

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:) CASE NO. 12,622
)
APPLICATION OF NEARBURG EXPLORATION)
COMPANY, L.L.C., FOR TWO NONSTANDARD)
GAS SPACING AND PRORATION UNITS,)
LEA COUNTY, NEW MEXICO) ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

July 26th, 2001

Santa Fe, New Mexico

OIL CONSERVATION DIV
01 AUG -9 AM 9:20

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, July 26th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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July 26th, 2001
Examiner Hearing
CASE NO. 12,622

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A P P E A R A N C E S

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By: J. SCOTT HALL

* * *

1 WHEREUPON, the following proceedings were had at
2 10:42 a.m.:

3 EXAMINER STOGNER: At this time I'll now call
4 Case Number 12,622, which is the Application of Nearburg
5 Exploration Company L.L.C., for two nonstandard gas
6 spacing and proration units in Lea County, New Mexico.

7 At this time I'll call for appearances.

8 MR. FELDEWERT: Michael Feldewert with the law
9 firm of Holland and Hart and Campbell and Carr, on behalf
10 of the Applicant, Nearburg Exploration Company, L.L.C.

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

14 MR. HALL: Mr. Examiner, Scott Hall of Miller,
15 Stratvert and Torgerson law firm, Santa Fe, appearing on
16 behalf of Raptor Natural Pipeline, L.L.C.

17 EXAMINER STOGNER: Any other appearances?

18 There being none, I see that there's no witnesses
19 here today.

20 Mr. Feldewert, you're the Applicant today. Do
21 you have anything further at this time?

22 MR. FELDEWERT: Mr. Examiner, I've been in touch
23 with Mr. Carr, who has been involved in the discussions
24 with Mr. Kellahin and the parties that are involved here.
25 Mr. Carr informs me that they have not yet reached a

1 settlement, although it's my understanding that a meeting
2 has been requested next week for purposes of pursuing some
3 additional settlement discussions. Mr. Kellahin could
4 probably speak a little better than I on that, but it's my
5 understanding that there has been a meeting requested. I
6 don't know whether one has been set, but there has been a
7 meeting requested for next week.

8 EXAMINER STOGNER: Mr. Kellahin, do you have
9 anything to add?

10 MR. KELLAHIN: Mr. Examiner, I regret to inform
11 you that the parties have not been able to settle this
12 matter as of this date, and I don't hold any reasonable
13 opportunity that it's going to be settled prior to any
14 entry of an order by you, so we would ask that you take the
15 case under advisement at this time and enter a decision at
16 this point.

17 EXAMINER STOGNER: Mr. Hall, do you have anything
18 to add?

19 MR. HALL: Mr. Examiner, the Division should be
20 advised that on behalf of Raptor I requested of Nearburg
21 that if the well were to be shut in, in Raptor be allowed
22 to go to the well with Nearburg and observe shut-in casing
23 pressures and collect pressure data. That way -- We've not
24 received a response to that yet, and if we don't receive a
25 response following shut-in, we may be back before you to

1 follow up on that particular matter.

2 EXAMINER STOGNER: Mr. Feldewert, do you have any
3 comments on Mr. Hall's proposal?

4 MR. FELDEWERT: I do not. I'm assuming that's
5 something you've raised with them recently?

6 MR. HALL: Yes, that was through Mr. Carr, and I
7 understood he was to communicate that with Mr. Shelton. We
8 simply haven't heard back.

9 MR. FELDEWERT: Okay, I certainly can follow up
10 on that.

11 The only thing I could add, Mr. Examiner, is that
12 the meeting had been requested next week. I would hope
13 that the parties were not at a point where they felt that
14 settlement was not possible. I think that was one of the
15 purposes of requesting the meeting next week.

16 So we would ask that the well not be shut in at
17 this point and that the Division afford the parties the
18 opportunity to meet next week and see what, if anything,
19 can be done, based on the efforts that have been made thus
20 far.

21 And as I indicated, I cannot really comment on
22 those efforts since I have personally not been involved,
23 but I know Mr. Carr did inform me that they have been
24 making efforts and that they hope to have a meeting next
25 week.

1 EXAMINER STOGNER: Mr. Kellahin?

2 MR. KELLAHIN: Mr. Stogner, despite my efforts,
3 Nearburg has never communicated any offer of settlement to
4 us. I still do not have one. There is no point in having
5 a meeting if they won't give us a proposed offer of
6 settlement.

7 We would ask that you take the case under
8 advisement and order the well shut in.

9 EXAMINER STOGNER: Okay. Now, this case was
10 heard or commenced on June 25th, and I continued this
11 matter until today's hearing because we had agreed to have
12 a meeting on or around July the 19th. Mr. Kellahin was in
13 attendance of that, and I have discussed that with Mr.
14 Carr, and subsequent to that meeting with Mr. Kellahin it
15 was my understanding he had discussed this with you, Mr.
16 Kellahin, and if necessary, to last Monday, whatever Monday
17 of this week, should there be a need to meet with me then,
18 we all agreed, and through you, as I understand -- or you
19 were involved in that -- we could have a meeting on Monday.
20 But that never materialized.

21 MR. KELLAHIN: That's correct.

22 EXAMINER STOGNER: So with that -- and at the
23 time of the June 25th hearing, I stated, and everybody was
24 aware of it, if we took this case under advisement today,
25 and there had -- if there had not been an agreement reached

1 by today and this matter was taken under advisement, that
2 the well would be ordered shut in pending the issuance of
3 an order in this case, or perhaps a dismissal subsequent to
4 an agreement.

5 So at this time I see no choice but to shut the
6 well or wells in at this time.

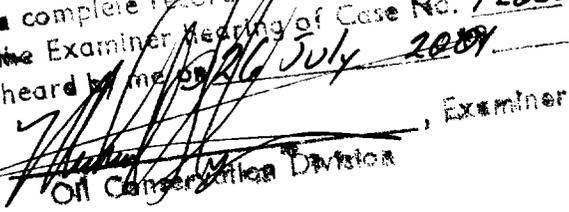
7 So Mr. Feldewert, consider this verbal order on
8 the record today as Nearburg's order to shut the wells in.

9 And with that this matter will be taken under
10 advisement, and if there's nothing further in this matter,
11 then this case will be taken under advisement.

12 And this hearing is adjourned.

13 (Thereupon, these proceedings were concluded at
14 10:46 a.m.)

15 * * *

16
17
18 I do hereby certify that the foregoing is
19 a complete record of the proceedings in
20 the Examiner Hearing of Case No. 12622
21 heard by me on 26 July 2009
22  , Examiner
23 Oil Conservation Division
24
25

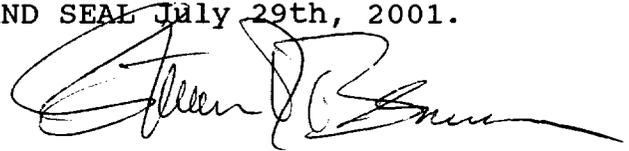
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL July 29th, 2001.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:) CASE NO. 12,622
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APPLICATION OF NEARBURG EXPLORATION)
COMPANY, L.L.C., FOR TWO NONSTANDARD)
GAS SPACING AND PRORATION UNITS, LEA) ORIGINAL
COUNTY, NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

June 28th, 2001

Santa Fe, New Mexico

01 JUL 12 AM 7:56
OIL CONSERVATION DIV

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, June 28th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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June 28th, 2001
 Examiner Hearing
 CASE NO. 12,622

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* * *

A P P E A R A N C E S

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DRILLING COMPANY; CONTINENTAL LAND AND FUR COMPANY; WAYNE
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By: J. SCOTT HALL

ALSO PRESENT:

Tim Cashon
Redrock Operating, Ltd.

* * *

1 WHEREUPON, the following proceedings were had at
2 12:50 p.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order. At this time I'll call Case Number 12,622, which is
5 the Application of Nearburg Exploration Company, L.L.C.,
6 for two nonstandard gas spacing and proration units, Lea
7 County, New Mexico.

8 Call for appearances.

9 MR. CARR: May it please the Examiner, my name is
10 William F. Carr with the law firm Holland and Hart. We
11 represent in this matter Nearburg Exploration Company,
12 L.L.C.; Great Western Drilling Company; Continental Land
13 and Fur Company; and the following overriding interest
14 owners: Wayne Newkumet, James D. Brown, Brent Hilliard,
15 Wendell R. Creech and David Alderks.

16 EXAMINER STOGNER: Other appearances?

17 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
18 the Santa Fe law firm of Kellahin and Kellahin. I'm
19 appearing today on behalf of Redrock Operating, Ltd.,
20 Company, and I have with me Mr. Tim Cashon, and he's the
21 principal of the company.

22 EXAMINER STOGNER: Other appearances?

23 MR. HALL: Mr. Examiner, Scott Hall, Miller
24 Stratvert and Torgerson of Santa Fe, appearing on behalf of
25 Raptor Natural Pipeline, L.L.C.

1 EXAMINER STOGNER: Mr. Carr, how many witnesses?
2 MR. CARR: I have three witnesses.
3 EXAMINER STOGNER: Three witnesses.
4 Mr. Kellahin, is Mr. Cashon going to be --
5 MR. KELLAHIN: He is not, sir. I have no
6 witnesses.
7 EXAMINER STOGNER: Mr. Hall, do you have any
8 witnesses?
9 MR. HALL: No witnesses.
10 EXAMINER STOGNER: Okay, will the three witnesses
11 please stand to be sworn at this time?
12 (Thereupon, the witnesses were sworn.)
13 EXAMINER STOGNER: Are there any opening
14 statements to be made?
15 MR. CARR: I have a very brief opening statement.
16 MR. KELLAHIN: And I have one too, Mr. Examiner.
17 EXAMINER STOGNER: Mr. Hall, do you have one?
18 MR. HALL: I might.
19 EXAMINER STOGNER: Okay. Who would like to go
20 first?
21 MR. CARR: I'll be glad to.
22 Mr. Stogner, Nearburg Exploration Company,
23 L.L.C., is before you today seeking approval of two
24 nonstandard gas spacing and proration units in the east
25 half of Section 34, Township 21 South, Range 34 East.

1 This case is actually a part of what became a
2 larger problem. Nearburg acquired a lease on the north
3 half of Section 34, drilled and completed its Grama Ridge
4 East "34" State Well Number 1 on an approved north-half
5 spacing unit, and after the well was completed learned from
6 the OCD that the well in the north-half unit was actually a
7 unit that extended into two pools.

8 That triggered a number of issues. Some of them
9 involve special rules for the offsetting gas storage
10 project. Those rules were before you at your last hearing.
11 We have since that time been working with all the other
12 interest owners in the section in an effort to come before
13 you with a voluntary agreement to resolve the problems that
14 come from this situation. We have not yet reached
15 agreement with everyone. We have either agreement or
16 waiver from every interest owner except Redrock Operating.

17 Today we will call witnesses to review the
18 history of the well, the background facts which led to this
19 problem. We will review with you our efforts to reach
20 voluntary agreements with the other interest owners in this
21 section. We will present technical data supporting our
22 Application, give you an update on the current status of
23 the well, and advise you as to where our efforts to reach a
24 voluntary agreement with Redrock stand as of today.

25 EXAMINER STOGNER: Thank you.

1 Mr. Kellahin?

2 MR. KELLAHIN: Mr. Examiner, let me show you what
3 the evidence is going to show. If you'll look at Nearburg
4 Exhibit 1, there's a plat that will orient you as to the
5 matter at hand. If you'll look in Section 34, the north
6 half of that is outlined in yellow, and if you'll look in
7 the southwest quarter I will identify for you the four
8 current gas storage wells that are in the gas storage unit.

9 The first one is in the southwest quarter of 34,
10 that's one of them.

11 If you move over west into Section 33, the well
12 in the southeast quarter, that's the second one.

13 If you drop down south to Section 4, the only
14 well in Section 4 is in the gas storage unit.

15 And then finally as you move east into Section 3,
16 you'll see the well in the northwest quarter. That's in
17 the gas storage unit.

18 Our position is this: When you look at the map
19 in Section 34, the south half is a single lease. Redrock
20 Operating has a 10-percent overriding royalty.

21 Historically, Section 34 has been handled in this
22 way: Back in December of 1965 the Division entered Order
23 R-3006 and created the Grama Ridge-Morrow Gas Pool. They
24 adopted 640-acre spacing and then in July of 1966 extended
25 that pool to include all of Section 34.

1 In 1973, by Order R-4491, the Division authorized
2 gas storage. And one of the first of the two wells then
3 authorized was the well in the southwest quarter of Section
4 34. Original gas storage wells.

5 Then in 1979 a series of hearings were held and a
6 series of orders were issued. In May of 1979 Order R-5995
7 was issued, and the Division found, among other things,
8 that the Grama Ridge-Morrow Gas Pool ought to be downspaced
9 from 640 to 320, and they did that.

10 In addition, they approved an amended acreage
11 dedication factor so that the Grama Ridge Unit Number 2
12 well in the southwest quarter of 34 was dedicated to the
13 west half of that section. So it was a standup 320 for
14 that well.

15 And then something very important happened. In
16 July of 1979 they issued Order R-6050 and created the East
17 Grama Ridge Gas Pool, also on 320 acres. And so Section 34
18 has been vertically subdivided with two standup spacing
19 units since 1979. The one of importance to us is the east
20 half. That east-half dedication to what became the EOG
21 well -- we'll call it the EOG well just for convenience,
22 but that's the Llano "34" State Com Well Number 1, located
23 in Unit Letter I -- that was completed in October of 1979,
24 with an east-half dedication.

25 As a consequence of the east-half dedication, all

1 the interest owners in the northeast quarter and the
2 southeast quarter have historically shared in that first
3 well.

4 Then in June of the year 2000, Nearburg completes
5 its well in the northeast quarter of 34. But instead of
6 dedicating it to the existing standup east-half spacing
7 unit, they filed for a north-half spacing unit. And in
8 doing so, they failed to exercise the basic judgments of
9 search for the documents I've just described to you.

10 Nearburg or any other operator, particularly
11 someone like Nearburg, who is an experienced operator in
12 southeastern New Mexico, drilling deep gas wells, they most
13 of all should have known about the existence of these
14 orders, the existence of this spacing unit and the fact
15 that they should not dedicate the north half.

16 Having realized the mistake, in order to deflect
17 responsibility for now fixing that mistake, they want you
18 to approve a nonstandard proration unit consisting only of
19 the northeast quarter and, by doing so, excluding Redrock
20 from a 5-percent override. We are opposed to it, and we
21 ask that you deny the Application.

22 EXAMINER STOGNER: Mr. Hall?

23 MR. HALL: Mr. Examiner, appearing on behalf of
24 Raptor Natural Pipeline, L.L.C., the purpose for our
25 interest in this case is, as you know, lands that are the

1 subject of this Application are included within the
2 boundaries of the East Grama Ridge-Morrow Gas Storage Unit,
3 recently acquired by Conoco's subsidiary Raptor.

4 You have recently heard a case seeking approval
5 of special project rules for the storage unit. That
6 application was precipitated, in fact, by the drilling of
7 the Nearburg well in the northeast quarter of Section 34.

8 In that case you heard testimony that established
9 that even though that well is completed within the unitized
10 formation for the storage facility, it appears that based
11 on currently available data the well is not in
12 communication with the storage facility itself.

13 We also presented testimony that established that
14 absolute communication could not be precluded with
15 certainty. That evidence in that case establishes the
16 premise for our appearance in this case, and our position
17 is that we neither support nor oppose the Nearburg
18 Application.

19 We continue to believe that there is no
20 communication between the Nearburg well and the storage
21 facility, but should evidence that comes out of this
22 hearing or discovered in subsequent hearings or in the
23 ordinary course establish that there is some communication,
24 some interference with storage operations, Raptor would
25 certainly waive no rights to seek relief from the Division

1 or any other jurisdictional entity to cure interference.

2 EXAMINER STOGNER: Are you ready to proceed, Mr.
3 Carr?

4 MR. CARR: Yes, sir, I am. At this time we would
5 call Bob Shelton.

6 ROBERT G. SHELTON,
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARR:

11 Q. Will you state your name for the record, please?

12 A. My name is Bob Shelton.

13 Q. Mr. Shelton, where do you reside?

14 A. In Midland, Texas.

15 Q. By whom are you employed?

16 A. Nearburg Producing Company.

17 Q. And what is your position with Nearburg Producing
18 Company?

19 A. My position is as land manager for the company.

20 Q. And what is the relationship between Nearburg
21 Producing Company and Nearburg Exploration Company, the
22 Applicant in this case?

23 A. Nearburg Producing Company is the operating arm
24 of Nearburg Exploration Company, L.L.C., and it's the
25 company that has the employees with it.

1 Q. Mr. Shelton, have you previously testified before
2 the New Mexico Oil Conservation Division?

3 A. Yes, I have.

4 Q. At the time of that testimony, were your
5 credentials as an expert in petroleum land matters accepted
6 and made a matter of record?

7 A. Yes, sir, they were.

8 Q. Are you familiar with the Application filed in
9 this case on behalf of Nearburg Exploration Company,
10 L.L.C., and the status of the lands in the area which is
11 the subject of this hearing?

12 A. Yes, sir, I am.

13 Q. Are you also familiar with the history of the
14 Nearburg Grama Ridge East "34" State Well Number 1?

15 A. Yes, sir, I am.

16 Q. And have you prepared exhibits for presentation
17 in this hearing?

18 A. Yes, sir.

19 MR. CARR: Mr. Stogner, are the witness's
20 qualifications acceptable?

21 EXAMINER STOGNER: Are there any objections?

22 MR. KELLAHIN: No objection.

23 MR. HALL: No objection.

24 EXAMINER STOGNER: Mr. Shelton is so qualified.

25 Q. (By Mr. Carr) Mr. Shelton, could you briefly

1 summarize for the Examiner what it is that Nearburg
2 Exploration Company seeks with this Application?

3 A. We're seeking the creation of two 160-acre
4 spacing units for the Morrow formation, one covering the
5 northeast quarter of Section 34, Township 21 South, Range
6 34 East, to be dedicated to the Nearburg Grama Ridge "34"
7 State Number 1 well, and an additional 160-acre spacing
8 unit in the southeast quarter of Section 34 to be dedicated
9 to the EOG Resources Llano "34" State Well Number 1 in the
10 southeast quarter of Section 34.

11 Q. And the Grama Ridge East "34" State Well Number 1
12 is the Nearburg well which was drilled last year in the
13 northeast quarter of this section; is that correct?

14 A. That is correct.

15 Q. Is that well at standard location?

16 A. Yes, sir, it is. It's located 1548 from the
17 north and 990 from the east.

18 Q. In the southeast quarter of Section 34, is the
19 EOG Llano "34" State Well Number 1?

20 A. That is correct.

21 Q. Is that well also drilled at a standard location?

22 A. Yes, sir, it is.

23 Q. What is the status of that well?

24 A. That well is shut in and has been shut in for
25 some time. It has not produced since 1991.

1 Q. And what is the status of the west half of
2 Section 34?

3 A. The west half of Section 34 is dedicated to an
4 injection and withdrawal gas facility. There is no current
5 production of any indigenous gas from that 320-acre spacing
6 unit.

7 Q. In the west half of the section, certain
8 intervals are dedicated to the Grama Ridge gas storage
9 project; is that correct?

10 A. That is correct, that is correct.

11 Q. Nearburg owns an interest in the lease that
12 encompasses the north half of this section?

13 A. Yes, sir, we've got a lease that encompasses the
14 northwest quarter. We own the -- Continental Land and Fur,
15 Great Western Drilling Company and Nearburg own 100 percent
16 of the working interest in the lease, insofar as it covers
17 the north half, the northwest quarter, obviously.

18 Q. Is the gas storage interval excluded from that?

19 A. From that lease?

20 Q. Yes.

21 A. It is not excluded from that lease. When it was
22 issued there was no stipulation on the lease, nor was there
23 on the sale at that time. The gas storage interval, Raptor
24 Pipeline has certain rights. It's designated by the State
25 to inject and withdraw gas from that reservoir, although

1 our lease does cover that interval also.

2 Q. As to intervals other than the gas storage
3 interval or the gas injected therein, you do have the
4 rights to explore for and develop the oil and gas?

5 A. Yes, sir, we do.

6 Q. Would you identify what has been marked as
7 Nearburg Exhibit Number 1?

8 A. Yes, sir, this is a general location map. It
9 shows Section 34, Township 21 South, Range 34 East, in the
10 center. The north half of that section is colored in
11 yellow, which is the Nearburg-Great Western-CLF oil and gas
12 lease issued, and the northeast quarter is the 160-acre
13 dedicated spacing unit that we're requesting in this
14 Application.

15 Q. Let's go to Nearburg Exhibit Number 2, the
16 chronology, with various attached documents. Is it the
17 intention of Nearburg to have included behind this
18 chronology all the documents that relate to this dispute?

19 A. Everything that relates to this dispute, yes.

20 Q. Do you have all documents, or are you just
21 including documents which support the individual points
22 presented in your chronology?

23 A. Individual points that support this chronology.

24 Q. I'd like you to refer to this exhibit and first
25 review for Mr. Stogner the circumstances concerning the

1 cancellation of the prior lease on the north half and the
2 acquisition of the lease which you now own an interest in.

3 A. There was a prior lease issued by the State,
4 K-03592, that was owned by Apache Corporation. Due to a
5 failure of title for nonpayment of rental, the lease was
6 canceled, terminated. When it was terminated, the new
7 lease was offered at the State's regular sale in December,
8 1999, and it was purchased by Great Western Drilling
9 Company and issued on January 31st, 2000.

10 Q. When that lease was issued, was there any
11 reference in the documents from the State Land Office that
12 would indicate that it in any way overlapped a gas storage
13 unit?

14 A. No, there was no notification or stipulation in
15 either the sales brochure or the oil and gas lease when it
16 was issued.

17 Q. How did Nearburg acquire its interest in this
18 property?

19 A. We acquired our interest in the property by
20 assignment from Great Western Drilling Company.

21 Q. When did Nearburg drill a well on this north-half
22 unit?

23 A. Oh, the well was commenced in March 7th, 2000.

24 Q. Prior to commencing this well, what efforts were
25 undertaken by Nearburg to determine what the status of the

1 title was in the north half of this section?

2 A. We received a title opinion from Mr. Phil Brewer
3 and relied on that title opinion in the issuance of a
4 brand-new state lease for the drilling of this well.

5 Q. Did it indicate the existence of a gas storage
6 unit?

7 A. No, it did not.

8 Q. When you decided to go forward with the well,
9 what actions or contacts did you have with the New Mexico
10 Oil Conservation Division?

11 A. We filed an application for permit to drill. At
12 that time we designated the north half as the proposed
13 spacing unit for the well, and the --

14 Q. Was that application for permit to drill approved
15 by the Division?

16 A. Yes, it was approved by the Division, with the
17 north-half spacing unit being granted as the spacing unit
18 for the well.

19 Q. Is a copy of that approved APD included in this
20 exhibit behind Tab 3?

21 A. Behind Tab 3 is the approved APD. Attached to
22 the APD as page 2 is the C-102 which clearly designates the
23 north half as the spacing and proration unit for the 320
24 acres dedicated to the Morrow well.

25 Q. And when was the well completed?

1 A. The well was completed on June 9th, 2000,
2 perforated in the Morrow formation, with 2 million cubic
3 feet of gas a day.

4 Q. Did you receive an approval from the Oil
5 Conservation Division or an approved request for allowable
6 from the Division?

7 A. Yes, we did, we received two of those. On June
8 19th we filed and received approval for a request for
9 allowable, an authorization to transport, which is under
10 Tab 5, and then again we received on June 22nd approval
11 from the OCD, the approval from OCD for test allowable,
12 which is under Tab 6.

13 Q. When was the completion report filed on this
14 well?

15 A. I believe the completion report was filed June
16 27th, 2000.

17 Q. And what response did you get from the Oil
18 Conservation Division to the filing of this completion
19 report?

20 A. Well, we didn't receive anything back
21 immediately. During a telephone conversation in July,
22 2000, we received by one of our employees in the production
23 department, and they were advised at that time that the
24 north half was not available as a spacing unit for the
25 well, because it crossed two boundary lines.

1 Q. Following that --

2 A. We had relied on the OCD and the title opinion
3 designating the north half and the approved APD for the
4 drilling of the well.

5 Q. You were unaware at that time that, one, this
6 north-half spacing unit crossed into another pool; is that
7 correct?

8 A. That is correct.

9 Q. You were unaware at that time that the spacing
10 unit extended over a gas storage unit?

11 A. That is correct.

12 Q. Had you arranged to contract to sell the
13 production from this well?

14 A. Yes, we had. In fact, we'd already -- you know,
15 while we were drilling the well, we contacted LG&E, who is
16 the successor in interest to Raptor Pipeline, Natural
17 Pipeline. And at that time we received -- they issued a --
18 they gave us a dedication for the purchase of the gas.

19 Q. So you, in fact, were selling the gas to the
20 owner of the gas storage unit?

21 A. That is correct.

22 Q. When did you file an administrative application
23 seeking the creation of the nonstandard units which are the
24 subject of today's hearing?

25 A. We filed the application for -- administrative

1 application for the formation of the two nonstandard gas
2 spacing units on December 12th, 2000 -- December 13th,
3 excuse me.

4 Q. And following the filing of that Application,
5 what efforts were undertaken by Nearburg to either obtain
6 waivers or support from the other interest owners in
7 Section 34?

8 A. Well, we obviously did a complete title search of
9 anybody that would be an affected party, and we went to
10 EOG, the State Land Office, the overriding royalty interest
11 owners in the northeast quarter and the overriding royalty
12 interest owner in the southeast quarter, everybody that
13 would be affected by our Application in the east half, and
14 sent notice letters out to them, and discussed with them,
15 you know, what our Application was intended to cover, and
16 requested waivers from those affected parties.

17 Q. What interest does EOG own in the east half of
18 this section?

19 A. In the east half of this section EOG owns 100
20 percent of the leasehold and working interest in the
21 southeast quarter of Section 34.

22 Q. Did you meet with EOG?

23 A. I did, I met with EOG, I showed them certain
24 geologic information. They had a geologist, an engineer
25 and a landman present at that time.

1 Q. And what was the result of that?

2 A. The result of that was that they issued -- and
3 you will find under Tab 10 -- a waiver from EOG of any
4 objection to our proposed Application for the two 160-acre
5 spacing units.

6 Q. Have you been able to obtain the waiver of
7 support from the overriding royalty interest owners in the
8 northeast quarter of this section?

9 A. Yes, sir, we have. We've gotten the support and
10 waivers of objection from all the overriding royalty
11 interest owners in the northeast quarter.

12 Q. And is that letter included behind Tab 12 of this
13 exhibit?

14 A. Yes, it is.

15 Q. What is the status of your negotiations with the
16 New Mexico State Land Office?

17 A. The New Mexico State Land Office has issued a
18 letter waiving objection to the formation of these two
19 nonstandard spacing units.

20 Q. Is that included behind Tab 13?

21 A. Yes, sir, it is.

22 Q. Prior to receiving this letter, we were back and
23 forth with the State Land Office on these issues, were we
24 not?

25 A. Yes, we were. The initial response then was that

1 they weren't quite clear what we were doing. We had to
2 meet with them, discuss it with them. And in fact your law
3 firm did on one occasion or more.

4 And as a result of those meetings and further
5 explanations, they issued their waiver letter on January
6 23rd, 2001.

7 Q. When was the notice letter sent to Redrock
8 Operating, Ltd.?

9 A. A notice letter was sent to Redrock on January
10 29th, 2001.

11 Q. And what response did you receive?

12 A. I talked to Mr. Mark Stanger with Redrock, and
13 ultimately during the conversation with him, he told me
14 that they would not execute a waiver in support of our
15 Application.

16 Q. When did Redrock file its objection with the Oil
17 Conservation Division?

18 A. It was around February 15th when they filed an
19 objection. That must be under Tab 16, I believe.

20 Q. And the Application and that objection is what
21 has led to this hearing here today; is that correct?

22 A. That is correct.

23 Q. Is the Oil Conservation Division's letter setting
24 this matter for hearing included behind Tab 16?

25 A. Yes, it is.

1 Q. Now, be sure we're all together. Can you
2 summarize for us the ownership of the oil and gas rights in
3 the east half of Section 34?

4 A. The oil and gas rights which extend to the
5 working interest and leasehold rights are owned by -- in
6 the northeast quarter by Nearburg Exploration Company,
7 L.L.C., Great Western Drilling Company and by Continental
8 Land and Fur. A hundred percent of the working interest
9 and leasehold rights in the southeast quarter are owned by
10 EOG Resources, Inc.

11 Q. Who owns the base royalty entities under the east
12 half?

13 A. The base royalty is -- They're separate state
14 leases, and the State of New Mexico has the base royalty.
15 On the northeast quarter the base royalty is one-sixth, in
16 the southeast quarter the base royalty under the existing
17 lease is a one-eighth.

18 Q. If the nonstandard 160-acre spacing unit is
19 approved for the Grama Ridge 34 State Well Number 1, what
20 impact will that have on the royalty that's paid to the
21 State of New Mexico?

22 A. If the 160-acre spacing unit is approved as
23 requested, the royalty rate for the State will be one-sixth
24 and will remain as it is right now, one-sixth.

25 Q. Of all of the overriding royalty interest owners

1 in the east half of this section, is the only one with whom
2 you have not reached an agreement Redrock Operating?

3 A. That is correct. And if an east-half 320-acre
4 spacing unit is formed, then the State's royalty rate will
5 be decreased as the result of the one-eighth royalty in the
6 southeast quarter.

7 Q. Mr. Kellahin a few minutes ago stated that
8 Redrock owned a 10-percent overriding royalty interest in
9 the southeast quarter; is that consistent --

10 A. That is correct, yes, it is.

11 Q. Do they own anything in the northeast quarter?

12 A. No, sir, they do not.

13 Q. Have you looked and tried to determine when the
14 interest of Redrock was actually acquired?

15 A. Yes, the interest of Redrock was acquired by
16 assignment dated from -- Let's see, Apache Corporation.
17 You'll find this as Exhibit Number 4.

18 Q. And what is the date on that assignment?

19 A. The assignment date is February 25th, 1998. That
20 would be some seven years after the well in the southeast
21 quarter ceased to produce.

22 Q. When was the 10-percent overriding royalty
23 interest created?

24 A. The 10-percent overriding royalty interest was
25 created by an assignment and bill of sale dated 3-27-99,

1 approximately one year and one month after the acquisition
2 of the property by Redrock, in an assignment to Roca
3 Resource Company, marked as Exhibit Number 3.

4 And on page 2 of that assignment you can see that
5 there's a 10-percent overriding royalty interest from all
6 production saved and produced from the south half of
7 Section 32.

8 Q. Did the well in the southeast quarter of Section
9 34 produce from the Morrow formation at any time during the
10 time that Redrock has actually owned an interest in that
11 property?

12 A. No, nor did Redrock participate in the production
13 of the well during the period of time when the well did
14 produce.

15 Q. So that during the period of time that Redrock
16 has owned its interest, there has been no sharing in
17 production --

18 A. There has been no sharing of production. The
19 well was not productive since the date of Redrock's
20 acquisition and before that date, so there's been no
21 sharing of production by Redrock with the northeast quarter
22 as to the southeast-quarter well.

23 Q. Prior to 1991 when the well was producing, what
24 acreage was dedicated to that well?

25 A. The acreage that was dedicated to that well

1 during its production was the east half of Section 34.

2 Q. And how was that east-half unit put together?

3 A. It was put together in the formation of a
4 communitization agreement, which if you'll refer to Exhibit
5 Number 5 shows the State of New Mexico, Commissioner of
6 Public Lands', approval of a communitization agreement
7 covering the east half of Section 34 for the Morrow
8 formation, effective May 1st, 1979.

9 Q. Is that communitization agreement still in
10 effect?

11 A. No, it is not. That communitization agreement
12 was terminated by the State with the cessation of
13 production, and you will find on Exhibit Number 5, the
14 third page, an entry, Llano State "34". It's the third one
15 from the bottom. Minerals, Inc., it says -- It's referring
16 to the com agreement. It says approved 11-5-92, terminated
17 3-31- -- effective 3-31-91. Well, it was actually -- The
18 date of the termination was 11-5-92, and it was effective
19 3-31-91.

20 Also on an additional page right behind that one
21 you'll also find documentation of that termination in the
22 form of another document received by the State Land Office,
23 and it shows its current operator had some petroleum, and
24 it shows remarks, terminated effective 3-31-91; lack of
25 production is the reason for termination of the com

1 agreement.

2 So right now there is no effective dedication to
3 the east half of Section 34.

4 Q. Did Redrock own any interest in the east half at
5 any time when the well in the southeast quarter was
6 producing?

7 A. No, they did not.

8 Q. Had the communitization agreement expired before
9 Redrock acquired any interest in the property?

10 A. Yes, the com agreement had expired.

11 Q. Other than the State of New Mexico, are any of
12 the owners who were involved at the time the well was
13 producing from the southeast quarter of this section still
14 involved or interest owners in the east half of this
15 section?

16 A. They are not involved in any way. All the owners
17 of overrides, royalty interest owner, leasehold, working
18 interest, have all extinguished their interest and no
19 longer own an interest in the east half, except for the
20 State, who has common royalty ownership.

21 Q. Who is Redrock? Have you dealt with Redrock
22 before?

23 A. We did a title search to determine who notice was
24 required to give, and we uncovered Redrock Operating
25 Company. I was not familiar with them at that time.

1 Q. You had communications with Redrock?

2 A. We did when we were trying to obtain from them
3 the waiver of objection. I talked to Mr. Mark Stanger on,
4 I think, two telephone conversations.

5 Q. Do you know who he is?

6 A. No, I know he lives in Dallas and I know he's
7 associated with Redrock, but I do not know him.

8 Q. Do you know Mr. Cashon?

9 A. Yes, we do know Mr. Cashon.

10 Q. And who is Mr. Cashon?

11 A. Well, Mr. Cashon, when we first met him, at the
12 time we met him we did not know he had any association with
13 Redrock. He was an employee of LG&E, who was the owner of
14 the gas storage unit and who represented LG&E in all of our
15 negotiations with LG&E subsequent to the date that our well
16 was drilled and completed in an attempt to reach a
17 settlement agreement with LG&E over the gas storage issue
18 and our possible communication with that reservoir.

19 So Mr. Cashon negotiated with us, we furnished
20 him technical, sensitive and confidential information
21 during that period of time, and only later did we learn
22 that he was also an interest owner of the overriding
23 royalty interest in the southeast quarter of Section 34,
24 and we learned that after the acquisition of the gas
25 storage unit by Raptor Resources -- by -- not Raptor,

1 Natural Resources.

2 Q. What is the current status of your efforts to
3 reach a settlement with Mr. Cashon and Redrock concerning
4 the interest they own in the southeast quarter of this
5 section?

6 A. Well, we were served with a subpoena, and we
7 furnished information under the subpoena. And we also had
8 a meeting set -- a proposed settlement meeting set for the
9 21st of June. That meeting was canceled by Mr. Kellahin
10 who had a death in the family, and understandably the
11 meeting was canceled. We did not have that meeting, and we
12 -- you know, we had planned on having another meeting in
13 the very near future. It could have possibly occurred this
14 week.

15 Q. Do you intend to continue to attempt to reach a
16 settlement with Redrock and Mr. Cashon?

17 A. Yes, I mean, we always want to try to settle any
18 issues like this, and we certainly leave that possibility
19 open.

20 Q. Are these the only settlement negotiations that
21 are still in progress with any of the interest owners --

22 A. Yes, sir, they are.

23 Q. -- in this section?

24 A. Yes, sir, they are. All other issues have been
25 settled with all other owners of either working leasehold

1 or overriding royalty interests.

2 Q. Mr. Shelton, will Nearburg call geological and
3 engineering witnesses to review the technical portions of
4 this case?

5 A. Yes, we will.

6 Q. Were Nearburg Exhibit Numbers 1 through 5 either
7 prepared by you or compiled under your direction?

8 A. Yes, sir, they were.

9 Q. Can you testify as to the accuracy of these
10 documents?

11 A. Yes, sir, I can.

12 MR. CARR: May it please the Examiner, at this
13 time we would move the admission into evidence of Nearburg
14 Exhibits 1 through 5.

15 EXAMINER STOGNER: An objection?

16 MR. KELLAHIN: No objection.

17 EXAMINER STOGNER: Exhibits 1 through 5 will be
18 admitted into evidence.

19 MR. CARR: That concludes my direct examination
20 of Mr. Shelton.

21 EXAMINER STOGNER: Thank you, Mr. Carr.

22 Mr. Kellahin, your witness.

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

24 Good afternoon, Mr. Shelton.

25 THE WITNESS: Hello, Tom. How are you?

1 MR. KELLAHIN: I'm fine, thank you.

2 CROSS-EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Would you turn with me, Mr. Shelton, to Exhibit
5 Number 2, and let's look behind Tab 3.

6 A. Tab 2?

7 Q. No, sir, it's Tab 3 of Exhibit 2.

8 A. Okay.

9 Q. And behind Tab 3 I have a photocopy of Nearburg's
10 application for permit to drill this well.

11 A. That's correct.

12 Q. And for convenience I'm simply going to call it
13 the Nearburg well; is that all right?

14 A. That's fine.

15 Q. At this time are you the land manager, in
16 February of year 2000?

17 A. Yes, I am.

18 Q. How long prior to that had you been the land
19 manager for Nearburg?

20 A. Approximately six years.

21 Q. Who was the geologist involved on behalf of
22 Nearburg that put together the idea to locate this well in
23 the northeast quarter?

24 A. Well, the location of the well was also proposed
25 by Great Western Drilling Company, who we purchased the

1 prospect from. Ted Gawloski was the geologist that was
2 working, that was employed by Nearburg Producing Company,
3 and he concurred with their location.

4 Q. Okay. How many wells does Nearburg operate in
5 southeastern New Mexico? Do you have an estimate?

6 A. Oh, 60, 70, 80, you know, a number of wells.

7 Q. When you get ready to permit a well --

8 A. Yes.

9 Q. -- who makes the decision about the well location
10 and the acreage dedication for the well?

11 A. The acreage dedication is based on an
12 understanding of what we have available for the acreage
13 dedication. The well location is picked by the geologist.

14 Q. At this time, who in Nearburg is responsible for
15 checking the availability of a spacing unit in Section 34?

16 A. That was done by virtue of the title search by
17 the attorney.

18 Q. And that is the sole means by which Nearburg
19 relied for the acreage dedication for this well?

20 A. And also the approval of the OCD permit which
21 gave us authority to drill the well on the north-half
22 spacing unit.

23 Q. I'm stepping back prior to the approval.

24 A. Uh-huh.

25 Q. At the time you're preparing the APD --

1 A. Yes.

2 Q. -- does that come across your desk for any type
3 of approval?

4 A. Yes, it does.

5 Q. So you would have an opportunity to inquire and
6 check on various things?

7 A. That's correct.

8 Q. Let's look at the APD. When this APD is filled
9 out, Nearburg as the operator/applicant fills in everything
10 except the Division approval and perhaps the API number,
11 right?

12 A. That's correct.

13 Q. When I look at the proposed pool, it indicates
14 Grama Ridge-Morrow East. Do you see that?

15 A. Yes.

16 Q. That would have been action taken by Nearburg to
17 fill in the form, right?

18 A. Either that or we would have submitted the form
19 to them and they would have told us what to put in that
20 pool, what the well -- We generally look at the well
21 location and we find out what the closest pool is, and we
22 found out in that case that that location in the northeast
23 quarter, that would be included in the Grama Ridge North --
24 or the Grama Ridge East Pool.

25 Q. Do you have in place a practice where you check

1 pool rules?

2 A. Only if we think there's a reason to do so, via
3 something that alerts us to that effect. And I honestly
4 don't believe, Tom, that any operator in the State of New
5 Mexico, when they get ready to have well, if they have a
6 dedication of 320 acres, goes and researches every single
7 pool, you know, around the area?

8 Q. Wouldn't you do that, Mr. Shelton?

9 A. No, I don't think anybody does that. I think
10 they rely on title opinions and they rely on the State's
11 notification after the C-102 is approved for that type of
12 information.

13 Q. And that is Nearburg's practice, then,
14 apparently, at least in this case?

15 A. That's Nearburg's practice and the practice of
16 other people I've been associated with, yes.

17 Q. So you're expecting the Division District office
18 and the Santa Fe office to check any kind of mistake that
19 you might make?

20 A. Well, in the title opinion also.

21 Q. Well, the title opinion, does that include a
22 search of the OCD public records?

23 A. It includes a search of the -- in this case, the
24 SLO records.

25 Q. Well, they won't search, then -- under the drill-

1 site title-opinion process, they don't search the OCD well
2 files, do they?

3 A. No, they do not.

4 Q. They don't search *Byram's* or the OCD rule book
5 for pool rules, do they?

6 A. No, they do not.

7 Q. They don't look to see where the boundaries are
8 of any pool?

9 A. That's correct.

10 Q. They don't check to see if there's a difference
11 in special rules between the special rules and the
12 statewide rules, right?

13 A. That's correct.

14 Q. And you don't do it internally?

15 A. We do it if we feel like there's a necessity to,
16 if we're alerted to that.

17 Q. Okay. How would you know which way to turn the
18 320 acres in Section 34?

19 A. Well, we would -- I don't know that we would
20 have. We likely would have come before the Division asking
21 for what we have right now at that time, based on the
22 mapping that we have now, which I think you will see and
23 which will present our evidence, that the 160-acre spacing
24 unit is the applicable acreage to be dedicated to the well.

25 Q. Well, let's look at Exhibit 1, the plat.

1 A. Okay.

2 Q. You and Mr. Gawloski are looking at this
3 prospect, and he's doing some geology for you, right?

4 A. Correct.

5 Q. And he's going to base his geology on a Morrow
6 attempt, right?

7 A. Correct.

8 Q. He's going to have available to him in Section 34
9 the existence of Morrow wells, true?

10 A. That's correct.

11 Q. Wouldn't it be interesting for you to know,
12 before you file the permit, which way those spacing units
13 are oriented for existing wells that he's looking at?

14 A. Well, we knew the well in the southeast quarter
15 was non- -- it had not produced. And just like we
16 testified to, there was no com agreement. The com
17 agreement had expired for that well.

18 Q. Did you check the OCD files to determine whether
19 or not their records still showed the east half of Section
20 34 dedicated to this temporarily abandoned well?

21 A. No, we did not at that time. But we know the com
22 agreement under the -- has terminated with regard to that
23 well, and there is no dedication to the east half.

24 Q. Did you look at the pool rules for the East Grama
25 Ridge-Morrow Gas Pool?

1 A. Well, we knew what the pool rules were. They
2 were 320 acres.

3 Q. All right. Did you know the west half was in a
4 different pool?

5 A. No, we did not.

6 Q. Did you make any effort to determine that?

7 A. Only through the indications that I've made
8 previous to you.

9 Q. In your prior practices, aren't you aware that
10 the Division precludes you from having two separate pools
11 dedicated in the same spacing unit for the same well?

12 A. Well, we haven't -- You know, that is the
13 practice of the OCD, I understand that.

14 Q. But you didn't know it then?

15 A. Well, we -- you know, I didn't know how that
16 would affect us, no.

17 Q. Who was the landman responsible for this at this
18 time?

19 A. Duke Roush.

20 Q. Is he still employed?

21 A. Yes, he is.

22 Q. Was there a petroleum engineer involved in the
23 process, Mr. Shelton?

24 A. Well, there would have been somebody that ran
25 economics on the well and reviewed the prospect along with

1 the geologist for the acquisition of the prospect from
2 Great Western Drilling Company.

3 Q. Mr. Carr identified a number of people he
4 represented this morning. Are not all those parties'
5 interests confined to the north half of the section?

6 A. Yes, they are.

7 Q. The State Land Office has given you a waiver.
8 Did you tell me that the royalty in the northeast quarter
9 would be 1/16?

10 A. One-sixth.

11 Q. I'm sorry, one-sixth.

12 A. Correct.

13 Q. And in the southea- -- southeast, it would be
14 one-eighth?

15 A. Correct.

16 Q. And so the royalty for the land office increases
17 with the approval of the nonstandard proration unit?

18 A. That's correct.

19 Q. And so the only outstanding potential liability
20 is an additional five-percent override to Redrock?

21 A. That is correct.

22 Q. Let's go back to the chronology for a moment.
23 The second page of the chronology it says December 13th,
24 you're filing an administrative application for the
25 formation of the nonstandard proration unit, right?

1 A. That is correct.

2 Q. Did you explore the option of dedicating the east
3 half of this section so it would be a standard 320-acre
4 standup unit?

5 A. No.

6 Q. Why not?

7 A. Well, because we believe that the geology merits
8 what we're asking for.

9 Q. All right.

10 A. Which you will be shown by our geologist.

11 Q. Now, is the geology I'm about to see the same
12 geology that was produced pursuant to the subpoena?

13 A. Pursuant to the subpoena and a new map that you
14 got yesterday.

15 Q. Which added an additional well?

16 A. Which added an additional well to the cross-
17 section.

18 Q. All right. At the time you were making the
19 decision to drill the well, in February of 2000, was the
20 geologic interpretation I'm about to see the same
21 interpretation you used then?

22 A. No, it was not.

23 Q. How was it different?

24 A. It was -- There was other sands within the Morrow
25 formation. And I really don't feel comfortable answering

1 that question, Tom. I'm not a geologist. You know, Ted
2 will get up here, let him answer that.

3 Q. I'm just asking you about the sequence of
4 different maps.

5 A. There was another map.

6 Q. All right.

7 A. Prior to the time the well was drilled, there was
8 another version of a map.

9 Q. Now, when we go to having the well drilled,
10 completed and the additional data point for the Nearburg
11 well, was there a geologic evaluation made by Mr. Gawloski?

12 A. Yes, there was.

13 Q. Is that evaluation then the same one I'm about to
14 see now?

15 A. I'll have to let you ask him again.

16 Q. Okay. The presentation made to the Land Office,
17 were you involved in any of those meetings with the Land
18 Office?

19 A. No, I was not.

20 Q. You testified about the notice. Let's look at
21 the entry on page 2. It says December 13th, it says,
22 "Notices of waiver are sent out to all affected parties."
23 Do you see that?

24 A. Yes.

25 Q. Did you send notice at that time to Redrock?

1 A. No, we did not.

2 Q. When you read down the spreadsheet, we find that
3 Redrock wasn't sent notice until January 29th, correct?

4 A. That is correct.

5 Q. Why were they not receiving notice back on
6 December 13th?

7 A. We knew at that time that EOG owned 100 percent
8 of the leasehold and working interest. We were unaware
9 that they owned an overriding royalty interest in this and
10 went back during the notice period, did further checks,
11 recognized that they were an overriding royalty interest
12 owner and gave them proper notice.

13 Q. All right. Their override was of record at the
14 time you were making the initial notice effort?

15 A. Yes, it was.

16 Q. It was simply overlooked in the search to find
17 that document?

18 A. Yes.

19 Q. Let's turn to the entry on January 10th and look
20 at Tab 11 of Exhibit 2. That is the Land Office's response
21 on January 10th concerning the request to form a
22 nonstandard proration unit, correct?

23 A. That was their letter back to us after the one we
24 sent where we asked them for a waiver of objection, yes,
25 their first letter.

1 Q. All right, their first letter says, We received
2 your January 18th --

3 A. 8th.

4 Q. -- I'm sorry, 8th, letter requesting approval,
5 and it goes on and describes their position, and they say,
6 "Our concern has been and remains," in the third paragraph,
7 first line, "Our concern has been and remains that an E/2
8 dedicated Grama Ridge Morrow, East Gas well already exists
9 in Section 34, although inactive."

10 A. That's correct.

11 Q. How do you reconcile the January 10th letter with
12 the fact that you have documentation which you assert has
13 terminated the com agreement for that spacing unit?

14 A. The com agreement was terminated at the time this
15 letter was written.

16 Q. That's what I'm saying.

17 A. Yes.

18 Q. And yet the Land Office still maintains that the
19 east half of the spacing unit is dedicated to an inactive
20 well.

21 A. That is incorrect. The com agreement had
22 terminated at that time.

23 Q. They don't say that here, though, do they?

24 A. No.

25 Q. Let's go on to the second page. It says, "We

1 understand the desire of your client," referring to
2 Nearburg, "to operate and produce separately within Section
3 34, thus the necessity of the quarter section proration
4 units. However, we concur with the current rules,
5 regulations and spacing requirements affecting the Grama
6 Ridge Morrow, East Gas pool established by the Oil
7 Conservation Division. We believe that 320 acre spacing is
8 correct and justified for this pool." And therefore they
9 won't sign your waiver.

10 A. That was the first letter we got from them, and
11 since then you'll find another letter that they do waive
12 their objection to the formation of our 160-acre spacing
13 unit.

14 Q. All right, let's turn to that letter. It's
15 behind Tab 13.

16 A. Okay.

17 Q. It's a letter dated January 23rd.

18 A. Uh-huh.

19 Q. It says that "...because of unique geology and
20 other special circumstances." And then they go on to say,
21 "However, the other administrative issues raised by Mr.
22 Jeff Albers' letter, dated January 10th, 2001, still need
23 to be addressed." Right?

24 A. Correct.

25 Q. I cannot find in this Exhibit 2 Mr. Albers'

1 January 10th letter. Do you have that letter?

2 A. No, I do not.

3 Q. I can't find it in here.

4 A. What I believe happened, Tom -- and I'm not sure
5 about this, you'll have to go back and talk to the SLO --
6 but the administrative issues in Mr. Jeff Albers' letter
7 dated January 10th, 2001, I would believe that Mr. Jeff
8 Albers wrote this letter and Jami signed it, and the one
9 that you see as the January 10th, 2000, letter is probably
10 it.

11 Q. All right. You think that's what Bruce
12 Frederick --

13 A. Yes.

14 Q. He's mistakenly referred to Ms. Bailey's letter
15 because Jeff drafted it?

16 A. That's what I believe. I mean, that's just my
17 opinion.

18 Q. Okay, I was asking you where the letter was, and
19 you've given me an explanation.

20 A. And I believe that the concerns there that
21 they're talking about still needing to be addressed is the
22 east-half dedication, which we now know is not dedicated.
23 I think those issues were addressed and that we have the
24 waiver of the SLO.

25 Q. Let me show you some documents, Mr. Shelton. The

1 first part of Redrock Exhibit 1, Mr. Shelton, is Byram
2 Reporting Service, reproduction of the Grama Ridge-Morrow
3 Gas Pool Rules.

4 A. Okay.

5 Q. Does your office maintain a set of those reports?

6 A. We have the books, yes, we do.

7 Q. Did you use them in this case?

8 A. No, we did not.

9 Q. Let's turn past Byram summary of the rules for
10 the Grama Ridge-Morrow Gas Pool, and if you'll turn to the
11 third page, Byram also publishes the rules for the East
12 Grama Ridge-Morrow Gas Pool. Do you see that?

13 A. Correct, yes, sir.

14 Q. You didn't check those rules in this case either,
15 did you?

16 A. No, we did not.

17 Q. Did you check Byram's publication for the pool
18 boundaries for either pool?

19 A. No, we did not. I don't think we have pool
20 boundaries from Byram's service.

21 Q. You don't have that in the books?

22 A. We don't have that in the books. I've never seen
23 that.

24 Q. Turn past the Byram's. There's an Order R-4491.
25 Before today have you seen this order? It deals with the

1 approval of Llano's gas storage unit back in 1973.

2 A. I may have seen this in the review of a lot of
3 documents that I've seen over the past several months.

4 Q. Did you take this into consideration at the time
5 you were filing the application for a permit to drill?

6 A. No, we did not.

7 Q. If you'll turn past that order, the next one is
8 R-5995, issued in May of 1979. This is the order that
9 changed the spacing from 640 to 320.

10 A. Okay.

11 Q. Were you aware of the existence of this order at
12 the time that you were filing the APD?

13 A. No, we were not.

14 Q. If you'll turn past that order, let's look at the
15 next one. It's R-6050, also issued in 1979, and this one
16 has to do with the creation of the East Grama Ridge-Morrow
17 Gas Pool and establishment of 320 gas spacing. At the time
18 you were prepared to file the APD on the well, were you
19 aware of the existence of this order?

20 A. No, we were not.

21 Q. Okay. Mr. Shelton, let me show you -- This is a
22 well-completion report and an attached C-102 for what is
23 now the EOG well?

24 A. Correct.

25 Q. And it's dated in 1979, and it shows the acreage

1 dedication for what is now the EOG well. Did you have
2 anybody search the well records, either in Hobbs or in
3 Santa Fe, to determine what happened to any of these wells
4 before you filed your APD?

5 A. No, we did not. But I -- Where do you see the
6 acreage dedication on here?

7 Q. Second page.

8 A. By the indication of the -- It's not outlined as
9 it's an east-half proration unit. All it is, it just shows
10 the information on the lease in the northeast and the
11 southeast.

12 Q. I think it's a flaw of the photocopying. If you
13 look at the original, there's a darker line associated with
14 the east half, and there's no information displayed on the
15 west half?

16 A. Correct.

17 Q. Okay. Is there anything to preclude Nearburg
18 from dedicating the east half of the section to this well,
19 other than the desire to avoid paying Redrock the override?

20 A. Well, as the geology will present itself, I think
21 there is sufficient reason to only include the northeast
22 quarter into the proration unit for the well.

23 Q. Other than relying upon the drill-site title
24 opinion and the issuance by the Land Office of the lease,
25 did you make any further search to determine the location

1 and existence of the gas storage unit?

2 A. No, we did not. The title opinion did not reveal
3 the existence of the gas storage unit.

4 Q. Were there documents of record at that time that
5 were recorded, that --

6 A. There was no documents of record in the county
7 that indicated that there was a gas storage unit
8 whatsoever.

9 Q. Do you now have a system in place at Nearburg to
10 avoid repetition of this mistake?

11 A. Not any more than we did.

12 Q. So you're going to continue to rely upon the
13 Division's check of your work?

14 A. We look at the maps, we look at the area, we look
15 at the maps to indicate what pools are in the area, and
16 look to see if there's other wells in the section upon
17 which we're drilling, and if we feel like there's a
18 necessity to check that and to take it further in
19 investigation, then we will.

20 Q. All right. So in this instance, even with the
21 existence of these Morrow gas wells, or at least Morrow
22 penetrations --

23 A. Uh-huh.

24 Q. -- you made no effort to determine the
25 orientation of the spacing unit or even the size of the

1 spacing unit, whether it was 320 or something else?

2 A. That's correct, because one of them is an
3 injection well, and the other one was an abandoned well.

4 Q. But you now know that after the fact?

5 A. That's correct.

6 Q. You did not know that at the time you were filing
7 the --

8 A. We knew the well in the southeast quarter was not
9 producing and had not produced for some period of time.

10 Q. But it's not plugged and abandoned either, is it?

11 A. It is not plugged and abandoned.

12 Q. And the inquiry stopped there?

13 A. Yes.

14 Q. After the Land Office sent you the rejection
15 letter declining to sign the waiver, January 10th letter --

16 A. Uh-huh.

17 Q. -- were you involved in any of the meetings,
18 discussions or negotiations with the Land Office that
19 resulted in them granting you the waiver on January 23rd?

20 A. I was not.

21 Q. Who was involved?

22 A. Mr. Carr's law firm.

23 Q. And that's all?

24 A. Yes.

25 Q. Were there no representatives of your company in

1 any of these meetings?

2 A. That's correct.

3 Q. Nearburg first learned of the unavailability of
4 the north-half spacing unit by a telephone call in July of
5 the year 2000?

6 A. That is correct.

7 Q. And that phone call came from the District
8 Office?

9 A. The Hobbs -- yeah, the Hobbs District Office.

10 Q. To one of your production people?

11 A. That's correct.

12 Q. Was there any correspondence associated with that
13 notification?

14 A. No, I've looked everywhere and I've never seen
15 any correspondence on that.

16 Q. Do you know what individual in the Hobbs office
17 of the OCD made the phone call to you?

18 A. I do not know. I know Kim Stewart was the one
19 that received the call at Nearburg.

20 Q. Is it the practice of the land department you
21 manage, Mr. Shelton, to keep notations of phone
22 conversations during the course of activities concerning a
23 well?

24 A. Not on every -- We do not make notations of every
25 telephone conversation we have, no.

1 Q. Are there any notations of conversation with
2 regards to this well?

3 A. Not that I'm aware of.

4 Q. So Mr. Roush did not keep notes or pass
5 information or memos to you about his activities?

6 A. I don't remember any right now.

7 Q. It was all done verbally between you?

8 A. I believe so, yes. I mean, he may -- I know he's
9 had some handwritten notes concerning this since the date
10 after the well was drilled.

11 Q. Is he the only landman, apart from you as his
12 manager, that was involved in this?

13 A. Yes, he is.

14 Q. Thus far, with the exception of EOG, the parties
15 that have provided you waivers are those interest owners in
16 the northeast quarter?

17 A. Except for the SLO, who's an interest owner in
18 both.

19 Q. And the SLO would have a better interest
20 percentage if the nonstandard unit is approved?

21 A. That's correct.

22 Q. In addition, all the rest of the parties, with
23 the exception of EOG, would have an increased interest?

24 A. That's correct.

25 MR. KELLAHIN: No further questions, Mr. Stogner.

1 EXAMINER STOGNER: Thank you, Mr. Kellahin.

2 Mr. Hall, your witness.

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Briefly, Mr. Shelton. You indicated earlier that
6 production from the well in the northeast quarter of
7 Section 34 was being purchased by Raptor and being injected
8 into the gas storage unit; is that correct?

9 A. No, I indicated that LG&E, the then-owner of the
10 gas storage unit, executed a commitment letter to purchase
11 gas from that well. I have no idea what they were going to
12 do with it. I don't know whether it was to be injected
13 into that gas storage unit or whatever.

14 Q. All right. As far as you know now, production
15 from the well is not being purchased by Raptor; is that
16 right?

17 A. I am aware -- I do know that. It's purchased by
18 another gas processor in the area.

19 Q. All right. As operator of the well, isn't it the
20 case that Nearburg is authorized to receive payment from
21 the purchaser of the gas, be it Raptor or any third party?

22 A. Yes, sir, we are.

23 Q. And also as operator, isn't it the case that
24 Nearburg would be responsible for disbursing proceeds to
25 all interest owners, working interest owners, royalty

1 interest owners and owners of overrides?

2 A. That is correct.

3 Q. And that's true whether or not you have a 160-
4 acre unit or a 320-acre unit?

5 A. That is correct.

6 Q. You've discussed Mr. Brewer's drill-site title
7 opinion and what it did not contain. Are you at liberty to
8 tell us or discuss what it did, in fact, contain?

9 A. Well, we furnished copies of it, if I understand,
10 or --

11 MR. KELLAHIN: No, sir, you did not.

12 THE WITNESS: It's a short title opinion covering
13 a very new lease. It does not make any reference to the
14 gas storage area or to the existence of any pools in the
15 area, and it does not make any reference to the east half
16 being the dedicated spacing unit, and it's -- as far as I
17 know, does not have any significant title requirements in
18 it.

19 Q. (By Mr. Hall) Was the title opinion for a north-
20 half unit?

21 A. Yes. The title opinion covered the north half of
22 Section 34.

23 Q. All right. Do you know if Mr. Brewer drafted the
24 opinion based on abstracts?

25 A. He did it on the basis of a run sheet and a

1 standup.

2 Q. All right. As far as we know -- or maybe you can
3 tell us. Does the opinion still say that there was a check
4 run of State Land Office records?

5 A. Yes, there was.

6 Q. Let me ask you something about your Exhibit 2
7 under Tab 16. That's your administrative application. And
8 if you look under -- I believe it's Exhibit 5, the
9 administrative application, there is --

10 A. Under Tab 5?

11 Q. Well, under Exhibit 5, under Tab 16. 16 is your
12 administrative application to the Division.

13 A. Okay. Number 16? That's not right.

14 MR. CARR: It's Exhibit 5.

15 THE WITNESS: It's Exhibit 5.

16 Q. (By Mr. Hall) It's Tab 16 under Exhibit 5,
17 Exhibit 5 to your administrative --

18 A. Let me just find Exhibit 5

19 MR. CARR: If you take them apart, it's just
20 straight Exhibit 5.

21 THE WITNESS: It's just Exhibit 5.

22 Q. (By Mr. Hall) Exhibit 5, the administrative
23 application, do you have that in front of you?

24 A. Yes, I do.

25 Q. Within that batch of documents, doesn't that

1 contain a copy of the State Land Office Tract Book 4?

2 A. Yes, it does.

3 Q. For Section 34, 21 South, 34 East?

4 A. Yes.

5 Q. And if you look in the upper right-hand corner of
6 that exhibit, doesn't it reference the existence of the
7 Grama Ridge Morrow Unit Agreement?

8 A. It has a stamp on there that says "Section 34,
9 21-34, All Grama Ridge Morrow", and then it has written in
10 there "8-27-73, effective 4-25-73", and it's stamped "unit
11 agreement". It doesn't say it's a gas -- It doesn't
12 indicate to me it's a gas storage unit, it just -- just
13 Grama Ridge-Morrow.

14 Q. Well anyway, if you can say, did Mr. Brewer's
15 opinion reference the existence of any unit agreement in
16 Section 34?

17 A. No, it did not.

18 Q. All right. And again, did he indicate whether he
19 had run a standup examination of State Land --

20 A. He did.

21 Q. He did personally?

22 A. He did, he did, yes.

23 Q. He came to Santa Fe and looked at the tract
24 books?

25 A. That's my understanding. And he also -- and he

1 had a run sheet of that know where to look.

2 Q. I understood you said that his opinion, to the
3 extent it's based on county records, was based on a standup
4 examination down there as well?

5 A. That is correct.

6 Q. So there was no abstract generated?

7 A. There was no abstract generated for that for the
8 county records either.

9 Q. All right. And so you haven't looked at an
10 abstract yourself that shows --

11 A. No.

12 Q. -- the instruments of record for --

13 A. No.

14 Q. -- Section 34?

15 A. No, that's correct.

16 MR. HALL: Nothing further, Mr. Examiner.

17 EXAMINER STOGNER: Any redirect, Mr. Carr?

18 MR. CARR: Yes.

19 REDIRECT EXAMINATION

20 BY MR. CARR:

21 Q. Mr. Shelton, Nearburg acquired an interest in a
22 state lease that had been awarded to Great Western
23 Drilling, correct?

24 A. That's correct.

25 Q. This lease encompassed 320 acres?

1 A. That's correct.

2 Q. And it was your intention to drill a well on that
3 320 acres?

4 A. That is correct.

5 Q. That being a standard spacing unit?

6 A. That's correct.

7 Q. When you filed the application for permit to
8 drill, when you went forward with this effort and ordered a
9 title opinion, did anything come to your attention which
10 would suggest that the spacing unit included two pools?

11 A. No, it did not.

12 Q. When you were going forward with your plans to
13 develop the acreage, you ordered a title opinion?

14 A. That's correct.

15 Q. And it was on the north half only?

16 A. That's correct.

17 Q. And for that reason there was nothing that came
18 up in the title opinion concerning an interest of Redrock?

19 A. That's correct.

20 Q. You drilled the well.

21 A. (Nods)

22 Q. Who paid for the well?

23 A. The well was paid for by the working interest
24 owners, Continental Land and Fur, Nearburg and Great
25 Western Drilling Company.

1 Q. Only the owners in the north half?

2 A. That is correct.

3 Q. When you are asked if the only thing that you
4 would lose here would be the 10-percent override, reduced
5 by 50 percent if you included the southeast, that isn't
6 exactly correct, is it?

7 A. Absolutely not.

8 Q. If an east-half unit was formed, you would give
9 away half of the well, correct?

10 A. Half of the working interest in the well.

11 Q. Plus incur the additional override?

12 A. That is correct.

13 MR. CARR: Thank you.

14 MR. KELLAHIN: Additional questions, Mr.

15 Examiner?

16 EXAMINER STOGNER: Mr. Kellahin?

17 RECROSS-EXAMINATION

18 BY MR. KELLAHIN:

19 Q. Your response to Mr. Carr is not quite correct
20 either, is it, Mr. Shelton? You're not going to have to
21 give away half your well, are you?

22 A. Well, they'd have to pay their share of the cost
23 to drill the well, but they would get -- yes, they would --

24 Q. Yeah, they're going to have to compensate you to
25 bring in their working interest in your wellbore.

1 A. Well, they don't compensate us at all. All they
2 do is repay us for the expense that we've had in drilling
3 and completing the well. That's hardly compensation.

4 Q. Well, you can force pool them if you can't work
5 out an agreement, can't you?

6 A. I would think that would not be necessary.

7 Q. Well, you don't have to give it away, do you?

8 A. We get a recoupment of our cost for that.

9 Q. And that might be reasonable under the
10 circumstances, don't you think?

11 A. No, I don't believe it is reasonable.

12 Q. Shouldn't there be some penalty associated with
13 your mistake?

14 A. We have the geology to support a northeast
15 quarter 160-acre spacing unit.

16 Q. And that's after the fact, isn't it?

17 A. Well, it's based on current known geologic inter-
18 -- I mean, facts.

19 MR. KELLAHIN: No further questions.

20 MR. CARR: One follow-up.

21 EXAMINER STOGNER: Mr. Carr?

22 FURTHER EXAMINATION

23 BY MR. CARR:

24 Q. If an east-half unit was formed, would you
25 receive any compensation or any benefit for the risk

1 incurred in developing this acreage?

2 A. Absolutely not.

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

4 EXAMINATION

5 BY EXAMINER STOGNER:

6 Q. Exhibit Number 1, the yellow part --

7 A. Yes, sir.

8 Q. -- shows Nearburg's lease; is that correct?

9 A. That is correct, the yellow part shows the north
10 half of the section, which is Nearburg, Great Western and
11 CLX oil and gas lease.

12 Q. Is it your understanding the northwest quarter
13 will never be dedicated to any kind of a Morrow production?

14 A. Well, the west half, insofar -- the northwest
15 quarter, insofar as to the gas storage zones, may not ever
16 be developed by Nearburg. There is another zone in the "A"
17 zone up above and out of the gas storage interval, which I
18 doubt, quite frankly -- the geology does not support
19 drilling, but it is there and present, we believe. But it
20 would not be dedicated -- It's not dedicated to the gas
21 storage area.

22 Q. The northwest quarter is not dedicated to the gas
23 storage area?

24 A. In the "A" zone.

25 Q. In the "A" zone. What's the "A" zone?

1 A. The "A" zone is -- which we'll be able to
2 demonstrate in a few minutes with the geologic cross-
3 section, is above the interval dedicated to the gas storage
4 unit.

5 Q. So that would be the producing interval?

6 A. A prod- -- Yeah, the gas storage interval is the
7 pro- -- is the injection and withdrawal interval.

8 Q. Okay. Now, the well in Unit L, that's currently
9 part of the storage system?

10 A. Yes, sir, that is correct.

11 Q. Did it ever have any production that you know of
12 from the Morrow?

13 A. I'll have to defer to Ted Gawloski, our
14 geologist, on that. I think he has some notations on his
15 cross-section.

16 Q. Let me rephrase that. You don't know if the
17 northwest quarter ever benefitted from any production from
18 that well, do you?

19 A. No, I do not. I know that the northwest quarter
20 at one time was included in the gas storage unit before the
21 lease expired, and it was a part of the injection and
22 withdrawal of gas on a prorated basis for the entire unit.

23 Q. Who in your organization contacted Holland and
24 Hart to file the administrative application of December?
25 Was that who actually made the application with the OCD?

1 A. Yes, actually, Holland and Hart was the law firm
2 that filed it for us, that's correct, at my request.

3 Q. And you contacted them?

4 A. Yes, sir.

5 Q. When did you contact them?

6 A. I would say, Mr. Stogner, it would have been a
7 week or so before the day the application was filed.

8 Q. Which came in response from the Hobbs OCD office
9 contacting Nearburg?

10 A. That's correct.

11 EXAMINER STOGNER: I have no other questions of
12 this witness. I will leave you a word of advice. From
13 here on out any Nearburg application for administrative
14 approval, I will expect and I will demand that you review
15 everything around it within that section within a mile, or
16 it will be sent back to you with no explanation but the
17 word that says incomplete. Do you understand?

18 THE WITNESS: Yes, sir, I do.

19 EXAMINER STOGNER: Okay, you may be excused.

20 MR. BROOKS: I have one question --

21 EXAMINER STOGNER: Okay, I'm sorry.

22 MR. BROOKS: -- Mr. Examiner.

23 EXAMINATION

24 BY MR. BROOKS:

25 Q. Your function as a land manager, do you order

1 title opinions from attorneys?

2 A. Yes, sir, we do.

3 Q. Okay. You understand that a title opinion is an
4 opinion on the legal effect of the materials examined by
5 the title attorney, correct?

6 A. That is correct.

7 Q. And it doesn't -- the opinion as to legal effect
8 of everything in the world, it's just the materials he's
9 examined.

10 A. I understand.

11 Q. And in your experience is it customary for title
12 attorneys to be called upon to examine OCD records in
13 connection with --

14 A. If they see something of record which leads them
15 to do that, I would expect them to do that, yes.

16 MR. BROOKS: Okay, the only -- My experience with
17 it has been, just for what it's worth -- and I was a title
18 examiner for a number of years -- I don't recall ever
19 examining regulatory records, either here or in Texas or in
20 Colorado, except when we had a force-pooling situation or
21 suspected we might have a force-pooling situation --

22 THE WITNESS: Right.

23 MR. BROOKS: -- but that's for what it's worth.

24 Thank you. No further questions.

25 THE WITNESS: Anything else?

1 EXAMINER STOGNER: No, you may be excused.

2 MR. CARR: Mr. Stogner, at this time we would
3 call Ted Gawloski.

4 TED GAWLOSKI,
5 the witness herein, after having been first duly sworn upon
6 his oath, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CARR:

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

10 A. My name is Ted Gawloski.

11 Q. Mr. Gawloski, where do you reside?

12 A. Midland, Texas.

13 Q. By whom are you employed?

14 A. Nearburg Producing Company.

15 Q. And what is your position with Nearburg?

16 A. I'm the district geologist.

17 Q. And you've been the geologist assigned to this
18 project since the lease was acquired.

19 A. That's correct.

20 Q. Have you previously testified before the New
21 Mexico Oil Conservation Division?

22 A. Yes, sir.

23 Q. At the time of that testimony, were your
24 credentials as an expert in petroleum geology accepted and
25 made a matter of record?

1 A. Yes, they have.

2 Q. Are you familiar with the Application filed in
3 this case?

4 A. Yes, sir.

5 Q. And have you made a geological study of the area
6 which is involved in this Application?

7 A. Yes, sir, I have.

8 Q. Are you prepared to share the results of that
9 work with Mr. Stogner?

10 A. Yes.

11 MR. CARR: Are the witness's qualifications
12 acceptable?

13 EXAMINER STOGNER: Any objection?

14 MR. KELLAHIN: No objection.

15 MR. HALL: No objection.

16 EXAMINER STOGNER: So qualified.

17 Q. (By Mr. Carr) All right, Mr. Gawloski, let's go
18 to what has been marked Nearburg Exhibit Number 6, the
19 cross-section. There's an index map in the lower right-
20 hand portion of the exhibit. I'd like you to start there
21 and review the general trace for the cross-section, and
22 then work across this exhibit, noting the information on
23 the individual wells.

24 A. Okay. If you'll refer to the index map in the
25 lower right-hand corner you'll see the orientation of the

1 cross-section GRE-GRE'. It is a stratigraphic cross-
2 section hung on the top of the Morrow "B", which is the
3 base of that blue marker on the top of the cross-section.

4 This cross-section goes from the Shell GRB State
5 well in the southwest of Section 34, across to the Minerals
6 Llano "34" State Number 1 in the southeast of 34,
7 northeastward to the BTA Burgundy well in Section 35,
8 across to the Nearburg Producing Grama Ridge East "34"
9 State Number 1 well, and then up to the north, another BTA
10 well, the Grama Ridge "B" Number 1 well in Section 27.

11 Q. All right, let's go through the wells on this
12 cross-section and explain what this exhibit shows.

13 A. I'd like to go through the different zonations of
14 the Morrow and how we go about looking at the Morrow in
15 here, with particular emphasis to the two wells in the
16 south half of 34 and to the Nearburg well in Section -- and
17 also in Section 34 in the northeast quarter.

18 One of the first things that you will note in
19 here is the lenticular nature of the Morrow sands in here.
20 These sands do come and go. The porosity and permeability
21 is quite variable in these sands in here as well.

22 Starting from the bottom of the cross-section,
23 and on each side, I've denoted the divisions of the Morrow.
24 From the bottom, the Morrow "C" sands, and as you come up
25 to the lower Morrow "B" package, and above that is the

1 upper Morrow "B", and then above the blue marker and the
2 two wells in the middle, the BTA Burgundy and the Grama
3 Ridge East, there's a Morrow "A" sand.

4 Starting from the bottom of the cross-section,
5 there's the Morrow "C" package, which is really not a
6 target in this grama ridge area. The well in the southeast
7 of 34 did perforate it, but it was very thin and probably
8 contributed little to the production.

9 The next zone up from the bottom is what I refer
10 to as the GRE sand. It is part of the lower Morrow "B"
11 package, and as you can see, it is only developed within
12 the BTA Burgundy well in Section 35 and the Nearburg Grama
13 Ridge East 34 State Number 1, and there's a remnant of it
14 in the BTA well in Section 27.

15 This is the producing zone at present within the
16 Grama Ridge East "34" State Number 1, the Nearburg-operated
17 well. It has been only tested in one other well in the
18 area, and it is this BTA Burgundy well, which has just
19 drilled -- completed in January of this year. They tested
20 the correlative zone in here. It's very thin, as you can
21 see; the porosity is very thin. They tested gas too small
22 to measure. They abandoned the zone and went uphole to
23 test other Morrow zones. So the zone was nonproductive in
24 the BTA Burgundy well.

25 The only other place it was present that has any

1 kind of porosity is in the BTA Grama well in Section 27,
2 and they did not even deem it worthy enough to be
3 production tested there. So this particular zone in this
4 cross-section that we see here is only productive in the
5 Nearburg Grama Ridge East "34" State Number 1 well.

6 Q. And that is the zone that is the producing zone
7 in our well?

8 A. That's correct.

9 Q. And was this the zone that you were targeting
10 when the well was drilled?

11 A. No, it was not.

12 Q. Okay, let's go on up and look at the other Morrow
13 "B" sands.

14 A. As we go up into the lower Morrow "B", there's --
15 the big thick sand that's developed through here is, in
16 fact, not really one particular sand unit, it's many -- it
17 is a sand unit that has many different porosity and
18 permeability lenses. It is one of the producing minerals
19 that's in the south half of 34. It produced in the Shell
20 well, it also produced in the Llano "34" State Number 1.
21 Both of them are in the south half of 34.

22 As you go across into Section 35 in the BTA well,
23 this was production-tested in the top of it. It also was
24 shown to be noncommercial, and they abandoned that zone and
25 subsequently moved uphole and tested other Morrow zones.

1 In the Nearburg well, this particular zone
2 calculates wet in the top portion where the porosity is
3 high, and in the lower portions its lenticular nature has
4 very little permeability, and it is not a zone that we
5 would perforate and production-test in our well.

6 It was also tested in the Grama Ridge 27 well,
7 and it was noncommercial in that well also, and that well
8 was plugged and abandoned.

9 I might also note that this particular sand is
10 part of the gas storage unit and one of the zones that is
11 being injected and stored gas in.

12 Then now, as we move up we go to the upper Morrow
13 "B", which is denoted by a little darker shade of yellow in
14 here. There are three sands in this particular unit. The
15 first one coming from the bottom is the main pay zone that
16 was in the Shell GRB State Number 1 well, shown on the
17 left-hand side of the cross-section.

18 This is the main producing zone in this
19 particular well. It is only developed across the south
20 half of 34. It's in the other well, the Llano "34" State
21 Number 1, but it was not production tested in that well.
22 And again, this is one of the gas storage zones that is
23 being -- gas is being injected and stored in.

24 The next zone up is developed across the four
25 wells, starting from the Llano "34" State and going across

1 to the BTA well in Section 27. It is one of the primary
2 producing wells in the Llano "34" State Number 1 in the
3 southeast of Section 34. It is present in the BTA well in
4 Section 35. Again, it was tested in that well this year
5 and was proven to be noncommercial, and they subsequently
6 abandoned that zone.

7 In the Nearburg well, you can see that the zone
8 is dramatically thinned. It is a zone of low permeability
9 and it is not a zone that we would test in our well as an
10 uphole recompletion.

11 And over in the BTA well in Section 27 you see
12 about a one-foot remnant. They added perforations to that,
13 but again this well was nonproductive and was plugged.

14 There is one other zone in the upper Morrow "B"
15 that was present in the well in Section 27, but it is not
16 present in any of the other wells, and it was not
17 commercial in the BTA well in Section 27.

18 So from that blue marker on down, this is the
19 interval of the gas storage. As you go above that, any
20 sands above that are not part of the gas storage unit.

21 There is one sand of interest, and that is what I
22 refer to as the Morrow "A", and on the isopach it's
23 referred to as the lower Morrow "A". And you can see that
24 it's a relatively thin zone; it doesn't get very thick in
25 the entire area. It is one of the targets in the Grama

1 Ridge Field area. This well was tested in the BTA Burgundy
2 well, just recently. It was completed after fracture
3 stimulation in March of this year, flowing down the
4 pipeline at approximately 400 MCF a day.

5 They have continued to produce this well, and as
6 of a week or so ago, after talking to the operator of the
7 well, it's only flowing at a rate of 221 MCF a day, so the
8 rate is now cut in half. And it appears that this zone is
9 not a large areal extent.

10 Q. Mr. Gawloski, in your work in this area, what
11 information have you had available to you? Have you had
12 only well control?

13 A. Basically, yes, we've had well control before us
14 from --

15 Q. No seismic information on the area?

16 A. No, we don't.

17 Q. I don't see any faults placed on this exhibit.

18 A. No, sir.

19 Q. Do you have any information that would support
20 the placement of a fault anywhere on the exhibit?

21 A. No, sir.

22 Q. When you look at the nature of the reservoir, do
23 you find separation, well-to-well and location-to-location,
24 in the Morrow formation?

25 A. Yes, sir, that's quite common in this area.

1 Q. And what is that attributable to?

2 A. Well, the deposition of the Morrow is very --
3 well, it comes and goes many times, and the reservoir
4 parameters -- there's many minerals that affect the
5 permeability and porosity of the rocks. It's very
6 compartmentalized. And so it's discontinuous by its
7 nature.

8 Q. And because of permeability barriers and other
9 characteristics of the formation itself?

10 A. That's correct.

11 Q. Not necessarily faulting?

12 A. No.

13 Q. Do you have anything else to present with Exhibit
14 Number 6?

15 A. No, I would refer to this as I go through the
16 maps.

17 Q. So we should keep it out?

18 A. Yes.

19 Q. All right, let's go to Exhibit Number 7, your net
20 isopach on the GRE sand. Identify this and review it for
21 Mr. Stogner.

22 A. Mr. Examiner, this is an isopach, using a
23 porosity of 8-percent cutoff, which is what I used in the
24 entire area of the Morrow as an effective cutoff for
25 productivity. It is of the GRE sand, and if you'll refer

1 to the cross-section it's the sand on the lower part of the
2 lower Morrow "B", and it's labeled "GRE sand".

3 Essentially -- We're essentially referring to
4 just this pod that's in the cross-section -- north half of
5 Section 34, extending to Section 35, has a remnant in
6 Section 27. This well is at its thickest point in the
7 Nearburg well, which has approximately 16 feet of pay in
8 that well.

9 The only other wells that have present -- the
10 sand is present with porosity, are two wells in Section 35,
11 one of which is on the cross-section, the BTA Burgundy
12 well, which was production-tested and it was nonproductive.
13 The other well in Section 35 did not even test the zone.
14 It had only two feet of porosity. The well up in Section
15 27, the BTA Grama Ridge well, had just a slight remnant of
16 it, and they did not even production-test it.

17 One thing you'll note, that there's well control
18 all around this that shows no net pay in this particular
19 zone at all. So we have a very small, compartmentalized
20 zone.

21 And one other thing to note, there is no
22 productivity below the five-foot contour. So in fact, this
23 actual reservoir is probably contained within the five-foot
24 contour and higher.

25 Q. And this is the zone that is producing in the

1 Nearburg well?

2 A. Yes, sir.

3 Q. Anything else with Exhibit Number 7?

4 A. No, sir.

5 Q. Let's go to Exhibit Number 8. This is the
6 isopach map on the Morrow "A" sand.

7 A. Okay, this is an isopach map of the Morrow "A"
8 sand. And then if you refer to the Exhibit 6, the cross-
9 section, it is the sand that's right above the big blue
10 marker at the top part of the logs.

11 And as you can see, this is a very thin zone
12 that's developed through here. At its thickest point it
13 only gets 14 feet through this entire map. It is
14 productive out here by itself and with several other zones.

15 One thing to note is that in the south half of
16 Section 34 it is not present in any of those wells in the
17 south half of 34, as well as any of the wells in Section
18 27, with just traces in the wells in Section 26.

19 Another thing of note, what I referred to before
20 is that the four feet that is present in the BTA Burgundy
21 well was production tested and after fracture stimulation
22 only produced at a rate of 400 MCF a day and is down to
23 almost half that. So we believe that this zone is really a
24 zone of limited areal extent. And by the well control and
25 by that information from the BTA well, we don't feel that

1 it extends any farther than the way it is mapped.

2 Q. If we look at the two isopachs, one on the GRE
3 sand and this one on the Morrow "A", have you mapped the
4 only two potentially productive zones in this well?

5 A. That's correct.

6 Q. Are either of these zones present or productive
7 in the south half of Section 34?

8 A. No, they are not.

9 Q. Let's go to Exhibit Number 9, the structure map,
10 and explain what this shows.

11 A. This is a structure map on the top of the Morrow
12 "B". On your cross-section it is right below the blue
13 marker. It is a very good stratigraphic marker in the
14 area, and it is what I've used to make the structure map in
15 here.

16 The structure map essentially shows just
17 southwestward-plunging structural nose through here, but if
18 you notice, there's very little difference in structure
19 between all the wells in Section 34, south half of 27 and
20 even the west half of 35. In the Nearburg and BTA well
21 there's only a few feet of difference. It's basically a
22 pretty flat area through here.

23 Q. On this exhibit, you've also put cumulative
24 production figures, have you not?

25 A. That's correct.

1 Q. And through what date, do you know?

2 A. I believe it's through November. These maps
3 obviously change -- very timely things.

4 Q. All right. What conclusions can you reach from
5 your geological study of this area?

6 A. Conclusions I can reach are that the productive
7 zones that are in the wells in the south half of Section 34
8 are zones that are not productive and -- or would not be
9 tested and are not productive in the Nearburg Grama Ridge
10 East "34" State Number 1. I'd also like to point out that
11 the two potential zones in the Nearburg well are not
12 present in the wells in the south half of Section 34.

13 Q. In your opinion, does any of the acreage in the
14 south half of Section 34 contribute recoverable reserves to
15 the Nearburg well located in the northeast quarter of that
16 section?

17 A. No, it does not.

18 Q. Were Exhibits 6 through 9 prepared by you?

19 A. Yes, they were.

20 MR. CARR: At this time, Mr. Stogner, we move the
21 admission into evidence of Nearburg Exhibits 6 through 9.

22 EXAMINER STOGNER: Exhibits 6 through 9 will be
23 admitted into evidence if there's no objection.

24 MR. KELLAHIN: No objection.

25 MR. CARR: That completes my direct examination

1 of Mr. Gawloski.

2 EXAMINER STOGNER: Thank you, Mr. Carr.

3 Mr. Kellahin, your witness.

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

5 CROSS-EXAMINATION

6 BY MR. KELLAHIN:

7 Q. Mr. Gawloski, let's look at Exhibit 6, the cross-
8 section. I've lost track of your exhibit numbers. The
9 isopach of the lower Morrow "B" is what exhibit number?
10 Mine are not marked.

11 A. Exhibit Number 7.

12 Q. Number 7 is the lower Morrow "B"?

13 A. Yes, sir.

14 Q. Okay. When I look at the cross-section, show me
15 the top and the bottom of the interval you're isopaching on
16 Exhibit 7, using the Nearburg well.

17 A. Using the Nearburg well, it's essentially the
18 zone that's shown in the perforations there.

19 Q. All right, nothing else?

20 A. Nothing else.

21 Q. Did you make an isopach of the main sand interval
22 that is just above that, that was produced in the Llano
23 "34" State Com well?

24 A. Prior to drilling the well, yes. I made -- not a
25 separate isopach of that zone. I made an isopach of the

1 lower Morrow "B" interval and the upper Morrow "B"
2 interval.

3 Q. All right. The prior isopach would have
4 corresponded to the identification on the far right of the
5 cross-section?

6 A. That's correct, on either side, yes.

7 Q. Since drilling the Nearburg well with that new
8 data point, have you attempted to isopach the interval that
9 was produced in what we now call the EOG well in the
10 southeast quarter of 34?

11 A. No, I have not split out that sand, because it is
12 not present in our wellbore.

13 Q. So you've chosen not to isopach?

14 A. That's correct.

15 Q. So at this point you don't know the size and the
16 shape of the sand package that was produced in the EOG
17 well?

18 A. We do know it's not present in the northeast
19 quarter.

20 Q. And why do you know that? It appears to be so on
21 your cross-section.

22 A. No, the --

23 Q. We're not talking the same thing, are we?

24 A. No, the zone is present, but it is not a
25 productive zone.

1 Q. How will you know that until you perforate it?

2 A. Well, we have data that indicates the zone is
3 very low in permeability.

4 Q. All right. So at this point am I correct in
5 understanding that Nearburg at no point in the future will
6 perforate that interval?

7 A. That's correct.

8 Q. You're going to go with what we have identified
9 as your portion of the lower Morrow B --

10 A. That is correct.

11 Q. -- which open to perfs now?

12 A. And anything above in the Morrow "A" zone.

13 Q. Which is the other isopach?

14 A. That's correct.

15 Q. Let's look, then, at the isopach interval that
16 corresponds to the perforations in the lower Morrow on the
17 Nearburg well. It's Exhibit 7. Have you got it?

18 A. Got it.

19 Q. I'm looking for your control as to the size and
20 the shape of this lens that you've isopached, and what I'm
21 looking for is the control to the west of the well that
22 causes you to put net acres in the northwest quarter of 34.
23 What's your control for doing that?

24 A. The only control I have for that is the well in
25 Section 27.

1 Q. Okay. Would it be an alternative geologic
2 interpretation to orient this pod so it is north-south and
3 therefore the control well in Section 27, which is on the
4 north of your pod, could in fact be the west control point
5 for the pod with that different orientation?

6 A. No, sir, based upon the data that I had, this is
7 the way I would have mapped it.

8 Q. All right, I understand this is your preference.

9 A. No, this is the way I would have mapped it,
10 regardless.

11 Q. What is the control that tells you that you've
12 got thickness of 10 feet projecting into the northwest
13 quarter?

14 A. Just an interpretation of the well in the south
15 half of Section 27.

16 Q. All right, there is no control point here?

17 A. There is some porosity in that well, and there's
18 no porosity in the wells in the south half of Section 34.

19 Q. In doing your preparation of your geology, I'm
20 looking at an interpretation that's dated March of this
21 year, Exhibit 7. That's what we're looking at. Your data
22 on the bottom of the code here, do you see that? It says
23 March of this year.

24 A. Which exhibit are you referring to?

25 Q. Number 7. Bottom right corner, it's got your

1 name, it's got a date. Mine says 6 of 2001.

2 Q. Mine says 3. Oh, I see what you've got. I
3 apologize. I have Mr. Carr's set that he produced in the
4 subpoena.

5 A. You have a new set that was given to you
6 yesterday, and that's what you --

7 Q. This is a prior set, so the --

8 A. I do not have that with me, so I --

9 Q. Well, what I'm asking you, is the difference
10 between what you have produced today --

11 A. Okay, the only difference on this particular map
12 is that I just added the BTA well onto the cross-section,
13 so the only thing that changes is the line of cross-section
14 on that particular map.

15 Q. So --

16 A. That is it.

17 Q. Okay. And that's true of the other exhibits too?

18 A. That is not correct. We haven't got to the other
19 exhibits, and I can show you what has been changed on that.

20 Q. On Exhibit 7, from the one produced in response
21 to the subpoena to the one now, there's no change except
22 you've added the BTA well in the line of cross-section
23 showing that?

24 A. That's correct.

25 Q. Okay. Prior to the addition of that well, did

1 you have any other geologic interpretation of this interval
2 after the well was drilled?

3 A. No, sir.

4 Q. Has this consistently been your interpretation?

5 A. Yes, sir.

6 Q. Is this the interpretation you showed the Land
7 Office?

8 A. I didn't show the Land Office any geology.

9 Q. Is this the geology you provided to Holland and
10 Hart so they could show it to the Land Office?

11 A. I do not know what was shown tot he Land Office.

12 Q. Let's look at Exhibit Number 2 that Mr. Shelton
13 sponsored. Do you have a copy of that, Mr. Gawloski? If
14 you'll turn to Tab 13 for me -- Do you see Tab 13?

15 A. Yes, sir.

16 Q. And you see the January 23rd letter from the Land
17 Office back to Holland and Hart? Do you see that?

18 A. Uh-huh.

19 Q. Do you see the second sentence? It says, "only
20 because of the unique geology and other special
21 circumstances." Do you see the word "geology"?

22 A. Yes, sir, I do.

23 Q. Where does that come from? Did you supply the
24 displays that were given to the Land Office?

25 A. I'm not aware of that, sir.

1 Q. You didn't?

2 A. I do not know if I did.

3 Q. The displays we're seeing today, Exhibit 7, which
4 now has a date of 6 of this year, when did you first form
5 this opinion and reduce it to paper?

6 A. This map was constructed after the Nearburg well
7 and the BTA well were completed -- were drilled and I have
8 gotten the data for it to construct this map.

9 Q. When did you do that, sir?

10 A. Probably -- it was probably a month -- well, when
11 you have -- That map was probably the first version that
12 you have, the one that you have dated prior to this.

13 Q. Was the subpoenaed map that said March of the
14 year 2001?

15 A. That's correct.

16 Q. You did not have an interpretation on paper prior
17 to that time and post-drilling?

18 A. Not of this sand, no, sir.

19 Q. Do you have any idea where the Land Office came
20 up with this statement about unique geology, regarding your
21 well?

22 A. I do not know.

23 Q. You were the -- what I would call the drilling
24 geologist. You put together the prospect, and this is your
25 geology upon which the well was located and drilled?

1 A. That's correct.

2 Q. Okay. What did you do in order to reach that
3 opinion about drilling the well?

4 A. I do what I normally do when I propose a Morrow
5 location for Nearburg.

6 Q. And you would look at data points in the Morrow
7 formation, wouldn't you?

8 A. That's correct.

9 Q. And what did you have available to you?

10 A. I had essentially all the wells except the BTA
11 Burgundy well and of course our own wellbore. All the
12 other wells in here -- within Section 26, 27, 28, 33, 34,
13 35, 2, 3 and 4, and that area right there is drilling up to
14 the north, that's not --

15 Q. Other than looking at the logs that are available
16 for those wells, you do need further research about those
17 wells?

18 A. Yes, we dig through the scout tickets and look at
19 those, and producing intervals.

20 Q. Do you check the well files at the OCD?

21 A. Yes, sir, we do.

22 Q. Did you do it in this case?

23 A. Yes, we did.

24 Q. You did?

25 A. (Nods)

1 Q. What did you check?

2 A. What did I check?

3 Q. Uh-huh.

4 A. I check for the producing zones, I go through and
5 check all the testing information. I don't look at really
6 anything else, except sometimes there's additional
7 information that you can't get off a scout ticket on the
8 producing zones, and actually you can find some of those in
9 the OCD files, and that's I look for.

10 Q. In February of the year 2000 -- That's the month
11 the APD was filed, right?

12 A. I'll go with you on that.

13 Q. Well, you don't have to go with me, it's in the
14 Exhibit Tab 3.

15 A. Okay, if that's part of the record --

16 Q. Yes, sir, it is.

17 A. -- that's correct. Okay.

18 Q. It says it was prepared on February 23rd?

19 A. Okay.

20 Q. I'm looking at February as a time frame. I
21 assume the APD is filed in response to your geologic
22 opinions and conclusions, right?

23 A. And in the proration unit of the lease that was
24 bought at the lease sale.

25 Q. Did you check the OCD records to see what was

1 available to you for a spacing unit in Section 34?

2 A. No, I did not.

3 Q. Did you check to see which wells were in the gas
4 storage unit?

5 A. Before the well was drilled --

6 Q. Yes, sir.

7 A. -- I did not, no.

8 Q. You didn't check the status of those Morrow
9 wells?

10 A. I check the status of the Morrow wells, but I can
11 do that from *Dwight's Production*, and it's not -- The
12 production you don't get from the OCD files. You get the
13 production from companies that put the production together.
14 The OCD files, after the well is completed and the C-104s
15 and C-105s, they don't keep up with production.

16 Q. Doesn't *Dwight's* disclose to you that these are
17 gas injection withdrawal wells in a storage unit?

18 A. No, it shows -- It will give the cumulative
19 production of the well.

20 Q. Do you check OCD rules for the pools in the area
21 that you're --

22 A. Not normally.

23 Q. You don't do that?

24 A. No, sir, I don't, not normally.

25 Q. You didn't -- Where does the indication on the

1 application for permit to drill come from that declares
2 this to be East Grama Ridge-Morrow; is that your work?

3 A. I don't do the filing for that.

4 Q. Okay.

5 A. If somebody comes and asks me, then I will supply
6 that information. But to my knowledge, nobody had done
7 that.

8 Q. Let's look at your cross-section -- or, I'm
9 sorry, your structure map. Tell me what number that is,
10 please.

11 A. Number 9.

12 Q. Nine. What's the red line running northeast to
13 southwest through a portion of Section 33? What's that?

14 A. That's a fault.

15 Q. Okay, and how did you locate it there?

16 A. Basically from the well control. The well in
17 Section 28 is upwards of 900 feet downdip from the wells in
18 33 and 27 and twenty-ni- -- and Section 27.

19 Q. All right.

20 A. The exact placement of that could move a little
21 ways east and west from there, but we have the well control
22 to show that right there.

23 Q. In 1979 and since then, are you aware of the
24 acreage that's in the Grama Ridge-Morrow Gas Pool?

25 A. Can you rephrase that -- I mean, could you say

1 that again?

2 Q. Yeah. In the Grama Ridge-Morrow Gas Pool -- not
3 the East Pool, the Grama Ridge Pool -- do you know what
4 acreage is in that pool?

5 A. No, I do not.

6 Q. For the East Grama Ridge-Morrow Gas Pool, do you
7 know what acreage is in that pool?

8 A. No, I do not.

9 Q. Do you know that pool splits Section 34, east
10 half, west half?

11 A. Well, I do now, yes.

12 Q. Did you know it at the time --

13 A. No, I did not.

14 Q. -- you were working on the APD?

15 Have you read any of those orders?

16 A. No, it's not my purpose as a geologist to read
17 many of the orders.

18 Q. Let me show you -- Mr. Gawloski, if you'll turn
19 to Order Number R-5995, page 2, look at finding number (6)
20 with me. Do you understand finding number (6), Mr.
21 Gawloski?

22 A. Yes, I do.

23 Q. Do you see the western portion of the Grama Ridge
24 is decided by the Division and predicated on the upthrown
25 fault that you have depicted in Section 33?

1 A. Uh-huh, and when was this order --

2 Q. 1979.

3 A. Okay. Well, subsequent to that there have been
4 two wells drilled in here --

5 Q. Okay.

6 A. -- that show it to be almost flat, and I believe
7 if they had this data they would not have made this
8 statement.

9 Q. When we look at the other finding, they say an
10 east boundary of that pool is used to separate it from what
11 becomes the East Grama Ridge-Morrow Gas Pool?

12 A. I see what they say, yes.

13 Q. They have concluded there was a fault splitting
14 Section 34, east half, west half, and you don't account for
15 it here?

16 A. No, I don't. In my geological opinion there is
17 no fault. There's very, very little difference in
18 structure through this entire Section 34, less than -- what
19 is that? Sixty feet structure across Section 34. That is
20 no basis for a fault.

21 Q. What separates your Exhibit 7 isopach, then, from
22 the gas storage unit?

23 A. The well control to the south shows it to have
24 zero in it. And we can demonstrate the size of this
25 reservoir by our engineering data that will be supplied to

1 you coming up with our next witness.

2 Q. Okay. Let me go back to the structure map,
3 Exhibit -- I'm sorry, the cross-section, Exhibit 6. I'm
4 looking now at the Llano well in 34, State Com 1.

5 A. Yes, sir.

6 Q. All right? We've looked at the lower
7 perforations. That's a portion that you didn't isopach
8 yet. We come up to the upper perforations in 4 of 1984?

9 A. Yes.

10 Q. Have you isopached that interval?

11 A. Prior to when the well was drilled, I isopached
12 the entire upper Morrow "B".

13 Q. Yes, sir. Afterwards did you do the --

14 A. Afterwards I did not isolate these sands, because
15 it was a nonproductive zone in our Grama Ridge East well.
16 I do not isopach zones that we don't have interest in. I
17 have lots of things to do.

18 Q. Well, I'm just curious in what contribution, if
19 any, has been shared in the east half as we go through this
20 various family of lenses in the Morrow --

21 A. Well, we have --

22 Q. -- looked at --

23 A. -- our rock data shows that that zone is not
24 productive in our well.

25 Q. The EOG well has 4 BCF of gas cum production,

1 right?

2 A. It has 4.1.

3 Q. Yeah, where did that come from?

4 A. Well, it came from both sets of -- well, actually
5 all three sets of perforations. They did not break it
6 apart. The well came on, and they worked the well over in
7 1984, so there is production out of all of these intervals
8 in here that have been perforated. None other than those,
9 that I'm aware of.

10 Q. Mr. Gawloski, are you aware of any other instance
11 where the Division has subdivided the lower Morrow as
12 you're proposing to do in terms of allocation to spacing
13 units?

14 A. No, I'm not aware of that.

15 MR. KELLAHIN: All right, sir. No further
16 questions.

17 EXAMINER STOGNER: Thank you, Mr. Kellahin.

18 Mr. Hall?

19 EXAMINATION

20 BY MR. HALL:

21 Q. Briefly, Mr. Gawloski, let me clarify one thing.
22 We're in agreement, are we not, that the unitized formation
23 dedicated to the gas storage project area is the entirety
24 of the Morrow formation; do you agree?

25 A. It's the interval from this blue marker down. It

1 does not cover the Morrow "A" interval. This is still part
2 of the Morrow, but not part of the main Morrow clastics
3 interval.

4 Q. All right, now you're speaking of a specific
5 storage, and I'm speaking of the unitized formation as
6 defined --

7 A. Okay.

8 Q. -- in the unit agreement.

9 A. Okay, the Morrow does cover all of that, yes.

10 Q. Okay, and could we agree that the unitized
11 formation consists of the entire --

12 A. Yes.

13 Q. -- vertical extent? All right.

14 A. Yes.

15 MR. CARR: I think that you need to establish if
16 he knows what the unit agreement is. You may be taking him
17 into areas he doesn't know.

18 Q. (By Mr. Hall) Do you not know?

19 A. I don't know what's in the unit agreement, no. I
20 just know what the boundary is geologically because that's
21 my expertise: this marker here, down.

22 Q. And I want to clarify something else in the event
23 the Examiner wishes to reconcile the testimony in this case
24 with the evidence in Case Number 12,588. Isn't it the
25 case, if you know, that different operators have used

1 different nomenclature to identify this area as Morrow
2 sand?

3 A. I'm sure there is, yes.

4 Q. And for instance, what you've identified 6 as
5 the Morrow "A" sand, others have identified as Morrow
6 clastics, for instance?

7 A. Yeah, they can use -- They use many different
8 terminologies, yes.

9 Q. All right. Also on Exhibit 6 you show the
10 existence of a perm barrier between the Burgundy Number 1
11 and the Grama Ridge East "34" State Number 1. Do you see
12 that there?

13 A. Yes.

14 Q. And so that's located to the east side of the
15 East "34" State Number 1 well; is that --

16 A. That's correct.

17 Q. Is there a similar barrier to the west side of
18 the East "34" State Number 1 well?

19 A. In this particular zone? We have no evidence of
20 that, no, except the fact that Section 27 is almost
21 completely gone, so there's -- I mean, it's not even fair.
22 Okay? The well up in 27, it's not necessarily a perm
23 barrier, but the zone is completely gone.

24 Q. So the sand pinches out to the west?

25 A. Correct.

1 Q. Other than the pinchout, where the sand does
2 exist, is there any other barrier, any sort of barrier
3 between the "34" State Number 1 well and the acreage to the
4 west?

5 A. No. I mean, you can see that there's no more
6 well control there that -- You can't say that, you don't
7 know.

8 Q. All right. In your opinion, is the "34" State
9 Number 1 well draining reserves from the northwest quarter
10 of Section 34?

11 A. Probably from the zone that we're in, there's
12 probably some limited drainage. And we can get -- Our
13 reservoir engineer will get into that discussion in detail.

14 Q. If you know, Mr. Gawloski, has Nearburg taken the
15 position in the past that the East "34" State Number 1 well
16 and the storage unit were fault-separated?

17 A. There is -- At one point we talked about the
18 possibility of fault separation or permeability barrier.
19 And subsequent to the drilling of our well and the BTA
20 well, I believe that it is not a fault and it is a
21 permeability barrier.

22 Q. So there is a permeability barrier to the west of
23 the 34 State Number 1; is that your --

24 A. Yes, but it's in a different -- actually it's
25 over to the south. I don't know about to the west. We

1 MR. HALL: Yes, it addresses the potential for
2 future development in the Morrow formation within the unit
3 project area.

4 EXAMINER STOGNER: So it did narrow it down to an
5 interval within the Morrow, as far as the injection
6 portion?

7 MR. HALL: The actual storage interval is
8 probably less than the entirety of the unitized formation,
9 but I believe the testimony, Mr. Examiner, was, that there
10 was a need to provide for the integrity of the Morrow, both
11 above and below the storage interval, in the event there
12 was further development, further recompletions, perhaps
13 fracture stimulation, something like that, which might
14 result in communication with the storage interval.

15 EXAMINER STOGNER: But that did not include -- or
16 preclude anybody from going in and exploring the Morrow,
17 but it did preclude them from getting gas or obtaining gas
18 from that injection interval; was that my understanding or
19 memory?

20 MR. HALL: The stipulated order provided to you
21 provides there will be no more completions in the unitized
22 formation.

23 EXAMINER STOGNER: That would have been the whole
24 Morrow formation?

25 MR. HALL: Right.

1 EXAMINER STOGNER: That's what I was trying to
2 remember, if the whole northwest quarter of this section
3 now is off limits as far as the Morrow goes.

4 MR. HALL: I think what you need to do is look at
5 the definitions of unitized formation. They are --

6 EXAMINER STOGNER: I don't have it with me,
7 that's --

8 MR. HALL: I do, if you'd like to see that. Or I
9 can make it available to you later. They are based on log
10 picks for the state unit agreement and the federal unit
11 agreement.

12 EXAMINATION

13 BY EXAMINER STOGNER:

14 Q. My question of Nearburg is going to be, do they
15 have any plans to develop the Morrow in the northwest
16 quarter?

17 A. No, sir, we do not.

18 Q. Why not?

19 A. Basically we believe that the zone that we're in
20 right now is of limited extent, and our reservoir engineer
21 will demonstrate that, and we feel it doesn't extend very
22 far into that quarter that would justify enough reserves to
23 drill a well there.

24 Q. Well, according to Exhibit 7 and 8, it looks like
25 there's quite a bit of reservoir over there.

1 A. Well, our reservoir engineer will get into what
2 he thinks this well is going to produce and the -- how he
3 feels -- how far this is going to be. And he will
4 demonstrate that this actually mapped quite optimistically.
5 It's not even as big as it's going to show, and he could go
6 through that data with you.

7 EXAMINER STOGNER: I have no other questions of
8 this witness.

9 Does anybody else have any questions?

10 MR. KELLAHIN: No, sir.

11 EXAMINER STOGNER: You may be excused.

12 I need to take about 10-minute recess at this
13 point.

14 (Thereupon, a recess was taken at 2:55 p.m.)

15 (The following proceedings had at 3:12 p.m.)

16 EXAMINER STOGNER: Hearing will come to order.

17 Mr. Carr?

18 MR. CARR: Mr. Stogner, at this time we call
19 George F-r-i-e-s-e-n.

20 GEORGE FRIESEN,

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

23 EXAMINATION

24 BY MR. CARR:

25 Q. State your full name for the record, please.

1 A. George Friesen.

2 Q. Mr. Friesen, where do you reside?

3 A. Midland, Texas.

4 Q. By whom are you employed?

5 A. I'm a self-employed consulting engineer.

6 Q. And what is your relationship with Nearburg?

7 A. Reservoir engineer for Nearburg.

8 Q. Have you been asked to perform some engineering
9 services for them?

10 A. Yes.

11 Q. When were you employed?

12 A. I've worked at Nearburg since about the middle of
13 November of 2000, about 7 1/2 months.

14 Q. And when were you first asked to look into the
15 issues that you're testifying here today?

16 A. This Thursday afternoon, about three o'clock in
17 the afternoon.

18 Q. You were the engineer we could find; is that fair
19 to say?

20 A. (Laughter) Well, I hope not. I hope it didn't
21 come to that.

22 Q. Have you previously testified before the New
23 Mexico Oil Conservation Division?

24 A. No.

25 Q. Could you summarize for us your educational

1 background?

2 A. Yes, I have a bachelor of science degree in
3 petroleum engineering from the University of Wyoming, 1976,
4 and have 25 years of diversified reservoir engineering, 20
5 of which have been here in the Permian Basin.

6 Q. Are you familiar with the Application filed in
7 this case on behalf of Nearburg?

8 A. Yes.

9 Q. And are you familiar with the history of the
10 Grama Ridge East "34" State Well Number 1?

11 A. Yes, I am.

12 Q. And in the last 48 hours have you made an
13 engineering study of the well which is really the subject
14 of this hearing, the Nearburg well in the northeast of
15 Section 34?

16 A. That's correct.

17 Q. Are you prepared to share the results of your
18 work with the Examiner?

19 A. Yes, I am.

20 MR. CARR: Mr. Stogner, we'd tender Mr. Friesen
21 as an expert witness and reservoir engineer.

22 EXAMINER STOGNER: Any objections?

23 MR. KELLAHIN: No, sir.

24 EXAMINER STOGNER: Mr. Friesen is so qualified.

25 Q. I think, Mr. Friesen, first I'd like to ask you

1 some questions about well performance, and I'd ask you to
2 refer first to what has been marked as Nearburg Exhibit
3 Number 10, the P/Z curve?

4 A. Yes, sir.

5 Q. Would you review the information on this exhibit?

6 A. Yes, I will. What this exhibit shows, this is a
7 plot, which I'm sure you're all familiar, cumulative gas
8 production versus P/Z.

9 Now, the two pressure points that I'm using
10 here -- neither of which are static reservoir pressures;
11 they're actually a little bit too low -- the first point is
12 calculated on a bottomhole flowing pressure when the well
13 first came on, within the first day, and the second point
14 is the bottomhole pressure, but it's after a 70-hour shut-
15 in.

16 And the reason that I prepared this was, this
17 gives me at least a floor to work on in terms of reserves,
18 this well. And what this shows is that the well has an
19 estimated ultimate recovery of just slightly over a BCF,
20 between 1 and 1.1 BCF.

21 Now, the well has a cumulative production through
22 May of this year of 1 BCF, so obviously this is too low.
23 But it's too low because they're not static pressures. But
24 -- And I don't have any data or way of calculating this,
25 but based on my experience in using this type of data, it's

1 based on pressures that are nonstatic, I would say in this
2 case you're probably looking at another .3, possibly
3 another .6 of a BCF. So based on this exhibit, my
4 experience, I'd say you're looking at a well with 1.4 to
5 1.6 BCF.

6 Q. All right, Mr. Friesen, let's go to Exhibit
7 Number 11, the graph showing tubing pressure flowing rate
8 versus time.

9 A. Yes, and what this shows is, this is really just
10 a little bit of data from the well, again to show the
11 limited extent of the reservoir.

12 The red line shows the flowing tubing pressure,
13 and it shows it from when the well first came on in June of
14 2000 to now, the end of June, 2001. That's about the 23rd,
15 is that last piece of data. And it shows that the tubing
16 pressure has gone from 5300 pounds down to 650 pounds. So
17 what we've lost is 4650 pounds on the surface, or
18 approximately 88 percent of the flowing pressure.

19 Now, the black dashed line is the rate from the
20 well, and it originally came on about 1.7 million a day.
21 Nearburg increased the rate up to 5 million a day, and that
22 peaked out about September of 2000. So between September
23 in 2000 and now, about nine months, we've lost 3.9 million
24 cubic feet a day of productivity or about 78 percent in 9
25 months. So the well is depleting rather rapidly, and this

1 is just a little anecdotal evidence to support that.

2 Q. Let's go to Exhibit Number 12, the decline curve.

3 A. Okay, this is a decline curve of the Grama Ridge
4 East "34" State Number 1, production since inception,
5 approximately one year. And the upper curve, solid line is
6 labeled "gas", the next dashed line staircase condensate,
7 and then the last one is water.

8 The well exhibits -- if I honor all the data on
9 the decline -- that's the decline from 5 million down to
10 the one-point-roughly-five-million, the end of May -- if I
11 honor all of that data, it's about an 81-, 82-percent
12 decline.

13 But as we saw from Exhibit Number 11, there's a
14 little flattening there of the tubing pressure, but it's
15 still decreasing. And closely looking at the last few
16 months of production, it looks like there's a little less
17 steepening of the decline. So I believe you're looking at
18 probably more of about a 58-percent decline, and that gives
19 you 1.7 BCF, would be the estimated ultimate recovery.

20 Now, one thing to point out, that last point that
21 you see on that curve is 1.5 million a day, but by June --
22 or through June that rate declined where at the end of June
23 it was about 1.1 million a day. So if we add that next
24 data point, it's going to drop down very close to 1 million
25 a day. So my 80-percent decline may not be that far off.

1 But I nonetheless feel like the data given, the 58-percent
2 decline of the 1.7 BCF is a good estimate of reserves.

3 Q. Is there any way to convert this information into
4 an acreage drainage?

5 A. Yes, I did. I backed out the acreage, and that
6 equates to 140 acres drainage area of 10 foot thick. And
7 that average thickness comes off the planimetered results
8 of Nearburg's Exhibit 7, which is the isopach map that Mr.
9 Gawloski prepared.

10 Q. Has volumetric work been done on this particular
11 well and reservoir?

12 A. Yes, Haas Petroleum Consultants does Nearburg's
13 reserve estimates, and Exhibit 13 is part of a page out of
14 their book as of 1-1-2001. And I apologize, difficult to
15 read this exhibit, but, you know, given the short time
16 circumstances they faxed this to me, and I've reviewed all
17 of the data, which is across the very top line of that
18 exhibit, the engineering data that goes into their
19 calculations. And as of 1-1-2001, their volumetrics show 3
20 BCF of recoverable reserves.

21 Now, the only thing that I can see here that I
22 would have exception to is their thickness, which they use
23 16 feet over 160 acres, and that 16 feet is the peak
24 thickness. That map, that isopach that Mr. Gawloski
25 prepared, shows a peak thickness of 16 feet, and then it

1 feathers down to five feet, which is our minimum pay
2 contours. And the average over that 160 feet, when you run
3 the planimeter over it, is 10 feet.

4 So making that one adjustment, 16 down to 10
5 feet, cuts their reserve by about a third or makes that
6 roughly about 1.9 BCF. And --

7 Q. When I look at Exhibit 13 --

8 A. Okay.

9 Q. -- they have allocated or attributed production
10 by zone; is that correct?

11 A. That's correct.

12 Q. And they're looking only at what here, the GRE
13 sand?

14 A. That's for the GRE sand, they're numbers that I'm
15 just quoting.

16 Q. The rest of the Morrow "B" has no production
17 attributed to it?

18 A. That's right, no reserves to the rest of the
19 Morrow "B".

20 Q. Mr. Friesen, when I listen to your testimony, we
21 have a number of factors. We have 1.1, 1.7, 1.9 as the BCF
22 of recoverable reserves. We also see the volumetric work.
23 What is this telling us?

24 A. Well, really the most important tool that you
25 have here, or at least the best estimate of reserves is

1 going to come from one of these performance indicators.
2 The decline curve, I feel, is the best. It gives us,
3 certainly, a good look at what the reservoir performance
4 will be. It's declined quite rapidly. The P/Z, as I
5 mentioned, is too low. However, I believe that when you
6 make those adjustment I was talking about, you come out
7 pretty close to the 1.7 BCF.

8 And then on Haas's estimate of volumetric
9 reserves, they didn't have the data that we have today.
10 Their data would have gone through December. And I'm
11 confident that when they take a look at this late this
12 year, based on the data that we have today, plus the data
13 going forward, that they'll reduce their reserves
14 substantially from the 3 BCF. In fact, as I mentioned, if
15 I make that one adjustment for thickness, put theirs about
16 1.9 BCF.

17 So all three of them are fairly close together.

18 Q. What does this tell you in terms of the way this
19 reservoir has been mapped, the geological maps?

20 A. Well, you take the adjustment to Haas's map, 1.9
21 BCF, that's going to back into about 165 acres drainage
22 area, again being the ten-foot thick. And what we're
23 looking at here, based on Mr. Gawloski's Exhibit 7, is that
24 actually it's drawn too large, that actually that reservoir
25 is probably in the size of 140 to 165 acre.

1 Q. And so how much -- A third too large?

2 A. It's roughly about a third too large. The
3 volumetrics on Mr. Gawloski's map come out to be 2.7 BCF.

4 Q. And you think it's more reasonable to fall in the
5 range of 1.7, 1.9?

6 A. I think the 1.7 to 1.9 is what we're looking at,
7 which would make Mr. Gawloski's map about a third --
8 roughly a third too large.

9 Q. Okay, what conclusions can you reach from your
10 work on the area?

11 A. Well, that GRE sand is definitely limited in
12 size. It's rather prolific reservoir, rate was very good,
13 but it hasn't been able to hold up. It's on a 50-percent
14 decline -- actually, if I honor all the data, an 80-percent
15 decline, which is very steep. It's going to be limited in
16 size.

17 There can't be any contribution from the
18 southeast quarter of Section 34, it's all coming from the
19 northeast quarter, in my opinion the northeast quarter of
20 the section.

21 Q. Were Nearburg Exhibits 10 through 13 prepared by
22 you?

23 A. Yes. Ten through 12 were, and 13 an exhibit
24 faxed.

25 Q. Have you reviewed 13?

1 A. Yes, I have.

2 Q. And is it, in your opinion, accurate --

3 A. Yes, except --

4 Q. -- for what it is?

5 A. Yes, except for that one part on the thickness
6 that I had a difference with. Good estimates were used
7 there.

8 MR. CARR: Mr. Examiner, we'd move the admission
9 of Nearburg Exhibits 10 through 13.

10 EXAMINER STOGNER: Any objections?

11 MR. KELLAHIN: No, sir.

12 EXAMINER STOGNER: Exhibits 10 through 13 will be
13 admitted into evidence.

14 MR. CARR: And that concludes my direct
15 examination of Mr. Friesen.

16 EXAMINER STOGNER: Thank you, Mr. Carr.

17 Mr. Kellahin, your witness.

18 MR. KELLAHIN: Thank you, sir.

19 CROSS-EXAMINATION

20 BY MR. KELLAHIN:

21 Q. Exhibit 7, Mr. Friesen --

22 A. Yes, sir.

23 Q. -- is Mr. Gawloski's isopach of this interval
24 perforated in the Nearburg well?

25 A. Uh-huh.

1 Q. Have you attempted to calculate the original gas
2 in place using his size and shape of the reservoir for that
3 sand stringer?

4 A. Yes, I have, that was the 2.7 BCF.

5 Q. Okay, 2.7 is not the recovery, it's the gas in
6 place --

7 A. I'm sorry, I'm sorry, I'm sorry. The 2.7 BCF is
8 the reserves, it's the recovery.

9 Q. All right, so what's the original gas in place,
10 looking at his map?

11 A. Let's see here. The original gas in place would
12 be 3.3 BCF.

13 Q. What percentage of recovery are you using?

14 A. It should work out to 82 percent here. Yes, sir,
15 82 percent.

16 Q. Your opinion about there being no contribution
17 from the southeast quarter of 34 is exclusively predicated
18 on Mr. Gawloski's map, isn't it?

19 A. That's correct, that's what I use, is his map.

20 Q. That's right, and you're simply repeating his
21 opinion?

22 A. No, I mean, that's my opinion. I take --
23 well, my opinion -- I take what the geologists give me --

24 Q. I'm sure you do.

25 A. -- that's what I work with, yes, sir.

1 Q. You don't know the shape, you're just trying to
2 confirm the size?

3 A. That's correct, I can confirm the size but I
4 cannot tell you the shape of it. I have to rely on the
5 geologist for that.

6 Q. You've got two pressure data points on your P/Z
7 curve?

8 A. That's correct.

9 Q. And I don't have it in front of me, but that
10 doesn't matter. Tell me the first pressure point, recently
11 after completion, you get a bottomhole pressure?

12 A. Yes, sir, but what I did there, I calculated the
13 flowing bottomhole pressure based on the flowing surface
14 pressure.

15 Q. All right, you used surface pressure to calculate
16 bottomhole. Did you do the same thing on the second
17 pressure point?

18 A. No, the second pressure point is an actual --

19 Q. Was it shut in?

20 A. -- bottomhole, but it's only after 70 hours, so
21 it hasn't completely built up to the static pressure, which
22 would be higher than that value.

23 Q. And that's why you characterize your P/Z curve as
24 being a floor. It gave you a 1.1 --

25 A. Well, it's too low, because the well has already

1 cum'd a BCF and, you know, we're -- actually if you take
2 the number as it is, it's between 1 and 1.1 BCF. So it's
3 not -- I said floor, but really it's not -- It's way too
4 low, or it's too low. And then what I do with that, it
5 still doesn't make it an unuseful tool. I think it's a
6 useful too, but I you just -- and I can't make a
7 calculation, and I just have to rely on my experience there
8 with using these kinds of things.

9 Q. I was just trying to understand what you meant by
10 a floor.

11 A. To make an estimate of what I think it would be.

12 Q. Knowing that it is conservative and it would
13 probably be low as to what the actual well will ultimately
14 do?

15 A. Well yes, sir, it's low, that's correct. The
16 well will make more than 50 million cubic feet of gas from
17 -- which is what you would have from that Exhibit 11 .

18 Q. In studying how the well the well had been
19 produced, has the operator changed the choke setting to
20 change its producing rate?

21 A. It has changed a little bit. In fact, to get
22 that rate up to 5 million, what they did, they opened the
23 choke up on the well.

24 Q. What's the choke setting now, do you know?

25 A. Possibly. I may have something on that, let me

1 check. No, I'm not going to have -- I thought this piece
2 of paper might have it, but it doesn't have the choke
3 setting.

4 Q. Have you studied this enough yet to know what is
5 the optimum producing rate choke setting put on the well?

6 A. No, sir, I have not.

7 MR. KELLAHIN: No further questions, thank you.

8 EXAMINER STOGNER: Thank you, Mr. Kellahin.

9 Mr. Hall, your witness.

10 MR. HALL: No questions, Mr. Stogner.

11 EXAMINER STOGNER: Mr. Carr, any redirect?

12 MR. CARR: No, I have no redirect, Mr. Stogner.

13 EXAMINER STOGNER: Okay, I have no questions of
14 this witness. Are there any questions of --

15 MR. BROOKS: I have no questions.

16 EXAMINER STOGNER: You may be excused, thank you.

17 MR. KELLAHIN: Mr. Stogner, I'd like to move the
18 introduction of Redrock's Exhibits 1 and 2.

19 EXAMINER STOGNER: Any objections?

20 MR. CARR: No objection.

21 EXAMINER STOGNER: Exhibits 1 and 2 submitted by
22 Redrock Operating is hereby accepted.

23 Guess we're ready for closing statements; is that
24 correct?

25 MR. KELLAHIN: Yes, sir. I believe it's the

1 Applicant's prerogative to go last, Mr. Examiner.

2 EXAMINER STOGNER: Mr. Hall, I'll allow you to go
3 first.

4 MR. HALL: I have no statement at this time, Mr.
5 Examiner.

6 EXAMINER STOGNER: Okay, Mr. Kellahin?

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

8 There are a number of points I'd like to refresh
9 your recollection on. I think they're policy decisions and
10 matters of precedent forced on you by this case. But let
11 me clear up some of the smaller points first, and then
12 let's talk about the big problem.

13 First of all, Mr. Shelton testified about Mr.
14 Cashon's prior involvement as a representative of the gas
15 storage company in its discussions with Nearburg about
16 communication. The implication, I think, is that as a
17 participant in Redrock he has an override in the southeast
18 quarter. I would hope you draw no connection between the
19 two, because there is none. Mr. Cashon's responsibility
20 for the gas storage company was to protect it from being
21 drained or communicated with by Nearburg or anyone else,
22 and that's the sole objective of his employment. The fact
23 that he has a share of an override in the southeast quarter
24 is of no consequence with regards to his participation on
25 behalf of the unit.

1 What I think we need to focus on is what Nearburg
2 as an experienced oil and gas operator ought to do.
3 Nearburg as an operator should not rely upon the Oil
4 Conservation Division to catch Nearburg's mistakes, nor is
5 it an excuse that because the Division failed to catch it,
6 that they now ought to be granted a nonstandard proration
7 unit.

8 They shouldn't rely on the Division to catch
9 their mistakes, but Mr. Shelton testified that's exactly
10 what Nearburg expects to do, and he thinks he's going to do
11 it again. He proposes no change of policy, form or conduct
12 or procedure by his company by which they'll do their own
13 due diligence so that we don't have to come forward today
14 and deal with this kind of problem.

15 And as he deals with the problem and Nearburg
16 tries to figure out how they're going to extract themselves
17 from this difficulty and from the Division's oversight in
18 not catching it, what do they do?

19 The Division tells them in July of the year 2000
20 that they've got a problem and they've got to fix it. It
21 is not until January 8th, some six months later, do they
22 take action and file with the Division and you an
23 Application to seek a nonstandard proration unit. It
24 simply is consistent in the behavior that they're trying to
25 ignore the problem.

1 It's just not going to go away. You're going to
2 have to decide this, Mr. Stogner. And they want to deflect
3 your decision by crafting a geologic defense. And I want
4 to show you how meaningless that is. Let's take a moment
5 and look at the cross-section that Mr. Gawloski gave you.
6 It's Exhibit Number 6. It won't take but a minute.

7 Your obligation is to protect correlative rights,
8 among other things. It doesn't matter who owned what, when
9 or how: Here is what historically has happened in the east
10 half of Section 34. What is now the EOG well shared its
11 production on a 320-acre basis with the people, whoever
12 owned it then, in the northeast quarter.

13 But look what Mr. Gawloski told us. When you go
14 through the various lenses of the Morrow, upper and lower,
15 he has told us that his production that he now has open is
16 not having aid of contribution from the southeast quarter.
17 But look at the next zone up, the big zone, the one that
18 got 4 BCF out of the Llano well. He tells us the northeast
19 quarter had no contribution. He's confirmed that with his
20 wellbore. And yet historically all that production has
21 been shared. He now wants to carve himself out.

22 The problem is, that establishes a substantial
23 problem with how we administer the Morrow. We don't
24 subdivide the Morrow. We are being asked to subdivide the
25 middle Morrow and take a lens out, and let the second well

1 that's drilled produce that lens and not to share. What we
2 are effectively doing is circumventing what we all know is
3 an appropriate way to develop the Morrow, historically on
4 320 spacing.

5 What did we do last year? We adopted Rule 104
6 changes. And why did we do that? To grant the necessity
7 of an infill well in the opposite 160. And why? Because
8 we all know, technical people or not, those before you know
9 that this is lenticular, it's discontinuous, it's all over
10 southeastern New Mexico. And if you grant it here as an
11 exception, you're effectively downspacing southeastern New
12 Mexico for every infill well. And it won't take me 15
13 minutes to call a bunch of people, and we'll start doing
14 this all over again.

15 You're going to have a nightmare on your hands.
16 It's a bad precedent, you shouldn't use it to fix their
17 mistake.

18 Nearburg wants you to think they're the innocent
19 victim here, when in fact it was Nearburg's own negligence
20 that made their own problem, they perpetrated their own
21 mistake, and it should not be up to you to fix it. We ask
22 that you deny their Application.

23 EXAMINER STOGNER: Thank you, Mr. Kellahin.

24 Mr. Carr?

25 MR. CARR: May it please the Examiner, I'd like

1 to give you something that we've all seen a thousand times,
2 but I'm going to refer to it in my closing argument.

3 MR. KELLAHIN: I don't need one.

4 MR. CARR: You probably do.

5 This is an interesting case. The case that Red
6 Rock is attempting to bring before you involves what
7 strikes me as an absolutely illogical disconnect. They on
8 one hand want to talk about penalizing Nearburg for an
9 alleged mistake, and on the other hand they somehow want to
10 convert this into a windfall for them, someone who has no
11 reserves to contribute to the well which is really at the
12 heart of this dispute.

13 EOG looked at this data, they didn't try to play
14 this game. They recognize that this isn't a vertical
15 segregation of the Morrow; this is a situation where they
16 had no Morrow reserves to contribute.

17 I think that when Mr. Kellahin comes up here and
18 tries to pull on your heartstrings and say, Oh, somebody is
19 really, you know, ignoring you and making a travesty of the
20 rules, all those things that he suggests, I think he's
21 trying to deflect your attention from what you are supposed
22 to do. And I think when you get to a case like this you
23 ought to do what I do, and that is, you step back and you
24 look at the framework within which these things play out.

25 You have to remember that the Oil Conservation

1 Division is a creature of statute, and its powers are
2 expressly defined and limited by the Oil and Gas Act. You
3 don't sit here like Solomon and just sort of cut up
4 somebody else's interest based on a whim. You take the
5 facts and you apply them to the law. In this case, the
6 facts are Nearburg's, because we're the only party before
7 you who has presented the facts. We have presented to you
8 engineering data, we have presented to you geological
9 interpretations. And for the purpose of deciding this
10 case, those are the facts.

11 And then you take those facts and you apply them
12 to the law. Mr. Kellahin pointed out, this is a case
13 involving correlative rights. I think you need to look at
14 the definition of correlative rights from the Oil and Gas
15 Act, Section 8. You have it before you.

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

1 The measure of correlative rights is recoverable
2 oil or gas under your property. And Redrock stands before
3 you on these facts with no recoverable reserves. And yet
4 they want you somehow to penalize Nearburg by giving them a
5 windfall. I submit to you their position is inconsistent
6 with the facts in this case, and it's inconsistent with the
7 law which empowers you to act. The evidence shows there
8 are no recoverable reserves.

9 And we can be beaten up for being the only party
10 that comes in here with any technical information, but the
11 fact of the matter is, we have established, not that we're
12 vertically segregating the Morrow formation, but there is
13 no Morrow formation down there to contribute.

14 You know, correlative rights can be impaired not
15 just as Redrock would like you to believe, by creating a
16 160-acre unit and cutting them out, the owner of nothing.
17 Correlative rights can be impaired by creating a 320-acre
18 unit. You're concerned about the interests of royalty
19 owners, overriding royalty owners, and it's appropriate for
20 you to do so.

21 But there are overriding royalty owners and
22 royalty owners in the northeast quarter of the section.
23 They own interest in property from which you can recover
24 reserves. And if you don't recognize that in this
25 circumstance, under this statute, you don't throw in

1 nonproductive acreage, then there's not much we can do.
2 Because if you don't do this, you're going to deny the
3 owners of the reserves the opportunity to produce without
4 waste their fair share.

5 Mr. Kellahin wants to go back in history and talk
6 about sharing -- the sharing argument, you know. Reserves
7 from the southeast were shared with the northeast. Well,
8 fine, that's true.

9 Correlative rights, however, is a concept where
10 it's one of the few things I know of where you wake up in a
11 new world every day. It's an opportunity to produce what's
12 under your tract. And the data changes every time a well
13 is drilled. And if it was shared by other owners in
14 another time, based on another interpretation, that would
15 not excuse this Division from ignoring the facts of this
16 case and not applying them to the applicable law. The
17 sharing argument is simply a red herring.

18 This case involves spacing units, it involves
19 drainage, we have given you information on what the
20 reservoir is going to be. You know, spacing isn't
21 sacrosanct. I mean, we have always said that spacing
22 actually follows the acreage the well will drain, and we've
23 said that in these deep zones 320 is what a well is
24 presumed to drain. I'm not even sure that notion has
25 questionable validity now, since we've pre-authorized

1 infills, so we have well -- well on each 160, in fact,
2 unless you have special pool rules in these deep zones in
3 the southeast.

4 But we do know here that we have a reservoir that
5 is being produced that contains 145 to approximately 160
6 acres, it is located in the northeast quarter of Section
7 34, there are only certain owners who are contributing
8 reserves to that well, and we submit these are the
9 individuals you're required to act to protect their rights
10 to recover their correlative rights as defined by law.

11 Now, it's a bad situation. There have been a
12 series of errors. We certainly make mistakes. The Land
13 Office didn't pick this up, you didn't pick it up, and
14 we're not blaming you for that or saying that you should
15 have. LG&E didn't pick it up. They were contracting for
16 gas that with one moment have even thought might be being
17 produced out of their own storage unit.

18 But that is all sort of the collateral stuff
19 about the edge. You've got to get back to the facts,
20 you've got to get back to the law. And what you have got
21 to do is take these facts, apply them to this case, and
22 when you do, you're going to find that you are protecting
23 correlative rights by affording to the interest owners in
24 the northeast quarter the opportunity to produce their fair
25 share of the reserves, measured by the recoverable reserves

1 under their acreage. And you won't be playing a game, you
 2 won't be giving someone production that belongs to someone
 3 else, because they have acreage that cannot contribute to
 4 the well.

5 EXAMINER STOGNER: Thank you, Mr. Carr.

6 I want to see all the attorneys out here. Let's
 7 take a recess.

8 (Thereupon, a recess was taken at 3:43 p.m.)

9 (The following proceedings had at 3:50 p.m.)

10 EXAMINER STOGNER: Back on the record at this
 11 time. I've heard the case today and closing arguments.
 12 There are some items that came up that I think are going to
 13 need further attention from me. I'm proposing to continue
 14 this case until July the 26th. That's four weeks from now.

15 Also, I have scheduled a meeting with the
 16 attorneys in this matter to bring me an update of any
 17 negotiations, any and all negotiations that are going on in
 18 this matter, for July the 19th, Thursday, at nine o'clock,
 19 unless you hear otherwise.

20 With that, this matter is hereby continued. The
 21 well can stay on at least until the July 26th date.

22 With that, today's hearing is adjourned.

23 (Thereupon, these proceedings were concluded at
 24 3:51 p.m.)

I do hereby certify that the foregoing is
 a complete record of the proceedings in
 the Examiner hearing of Case No. 12622,
 * heard by me on 28 June 2001

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 July 4th, 2001.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002