact, the cost of some clients of mine at that time  
20 drilling Bone Springs wells, and same size pipe was \$4.75.  
21 So I was nearly paying double the price.

22 I complained about it, called Don Davis, talked  
23 to him, and eventually I got a credit through on it several  
24 months later, probably latter 1993, early 1994.

25 I can't tell you about the other pipe -- the pipe

1 charges on the 3, 4, 5 and 6, because I didn't have those  
2 analyzed by then.

3 Q. Did you have trouble receiving payment for  
4 production on the well?

5 A. Well, neither the girls, who still had an  
6 override under the first well, or myself got paid for --  
7 They didn't get paid for the Number 2 on gas till the first  
8 part of 1994, some nine or ten months.

9 Q. Do you remember when the Number 1 well was  
10 completed?

11 A. May of 1993. I didn't get paid until May of 1994  
12 for gas.

13 Q. In December of 1993, were your oil payments  
14 reduced?

15 A. Well, yes, they ran a charge through for gas and  
16 deducted off my oil payments for gas that I guess was  
17 produced from the Number 1 -- or Number 2 well, for which I  
18 had not been paid.

19 I need, Mr. Carr, to explain, and Commissioners,  
20 that Meridian maintains an owners' inquiry office in Fort  
21 Worth, and I got to know Mr. Tom Smith, who at least was  
22 one of the representatives, and he was very cordial and  
23 very helpful to the extent he could be. I had several  
24 conversations over many months trying to get the gas paid,  
25 and I'm sure he worked to try to figure out why I wasn't

1 getting paid, or the girls either.

2 Q. Have you received balancing statements on  
3 casinghead gas from these wells?

4 A. I did, yes.

5 Q. Is that normal?

6 A. No, there wasn't a balancing agreement, and  
7 originally Mr. Smith explained to me that they weren't  
8 taking my gas.

9 And I said, I have a little difficulty  
10 understanding if -- you're lifting my oil, and you have to  
11 do that to get my gas.

12 But eventually we got -- We didn't ever get  
13 liquid payments, but we did get paid for the gas price.

14 Q. How did the price that Meridian was using for the  
15 oil production compare to other prices in the area,  
16 particularly Navajo's?

17 A. Well, through 1993 and 1994 they were selling the  
18 oil at one time, I believe, to Koch, and then eventually to  
19 EOTT, who I think was paying, as I understood it -- and  
20 this probably is my conversations with Mr. Smith -- based  
21 on the Koch postings. And Navajo's prices were running 25  
22 to 35 cents a barrel higher for intermediate. By -- And I  
23 only got interested in this after Trainer started  
24 complaining that he wanted to take his oil in kind.

25 And he -- By the summer of 1994, Navajo's price

1 differential between intermediate and Koch's had risen to  
2 75 cents to a dollar a barrel higher. It was higher than  
3 what Meridian -- Meridian was using their posting, as I  
4 understood.

5 Q. You received statements with your payment  
6 vouchers from Meridian, did you not?

7 A. Yes.

8 Q. Did you have difficulty reconciling them?

9 A. Yes.

10 Q. What did you finally consider having to do to  
11 reconcile the information you were getting from Meridian?

12 A. Well, Meridian had a -- I say it's unusual, I  
13 have not seen it on any of the wells I have participated  
14 in.

15 But they had a theory that they actually  
16 estimated production towards the 20th of the month and made  
17 a payment, and then sometimes it wasn't -- they didn't  
18 correct it until next month, sometimes later on that month,  
19 and that was met by a bunch of negative numbers in their  
20 statement. And then they would positively pay what I  
21 assumed to be the accurate number.

22 But you could not balance -- I couldn't, at any  
23 rate, or my accountant really couldn't -- those numbers  
24 with the actual production figures on the wells.

25 Q. Did you look into a joint interest auditor to

1 sort this out?

2 A. Yes, by the summer of 1994 I was convinced that I  
3 needed to do something to verify the cost in the wells, and  
4 the production, and I made some inquiry about could I find  
5 one and what would it cost to do so, to -- It's pretty hard  
6 to run a joint-interest audit with a 5-percent interest in  
7 the well, but I felt like that's the only way I was going  
8 to be satisfied.

9 Q. How many wells do you own working interest in, or  
10 have you owned working interest in?

11 A. Well, Mr. Carr, I cannot tell you, but somewhere,  
12 60 to 80 or somewhere in there, I've participated and  
13 drilled.

14 Q. Is it unusual, in your experience, to have to  
15 look for an auditor to understand the payment information  
16 you're getting on your production?

17 A. Well, I haven't done it before. I haven't had  
18 to, I guess.

19 Q. In the summer of 1994, when you were looking into  
20 perhaps having to get an auditor, is that when Meridian  
21 proposed drilling the additional well?

22 A. Well, sometime in that time period, yes.

23 Q. Earlier today Ms. Swierc talked about it being  
24 prudent to drill one well -- it was prudent to drill one  
25 well at a time. What does that mean to you?

1           A.    Well, I thought it meant that you drilled a well  
2 down and completed it and produced it for a while to  
3 determine what its flow rate would be, you could count on,  
4 and what the reserves might be. And I didn't have that  
5 information on the first six wells in the field in that  
6 Checkerboard lease. And I frankly wanted to wait a period  
7 of time.

8           Q.    So at the time they proposed those wells, that's  
9 when you were looking for an auditor, and that's when they  
10 were proposing multiple wells at one time --

11          A.    Yes.

12          Q.    -- is that right?

13          A.    And also, the other reason -- I mean, both of  
14 those are things that concerned me. And another reason  
15 that I sold out, obviously I didn't want to end up with --  
16 in one year with about \$400,000 in the wells.

17          Q.    So you sold out?

18          A.    Yes.

19          Q.    Burlington then proposed an additional well?

20          A.    I'm sorry, I didn't --

21          Q.    And then Burlington proposed the drilling of this  
22 additional well, correct?

23          A.    This one -- Yes.

24          Q.    Yes.

25          A.    That's right.

1 Q. And if the Oil Conservation Commission rules that  
2 they operate the well, will you retain any interest in the  
3 well?

4 A. I will not.

5 Q. Do you want to be in a well that is operated by  
6 Burlington, based on your past experience?

7 A. Well, I do not want to be a working interest  
8 owner if they do.

9 I have explained that -- or actually written a  
10 letter to Mr. Wheeler of Penwell that if they operate it we  
11 will participate, at least in the first two wells, and then  
12 I'll look at it. And if not, if Meridian's the operator,  
13 we'll farm out to Penwell on the same basis that Trainer  
14 did.

15 Q. You're willing to participate as a working  
16 interest owner in a well if Penwell is, in fact, the  
17 operator?

18 A. Yes.

19 Q. Was the purpose of any conveyance of your  
20 interest between your daughters and yourself ever to avoid  
21 a pooling statute?

22 A. Oh, no.

23 MR. CARR: That's all I have. Thank you, Mr.  
24 Losee.

25 CHAIRMAN LEMAY: Mr. Kellahin?

## CROSS-EXAMINATION

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BY MR. KELLAHIN:

Q. Mr. Losee, I'd like a time reference. I think it was the second well you were involved in, was the one that was AFE'd for \$845,000?

A. Something like that, yes.

Q. Do you remember the well? Which one are we talking about?

A. It's called the Checkerboard 1.

Q. Checkerboard 1.

A. Which was actually the second well drilled. That would have been in the northwest of the southeast quarter.

Q. All right, I was trying to put this in sequence by looking at Burlington Exhibit 29, but I've got the Bone Springs wells, and you were in a Delaware well, so that's not going to help me. What's our time frame?

A. Well, they drilled all of these wells, my recollection is, at least the first two or three or four was drilled into the Bone Springs --

Q. What's our time frame, Mr. Losee?

A. They drilled the 2 and the 1 in 1993.

Q. Okay. Those were the early wells, then, drilled in the area?

A. That's right. Well, the early wells on the Checkerboard.

1 Q. Yeah.

2 A. There's -- Yates has got wells to the east -- or  
3 to the west -- and --

4 Q. I'm looking at the Section 23 --

5 A. Yes.

6 Q. -- the properties to the west --

7 A. Yes.

8 Q. -- where you had an interest.

9 A. Yes.

10 Q. Did you ever have an interest in any of the Pogo-  
11 operated wells?

12 A. Only in these -- The girls have an override. I  
13 have no working interest in these two wells that are in 24.

14 Q. For Pogo, down in -- I think they were in another  
15 section to the south.

16 A. Well, no, Pogo --

17 Q. Pogo's got the wells in the --

18 A. -- the offset --

19 Q. -- southwest quarter.

20 A. -- to the proposed well.

21 Q. All right.

22 A. Yes. Yes, west half.

23 Q. After the initial wells in 1993 --

24 A. Yes.

25 Q. -- the costs have dropped appreciably for all the

1 wells, have they not? The actual costs have been dropping,  
2 haven't they?

3 A. Mr. Kellahin, there's no sense in saying I can  
4 tell you, because at the time I sold out to Meridian, I was  
5 still getting tangible and intangible expenses charged to  
6 those -- for what are the 3, 4, 5 and 6, and I did not  
7 balance those out.

8 Q. Were you involved with Mr. Trainer in any  
9 discussions concerning the -- his counterproposal in May of  
10 1995 for the well that's the subject of this hearing? Did  
11 you hear that earlier discussion?

12 A. Well, I talked to him, sure. I talked to him  
13 several times about all these.

14 Q. I assume you received Burlington's AFE in April  
15 of 1995 for this well?

16 A. Yes.

17 Q. And if my memory serves me right, you approved  
18 Mr. Trainer's AFE for --

19 A. That's correct.

20 Q. -- for the well in May of 1995?

21 A. I think that's right.

22 Q. You had elected Mr. Trainer to drill the well  
23 that we're still talking about today?

24 A. That's right.

25 Q. All right. This was at a time when you were

1 concerned or had experienced the higher costs of the  
2 earlier wells that Burlington had drilled?

3 A. Well, I -- The only one that I could verify the  
4 costs, that I had verified it completely at that point, was  
5 the Number 1 well. The girls were in the Number 2 solely  
6 as override owners, so I didn't keep up with those costs.

7 Q. Okay.

8 A. And I had not run a running total on the 3, 4, 5  
9 and 6, because I was still getting invoices on them.

10 Q. Is that the well that went down to more than  
11 10,000 feet? That first well we're talking about? That  
12 was a deeper well, wasn't it?

13 A. I think most of those first two wells went to  
14 10,000.

15 Q. Okay.

16 A. A little bit below them, I think.

17 Q. And that would explain some of the cost  
18 difference that we're seeing now, compared to then?

19 A. I think that's right. But I think the well was  
20 projected to 10,000 or more than 10,000, to the upper Bone  
21 Springs. I may be wrong on that too.

22 Q. All right. If your intent was not to be involved  
23 with Burlington as the operator of these wells, you had  
24 that opportunity when you signed Mr. Trainer's AFE to have  
25 him drill the well; is that not true?

1           A.    That's correct.

2           Q.    Did you pursue with Mr. Trainer having him  
3 commence drilling that well so you could avoid having  
4 Burlington operate the well?

5           A.    I talked to him several times to encourage him to  
6 drill it himself, or get somebody to drill it for him.

7           Q.    And he never got around to it, did he?

8           A.    He never got around to it.  I can't tell you  
9 whether it was financial or if he was too busy doing other  
10 things or -- but I did encourage him to -- Of course, as  
11 hindsight tells me, the price of oil has gone up, and it  
12 may have been worthwhile for everybody to have delayed a  
13 year, looking at crude oil.

14          Q.    The interest involved, I believe -- I've  
15 forgotten the exact details, but my recollection is that  
16 Penwell acquired Mr. Trainer's interest in -- after being  
17 served with a force-pooling order in this case, Penwell  
18 acquired Mr. Trainer's interest by paying him \$100 an acre  
19 and receiving a 75-percent net interest.  Were you made  
20 that same proposal by Penwell?

21          A.    Yes, but I think it was -- I had forgotten the  
22 hundred bucks an acre, but it was a 75-percent on the first  
23 well, and payout increased to 72 percent net revenue, and  
24 it was 72 on the rest of the wells.

25          Q.    And am I correct in understanding that about in

1 September of 1996, you afforded Mr. Wheeler of Penwell the  
2 option to either allow you to participate in the well or to  
3 sell your interest, your daughter's interest?

4 A. I think the option was up to me, depending on who  
5 operated it, Mr. Kellahin.

6 Q. Okay. Mr. Losee, let me show you the letter you  
7 wrote Mr. Wheeler. I've read it as carefully as I can,  
8 sir, and I find nothing in here that describes the  
9 contingency that you have just stated. It appears not to  
10 have a contingency about whether or not Penwell is elected  
11 the operator. Let me let you look at that.

12 A. Mr. Kellahin, I think that's -- the letter  
13 correctly recites exactly what I sent to him. The basis of  
14 this letter and the fact that it was facsimile-transmitted  
15 is that Mr. Wheeler said before they went in to commit  
16 themselves on it, they wanted to know that the girls would  
17 go along with a proposal.

18 And my explanation to him, although not in this  
19 letter, on the telephone, was, if you all drill it, I will  
20 participate at least in the first two wells. As a matter  
21 of fact, the JOA which he sent included all of the lands in  
22 Section 24, and I said, all I'll sign one well on the east  
23 half of the southwest, in that 80-acre tract.

24 Q. Have you recently received multiple proposals  
25 from Penwell for other wells in the section?

1           A.    I've got a whole bunch of permits to drill on the  
2 rest -- I imagine on the rest of the acreage, yes.

3           Q.    Permits to drill filed by Penwell --

4           A.    Yes.

5           Q.    -- on the rest of the acreage --

6           A.    Yes.

7           Q.    -- in Section 23?

8           A.    Yes.

9           Q.    I'm sorry, Section 24?

10          A.    Yes.

11          Q.    All right.

12          A.    And I have no commitment to do anything one way  
13 or the other on those.

14          Q.    All right.  You've seen copies of Penwell's  
15 applications for -- APD for the additional wells in Section  
16 24.  Have they submitted to you yet well proposals or AFEs?

17          A.    I don't think I've seen any AFEs at all on any of  
18 those wells.

19          Q.    How are you going to handle the subsequent  
20 proposals from Penwell for the section?  Are you going to  
21 deal with these one at a time or --

22          A.    That's my intention, yes.

23          Q.    That's your methodology?

24          A.    Yes, I'd like to look and see what happens when  
25 we drill the first one, and...

1 Q. Disputes between an operator and a nonoperator in  
2 a well sometimes are resolved simply by taking -- the  
3 nonoperator taking their share of production in kind; is  
4 that not true?

5 A. Yes.

6 Q. All right. And am I correct in understanding  
7 that if the Commission allows Burlington to drill this  
8 well, that that is the option that you will choose in this  
9 circumstance, would be to take your share in kind? Is that  
10 not true?

11 A. If Burlington operates?

12 Q. Yes, sir.

13 A. Well, I won't be participating. My girls would  
14 simply participate on an overriding royalty basis, and if  
15 Burlington is going to keep on selling it at Koch's prices,  
16 then yes, I'll explore the right for the girls to take it  
17 in kind.

18 Q. All right. Describe for me what it is that you  
19 have by terms of your farmout from your daughters. Do you  
20 retain any interest?

21 A. Well, as far as -- I have a farmout from them --

22 Q. Yes, sir.

23 A. -- which, if Meridian operates it, I'm going to  
24 cancel the farmout.

25 If Penwell operates it, then I'll take the

1 farmout, which is -- Penwell would get a 75-percent net  
2 revenue lease, or I would get a 75-percent, excuse me, not  
3 Penwell. And the girls would have their share of a 12.5-  
4 percent royalty. They would back in for a 50-percent  
5 interest.

6 Q. Am I fair in characterizing that your difficulty  
7 with Burlington is with regards to marketing and accounting  
8 issues, as opposed to drilling, completing and the  
9 operation of the facility?

10 A. Well, the answer is yes. I am really not myself  
11 qualified to complain about the operations, and I think in  
12 fairness to Meridian I will explain that my relationship  
13 with Don Davis, who was doing the land work, originally was  
14 very good and he tried to be very helpful. I felt the same  
15 thing about their owner-inquiry man, Tom Smith, and as a  
16 matter of fact, the engineer at the time was Kevin --

17 Q. -- Metcalf, I think.

18 A. -- Metcalf, and Kevin couldn't have been more  
19 helpful.

20 But they really didn't have a lot of control, I  
21 felt like out of -- You know, they could listen to my  
22 complaint and try to get it straightened out. Sometimes it  
23 was accomplished very quickly, but sometimes it wasn't.

24 But I haven't -- I can't tell you about the  
25 operations. I'm not qualified to, Mr. Kellahin.

1 Q. All right. That concern about the accounting and  
2 the marketing issues were directed to the wells in Section  
3 23 at a point in time in which the early wells were  
4 drilled; is that not true?

5 A. Yes, I haven't had any accounting since then --

6 Q. All right, sir.

7 A. -- problem.

8 MR. KELLAHIN: No further questions, Mr.  
9 Chairman. Thank you.

10 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.  
11 Commissioner Weiss?

12 COMMISSIONER WEISS: I have no questions.

13 CHAIRMAN LEMAY: Commissioner Bailey?

14 COMMISSIONER BAILEY: No questions.

15 CHAIRMAN LEMAY: Gosh, that got a bunch of them,  
16 Mr. Losee, but let me just -- I'm trying to get to the  
17 bottom of this.

18 EXAMINATION

19 BY CHAIRMAN LEMAY:

20 Q. Is it really -- You got a better deal from  
21 Penwell than you got from Meridian, and that's -- the  
22 farmout sounds better than the force-pooling or --

23 A. Well --

24 Q. Meridian wouldn't deal with you on your interest  
25 in this section to your liking? I mean, \$500 an acre isn't

1 acceptable?

2 A. Meridian didn't offer -- Well, back up.

3 My recollection is, in my conversation that Ms.  
4 Swierc talked about in August or September, I asked them,  
5 would they consider a farmout for a 75-percent net lease  
6 and back-in? I said, You all probably won't give the girls  
7 the same back-in I will, but I'd like to know what back-in  
8 you would get.

9 I think she said, I'm not sure we'll give any,  
10 but I'll see.

11 And I think that's our last conversation. Maybe  
12 she turned me down. I'm not sure; I don't want to say she  
13 did. I didn't feel like I was, but I -- The next thing I  
14 got was the force-pooling application.

15 Q. But your deal from Penwell is definitely a better  
16 deal for you all than any deal you could make with  
17 Meridian, as far as retained interest and money?

18 A. Well, I did not offer -- Penwell's deal is a 75-  
19 percent, the first well, back-in, increase your override  
20 from 12.5 to 15.5, and on the other subsequent wells in the  
21 section 15.5 and \$100 an acre.

22 I don't know whether that's better or worse than  
23 Meridian, but at least I felt like they would have a better  
24 control over the income, and hopefully we would be able to  
25 get away to get the price of the oil at something

1 commensurate with Navajo's prices, rather than Koch's,  
2 which -- and I really haven't looked at the girls' last  
3 invoices, so I don't know where they're selling to those  
4 people.

5 But that's the reason I preferred, and still do,  
6 that Penwell operate the well.

7 Q. Yeah, that's what -- I thought because of those  
8 economic factors the -- You said Trainer got \$4000 an acre  
9 from Meridian. That was, I guess, in Section 23, where the  
10 offsetting Delaware well is not -- I mean, the quality was  
11 better in Section 23 or something?

12 A. Well, I think -- I can't -- My recollection at  
13 the time he sold the 20 for \$4000 -- and I can't tell you  
14 the time certain -- I think they had drilled through the 6.  
15 I think the northwest quarter, I don't believe, had a well  
16 in it, but that may be wrong too, Mr. LeMay. It was in  
17 1994.

18 Q. But there were those prices floating around, but  
19 it wasn't in an area where the production looked like it  
20 would be better than maybe --

21 A. Oh, yes, yes, sure.

22 Q. You mentioned \$1250 an acre, 80 percent net  
23 revenue. That's what Pogo paid, so -- In 23?

24 A. Yeah -- well, no, in 24, but that's what  
25 Meridian --

1 Q. In 24.

2 A. Meridian paid -- Trainer had two sales to  
3 Meridian in 23.

4 Q. Uh-huh.

5 A. The first one was that -- He offered to a lot of  
6 companies, Meridian, Pogo, and I'm sure he solicited Yates  
7 and a bunch of others.

8 Q. Yeah.

9 A. He made an offer that he'd sell it for \$1250 with  
10 an 80-percent net revenue.

11 Meridian took him up on the Checkerboards in  
12 23 --

13 Q. Uh-huh.

14 A. -- Pogo took this 180 in 24 --

15 Q. Uh-huh.

16 A. -- and that, I think, was probably in 1993, early  
17 1993.

18 In 1994, Meridian bought the rest of his 80s, in  
19 Section 23, at \$4000 an acre and with an 80-percent net  
20 revenue lease.

21 Q. Okay. Yeah, I think --

22 A. But there was some development at that time --

23 Q. Yeah.

24 A. -- Mr. LeMay, to answer your question.

25 Q. Yeah, okay. The last question I've got is trying

1 to gauge your frustration with Trainer, the fact that he  
2 didn't drill the well between the period we issued the  
3 force-pooling order giving him the rights to drill the  
4 well, May, 1995, to August, 1996.

5 How would you characterize your posture? Were  
6 you anxious to get the well drilled? Was it kind of, Okay,  
7 C.W. is my friend, I'll see -- You know, he may not have  
8 the ability to drill, so he might have to find someone who  
9 can handle that kind of bucks for him.

10 Were you all kind of together, looking for an  
11 operator? Or was this -- Was your impression that C.W. was  
12 going to drill that well with his money, and you would  
13 participate?

14 A. Realizing that C.W. had gotten the deal together  
15 from the beginning, realizing that I'm not in the business  
16 of promoting oil and gas wells -- although I've  
17 participated for a great number of years I've never  
18 promoted any -- and I wanted the well drilled. At least at  
19 the point -- Well, I guess Pogo had finished their second  
20 well out there, and it seemed logical that it would be  
21 drilled. I got some numbers from Pogo, as to the -- what  
22 the wells look like. And I wanted to drill.

23 I probably talked to C.W. sometime in that year  
24 period, between 1995 and 1996, one or two times, but it's  
25 something -- You get busy and you don't talk to him. I was

1 slowing down in my practice and wondering a little bit  
2 more. But I thought that he would either get the financing  
3 or find something to drill it. That's what I wanted him to  
4 do, one or the other.

5 Q. Were you frustrated with him that he couldn't do  
6 it during that period of time?

7 A. Yeah, that's probably a reasonable description of  
8 it, Mr. LeMay.

9 CHAIRMAN LEMAY: That's the only questions I  
10 have.

11 Anything else?

12 COMMISSIONER WEISS: No.

13 CHAIRMAN LEMAY: Thank you, Mr. Losee. You may  
14 be --

15 THE WITNESS: I take it I can be excused?

16 CHAIRMAN LEMAY: You can be excused.

17 Let's pick up again at 1:30.

18 (Thereupon, a recess was taken at 12:20 p.m.)

19 (The following proceedings had at 1:45 p.m.)

20 CHAIRMAN LEMAY: Are we ready to proceed? I  
21 think, Mr. Carr, you were finished with your first witness,  
22 were you, and were about to call your second at the last  
23 break?

24 MR. CARR: Yes, Mr. Chairman, and my second  
25 witness is Mr. Mark Wheeler.

1 MR. KELLAHIN: Mr. Chairman, before Mr. Carr  
2 starts with his next witness there's a matter of  
3 housekeeping.

4 I had Mr. Losee authenticate a letter to Mr.  
5 Wheeler. It's Exhibit 33 by Burlington. We would move the  
6 introduction of Burlington's Exhibit 33 at this time.

7 CHAIRMAN LEMAY: Without objection, Exhibit 33  
8 will be entered into the record. Thank you, Mr. Kellahin.

9 You may proceed, Mr. Carr.

10 MARK WHEELER,  
11 the witness herein, after having been first duly sworn upon  
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. CARR:

15 Q. Will you state your name for the record, please?

16 A. Mark Wheeler.

17 Q. Where do you reside?

18 A. Midland, Texas.

19 Q. By whom are you employed?

20 A. Penwell Energy, Incorporated.

21 Q. What is your current position with Penwell?

22 A. Land manager for the Permian Basin.

23 Q. Have you previously testified before this  
24 Division?

25 A. Yes, I have.

1 Q. At the time of that testimony, were your  
2 credentials as a petroleum landman accepted and made a  
3 matter of record?

4 A. Yes, they were.

5 Q. Are you familiar with the Application filed in  
6 this case?

7 A. Yes.

8 Q. Are you familiar with the status of the lands in  
9 the subject area?

10 A. Yes, I am.

11 MR. CARR: Are the witness's qualifications  
12 acceptable?

13 CHAIRMAN LEMAY: His qualifications are  
14 acceptable.

15 Q. (By Mr. Carr) Mr. Wheeler, could you briefly  
16 review for the Commission what it is Penwell seeks with  
17 this Application?

18 A. Penwell seeks to be named operator and pool all  
19 minerals from the surface to the base of the Bone Springs  
20 formation under the northwest southeast quarter of Section  
21 24, 22 South, 32 East, Lea County, New Mexico.

22 Q. And this unit will be dedicated to what well if  
23 you are successful?

24 A. Our Checkers 24 Federal Number 1 well, which is  
25 located at a standard 1980 feet from the east and south

1 lines of that section.

2 Q. Is this the same location proposed by Burlington?

3 A. Yes, it is.

4 Q. Could you refer to what has been marked for  
5 identification as Penwell Exhibit Number 1, identify it and  
6 review it for the Commission?

7 A. This is a land plat that shows the acreage in  
8 yellow, which Penwell owns an interest in. It also shows  
9 our proposed Checkers 24 Federal Number 1 location and  
10 shows development in the area.

11 Q. And what is the primary objective in the proposed  
12 well?

13 A. Bone Springs formation at approximately 9000  
14 feet.

15 Q. Can you identify what has been marked as Penwell  
16 Exhibit Number 2?

17 A. Exhibit Number 2 is our proposed operating  
18 agreement dated September the 10th of 1996, covering, in  
19 addition to this location, the remaining -- the remainder  
20 of the acreage shown in yellow on the previous exhibit.

21 Q. Does this exhibit contain an ownership breakdown  
22 showing the ownership of the northwest of the southeast of  
23 24?

24 A. Yes, it does. Exhibit A to this agreement shows  
25 the interest broken down between Penwell, Burlington

1 Resources and Mr. Losee.

2 Q. What is the relationship between Penwell and  
3 CoEnergy?

4 A. CoEnergy Central Exploration is our financial  
5 partner who finances all of our drilling in New Mexico and  
6 other parts of the country. There's not been a single  
7 prospect that we've been involved with in New Mexico that  
8 CoEnergy is not also involved with.

9 Q. And what percentage at this time of the working  
10 interest has been voluntarily committed to Penwell's  
11 proposal for this well?

12 A. 86.599 percent.

13 Q. Can you identify what has been marked Penwell  
14 Exhibit Number 3?

15 A. This is a copy of Penwell's proposed AFE for the  
16 Checkers 24 Federal Number 1 well.

17 Q. Would you review the totals set forth on that  
18 exhibit?

19 A. The dryhole cost is \$330,000, and the completed  
20 well cost is \$649,320.

21 Q. Is this the same AFE and the same figures that  
22 were presented to the Examiner in the hearing last fall?

23 A. Yes, sir, it is.

24 Q. Are these costs in line with what has been  
25 charged by other operators for similar wells in the area?

1           A.    Yes, as well as wells that we have drilled to  
2 similar depths.

3           Q.    And these are higher than the AFE figures that  
4 were presented here today by Burlington, \$618,400?

5           A.    This is higher than the last AFE that we received  
6 from Burlington.

7           Q.    Approximately how does it compare with the AFE  
8 that was presented last fall by Burlington?

9           A.    The new Burlington AFE is approximately \$30,000  
10 to \$35,000 cheaper.

11          Q.    And how did your AFE compare to Burlington's last  
12 fall?

13          A.    This AFE to their previous one, we were slightly  
14 cheaper, by \$2000 or \$3000.

15          Q.    Could you summarize the efforts that have been  
16 made by Penwell to obtain the voluntary joinder of all  
17 working interest owners in your proposal for this well?

18          A.    Since our entry into this prospect in early  
19 September of 1996, we immediately contacted both Burlington  
20 and Mr. Losee, and we obtained the joinder of all parties  
21 except Burlington. We have attempted to continue to obtain  
22 joinder of all parties, but thus far we've been unable to.  
23 We've visited Burlington's office, we've talked to them on  
24 the phone several times, and of course we had our hearing.

25          Q.    When were you first contacted by Mr. Trainer

1 about this development or this particular piece of  
2 property?

3 A. Mr. Trainer approached us in early September and  
4 came to our offices, I believe on September the 4th.

5 Q. And what happened at that time?

6 A. Well, he told us that he had been in this acreage  
7 -- in this area, not just this particular acreage, but in  
8 this area, for quite some time and bought the original  
9 lease and had turned property previously to Meridian and  
10 also to Pogo and had had some wells drilled.

11 He commented on the Checkerboard that he sold.  
12 And in fact, when I used to work at Maralo, Incorporated,  
13 Maralo looked at the Checkerboard that Meridian ended up  
14 buying.

15 He said that he had sold that and ended up  
16 selling the alternate Checkerboard also to Meridian for  
17 quite some sum of money, and he -- but that he had been  
18 served with a force-pooling notice and that he did not  
19 desire to participate if Burlington was going to operate,  
20 and therefore would like to sell his interest in the wells  
21 and just retain an override.

22 Q. And when did you reach an agreement with Mr.  
23 Trainer for the acquisition of this property?

24 A. Shortly thereafter. I think we actually closed  
25 that in the latter part of September.

1 Q. And then how soon thereafter were you able to get  
2 the Losee interests committed?

3 A. Actually, we started visiting with Mr. Losee --  
4 It took a while to get the purchase closed, but we in  
5 essence had a deal made to purchase the Trainer and Prince  
6 interests, so we began to -- we visited with Mr. Losee, as  
7 well as having a visit with Burlington in their offices to  
8 discuss drilling this well, and --

9 Q. What did you get from Trainer and Prince? An  
10 assignment?

11 A. We got an assignment of operating rights, yes,  
12 sir.

13 Q. And has that been filed with the Bureau of Land  
14 Management?

15 A. Yes, it has.

16 Q. Has that also been recorded in the records of Lea  
17 County, New Mexico?

18 A. Yes, it has.

19 Q. Has Penwell drilled other Bone Spring wells in  
20 this immediate area?

21 A. Our closest production is approximately four to  
22 five miles to the south of this area. We have a large Bone  
23 Springs field that we're developing just across the line in  
24 Eddy County, and we're currently drilling our sixth well in  
25 that field, and we've also participated in several other

1 ones.

2 Q. When did Penwell first become involved in New  
3 Mexico, approximately?

4 A. Well, Penwell -- Probably the latter part of 1995  
5 was the first time they had participated in any wells or  
6 any acreage in New Mexico.

7 Q. And at this time, how many drilling rigs does  
8 Penwell have going in this state?

9 A. In New Mexico?

10 Q. Yes.

11 A. The last time I checked, we had either seven or  
12 eight, depending on whether they had actually completed one  
13 of the wells.

14 Q. And if you are designated as operator will you  
15 have any opportunity going forward with the drilling of  
16 this well in the immediate future?

17 A. Yes, we would plan on drilling this well  
18 immediately. We have rigs committed to us and available.

19 Q. Can you identify what has been marked as Penwell  
20 Exhibit Number 4?

21 A. This is just a compilation of letters to Mr.  
22 Losee, and letters to and from Meridian or Burlington to  
23 Mr. Trainer, and then also to us.

24 Q. This morning you were present for the testimony  
25 of Ms. Swierc, were you not?

1 A. Yes, I was.

2 Q. Do you have any real disagreement with the time  
3 frame that she set out in her presentation?

4 A. No, I do not.

5 Q. Have you made an estimate of the overhead and  
6 administrative costs to be incurred while drilling this  
7 well and also while producing it if you are successful?

8 A. Yes, sir, we have. \$4178 a month during the  
9 drilling and \$440 a month when it's producing.

10 Q. And what is the source of those figures?

11 A. We used the Ernst and Young figures from the 1995  
12 estimate. I believe that at the time this operating  
13 agreement was proposed, the percentage of increase that's  
14 allowed under COPAS had not been -- had not come forward at  
15 that time, but the numbers that we used were the 1995  
16 numbers.

17 Q. Does Penwell recommend that these figures be  
18 incorporated into any order which results from this  
19 hearing?

20 A. Yes, we do.

21 Q. Were Exhibits 1 through 5 prepared by you or  
22 compiled at your direction?

23 A. Yes, they were.

24 MR. CARR: At this time, may it please the  
25 Commission, we would offer -- or move the admission into

1 evidence of Penwell Exhibits 1 through 5.

2 CHAIRMAN LEMAY: Without objection, Penwell  
3 Exhibits 1 through 5 will be admitted into the record.

4 MR. CARR: And that concludes my direct  
5 examination of Mr. Wheeler.

6 CHAIRMAN LEMAY: Thank you, Mr. Carr.

7 Mr. Kellahin?

8 MR. KELLAHIN: Thank you, Mr. Chairman.

9 CROSS-EXAMINATION

10 BY MR. KELLAHIN:

11 Q. Mr. Wheeler, I have a copy of the Ernst and Young  
12 1995 book. Are you aware of what the 1996 schedule is  
13 going to provide for the average of well costs?

14 A. We have been told that the increase is 4.1  
15 percent for 1995, so these figures plus 4.1 percent would  
16 probably -- I have not seen the 1996 book, but I will  
17 assume that's what will be in there.

18 Q. I'm going to show you a copy of the book here.  
19 It's the only copy I have. Apparently Ernst and Young, on  
20 the basis of tabulating 98 wells in the category between  
21 5000 feet to 10,000 feet for 1995 has a mean average for  
22 drilling monthly rates of \$4178. That's what you used?

23 A. Yes, sir.

24 Q. You did not use the median, which was the \$4500  
25 number?

1           A.    Our agreement with CoEnergy Central provides that  
2 we use the mean and not the median.

3           Q.    All right.  And the monthly producing well rate,  
4 the median is \$450 and the mean is \$440?

5           A.    Yes.  And we used the mean also.  I have the same  
6 book.

7           Q.    Okay, you have the same book?  All right.

8                    Do you participate -- not you, your company.  
9 Does your company participate with Pogo in any of the wells  
10 in the area?

11          A.    No, sir.

12          Q.    I have your Exhibit 1 here, which is your locator  
13 map.

14          A.    Yes, sir.

15          Q.    The area shaded in yellow on Section 24 is the  
16 area where you have acquired interests from Mr. Trainer and  
17 Mr. Prince?

18          A.    Yes, it is.

19          Q.    Have you also taken it upon yourself to file  
20 applications for permits to drill on those tracts, other  
21 than the subject well we're dealing with?

22          A.    Yes, sir, we have.

23          Q.    And has your company filed applications for  
24 permits to drill on all six of the remaining 40-acre tracts  
25 in Section 24?

1 A. Yes, sir, we have.

2 Q. You've done that, haven't you?

3 A. Yes.

4 Q. You've staked those locations, have you not?

5 A. Yes.

6 Q. You staked those locations before you proposed  
7 those additional six wells to Burlington, who will be one  
8 of the interest owners in those spacing units? You chose  
9 to do that, didn't you?

10 A. That's typically what you do, is stake them, in  
11 order to get a permit.

12 Q. Have you yet sent Burlington well proposals and  
13 AFEs for any of those six wells?

14 A. Yes, we have all six.

15 Q. And all those six APDs -- AFEs and well proposals  
16 were submitted to Burlington after you filed for permitting  
17 the well?

18 A. Yes.

19 Q. Did you send all those to Mr. Losee as well?

20 A. Yes, we did.

21 Q. Okay. Are you familiar with the Division's order  
22 that was entered on November 26th of this year in this  
23 case?

24 A. Yes, I am.

25 Q. Let me show you a copy of it, Mr. Wheeler, and

1 ask you to turn to page number 5. Now, you filed the  
2 applications for a permit to drill and submitted the AFEs  
3 and well proposals after the entry of this order; is that  
4 not true?

5 A. I believe that our correspondence -- I don't have  
6 the correspondence that went out. I believe that the AFEs  
7 went out prior to this order. There was quite some lag  
8 period between the hearing and the order, and I believe  
9 that the AFEs went out during the interim before November  
10 26th.

11 Q. Were you undertaking that activity for these  
12 additional six wells with regard to the fact that the  
13 Division was finding it significant in Burlington's behalf  
14 that they were the first interest owner to propose a well  
15 in a spacing unit?

16 A. I had no way of knowing until the order came out  
17 what the Commission was finding.

18 Q. Were you operating under knowledge of the  
19 Division's guidelines for settling and resolving compulsory  
20 pooling cases? Did Mr. Carr give you that guideline?

21 A. I'm aware of the guideline. I don't know if I  
22 understand the question.

23 Q. All right, you're aware of the guideline. Are  
24 you aware the guideline contains a provision giving  
25 advantage to the working interest owner which first

1 proposes a well?

2 A. I am aware of that provision, yes.

3 Q. Do you have a copy of what Ms. Swierc sponsored  
4 as her Exhibit 13, which is the confirmation of the verbal  
5 agreement that you made with Mr. Trainer by a letter dated  
6 September 10th, 1996? Do you have a copy of that, Mr.  
7 Williams?

8 A. I don't know if I have one handy. I know I've  
9 got one.

10 Q. All right, sir, let me give you my copy. Now,  
11 the assignments that you received from Trainer and Prince,  
12 what's the date that you recorded those two assignments in  
13 Lea County?

14 A. I don't have the exact date in front of me. We  
15 closed that particular deal the latter part of September  
16 and recorded them -- In fact, I believe, when we had our  
17 hearing on October the 3rd, those assignments had been sent  
18 for recording, so it must have been the latter part of  
19 September.

20 Q. Okay. Am I correct in understanding that all  
21 your transactions with Mr. Trainer occurred after August  
22 30th of 1996 and after he had received notification that he  
23 was being subject to a force-pooling application filed by  
24 Burlington?

25 A. He came to us after he received that --

1 Q. All right.

2 A. -- order, after he received that notice, yes.

3 Q. This letter agreement of September 10th is the  
4 document by which the assignments are made? Let me say  
5 that a different way.

6 If you satisfy the terms and conditions of this  
7 letter agreement, did that earn you the assignments?

8 A. Well, that -- Yes, that and paying him the sum  
9 that we owed him, we would earn an assignment, yes.

10 Q. Okay. Did you have to satisfy all the terms and  
11 conditions of this letter agreement in order to get Mr.  
12 Trainer and Mr. Prince to sign those assignments?

13 A. No.

14 Q. Are those assignments contingent upon any of the  
15 conditions of this letter agreement?

16 A. No, they're not.

17 Q. So you've undertaken some other solution to  
18 achieving the assignments, other than for filling the terms  
19 of this letter agreement?

20 A. The assignments were prepared and paid for and  
21 recorded while we continued to see who would be designated  
22 operator.

23 Q. Okay. Is Penwell obligated to reassign these  
24 interests to Mr. Trainer or to Mr. Prince in the event the  
25 Commission does not award operations to Penwell?

1 A. No, that is at our option.

2 Q. Okay. So Mr. Trainer and Mr. Prince can't  
3 trigger that?

4 A. No, sir.

5 Q. Can Mr. Prince or Mr. Trainer require you to  
6 reassign the interests to them in the event you fail to  
7 spud the well by a particular date?

8 A. Yes, sir, if we do not drill a well, then we  
9 would have to reassign to them.

10 Q. All right. What is --

11 A. But if the well is not drilled, it doesn't have  
12 to be drilled by us, but if a well is not drilled.

13 Q. All right. Is there a new time deadline?  
14 November 15 is long gone. What's the new deadline?

15 A. We have not formally extended it. I've been in  
16 continuous contact with Mr. Trainer since our first hearing  
17 on October the 3rd. He was aware that we were waiting on  
18 the order after the order was issued. In late November I  
19 made him aware of the order and told him that we were  
20 planning on filing for *de novo*. He suggested that that was  
21 an excellent idea and that we continue along that basis.

22 Q. Okay. On page 2 of the letter agreement, Mr.  
23 Wheeler, in paragraph number 7 --

24 A. Yes.

25 Q. -- the letter agreement says, In the event that

1 Penwell is unsuccessful in obtaining operations -- it says  
2 for all wells drilled in the acreage described in A, and  
3 that is for the area shaded in yellow? Yes, it is, isn't  
4 it?

5 A. Yes.

6 Q. So that it covers more than just the subject  
7 well; it's the rest of the wells drilled on the yellow  
8 acreage?

9 A. That is correct.

10 Q. If you're unsuccessful in operating those wells,  
11 then you, Penwell, has the option to withdraw from this  
12 agreement, and you have no obligation to Trainer?

13 A. Yes, sir, we --

14 Q. What's the status of that?

15 A. We did not want to have an 81.575-percent  
16 interest in this acreage and not be able to operate.

17 Q. Okay. So you still have available to you the  
18 contingency under this agreement where Penwell could  
19 reassign the interests back to Trainer and Prince at your  
20 election if you don't get operations?

21 A. That is correct.

22 Q. All right. Has Penwell made a decision about  
23 what to do with regards to re-assignment of the interests  
24 for the tract that's the subject of this well?

25 A. Not until this matter is resolved, no.

1 Q. All right. So you still have the option to  
2 return to Trainer and Prince the interest acquired at least  
3 for this tract?

4 A. Yeah.

5 Q. Let's talk about the relationship with CoEnergy.  
6 What is CoEnergy?

7 A. CoEnergy is a subsidiary of Michigan Consolidated  
8 Natural Gas out of Detroit. They are a large -- the  
9 largest gas distributor and utility in Michigan, and they  
10 maintain an investment vehicle through CoEnergy in oil and  
11 gas properties, exploration throughout the United States.

12 Q. In the State of New Mexico, CoEnergy is not  
13 operating interests for their own account?

14 A. CoEnergy does not operate anywhere, to my  
15 knowledge.

16 Q. In New Mexico, their arrangement between Penwell  
17 and CoEnergy is that you are going to be the operating  
18 entity or the operating partner, if you will?

19 A. Yes, that's correct.

20 Q. Under that arrangement, is CoEnergy's funding of  
21 your participation in this well conditioned upon Penwell  
22 being the operator of the well?

23 A. Not necessarily. The priority in our arrangement  
24 with CoEnergy is that Penwell operate, but there have been  
25 other circumstances where we have not been the operator,

1 and CoEnergy has participated along with us.

2 Q. By my count, in Lea County I think you have about  
3 11 wells that you operate.

4 A. That's probably pretty accurate.

5 Q. And of those 11 wells, is CoEnergy a funding  
6 partner in all 11 of those wells?

7 A. Yes, they are.

8 Q. And in each instance they've funded, and you have  
9 been the operator?

10 A. In Lea County, I believe there's a well that  
11 Santa Fe Energy operated on our Drover prospect. I believe  
12 that the other wells -- I'd have to look at a list, but I  
13 believe that the other wells are all Penwell-operated.

14 Q. So they have made at least one exception you're  
15 aware of?

16 A. They've made several exceptions.

17 Q. Have they made an exception on this well at this  
18 time?

19 A. No, not until this matter is resolved.

20 Q. Okay. If CoEnergy elects not to fund their  
21 interests, then they acquire no interest in the well?

22 A. That's correct.

23 Q. And that entire percentage interest now is up to  
24 Penwell to fund?

25 A. That's correct.

1 Q. Do you intend to fund your share of the well?

2 A. Yes, we do.

3 Q. Even if CoEnergy doesn't participate?

4 A. Well, CoEnergy has signed our AFE and has signed  
5 the prospect summary which triggers their participation in  
6 the prospect.

7 Q. All right, let me turn it around the other way  
8 then.

9 A. I assume that if we are not named operator, they  
10 will still participate.

11 Q. All right, that's an assumption at this point?

12 A. Yes.

13 Q. So you know they've committed to your AFE, and so  
14 if you're the operator, you know that you only have to pay  
15 the cost-bearing share of the well?

16 A. If we're the operator, we will pay the -- yeah,  
17 the cost-bearing share that we discussed, 12.3, whatever,  
18 12.23 or something.

19 Q. But there is no commitment yet about what happens  
20 if the Commission confirms the Examiner order unless  
21 Burlington operate?

22 A. There's no final determination, although again I  
23 believe since they've signed the prospect summary, that  
24 they will participate.

25 Q. Even though Burlington might be designated as the

1 operator?

2 A. That's correct.

3 Q. All right. Let me make sure I understand. Is  
4 Penwell prepared to fund the entire percentage that would  
5 otherwise be shared with CoEnergy if Burlington is named  
6 operator?

7 A. I believe so, yes.

8 Q. Mr. Wheeler, let me show you what I propose to  
9 introduce as Exhibit 34. You recognize this billing  
10 statement?

11 A. Yes, I do. I prepared it.

12 Q. All right. It's dated September 30th, 1996, is  
13 it not?

14 A. Yes, it is.

15 Q. And in fact, you sent this to the interest owners  
16 that would pay for the Checkers well, which is the subject  
17 well we're debating?

18 A. Yes, I did.

19 Q. And you submitted that to Burlington prior to the  
20 hearing we had before Examiner Stogner?

21 A. Yes, I did.

22 Q. Under this calculation, when I compare the  
23 interest percentages on Exhibit 34 to Exhibit A attached to  
24 your proposed operating agreement, which is part of Exhibit  
25 2, there's some differences in the percentages, and I want

1 to make sure the Commission understands those.

2 A. Okay, if you add Penwell and CoEnergy Central's  
3 interest together, that would be 81.575 percent, which is  
4 shown in Exhibit A.

5 Q. Okay.

6 A. The reason the operating agreement lists Penwell  
7 instead of Penwell and CoEnergy is, at the time the  
8 operating agreement was prepared, CoEnergy had not signed  
9 our prospect summary agreeing to participate in the well,  
10 so at that point it was all Penwell's interest.

11 Q. All right.

12 A. And, record-titlewise, remains all Penwell's  
13 interest. We still have not assigned to CoEnergy.

14 Q. Okay. When we look at Exhibit 34, it shows that  
15 Penwell's going to pay for 12.24 percent, if you will, of  
16 the actual costs of the well; is that not true?

17 A. That's correct.

18 Q. Part of that calculation is the result of the  
19 fact that CoEnergy is going to carry a certain portion of  
20 Penwell's interest down to the casingpoint election; is  
21 that the way I understand it?

22 A. It actually is through the tanks of the well.

23 Q. Oh, through the tanks of the well, they're going  
24 to pay your share?

25 A. Yes.

1 Q. Okay. And when we look at the paying share that  
2 Burlington is going to have, they're going to be paying  
3 13.4 percent?

4 A. That's correct.

5 Q. And then Mr. Losee and his daughters have the  
6 other 5 percent?

7 A. That's correct.

8 MR. KELLAHIN: Mr. Chairman, we would move the  
9 introduction of Exhibit 34.

10 MR. CARR: No objection.

11 CHAIRMAN LEMAY: Exhibit 34 into the record.

12 Q. (By Mr. Kellahin) Have we covered all the items  
13 on Exhibit 13, the letter agreement of September 10th,  
14 1996, in terms of any contingencies that are not yet  
15 discussed here this afternoon?

16 A. Well, there's a continuous development program  
17 which Penwell will have to prosecute in order to maintain  
18 their interests that they purchased from Mr. Prince and Mr.  
19 Trainer, so that is a contingency.

20 Q. You've got 180 days between wells; is that what  
21 this is?

22 A. That's correct.

23 Q. All right. Mr. Wheeler, I believe you told me at  
24 the last hearing that you found it significant that  
25 Penwell's gross interest was substantially larger than

1 Burlington, and urged the Examiner to decide the case based  
2 upon that difference; is that not true?

3 A. That's correct. Our funding from CoEnergy is no  
4 different than the funding Burlington receives from  
5 internally. Everything we do in New Mexico, CoEnergy is  
6 involved with us on, if they choose to be, as they have  
7 here. So in my mind, CoEnergy and Penwell are one entity.  
8 They certainly have an election to do something different,  
9 but to date they have not. They use our expertise.

10 Q. What has been your practice or Penwell's practice  
11 in the reverse situation, where Penwell and CoEnergy have a  
12 minority interest? What do they do in terms of operating  
13 the well or participating with a majority owner in those  
14 operations?

15 A. To my knowledge, thus far, we have -- the  
16 operations where we have a minority interest have been the  
17 ones that we have not ended up being operator generally. I  
18 don't know that's the case in every situation, but -- I'd  
19 have to look at those individually. But the majority of  
20 our prospects, we are the largest owner, at least 50  
21 percent or larger.

22 Q. On behalf of Penwell, have you advanced the  
23 proposition that Penwell, having proposed the well, should  
24 be the operator, even though you have a minority interest  
25 in the spacing unit?

1           A.    Not to my knowledge, not when you take Penwell  
2           and CoEnergy together.

3           Q.    All right.  Let me see if I can refresh your  
4           recollection.

5                     Let me show you what I have as a December 19th,  
6           1996, well proposal to Ms. Swierc, over your signature, in  
7           which Penwell is proposing a Morrow gas well in Section 33,  
8           19 South, 33 East, Lea County, New Mexico, and you attach a  
9           proposed operating agreement.  And if you'll turn to  
10          Exhibit A you'll find that Penwell's interest before the  
11          tanks is only 3.75 percent, compared to the Burlington  
12          interest which is 50 percent.

13          A.    Penwell and CoEnergy together have 25 percent.  
14          Our partner in the lease, Santa Fe Energy, has 25 percent.  
15          So Santa Fe has backed Penwell as operator of this  
16          particular prospect.  So in this particular prospect we're  
17          at 50 percent and Burlington is at 50 percent.

18          Q.    Do you have a commitment in writing from Santa Fe  
19          to participate with you in this well?

20          A.    No, we do not at this point have a commitment in  
21          writing for them to participate.  However, at the time  
22          Santa Fe entered into this acreage we had an understanding  
23          that Penwell would operate.

24          Q.    Is that understanding to such a specific extent  
25          that contractually you can commit Santa Fe's interest over

1 their objection in this particular prospect?

2 A. No, I submitted this AFE and this operating  
3 agreement to Santa Fe Energy at the same time I submitted  
4 it to Burlington. But because of our previous verbal  
5 agreement, I anticipate Santa Fe signing our AFE and  
6 operating agreement.

7 Q. Have you had any conversations with Santa Fe  
8 about their willingness to participate with you in this?

9 A. Not since I sent this letter, no.

10 Q. You told me your nearest operations were what?  
11 Four or five miles away?

12 A. To the south, yes, sir.

13 Q. Tell me again in what pool that's located?

14 A. We call the wells Diamondtail. I don't know that  
15 that's the official pool name, but they're in Section 23 of  
16 23-32.

17 MR. KELLAHIN: Okay. Thank you, Mr. Chairman.

18 CHAIRMAN LEMAY: Were you going to submit that as  
19 an exhibit, what you were talking about, that --

20 MR. KELLAHIN: If you please, I have it marked,  
21 and I need to mark some copies. It would be Burlington  
22 Exhibit 35, if you please, Mr. Chairman.

23 CHAIRMAN LEMAY: Commissioner Weiss?

24 COMMISSIONER WEISS: I have no questions.

25 CHAIRMAN LEMAY: Commissioner Bailey?

## EXAMINATION

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BY COMMISSIONER BAILEY:

Q. There was some discussion earlier that Meridian would be using EOTT and Koch for purchase of the oil. Who would Penwell sell to?

A. I don't know that that decision has been made at this point. We have sold production to various purchasers. I believe that -- I know that in the property to the south, that's four or five miles to the south that I was discussing, we sell to Navajo, but I -- for the oil. I do not know that they would necessarily be the purchaser here. But since they purchase in that same area, probably so.

COMMISSIONER BAILEY: That's all.

## EXAMINATION

BY CHAIRMAN LEMAY:

Q. Mr. Wheeler, J prospect, did you originate it?

A. Yes, I did.

Q. Okay. What do you call this prospect, the Trainer prospect?

A. Checkers.

Q. Checkers. Did you originate this?

A. I didn't orig- -- I mean, Mr. Trainer originated it --

Q. Okay.

A. -- by bringing it.

1 Q. Okay. So there's a difference. You came there  
2 with this one, your geology, your idea. Do you want to  
3 join us, Burlington? We've got 50 percent, you've got 50  
4 percent.

5 Here -- I'm trying to get this thing in  
6 perspective -- Trainer comes to you. Was this deal on the  
7 street before it hit you, or did you -- I mean, here --  
8 C.W. has got 14 months, doesn't get the well drilled, gets  
9 a request from Burlington, Hey, I'm going to drill unless  
10 you do.

11 He's pretty desperate. He comes -- I mean, I  
12 would assume he is. What's -- How did you get involved in  
13 this? I know C.W. came to you, but did he come to you and  
14 others in Midland, trying to get the thing sold?

15 A. I don't know whether we were the first ones to  
16 look at it or not. I think your categorizing him as  
17 desperate is probably a pretty good --

18 Q. Okay, thank you.

19 A. -- categorization because --

20 Q. Okay.

21 A. -- he suggested at that meeting some of the same  
22 concerns that Mr. Losee had --

23 Q. Okay.

24 A. -- about his previous dealings with Meridian.

25 Q. So you're kind of there for C.W., to get the

1 job -- to preserve his rights under our initial force-  
2 pooling order, or trying to resurrect that force-pooling  
3 order because he --

4 A. There was no force-pooling order at the time Mr.  
5 Trainer brought this to us, Mr. LeMay. The first order  
6 that's been issued on this particular location is the one  
7 that we're discussing today, that was done in November of  
8 1996.

9 MR. KELLAHIN: May I take a moment and clarify  
10 something?

11 CHAIRMAN LEMAY: Yes.

12 MR. KELLAHIN: I think you've misunderstood  
13 something.

14 CHAIRMAN LEMAY: Yes.

15 MR. KELLAHIN: In April of 1995, Burlington sent  
16 a well proposal and an AFE to Trainer and Prince.

17 Mr. Trainer countered in May of 1995 and said,  
18 Here's my AFE on your proposal; sign it and let me operate.

19 CHAIRMAN LEMAY: I'm sorry, I said force-pooling,  
20 but I mean, by agreement, Trainer had operations --

21 MR. KELLAHIN: That's right.

22 CHAIRMAN LEMAY: -- on the prospect between May,  
23 1995, and August, 1996.

24 MR. KELLAHIN: Exactly right.

25 CHAIRMAN LEMAY: There wasn't a force-pool -- I

1 said force- -- but I meant --

2 MR. KELLAHIN: It's not a force-pooling.

3 CHAIRMAN LEMAY: Not a force-pooling.

4 MR. KELLAHIN: It was a voluntary agreement --

5 CHAIRMAN LEMAY: A voluntary agreement. He had  
6 the majority of interest; it was agreed that he would  
7 operate the prospect.

8 Everyone is shaking their head, so that was --

9 MR. KELLAHIN: Yes.

10 CHAIRMAN LEMAY: -- at that period of time.

11 MR. KELLAHIN: Yes, sir.

12 Q. (By Chairman LeMay) And then time ran out or --  
13 so to speak? And that's why you -- kind of desperate to  
14 get the job done?

15 A. Well, with all due respect to Mr. Trainer, what  
16 he did was really none of our concern. When he approached  
17 us and said, My interest is available, we would like for  
18 you to purchase it, we would like for you to see what you  
19 can do in working in Meridian, because I do not want to --  
20 or Burlington at the time.

21 We looked at it and we said, Yes, we're  
22 interested in it. We contacted Mr. Losee. He immediately  
23 agreed to sign our AFE and participate with us. So we were  
24 prepared to move forward and drill the well.

25 So I don't think Penwell should be judged by what

1 Mr. Trainer did. We entered into this prospect as a good-  
2 faith purchaser, and immediately upon our entry into the  
3 prospect, we prosecuted getting this well drilled with the  
4 86 percent that we had committed, as soon as we possibly  
5 could.

6 Q. Yeah, I wasn't questioning anything as far as the  
7 integrity of -- I mean, please don't misinterpret the  
8 question.

9 I was trying to get the chronology of events and  
10 also the agreements as they existed then. And I understand  
11 from your response that if you don't get operations you can  
12 reassign, or at least --

13 A. We have that option.

14 Q. -- get out of the deal, I guess --

15 A. We have that option.

16 Q. -- if you don't get operations? Okay.

17 You have rigs in the area, you're qualified to  
18 operate, you're willing to pursue the prospect. And you  
19 view this as -- How important are operations to you?  
20 Pretty important?

21 A. Well, they're important in our relationship with  
22 CoEnergy. But more importantly here, we represent, even  
23 without Mr. Losee, nearly 82 percent, 81.5 percent of the  
24 cost of this well. CoEnergy is counting on us. And with  
25 that kind of percentage in a \$600,000 or \$700,000 well, we

1 feel like it's incumbent to try to operate that and do the  
2 best job we can at controlling our costs and also  
3 accounting for production properly and everything that we  
4 normally do.

5 Q. Do you think with a 180-day continuous  
6 development clause -- it's kind of a -- two clauses, as I  
7 understand; it goes back -- proration units go back if  
8 they're not developed -- that you'll have enough time to  
9 evaluate the previous well before you're obligated to drill  
10 the next one?

11 A. Yes, sir, in this area -- I'm not a geologist,  
12 but in this -- We do have a geologic witness. But in this  
13 area there's enough well experience, enough wells that have  
14 been drilled, that we feel like we can evaluate fairly  
15 quickly whether or not we want to drill under the  
16 continuous-development obligation.

17 Q. Does your operating agreement -- or have you seen  
18 it and compared it to the operating agreement of  
19 Burlington? Do they both have -- I just looked, like a  
20 hundred/three hundred on the nonconsent provision to the  
21 operating agreement?

22 A. I believe that's correct, they both have the  
23 same --

24 Q. And that's agreeable to you and also to  
25 Burlington, I assume?

1 A. Yes.

2 Q. So that part -- If you've got to hurry up and  
3 drill the wells because of the continuous-development  
4 clause, the other parties in the deal can go nonconsent on  
5 a 300-percent basis?

6 A. That's correct, under our proposal, yes.

7 Q. Yeah, okay.

8 A. And theirs.

9 CHAIRMAN LEMAY: And theirs, yeah. Thank you,  
10 that's it.

11 Any other questions of the witness?

12 That's all I have, thank you. The witness may be  
13 excused.

14 Mr. Carr?

15 MR. CARR: At this time we call Mr. Thoma.

16 JOHN THOMA,

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

19 DIRECT EXAMINATION

20 BY MR. CARR:

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

22 A. John Thoma.

23 Q. Where do you reside?

24 A. Midland, Texas.

25 Q. By whom are you employed?

1 A. Penwell Energy.

2 Q. What is your current position with Penwell?

3 A. Geologist.

4 Q. Mr. Thoma, have you previously testified before  
5 this Division?

6 A. Yes, I have.

7 Q. At the time of that testimony, were your  
8 credentials accepted and made a matter of record?

9 A. Yes, they were.

10 Q. You've also testified before the Commission?

11 A. Yes, I have.

12 Q. Are you familiar with the Application filed in  
13 this case?

14 A. Yes.

15 Q. Have you made a geological study of the area  
16 surrounding the proposed well?

17 A. Yes, I have.

18 Q. Are you prepared to share the results of that  
19 study with the Commission?

20 A. Yes.

21 MR. CARR: Are the witness's qualifications  
22 acceptable?

23 CHAIRMAN LEMAY: His qualifications are  
24 acceptable.

25 Q. (By Mr. Carr) Mr. Thoma, let's refer to what has

1 been marked as Penwell Exhibit Number 6. Do you have that  
2 in front of you?

3 A. Yes.

4 Q. Would you identify that and review it for the  
5 Commission?

6 A. Exhibit Number 6 is an isoporosity map of the  
7 upper Bone Springs Avalon sand, which is the sand, upper  
8 Bone Springs reservoir, that was shown on Mr. Thomerson's  
9 exhibit and was referred to as the Tresnor sand. It's the  
10 same reservoir, different name, local name.

11 The color coding is as follows: The red markers  
12 are proposed and/or drilling possibly industry locations.  
13 The green dots are producing or wells that have production-  
14 tested the Avalon sand. The yellow shown in Section 24 is  
15 the Penwell leasehold. And the proposed location, the  
16 Checkers 24 Federal Number 1, is shown with the blue  
17 diamond, heavy blue dot, in the northwest of the southeast  
18 of Section 24.

19 The balance of the triangles, numbered Number 2  
20 through 6 -- or rather 7 -- are proposed permitted --  
21 approved, as far as permitting is concerned, locations that  
22 have been staked by Penwell.

23 Q. Basically, what does your geological study tell  
24 you about the risk associated with the development of this  
25 prospect?

1           A.    The risk associated with the prospect is fairly  
2 high.  This map is -- it is a 10-percent isopach, using a  
3 10-percent porosity cutoff, and so it shows a little bit  
4 greater continuity than does Burlington's map of the  
5 overall sand trend.

6                    The better part of the risk in exploring for this  
7 sand is not necessarily penetrating the sand but in  
8 establishing commercial production from the sand.

9                    There are critical net thickness cutoffs.  
10 There's great divergence on how much -- between geologists  
11 on how much net pay you need to establish commercial  
12 production.  When I say "commercial production", I mean a  
13 well in the range of 80,000 to 120,000 barrels.

14           Q.    In your opinion, is there a chance at this  
15 location you could drill a well that would not be capable  
16 of commercial production?

17           A.    Yes, there is.

18           Q.    Are you prepared to make a recommendation to the  
19 Commission as to the risk that should be assessed against  
20 any nonconsenting interest owner in the Penwell well?

21           A.    Yes.

22           Q.    And what is that?

23           A.    200 percent, plus cost.

24           Q.    Does Penwell seek to be designated operator of  
25 the well?

1 A. Yes.

2 Q. In your opinion, will the granting of this  
3 Application and the drilling of this well be in the best  
4 interest of conservation, the prevention of waste and the  
5 protection of correlative rights?

6 A. Yes.

7 Q. Was Exhibit 6 prepared by you?

8 A. Yes, it was.

9 MR. CARR: At this time we would move the  
10 admission into evidence of Penwell Exhibit 6.

11 CHAIRMAN LEMAY: Without objection, Exhibit 6  
12 will enter the record.

13 MR. CARR: And that concludes my direct  
14 examination of Mr. Thoma.

15 CHAIRMAN LEMAY: Thank you, Mr. Carr.

16 Mr. Kellahin?

17 MR. KELLAHIN: No questions. Thank you, Mr.  
18 Chairman.

19 CHAIRMAN LEMAY: Commissioner Weiss?

20 EXAMINATION

21 BY COMMISSIONER WEISS:

22 Q. How were the contours generated on Exhibit 6, or  
23 whatever it was? Six.

24 A. By hand.

25 COMMISSIONER WEISS: By hand. Quite a

1 difference.

2 That's the only question I had.

3 CHAIRMAN LEMAY: Commissioner Bailey?

4 COMMISSIONER BAILEY: I have no questions.

5 CHAIRMAN LEMAY: Are you going to have an  
6 engineer --

7 MR. CARR: Yes, I am.

8 CHAIRMAN LEMAY: -- following this? I have no  
9 questions. Thank you very much.

10 MR. CARR: At this time we would call Mr. Bill  
11 Pierce.

12 BILL PIERCE,

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

15 DIRECT EXAMINATION

16 BY MR. CARR:

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

18 A. Bill Pierce.

19 Q. Where do you reside?

20 A. Midland, Texas.

21 Q. Mr. Pierce, by whom are you employed?

22 A. Penwell Energy, Incorporated.

23 Q. And what is your position with Penwell?

24 A. Senior operations engineer.

25 Q. How long have you been employed by Penwell?

1 A. One year.

2 Q. Prior to your tenure with Penwell, for whom have  
3 you worked?

4 A. I worked for a major, Mobil Oil Corporation, and  
5 then two independents.

6 Q. And who are they?

7 A. Mewbourne Oil Company, and then for a while I did  
8 consulting work for the Forest Oil Corporation group.

9 Q. Has the geographic area of your responsibility  
10 for these companies, as well as Penwell, included  
11 southeastern New Mexico?

12 A. Yes, sir, they have.

13 Q. Have you been personally involved with the  
14 drilling of Delaware and Bone Springs wells in southeast  
15 New Mexico?

16 A. Yes, sir, I have.

17 Q. How many of these wells have you personally been  
18 involved with?

19 A. Over 100.

20 Q. Are you familiar with the Application filed in  
21 this case on behalf of Penwell?

22 A. Yes, sir, I am.

23 Q. Are you familiar with the Burlington Application  
24 and the documents that relate to that Application?

25 A. Yes, sir.

1 Q. And have you reviewed those documents and are you  
2 prepared to make certain recommendations and observations  
3 to the Oil Conservation Commission?

4 A. Yes, I am.

5 MR. CARR: Are the qualifications of Mr. Pierce  
6 acceptable?

7 CHAIRMAN LEMAY: His qualifications are  
8 acceptable.

9 Q. (By Mr. Carr) Initially, Mr. Pierce, how many  
10 rigs do you have drilling in New Mexico at this time?

11 A. As of this morning, we have six.

12 Q. And would you have any problem of having a rig  
13 immediately available to drill this well, if authorized by  
14 the Oil Conservation Division?

15 A. No, sir, we would not.

16 Q. Let's go to what has been marked as Penwell  
17 Exhibit Number 7, which is a copy of the AFE of Burlington,  
18 dated early December, 1996. Do you have that in front of  
19 you?

20 A. Yes, sir.

21 Q. How does this AFE actually differ from the  
22 previous AFEs you've received from Burlington on this well?

23 A. The main difference I could determine, Mr. Carr,  
24 was in the tubulars that they intend to run, versus what  
25 they originally had proposed in their first AFE to us.

1 Q. And what are those changes? Can you be more  
2 specific?

3 A. Yes, sir, in the original AFE they had proposed  
4 surface casing of 13 3/8 diameter, followed by intermediate  
5 casing of 8 5/8, with a long string or production casing of  
6 5 1/2 inches in diameter.

7 The new AFE submitted to us, they report to us  
8 that they would like to set 9-5/8-inch surface casing,  
9 7-5/8-inch intermediate and 4-1/2-inch production casing.

10 Q. Okay. How large will the intermediate hole be  
11 under their current proposal?

12 A. It will have to be -- Based on what they've  
13 submitted, it can't be any larger than 8 3/4.

14 Q. Now what is the OD, outer diameter, of the 7 5/8  
15 inch casing?

16 A. The OD of a 7 5/8 casing coupling is 8 1/2  
17 inches.

18 Q. And that would be run, according to their  
19 proposal, in an 8-3/4-inch hole?

20 A. That is correct.

21 Q. Does this give you any concern as a drilling  
22 engineer?

23 A. Well, to begin with, Mr. Carr, the federal  
24 government, according to Mr. Joe Lara of the Carlsbad BLM  
25 office, they will not approve such a configuration on

1 federal land.

2 Q. And why is that? Did he tell --

3 A. Because it does not give enough clearance for  
4 cement between the OD of the casing coupling and the  
5 borehole.

6 Q. In your opinion, is this a prudent way to  
7 complete a well in this area?

8 A. No, sir, it absolutely it is not.

9 Q. And when did you check with them on this matter?

10 A. Tuesday, I checked with Mr. Lara.

11 Q. Do you have any other concerns about the new AFE?

12 A. Well, one thing I noticed is -- It's not unusual  
13 for someone to drop a pumping unit size one size, but in  
14 this instance they have gone from a 912-size pumping unit  
15 down to a 456, and I'm not sure I really understand why  
16 they could drop a unit two sizes. That's a significant  
17 difference in production capabilities between a 912 and a  
18 456, and I'm not sure I understand how they can do that.  
19 So...

20 Q. Is there anything in the current AFE that would  
21 provide -- from Burlington, that would provide for any  
22 separation equipment?

23 A. In the original AFE they did not provide for any  
24 separation equipment. In the new one they did provide for  
25 a heater treater, but they still have not provided for

1 additional tanks to hold the oil from this particular well.

2 Q. If Burlington is the operator of this well, will  
3 Penwell and CoEnergy desire to take their share of  
4 production in kind?

5 A. Yes, sir, we will take our production in kind.

6 Q. Will you require that it be placed in a tank  
7 battery on the lease?

8 A. Yes, sir, we will.

9 Q. Is there anything in the AFE, as presented by  
10 Burlington, that would provide for the tanks that are  
11 necessary for this kind of an arrangement?

12 A. I couldn't find one, Mr. Carr.

13 Q. When was this AFE provided to Penwell?

14 A. I think we actually received ours in our office  
15 -- The week of the 21st, thereabouts, is when we actually  
16 received this AFE.

17 Q. And your Exhibit Number 7 is from the files of  
18 Penwell?

19 A. That is correct, yes, sir.

20 MR. CARR: Mr. Chairman, at this time I would  
21 offer into evidence Penwell's Exhibit Number 7.

22 And that concludes my direct examination of Mr.  
23 Pierce.

24 CHAIRMAN LEMAY: Okay, Mr. Carr. Without  
25 objection, Exhibit Number 7 of Penwell will be admitted

1 into the record.

2 Mr. Kellahin?

3 MR. KELLAHIN: Thank you, Mr. Chairman.

4 CROSS-EXAMINATION

5 BY MR. KELLAHIN:

6 Q. Are you familiar with the pumping capacity of the  
7 456 unit?

8 A. Yes, sir.

9 Q. And what is that, sir?

10 A. Well, it depends on what kind of tubing you have  
11 in the hole, Mr. Kellahin.

12 Q. All right. And have you figured out what its  
13 capacity is with this wellbore configuration?

14 A. With this one of their latest AFE --

15 Q. Yes, sir.

16 A. -- or their original AFE?

17 Q. With the latest.

18 A. The latest AFE would allow them to move  
19 approximately 250 to 300 barrels a day.

20 Q. Under the prior configuration, how much fluid can  
21 you move?

22 A. They could move probably in excess of 600 barrels  
23 a day.

24 Q. Are you aware that the average fluid rate for the  
25 upper Bone Springs wells in this area is only 32 barrels?

1 A. Of total fluid?

2 Q. Yes, sir, a day?

3 A. Yes, sir, and that's why we wondered why they  
4 gave us such a large pumping unit size to begin with.

5 Q. But then you've just criticized them for dropping  
6 the pumping size.

7 A. Exactly, they can't seem to figure out what size  
8 they really need out there.

9 Q. But did you figure out with Mr. Joe Lara at the  
10 BLM why he approved this same slimhole configuration for  
11 Burlington in the Pronghorn well, and now he tells you he  
12 won't do it for this well?

13 A. Is the Pronghorn federal or state?

14 Q. Federal, sir.

15 A. Mr. Joe Lara said he would not approve this  
16 configuration.

17 Q. So he didn't explain to you the fact that they  
18 had already approved and Burlington was using this type of  
19 configuration on a federal lease?

20 A. No, sir, he did not.

21 Q. He didn't explain to you why they are now  
22 inconsistently telling you something that they now let us  
23 do?

24 A. No, sir, he did not.

25 MR. KELLAHIN: All right, no further questions.

1 CHAIRMAN LEMAY: Thank you. Commissioner Weiss?

2 EXAMINATION

3 BY COMMISSIONER WEISS:

4 A. Yes, sir, Mr. Pierce, what's your opinion on the  
5 aspects of drainage out here in this area by these two  
6 wells that are producing on the Pogo well?

7 A. Well, it has been our experience, or my personal  
8 experience over the years that some Bone Spring and some  
9 Delaware do have difficulty draining 40-acre oil spacing  
10 units.

11 COMMISSIONER WEISS: Thank you.

12 CHAIRMAN LEMAY: Commissioner Bailey?

13 EXAMINATION

14 BY COMMISSIONER BAILEY:

15 Q. The question of saltwater disposal came up  
16 earlier.

17 A. Yes, ma'am.

18 Q. What would be the plans for saltwater disposal?

19 A. Well, originally we had planned to approach  
20 Burlington to see if we could dispose of the water from  
21 this lease into their disposal system, but of course quite  
22 obviously that has changed, which now leaves us with no  
23 resource but to truck the water.

24 Q. And are you looking at \$1.40 a barrel?

25 A. Mostly, the water hauled in that area goes from

1 \$1.00 to \$1.40 a barrel, yes, ma'am.

2 COMMISSIONER BAILEY: That's all.

3 EXAMINATION

4 BY CHAIRMAN LEMAY:

5 Q. Mr. Pierce, you've been around a while.

6 A. Yes, sir.

7 Q. You've been involved in lots of wells, I'll bet.

8 A. Yes, sir.

9 Q. What's been your experience with joint operation?

10 What's a prudent time frame for an operator to get a well  
11 drilled if you're in partnership with them because of  
12 communitization?

13 A. From the time a well is first proposed, the  
14 industry, over the years, Mr. LeMay, has been anywhere from  
15 60 to 90 days, from the time a well is actually proposed  
16 until it's actually spudded.

17 Q. And something that goes longer than that, how  
18 would you characterize it?

19 A. Obviously, the parties involved have problems,  
20 either financial or operational differences. You know,  
21 there can be various things to delay the drilling of a  
22 prospect.

23 CHAIRMAN LEMAY: Thank you, no further questions.

24 MR. CARR: Nothing further.

25 CHAIRMAN LEMAY: You may be excused. Thank you

1 very much, Mr. Pierce.

2 MR. CARR: Ready for closing?

3 CHAIRMAN LEMAY: Ready to close?

4 MR. CARR: Yes, sir.

5 CHAIRMAN LEMAY: Let's do it.

6 MR. CARR: May it please the Commission, what  
7 we're talking here about today, as you're aware, are two  
8 competing compulsory pooling applications.

9 I think it's instructive to go back to the  
10 statute and start there, for the Oil and Gas Act provides  
11 that where there are separately owned tracts embraced  
12 within a single spacing or proration unit and the owners  
13 have not agreed to pool their interests, then they may come  
14 to the Division and you will pool them.

15 But before it says that, it also provides that  
16 they may validly pool their interests and go forward and  
17 develop the land as a unit.

18 When Penwell entered the picture in September,  
19 that's what they tried to do. They contacted the other  
20 owners, and within a month everyone except Burlington had  
21 agreed to join in a well they would drill and operate. And  
22 86.6 percent said, yes, they would pay voluntarily their  
23 share.

24 They're here today, Burlington, now asking you to  
25 say that that agreement is of no value and that that 86

1 percent will have to pay for a well operated and drilled by  
2 someone they have elected not to go with.

3 As was clarified a few minutes ago, prior to last  
4 August in the context of this particular case, there was no  
5 pooling order. No one designated anyone operator of the  
6 well. You did not, until the order coming after the August  
7 hearing.

8 And what we really had was almost two years when  
9 Burlington was out there, anxious to get a well drilled,  
10 talking to Trainer, waiting, but not doing what it had a  
11 right to do: Come to you, pool the land and drill the  
12 well. That's what happened. Negotiations, but no one  
13 willing to step forward and say, We're going to go forward,  
14 we're going to develop the property. It really didn't  
15 happen until Penwell entered the scene, and in a month they  
16 were virtually ready to go.

17 So I think it's wrong to dwell, and I think it's  
18 a -- tactically may be useful to dwell a lot on what Mr.  
19 Trainer may or may not have done. But the fact is, Penwell  
20 is here with a right to drill, they stand before you with  
21 86 percent of the working interest committed to them. They  
22 have a rig ready to go. They have lower overhead and  
23 administrative costs, based on Ernst and Young, not higher  
24 costs, because some of the things that might be in the AFE  
25 are actually in the overhead charges of Burlington, so they

1 have a lower overhead and administrative proposal.

2 They have a valid AFE, an AFE which we'd like to  
3 cast aside on Burlington's side today, but was even lower  
4 than theirs in August and has been, if you look at the  
5 general trend, pretty much consistent with how the AFEs  
6 were coming down over a long period of time.

7 But I submit to you, it's also the valid AFE, for  
8 whether Mr. Lara didn't notice that the hole was too thin  
9 on the Pronghorn well or not -- yesterday he said, what  
10 they're proposing, the hole is too thin. And so they've  
11 got a well that's cheap, but we submit to you it's wrong,  
12 and we submit our AFE is the valid AFE.

13 And we stand before you with 86 percent of the  
14 working interest behind us, and no complaints. We don't  
15 have anyone coming in here and raising questions about what  
16 price of oil we use or how we account or are we balancing  
17 on casinghead gas or -- You know, we don't even have to  
18 have somebody in our company to deal with customer  
19 complaints. He may be a nice guy, but we don't have to  
20 have any.

21 What you've got is a situation where Mr. Losee  
22 says, If they operate, I'm out. I was in a mess, I got out  
23 of it. Don't put me back.

24 We're here, we think, with those things that  
25 count: quick action to get the well up and going, and a

1 proposal to everyone, and most everyone in agreement, the  
2 best AFE, the lowest cost.

3 And all we need is for you not to throw out the  
4 agreement of almost everyone to give operations to someone  
5 the rest of them don't want. That's what this case is  
6 about.

7 And we ask you to honor the voluntary  
8 negotiations that resulted in an 86-percent joinder in our  
9 prospect, our proposal. And to do that, we ask you to  
10 grant our Application and deny the Application of  
11 Burlington.

12 CHAIRMAN LEMAY: Thank you, Mr. Carr.

13 Mr. Kellahin?

14 MR. KELLAHIN: Mr. Chairman, I have no idea what  
15 Mr. Carr just said. It makes absolutely no sense to me.

16 Has he forgotten 17 months of cooperation? Has  
17 he forgotten 17 months of a voluntary agreement? Has he  
18 forgotten that Trainer had all this time to spud the well?  
19 Where was he when we talked about the fact that Trainer was  
20 agreed upon voluntarily by all these interest owners to  
21 drill the well? That was the agreement.

22 Look at the statute. It talks about a voluntary  
23 agreement. Everybody signed off on his AFE. Yes,  
24 Burlington first proposed the well. Yes, they had a  
25 minority interest. Yes, they had operations in the area.

1 And yes, they deferred to the majority interest owner. And  
2 that's what happened.

3 And you can see and share in their frustration.  
4 You ask Mr. Pierce how long it takes to get a well drilled  
5 that you propose. Sixty to 90 days. Burlington was  
6 incredibly patient with Mr. Trainer. They gave him 17  
7 months. They talked to him, they asked him, they gave him  
8 time for funding. He was a little guy. They waited for  
9 him to find all his marbles so he could go do this thing,  
10 and it doesn't happen.

11 Mr. Carr wants to assess Mr. Trainer's delay  
12 against Burlington? The whole point of the exercise is to  
13 avoid compulsory pooling.

14 And we had a solution. We would have preferred  
15 to drill the well then. We were the minority interest  
16 owner; we deferred to him. He said he was going to do it.  
17 We patiently waited; it didn't happen.

18 Commissioner Weiss was astute this morning when  
19 he recognized that this wasn't a waste case, this wasn't a  
20 correlative-rights case. He says it's a business case.  
21 It's the business of this Commission that's the case here  
22 today.

23 Look at Examiner Stogner's order. If you'll turn  
24 to page 5 with me and look at paragraph numbered 9, Mr.  
25 Stogner says, It would only serve to circumvent the purpose

1 of the New Mexico Oil and Gas Act to allow a record owner  
2 of a working interest, Trainer and Prince, in the spacing  
3 unit at the time said party was served with a compulsory  
4 pooling application to avoid or delay having that entire  
5 percentage interest pooled by assigning, conveying, selling  
6 or otherwise burdening or reducing that interest.

7 That's exactly what he did. We proposed the well  
8 to him, he tells Leslyn, I don't want to be in a well with  
9 you. We file and serve him with a compulsory pooling  
10 application, and then after that he goes out and finds  
11 Penwell.

12 And look at Penwell. Penwell came in there with  
13 specific knowledge that Trainer and Prince had already been  
14 served with a pooling order. They didn't come in there as  
15 innocent bystanders. They saw what was happening, they  
16 assumed the risk of acquiring his interest late in the  
17 game.

18 And Mr. Wheeler is a very clever man. He figured  
19 out a way to protect his company, rightfully so. He's got  
20 a bailout on this deal. And if they don't get operations,  
21 he has got the unilateral right to turn this deal back to  
22 Trainer. And so if you have sympathy for Penwell, they are  
23 not at risk, they are not a party at harm. And they came  
24 in there with their eyes wide open as to the deal they were  
25 getting.

1           They can still make other deals with Mr. Trainer  
2 and Prince. They've already got six other proposals in  
3 this very area. The point is, we're disputing this one.  
4 And the one at hand is the one we've asked to operate for  
5 months now. It is our turn.

6           And what we have here is a case more than just  
7 the parties here. You need to begin to deal with the  
8 business of the Division. And the business is to make sure  
9 that once we engage upon compulsory pooling, that the party  
10 served does not have a way to delay, substitute, scatter  
11 their interest or manipulate their way out of the problem.  
12 We've gotten to the point where we need to institute  
13 compulsory pooling.

14           You need to decide if you want to ignore the fact  
15 that Mr. Prince is served and Mr. Trainer is served and the  
16 case is waiting for hearing. And if you want to substitute  
17 people in after the fact, then you need to tell us, because  
18 that's what you're being asked to do.

19           The business here is not waste, it's not  
20 correlative rights. It's more fundamental than that. It  
21 is what this Commission and what this agency and Division  
22 are going to do with regards to compulsory pooling cases  
23 under the Oil and Gas Act.

24           Mr. Stogner goes on and he makes specific  
25 findings. He says Burlington was the first to propose the

1 well, he finds that of significance.

2           They went through the BLM process -- as we all  
3 know, it can be very lengthy and time-consuming -- and they  
4 got their APD approved.

5           And what's more, and what's very important, as  
6 the minority interest owner they gave the majority 15  
7 months to get the deal done, and they couldn't do it.

8           The time is too late for Mr. Trainer to bring in  
9 somebody else. The time is too late to now let Penwell  
10 have a turn. The turn here belongs to Burlington. It is  
11 appropriate, it is fair. This is their back yard, if you  
12 will. They have the expertise, the technology and the  
13 operation experience in the area to effectively drill and  
14 produce the well.

15           I am sorry for Mr. Losee. He's a good friend of  
16 mine. He was a great friend of my dad's. He's got a  
17 marketing dispute with Burlington, he has got an accounting  
18 problem with Burlington. We will do our best effort to  
19 solve that. But that really is beyond, I think, the  
20 jurisdiction of the Commission.

21           We don't enter into force-pooling cases based  
22 upon marketing conditions, and we have accounting solutions  
23 for those examples, unfortunate as it may be, where Mr.  
24 Losee and others have a dispute over payment of proceeds.

25           Mr. Losee has another solution. He talked to you

1 very candidly about the fact that he can sell his interest  
2 to Penwell, he can go nonconsent. He can take his  
3 production in kind. It is now not our effort to make  
4 people like Mr. Losee or anyone else in his position  
5 unhappy, and we apologize to him and to you if that's  
6 occurred.

7 But don't let that cloud the fact that we've got  
8 a fundamental issue of the business of the Division to  
9 decide in this case, and we think the only fair decision is  
10 to let us go forward and operate this well.

11 Thank you.

12 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

13 Is there anything additional in these cases,  
14 11,613 and 11,622?

15 If not, the Commission shall take it under  
16 advisement.

17 Thank you very much.

18 (Thereupon, these proceedings were concluded at  
19 2:50 p.m.)

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## 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 Commission 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 January 21st, 1997.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 1998