

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date OCTOBER 3, 1996 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION
W. Zellachin	Zellachin & Zellachin	Santa Fe
William F. ...	Campbell, ...	Santa Fe
John Thant	PENWELL ENERGY	MIDLAND
Bill Pierce	Penwell Energy Inc.	Midland
Jim Bruce	Hinkle Law Firm	SF
Rich Deffenbacher	Inter Court	Tulsa
Mark S. Scott	Intc Court	Dallas Tx
DAVE BONEAU	YATES PETROLEUM CORP	ARTESIA, NM
Markus Thumerson	Burlington Resources	Midland TX
Doug Seams	Burlington Resources	Midland TX
Don Davis	Burlington Resources	"
Leshyn Swierc	Burlington Resources	"
C. Yakubuk	Penwell Energy, Inc.	Midland, TX
Robert Thornton	Thornton Operating Corp	Midland TX

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NAME	REPRESENTING	LOCATION
Scott Hall	MILLER, STRATVERT, ET AL	SF
Mecca Mauritsen	Vato Petroleum	Arling
Ralph Nelson	Enserch	Dallas
DAVID SCOLMAN	ENSEARCH	DALLAS
KEVIN WIDNER	GILLESPIE-COON	MIDLAND

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

IN THE MATTER OF THE HEARING CALLED BY)	
THE OIL CONSERVATION DIVISION FOR THE)	
PURPOSE OF CONSIDERING:)	
)	
APPLICATION OF BURLINGTON RESOURCES OIL)	CASE NO. 11,613
AND GAS COMPANY FOR COMPULSORY POOLING,)	
LEA COUNTY, NEW MEXICO)	
)	
APPLICATION OF PENWELL ENERGY, INC., FOR)	CASE NO. 11,622
COMPULSORY POOLING, LEA COUNTY,)	
NEW MEXICO)	
)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

ORIGINAL

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

October 3rd, 1996

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, October 3rd, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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October 3rd, 1996
 Examiner Hearing
 CASE NOS. 11,613 and 11,622 (Consolidated)

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FOR PENWELL ENERGY, INC.:

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 By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 10:05 a.m.:

3 EXAMINER STOGNER: Hearing will come to order.

4 At this time I'll call Case Number 11,613.

5 MR. CARROLL: Application of Burlington Resources
6 Oil and Gas Company for compulsory pooling, Lea County, New
7 Mexico.

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

10 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
11 the Santa Fe law firm of Kellahin and Kellahin, appearing
12 on behalf of the Applicant.

13 I have three witnesses to be sworn.

14 EXAMINER STOGNER: Any other appearances?

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

18 I'm appearing on behalf of Penwell Energy, Inc.,
19 and I have two witnesses.

20 At this time, Mr. Examiner, I would request that
21 the Penwell Application for compulsory pooling, which is
22 Case 11,622, be consolidated for the purposes of hearing
23 with the Burlington Application.

24 EXAMINER STOGNER: Are there any other
25 appearances in the Meridian case, 11,613, at this time?

1 At this time I will call Case Number 11,622 for
2 purposes of testimony.

3 MR. CARROLL: Application of Penwell Energy,
4 Inc., for compulsory pooling, Lea County, New Mexico.

5 EXAMINER STOGNER: At this time I'll call for
6 appearances in Case 11,622, other than Meridian and
7 Penwell.

8 Okay. I'm assuming there's a need for opening
9 statements at this time?

10 MR. KELLAHIN: Yes, Mr. Examiner.

11 EXAMINER STOGNER: Mr. Carr, -- I mean, I'm
12 sorry, Mr. Kellahin, I'll allow you to go first.

13 MR. KELLAHIN: Thank you, sir.

14 Mr. Examiner, if you've had an opportunity to
15 review the prehearing statements filed in this matter, you
16 have become aware that there is a dispute between
17 Burlington Resources and an individual named C.W. Trainer
18 with regards to the drilling and operation of an oil well
19 on 40-acre oil spacing.

20 The specific subject of the Application is a 40-
21 acre tract in Section 24, 22 South, 32 East. It's
22 anticipated that if it's productive at this location, then
23 production would be dedicated to the Red Tank-Bone Springs
24 Pool, which is an oil pool.

25 Our evidence this morning, Mr. Examiner, will be

1 from three witnesses, a petroleum landman, a petroleum
2 geologist and a petroleum engineer. That testimony will
3 demonstrate to you that in April of 1995 Meridian,
4 Burlington's predecessor, proposed the drilling of this
5 well to the working interest owners in that spacing unit.

6 At that time and now, Burlington had 13 percent
7 of the gross working interest. Mr. Trainer and Mr. Prince,
8 when you combine their working interest, had about 83
9 percent. This is a federal oil and gas lease. And
10 Burlington proposed the well in April of 1995.

11 In response to that proposal, Mr. Trainer
12 provided an alternative AFE to Burlington, and Burlington
13 approved it.

14 In May of 1995, then, they authorized Mr. Trainer
15 to go forward with the drilling of the well. Mr. Trainer
16 did not. More than 15 months elapsed and Trainer never
17 commenced the well, he never submitted a joint operating
18 agreement, and he never acted on the AFE to get this well
19 drilled that Burlington had proposed and had agreed to have
20 him drill.

21 In order to get this well drilled, Burlington
22 then repropoed the same well in August of 1996, and again
23 they proposed it to the same working interest owners, which
24 were Mr. Trainer and Mr. Prince. And then there's a small
25 five-percent interest held by Jerry Losee's two daughters.

1 In response to that proposal, Leslyn Swierc, with
2 Burlington, Burlington's landman, met with Mr. Trainer and
3 asked him, What are you going to do?

4 Mr. Trainer refused to execute the Burlington
5 AFE, refused to sign their joint operating agreement, and
6 communicated his opposition by August 23rd of 1996.

7 And therefore on August 26th, I was authorized to
8 file a compulsory pooling application against Mr. Trainer
9 and Mr. Prince for a hearing docket that was then scheduled
10 or anticipated to schedule for September 19th. It then,
11 because of a conflict with the Commission docket, was
12 bumped back to the 26th.

13 The evidence will show that Mr. Trainer was
14 served with a pooling application on August 30th, and in
15 order to avoid being pooled, Mr. Trainer, then, on the 10th
16 of September, attempts to elect Penwell as his designated
17 operator, and he agrees in a verbal agreement with Mr. Mark
18 Wheeler of Penwell that he wants them to operate the well.

19 In response, then, Penwell files a competing
20 pooling application, in which they're contesting, not the
21 well location, I think virtually nothing except they want
22 to operate.

23 And so the issue for you to decide today, Mr.
24 Examiner, is whether Burlington, with a minority working
25 interest of 13 percent, who first proposed this well in

1 April and May of 1995, now gets its turn to drill and
2 operate the well. Having afforded the majority owners 15
3 months to drill the well and having not done so, we contend
4 it is now our turn.

5 In addition, there has been -- the evidence will
6 show that there has been substantial changes in the factual
7 circumstances between May of 1995 and August and September
8 of 1996.

9 The technical evidence will demonstrate to you
10 that 15 months ago the parties were acting under the
11 expectation that this location may be highly productive.
12 At that point in time, the southwest offset to this
13 location had an initial potential of in excess of 400
14 barrels of oil a day. Everybody was very excited.

15 That expectation has not been realized, and
16 you'll be told and you'll see evidence that Burlington is
17 the operator of some 27 wells in this vicinity that produce
18 oil out of the Delaware and the Bone Springs.

19 The major other operator in this vicinity is
20 Pogo. And Burlington has a working interest in ten or
21 eleven, if I remember right, perhaps ten, of the Pogo-
22 operated wells.

23 These wells are now incredibly price-sensitive.
24 This is not simply the question of two major operators
25 actively involved in the same pool, fighting over

1 operations. In those circumstances, it has been the
2 practice of the Division to allow the operator with the
3 greatest percentage to be the operator.

4 We believe this case is substantially different,
5 and it's different because the interest owner with the
6 biggest share had his turn, failed to do it, it's now our
7 turn, and in the 15 months, the productivity of these wells
8 is not very high, and they're incredibly cost-sensitive.

9 Penwell has no wells in this pool, no wells in
10 this area. They are not an operator in this pool. And we
11 are very concerned that while they try to achieve some
12 level of experience and understanding with these wells,
13 they're going to do so at our expense.

14 Our conclusion is that after a presentation of
15 our case, we're going to ask you to give us our turn and
16 not allow Mr. Trainer and Mr. Prince to have a second
17 chance of designating who they want to operate this
18 property. We believe that that's fair and appropriate, and
19 we would like you to do just that.

20 EXAMINER STOGNER: Thank you, Mr. Kellahin.

21 Mr. Carr?

22 MR. CARR: May it please the Examiner, I think
23 initially it should be noted that Mr. Kellahin may think
24 the development of properties is simply a matter of taking
25 turns. We believe more is involved than that.

1 In April of 1995, Burlington apparently decided
2 that it was time to develop this acreage, and they proposed
3 a well to Mr. Trainer, and for what has gone on now 18
4 months, no agreement was reached, no well was drilled.

5 And a few weeks ago Mr. Trainer approached
6 Penwell and offered to assign his interest to them. They
7 have acquired that acreage and that interest by assignment.
8 Mr. Prince has also assigned to Penwell. And since that
9 time, A.J. Losee in the interest of his two daughters has
10 also been committed to the well.

11 Penwell comes before you, having 86.6 percent of
12 the interest in this unit, preferring that they drill the
13 well, that they develop the property.

14 When Mr. Trainer approached Penwell, Penwell
15 advised Burlington that this was occurring. They have kept
16 them advised of their activity to go forward with the
17 development of this prospect, at Meridian's request they
18 agreed to do what they could, to even spud the well by the
19 15th of October.

20 But now we find that although we are the majority
21 owner and although we are here prepared to go forward with
22 the well, having not been able to get there for 18 months,
23 Burlington now would like to step forward and say, But,
24 yes, it's our turn. It may be a turn with a former owner,
25 but Penwell is on the scene now, we've been here for a

1 month, and we're trying to get the prospect developed as we
2 understood all parties wanted it developed.

3 It's not a question of taking a turn; it's a
4 question of whether 86 percent of the ownership should be
5 entitled now to develop the property once the log jam
6 between Trainer and Burlington has been dissolved and is no
7 longer in the way.

8 And we will ask you at the end to designate
9 Penwell operator of the well.

10 I believe we are in agreement on virtually all
11 other interest issues in these competing cases.

12 MR. KELLAHIN: All right, sir.

13 EXAMINER STOGNER: With that, Mr. Kellahin, I'll
14 allow you to proceed.

15 (Thereupon, the witnesses were sworn.)

16 LESLYN M. SWIERC,

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

19 DIRECT EXAMINATION

20 BY MR. KELLAHIN:

21 Q. Ms. Swierc, for the record would you please state
22 your name and occupation?

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

25 Q. Pronounce your last name again for me.

1 A. "Swertz" --

2 Q. "Swertz"?

3 A. -- as in two "shirts", yes.

4 Q. Well, I've been saying it wrong for two years. I
5 apologize to you.

6 A. That's all right.

7 Q. "Swertz". It's spelled S-w-i-r- --

8 A. -- -i-e-r-c.

9 Q. -- -i-e-r-c.

10 A. Right.

11 MR. KELLAHIN: Therein lies my problem.

12 EXAMINER STOGNER: Can't spell it either.

13 MR. KELLAHIN: I can't spell it either.

14 THE WITNESS: I gave him a card.

15 Q. (By Mr. Kellahin) On prior occasions, have you
16 testified before the Division as an expert in petroleum
17 land management?

18 A. Yes, sir, I have.

19 Q. Summarize for us whether or not you have been the
20 responsible landman for bringing in Burlington with regards
21 to the consolidation of ownership on a voluntary basis for
22 drilling the well that we've discussed to the Examiner this
23 morning.

24 A. I have been the responsible party since January
25 of 1996. I took over this area, and it has been my job to

1 attempt to form some sort of a voluntary agreement between
2 Trainer and Prince and Burlington Resources and Losee to
3 get this well drilled.

4 Q. All right. Have you reviewed the Burlington
5 files prior to that date on this subject, insofar as they
6 refer to the land matters?

7 A. Yes, sir, I have.

8 Q. And with the assistance of certified abstractors,
9 have you obtained the necessary title documents so that you
10 could reach an opinion about the ownership of the working
11 interests with regards to this spacing unit?

12 A. Yes, sir, I have.

13 MR. KELLAHIN: We tender Ms. Swierc as an expert
14 petroleum landman.

15 EXAMINER STOGNER: Any objection?

16 MR. CARR: No objection.

17 EXAMINER STOGNER: Ms. Swierc is so qualified.

18 Q. (By Mr. Kellahin) Let's give the Examiner a
19 picture of the ownership in the area. If you'll turn to
20 what's marked as Exhibit 1, let's take a moment and have
21 you identify for us the color code.

22 A. Mr. Examiner, if you would, this is an area of
23 the acreage which is the subject of the hearing today.
24 Primarily, the yellow is acreage which represents
25 Burlington Resources' 100-percent ownership. The acreage

1 that's in light blue is that which is subject to today's
2 hearing.

3 The other color codes are pretty much self-
4 explanatory, but you'll see that Burlington owns an
5 interest in several other tracts, other than just the
6 yellow, where we have nonoperating interests with Pogo
7 Producing Company.

8 Q. I described a while ago the Pogo-operated wells
9 in the pool. Will this display show us any of those wells
10 that Pogo operates in the Bone Springs?

11 A. Yes, sir, it does. In Section 25 it shows in the
12 pink color coding, if you will, it shows wells that Pogo
13 operates where we have a little over 10-percent interest.
14 And then the color coding in green, specifically in Section
15 24, it shows the two Bone Spring wells, one which was the
16 initial well, that Pogo operates that was so highly
17 productive early on.

18 Q. When we look at the southeast quarter, then, of
19 Section 24, is that all one federal lease?

20 A. Yes, sir, it is.

21 Q. For that entire 160 acres?

22 A. Yes, sir, it is.

23 Q. Let me have you turn to what is marked as Exhibit
24 2. What are we looking at here?

25 A. This is a mineral and leasehold takeoff that was

1 compiled for me by David Logan. Mr. Logan is a broker,
2 landman, that works out of Midland, Texas, and on August
3 12th he ran the records of both the county and the BLM and
4 compiled the ownership as you see on this takeoff.

5 Q. Have you also compiled other title documents
6 before and after the date of this mineral takeoff?

7 A. Yes, sir, we did.

8 Q. Is all the rest of your information consistent
9 with what is shown on this tabulation for Exhibit 2?

10 A. Yes, sir, it is.

11 Q. Have you again, as of, I believe yesterday,
12 reconfirmed what the recorded interests were with regards
13 to the operating rights within this 40-acre tract?

14 A. Yes, sir, I did. As of yesterday, we had a
15 certified -- or a search done by Federal Abstract, and the
16 records showed that neither Mr. Trainer nor Mr. Prince had
17 conveyed their interest to anyone.

18 Q. To the best of your knowledge, then, the summary
19 of gross working interest that we see on this tabulation,
20 where Prince as the 50-plus percent, on down on that
21 column, that's correct and true to the best of your
22 knowledge?

23 A. To the best of my knowledge, that's what's of
24 record today.

25 Q. During the period of time in 1996, then, when you

1 have worked on this project, did this ownership in these
2 individuals with these percentages continue to be the same?

3 A. Yes, sir, it did.

4 Q. Let's go back, now, and look at Exhibit Number 3.
5 Would you identify and describe for us what we see in
6 Exhibit 3?

7 A. Exhibit 3 is an application for a permit to
8 drill. This application was filed when we initially
9 proposed the first Checkmate Federal 24 Number 1 in
10 February of 1995.

11 Attached to this are the various pieces of
12 correspondence which the OCD requires when an application
13 is filed.

14 Q. In addition to having Meridian file an APD for
15 the drilling of this well, what was done by Meridian at
16 that point to consolidate the working interest owners for
17 the drilling of this well?

18 A. An AFE was sent to the working interest owners,
19 as you see on the takeoff, and submitted for their
20 approval, for their review and approval.

21 Q. Have you reviewed your records and extracted from
22 your files the documents that show that chain of events?

23 A. Yes, I have. They are Exhibit Number 4.

24 Q. Let's turn to Exhibit Number 4, now, and I think
25 the Exhibit is organized so that we should start with the

1 last item that's stapled?

2 A. That's correct, start at the last page and work
3 forward.

4 Q. So if we start at the last page, we're looking at
5 a letter that's dated April 21st of 1995?

6 A. Yes, sir.

7 Q. To the best of your knowledge, is this the first
8 proposal by any of the working interest owners shown on
9 your list in Exhibit 2 for the drilling of this well?

10 A. Yes, sir, it is.

11 Q. And what was proposed then?

12 A. At that time, a 9000-foot Bone Spring test was
13 proposed and an AFE was attached, which would be the next
14 to the last page.

15 Q. That transmittal also included a proposed joint
16 operating agreement?

17 A. At that time, no, sir, it did not.

18 Q. Okay. I was simply reading the context of the
19 letter. It apparently says a joint operating agreement was
20 enclosed.

21 A. Okay, I stand corrected.

22 Q. You have not appended the joint operating
23 agreement to this exhibit?

24 A. No, sir.

25 Q. All right. Did you -- Burlington -- Meridian did

1 submit to Prince and Trainer and Mr. Losee this AFE that's
2 attached?

3 A. Yes, sir.

4 Q. And that's the next document forward in the
5 exhibit package?

6 A. That is correct.

7 Q. All right. It was for \$699,000, give or take,
8 for a completed well on this AFE?

9 A. Yes, sir, it was.

10 Q. What do your records show occurred after that,
11 with regards to Meridian's proposal?

12 A. We received our AFE from Mr. Trainer on -- early
13 in May of 1995. Mr. Trainer had written a note at the
14 bottom, he had written his name on the company name. He
15 said this is not approved, he prefers to operate, our AFE
16 is enclosed.

17 Q. So the next document we see is Mr. Trainer's AFE?

18 A. Yes, sir, it is.

19 Q. Okay.

20 A. His AFE is for the same location, same depth. He
21 changed the name, and his costs are slightly different.

22 Q. Okay, and there was attached, then, a cover
23 letter to his AFE --

24 A. Yes, sir.

25 Q. -- which is the first page of Exhibit Number 4?

1 A. That's correct.

2 Q. All right. What is Mr. Trainer telling Meridian
3 at this point?

4 A. That he is returning our AFE unsigned and
5 unapproved, he prefers to operate this well, and he is
6 enclosing for our review execution his AFE for the same
7 well at the same location.

8 Q. What do your records show was the action, if any,
9 taken by Meridian at that point in response to his AFE?

10 A. We signed his AFE and returned it.

11 Q. What happened after that?

12 A. Basically nothing. Mr. Trainer promised us that
13 an AFE would be forthcoming, that -- excuse me, that a
14 joint operating agreement would be forthcoming and that he
15 would drill the well as soon as he could possibly work it
16 into his schedule.

17 Q. When you got the responsibility for the land
18 matters concerning this well in early 1996, then, you had
19 reviewed these documents and you had an understanding of
20 that background?

21 A. Yes, sir.

22 Q. Did you have any conversations with Mr. Trainer
23 between then and reproposing this well in August of 1996?

24 A. I had only one conversation with Mr. Trainer.
25 Mr. Trainer had had several conversations with the

1 reservoir engineer that handled the area prior to the
2 testifying witness today, Mr. Billy Juroska, and he and Mr.
3 Trainer had spoken on several occasions about when the well
4 would be drilled.

5 Q. At what point in time did now Burlington decide
6 or come to the conclusion that Trainer, despite having the
7 approved AFE, was not going to commence the well?

8 A. I think it was the last conversation that he had
9 with Mr. Juroska where I was present in Billy's office, and
10 Mr. Trainer said that he agreed that the well needs to be
11 drilled, but that his scheduling was such that he was just
12 couldn't get to it in a timely fashion.

13 Q. What did you do in response to that?

14 A. In response to that, we repropoed the same well,
15 we compiled another AFE and a separate joint operating
16 agreement where we designated Burlington as operator, and
17 we forwarded it to Mr. Trainer, Mr. Prince and both Mr.
18 Losee's daughters.

19 Q. When we turn to Exhibit Number 5, are we looking
20 at the documentation that supports what you've just
21 described?

22 A. Yes, sir, we are.

23 Q. And it's the proposal letter of August 14th,
24 1996?

25 A. That's correct.

1 Q. Is any other working interest owner proposing
2 wells, other than Burlington?

3 A. No, sir, they have not, to my knowledge.

4 Q. All right. Am I correct in understanding that
5 you're reproposing, then, the same well, same location,
6 same depth?

7 A. That's correct.

8 Q. You provided an opportunity to Prince, Trainer
9 and the Losees to participate by approving the AFE and
10 signing Burlington's joint operating agreement?

11 A. Yes, sir, we did.

12 Q. When did you become aware that you were not going
13 to be able to achieve a voluntary agreement with those
14 parties?

15 A. We had a meeting with Mr. Trainer -- I don't
16 recall the exact date. I don't have my notes in front of
17 me. I think it was August 23rd, 22nd, somewhere along in
18 that time frame.

19 Mr. Trainer came to our office, wanted to visit
20 with us about the AFE and the joint operating agreement,
21 and he told us at that time that he agreed that the well
22 needed to be drilled, he agreed with the location, but that
23 he was not going to support Burlington as operator.

24 Q. Was there any disagreement among the working
25 interest owners at that time as to the cost of the well as

1 it's now proposed? The price has dropped, as I see in the
2 letter?

3 A. Yes, sir, it has. And Mr. Trainer had no
4 arguments with our AFE; he simply was not willing to
5 support Burlington as operator.

6 Q. During the course of this more than a year, the
7 prices that you're quoting in your AFE are being reduced?

8 A. Yes, sir, they are.

9 Q. All right. Having been told by Mr. Trainer that
10 he doesn't propose to sign your AFE, what then did you do
11 in the next course of events?

12 A. If you'll look at Exhibit Number 6, I submitted a
13 letter to the working interest owners and basically told
14 them that we had -- it had come to our attention that Mr.
15 Trainer was not willing to support Burlington as operator.
16 He also represented that he spoke for Mr. Prince, and we
17 advised the working interest owners that we were going to
18 apply for compulsory pooling but that we would still give
19 them the 30 days that we had originally given them in the
20 initial proposal to elect whether or not to participate in
21 the drilling of the well.

22 Q. On or about -- I think it's the 26th, perhaps,
23 the day before this letter, the Burlington compulsory
24 pooling Application is then filed?

25 A. Yes, sir.

1 Q. I think the evidence will show that Mr. Trainer
2 received his copy of the pooling Application on August
3 30th.

4 A. Okay.

5 Q. Between August 30th and your letter of August
6 27th, did you have any more conversations with Mr. Trainer?

7 A. No, sir, I did not.

8 Q. Subsequent to August 30th, between then and the
9 time that Penwell filed their force-pooling application,
10 about September 12th --

11 A. 10th, I believe.

12 Q. 10th, it's the 10th.

13 A. Yes, sir.

14 Q. -- on the 10th, did you have any conversations
15 with Mr. Trainer?

16 A. No, sir.

17 Q. At what point do you become aware that Trainer is
18 attempting to have Penwell exercise the opportunity to
19 drill this well, as opposed to Burlington?

20 A. I heard information from my reservoir engineer
21 that Penwell was working on acquiring the interest from Mr.
22 Trainer, and then I got a phone call from Mark Wheeler, and
23 he advised me that they were in the process of acquiring
24 the interest from Mr. Trainer and Mr. Prince.

25 Q. The next document we have as an exhibit is

1 Exhibit 7 --

2 A. Yes, sir.

3 Q. -- and it's the Penwell package for their
4 proposing that they operate this well. It's a letter dated
5 September 10th of 1996. Do you see that?

6 A. Yes, sir.

7 Q. Prior to this time had you had any conversations
8 with Mr. Wheeler?

9 A. No, sir, I had not, not regarding this particular
10 well.

11 Q. All right. You received -- The indication shows
12 this was hand-delivered. It's date-stamped the 11th of
13 September, the following day.

14 Did this matter come to your attention then, Mr.
15 Wheeler's proposal on behalf of Penwell?

16 A. Yes, sir, it did.

17 Q. Did you have conversations with Mr. Wheeler about
18 Penwell operating?

19 A. Yes, sir, we did.

20 Q. Okay. Were you and Mr. Wheeler able to resolve
21 the issues of operation and a commitment as to when the
22 well would be drilled?

23 A. No, sir, we were not.

24 Q. Were you able to obtain any guarantee from
25 Penwell that they would commence this well in the month of

1 October, 1996?

2 A. They would not guarantee a specific date, no,
3 sir.

4 Q. Why, in your opinion, from your perspective as a
5 landman, did you choose not to approve Penwell as the
6 operator of this well in their attempting to be substituted
7 in for the Trainer interest?

8 A. As a landman, it's important that we understand
9 title and who the owners are, and as of the dates that I
10 had spoken with Mr. Wheeler, he was very cooperative in
11 letting me know that they were in the process, but they had
12 not acquired the interests of Mr. Trainer and Mr. Prince.

13 Given the history that we've had working with Mr.
14 Trainer, it became clear that a conclusion or a closure of
15 that transaction may or may not occur, based upon certain
16 conditions under which Penwell was going to acquire the
17 acreage from Mr. Trainer and Mr. Prince.

18 Q. Subsequent to the September 10th letter, the
19 Exhibit 7 --

20 A. Yes, sir.

21 Q. -- did you receive any other documentation from
22 Mr. Wheeler?

23 A. Yes, sir, I did. Exhibit 8 is a letter which Mr.
24 Wheeler furnished me, stating that he had acquired the
25 signatures of Mr. Trainer and Mr. Prince, where they had

1 agreed to sell their interest to Penwell under specific
2 conditions.

3 Q. Are you familiar with looking at documents like
4 this to determine to your own ability, within your
5 expertise, whether or not an individual is firmly committed
6 to drilling a well under these terms and conditions?

7 A. I believe I'm capable, yes, sir.

8 Q. All right. Have you done so with regards to this
9 letter?

10 A. Yes, sir.

11 Q. What is your understanding of whether or not
12 Penwell, by this letter which apparently documents some
13 verbal agreement, whether Penwell is firmly committed to
14 commencing the well on or before, in paragraph 2, November
15 15th, 1996?

16 A. The part that puzzles me or that brought us a bit
17 of concern is that if you would look at item number 6 on
18 page 2 of that letter -- excuse me, item number 7, it says
19 that in the event that Penwell is unsuccessful in obtaining
20 operations for this well and the offset acreage, that they
21 would have the right to withdraw their offer and not
22 acquire the acreage of Mr. Trainer and Mr. Prince.

23 Which left us in a puzzling position. Are we
24 back in the situation that we were in 17 months ago, still
25 owning the interest in the acreage and the well is not

1 anywhere closer to being drilled today than it was then?

2 Q. From a land perspective, then, you were concerned
3 about whether or not Penwell was, in fact, the appropriate
4 person with the working interest?

5 A. That is correct, we were uncertain who owned the
6 interest at this point in time.

7 Q. And at this point you had already filed your
8 compulsory pooling application, and it was on the docket
9 for hearing?

10 A. That is correct.

11 Q. Have you submitted to Mr. Trainer a proposed
12 joint operating agreement?

13 A. Yes, sir, we did.

14 Q. The terms and conditions of that joint operating
15 agreement are set forth, I assume, on some type of model
16 form operating agreement?

17 A. Yes, sir, it's attached in Exhibit Number 5.

18 Q. You're using a model form --

19 A. An AAPL 1982 --

20 Q. -- model form?

21 A. -- model form, yes, sir.

22 Q. The model form that you're proposing sets forth
23 some overhead rates?

24 A. Yes, sir, it does.

25 Q. And what are you requesting from the Examiner,

1 should he authorize Burlington to drill this well? What
2 are you proposing to him as the overhead rates while
3 drilling and while producing?

4 A. We're asking for a drilling well rate of \$5000
5 per well-month and a producing well rate of \$500 per well-
6 month.

7 Q. And what's the basis for those numbers? Where do
8 they come from?

9 A. The basis partly comes from an Ernst and Young
10 survey, of which the latest version that has been published
11 is a 1995 version. It's also based upon the overhead rates
12 that we are currently using on our own wells in this same
13 area. And it's competitive or commensurate with the
14 overhead rates that were being charged by Pogo in the wells
15 where Pogo operates, directly to the south of this acreage.

16 Q. The Pogo-operated wells in which you have --
17 Burlington has a working interest, your proposed overhead
18 rates are similar to what you're paying Pogo for?

19 A. That is correct.

20 Q. And what you're charging others for wells in the
21 area that you operate?

22 A. That is correct.

23 Q. All right. Mr. Wheeler, I think, has, in his
24 proposal to you in Exhibit 7, he has a slightly different
25 overhead rate, and I believe they're lower. If you'll turn

1 with me on page 4, the COPAS attachment to Exhibit 7 --

2 A. Yes, sir.

3 Q. -- he's proposing \$440 a month or about \$4200 a
4 month, drilling?

5 A. Yes, sir.

6 Q. All right. Do you know of any operator in this
7 area that's charging overhead rates at the level that
8 Penwell is proposing to charge for their wells?

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

10 Q. Summarize for us your position, from your
11 perspective, with regards to this case, Ms. Swierc.

12 A. Our position is that we've owned the interest in
13 this acreage since August of 1992. In 1992 we attempted to
14 acquire additional interest here but were unsuccessful, and
15 13 percent was the maximum we could acquire at that time,
16 given certain economic parameters.

17 We have anxiously attempted every way we could to
18 get a well drilled in this area, given the excitement that
19 we had when the first offset well was drilled and was
20 producing in excess of 400 barrels per day. We wanted to
21 see something happen here. We were willing to go along
22 with Mr. Prince early on so that we could try to get this
23 well drilled, and a significant change in the facts have
24 occurred since that date.

25 And what we propose now is that because we have

1 expertise in the area and because we have drilled 27 wells
2 within a year's time frame, that shows that we have now
3 exceeded the learning curve, which is always clear in any
4 new endeavor. We've surpassed that learning curve, we're
5 qualified, we're competent and we're prepared to go forward
6 and drill this well. And because we've got other
7 operations in the area, we feel that we're the most
8 qualified.

9 MR. KELLAHIN: That concludes my examination of
10 Ms. Swierc.

11 We move the introduction of her Exhibits 1
12 through 8.

13 EXAMINER STOGNER: Any objections?

14 MR. CARR: No objection.

15 EXAMINER STOGNER: Exhibits 1 through 8 will be
16 admitted into the evidence.

17 Mr. Carr, your witness.

18 CROSS-EXAMINATION

19 BY MR. CARR:

20 Q. Ms. Swierc, you have reported that Burlington has
21 -- operates additional wells in this area?

22 A. Yes, sir.

23 Q. And Penwell has not?

24 A. To my knowledge, yes, sir.

25 Q. If we look at Section 24 on your Exhibit Number

1 1, that's the -- and particularly the blue-shaded lease,
2 we're talking really about three parcels covered by that
3 lease, are we not?

4 A. Yes, sir, we are.

5 Q. And you have a 13-percent interest throughout
6 that property --

7 A. That is correct.

8 Q. -- is that not correct?

9 The remaining interest is not committed to
10 Burlington? You do know that?

11 A. Yes, sir.

12 Q. And if we represent that we would have the rest
13 of the interests committed to us, we would have 86-percent
14 interest if that is true?

15 A. That is true.

16 Q. Do you have future development plans in this blue
17 area that you're actively proceeding with at this time?

18 A. Yes, sir, we do.

19 Q. Do you know that Penwell has staked six
20 additional locations on this acreage?

21 A. I was not sure of the exact number, but Mr.
22 Wheeler had told me they had staked additional locations.

23 Q. And they would have eighty- -- you would have 13
24 percent of the interests under those tracts, and the
25 balance would be to someone else?

1 A. Yes, sir.

2 Q. You checked the public records looking for title
3 documents to evidence actually the conveyance of these
4 interests to Penwell?

5 A. Yes, sir.

6 Q. You have not found those?

7 A. No, sir.

8 Q. That doesn't mean they don't exist; isn't that
9 right?

10 A. That is correct.

11 Q. All right. And we're not here challenging
12 whether or not Penwell has been negotiating with Trainer in
13 attempting to achieve --

14 A. No, sir, I'm not challenging that.

15 Q. Now, you became interested in this area when
16 there was a very good well drilled offsetting this
17 property; isn't that your testimony?

18 A. Yes, sir.

19 Q. When did that occur, approximately?

20 A. I think the well was drilled about December of
21 1994. We actually owned the interest prior to then, but
22 our interest was peaked in that time.

23 Q. So what you first did was, you prepared -- One of
24 the earlier things you did was the preparation of an
25 application for a permit to drill, which is your Exhibit

1 Number 3?

2 A. Yes, sir.

3 Q. Did you actually file that?

4 A. I believe it was filed, yes, sir.

5 Q. Was it approved?

6 A. That I'm uncertain about.

7 Q. Because it isn't shown on the exhibit, and I just
8 wondered if this was a document that was actually filed
9 with a government agency.

10 A. Yes, it was filed, but I'm uncertain as to
11 whether it was approved.

12 Q. And then following the filing of an APD that's
13 dated February the 16th, you first proposed the well in
14 April of that year, a couple of months after you had filed
15 and gotten an APD; is that right?

16 A. That is correct.

17 Q. At that time you owned 13 percent of the well?

18 A. That's correct.

19 Q. And then you talked to Mr. Trainer, and Mr.
20 Trainer indicated that he basically preferred to operate,
21 and that's what he said when he returned your AFE to you in
22 May and sent his own?

23 A. That is correct.

24 Q. Is it fair to say that sometime around May, 1995,
25 Meridian and Burlington executed the AFE and agreed that

1 Mr. Trainer could proceed with this endeavor?

2 A. Yes, we did.

3 Q. So from May of 1995, until you repropose the
4 well in August of this year, there really was no activity,
5 was there? You were waiting for Trainer?

6 A. Yes sir, that's correct.

7 Q. Now, you have indicated Burlington/Meridian was
8 excited about the need for a well.

9 A. Right.

10 Q. Did you take no action with Trainer during a --
11 about a 15-month period of time?

12 A. No, sir, there were numerous conversations
13 between our reservoir engineer and Mr. Trainer, and Mr.
14 Trainer was continually asked, When are we going to start
15 the well? When are we going to start the well?

16 And Mr. Trainer would always respond, We're going
17 to get the well drilled as quickly as I can get my
18 scheduling and finances worked out.

19 Q. When did he tell you that he could not get to it?

20 A. In numerous conversations.

21 Q. Did you ever offer to purchase his interest from
22 him?

23 A. Yes, sir, we did, and he wanted \$4000 an acre for
24 his interest.

25 Q. And you were not interested in doing that?

1 A. Our economics would not support it.

2 Q. So it was repropose in August of this year?

3 A. Yes, sir.

4 Q. And then the first time you knew that Penwell was
5 involved was -- was it when Mark Wheeler called you, or had
6 you heard before that from your in-house people?

7 A. I had heard before that.

8 Q. And he advised you he was in negotiations with
9 Trainer?

10 A. Yes, sir.

11 Q. Did you encourage him to try and acquire that
12 interest at that time?

13 A. No, sir, I did not.

14 Q. Did you agree that you would not become -- would
15 not get in the way of those negotiations?

16 A. Yes, sir, I did.

17 Q. Penwell might be easier to deal with than
18 Trainer?

19 A. Yes, sir.

20 Q. Now, you are aware that Penwell is, of course,
21 proposing the same well that you are proposing?

22 A. Yes, sir.

23 Q. There's no discrepancy between the parties as to
24 the well location or the spacing unit; is that fair to say?

25 A. Yes, sir.

1 Q. The question here really is one of operation?

2 A. That is correct.

3 Q. In any of your conversations with Penwell, did
4 they ever indicate to you that they weren't ready to go
5 forward as quickly as possible to drill the well?

6 A. No, sir.

7 Q. Now, you asked for a guarantee, an absolute
8 guarantee that the well would be drilled in October?

9 A. Yes, sir.

10 Q. When another interest owner comes to you at
11 Burlington, do you give them absolute guarantees that,
12 anything aside, you will drill at a certain time?

13 A. We do the best that we can.

14 Q. And that's what Penwell was agreeing to do for
15 you, wasn't it --

16 A. Yes, sir.

17 Q. -- the best that they could?

18 Now, we have -- Let me see if I can find the
19 exhibit. I think it's your Exhibit Number 8. This is some
20 recent correspondence. There's a fax to you from Mark
21 Wheeler --

22 A. Yes, sir.

23 Q. -- concerning the letter agreement with Mr.
24 Trainer.

25 Following that time, you have had meetings with

1 Penwell, have you not?

2 A. Yes, sir.

3 Q. And you have discussed the operation of the
4 property?

5 A. Yes, sir.

6 Q. Before you would drill the well as Burlington,
7 you would want to have a drilling title opinion, would you
8 not?

9 A. Yes, sir.

10 Q. And did you not request that Penwell go ahead and
11 proceed with the acquisition of a drilling title opinion?

12 A. I did not request that they proceed with it. I
13 told Mr. Wheeler that I would not have a problem if he
14 chose to do so.

15 Q. And have you ordered a drilling title opinion as
16 of this time?

17 A. No, sir, I have not.

18 MR. CARR: That's all I have.

19 EXAMINER STOGNER: Thank you, Mr. Carr.

20 Mr. Kellahin, redirect?

21 REDIRECT EXAMINATION

22 BY MR. KELLAHIN:

23 Q. What was your urgency in having a commitment from
24 Penwell about drilling this well as soon as possible? I
25 think you were using a time frame, if I remember your

1 testimony --

2 A. October 15th.

3 Q. -- of October, mid-October of 1996.

4 A. We have capital dollars which are budgeted for
5 this well, and we risk losing those dollars in 1996 if the
6 well were not committed or commenced as soon as possible.

7 Q. The process, then, is, the dollars are committed
8 to Burlington to drill the well in 1996, and after that
9 date, then you have to go through the entire budget
10 process?

11 A. That is correct.

12 Q. And this well, if not drilled then, goes back on
13 a list and establishes a priority as to other funds?

14 A. That's correct.

15 Q. Do you have funds available?

16 A. Yes, sir, we do.

17 Q. Did you have funds available, prior to Penwell
18 becoming involved, where if Trainer and Prince decided not
19 to participate, you could, in fact, fund the entire cost of
20 drilling and completing this well?

21 A. Yes, sir, we did. In fact, that's what our plans
22 were, that if Trainer-Prince elected not to participate, we
23 had the funds available to carry the well 100 percent if we
24 had to.

25 Q. All right. And those funds disappeared at the

1 end of this year?

2 A. That is correct.

3 MR. KELLAHIN: No further questions.

4 EXAMINER STOGNER: Thank you, Mr. Kellahin.

5 Mr. Carr, any re-cross examination?

6 MR. CARR: No.

7 EXAMINER STOGNER: Mr. Carroll?

8 MR. CARROLL: Yeah, I have a couple.

9 EXAMINATION

10 BY MR. CARROLL:

11 Q. It looks like the last AFEs that were exchanged
12 are very close in the number -- or in the amounts?

13 A. Yes, sir.

14 Q. What's Burlington's last ones? \$651,700?

15 A. That's the one that was submitted, yes, sir.

16 Q. And Penwell's is \$649,220?

17 A. That's correct.

18 Q. So it's about \$2400 --

19 A. Right.

20 Q. -- difference?

21 And where was this offsetting well drilled --

22 A. It's in the --

23 Q. -- that excited Burlington?

24 A. It's in the -- Section 24, the southeast quarter
25 of the southwest quarter. It's on the green acreage in

1 Section 24.

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

3 EXAMINER STOGNER: Well, thank you, Mr. Carroll.

4 EXAMINATION

5 BY EXAMINER STOGNER:

6 Q. When were you aware that Penwell had made an
7 Application with the Division for compulsory pooling?

8 A. When I received a letter dated September 10th
9 from Mr. Wheeler.

10 Q. Now did that include a copy of the Application,
11 or is that just mentioned within their letter that you're
12 referring to?

13 A. It just mentioned it in the letter.

14 Q. And the receipt date of September 11th, that is
15 Meridian's -- I'm sorry, Burlington's receipt date?

16 A. Where it says "receipt" at the top, yes, sir,
17 that's our internal stamp.

18 Q. Okay. You had mentioned the \$5000 overhead rates
19 and \$500 overhead rates as being currently used in this
20 area?

21 A. Yes, sir.

22 Q. Are those used on the -- I believe you said 27
23 wells. Is that what Burlington uses on those 27 wells
24 drilled within the area?

25 A. On those wells where we have 100 percent, we have

1 an internal overhead rate that is charged, and yes, sir,
2 that is the rate that's being used.

3 Q. How many of those wells are -- What did you say,
4 100 percent?

5 A. Yes, sir.

6 Q. And how many of those, of that 27, are 100
7 percent?

8 A. I think there's roughly 20 of them, 25 of them.

9 Q. What are the other wells then considered?

10 A. Joint-interest wells?

11 Q. Yes.

12 A. The same rate is being used.

13 Q. Of \$5000 and \$500?

14 A. Yes, sir.

15 Q. Of those joint interests, are some of the parties
16 here today --

17 A. No, sir.

18 Q. -- being force-pooled?

19 A. No, sir.

20 Q. They're not?

21 A. No, sir.

22 Q. How about some of the Pogo, like Pogo Producing
23 or some of the other wells in the area that are produced by
24 someone else? Is Burlington a party to those?

25 A. Yes, sir, we have a little over 10-percent

1 interest in the Pogo producing wells in Section 25.

2 Q. And do you know what the overhead rates are for
3 those?

4 A. Yes, sir, the overhead rates vary from \$495 to
5 \$525 per month.

6 Q. I'm sorry, \$495 --

7 A. \$495 to \$525 per month.

8 Q. Do you remember what the drilling rates were?

9 A. No, sir, I don't

10 Q. Would those be in the Burlington records, should
11 it become necessary?

12 A. Yes, sir.

13 EXAMINER STOGNER: Does anybody else have
14 anything further in this matter? With -- I'm sorry --

15 MR. KELLAHIN: No, sir.

16 EXAMINER STOGNER: I'm getting ahead of myself.
17 Does anybody else have any other questions of Ms. Swierc?

18 You may be excused.

19 Mr. Kellahin?

20 MARKUS D. THOMERSON,

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

23 DIRECT EXAMINATION

24 BY MR. KELLAHIN:

25 Q. All right, sir. Would you please state your name

1 and occupation?

2 A. Yes, sir, my name is Markus Thomerson. I'm
3 senior geologist with Burlington Resources, Mid-Continent
4 Division, currently assigned to the Permian area.

5 Q. Mr. Thomerson, on prior occasions have you
6 testified before the Division as a petroleum geologist?

7 A. Yes, sir, I have.

8 Q. Is the geology in the pool we're describing here
9 today the geologic work that you've performed for your
10 company?

11 A. Yes, sir, it is.

12 Q. Are you also involved as Burlington's geologist
13 in the Delaware production to the west of this particular
14 location?

15 A. Yes, sir, I am.

16 Q. How long have you been involved in doing the
17 geology for your company in this area?

18 A. I've been involved in the Delaware sand -- or the
19 Delaware trend, since approximately September, 1993. This
20 particular area here, I took this over in May of 1995.

21 Q. Since that date, then, are you the primary
22 geologist responsible for making decisions about where
23 wells are drilled and whether or not Burlington
24 participates in those wells?

25 A. Yes, sir, I am.

1 Q. Does your geologic investigation include not only
2 the Delaware wells but the Bone Spring wells that have been
3 drilled by Burlington and Pogo?

4 A. Yes, sir.

5 MR. KELLAHIN: We tender Mr. Thomerson as an
6 expert petroleum geologist.

7 EXAMINER STOGNER: Are there any objections?

8 MR. CARR: No objection.

9 EXAMINER STOGNER: Mr. Thomerson is so qualified.

10 Q. (By Mr. Kellahin) Mr. Thomerson, let's have you
11 turn to what is marked as Burlington Exhibit Number 9.
12 Let's take a moment and identify the display, show us how
13 to read the information.

14 A. All right, sir.

15 What we're looking at in Exhibit 9, sir, is a
16 structure map that is on the top of the basal Brushy
17 Canyon. This is a regional marker that we use throughout
18 the Delaware Basin.

19 There is a type log on the right-hand side that
20 -- There are several blue lines indicating formation tops.
21 The one in red, which is noted as the basal Brushy Canyon,
22 that is the marker that this map is prepared on.

23 This is a color-filled map, with the hotter
24 colors, the reds and yellows, indicating the higher
25 structures, and then grading off into the lower structures,

1 which are -- or the lower areas that are contoured in blue.

2 The red dots are all-inclusive of Delaware
3 production, the blue dots are inclusive of upper Bone
4 Springs sand production.

5 Q. There seems to be a decided distinction between
6 whether a well is a Delaware well or a Bone Springs well,
7 based upon its position on the map.

8 A. Yes, sir, there is.

9 Q. Is there a structural reason for that difference?

10 A. Not to the extent that's going to be shown by
11 this map. However, the exhibit after this will indicate
12 that.

13 What we're looking at here are stratigraphic
14 traps that are not necessarily concerned with structure.

15 Q. So you identified structure in here and come to
16 the geologic conclusion that structure is not a significant
17 criteria for deciding where to position either a Delaware
18 well or a Bone Springs well?

19 A. Not with regard to the Bone Spring. However,
20 with the basal Brushy Canyon, yes, sir, structure does play
21 an important rule.

22 Q. All right. The color code here for the wells,
23 the blue wells are the Bone Springs wells?

24 A. Yes, sir.

25 Q. What do you see as the opportunity for the

1 subject well at this location?

2 A. If I could, if I could actually -- don't want to
3 defer that, but refer that to an exhibit into the future
4 here, I think that question will be better -- easily
5 answered there, sir, or if I'm not understanding your
6 question --

7 Q. The ultimate conclusion is whether or not you see
8 the best opportunity for Bone Springs or Delaware or both;
9 those are your choices, right?

10 A. Yes, sir, that's the only two horizons we're
11 looking for out here, that's correct.

12 Q. At this location, which is going to be the best
13 choice?

14 A. I'm sorry, I misunderstood your question. The
15 primary horizon here will be the upper Bone Springs sand,
16 with the secondary horizon being the basal Brushy Canyon.

17 Q. Let's turn now to Exhibit Number 10. Give me a
18 minute to unfold my copy. Describe for us what we're
19 seeing with Exhibit Number 10, Mr. Thomerson.

20 A. Okay, what I have done here, this is a net sand
21 or porosity map. What we've done is mapped sand that has a
22 density porosity greater than 12 percent. Again, this is
23 the same area as what was covered by the first map. The
24 type log. We are mapping a zone that is called the "K2"
25 sand. This is an informal designation; it is not

1 recognized in any stratigraphic nomen- -- or any
2 stratigraphic material.

3 What this does, this is the main pay that you
4 find in the Red Tank-Delaware field, which is, as I am sure
5 it becomes quite obvious, over to the western edge, which
6 is in the Red Tank-Delaware field. You'll see a large
7 number of thicks, all of those indicated by the red dots,
8 again, the blue dots being the upper Bone Spring sand.

9 As you can see, moving over to the east side
10 there is very little of the Delaware sand present.

11 Q. All right, let's look at the next display. Let's
12 look at Exhibit 11.

13 A. Exhibit 11 is a structure map that is prepared on
14 top of the Upper Bone Spring sand, which is the primary
15 horizon that we're looking for in the highlighted well. As
16 you can see, then -- and on the type log, you'll notice
17 that is the lower section.

18 And one thing that becomes apparent with this,
19 there is a slight nosing and some closure across the area
20 where those -- in Section 25 and 36. Again note that this
21 is the result of differential compaction across these
22 sands, because we are mapping on top of the sand, so it's
23 not really a true representation in the standpoint of what
24 we would typically use a structure map for.

25 Q. When we look at our opportunity for production in

1 the Bone Springs sand, is that opportunity affected by
2 structural position?

3 A. No, sir, it is not, the reason being that there
4 are several wells that we have drilled in Section 36, and
5 continuing on down into Section 1 of the adjoining township
6 that were recently completed by Yates. They're extremely
7 good wells in the upper Bone Springs sand, and even some of
8 the structurally highest positioned wells here within the
9 upper Bone Spring sand are -- can be some of the poorest
10 producers.

11 Q. Can you make decisions, then, in the Bone Springs
12 based upon sand thickness?

13 A. Yes, sir, you can.

14 Q. Let's turn to that map, then. It's Exhibit
15 Number 12?

16 A. Yes, sir. Exhibit Number 12 is a map similar to
17 that in Exhibit 10. This is a net sand porosity map, again
18 using a porosity cutoff of 12 percent.

19 And what I have done is, everything less than 12
20 feet of sand is not colored in because it is -- In the
21 process of drilling all of these wells, we have pretty well
22 come to the conclusion that if you have less than 12 feet,
23 you don't have an economic well.

24 But what you're seeing here is a very narrow
25 fairway that is approximately anywhere from three-quarters

1 of a mile to a mile wide.

2 Q. The well that was described earlier as the big
3 well, the one that had the initial potential of greater
4 than 400 barrels a day --

5 A. Yes, sir.

6 Q. -- that's the well in the southeast of the
7 southwest?

8 A. Yes, sir, that is correct.

9 Q. Do you see a relationship between sand thickness
10 and the productivity of the Bone Springs wells?

11 A. With regard to the IPs in some instances, we have
12 not. However, there's a lot of -- It depends entirely upon
13 how a certain operator is going to complete that well.
14 There's a lot of other factors that can come into account.

15 We have noticed that several of these wells have
16 extremely high IPs with a very -- you know, a mediocre
17 amount of sand thickness, but others have a very thick sand
18 and very good IPs to go with it.

19 Q. Were you involved as part of the decision to
20 propose the drilling of this well to Trainer and Prince
21 back in May of 1995?

22 A. Indirectly, sir. I was in the process of taking
23 over the area at that time.

24 Q. All right. Can you set within a historical
25 context what you and Burlington were thinking with regards

1 to the development that was occurring in early 1995, and
2 contrast that with what's occurred with these --

3 A. Yes, sir.

4 Q. -- Bone Spring wells --

5 A. What we were --

6 Q. -- as we look at them now?

7 A. Sure. What we -- The first well that was found
8 or that really got things rolling out here was this Red
9 Tank 24 Number 1, which is the well that we've been talking
10 about that had the very high IP.

11 At that time there was very little development in
12 Section 25, and we about four months later, in April of
13 1995, drilled our Mule Deer 1, which is a well that's
14 located in Section 36.

15 So once that became -- once we had drilled that
16 well, then Pogo, which owns pretty well everything in
17 Section 25, which we have an interest in, the -- at that
18 point in time, the drilling carried up to a pretty frenzied
19 pace at that point, and we were beginning to move northward
20 toward this location.

21 Q. All right. This location appears to be
22 uncontrolled, if that's the right expression. You do not
23 have well-control data for the north and to the west for
24 this well location?

25 A. Not to the immediate -- Not immediately, sir. We

1 have this -- The sand thick that I have contoured in there
2 has a lot of geologic license involved with it. However,
3 that is as a result of studying the trend as a whole and
4 projecting it forward.

5 Q. When we look at this trend, is there the
6 possibility that you can drill a successful well with
7 sufficient sand and move 40 acres away and find one that
8 has inadequate thickness and therefore is a poor producer?

9 A. Yes, sir, that can be illustrated in several
10 places. A key point here would be if you look in Section
11 36, in the well that is in the northeast of the northeast.
12 That is our Mule Deer 4, and you can see it has a
13 substantial amount of sand involved in it.

14 If you move to the well directly to the north of
15 that, which is Pogo's Covington well, you can see that you
16 have less than 12 feet of sand at that point.

17 And again, as you look -- as you just glance over
18 the map as a whole, you can see many instances where you
19 have wells with sand thicks and adjoining wells that have
20 very little sand in them at all.

21 Q. One of the items the Examiner needs to make a
22 decision upon for a pooling case is to assign a risk-
23 penalty factor in the event any of the working interest
24 owners make the choice not to participate. Do you have a
25 recommendation based upon geologic risk as to what that

1 percentage ought to be?

2 A. Yes, sir, I would look at 200 percent, and what
3 that is based on is the fact, again, you're looking at a
4 very narrow fairway. And even though you may look at this
5 as a development well, it is obvious that you can move the
6 one location and totally lose the sand. That's referring
7 to Exhibit 12 with regard to the upper Bone Spring sand.

8 If you go back and look at Exhibit 10, you'll
9 also note which a secondary horizon is the upper -- I'm
10 sorry, the basal Brushy Canyon sands. We are off the trend
11 there into an area where the sands are quite thin.

12 Q. Whether or not Penwell operates or Burlington
13 operates, do you have any disagreement if the pooling
14 establishes a 200-percent risk factor, Mr. Thomerson?

15 A. No, sir.

16 MR. KELLAHIN: That concludes my examination of
17 Mr. Thomerson.

18 We move the introduction of his Exhibits 9
19 through 12.

20 MR. CARR: No objection.

21 EXAMINER STOGNER: Exhibits 9 through 12 will be
22 admitted into evidence.

23 Thank you, Mr. Kellahin.

24 Mr. Carr, your witness?

25 MR. CARR: I have no questions.

EXAMINATION

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BY EXAMINER STOGNER:

Q. In referring to Exhibit Number 12, just north of the proposed Checkmate 24 Federal Well Number 1 --

A. Yes, sir.

Q. -- there is a well designation, the Number 3?

A. Yes, sir.

Q. How long has that been proposed? Because it shows up on Exhibit Number 1 also.

A. That well is a well that we have currently AFE'd to drill, that is our Jackalope 24 Number 3. That well -- To be honest with you, sir, I couldn't tell you the first time that that well had been staked. This is a continuation of an initial APD that had been granted several months ago. But it is currently slated to be drilled at the end of this year.

Q. Now, if I look further north of there into Section 13 --

A. Yes, sir.

Q. -- just off the colored portion, there's a gas well designation --

A. Yes, sir.

Q. -- Number 1.

Did you look at the well logs, or was that area indicated on that well logs --

1 A. Yes, sir.

2 Q. -- to correspond with your thicknesses here?

3 A. What -- That particular well obviously is a
4 Morrow well. The problem I had, I made a guess, a best
5 guess, if you will, off of a cased-hole neutron log. This
6 section was behind their intermediate run -- I'm sorry,
7 their second intermediate run. So that is an estimate on
8 my part.

9 However, in addition to that, the two wells in
10 that same section, the Number 2 and the Number 3, I did
11 look at those and they do have less than 12 feet of sand in
12 them.

13 Q. Now, it also shows a well over there in the
14 southeast quarter of the southeast quarter of that Section
15 13. Were you able to get anything off of that one?

16 A. No, sir, that is a shallow Ramsey test. It's not
17 drilled deep enough.

18 EXAMINER STOGNER: Okay, any other questions of
19 this witness?

20 You may be excused.

21 Mr. Kellahin?

22 THE WITNESS: Thank you, sir.

23 MR. KELLAHIN: Mr. Examiner, our next witness is
24 Mr. Doug Seams.

25 He spells his last name S-e-a-m-s.

1 the economic evaluation side of the Checkmate 24 Number 1
2 to look at the economic viability of the drilling,
3 completion and production of this well.

4 Q. Have you also been involved as a reservoir
5 engineer in looking at the production and opportunities in
6 both the Delaware and the Bone Springs in this vicinity?

7 A. Yes, I have. I've evaluated both the primary
8 potential in this well, in the upper Bone Spring sand, and
9 the secondary potential in what would be called the basal
10 Brushy sands.

11 Q. You're part of the team, then, with Mr.
12 Thomerson, as the technical group of engineers and
13 geologists that examine opportunities for your company in
14 this area?

15 A. Yes, I am.

16 Q. This is your responsibility?

17 A. Yes, it is.

18 MR. KELLAHIN: We tender Mr. Seams as an expert
19 engineer.

20 EXAMINER STOGNER: Any objection?

21 MR. CARR: No objection.

22 EXAMINER STOGNER: Mr. Seams is so qualified.

23 Q. (By Mr. Kellahin) Mr. Seams, let's look at
24 Exhibit Number 13, please. What are we seeing here?

25 A. Exhibit Number 13 is a map showing the existing

1 Delaware production with the red dots and the blue dot
2 showing the existing upper Bone Spring or what we call
3 locally the Tresnor production. The Checkmate 24 Number 1
4 is noted there near the top of the map.

5 Q. When we look at the Red Tank area, then, the
6 limits of current development in the Bone Springs are as we
7 see here in Section 25, with the blue dots and then the
8 single example in 24?

9 A. That is correct.

10 Q. All right. Let's use that as a locator map,
11 then, and have you compare it to what you see in Exhibit
12 14, which is, I would say, the productivity of those wells.
13 Let's look at 14 and have you describe what you're showing.

14 A. Exhibit Number 14 is an IP bubble map, and this
15 is a qualitative-type map where the bubble is larger with
16 the larger IP.

17 As you can see, the well to the southwest of the
18 Checkmate 24 Federal Number 1 had an initial IP of 449
19 barrels a day.

20 Q. So the red number next to it is the IP for each
21 of these wells and for that well?

22 A. Yes, it is.

23 Q. All right, go ahead.

24 A. As you can see, as the trend goes southward, you
25 can see the various sizes of green dots representing the

1 various sizes of the IP, with the IPs varying anywhere from
2 zero to about 300 barrels of oil per day.

3 Q. In early 1995, what was the level of development
4 in the Bone Springs in this area?

5 A. In early of 1995, the initial two wells up by the
6 Checkmate 24 Number 1 had been drilled, and there was
7 approximately six wells drilled on the Pogo Covington
8 lease, and to the best of my knowledge, I think we had two
9 or three of our wells drilled in Section 36.

10 Q. Since then, what has occurred?

11 A. Since then, what has occurred is what you see
12 now, with the IP bubble map with the upper Bone Springs
13 sand, you see a continued trend to the southward developing
14 the upper Bone Springs sand.

15 Q. When we look at the operators that are developing
16 the Bone Springs sand in this area, we have Burlington and
17 Pogo?

18 A. They are the two main operators in the area.

19 Q. Are there any other operators shown on this
20 display with regard to Bone Springs production?

21 A. Not to my knowledge.

22 Q. Okay. Burlington operates what, 27 wells in this
23 area? And you have an interest in 14 others --

24 A. Yes, we do.

25 Q. -- that are operated by Pogo, I guess?

1 A. That's correct.

2 Q. All right. If this was a dispute over operations
3 with Pogo, how would that have been resolved?

4 A. If this was a dispute with Pogo over operations,
5 we would have allowed Pogo to go ahead and continue
6 operations, drill, complete and produce this well.

7 Q. Why don't you do so for Penwell?

8 A. It's not a fair comparison. Pogo is not a fair
9 or an equivalent operator to Penwell in this case. The
10 reason why that is so is that Pogo has extensive experience
11 in this area in both finding and developing the upper Bone
12 Springs sand, and minimizing the cost on both the drilling,
13 completion and the daily operations portion.

14 Q. Are you aware of any of Penwell's Bone Springs
15 production within several miles of this proposed location?

16 A. I'm aware of one well approximately ten miles to
17 the south.

18 Q. Let's turn our attention to the Burlington
19 operations. Let's look at Exhibit 15.

20 I'd like you to contrast something for me. Back
21 in spring of 1995, we've got one very nice well with an
22 initial potential of 449 and a couple of others. Since
23 then, what is the level of initial potential of these
24 subsequent wells?

25 A. Well, referring back to the initial IP map, you

1 can see as the trend went southward no well was able to
2 attain the initial IP of the 449-barrel southwest offset.
3 In fact, most of the IPs throughout Section 25 and into
4 Section 36 were in the 100- to 200-plus-barrel-a-day range,
5 but nowhere near that initial 449-barrel-a-day IP.

6 Q. How does that level of productivity affect your
7 analysis of the economic viability of these wells?

8 A. Well, when we initially saw the 449 IP without
9 the additional data, we were very excited about the trend
10 we saw, or we could estimate great potential using that as
11 a marker for an average-type well.

12 Q. Since then we have not achieved the level of
13 production, either Burlington or Pogo?

14 A. Since then we've proved out that these wells are
15 more on average of the IPs in the 100-to-200-plus-barrel-a-
16 day range, which makes this play very cost-sensitive.

17 Q. As a consequence, have both you and Burlington
18 and Pogo been aggressive in trying to reduce the costs of
19 these wells?

20 A. Yes, we have.

21 Q. In historical contexts, the AFEs back in early
22 1995 were in the \$700,000 range?

23 A. Yes.

24 Q. The proposal now puts them down in the \$650,000
25 range?

1 A. Yes.

2 Q. And you and Pogo are continuing to work as the
3 major operators in further reducing those costs?

4 A. Yes, we are.

5 Q. Let's talk about your operations. One of the
6 things that you have to decide in ultimately who operates a
7 particular well is the -- One of the things you have to
8 decide when operating a well is whether or not there are
9 adequate staffing of personnel by that operator to manage
10 effectively the production from that well?

11 A. Yes.

12 Q. Describe for us what your position is in this
13 pool that gives you the opportunity to best serve all
14 working interest owners.

15 A. Well, if I can refer to Exhibit 15, Exhibit 15
16 shows in green the 27 Burlington Resources-operated wells
17 that are local to the area, the Checkmate 24 Number 1, then
18 also shown in red are the 14 wells in which we have an
19 operating interest in, that are operated by Pogo.

20 The Checkmate 24 Number 1 would blend in well
21 with our current daily operations out there and would
22 receive daily attention to minimize down time and other
23 types of problems.

24 Q. Do you have sufficient wells that you operate in
25 this area to provide daily field representatives every

1 day --

2 A. Yes, we --

3 Q. -- in order to attend to the management of this
4 well?

5 A. Yes we do.

6 Q. What's your rig availability for this well?

7 A. We have a rig available for a 1996 spud date for
8 this well.

9 Q. Do you see any impediment to the probability that
10 if Burlington is allowed to drill this well, that you could
11 do so in this year?

12 A. No, I don't.

13 Q. How long have you operated these wells in this
14 area?

15 A. The wells up to the north, the initial well in
16 Section 14 would be in the southwest -- well, actually the
17 southwest of the southeast. The Number 1 well was
18 initially drilled three and a half years ago. We have
19 since drilled the remaining 27 wells to date.

20 Q. And in terms of operational efficiency, have you
21 as a petroleum engineer examined the various choices for
22 configuring the facilities at this well to decide, in your
23 opinion, what is the best optimum configuration?

24 A. Yes, I have.

25 Q. Because you have facilities in the area, is it

1 going to be necessary to you to set separate tanks and
2 separators with regards to the production?

3 A. No, it won't be.

4 Q. Will you have the ability to accurately meter and
5 allocate production from this well so that all interest
6 owners receive their fair and appropriate share?

7 A. Yes, we will.

8 Q. Let's look at your operations in the area.
9 You've brought me some photographs to show the level of
10 effort. Describe for us what we're seeing at in Exhibit
11 16, Mr. Seams.

12 A. Exhibit 16 is a picture of the Red Tank Number 1.
13 This is a lease approximately a half a mile to the west.
14 In fact, this is the well I mentioned, one of the initial
15 drill wells in the area.

16 Q. Do these wells have to be pumped, or will they
17 flow and then you have to pump them later?

18 A. These wells typically will initially flow between
19 three and twelve months, and then following that they will
20 go on rod pump.

21 Q. All right. And when you put a pump on a well, it
22 would be similar to what we're seeing in Exhibit Number 16?

23 A. It would be similar. This type of pumping unit
24 is a mark unit, and sometimes you will see a conventional
25 type of pumping unit.

1 Q. Let's turn to the oil storage tanks on Exhibit
2 17. Is this the type of facility that's available in the
3 area to take production and store it?

4 A. In fact, this would be the facility that would
5 take the production from the proposed Checkmate 24 Number
6 1, with Burlington Resources as operator.

7 Q. What's the vintage of this equipment and its
8 ability to meet the various environmental standards that
9 apply?

10 A. This equipment is under 30 months old, and as you
11 can see by the environmental standards, we have the
12 environmental containment vessels and the other
13 environmental requirements in place.

14 Q. Let's turn to the production facilities and look
15 at the photograph, 18. Describe for us what we're seeing
16 here.

17 A. What we're seeing here is the area where the oil,
18 water and gas are separated and also the individual wells
19 are tested, with the operations of the 24 Number 1 going to
20 Burlington Resources. That well would be routed through
21 here and tested through here for well-line testing, and
22 then through bulk separation of the oil, gas and water.

23 Q. Where is this production facility in relation to
24 the Checkmate 24 well, the subject well? Where is it?

25 A. It's approximately a half to three-quarters of a

1 mile to the west.

2 Q. All right. And you would construct the necessary
3 gathering lines to take production from the wellhead and
4 move it to this production facility?

5 A. Yes, we will.

6 Q. Again, the level of integrity of this equipment,
7 what's its vintage and how reliable is this --

8 A. All this equipment is under 30 months old, and
9 we've even increased the reliability by putting up some
10 additional lighting for the cold months in the winter to
11 minimize the effect of freezing.

12 Q. All right. Let's look, then, at photograph 19,
13 and describe for us what we're seeing here.

14 A. Photograph 19 is a telemetry unit that both sends
15 the gas measurement via -- through the radio waves down to
16 the phone lines.

17 And then also the small white box on the right is
18 an alarm which is tied directly into a phone call-out
19 system, which gives us alarms on both high or low tank
20 levels, our water disposal system, and whether the
21 electrical power is sufficient or not.

22 Q. If you're allowed to operate this well, this is
23 the type of monitoring system you would put at the well?

24 A. Yes, we will tie that well's production into this
25 system..

1 Q. Has it proved to be a reliable means for
2 monitoring production and measuring flow?

3 A. Yes, it has.

4 Q. You mentioned water disposal. Do these wells
5 produce water?

6 A. Yes, they will. Well, the upper Bone Spring sand
7 produces very little water. The basal Brushy will produce
8 quite a bit of water. And what I mean by "quite a bit" is
9 more than a hundred barrels of water per day for the basal
10 Brushy.

11 Q. Should this well at the Bone Springs produce
12 water, you have facilities in the area that have the
13 capacity to handle produced water and dispose of it in an
14 appropriate way?

15 A. Yes, we do.

16 Q. Let me turn your attention to a different topic
17 then, and that's the comparison of the well costs that have
18 been proposed. If you'll look at Exhibit 20 for me, Mr.
19 Seams --

20 A. Uh-huh.

21 Q. -- describe for us first of all how you have
22 organized the information, and then we'll talk about your
23 conclusions.

24 A. Mr. Examiner, Exhibit 20 is a comparison between
25 Penwell's AFE and Burlington's AFE. Noted there on the

1 bottom is the Burlington Resources AFE total of \$651,700.
2 Underneath that is the Penwell AFE of \$649,320.

3 What I looked at was the major areas of variance
4 within common areas of expense, and anything over
5 approximately \$1000 I then correlated here to the top. And
6 I sorted from the most negative variance to the most
7 positive variance.

8 Q. All right. When we look, then, at the sum total
9 and you're summing \$418,000, the difference between that
10 and the \$650,000 are cost items for which there's less than
11 a \$1000 differential?

12 A. Yes.

13 Q. All right. And so you have excluded those for
14 the moment and concentrated on those items that have the
15 greatest difference between you and Penwell?

16 A. Yes, I did.

17 Q. Some of these items you have zero entries, and
18 Penwell proposes to spend money for certain batteries.
19 Describe for us the difference and what's happening.

20 A. Well, a good example of the zero entries would be
21 that Penwell has AFE'd \$8500 for a separator, heater
22 treater and \$6500 for tanks, dedicating a tank battery to
23 this well.

24 Burlington has AFE'd zero dollars for that,
25 electing to route this production over into the Red Tank

1 area, tank battery.

2 Q. Penwell apparently has staked another five
3 locations in this immediate vicinity for additional tests
4 in the Bone Springs. If -- That's beyond the subject of
5 this hearing, but would you have the facilities to handle
6 subsequent wells if they were operated by you?

7 A. Yes, we would.

8 Q. In addition, I think Burlington has continued to
9 examine costs over time, and that 15 months ago costs for
10 you and Pogo were substantially higher than they are now.
11 Give us a summary of how you and Pogo have been able to
12 reduce the cost.

13 A. With our cooperation of sharing data and our
14 mutual interest wells in this Tresnor trend, we have
15 evaluated the cost to date in areas where we can both
16 optimize the stimulation and save on costs. We've done
17 that through an extensive research on both the wells
18 operated by Pogo and by Burlington Resources.

19 Q. What concern do you have as a petroleum engineer
20 that if Penwell is allowed to operate this well, that
21 somehow your ability to handle and manage costs is
22 compromised?

23 A. I'm very concerned about the cost, in that we now
24 have 27 operated wells, the success of 27 operated wells,
25 behind us, and then also the 14 additional non-operated

1 wells. With this, you saw that the earlier AFE was worth
2 \$699,000. We've been able to further reduce that down to
3 the current AFE of \$650,000, with the efforts of Pogo.

4 Q. Let me ask you to turn your attention, Mr. Seams,
5 to Exhibit Number 21 as your final exhibit, and have you
6 summarize what we're seeing here.

7 A. Exhibit Number 21 is a plan that we have put in
8 place to further reduce the cost of drilling upper Bone
9 Spring sand and basal Brushy sands.

10 We now think that we can reduce a further \$74,000
11 of cost from that initial \$650,000 AFE for a total AFE now
12 of \$578,000.

13 We're going to do this in major areas of
14 categories, be it roads, locations, cement, stimulations
15 across the board. It's a factor of doing things to
16 optimize the stimulation or treatment to the well and also
17 some better negotiating techniques.

18 Q. If you're allowed to operate this well, would the
19 interest owners that are entitled to production from this
20 well be able to enjoy the benefits of your efforts to
21 further reduce costs?

22 A. Yes, they will.

23 Q. Summarize for us your position with regards to
24 this case as a petroleum engineer.

25 A. This is an interesting case in that economics

1 have become very sensitive in this upper Bone Spring play.

2 Where initially we were very optimistic about the
3 play with over a 400-barrel-a-day IP, we have since come
4 back down to earth, so to speak, in that we now have to
5 very much watch the costs of the drilling, completion and
6 production of these wells, to maintain economic viability
7 of this play.

8 In order to maintain a consistent development in
9 this trend, we've had to continue to reduce costs in order
10 to maintain that economic viability.

11 Q. What's your concern about those costs if Penwell
12 is allowed to operate?

13 A. My concern is that those costs will be higher and
14 we'll be forced to have reduced returns, if at all, from
15 these wells.

16 MR. KELLAHIN: That concludes my examination of
17 Mr. Seams.

18 We move the introduction of his Exhibits 13
19 through 21.

20 EXAMINER STOGNER: Any objections?

21 MR. CARR: No objection.

22 EXAMINER STOGNER: Exhibits 13 through 21 will be
23 admitted into evidence.

24 Before I go to Mr. Carr, I see now it's 11:30.
25 We will be breaking for lunch. I would suggest anybody

1 here for the Gillespie-Crow case, go ahead and take off for
2 lunch now. You're better apt to get into a place around
3 here around 11:30 anyway.

4 We will start no earlier than 1:15, so I would
5 suggest you be back around then. So you all can go if you
6 would like.

7 With that, Mr. Carr, your witness.

8 CROSS-EXAMINATION

9 BY MR. CARR:

10 Q. You've testified that you and Pogo working
11 together have been able to reduce the costs of developing
12 the reservoir, have you not?

13 A. Yes, I have.

14 Q. And that's evidence of the caliber of operations
15 you've able to conduct in the pool; is that not correct?

16 A. Yes.

17 Q. That's what you testified to; is that not right?

18 A. Uh-huh.

19 Q. And when we look at the AFEs, Penwell's is
20 slightly lower than yours?

21 A. Yes, it is.

22 Q. All right. Now, when we -- You have taken
23 various items out of the two AFEs and prepared a
24 comparison.

25 Before we get into that, I'm correct, am I not,

1 that an AFE is just an estimate?

2 A. Yes, it is.

3 Q. And that actual costs are what each of the
4 individual interest owners in the well are actually going
5 to have to pay in the final analysis?

6 A. Yes.

7 Q. Now, when we look at the AFE comparison, your
8 Exhibit 20, the first thing we have is a \$30,000 entry for
9 Penwell as a contingency, and you have none; is that right?

10 A. That's correct.

11 Q. Are you able to control your costs so that you do
12 not ever have to bill back through to another interest
13 owner, say, an escalation in fuel cost from a drilling
14 contractor?

15 A. We have not had that on the past wells, no.

16 Q. Have you ever had to bill back for the escalation
17 in, say, any water costs of any kind?

18 A. Yes, we've had that.

19 Q. And if you did, then eventually the owners, other
20 owners in the pool, would have to pay that, whether you
21 have a contingency in this or not; isn't that right?

22 A. Yes.

23 Q. Have you ever had to come forward with funds
24 because there's been, say, a change in tubular costs while
25 drilling a well?

1 A. Yes.

2 Q. Have you needed to, while completing a well, go
3 out and actually increase, say, a fracture treatment or
4 something of that nature and then you would need additional
5 money for that; isn't that right?

6 A. Yes.

7 Q. And so you actually bill those back to the other
8 interest owners in the property, ultimately, anyway; isn't
9 that right?

10 A. Yes.

11 Q. You're just not putting that in a estimate; isn't
12 that correct?

13 A. Actually, it is part of our estimate.

14 Q. And it's zero, is it not? Isn't what your
15 estimate is, it's zero?

16 A. The estimate that we have here is the best guess
17 for what we're planning to encounter.

18 Q. Okay, and if you do encounter something it could
19 be more; isn't that right?

20 A. Uh-huh, or --

21 Q. It could be --

22 A. -- it could be less.

23 Q. It could be less. It could be \$30,000 more,
24 could it not?

25 A. Yes.

1 Q. Now, if Penwell drills a well and they don't have
2 any of these things happen that you don't expect to happen,
3 their cost could drop \$30,000 and they wouldn't need their
4 contingency; isn't that right?

5 A. I don't know the basis of their AFE.

6 Q. If there is no contingency needed, you wouldn't
7 expect ultimately to have to pay for that; isn't that
8 right?

9 A. Uh-huh.

10 Q. Now, if we look at the separator treater, which
11 you have indicated Burlington would have zero cost; isn't
12 that correct?

13 A. Yes.

14 Q. And there's a charge there for Penwell. the same
15 thing applies to tanks; isn't that right?

16 A. Yes.

17 Q. And the same thing would actually apply to --
18 You've got a zero down for -- geological engineer, I
19 believe, as well; isn't that right?

20 A. Yes.

21 Q. Title and curative work?

22 A. Uh-huh.

23 Q. Now, you do have a separator and a treater out on
24 the facility; we've seen that, correct?

25 A. On the adjacent facility.

1 Q. And that's what you would be using so you don't
2 have to charge us; isn't that right?

3 A. Yes.

4 Q. We would be charged, however, at some point,
5 would we not, for the use in putting our share of the
6 production through that facility?

7 A. The daily operating expense portion, yes.

8 Q. And that may be why the daily operating expense
9 portion is, in terms of the estimated cost while drilling
10 and producing, higher than ours; isn't that possible?

11 A. I don't know the basis of that question.

12 Q. Same would apply for the tanks. These aren't
13 free, we're going to pay somewhere for the use of the
14 tanks; isn't that right?

15 A. Yes.

16 Q. Whether we buy them now and bill you or you have
17 them now and bill us later.

18 Geological engineer, do you plan to do that work
19 in-house?

20 A. Yes, we will.

21 Q. And so those costs would then be operating
22 expenses in terms of the overhead charges; isn't that
23 right?

24 A. Yes.

25 Q. Title and curative work, you have zero down; we

1 have \$2000. We've heard you haven't ordered a drilling
2 title opinion. Do you do those in-house?

3 A. I don't have the expertise to answer that
4 question.

5 Q. So we don't know that -- You're saying here
6 you're not going to pay Mr. Kellahin for curative work?
7 That's not what this is designed to say, I gather?

8 A. Once again --

9 Q. Okay. Basically, when we take these and we look
10 at them, we're looking at just estimates; isn't that right?

11 A. Yes, they are.

12 Q. And that's what you estimate as a good operator
13 it will take to drill the well; isn't that right?

14 A. Yes.

15 Q. And this is what Penwell estimates it will take
16 to drill and complete this well; isn't that correct?

17 A. Yes.

18 Q. Now, we look at potential future savings, and
19 these are potential savings; isn't that right?

20 A. Yes.

21 Q. And you're just continuing to try and watch the
22 costs in terms of developing the property; isn't that a
23 fair statement?

24 A. You're now on Exhibit 21?

25 Q. Yes, I am, I'm sorry. And so these, as you've

1 indicated, are potential costs; they haven't been realized
2 yet. And whatever you're able to actually achieve in terms
3 of savings is shared with others in the well?

4 A. Yes, it will be.

5 Q. And if Penwell actually effects savings in their
6 operations, then you would expect to share in those also?

7 A. Yes, we would.

8 MR. CARR: That's all I have.

9 EXAMINER STOGNER: Thank you, Mr. Carr.

10 Any other questions of this witness?

11 MR. KELLAHIN: No, sir.

12 EXAMINER STOGNER: You may be excused.

13 Mr. Kellahin, do you have anything further?

14 MR. KELLAHIN: Yes, sir, our last exhibit is a
15 certificate of mailing, which I've attested to, and it
16 shows the letter notice, the fact the Application was sent
17 to Mr. Trainer, the Losee daughters and Mr. Prince, and it
18 shows the receipt of those applications and notice of
19 hearing.

20 I move its introduction at this time, Mr.
21 Examiner.

22 EXAMINER STOGNER: That concludes your
23 presentation, Mr. Kellahin?

24 MR. KELLAHIN: Yes, sir, with the --

25 EXAMINER STOGNER: Mr. Carr?

1 MR. KELLAHIN: -- introduction of that exhibit.

2 EXAMINER STOGNER: Okay. Yes, Exhibit Number 22,
3 which is the affidavit in compliance for the notice will be
4 accepted at this time.

5 Mr. Carr?

6 MR. CARR: Thank you, Mr. Stogner.

7 MARK WHEELER,

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

10 DIRECT EXAMINATION

11 BY MR. CARR:

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

13 A. Mark Wheeler.

14 Q. Where do you reside?

15 A. Midland, Texas.

16 Q. By whom are you employed?

17 A. Penwell Energy, Incorporated.

18 Q. And what is your current position with Penwell?

19 A. Land manager for the Permian Basin.

20 Q. Have you previously testified before this
21 Division?

22 A. Yes, I have.

23 Q. At the time of that testimony were your
24 credentials as a petroleum landman accepted and made a
25 matter of record?

1 A. Yes, they were.

2 Q. Are you familiar with the Application filed in
3 this case on behalf of Penwell?

4 A. Yes, sir.

5 Q. And are you familiar with the status of the lands
6 in the subject area?

7 A. Yes, sir, I am.

8 MR. CARR: Are the witness's qualifications
9 acceptable?

10 EXAMINER STOGNER: Any objections?

11 MR. KELLAHIN: No objection.

12 EXAMINER STOGNER: So qualified.

13 Q. (By Mr. Carr) Briefly state what Penwell seeks
14 with this Application.

15 A. Penwell seeks an order pooling all minerals from
16 the surface to the base of the Bone Spring formation under
17 the northwest quarter, southeast quarter of Section 24,
18 Township 22, Range 32 East, Lea County, New Mexico.

19 Q. And to what well do you propose to dedicate?

20 A. Our Checkers 24 Federal Number 1 well, which will
21 be drilled at a standard location 1980 feet from the south
22 and east lines of said Section 24.

23 Q. We're talking about the same acreage and same
24 well location as were addressed in the Burlington
25 Application; is that correct?

1 A. Yes, sir, we are.

2 Q. Let's go to your Exhibit Number 1. Can you
3 identify and review this, please?

4 A. This is a land plat which we've prepared, which
5 shows the Penwell acreage in Section 24, also the proposed
6 well location for our Checkers 24 Federal Number 1.

7 Q. And what basically does this show? We've got the
8 lease --

9 A. This shows the acreage in the southeast quarter,
10 the west half, southwest quarter, and the northeast
11 quarter, northeast quarter of Section 24, which Penwell has
12 purchased from Mr. Trainer and Mr. Prince.

13 Q. And you will be dedicating -- what? The 40 acres
14 around the Checkers --

15 A. Yes, sir --

16 Q. -- north of the well?

17 A. -- the northwest-southeast, yes, sir.

18 Q. What is the primary objective in the well?

19 A. The Bone Spring formation.

20 Q. Let's go to Exhibit Number 2. Can you identify
21 that, please?

22 A. This is our operating agreement which we have
23 proposed for the drilling of this particular well and also
24 for operations on all of the acreage we just saw.

25 Q. Could you turn to Exhibit A in the operating

1 agreement?

2 A. Yes, sir.

3 Q. Would you, by referring to this exhibit,
4 summarize the status of the ownership in this property?

5 A. This particular property is owned 81.575 percent
6 by Penwell Energy, Incorporated, and CoEnergy Central
7 Exploration, our funding partner out of Michigan.

8 Burlington Resources has 13.401 percent, and Mr.
9 A.J. Losee has 5.024 percent.

10 Q. Would this ownership also be applicable to all
11 the acreage shaded in yellow on Exhibit Number 1?

12 A. Yes, sir, it is.

13 Q. And what percentage of this ownership has been
14 voluntarily committed to Penwell for the development of
15 this property?

16 A. 86.599 percent.

17 Q. Let's go, now, to Exhibit Number 3. Will you
18 identify that, please?

19 A. Yes, sir, that is Penwell's AFE for the Checkers
20 Federal 24 Number 1 well.

21 Q. And this is basically the AFE that's been
22 discussed in the testimony already presented here today --

23 A. Yes, sir, it --

24 Q. -- by Burlington?

25 A. Yes, sir, it is.

1 Q. Let's move -- are these -- Are the costs in line
2 on this exhibit realistic costs in Penwell' opinion, what
3 it would take to actually drill --

4 A. Yes, sir, based --

5 Q. -- a well on this property?

6 A. -- based on our experience in drilling Bone
7 Springs wells, these costs are reasonable.

8 Q. Could you summarize the efforts that you have
9 made to obtain the voluntary joinder of Burlington in this
10 prospect?

11 A. Since our entry into this prospect in early
12 September of this year, we have attempted to obtain the
13 joinder of all parties. We have obtained the joinder of
14 all parties to our AFE and -- pending our operating
15 agreement. We have not received all the signature pages
16 back on those, except for Burlington Resources. We have
17 not obtained their joinder. We have, through
18 correspondence, visited their office, and numerous
19 telephone conversations, attempted to obtain the joinder of
20 Burlington also.

21 Q. Have you, in your opinion, made a good-faith
22 effort to get all interests voluntarily in this prospect?

23 A. Yes, sir, we have.

24 Q. And are you anxious as Meridian/Burlington is to
25 drill this well and get going with the development?

- 1 A. We're exceedingly anxious to get started on this.
- 2 Q. Have you drilled other Bone Spring wells in the
3 area?
- 4 A. We've got two Bone Springs wells approximately
5 six miles south of this particular property.
- 6 Q. And those are the closest Bone Spring --
- 7 A. That's the closest, but we've also drilled
8 additional Bone Spring wells in Lea and Eddy Counties, New
9 Mexico.
- 10 Q. Let's take a look at your Exhibit Number 4.
11 Could you briefly review that for Mr. Stogner?
- 12 A. These are just letters that we have sent to
13 Burlington, and I believe there's also maybe a letter to
14 Mr. Losee in here, asking for their joinder to our --
- 15 Q. Can you tell Mr. Stogner --
- 16 A. -- AFE.
- 17 Q. -- exactly the status, as of this date, of the
18 participation of the interests that were held by the Losee
19 daughters and Ransome Losee and Elizabeth Losee in terms of
20 their commitment to the --
- 21 A. The Losee daughters advised us in a letter that
22 they were farming out their interest to their father, Mr.
23 A.J. Losee. Mr. Losee has signed our AFE and is currently
24 reviewing our operating agreement, waiting -- I'm waiting
25 to get his comments back on that.

1 Q. And our Exhibit Number 3 is the AFE which
2 reflects Mr. Losee's signature; is that --

3 A. Yes, sir --

4 Q. -- not correct?

5 A. -- that's correct.

6 Q. All right. Can you identify what has been marked
7 as Penwell Exhibit Number 5?

8 A. These are the assignments that we have obtained
9 from Mr. Trainer and Mr. Prince on assignments of operating
10 rights under this federal lease and the acreage described.

11 Q. And when were these obtained?

12 A. They were obtained early this week.

13 Q. And is it your intention to file them this week
14 in the -- with the appropriate agency --

15 A. Yes, we --

16 Q. -- of public record?

17 A. We are currently requesting checks to file with
18 the BLM and also a fourth copy that has acknowledgements to
19 be filed in Lea County, New Mexico.

20 Q. Have you ordered a drilling title opinion to go
21 forward with the development of this well?

22 A. Yes, I have, Mr. --

23 Q. And what --

24 A. -- Bill Burford with the Hinkle Cox firm is
25 currently preparing one as we speak.

1 Q. Is Exhibit Number 6 a copy of an affidavit
2 confirming that notice of this hearing was provided to both
3 the Losee daughters and to Burlington in compliance with
4 Oil Conservation Division rules and regulations?

5 A. Yes, sir, it is.

6 Q. Have you made an estimate of the overhead and
7 administrative costs while drilling a well and also while
8 producing it, if successful?

9 A. Yes, sir, we have, \$4178 per month while drilling
10 and \$440 per month while producing.

11 Q. Do you believe these costs are appropriate
12 compensation for the services you would be providing as
13 operator during these phases of the development --

14 A. These are identical costs to other Bone Springs
15 wells that we have drilled.

16 Q. Do you recommend that these figures be
17 incorporated into the order which results from this
18 hearing?

19 A. Yes, we do.

20 Q. Will we also be calling a geological witness --

21 A. Yes.

22 Q. -- to review that part of the case?

23 A. Yes, we will.

24 Q. Were Exhibits 1 through 6 prepared by you or
25 compiled under your direction?

1 A. Yes, they were.

2 MR. CARR: At this time, Mr. Stogner, we would
3 move the admission into evidence of Penwell Exhibits 1
4 through 6.

5 EXAMINER STOGNER: Any objection?

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

7 EXAMINER STOGNER: Exhibits 1 through 6 will be
8 admitted into evidence.

9 One quick question for clarification. Exhibit
10 Number 4, what all does that include? I'm kind of confused
11 what Exhibit 4 and Exhibit 5 -- where one begins and the
12 other starts.

13 THE WITNESS: Exhibit 4 is, I believe, a summary
14 of all of the communications that we have had and that Mr.
15 Trainer, prior to our -- to the property had had with
16 Burlington about this particular location.

17 Exhibit 5 are the two separate transfer of
18 operating rights that we have received from Mr. Trainer
19 and Mr. Prince and their wives and joinder.

20 EXAMINER STOGNER: Okay, so Exhibit Number 5 is
21 just the two pages?

22 THE WITNESS: Yes, two assignments, yes, sir.

23 MR. CARROLL: Four?

24 THE WITNESS: They're four pages, but two
25 assignments.

1 EXAMINER STOGNER: Uh-huh. Thank you.

2 Mr. Kellahin, your witness.

3 MR. KELLAHIN: Thank you, Mr. Examiner.

4 CROSS-EXAMINATION

5 BY MR. KELLAHIN:

6 Q. Mr. Losee's farmout from his two daughters is a
7 farmout that was specific as to this 40-acre tract; is that
8 not true?

9 A. I believe that's correct.

10 Q. They continue to hold their working interest as
11 to the balance of the lease in the southeast quarter; is
12 that not --

13 A. Mr. Losee informed me that it was their intention
14 as further wells were drilled to do the same thing. I
15 believe they farmed out just the 40 acres at this point.

16 Q. You're not suggesting to Mr. Stogner that he
17 ought to decide this case based upon who's able to get the
18 title opinion for drilling the well first, are you?

19 A. No, sir, I'm suggesting that he award operations
20 based on who has the largest interest and who can drill it
21 the most cheaply.

22 Q. Yeah, so Mr. Burford's opinion is not the
23 deciding factor, in your opinion, is it?

24 A. No, sir.

25 Q. All right. Either you or Burlington -- Leslyn

1 here is certainly competent and capable of getting a title
2 opinion so that the drilling of the well is not delayed for
3 that reason?

4 A. Certainly. We proceeded after our meeting with
5 Burlington based on instructions and based on comments that
6 Ms. Swierc and I had about who should go ahead and order
7 the title opinion and get abstracts prepared and over to
8 Mr. Burford, so we proceeded after that point.

9 Q. All right. Have you made application to the BLM
10 for the drilling of this well? Have you filed an APD yet?

11 A. Not on this particular well, because Burlington
12 had already done that.

13 Q. Okay.

14 A. That can be accomplished, I believe, through a
15 sundry notice.

16 Q. Okay. Are you aware of any reason why Penwell
17 can't commit to drilling this well, to make sure it's
18 spudded before the end of this year?

19 A. I'm not aware of any reason at this point.
20 Burlington has asked us to guarantee a well to be drilled
21 not by the end of this year but by the 15th of October, and
22 I informed Burlington that any number of things could
23 happen which would keep us from wanting to guarantee a well
24 to be drilled. The price of oil could go down, the
25 offsetting production could go to nothing. There's all

1 sorts of things that could happen that would keep us from
2 guaranteeing a well.

3 Q. What's Penwell's gross working interest in this
4 spacing unit at this point?

5 A. Penwell's or Penwell's and CoEnergy's together?

6 Q. Penwell.

7 A. Penwell's gross working interest will be
8 22.637063 percent.

9 Q. It's not 12.23625 percent?

10 A. Our record title interest will be 22.637063
11 percent. Our paying interest in the well will be 12.23675
12 percent.

13 Q. All right. That's what I'm asking you. I want
14 to ask you how much of the costs of the well are going to
15 come out of Penwell's pocket.

16 A. 12.23675 percent.

17 Q. How much of the cost of the well is going to come
18 out of Burlington's pocket?

19 A. 13.401 percent.

20 Q. Okay.

21 A. However, our arrangement with our funding partner
22 in Michigan, in our arrangement with them they depend on
23 Penwell to operate, and so our -- At this point, they do
24 not own record title to any of this interest. They will,
25 but they do not at this point own any record title.

1 Q. And that is consistent with Penwell's practice in
2 Lea County and Eddy County, New Mexico, is that when you
3 find these opportunities you turn 72.75 percent of it over
4 to CoEnergy, which is --

5 A. 72.25, yes, sir.

6 Q. Yeah. -- which is a company in Detroit,
7 Michigan?

8 A. That's correct.

9 Q. What does that company do?

10 A. They are a gas distributor in Michigan. They are
11 the largest gas distributor in Michigan.

12 Q. Okay. If the Division Examiner awards operations
13 to Burlington, then what happens to your deal with
14 CoEnergy?

15 A. We'd have to look at it individually at that
16 point. I think that at this point, we probably would
17 proceed with the well.

18 Q. Under what percentage, then? Would CoEnergy
19 still have their percentage?

20 A. CoEnergy has signed our AFE and has approved this
21 prospect at this point, so yes, I believe they would
22 proceed ahead.

23 Q. Is your funding with CoEnergy contingent upon you
24 operating?

25 A. It is by and large. There are exceptions, there

1 have been a few exceptions.

2 Q. So if they exercise their exception and don't
3 fund their share of this, are you going to fund it all?

4 A. They have already approved our AFE and signed
5 their prospect summary, which commits them to drill the
6 first well.

7 Q. All right. Am I correct in understanding -- I
8 don't want to confuse you or me -- if Burlington is awarded
9 operations, then is CoEnergy still able to fund to the
10 level that you've proposed to do if you're the operator?

11 A. Yes, they are.

12 Q. All right. The 12.23 percent is a gross working
13 interest, right?

14 A. That is the cost interest, and --

15 Q. That's the cost interest.

16 A. It's not the working --

17 Q. That's not your net revenue interest, is it?

18 A. That's not our net revenue interest.

19 Q. What's your net revenue interest in that
20 property?

21 A. Mr. Trainer and Mr. Prince turned us a 75-percent
22 net revenue, and internally we have tacked on a 2-percent
23 override, so it would be a 73 percent to CoEnergy and
24 Penwell.

25 Q. So what's Trainer and Prince's override?

1 A. They're keeping the difference between existing
2 burdens and 25 percent. I believe existing burdens out
3 there are approximately 17.5 percent, and I think they're
4 going to be keeping approximately 7.5.

5 They've got a little different arrangement
6 between themselves, between -- from Trainer and Prince on
7 this acreage than -- But I know that what we're being
8 delivered is 75 and 73 percent.

9 Q. Let's look at the arrangement between Penwell and
10 Trainer-Prince. You've got an assignment that's dated
11 September 27th, with regards to filling out the federal
12 assignment form, between you and Trainer-Prince, right?

13 A. I'll look at the date. I believe that's correct.

14 Q. It's your exhibit -- what? Four?

15 A. Five.

16 Q. All right.

17 A. Mr. Trainer signed his on the 27th, and I believe
18 Mr. Prince did also.

19 Q. All right.

20 A. We executed on the 30th.

21 Q. All right. Are those assignments tied back into
22 the letter agreement that you gave Leslyn that's dated
23 September 10th of 1996?

24 A. Not on the face of it. We obtained these after
25 the letter agreements were signed. We had subsequently

1 paid Mr. Prince and Mr. Trainer for these assignments, so
2 at this point we're just awaiting recording.

3 Q. All right. What I'm trying to understand is, are
4 you attempting to perform the contractual conditions
5 described in your letter of September 10th, 1996?

6 A. Yes, we are.

7 Q. That's still the deal?

8 A. Yes, sir.

9 Q. All right. The fact that you've got an
10 assignment from Trainer and Prince does not mean that you
11 have satisfied all the conditions of this letter agreement,
12 right?

13 A. The letter agreement calls for us to propose and
14 drill the well to the best of our abilities.

15 Q. All right. What I'm concerned about is paragraph
16 7 on page 2 of that letter. It's Burlington Exhibit Number
17 8. Page 2, paragraph -- numbered paragraph 7. Is this
18 still part of the deal, that if Penwell is not successful
19 in getting Examiner Stogner to award you operations, then
20 you have the unilateral right to undo this deal?

21 A. We have an option, according to this, and I've
22 already explained that we have elected and have gotten
23 CoEnergy's election to participate in this well, so at this
24 point we will drill the well regardless.

25 Q. All right. So your intent is not to exercise

1 this option?

2 A. We will not exercise this option.

3 Q. That's out of the deal?

4 A. Yes.

5 Q. Okay. When did you first contact Mr. Trainer or
6 he contact you with regards to this topic?

7 A. Mr. Trainer came to our offices on September the
8 4th and first told us about the possible availability of
9 their interest in this property.

10 Q. Did he tell you on September 4th that he had
11 already been served with a compulsory pooling application
12 filed --

13 A. Yes, he did.

14 Q. -- by Burlington?

15 A. Yes, he did.

16 Q. So you knew that when you were beginning to
17 negotiate with Mr. Trainer?

18 A. Absolutely.

19 Q. Were you also aware of the anticipated scheduling
20 date of that pooling hearing?

21 A. Yes, although I believe that date was
22 subsequently changed, but we thought it was going to be on
23 the 19th of September.

24 Q. And you're talking to Mr. Trainer on the 4th of
25 September?

1 A. Yes, sir.

2 Q. Okay. Part of the agreement with Trainer and
3 Prince is the payment of a cash bonus with regards to the
4 consideration for them to make the agreement with Penwell?

5 A. Yes, sir.

6 Q. What was the consideration paid?

7 A. We paid a total of \$100 per acre, which was a
8 little over \$22,000. We split that amongst three parties,
9 Mr. Trainer, Mr. Prince and a Mr. Keith Moore, who is an
10 employee of Mr. Trainer. We had a letter agreement from
11 Mr. Trainer and Mr. Prince instructing us how to break out
12 that consideration.

13 Q. I want to work through the mechanics of a pooling
14 order with you. You're familiar with the typical pooling
15 order out of the Division, aren't you, Mr. Wheeler?

16 A. Yes.

17 Q. Do we have the right parties before the Examiner
18 if he decides that Burlington gets to operate? Who's he
19 going to be pooling?

20 A. He's going to be pooling Mr. Losee and Penwell.

21 Q. All right.

22 A. And I believe that's all, that's all the working
23 interest owners, other than Burlington, at this point.

24 Q. You're satisfied that he could substitute Penwell
25 at this point for Trainer and Prince?

1 A. With these assignments, yes, sir, I am.

2 Q. But the assignments are conditioned upon the
3 balance of the performance of the September 10th, 1996,
4 letter agreement, are they not?

5 A. They are not on the face of the agreement, of the
6 assignments, conditioned upon anything.

7 Q. The second paragraph of the letter is an
8 obligation, a responsibility by Penwell, that on or before
9 November 15th, it will use its best efforts to commence or
10 cause to be commenced the drilling of the well?

11 A. That is our intention.

12 Q. What happens that, despite your intentions, we
13 don't get an Examiner order in time to get the elections
14 made to get the well drilled?

15 A. I believe at that point we would write Mr.
16 Trainer and Mr. Prince and ask them to extend that date.

17 Q. All right, that's still something that's within
18 their decision to do.

19 If they don't extend it, does the interest revert
20 back to them?

21 A. No, sir.

22 Q. Okay. I'm really concerned that if the order is
23 entered, we have the right parties before the Examiner and
24 an order issued affects those parties, and it's no -- I'm
25 not casting any aspersions on you, Mr. Wheeler. We've had

1 other cases where during the course of a pooling hearing
2 parties could substitute.

3 A. Yes.

4 Q. And I want to make sure that we've got the right
5 parties here. Okay?

6 A. Well, I suppose if the order wanted to include
7 Mr. Trainer and Mr. Prince's interest, it could.

8 Q. Okay.

9 A. However, I believe that the interest, the
10 assignments being recorded in Lea County, probably within
11 the week and filed with the BLM within the week, that by
12 the time any order is issued, Penwell will be the record
13 title owner of the Trainer and Prince interest.

14 Q. All right. If Burlington's allowed to operate,
15 then your paying share is the 12.23 percent?

16 A. Yes, sir.

17 Q. And those would be Penwell's funds and not
18 CoEnergy's funds?

19 A. Those would be Penwell's funds.

20 Q. Do you know how many wells Penwell operates in
21 Lea County, New Mexico?

22 A. Not exactly at this point. I believe in Lea
23 County we've probably drilled -- I know we've drilled 10 to
24 15 wells, in Lea and Eddy Counties, probably close to 30
25 wells at this point.

1 Q. Am I correct in understanding that the single
2 issue, then, that you're asking the Examiner to address is
3 the differential between those parties that are supporting
4 you as the operator at this point in time, as opposed to
5 Burlington?

6 A. We believe that our efforts in one month's time
7 to obtain the joinder of Mr. Losee and of CoEnergy, our
8 partner, have been successful, and we represent all of the
9 interests on our AFE, other than the Burlington interests,
10 yes, sir.

11 Q. Let me show you an exhibit, Mr. Wheeler. I've
12 lost track -- It's Exhibit 23.

13 Mr. Wheeler, can you explain to me why Penwell on
14 September 30th, prior to any decision being made by this
15 agency, to presume to bill all the interest owners for the
16 costs of this well?

17 A. Yeah, I can tell you exactly. We have been
18 performing ever since our first conversation with
19 Burlington upon the idea that there was not going to be any
20 question that we would ultimately get to operate. I mean,
21 they asked us for a guarantee to spud the well by October
22 the 15th. They asked us to clear a title, get a drilling
23 title opinion done.

24 And in an effort to both find a rig and get
25 everything situated paperworkwise so that we could meet

1 their demands of having this well spudded within a short
2 amount of time, we also sent out a prebilling on the well.

3 Q. You've prebilled it before the agency has decided
4 who operates and whether or not you're entitled to prebill;
5 is that not true?

6 A. I don't know whether the agency decides whether
7 we're entitled to prebill. They can ignore this or pay it.
8 If they want to have the well drilled by October the 15th,
9 we would like to have the money in hand by October the
10 10th.

11 Q. Have I missed something here? There is no
12 agreement between you and Burlington about you operating
13 this well?

14 A. No, there is no agreement.

15 Q. And so Penwell has simply presumed to invoice
16 everybody --

17 A. In an --

18 Q. -- despite the fact there is no agreement?

19 A. In an attempt to get this well drilled as quickly
20 as possible, which is what all parties had said they want
21 to do.

22 MR. KELLAHIN: I have no further questions.

23 EXAMINER STOGNER: Thank you, Mr. Kellahin.

24 Mr. Carr, any redirect?

25 MR. CARR: No redirect.

1 EXAMINER STOGNER: Mr. Carroll?

2 MR. CARROLL: No.

3 EXAMINATION

4 BY EXAMINER STOGNER:

5 Q. Mr. Wheeler, what is the status of an APD on this
6 well of Penwell's at this time?

7 A. Penwell has not filed an APD on this well, Mr.
8 Stogner.

9 Burlington filed one, and it's my understanding
10 from our discussions with Burlington that that APD has been
11 approved.

12 We would attempt -- If granted operations, we
13 would just file a sundry notice, changing Penwell to
14 operator under the existing APD.

15 EXAMINER STOGNER: With that point for
16 clarification, Mr. Kellahin, I'm going to ask Ms. Swierc a
17 question.

18 What is the present status of the APD that
19 Burlington has filed and that I believe you show as Exhibit
20 -- Oh what exhibit is that?

21 MR. CARROLL: Three.

22 EXAMINER STOGNER: -- Number 3?

23 MR. KELLAHIN: Mr. Examiner, I've got to
24 apologize to you. Neither Ms. Swierc nor I know the
25 current status, and if you'll provide us an opportunity I

1 will --

2 MS. SWIERC: -- we'll call and find out.

3 MR. KELLAHIN: -- immediately after the hearing
4 make a phone call, and we can talk to the operational
5 people and see the current status so you'll have that
6 information.

7 EXAMINER STOGNER: Okay, I believe it's
8 appropriate time -- At this time I'll take administrative
9 notice of the records of the APD with the BLM.

10 MR. KELLAHIN: Yes, sir, and we'll get copies for
11 you so that you will.

12 EXAMINER STOGNER: Okay. I have no other
13 questions of this witness.

14 MR. CARR: I have nothing further with this
15 witness, and I would call Mr. Thoma at this time.

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. State your name for the record.

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 position with Penwell?

3 A. Geologist.

4 Q. Mr. Thoma, have you previously testified before
5 this Division and had your credentials as a geologist
6 accepted and made a matter of record?

7 A. Yes, I have.

8 Q. Are you familiar with the Application filed in
9 this case?

10 A. Yes, I am.

11 Q. Have you made a geological study of the area that
12 is involved with this Application?

13 A. Yes.

14 MR. CARR: Are the witness's qualifications
15 acceptable?

16 EXAMINER STOGNER: Any objections?

17 MR. KELLAHIN: No objection.

18 EXAMINER STOGNER: They are accepted.

19 Q. (By Mr. Carr) Have you prepared exhibits for
20 presentation here today?

21 A. Yes, sir.

22 Q. Would you refer to what's been marked for
23 identification as Penwell Exhibit Number 7 and review that
24 for Mr. Stogner?

25 A. Yes, Exhibit Number 7 is an isopach map of the

1 upper Bone Spring Avalon sand. It is the same objective
2 that was illustrated on Mr. Thomerson's exhibit, isopach
3 exhibit.

4 It differs from his exhibit in that I use a 10-
5 percent porosity cutoff, whereas he uses a 12. So the
6 geometry of the sand does differ slightly from this exhibit
7 to Mr. Thomerson's exhibit.

8 And also the well in the southwest -- southeast
9 of the northeast of Section 13 does, in fact, have an open-
10 hole log on it, and there is 17 feet of upper Bone Spring
11 sand behind pipe in that well.

12 The exhibit basically displays a north-south-
13 trending channel deposit with a fairly limited areal extent
14 east to west. It shows the proposed location of the
15 Checkers 24 Federal Number 1 in the northwest of the
16 southeast of Section 24, along where we believe and are
17 projecting the axis of that channel to be positioned.

18 And that the positioning of that axis does, in
19 fact, use some geological license. It's based on a
20 projection from the existing subsurface control points,
21 which are annotated on the map.

22 The green dots are producing upper Bone Spring
23 sand wells. The red dots are currently staked and/or
24 drilling locations.

25 The number -- red number -- numbers highlighted

1 or posted next to the green dots are the actual net
2 footages at 10-percent porosity encountered in those
3 producing wells.

4 Q. Are you prepared to make a recommendation to Mr.
5 Stogner as to the risk that should be assessed against
6 nonconsenting interest owners in this well?

7 A. Yes, sir, I believe the penalty should be 200
8 percent.

9 Q. Do you believe there's a chance that a well at
10 this location could be drilled and then not be a commercial
11 success?

12 A. Yes, sir.

13 Q. Does Penwell request to be designated operator of
14 this well?

15 A. Yes.

16 Q. In your opinion, will approval of this
17 Application be in the best interest of conservation, the
18 prevention of waste and the protection of correlative
19 rights?

20 A. Yes, I do.

21 Q. Was Exhibit 7 prepared by you?

22 A. Yes, it was.

23 MR. CARR: At this time we move the admission
24 into evidence of Penwell Exhibit Number 7.

25 EXAMINER STOGNER: Any objection?

1 MR. KELLAHIN: No objection.

2 EXAMINER STOGNER: Exhibit Number 7 is admitted
3 into evidence.

4 MR. CARR: And that concludes my direct
5 examination of Mr. Thoma.

6 EXAMINER STOGNER: Thank you, Mr. Carr.
7 Mr. Kellahin, your witness.

8 MR. KELLAHIN: Thank you, Mr. Examiner.

9 CROSS-EXAMINATION

10 BY MR. KELLAHIN:

11 Q. Mr. Thoma, Mr. Wheeler has testified that he was
12 contacted by Mr. Trainer in early September of this year.

13 A. Uh-huh.

14 Q. Did you first start looking at the geologic
15 information with regard to this specific location before or
16 after that date?

17 A. Yes, sir, I've worked this area for a number of
18 years for previous employers.

19 Q. When we're looking at this specific well, you
20 started looking at it after Mr. Wheeler and Mr. Trainer
21 have started their conversations?

22 A. I guess in reference to this specific well --
23 this map that you have on Exhibit 7 has been in existence,
24 in my possession for a long time. It's taken on various
25 orientations, but I've always believed that Section 24,

1 Section 13, sections down to the south where Penwell is
2 currently drilling for this very objective have been
3 prospective. I was not aware of the interest being
4 available. Frankly, I thought we were already in control
5 of the interest.

6 MR. KELLAHIN: All right, thank you. I have no
7 further questions.

8 EXAMINER STOGNER: Thank you, Mr. Kellahin.
9 Mr. Carr, any redirect?

10 MR. CARR: No redirect.

11 EXAMINER STOGNER: Mr. Carroll?

12 MR. CARROLL: No.

13 EXAMINER STOGNER: I have no other questions.

14 MR. CARR: That concludes our presentation.

15 EXAMINER STOGNER: At this time I'll entertain
16 any closing remarks.

17 Mr. Carr, you may go first.

18 MR. CARR: Thank you, Mr. Stogner.

19 I think it's clear that what we have here is a
20 dispute as to who should operate the property. No dispute
21 between the parties as to the well location, the spacing
22 unit or the assessment of a 200-percent risk penalty on
23 those owners who don't voluntarily participate in the well.

24 I would submit, however, that what we're dealing
25 with here is not a question of taking turns about who

1 should operate the tract. We stand before you representing
2 the owners of 86.6 percent of the working interest, 86.6
3 percent of the people who will bear the cost and the
4 development of this tract, and we're asking you for
5 permission to go forward, drill a well and operate the
6 property.

7 Burlington has testified to you that they were,
8 and have been for about 18 months, anxious to get a well
9 drilled. Well, they had 18 months, and they cut the deal
10 with Trainer, and it didn't work out. But basically, Mr.
11 Stogner, I think the record shows that they stand here
12 today demanding a term, but they've been having a term for
13 18 months. They've been out there trying to dance with
14 somebody. And frankly, no one, not one other interest
15 owner, will join with them in that dance. And the result
16 is, there's no well.

17 Penwell entered the picture about a month ago.
18 We're not C.W. Trainer. It isn't fair to sit here and
19 complain about Trainer to us. We have entered the picture.
20 In four or five weeks we have staked seven locations on the
21 lease. We're ready to go, and we're serious about it. We
22 can't guarantee absolutely that a well will be drilled by
23 the 15th, but we can tell you we're doing everything that
24 we can to assure that that will happen.

25 We have come forward, and while they're anxious,

1 we have gone out and we have ordered the drilling title
2 opinion. And of course Leslyn can order that just as well
3 as Mark. But the bottom line is, it shows that we aren't
4 just sitting there talking, like the talk that's been going
5 on for 18 months. We're getting with the prospect. They
6 can complain about an advance billing, but what we've had
7 to do is get on top of this and try and get this thing
8 going. We're ready to go. All we need is your
9 authorization to proceed.

10 We've talked about overhead charges. Yes, ours
11 are less. We've talked about the AFEs. And when we look
12 at the AFEs, the bottom lines are comparable, and we can
13 debate whether a cost finds its way into an AFE or is
14 ultimately paid by one party or the other.

15 But it isn't fair to sit here and say just
16 because one party has tried to lower AFE costs, that that
17 means they're a better operator. How they drill wells,
18 what they do in the field, the kind of results they get
19 testifies to that.

20 And when you look at it, you have two operators
21 before you who, from a technical point of view, are
22 completely competent to go out and develop the property.
23 Where there is a difference is, people who are going to pay
24 86-percent-plus of the cost want Penwell to drill the well.

25 And we're asking you for permission to

1 immediately go forward with our efforts to get this acreage
2 developed.

3 EXAMINER STOGNER: Thank you, Mr. Carr.

4 Mr. Kellahin?

5 MR. KELLAHIN: Mr. Examiner, the responsible
6 party that has caused the delay and has manipulated the
7 system is Mr. Trainer, and he's not here.

8 The reason that this deal was not put together
9 earlier is that, as Leslyn testified, Mr. Trainer wanted
10 \$4000 an acre for his interest. He had no desire to have
11 this well drilled. When we gave him his AFE, approved it,
12 he obviously had no intention of doing it. He asked her
13 for \$4000.

14 You know why Penwell is successful? Because he
15 dropped his price to \$100 an acre, and he makes a deal with
16 them. He is trying to escape the consequence of the force-
17 pooling process that we've commenced. Only after he's
18 served, and within weeks of the hearing, he tries to
19 substitute Penwell for Burlington.

20 We think it's a matter of significance,
21 particularly in light of the fact that Burlington has taken
22 all the risk out of this for Penwell. We are the operator
23 in the area with 27 wells. The success rate is proven.
24 We've got an interest in 14 others. This is a matter of
25 significance. It's an unusual case, where the operations

1 ought to be awarded to Burlington, who's a minority
2 interest owner.

3 Isn't it interesting to note, though, off of the
4 Penwell billing, that the paying interest that Burlington
5 pays is higher than the paying interest that Penwell pays?
6 We're paying more of this well than Penwell pays.

7 Mr. Carr would have you believe that experience
8 doesn't count; if you have the biggest interest, then you
9 get to operate. Well, experience matters. It matters to
10 us in this forum, and it matters to Mr. Carr when he does
11 things.

12 When Mr. Carr goes fishing in the San Juan River,
13 he doesn't go up there and trial and error, based upon his
14 own knowledge and experience. He hires Brian Klein. We
15 all know who Brian Klein is. He's probably one of the best
16 fishermen in the State of New Mexico, and perhaps in the
17 Southwest, in fishing the San Juan River. And Mr. Carr is
18 delighted to pay him for his expertise. Mr. Klein, when he
19 goes fishing the San Juan River, doesn't call Mr. Carr to
20 be his guide. He doesn't need help catching these fish.

21 Quite frankly, Burlington doesn't need Penwell's
22 help to catch the fish in their own back yard.

23 Let us operate, it's our turn. Mr. Trainer had
24 his turn, he failed to exercise his turn. That was a
25 reasonable solution. He failed to do it. He simply

1 delayed and manipulated the system, and it's now our turn,
2 and we'd like to operate.

3 Thank you.

4 EXAMINER STOGNER: Thank you, Mr. Kellahin.

5 I'm going to request rough draft orders from both
6 of you. I know time is of an essence on this, so is there
7 a certain time period that you would suggest?

8 MR. CARR: Monday.

9 MR. KELLAHIN: You're going to the convention,
10 aren't you, Mr. Carr?

11 MR. CARR: Not this weekend.

12 MR. KELLAHIN: Monday is good enough with me.

13 EXAMINER STOGNER: Okay, that's fine with me,
14 then.

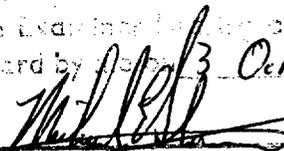
15 As a matter of record, I didn't know who Mr.
16 Klein was, but I'm not a fisherman either.

17 So with that, I will take both Cases 11,613 and
18 11,622 under advisement.

19 (Thereupon, these proceedings were concluded at
20 12:13 p.m.)

21 I do hereby certify that the foregoing is

22 a complete record of the proceedings in
the Examiner's Office of Cases Nos. 11613/11622
heard by me on 13 October 1961.

23  , Examiner
24 Oil Conservation Division

25

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 10th, 1996.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998