

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 CASE 9998

5
6 EXAMINER HEARING

7
8 IN THE MATTER OF:
9

10 In the Matter of Case 9998 Being Reopened Pursuant
11 to the Provisions of Division Order No. R-9093-B,
12 Which Order Temporarily Denied the Application of
13 Yates Energy Corporation to Amend Division Order
14 No. R-9093 by Expanding the Pooled Interval from
15 the Surface to the Base of the Undesignated
16 Tamano-Bone Spring Pool in Eddy County, New Mexico

17
18 TRANSCRIPT OF PROCEEDINGS
19

20 BEFORE: MICHAEL E. STOGNER, EXAMINER
21

22 STATE LAND OFFICE BUILDING

23 SANTA FE, NEW MEXICO

24 October 31, 1990
25

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1 WHEREUPON, the following proceedings were had
2 at 1:56 p.m.:

3 EXAMINER STOGNER: Call next case, Number
4 9998.

5 MR. STOVALL: In the matter of Case 9998
6 being reopened pursuant to the provisions of Division
7 Order Number R-9093-B, which Order temporarily denied
8 the Application of Yates Energy Corporation to amend
9 Division Order Number R-9093 by expanding the pooled
10 interval from the surface to the base of the
11 undesigned Tamano-Bone Spring Pool in Eddy County,
12 New Mexico.

13 EXAMINER STOGNER: Call for appearances.

14 MR. PADILLA: Mr. Examiner, I'm Ernest L.
15 Padilla, Santa Fe, New Mexico, for the Applicant Yates
16 Energy Corporation. I have one witness to be sworn.

17 EXAMINER STOGNER: Any additional
18 appearances?

19 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin
20 of the Santa Fe law firm of Kellahin, Kellahin and
21 Aubrey, appearing on behalf of Chevron, USA, Inc. I
22 have potentially two witnesses to testify this
23 afternoon.

24 (Off the record)

25 MR. CARR: May it please the Examiner, My

1 name is William F. Carr with the law firm Campbell and
2 Black, P.A., of Santa Fe. I'd like to enter our
3 appearance on behalf of Explorers Petroleum
4 Corporation; Spiral, Inc.; Heyco Employees, Ltd.; and
5 W.T. Wynn.

6 I do not intend to call a witness.

7 EXAMINER STOGNER: Thank you, Mr. Carr.

8 MR. PADILLA: Mr. Examiner, at this time
9 we'll call Shari Hamilton, please.

10 MR. STOVALL: Let's reswear the witnesses,
11 even though they were sworn in the original case. I
12 think we should --

13 EXAMINER STOGNER: How many do we have today?

14 MR. STOVALL: Two for Chevron and one for
15 Yates Energy.

16 SHARON R. HAMILTON,

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

19 DIRECT EXAMINATION

20 BY MR. PADILLA:

21 Q. Miss Hamilton, please state your full name.

22 A. Sharon R. Hamilton.

23 Q. Miss Hamilton, have you testified as a
24 petroleum landman in cases associated with this
25 Application?

1 A. Yes, sir, I have.

2 Q. Can you tell the Examiner when you've
3 testified, in general terms?

4 A. In December of 1989 and in July of 1990,
5 concerning this particular case.

6 Q. And you're familiar with the negotiations
7 that have taken place between Yates Energy Corporation
8 and Chevron USA in regard to voluntary joinder?

9 A. Yes, sir.

10 MR. PADILLA: Mr. Examiner, we tender Miss
11 Hamilton as a petroleum landman.

12 EXAMINER STOGNER: Are there any objections?

13 MR. KELLAHIN: No objections.

14 EXAMINER STOGNER: Miss Hamilton is so
15 qualified.

16 Q. (By Mr. Padilla) Miss Hamilton, would you
17 first of all state -- give us some background as to how
18 this case came about and -- in brief about that, if you
19 can, please.

20 A. We filed for a forced-pooling application and
21 appeared before hearing in December of 1989.

22 We received an Order in January, subsequently
23 drilled the well.

24 In title check, we discovered that the Order
25 only covered the Bone Springs formation.

1 Q. When did you have your title checked?

2 A. In May of 1990.

3 Q. Okay. And what did you do after that?

4 A. The well had been drilled to the Bone Springs
5 and then subsequently completed in the San Andres, and
6 we requested an agreement with Chevron to contractually
7 amend the Order to include the rights from the surface
8 down.

9 Q. And did you subsequently make application for
10 compulsory pooling of all formations down to the base
11 of the Bone Springs formation?

12 A. Yes, we did.

13 Q. And was Order 9093-B the outcome of that
14 hearing?

15 A. Yes, sir, it was.

16 Q. Have you conducted further negotiations with
17 Chevron USA in terms of seeking voluntary joinder since
18 issuance of Order Number 9093-B?

19 A. Yes, sir, we have, via telephone
20 conversations and via written settlement.

21 Q. Let's go back in time, back to May of 1990
22 when you first discovered the problem of pooling only
23 the Bone Springs formation.

24 Tell us about what you did with regard to
25 contacting Chevron after you discovered that the

1 original Order only called for force-pooling the Bone
2 Springs formation.

3 A. Under a letter dated June the 4th, we wrote a
4 letter to Chevron informing them of the problem that
5 had occurred and requested their agreement to
6 contractually amend the Order to include all depths.

7 Q. And what did Chevron say?

8 A. The gentleman I spoke with, Mickey Cohlma at
9 Chevron, indicated that at first he thought I was
10 mistaken because they understood the Order to cover all
11 depths. Then when he further checked into it, it did
12 not, and they were going to look into the matter.

13 Q. Let me hand you what we have marked as
14 Exhibit Number 1 and have you identify that for the
15 record, please.

16 MR. KELLAHIN: Mr. Examiner, I'm going to
17 make an objection, perhaps only for a point of
18 clarification. Unfortunately, Examiner Catanach heard
19 this back in July and this is probably a new matter to
20 you, Mr. Stogner, but my understanding of the Order
21 that the Division entered based upon the case in
22 July --

23 EXAMINER STOGNER: Now, you're talking about
24 Order R-9093-B?

25 MR. KELLAHIN: Yes, sir.

1 EXAMINER STOGNER: Okay.

2 MR. KELLAHIN: And Chevron at the time of the
3 conclusion of Mr. Padilla's presentation in that case
4 moved to dismiss the Application. And while Mr.
5 Catanach's Order temporarily denied that motion, all of
6 the contentions I made about that fact situation to
7 justify the Motion for Dismissal Mr. Catanach has found
8 to be true in his findings.

9 And then he goes on and requires us in
10 Finding 20 on page 4 of that Order to come back before
11 you today, this October 31st, and to discuss three
12 aspects of the original case.

13 I don't know if you've had a chance to review
14 this transcript or the Order itself, but in essence
15 what has occurred is, Yates has obtained a specific
16 pooling order that identified only the pooling of the
17 Bone Springs pool.

18 They then, after Chevron did not elect to
19 participate in the Bone Springs test, drilled the well.
20 And without benefit of modification of the pooling
21 Order or any amendments to that Order, they abandoned
22 their efforts in the Bone Springs.

23 And it was my contention, as now, that the
24 pooling Order expired, notwithstanding the fact they
25 continued to work in this wellbore in other formations

1 for which the interests were not pooled.

2 In essence, none of the predicates were
3 established by Yates to satisfy the conditions
4 precedent to getting a pooling application filed. It
5 was their contention then that Chevron, having gone
6 nonconsent as to the Bone Springs, was absolutely
7 precluded from participating in shallower attempts,
8 even though they were never given the opportunity to
9 participate and never furnished an AFE as to those
10 costs to the shallower zone.

11 So in absence of a pooling order, Yates on
12 its own assumed the entire risk and completed in a
13 shallower zone which was the San Andres, and has come
14 to Examiner Catanach back in July and attempted to
15 allocate and charge against Chevron's 25-percent
16 interest in the San Andres, all of the well costs in
17 the well, in excess of \$620,000-plus.

18 And so after doing this for a good part of
19 the afternoon, Mr. Catanach has entered an order in
20 which he has found the things that I've represented to
21 you to be true, and he's asked us to come back and say,
22 All right, what additional things have happened since
23 the last hearing? And do you have an agreement?. And
24 I'll tell you right now, there is no agreement.

25 The other thing he asked us to come back and

1 do is that he wanted testimony on the proportionate
2 share of well costs which are to be allocated to the
3 San Andres completion. We're prepared to come do that
4 today.

5 And in addition, the third point is the
6 assessment of a risk penalty which is fair to both
7 parties.

8 So those are the three things we're here to
9 do. And we're not here to start over and talk about
10 what Miss Hamilton did way back in June and May when we
11 first had this matter arise.

12 So I think we need some guidance from the
13 Division as to how we're supposed to present and
14 continue with the case today. Up to this point, Miss
15 Hamilton has simply testified about things which are
16 beyond the call and scope of the hearing, as I
17 understand it.

18 MR. STOVALL: What are you recommending, Mr.
19 Kellahin? I take it this is a motion that is being
20 made of some sort, or an objection. What is --

21 MR. KELLAHIN: Well, I will make a specific
22 motion, and we can approach it in that fashion.

23 It's my understanding that Yates has not
24 given us an AFE that allocates cost to the San Andres
25 and given us an opportunity to make an election on that

1 basis.

2 We were faxed some well costs on Tuesday, I
3 think, of this week, Monday, to examine. But we have
4 no proposal from Miss Hamilton on behalf of her company
5 as to what our share of production costs attributable
6 to the San Andres ought to be, and I think it's
7 premature to be back here on October 31st to discuss
8 this case when the parties have not yet completed the
9 process by which we commenced the pooling case.

10 We file those pooling cases after you've
11 exhausted the good-faith efforts to reach a solution.
12 And at this point, we can't exhaust that effort,
13 because Yates hasn't given us an allocation of the cost
14 of the San Andres and given us an opportunity to
15 reflect on those costs. So I think we're here
16 prematurely.

17 MR. STOVALL: Mr. Padilla, response?

18 MR. PADILLA: I'm not sure that I understand
19 the motion or the nature of the objection. The point
20 that we take the second order in paragraph F states,
21 The Applicant shall conduct good-faith negotiations
22 with Chevron in order to determine a fair and equitable
23 method whereby Chevron's interest as to the San Andres
24 formation may be consolidated.

25 What I'm trying to establish, I'm trying to

1 establish a foundation for the Examiner that there have
2 been good-faith negotiations.

3 It's still our contention that the entire
4 well costs for drilling a Bone Springs well should be
5 -- the well costs should be allocated between the
6 parties, between Chevron and between Yates Energy and
7 all of the other working-interest owners, as to their
8 proportionate share. We have never attempted to throw
9 the entire cost of drilling onto Chevron Corporation or
10 Chevron USA --

11 MR. STOVALL: Let me -- Just a second. I'm
12 sorry, I couldn't hear all of what you said. Are you
13 saying that -- Is what you're saying is that the costs
14 that should be -- of which Chevron should pay its
15 proportionate share are the total costs of the well?

16 MR. PADILLA: The total costs of the well --

17 MR. STOVALL: Its proportionate share of the
18 total costs of the well?

19 MR. PADILLA: Its proportionate share of the
20 total costs of the well. We have never attempted to
21 try to saddle Chevron with the entire well costs, I
22 don't believe.

23 MR. STOVALL: I don't think anybody's
24 contended that, Mr. Padilla. I don't think that's a --
25 I think what they're -- When we're talking entire well

1 costs, I think there's a presumption that you're
2 talking Chevron's proportionate share of those well
3 costs. Or am I mistaken, Mr. Kellahin?

4 MR. KELLAHIN: Absolutely not, you're
5 correct.

6 MR. STOVALL: Okay, so that's --

7 MR. KELLAHIN: You know, it's ludicrous to
8 argue that Chevron's 25 percent should pay 100 percent
9 of the well costs, no. It's our proportionate of costs
10 rightfully attributable to the San Andres.

11 And Mr. Padilla -- At least at the July
12 hearing, his clients contended that we should pay 25
13 percent of something in excess of \$220,000, which
14 represented costs not only to the San Andres but to the
15 deeper Bone Springs.

16 MR. STOVALL: And that is still your
17 contention; is that correct, Mr. Padilla?

18 MR. PADILLA: That's still our contention.

19 MR. KELLAHIN: Well, I guess I'm concerned
20 because ordering paragraph number 2 says, The Applicant
21 shall conduct good-faith negotiations to determine a
22 fair and equitable method for allocating costs to the
23 San Andres, and they've never given us that.

24 So it's my contention we're premature to be
25 here if they have not exercised --

1 MR. STOVALL: Is that a motion for
2 continuance; is that what that is?

3 MR. KELLAHIN: It's a motion to dismiss, and
4 it's what I should have received back in July, and I'm
5 renewing it.

6 MR. PADILLA: Well, I may respond. I don't
7 want to quibble with ordering paragraph number 2, but
8 the way I read that, and the way -- It doesn't say from
9 the surface to the San Andres formation. I can read
10 that to say from the surface to the Bone Springs and
11 back to the San Andres formation. That's what we're
12 contending the well costs should be, and that's
13 probably -- should be determined.

14 MR. STOVALL: Mr. Kellahin, just for the sake
15 of argument, if your Motion to Dismiss is granted and
16 this case is dismissed, what happens next?

17 MR. KELLAHIN: Then it becomes Yates's
18 obligation to provide us a good-faith allocation of
19 costs attributable to the San Andres, and then we will
20 have a reasonable period of opportunity to respond and
21 to trade outside of the hearing process that which
22 normally occurs in a pooling case, and so we can
23 discuss and exhaust the opportunities of reaching a
24 solution.

25 MR. STOVALL: If Chevron -- I mean, excuse

1 me, if Yates continues with the position that they
2 have, I think, consistently up to this point, that
3 Chevron's share of the cost should be the 25 percent of
4 the total cost of completing to the Bone Spring and
5 recompleting back in the San Andres, what do we gain by
6 dismissing this case?

7 Then the next step would be that if Chevron
8 doesn't accept that deal, Yates is back in force-
9 pooling Chevron in the San Andres; is that right?

10 MR. KELLAHIN: Certainly.

11 MR. STOVALL: And we're back to -- Gee whiz,
12 we've got an issue now of allocation of costs of the
13 well to the completion of the San Andres formation and
14 assignment of risk penalty, and then giving Chevron the
15 opportunity under a force-pooling order to participate
16 at that point; is that correct?

17 MR. KELLAHIN: Yes, and you've got the horse
18 before the cart, the way we've always had it. We've
19 exhausted these efforts before you file a force-pooling
20 case and attempt to use that as a process by which to
21 extract concessions.

22 And we think they're here in July prematurely
23 and still premature because as of Monday, I believe,
24 they faxed us some of the details of the actual
25 expenditures on the well. And it's, we contend,

1 premature to go through this process of talking about
2 the allocation of those costs when the parties, in my
3 opinion, have not exhausted the opportunity to reach a
4 solution.

5 MR. STOVALL: Mr. Padilla, let me ask you
6 just a preliminary question as kind of a backup to
7 this. Does Yates have a position, or rather, what is
8 Yates' position with respect to Chevron's opportunity
9 to participate in the well?

10 MR. PADILLA: It's our position that Yates
11 has had plenty of opportunity to participate in this
12 well.

13 MR. STOVALL: Yates or Chevron?

14 MR. PADILLA: Chevron.

15 MR. STOVALL: Are you, then, suggesting that
16 Chevron should not be given the opportunity to
17 participate in the will, and therefore the costs really
18 don't matter?

19 MR. PADILLA: I'm saying they ought to --
20 We'd love to have their money, we'd love to their money
21 as to their proportionate share of total well costs,
22 which we contend is \$603,000 to drill a Bone Spring
23 well.

24 MR. KELLAHIN: I guess I'm confused. Is it
25 your client's position that the original pooling Order

1 precludes us now from having a new election period for
2 participation in the San Andres?

3 MR. PADILLA: No, Mr. Kellahin, I think that
4 since June -- Since May or June of 1990, Chevron has
5 had enough opportunity to participate in the well.

6 It has not ever tendered anything to say that
7 they would participate in either a San Andres well or a
8 Bone Springs well, and they have been aware of what the
9 costs are all along.

10 They have been force-pooled in other areas
11 than the San Andres well; they have not participated.
12 In fact, they were prepared to show that they have not
13 participated in any wells in this area at all.

14 MR. KELLAHIN: Mr. Padilla, I think you've
15 misspoken. There's a July letter from Mr. Cohlma to
16 your client in which he says Chevron is willing to
17 participate in this well if you'll provide us a
18 reasonable allocation as to cost to the San Andres, and
19 I think it's one of the exhibits you've tendered to the
20 Examiner this very afternoon.

21 And that's my point: They say, Well, we're
22 happy to have you in the well, but they don't go
23 through process to get us an allocation as to the cost
24 to the San Andres. It's Mr. Cohlma's letter of July
25 18th.

1 MR. STOVALL: Let's move on to the next
2 point, then. If, in fact, the Chevron Motion to
3 Dismiss were granted, the parties would in effect be
4 back at square one. You'd again have a negotiating
5 period. Yates would have to file an application to
6 force-pool the Chevron interest in the San Andres, you
7 come back in and argue well costs and penalty.

8 There's no indication that I can see that
9 Chevron and Yates are any closer now to reaching an
10 agreement than they were in July or May, whenever the
11 last discussions were. Is that a fair assumption of
12 where we are so far and what happens next?

13 MR. PADILLA: Except that there have been
14 negotiations since --

15 MR. STOVALL: Well, I'm not saying whether or
16 not there have been negotiations. I'm saying that
17 you're no closer to reaching an agreement now than you
18 were in May or whenever the --

19 MR. PADILLA: No, sir.

20 MR. STOVALL: -- recompletion in the San
21 Andres was completed; is that correct?

22 MR. PADILLA: That's correct.

23 MR. STOVALL: So if Mr. Kellahin's Motion to
24 Dismiss were granted, it simply delays the process a
25 couple months, you refile, come back in for notice and

1 do what you're supposed to be prepared to do today.

2 MR. KELLAHIN: Well, I'm not suggesting that
3 it's delay for just delay's sake. And Miss Hamilton
4 can correct me if I'm wrong, but I believe that they
5 faxed to Chevron as of Monday, and that was the first
6 effort they made to us to give us the actual costs
7 attributable, at least on some monthly basis for the
8 expenditures in the well, so that we would have a basis
9 to begin our analysis of that information with our
10 drilling people in order to respond to them about what
11 we think is a fair allocation.

12 And so we're coming here today to discuss
13 about an allocation formula that Yates has not had a
14 chance to respond to and we have just recently
15 prepared.

16 MR. STOVALL: Are you prepared to present
17 that today?

18 MR. KELLAHIN: Well, sure, but I think it's
19 premature to enter into those discussions when the
20 parties outside the hearing process have not exhausted
21 the examination of each party's position on that point,
22 so --

23 MR. STOVALL: Well, let me make an assumption
24 here, that Yates is going to present today argument
25 that 100 percent of the costs of the well, including

1 the original drilling to the Bone Spring and the
2 recompletion to the San Andres, is the well cost of
3 which Chevron should pay its proportionate 25 percent.

4 Chevron is going to make an argument today
5 that it should be something less than that, and --

6 MR. PADILLA: We've already -- Mr. Stovall,
7 we've already presented evidence of actual well costs
8 at the July hearing.

9 MR. STOVALL: Well, I could see that there
10 could be two issues under a typical force-pooling
11 order. One is whether those actual well costs are
12 reasonable, and I assume that Chevron has seen the
13 actual well costs -- Was that the first time you saw
14 them, was Tuesday or -- when Chevron received them, Mr.
15 Kellahin?

16 MR. KELLAHIN: That's my understanding.

17 MR. STOVALL: Chevron never saw the actual
18 well costs of the well prior to this hearing?

19 MR. KELLAHIN: We have the AFEs from the July
20 hearing, but the actual well costs, it's my
21 understanding, were submitted to Chevron on -- Monday?

22 MR. AKINS: We got the fax on Monday.

23 MR. KELLAHIN: Got the fax on Monday.

24 MR. STOVALL: But Yates never provided those?

25 THE WITNESS: Yes, sir, we did. In a letter

1 dated October 5th we supplied an itemized statement
2 showing the total well costs.

3 MR. STOVALL: Is that part of your exhibit,
4 Miss Hamilton?

5 THE WITNESS: It's part of the exhibit marked
6 Number 2. We made a settlement proposal and supplied
7 the total cost of the well. We didn't have it broken
8 down on a month-by-month basis, but it was just a
9 statement of itemized well costs, and we provided the
10 same information to the Commission.

11 MR. STOVALL: Yates Energy Exhibit Number 2
12 in this case?

13 THE WITNESS: Yes, sir, it's about the fifth
14 or sixth document from the bottom of the stack.

15 MR. STOVALL: Oh, I see, the whole thing is
16 Exhibit 2. Is that what you --

17 THE WITNESS: It's a letter dated October
18 5th.

19 MR. STOVALL: Let me take a moment to --

20 MR. KELLAHIN: Well, as you take a moment,
21 look to see that there's a \$50,000 difference. I don't
22 know why we're hashing it out here when the parties
23 ought to be doing this among themselves outside the
24 hearing process, Mr. Examiner.

25 MR. STOVALL: Let me go back to the issues

1 that I see that are raised and that the Order out of
2 the last hearing contended -- As far as this hearing is
3 concerned, the real substantive issues are, are the
4 well costs reasonable, the total well costs? I'm
5 talking about the well costs, and I'll identify them as
6 the ones in the October 5th letter. Are they
7 reasonable?

8 Second issue is, should those be the well
9 costs for a San Andres completion, or should the San
10 Andres completion well costs be -- a portion of those
11 well costs -- attributable to the San Andres?

12 And then the third issue, substantive issue
13 in this hearing, is whether or not a 200-percent
14 penalty is appropriate.

15 Does that fairly summarize the substantive
16 areas of dispute between Chevron and Yates at this
17 point?

18 MR. KELLAHIN: No, sir. I think there's, in
19 my mind, a significant distinction between a hearing on
20 reasonable actual well costs, which is a supplemental
21 proceeding under a pooling order, and the preliminary
22 determination of the allocation or apportionment of the
23 cost between zones.

24 MR. STOVALL: Would you recommend -- All
25 right, I understand the distinction that you're making

1 between those.

2 MR. KELLAHIN: And the call of the hearing
3 today doesn't talk about the topic of determining
4 whether the actual costs spent are in fact reasonable,
5 and the monthly tabulation of that data was faxed to us
6 on Monday.

7 And so my witness, when he talks and has come
8 prepared to discuss apportioning costs between the two
9 zones, is going to qualify those statements, because he
10 has not yet had the opportunity to independently
11 satisfy whether the actual expenditures are reasonable.

12 Now, if you want to incorporate a hearing on
13 whether the actual costs expended are fair and
14 reasonable, I'm not sure I'm prepared to do that today.

15 MR. STOVALL: Okay, if -- Assuming, then, you
16 are prepared to discuss the allocation of costs to the
17 San Andres, what are you talking -- Are you talking
18 about based on the AFE or a percentage, or what basis
19 are you willing -- I mean, you've got to discuss it in
20 some concrete --

21 MR. KELLAHIN: Well, we will do the very best
22 we can to put it in context of the AFE and what we read
23 out of the supplement that we just received here on
24 Monday, recognizing that my drilling engineer, as
25 confident as he may be, has not independently verified

1 the prices actually spent for the well.

2 MR. STOVALL: Okay, I understand -- All
3 right. The actual prices, i.e., day work, pipe,
4 cement, whatever it may be, is an issue you are not
5 prepared to address. But you are prepared to address
6 what portion of costs should be allocated to the San
7 Andres; is that correct?

8 MR. KELLAHIN: If that's what we're directed
9 to do, yes, sir.

10 MR. STOVALL: Well, I think that's what the
11 Order -- one of the issues the Order directed to be
12 considered in this reopened case; is that not correct?

13 MR. KELLAHIN: I understand that is the
14 topic.

15 MR. STOVALL: Okay. And the other
16 substantive issue in that Order is the penalty; is that
17 correct?

18 MR. KELLAHIN: That's right.

19 MR. STOVALL: And are you prepared to address
20 that issue today?

21 MR. KELLAHIN: Yes.

22 MR. STOVALL: What would be gained by
23 deferring this process for a month, six weeks, while
24 dismissing it, requiring Yates to refile and put us
25 back where we are right now, in six weeks? Why not

1 address those issues today and get that allocation
2 settled?

3 MR. KELLAHIN: Well, we're here to do what
4 you direct us to do. I'm suggesting that the
5 opportunity to reach meaningful negotiations on the
6 allocation of the risks have not been concluded and
7 that it is premature to go forward with a compulsory-
8 pooling case when the Applicant has put the defending
9 party in the position of having not had a full
10 opportunity to respond to what we think is a meaningful
11 and fair allocation of those costs.

12 MR. STOVALL: But you're prepared to do so in
13 an evidentiary setting today?

14 MR. KELLAHIN: Certainly.

15 MR. STOVALL: Are you prepared to address
16 that issue, Mr. Padilla, today?

17 MR. PADILLA: Yes, sir, I am.

18 MR. KELLAHIN: I'm not sure he is. He's only
19 listed a landman as a witness.

20 MR. STOVALL: Well, that's -- I'm asking him
21 the question, Mr. Kellahin.

22 Are you prepared to address that issue as --
23 I mean, you're -- provide evidence in support of 100
24 percent of the costs being the costs attributable to
25 the San Andres?

1 MR. PADILLA: Mr. Stovall, I think I've
2 already done it at the July hearing. We presented an
3 AFE for a San Andres well, we presented an AFE for --
4 the actual AFE for drilling this particular well.

5 If I am forced to do it today, I can actually
6 go down to -- and give you a breakdown of what the San
7 Andres well versus -- plus the additional incremental
8 costs that it would take to go down to the Bone
9 Springs. That is contrary to our position, but if the
10 Division wants to hear that evidence, I'm prepared to
11 put it up.

12 MR. STOVALL: Well, the Division wants to
13 hear whatever -- I mean, you're taking a position that
14 100 percent of the costs of this well -- and we'll
15 use -- we're not discussing -- I think Mr. Kellahin is
16 proper that whether those costs are reasonable at this
17 point is not an issue in this case at this time.

18 MR. PADILLA: I have the witness who can do
19 that, and I have the evidence, documentary evidence, to
20 show that breakdown, but that is contrary to our
21 position as far as --

22 MR. STOVALL: Well, then I wouldn't present
23 the evidence if I were you, but that's your decision.
24 I mean, if the evidence that you're available and
25 prepared to present doesn't support your case, then --

1 Are you prepared to address the issues that were
2 identified in the Order? What's the Order Number?

3 MR. PADILLA: Well, to the extent that -- Let
4 me put it this way: They're already in the record.

5 MR. STOVALL: Okay, you want to stand on that
6 record?

7 MR. PADILLA: I want to stand on the record,
8 and I would like to proceed with the good-faith
9 negotiation portion of the Order.

10 MR. STOVALL: Now, the good-faith negotiation
11 section of the Order deals only with negotiations on
12 the narrow issue of allocation of costs to the San
13 Andres and the risk penalty, right?

14 MR. PADILLA: And we've already put on
15 testimony to indicate what that risk penalty should be.

16 MR. STOVALL: So really all that Miss
17 Hamilton should need to address, as I understand, and
18 back to where Mr. Kellahin first started out this
19 discussion, is what has taken place since the -- I
20 think it was the -- Was it the October 3rd or the
21 September -- It was a September hearing, wasn't it?

22 MR. KELLAHIN: It would be July 25th.

23 MR. STOVALL: Oh, was it July 25th? Is that
24 when that was? Okay. So that's all that really needs
25 to be supplemented into record; is that correct?

1 MR. PADILLA: That's correct.

2 MR. STOVALL: Mr. Examiner, I'd like to take
3 a minute to discuss this case with you.

4 EXAMINER STOGNER: Let's take a -- what?
5 Ten-minute recess?

6 MR. STOVALL: Five would probably do it.

7 EXAMINER STOGNER: Five- or ten-minute
8 recess.

9 (Thereupon, a recess was taken at 2:30 p.m.)

10 (The following proceedings had at 2:45 p.m.)

11 EXAMINER STOGNER: This hearing will come to
12 order. Mr. Kellahin, we're going to dismiss you
13 request -- deny your request to dismiss.

14 Mr. Padilla, the evidence we're going to take
15 today is going to be limited with what was the Order
16 R-9093-B, requested, and that's the substantial -- or
17 the cost for a well to the San Andres, a proportional
18 less cost and risk-penalty factor.

19 And also, I must remind you, you are going to
20 present some testimony on the negotiations, and let's
21 consider the evidence that's only pertinent to this,
22 and that's negotiations that were conducted after the
23 issuance of this order on September 19th, 1990.

24 Mr. Stovall?

25 MR. PADILLA: Let me get a clarification of

1 that. You want evidence on negotiations after the
2 Order was issued?

3 EXAMINER STOGNER: If you're going to present
4 that kind of testimony today on the negotiations.

5 MR. PADILLA: And you want evidence on the
6 breakdown between the costs of drilling a San Andres
7 well and drilling a Bone Springs well?

8 MR. STOVALL: Let's rephrase that so that you
9 understand it clearly, Mr. Padilla. The -- say he
10 is -- There is a dispute between Chevron and Yates as
11 to what costs should be apportioned, what costs Chevron
12 should pay 25 percent of, whether it's 100 percent of
13 the cost of the well, as is Yates' position, or
14 something less.

15 Now, Yates can make whatever position it
16 wants to at today's hearing and support it with
17 whatever evidence it's prepared to, including
18 incorporation of the record from the prior hearing as
19 support for its contention that Chevron should pay 25
20 percent of 100 percent of the costs of the well as
21 completed, not considering the reasonable-costs issue.
22 That is not the issue in this case, as Mr. Kellahin
23 properly pointed out.

24 So it's your option whether you want to go
25 for 100 percent or 90-10 or whatever allocation that

1 you would like to make and what evidence to present,
2 and also the issue of what risk penalty should be
3 assigned to the nonconsent in the San Andres
4 completion.

5 Is there any question as to what the scope is
6 at this point?

7 MR. PADILLA: It makes my case much simpler
8 at this point, I suppose.

9 I'll hand, at this point -- I assume that the
10 breakdown of Exhibits 1 and 2 is that Exhibit 1 applies
11 to negotiations that took place prior to the issuance
12 of the Order, and Exhibit Number 2 deals with
13 negotiations that have dealt with negotiations after
14 the Order. So it's my understanding, from what your
15 ruling is, that you will not accept any evidence on the
16 contents of Exhibit Number 1.

17 MR. STOVALL: Was it submitted in the
18 original 9998, in the July hearing?

19 MR. PADILLA: Some of that may have been
20 submitted in July.

21 EXAMINER STOGNER: You don't know if all of
22 it was?

23 MR. PADILLA: I'm not certain.

24 MR. STOVALL: Let's go ahead and present --
25 Why don't you continue with Exhibit 2, and we'll

1 defer -- I'll recommend we defer ruling on the
2 admissibility of 1 at this point. But I don't think we
3 need any more testimony, okay? Does that clarify that?

4 MR. PADILLA: Yes, but let me clarify what
5 you mean by -- what you just meant by Exhibit Number 1.
6 You will not -- You want to defer admissibility of
7 Exhibit Number 1; is that what you want to do?

8 MR. STOVALL: Are you offering that as an
9 exhibit?

10 MR. PADILLA: Well, I did before, yes.

11 MR. KELLAHIN: I have no objection. Let's
12 admit it --

13 MR. STOVALL: Okay, we'll admit it for the
14 record, for what it's worth.

15 EXAMINER STOGNER: Let's get this thing going
16 now.

17 Q. (By Mr. Padilla) Okay, Miss Hamilton, do you
18 recall that Order 9093 was issued on September 19th,
19 1990?

20 A. Yes, sir.

21 Q. And can you tell us generally what
22 negotiations you conducted with Chevron USA in regard
23 to the -- or pursuant to Order 9093-B?

24 A. Yes, sir, we made numerous telephone calls
25 and had conversations with Chevron's office, discussing

1 the costs and the allocation to which formation costs
2 should be associated with, and we discussed farmout
3 terms and possible commitment for continuous drilling
4 in the area, and we --

5 Q. Let me show you what we have marked as
6 Exhibit Number 2 and have you identify that for us.

7 A. Yes, sir. The front sheet is just a brief
8 summary of the telephone conversations and any
9 communication between the two companies, and the pages
10 underneath are a brief summary of some of the
11 conversations, and then copies of the correspondence.

12 Q. Okay, tell us about the telephone
13 conversations that you had with Chevron and tell us
14 with whom you had those conversations.

15 A. We spoke to Mr. Sam Martin.

16 Q. When you say "we," who do you include in
17 saying "we"? Was that you?

18 A. The first two telephone conversations, dated
19 September 24th and 26th, Mr. Fred Yates and myself
20 visited with Mr. Martin.

21 Q. All right.

22 A. On the -- The rest of the conversations were
23 simply between Mr. Martin and myself.

24 Q. And what did you discuss during these
25 telephone conversations?

1 A. We were discussing our side that -- what we
2 felt the well costs should be allocated to and that we
3 felt that the Bone Springs was the -- the total well
4 costs.

5 Q. Did you ever discuss any other alternative in
6 any of these telephone conversations?

7 A. We discussed the farmout proposals where
8 Chevron would elect to farm out their interests.

9 Q. Tell us about the farmout proposals.

10 A. We requested a farmout on the -- on more than
11 just the one location, but on the entire section that
12 the well is involved in, and to reach an agreement for
13 continuous drilling provision.

14 Q. Why were you trying to get the entire
15 section?

16 A. Because we had to force-pool Chevron on
17 several occasions, and we were trying to alleviate the
18 problem and reach an agreement for development.

19 Q. What were the terms of your proposal for
20 farmout?

21 A. We requested that a 75-percent net revenue be
22 delivered and a 180-day continuous drilling program.

23 Q. And in your opinion is that a reasonable
24 offer?

25 A. Yes, sir, we believe it is.

1 Q. Did you follow up that offer with some kind
2 of written communication?

3 A. Yes, sir, we did write a letter requesting a
4 farmout with the 75-percent net revenue.

5 Q. Is that letter included in Exhibit Number 2?

6 A. Yes, sir, it is.

7 Q. Could you identify that letter for the
8 Examiner, please?

9 A. Yes, it was our letter dated October 5th,
10 1990.

11 Q. And what was included or transmitted in that
12 letter?

13 A. In that letter we submitted what the well --
14 an itemized statement of what well costs were and asked
15 that they either participate in the Bone Springs test
16 or that they farm out, delivering a 75 percent net
17 revenue.

18 Q. What resulted from that letter?

19 A. They didn't respond to the farmout provision,
20 and they simply requested a breakdown of costs between
21 formations.

22 Q. Did you give them a breakdown of -- the
23 breakdown that they requested?

24 A. We were preparing it, but we just supplied it
25 to them this week when we completed the study.

1 Q. Did you ever supply them with actual well
2 costs for drilling the Bone Springs test?

3 A. Yes, sir.

4 Q. And when did you do that?

5 A. In our letter of October 5th.

6 Q. And what does that indicate?

7 A. It indicated an amount of \$599,988, plus it
8 also included the lease operating expenses through
9 August of \$18,002.83.

10 Q. Did you receive any other counterproposals
11 from Chevron with regard to your October 5th
12 correspondence to them?

13 A. On October 29th, we received a fax letter
14 where they indicated that they would either participate
15 upon a mutual agreement of well costs to the formation
16 of the San Andres or that they would make a farmout
17 delivering or retaining a 25-percent override.

18 Q. Is the 25-percent override a commonly
19 accepted -- acceptable thing for this area?

20 A. No, sir, we felt it was unreasonable.

21 Q. What did you propose to Chevron?

22 A. We proposed that they reserve an eighth
23 override.

24 Q. Did Chevron reject this one-eighth override?

25 A. Just in this letter of -- The October 29th,

1 they proposed a 25-percent override.

2 Q. So as I understand it, you still have -- You
3 have never been able to reach an agreement with Chevron
4 as to total well costs; is that correct?

5 A. I didn't question --

6 Q. Based on --

7 A. -- the total well costs. They wanted the
8 cost breakdown to the San Andres.

9 Q. And Chevron was only willing to participate
10 on a well -- to your understanding -- on a well down to
11 the San Andres formation?

12 A. That's my understanding.

13 Q. Miss Hamilton, in your opinion, have -- Has
14 Yates Energy and Chevron failed to reach an agreement
15 as to either farmout or some other voluntary agreement
16 in order to get participation and get Chevron in the
17 well?

18 A. Yes, sir, we have.

19 Q. And do you think you have exhausted the
20 negotiations with Chevron at this point?

21 A. Yes, sir, we're not making any headway either
22 way.

23 Q. Chevron is insistent on a San Andres-
24 formation well only; is that correct?

25 A. Yes, sir, that's my understanding, that those

1 are the only costs that they would agree to.

2 Q. In terms of any other alternative proposals,
3 proposals that you have received from Chevron have in
4 your opinion been unreasonable; is that --

5 A. Yes, sir.

6 Q. -- a fair...

7 Miss Hamilton, in regard to land matters, has
8 anything changed from the July hearing to this date,
9 other than the fact that you have tried to attempt
10 negotiations pursuant to Order 9093-B?

11 A. We were able to reach an agreement with
12 Chevron which allowed the well to be returned to
13 production, but there's been no other development. In
14 an offsetting location, we went into another force-
15 pooling proceeding, but not anything that affected this
16 particular 40-acre tract.

17 Q. Did Chevron agree to participate in any of
18 the -- in that other force-pooling that you're talking
19 about?

20 A. No, sir, they have not.

21 Q. Has Chevron ever participated in any of the
22 wells that you have drilled in the area?

23 MR. KELLAHIN: Objection, irrelevant, Mr.
24 Examiner.

25 THE WITNESS: No, sir.

1 MR. KELLAHIN: We have an objection pending.

2 MR. STOVALL: I don't see the relevance of
3 it, Mr. Examiner.

4 MR. PADILLA: I'll strike the question.

5 EXAMINER STOGNER: Thank you, Mr. Padilla.

6 Q. (By Mr. Padilla) Miss Hamilton, do you have
7 anything further to add to your testimony?

8 A. No, sir.

9 MR. PADILLA: Mr. Examiner, we tender Exhibit
10 Number 2, and at this point we'll rest. We'll stand on
11 the risk penalty factor of 200 percent which we
12 presented at the July hearing, and in addition to that
13 we will stand on our position that the entire well cost
14 for drilling of the Bone Springs formation should be
15 used as the well costs.

16 EXAMINER STOGNER: Thank you, Mr. Padilla.

17 MR. PADILLA: I have nothing further of this
18 witness.

19 EXAMINER STOGNER: Since there was no
20 objection to Exhibit 1, I'm going to go ahead and for
21 the record admit both Exhibits 1 and 2, if there are no
22 objections, Mr. Kellahin --

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

24 EXAMINER STOGNER: All right. -- to these
25 two exhibits. And tender the witness to you, Mr.

1 Kellahin.

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

3 CROSS-EXAMINATION

4 BY MR. KELLAHIN:

5 Q. Miss Hamilton, you responded to Mr. Padilla
6 that there had been no change in any of the land
7 matters that you were aware of with regards to this
8 particular well?

9 A. Yes, sir.

10 Q. Refresh my recollection in this particular.
11 It was the southeast quarter of the southwest quarter
12 of Section 1. It was that 40-acre tract that
13 originally was being developed by your company, right?

14 A. Yes, sir.

15 Q. The land matters at the time of the last
16 hearing were such that Chevron had 25 percent of the
17 San Andres?

18 A. Yes, sir.

19 Q. Okay. How is the balance of the working
20 interest in the San Andres allocated among the other
21 owners? Could you give us a quick summary?

22 A. Harvey E. Yates Company --

23 Q. That's Heyco?

24 A. Heyco.

25 Q. Has how much?

1 A. I'm sorry, sir, I don't have those figures in
2 front of me.

3 Q. Okay. Who are the other working-interest
4 owners?

5 A. Spiral, Inc.; Explorers Petroleum
6 Corporation; W.T. Wynn; Heyco Employees, Ltd.; Yates
7 Energy Corporation.

8 Q. With regards to the costs of the well that
9 would be attributable to Chevron's interest, that 25
10 percent of whatever number it is --

11 A. Yes, sir.

12 Q. -- how was that paid for in this well?

13 A. We had three trade partners that assumed the
14 25-percent cost in drilling the well to the Bone
15 Springs.

16 Q. Chevron's 25 percent was paid for by parties
17 other than Yates Energy Corporation?

18 A. Yes, sir.

19 Q. Who were those parties?

20 A. Bearing Service and Supply, Western Oil
21 Producers, LDY Corporation.

22 Q. Did each of those three entities pick up some
23 proportion, then, of the 25 percent?

24 A. Yes, sir.

25 Q. And what proportion did they pick up? Was it

1 split in thirds, or was there some other format?

2 A. It varied.

3 Q. It was some other format?

4 A. Right.

5 Q. But I'm correct in understanding that the
6 share of the well, the costs attributable to Chevron,
7 were borne by these other three parties or entities,
8 right?

9 A. Yes, sir.

10 Q. The recoupment, if you will, of those costs
11 advanced is to be out of production, is it not?

12 A. Yes, sir.

13 Q. And the plan has been, either before July or
14 since July, that your company has been attempting to
15 recover those costs out of production? Is that what
16 you're doing?

17 A. Well, the 25 percent --

18 Q. Yes.

19 A. -- that's allocated to Chevron is in
20 suspense.

21 Q. All right. The revenues derived from the
22 sale of product that represents Chevron's 25 percent,
23 that money, then, has been escrowed, right?

24 A. Yes, sir, it's to be escrowed.

25 Q. What happens to the arrangement with these

1 three other entities that picked up, if you will,
2 Chevron's 25 percent? How are they to be repaid?

3 A. Right now they're not. They're simply in
4 limbo.

5 Q. When they recover in some fashion the money
6 that they contributed for Chevron's share, are they to
7 be entitled to anything else?

8 A. Well, if Chevron is given the right to the
9 San Andres formation, they would not be entitled to any
10 recovery, except a proportionate part of the well costs
11 that Chevron would reimburse.

12 Q. So those three entities, then, would have
13 simply put in the 25 percent and received it back
14 without receiving any profit for that investment?

15 A. They would lose money because they would not
16 get a reimbursement of the total well cost that was
17 expended.

18 Q. Was there an arrangement between Yates Energy
19 Corporation and these three entities by which, in the
20 event it is determined that Chevron either is not
21 entitled to a new election or in fact does not
22 participate and there is a penalty factor assessed, who
23 shares in the penalty factor revenues?

24 A. The parties that took over the interest.

25 Q. And Yates Energy Corporation does not derive

1 the financial benefit for the risk --

2 A. No, sir.

3 Q. -- of carrying this Chevron 25 percent?

4 A. No, sir.

5 Q. So for -- Regardless of the formation, Yates
6 Energy Corporation has no risk involved in the drilling
7 of the well and the cost expended on the well?

8 A. Not to the 25-percent interest of Chevron.

9 MR. KELLAHIN: No further questions.

10 EXAMINER STOGNER: Thank you, Mr. Kellahin.

11 Any more questions of this witness?

12 MR. STOVALL: I don't think have any at this
13 time. Let's move along.

14 EXAMINER STOGNER: Thank you, Miss Hamilton.
15 You don't have any other witnesses, do you, Mr.
16 Padilla?

17 MR. PADILLA: I don't have any other
18 witnesses.

19 EXAMINER STOGNER: Mr. Kellahin?

20 MR. STOVALL: I assume -- Let's clarify for
21 the record, Mr. Padilla, that you are -- This is the
22 case reopened, so the testimony in July is part of this
23 record, and that is your argument for a hundred percent
24 of the costs being paid, your evidence, your case in
25 support of your position; is that correct?

1 MR. PADILLA: That's correct.

2 MR. KELLAHIN: Mr. Examiner, to expedite it I
3 propose not to call Mr. James Baca. He was my land
4 witness, and he would simply introduce the fact to
5 which Mrs. Hamilton's already testified, the parties
6 haven't agreed yet. And I'll admit him as a witness,
7 and let me go directly to my drilling engineer, Mr.
8 Mike Akins.

9 EXAMINER STOGNER: Thank you, Mr. Kellahin.

10 MR. KELLAHIN: Call Mr. Akins.

11 MR. PADILLA: If I may make a procedural
12 point here, at the July hearing Mr. Kellahin rested his
13 case, failed to present any evidence at that time. It
14 seems to me that he waived any kind of a case by not
15 presenting any evidence in that he rested at that time.
16 Therefore he's precluded at this time. So I move that
17 any testimony that he proposes not be allowed at this
18 point.

19 MR. STOVALL: Well, Mr. Examiner, I would
20 suggest that the Order reopens this case and addresses
21 specific issues and asks the parties to be prepared to
22 present that. I think that's certainly within the
23 scope of the Order.

24 EXAMINER STOGNER: I believe you're right,
25 Mr. Stovall. Objection overruled, Mr. Padilla.

1 Mr. Kellahin?

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

3 MICHAEL E. AKINS,

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

6 DIRECT EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Mr. Akins, for the record would you please
9 state your name and occupation?

10 A. My name is Michael Akins. I'm the New Mexico
11 District Drilling Superintendent for Chevron USA,
12 Incorporated.

13 Q. Describe for me, Mr. Akins, your educational
14 background, please.

15 A. In 1975 I received a bachelor of science
16 degree from Texas A&M University in engineering
17 technology.

18 Q. Subsequent to graduation would you
19 summarize -- In fact, let's not just start there; let's
20 go back earlier. Describe for us your employment
21 experience in the oil and gas industry.

22 A. I started at 14 years of age in Fort
23 Stockton, Texas, as a roustabout working for a
24 roustabout company in the oil fields, and with each
25 succeeding summer and spring break and Christmas

1 vacation I worked with various companies learning the
2 oil field from the bottom up.

3 Upon graduation I went to work for Hemrick
4 and Payne International Drilling Company, which is an
5 international drilling contractor involved in the
6 drilling of oil and gas wells.

7 From that time, after I worked for them for a
8 while, I went to work for Gulf Oil Corporation in Fort
9 Stockton, Texas, and have been through a series of
10 promotions and advancements in the Permian Basin for
11 the last 14 years and have worked my way up to drilling
12 superintendent.

13 Q. Describe for us currently what you do as a
14 drilling superintendent in the Permian Basin in New
15 Mexico.

16 A. I supervise 13 employees in the exploration
17 and drilling of production wells from 3700 feet to
18 14,000-foot wells in the central basin platform in the
19 Delaware Basin of southeast New Mexico.

20 Q. During your professional experience as a
21 drilling superintendent in New Mexico, have you dealt
22 with on a regular basis the analyzing AFEs and the
23 preparation of costs for the drilling of Bone Springs
24 wells?

25 A. Yes, I have.

1 Q. As well as San Andres wells?

2 A. Yes, I have.

3 Q. Describe for us the level of activity that
4 you currently supervise for your company.

5 A. Currently we have three drilling rigs running
6 and two pulling units working in southeast New Mexico,
7 of which we have a drilling rig running, drilling San
8 Andres wells in the Eunice Monument South unit, as well
9 as we just finished drilling a Bone Springs well out
10 off the caprock in the -- I've forgotten the name of
11 the pay right off the top of my head. And we have a
12 12,000-foot well drilling just north of Hobbs.

13 The Bone Springs wells that I was trying to
14 allude to are about ten miles east of the well in
15 question.

16 Q. Were you asked by your company to examine the
17 position Yates had presented to your company with
18 regards to the costs they're attributing to this
19 Thornbush Number 1 Well for the Bone Springs and the
20 San Andres completion?

21 A. I was asked in early August to look at a
22 \$603,000 cost estimate on the Thornbush Federal Number
23 1, by Mr. Al Bowen, to look at it and see if I could
24 back out a San Andres completion cost, or a San Andres
25 drilling complete cost, out of that number.

1 Q. Since then you have continued your study with
2 regards to this particular well and have examined the
3 additional information that Yates has provided to your
4 company?

5 A. Yes, I have.

6 Q. And based upon an assimilation of all of this
7 information and data, have you been able to formulate
8 an opinion as an expert drilling superintendent with
9 regards to the allocation of costs between the Bone
10 Springs and the San Andres for this particular well?

11 A. Yes, I think I can do that.

12 MR. KELLAHIN: Mr. Examiner, we tender Mr.
13 Akins as an expert drilling superintendent.

14 EXAMINER STOGNER: Are there any objections?

15 MR. PADILLA: No, sir.

16 (Off the record)

17 EXAMINER STOGNER: Mr. Akins is so qualified.

18 (Off the record)

19 Q. (By Mr. Kellahin) Let me start at the
20 beginning, sir, and ask you, what were you first asked
21 to do?

22 A. I was first asked to look at a Bone Springs
23 cost estimate, to back out San Andres drill-and-
24 complete costs from it, to be able to -- I assume for
25 Al to be able to present at the hearing in July.

1 Q. Subsequent to that, have you made -- Did Mr.
2 Bohling make available to you a transcript of the
3 hearing before Examiner Catanach on July 25th of this
4 year?

5 A. Yes, and I have read that.

6 Q. And you have also read the Order that he
7 issued --

8 A. Right.

9 Q. -- in that case, and you've looked at the
10 exhibits that Mr. Padilla's client presented?

11 A. I think most of them, yes.

12 Q. The AFEs that were --

13 A. Right.

14 Q. -- presented in that case?

15 A. The Thornbush Federal Number 1 as well as the
16 San Andres offset, the Prickly Pear thing.

17 Q. You were asked to make an assessment of the
18 information available to reach a determination about
19 the allocation of costs to the San Andres for this
20 well?

21 A. Yes.

22 Q. Were you given any direction to come up with
23 any particular solution?

24 A. No, they just asked me, based on my
25 experience and everything, to come up -- What is a

1 reasonable San Andres cost estimate?

2 Q. And you have available to you now what Miss
3 Hamilton has delivered to your company in terms of the
4 actual costs as they currently exist for this well?

5 A. For the Bone Springs well.

6 Q. I understand. Describe for us the method
7 that you utilized to reach your conclusion about the
8 allocation of costs. What did you do?

9 A. To start off with, not having drilled a San
10 Andres well in the immediate vicinity of the well in
11 question, I did a research. I went to PI cards to try
12 and find out what the average drilling time was in
13 those wells.

14 When Al came to me in August I said it's very
15 -- I thought it was a cut-and-dried situation. I said,
16 We just go to the base of the San Andres and allocate
17 those costs.

18 Our company -- We keep our drilling cost on a
19 daily basis. Our drilling reps are trained and turn in
20 costs on a daily basis that -- We have found that to be
21 the only accurate way to do it to get accurate cost.

22 So I said that I needed to research, so I
23 went and found in the area that there were some
24 completions that were listed in the PI cards, petroleum
25 information, to try and find out the actual drilling

1 days, and I have, if you want --

2 Q. Why is it important to you as a drilling
3 superintendent in making a cost allocation to know the
4 drilling day time?

5 A. The more days you're on a location, the more
6 money you spend. It's pretty simple in that regard.

7 Q. What else did you want to know?

8 A. I wanted to compare drilling days as far as
9 what the average in the area was for San Andres wells,
10 as compared to Bone Springs wells.

11 Q. Anything else?

12 A. No, I -- Based on those numbers, I could
13 generate a cost estimate of my own.

14 Q. When you looked at the transcript and the
15 information available from the Applicant, what did you
16 utilize as the total depth for the well?

17 A. 9060 feet.

18 Q. And what's the source of that information?

19 A. The hearing document that -- the finding of
20 the document of a TD of 9060, as well as there was that
21 number written in the cost estimate -- or in the
22 tabulation of final cost, that number was documented.

23 Q. Was there any guidance formula or method that
24 you applied to the costs to allocate those costs on
25 some basis between the San Andres and the Bone Springs?

1 A. We have a COPAS agreement that is written by
2 the Petroleum Accountant Societies, Bulletin Number 2,
3 just specifically for that, for the determination of
4 intangible drilling cost.

5 Q. When you examined the information available
6 to you, what did you use as the footage component for
7 the allocation formula so that you could separate out
8 the San Andres from the deeper costs?

9 A. I went to -- At first, I was given two
10 estimates, one a Bone Springs estimate, one a San
11 Andres estimate, the Prickly Pear, to look at. The
12 Prickly Pear, if I recall correctly, had a total depth
13 of 5000 feet.

14 In my investigation of wells in the immediate
15 vicinity, in looking upon it -- and I found three wells
16 that were drilled by Harvey E. Yates Company that
17 listed the top of the Delaware at approximately 4800
18 feet, so I used these PI cards. These wells are in
19 Section 13 of Township 18, 31 East, which would be a
20 mile south and a mile west, and so I used that depth
21 off of these PI cards of the formation top cost.

22 Q. Okay. What then did you do?

23 A. Then I took the numbers provided in the
24 October 5th letter -- No, it's not the October 5th
25 letter. There was a document that was given to me that

1 had the cost presented as of June 30th, \$563,000, if I
2 recall correctly. And I went to the COPAS agreement
3 and went and found a cost allocation factor of where
4 you can allocate the intangible drilling cost on a days
5 versus days basis.

6 I other words, if it takes 10 days to drill
7 to the San Andres and 24 to drill to the Bone Springs,
8 you divide that ratio and come up with a percentage
9 factor to allocate back to the intangible drilling
10 cost.

11 Q. Do you find as an expert that that is a fair
12 and reasonable way by which to allocate costs between
13 the San Andres and the Bone Springs?

14 A. Based on the numbers I was given, based on my
15 own cost estimate, they came out extremely close. So
16 yes, I do.

17 Q. Let's turn to Exhibit 1 now and have you
18 identify that for us.

19 A. Exhibit 1 is the nine wells that I researched
20 in the immediate vicinity in Township 18 South, 31
21 East, where I looked at three Grayburg-San Andres wells
22 that had an average depth of 4500 feet with days on
23 location, days on location being the spud date to rig
24 release, which is the intangible drilling costs that I
25 was interested in, and found that the average depth of

1 those wells was 4500 feet, with the average drilling
2 days of nine.

3 Delaware wells were identified as wells that
4 were drilled to approximately 5400 feet to 5500 feet,
5 and I had three wells with the average days on location
6 being 11.6.

7 Then I did three Bone Springs wells in
8 Section 2, immediately to the south of the well in
9 question, and found that the average days on location
10 was 23 days and an average depth was 9052. Comparing
11 that to the Thornbush Federal which was -- had 24 days
12 on location and drilled to a depth of 9060, I thought
13 those were pretty good comparisons.

14 Q. Having satisfied yourself that you have an
15 average reliable depth for these various formations,
16 what did you then do?

17 A. I took the numbers that were provided in the
18 June 30th numbers and tried to -- and backed out the
19 intangible drilling costs and multiplied them by the
20 ratio of 10 divided by 24 and came up with a number.

21 But as of Monday I came up -- I was handed a
22 new document that showed the cost allocation, I assume
23 through Monday, which was \$620,151, and I applied that
24 allocation to that.

25 Now, the number that was provided to me on

1 that date did not have the intangible drilling costs up
2 to rig release. It had the intangible drilling cost up
3 and through Monday, I suppose. The date is confusing
4 as to what point it stops or what the data is. Based
5 on testimony I've heard, it is all well costs.

6 So I multiplied that by 41 percent.

7 Q. We've finished Exhibit 1. Exhibit 2 is the
8 COPAS bulletin that you've used as a basis for the
9 allocation?

10 A. Yes.

11 Q. Okay, let's turn to that and have you find
12 the page of the bulletin which you specifically
13 utilized in your analysis. What page would that be on?

14 A. Page 4, Allocation of Intangible Drilling
15 Costs, major topic B, subitem 1, paragraph (a), the
16 drilling day ratio.

17 Q. What guidance does this bulletin at this
18 location provide for you in the allocation of the
19 intangibles? What does it say? Paraphrase the formula
20 for us.

21 A. It paraphrases and says that you have two
22 zones of interest, you have a shallower zone of
23 interest and a deeper zone of interest, that the
24 intangible drilling costs through rig release should be
25 proportioned to the base of that zone, from grass roots

1 to the base of that zone, of the shallower zone above
2 it, and then for the zone below it, those costs would
3 be attributed as well to the deeper zone.

4 Q. Let's turn now to Exhibit Number 3. What is
5 Exhibit Number 3?

6 A. Exhibit Number 3 is the estimated San Andres
7 drilling and completion costs that I computed based on
8 the total well cost furnished Monday that I was trying
9 to extract the total intangible drilling costs,
10 realizing that I was looking at the total intangible
11 costs for the well, and came up and applied the
12 drilling footage ratio against that and came up with an
13 intangible allocation dollar value.

14 Q. All right. Before we talk specifically about
15 the details of Exhibit Number 3, let's go to Exhibit 4
16 and have you identify that.

17 A. This was the document that I received Monday
18 through our land department that is the up-to-the-
19 minute, I assume, cost detail from Yates.

20 Q. All right. Let's have you --

21 A. And it's a draft document written on it in
22 draft.

23 Q. I understand it's a draft, and when we look
24 at the grand totals, then, the \$620,151.60 that appears
25 on the first page, far right column --

1 A. Uh-huh.

2 Q. -- do you see that number?

3 A. Yes, I do.

4 Q. That is the same number that you put on
5 Exhibit Number 3 as the third entry from the top?

6 A. That is correct.

7 Q. All right. Are there any comments that you
8 want to make about Exhibit Number 4 before we rely upon
9 that tabulation to go to the allocation?

10 A. The only comment I have to make on it is that
11 when I got it, I saw this number 5400 feet, Kelly
12 bushing elevation or Kelly bushing depth, and
13 questioned the person that gave it to me, where does
14 this number come from?

15 Q. Where do you find that in the document?

16 A. On the very front page, underneath "amount,"
17 there's a double border there written that says less
18 than 5400 feet and deeper than 5400 feet, and I assume
19 the subtotal at the bottom, the grand totals that are
20 in boxes, the 5400 feet, \$387,921 is to be attributed
21 to the cost drilling to 5400 feet, and from 5400 feet
22 to TD is \$232,229.

23 Q. Have you been able to make any investigation
24 to determine whether or not there's any rationale for
25 making an allocation based upon 5400 feet Kelly

1 bushing?

2 A. Based on my PI cards, I go back to those and
3 show the formation tops shown in some of the deeper
4 wells that show the top of the Delaware at 5059 --
5 Excuse me, top of the Delaware at 4760, and 4758 on
6 another well. So I used arbitrarily 4800 feet because
7 you typically drill 50 to 60 foot of rathole below the
8 base of the pay so you can log it.

9 Q. In your opinion, would you allocate for
10 purposes of this well costs from the surface down to
11 5400 feet and attribute that to the San Andres?

12 A. No.

13 Q. When you reviewed the transcript, did you
14 determine where exactly this well was perforated in the
15 San Andres?

16 A. 4637, one foot, I believe.

17 Q. Let's go now to Exhibit Number 3. Describe
18 for us your entries and then your ultimate conclusion
19 with regards to the allocation of costs.

20 A. As stated before, the total depth on the well
21 in question was 9060 feet. The days on location was
22 24. The total well cost provided in the Yates fax of
23 Monday was \$620,151, of which I had to back out their
24 tangible cost to come up with the total intangible
25 cost, and I want to emphasize that that is intangible

1 cost, not intangible drilling cost. That includes the
2 completion portion of it as well.

3 From COPAS Bulletin Number 2, Part B, the
4 Allocation of Intangible Drilling Costs, even though I
5 used that number of \$429,000, it was the best number I
6 could come up with because I do not have a rig release
7 date, or a rig-release dollar value of intangible
8 drilling costs, so I used the best number that I could
9 get my hands on provided by Yates, and took the ratio
10 of 10 divided by 24 to get 41.67 percent, and
11 multiplied it by the intangible cost of \$429,380 to get
12 an allocation factor for the San Andres of \$178,908.

13 Q. Again, now, the qualification about the
14 \$429,380 number is that those intangible costs may in
15 fact include what that should not be included?

16 A. Based on my reading of OCD documents last
17 night, about four attempts to complete in zones deeper
18 than the San Andres.

19 Q. All right. Subject to that reservation about
20 the reliability of that number, how did you make the
21 allocation?

22 A. I just went ahead and stayed with the numbers
23 that were provided, and after I got to the intangible
24 drilling cost, I knew that there were certain items
25 that I could add back in, like the wellhead, the

1 section A, the section B and the tubing head, I took
2 those numbers at whole values. The 13-3/8-inch surface
3 casing, I took that as a whole value.

4 The 8-5/8 intermediate casing, since this was
5 a San Andres well, I said was not applicable. We don't
6 need to have intermediate casing in a San Andres well.

7 The 5-1/2 production casing, instead of
8 allocating that on a 10/24 basis, I went ahead and
9 allocated that on 4800 feet, because that is a number
10 that I can physically put my hands on. I took the
11 5-1/2 production casing costs provided in the document,
12 divided it by 9060 feet and turned around and
13 multiplied it by 4800. That \$6.83 a foot you see is
14 the number that was provided to me divided by 1090 --
15 excuse me, divided by 9060. And then I multiplied by
16 4800 feet to get 32,802.

17 2-3/8 production tubing I did the same thing,
18 allocated it back to 4800 feet. And production
19 facilities, I took that as a 100-percent value based on
20 numbers furnished. The thing that I can say about the
21 tubing, you typically don't run 4800 foot of tubing in
22 a 4800-foot well. You typically produce it from a
23 little bit higher up. But that's inconsequential.
24 4800 feet would be an acceptable number to me to use.

25 Q. When you add up those tangible costs, then,

1 you get a subtotal, if you will?

2 A. Of \$72,544.

3 Q. And you add that number to what number?

4 A. The \$178,908.

5 Q. Giving you what?

6 A. \$251,452, as a total cost that could be
7 attributed to a San Andres well, based on Bone Springs
8 cost.

9 Q. Did you try to approach the problem from any
10 other direction to see to what extent you had
11 confidence in the reliability of the \$251,000 as being
12 a fair and reasonable --

13 A. Yes, I --

14 Q. -- expectation of costs for the San Andres?

15 A. Yes, I did. Right there on the bottom line I
16 put a note that said the cost estimate obtained by
17 multiplying the day ratio by the total well cost of
18 41.67 percent times \$620,000 comes up \$258,000.

19 I thought that was remarkably close in terms
20 of how the association of accountants had developed
21 this drilling ratio figure, that it's extremely
22 accurate. It's very workable and very usable, even
23 including tangible cost.

24 Q. Regardless, then, Mr. Akins, of whether Yates
25 is on one side of the problem and Chevron on the other,

1 or flip it around, would you be comfortable and
2 confident as a drilling superintendent to have these
3 costs applied to you if you were in Yates's position?

4 A. Yes.

5 Q. Did you attempt to approach this from
6 analyzing what it would cost for a San Andres attempt,
7 separate and apart from the details of Yates's Bone
8 Springs well?

9 A. Yes, I did. There's a cost estimate on one
10 of our computer forms that -- I don't -- That's not it.
11 You're asking for the San Andres cost estimate?

12 Q. Well, in a general range, what is your
13 experience level with regards to a straight-up San
14 Andres well? What's the total on that?

15 A. Straight-up San Andres well to 4600 feet,
16 4800 feet, should be in the \$250,000 to \$300,000 range,
17 and those costs could be dependent upon coring and
18 testing and any other things that could be attributed
19 that would increase the cost. But straight-up
20 drilling, \$250,000 to \$300,000.

21 Q. So when you analyze it from that perspective
22 and look at the actual costs as reported to you by
23 Yates and applied it to the Thornbush Federal well,
24 what does that tell you about your allocation and the
25 methods you've used to establish that allocation?

1 A. I feel comfortable with it.

2 Q. Let's go to Exhibit Number 5. Would you
3 identify that for me?

4 A. Exhibit Number 5 is the recent Bone Springs
5 well that Chevron has not completed as yet. We have
6 just finished drilling this well on Sunday of this past
7 week, and this is a day versus depth versus cost that
8 we keep on a daily basis. And I'd like to point out to
9 you that on day 10 we were at 4800 feet, and our total
10 expended cost at that point was \$192,150.

11 Q. That's the tenth day down on this display?

12 A. Yes.

13 Q. Which at 4800 feet, then, gives you a total
14 cumulative cost of what?

15 A. \$192,150. That number also includes our
16 8-5/8 casing string as well.

17 Q. Okay. So what did you do with this example
18 in order to have it adjusted to a San Andres
19 completion?

20 A. Well, to adjust it to a San Andres
21 completion, I took our cost at 4800 feet, which had an
22 8-5/8 casing string in it as well, which was not
23 required, and I started trying to add in the known
24 values of -- or estimated values that I could come up
25 with for a San Andres completion.

1 I took the logging cost on the Thornbush
2 Federal and divided it by the 10/24 ratio and said that
3 the logging cost attributed to the San andres would be
4 \$8500.

5 The 5-1/2 casing figure, the 2-3/8 tubing,
6 the production facilities are all the same numbers that
7 you've seen in the other displays.

8 And then the 5-1/2 cement, I did a ratio on
9 that. And then I estimated the perf and acidized
10 pooling unit, and I added \$10,000 miscellaneous cost in
11 case I overlooked something.

12 Come up for a grand total of \$296,420.

13 Q. What does that tell you as an expert when you
14 compare it to Exhibit Number 3, which is your
15 allocation formula?

16 A. It tells me that Exhibit Number 3 is in line.

17 Q. In summary, Mr. Akins, what is your
18 recommendation to the Examiner as to the method for
19 adopting an allocation formula to take the Thornbush
20 Federal 1 costs and have them fair and reasonably
21 allocated to the San Andres completion?

22 A. My recommendation is that the COPAS agreement
23 Bulletin Number 2 be used, because if you do not
24 capture the intangible drilling costs at the point of
25 when you expend them, trying to back into them is

1 extremely difficult. So we could use that allocation
2 factor of 10/24 and apply that against the cost and try
3 and come up with a number of around \$250,000 as a San
4 Andres well.

5 Q. In your opinion, is that a fair and
6 reasonable method of allocation as you have
7 demonstrated on Exhibit Number 3?

8 A. Yes, I think it is.

9 Q. Is this the method by which, then, you would
10 recommend the Examiner adopt and apply to Yates the
11 formula for the allocation of costs for this well?

12 A. Yes.

13 MR. KELLAHIN: That concludes my examination
14 of Mr. Akins. We move the introduction of Exhibits 1
15 through 5.

16 EXAMINER STOGNER: Are there any objections?

17 MR. PADILLA: No objections.

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

20 Mr. Padilla, your witness.

21 MR. PADILLA: Mr. Examiner, I wonder if I
22 could have a short recess at this time.

23 EXAMINER STOGNER: What? Five, ten minutes?

24 MR. PADILLA: Five minutes.

25 EXAMINER STOGNER: Okay, five-minute recess.

1 (Thereupon, a recess was taken at 3:34 p.m.)

2 (The following proceedings had at 3:44 p.m.)

3 EXAMINER STOGNER: Shall we go back on the
4 record?

5 Mr. Padilla?

6 CROSS-EXAMINATION

7 BY MR. PADILLA:

8 Q. Mr. Akins, let me ask on -- going to your
9 Exhibit Number 5 and see if I understand this
10 correctly. This applies to the well you're drilling in
11 Lea County; is that correct?

12 A. That is correct. It's approximately 10 miles
13 east of the Thornbush. It's a 9250-foot-deep Bone
14 Springs test.

15 Q. And do you own all the -- Does Chevron own
16 all the rights in that well?

17 A. I do not know.

18 Q. Have you completed this well in the Bone
19 Springs?

20 A. No, we have not, it's pending completion.
21 These figures are only developed to show drilling cost.

22 Q. Do you know whether Chevron tested other
23 zones on the way down in this well?

24 A. No, we did not. We had a mud logger on, but
25 we did not drill-stem test any other zones except Bone

1 Springs.

2 Q. But you do look at the mud logs to determine
3 whether there are any other potential pays on the way
4 down; isn't that correct?

5 A. Our geology has us put a mud logger on for
6 their use, yes. I assume it is for looking for any
7 zones that might appear.

8 Q. Assuming this particular well would have been
9 dry in the Bone Springs -- and still could be, I
10 suppose -- you would look at other zones upstairs,
11 wouldn't you? Wouldn't Chevron look at other zones
12 upstairs?

13 A. That would be typical of our geology
14 department. They would look at the logs to see if
15 there's any other potential, yes.

16 Q. And that, in your opinion, is a prudent
17 procedure to follow?

18 A. I would say yes.

19 Q. What would you attribute total well costs to
20 a well, say, drilled, to 4800 feet in this particular
21 instance?

22 A. My total well cost?

23 Q. Yes, sir.

24 A. I would have to attribute the drilling cost
25 down to 4800 feet, plus the tangible cost and then the

1 completion cost.

2 Q. You would ignore all of the incremental costs
3 from 4800 feet down to a total depth of 9250?

4 A. You're not clear in what you're asking me.
5 Are we talking a Bone Springs well or a San Andres
6 well?

7 Q. I'm asking you a hypothetical, Mr. Akins. If
8 you completed a well at 4800 feet, you're telling me
9 that you would ignore all costs below 4800 feet?

10 MR. KELLAHIN: I'm going to object. The
11 question is not capable of being answered. Ignored for
12 what purpose?

13 EXAMINER STOGNER: Mr. Padilla, I'm not sure
14 where you're going on this either.

15 MR. PADILLA: Well, let me clarify myself.

16 EXAMINER STOGNER: Okay.

17 Q. (By Mr. Padilla) Assuming -- Let's assume
18 for the moment, Mr. Akins, that you had -- that this
19 particular well was dry in the Bone Springs, which is
20 your proposed objective, and you did complete at 4800
21 feet. How would Chevron assess total well costs for a
22 well drilled or completed at 4800 feet in this
23 instance?

24 A. The first thing I can think of is that if it
25 was dry in the Bone Springs, we would talk to the OCD

1 and get cement plugs to plug off the lower portion of
2 the well and save tangible casing costs. So therefore,
3 the cost would be lower than what you see there on day
4 28.

5 But the second thing that I want to bring up
6 is that, the primary objective being the Bone Springs,
7 that if we have a change in scope, more than likely the
8 change in scope is going to require management approval
9 before proceeding. Now, logs would be run and
10 evaluated, and we may have a day that was rig time
11 before we possibly set pipe at a shallower depth.

12 Q. Assuming, Mr. Akins, that you got management
13 approval, your logs looked good and you decided to
14 complete this well at 4800 feet, what would be the
15 total costs that you would attribute for a well
16 completed at 4800 feet?

17 A. If you're just talking total cost and you're
18 talking while the rig is still on the hole, you would
19 have to assume the costs to go to TD and come back.

20 Q. Okay. Let's go to your Exhibit Number 1,
21 please.

22 A. Okay.

23 Q. You indicated in your testimony that you had
24 read the transcript of the July hearing; is that
25 correct?

1 A. Yes.

2 Q. Did you read the testimony given by Mr. Baker
3 regarding geology in this area?

4 A. I've read it, but to tell you that it meant
5 anything to me -- I was looking for drilling costs when
6 I read through it.

7 Q. You don't recall his testimony regarding the
8 general nature of the geology, that there was
9 interfingering between San Andres and Grayburg and
10 Delaware formations in this area?

11 A. I read it, but to tell you that it's -- the
12 geology part of it, I can't answer that. I'm not a
13 geologist.

14 Q. Normally, on a wildcat -- Well, first of all,
15 do you agree that -- Do you know whether this well was
16 a wildcat in the San Andres?

17 A. Based on the testimony, I think the word was
18 used, a wildcat zone.

19 Q. And would a different procedure apply to
20 completing the well, a wildcat well, to a development
21 well, or San Andres?

22 A. Would you please re-explain your question,
23 because wildcat and developmental drilling --

24 Q. When you drill --

25 A. -- both signify immense differences to me.

1 Q. Okay what kind of differences would you --
2 would be characteristic of a development well and a
3 wildcat well?

4 A. A development well, if we had a show in the
5 San Andres, we would probably still drill through it
6 and just log that show, whereas on a wildcat well, we
7 might log it at that point and turn around and drill-
8 stem test it.

9 Q. Let's say that you're just drilling a San
10 Andres well in this area, and it's a wildcat well.
11 What -- Would the initial well have a special casing
12 procedure?

13 A. For a 4800-foot --

14 Q. Yes, sir.

15 A. -- San Andres well? No more than what is
16 required from the offset wells, a surface string of
17 casing and a production string. Surface to protect the
18 groundwater, long string to case off the productive
19 intervals.

20 Q. Going to your Exhibit Number 5, Mr. Akins,
21 would you use an intermediate casing in that instance?

22 A. In a wildcat well?

23 Q. Yes, sir.

24 A. No.

25 Q. You did not use an intermediate string in

1 this well, as shown on Exhibit Number 5?

2 A. Are we talking a 4800-foot San Andres wildcat
3 now?

4 Q. I'm talking about a total depth of 9250, a
5 Bone Springs test.

6 A. A 9250-foot Bone Springs test requires an
7 intermediate. And yes, we did set intermediate.

8 Q. And if you were to come back up again, say,
9 to 4800 feet, you would include the cost of
10 intermediate casing for a well completed in -- at 4800
11 feet; isn't that correct?

12 A. Would you repeat that, please?

13 Q. Wouldn't you compute -- Well, let me go -- be
14 a little bit more specific. One of your exhibits shows
15 that you did not attribute any cost to intermediate
16 casing because you thought it -- I think that's your
17 Exhibit Number 3.

18 A. That's correct.

19 Q. Assuming a completion backup hole where you
20 have had to have intermediate casing already in the
21 well, would it be an appropriate accounting procedure,
22 in your opinion, to allocate costs for intermediate
23 string?

24 A. In purposes of drilling a well in which we
25 didn't participate in the Bone Springs and came back,

1 we consider those as sunk costs, spent and gone.

2 Q. You're going beyond my assumption. If the
3 string is already in the well, you come back upstairs
4 and complete a well at 4800 feet, wouldn't it be
5 appropriate to use and attribute a cost to the
6 intermediate string if it is already in the well?

7 A. If I was participating as a different partner
8 in a different zone, the sunk costs wouldn't mean
9 anything to me. I don't want to participate on the
10 cost allocation factor which covers the intangible
11 drilling cost. Those are tangible costs, the casing.

12 Q. Is what you're saying is that that's not an
13 appropriate accounting procedure? Is that what you're
14 saying?

15 MR. KELLAHIN: Object to the form of the
16 question. It's not an accounting question. It's a
17 cost allocation. We don't have an oil and gas
18 accountant before us.

19 EXAMINER STOGNER: Do you want to restate
20 your question, Mr. Padilla?

21 Q. (By Mr. Padilla) Well, Mr. Kellahin calls it
22 a cost allocation factor. Let's talk in those terms.
23 Is this an appropriate cost allocation factor when you
24 have intermediate string in a well and it's recompleted
25 in a shallower formation?

1 A. What I was attempting to do was to back out a
2 San Andres completion, and that's why I showed that as
3 non- --

4 Q. I didn't ask you what you were attempting to
5 do. I understand what you attempted to do. It was in
6 your testimony. I'm asking, once that intermediate
7 casing is in the well, what is the appropriate cost
8 allocation if that intermediate casing is in the well?

9 A. What is appropriate cost allocation? Once
10 again, I'm going to go back to the fact that it's sunk
11 cost. It's spent and gone.

12 Q. And you're saying that in your case that's a
13 sunk cost and you have no responsibility for that cost
14 at all?

15 A. No, not that we don't have responsibility for
16 it, but in terms of nonparticipating in the Bone
17 Springs test, that's a sunk cost that it's required for
18 Bone Springs. It's not required for San Andres.

19 Q. Are you in effect saying that another well be
20 drilled in order to appropriately allocate costs to
21 this particular well?

22 MR. KELLAHIN: Object to the form of the
23 question. It's argumentative in assuming facts the
24 witness didn't describe.

25 EXAMINER STOGNER: Mr. Padilla?

1 MR. PADILLA: I don't know that it's
2 argumentative. I wasn't trying to argue with the
3 witness.

4 EXAMINER STOGNER: Do you want to restate it
5 or --

6 MR. STOVALL: I don't think I understood the
7 question myself.

8 Q. (By Mr. Padilla) Well, I guess what I'm
9 trying to say, Mr. -- or ask, Mr. Akins, is, are you
10 proposing that a new well be drilled that would not
11 carry all this excess baggage that we're talking about
12 in this case?

13 A. To come up with the cost?

14 Q. Yes.

15 A. No. We ought to be able to work up a formula
16 that is acceptable.

17 Q. And you're saying that in this particular
18 case intermediate casing is sunk cost that should have
19 no bearing at all in cost allocation?

20 A. That was the way I looked at it when I did my
21 cost estimate. It was not required for a San Andres
22 well, so therefore I did not include it in the cost.

23 Q. And that's a nice cost allocation procedure,
24 whether or not to -- which really ignores the facts as
25 they exist in the wellbore, isn't it?

1 MR. KELLAHIN: Objection, Mr. Padilla's
2 arguing with the witness. He doesn't like the answer
3 and he wants him to change the answer.

4 EXAMINER STOGNER: Mr. Padilla, do you want
5 to restate it?

6 MR. PADILLA: Well, Mr. Examiner, I think
7 I've made my point.

8 Q. (By Mr. Padilla) Now, going to your Exhibit
9 Number 2, Mr. Akins, I notice at the bottom here that
10 it's got a stamp, Before the Oil Conservation
11 Commission. Was this exhibit used in another Chevron
12 hearing at some time?

13 A. I don't know.

14 Q. When did you first see this Bulletin Number
15 2, or this exhibit?

16 A. This document was presented to me through our
17 land department on Friday of last week.

18 Q. Did you make the change on page 5?

19 A. No, I did not.

20 Q. Do you know who did this?

21 A. No.

22 Q. Do you know what that change means?

23 A. No, I don't. I don't know who -- Evidently
24 there's a question about it, and whoever wrote it was
25 putting their interpretations.

1 Q. Who gave you this bulletin?

2 A. It came through the land department, through
3 Al, I believe, because Al is the one that gave it to
4 me.

5 Q. And for what purpose was it given to you?

6 A. In terms of figuring costs. Evidently
7 they've dealt with deals in this aspect before and come
8 up with the intangible cost.

9 Q. When was the last time you made a back-end
10 allocation in the manner that you've done?

11 MR. STOVALL: I can't hear you, Mr. Padilla.

12 Q. (By Mr. Padilla) When was the last time you
13 made a back-end analysis as you have done here today,
14 for this hearing?

15 A. For this hearing? I made it yesterday
16 morning at about 8:30 when I got the new figures at
17 \$620,000, because I had done the figures earlier at
18 \$563,000, so I did the back end at \$620,000 yesterday
19 morning.

20 Q. And you used this bulletin to help you make
21 that allocation?

22 A. Yes, I did.

23 Q. Can you tell me the difference between, on
24 page 4, between using the method in your subparagraph
25 (a) and the method in your subparagraph (b) that runs

1 on to page number 5?

2 A. Yes, I can.

3 Q. What is the difference between using these
4 two methods?

5 A. The difference in the two methods is that the
6 drilling-day ratio is a computation of the days going
7 through the base of the upper zone, as compared to the
8 total days on location at rig release, and you come up
9 with a comparison of 10/24.

10 The second method is a footage ratio whereas,
11 in this aspect, you could take the footage ratio of
12 4800 feet and divide it by 9060 and come up with a
13 ratio as well.

14 Q. If you're drilling on a footage contract,
15 would it make a difference whether you used (a) or (b)?

16 A. A footage contract. The difference, in my
17 opinion, yes. Regardless if it's day work or footage,
18 there is a difference. And the difference is that the
19 day ratio is more appropriate because the faster hole
20 is in the top part of the hole. So therefore drilling
21 to 4800 feet in terms of the ratio, the number of days,
22 you can reach that depth quicker than you can 9060. So
23 at that point, with the fast hole being in the top part
24 of the hole, I use the drilling-day ratio.

25 Q. And using the drilling-day ratio obviously

1 favors your position in this case, correct?

2 A. As far as favoring it, it's more logical to
3 me because of the fact that there's fast hole. If
4 you're trying to get me to point out what the
5 percentages are, by looking at them, it does favor us
6 41.67 percent versus 52.98 percent, when you do the
7 allocation on that basis.

8 But as I explained earlier, the fast part is
9 in the top part of the hole. That is more appropriate.

10 Q. Going to your Exhibit 5, again, I must ask,
11 when you allocate costs to 4800-foot depth, it really
12 doesn't make any sense to use a drilling-day rate, does
13 it, if you recomplete -- get a dry hole and go back
14 upstairs?

15 A. Would you say that again please?

16 Q. Going to the example as shown by your Exhibit
17 Number 5, when you use a drilling-day rate as you have
18 done in your calculations, it doesn't make any sense
19 when you have to go to a total depth of 9250 and then
20 come back and recomplete; isn't that correct? It's an
21 inappropriate method; it's not accurate in terms of
22 drilling a speedy hole to 4800 feet?

23 A. I'm lost. Try me again.

24 Q. Well, what I'm saying is that when you have a
25 well that has been recompleted at a shallower location,

1 as was done in this case, using the drilling-day rate
2 basis that, as you have testified, that you drill
3 faster to a shallower depth, it doesn't make any sense
4 to attribute or use a daily drilling rate, as you have
5 done, in order to make your calculations? I mean, it's
6 not appropriate, isn't it?

7 A. Are you suggesting I need to divide by 10 by
8 28 instead 24?

9 Q. No, I'm suggesting that you have to have some
10 other factor, other than -- when you have a
11 recompletion -- other than just simply calculating a
12 depth of 4800 feet.

13 A. Well, I feel like the cost that we're trying
14 to talk about is the intangible drilling cost, and the
15 intangible drilling cost at that point, divided by that
16 fast-hole footage, is 10 divided by 24, and I think I
17 point that out fairly well in Exhibit 1.

18 Q. You've simply taken 10 days times the daily
19 drilling rate; isn't that correct?

20 A. Ten times the daily drilling rate?

21 Q. Ten days -- Let me see your exhibit. If I
22 understand it correctly, your Exhibit Number 3 shows 10
23 total days to 4800 feet.

24 A. Okay.

25 Q. Isn't that essentially what you've done is --

1 A. I'm showing that based on my research, that
2 it takes approximately 10 days to drill and case a
3 4800-foot San Andres well, and then I've multiplied
4 that by the intangible drilling cost attributed to
5 9060.

6 Q. But what I'm saying -- What I'm trying to
7 elicit from you is that you cannot accurately compare a
8 well that has been drilled in 10 days to the San Andres
9 with a well that has been recompleted in the San Andres
10 after having drilled to a depth of 9250, for example?

11 A. I think, using the allocation factor, that
12 the numbers come out within \$25,000 to \$30,000 of each
13 other. That's fairly close. And you have to
14 understand that drilling estimates are that: They are
15 estimates.

16 Q. Isn't it true that when you use a drilling
17 footage ratio, that you can only come up to a general
18 figure of 60 percent allocated --

19 A. Sixty-percent drill and 40-percent
20 completion?

21 Q. Yes.

22 A. That's not a bad number.

23 Q. Had you used a drilling footage ratio, you
24 would have come up closer to 60 percent; isn't that
25 what you're saying?

1 A. I haven't looked at it from that aspect. But
2 on a total AFE, on total cost -- that's intangible cost
3 plus tangible cost -- that the split is typically 60-
4 percent drilling, 40-percent completion.

5 Q. And that's approximately 20 percent more than
6 what you have come up with at 41 percent?

7 A. Okay, I see what you're saying. For the
8 purpose of that discussion, in terms of those numbers,
9 we also have to realize that four perforations, four
10 acid jobs, three retainers or bridge plugs were used in
11 plugging off that part. So those intangible costs on
12 the Bone Spring are thrown into that number, and what
13 that dollar figure is, I don't know.

14 Q. You would also agree that your 4800 --

15 MR. KELLAHIN: Object to the use of "also
16 agree." I don't know the witness has agreed also.

17 EXAMINER STOGNER: Mr. Padilla, do you want
18 to restate it?

19 Q. (By Mr. Padilla) Let me ask you about your
20 4800-foot depth on your Exhibit Number 1. If you have
21 to go through the Delaware formation to accurately
22 explore on a wildcat basis, wouldn't it both be more
23 appropriate to use the middle column instead of the top
24 column?

25 A. To go through the San Andres?

1 Q. Yes.

2 A. Based on the information I have in the PI
3 cards, the -- And these are Yates wells that are
4 offsetting us -- they're showing the log of the
5 Delaware top at 4758, 4714 and 4750. Typically 50 to
6 60 feet below the top of the next zone gives you
7 sufficient rathole to log to evaluate your wellbore.
8 So no, I can't agree to that.

9 Q. You looked at the actual data for this
10 particular well from the July hearing, did you not?

11 A. The testimony and the --

12 Q. Yes.

13 A. -- hearing findings?

14 Q. Yes.

15 A. Yes, I did.

16 Q. And you looked at the potential pays that
17 Yates Energy looked at on the way down; isn't that
18 correct?

19 A. Okay, I didn't pay a lot of attention to the
20 geology. I was looking for depth and drilling for --
21 because I knew I was going to defend allocation of
22 cost.

23 Q. And you did not look at where the actual --
24 or at the actual footage for this particular well; is
25 that correct? Is that fair to say?

1 A. Did not -- No, I read it. 9060 feet is what
2 I understand is the total depth of this well.

3 Q. How about through the Delaware?

4 A. Based on OCD documents, the top of the
5 Delaware is logged at 4810 feet.

6 Q. How about the bottom of the Delaware?

7 A. I can't call that number off the top of my
8 head, but I have it. Top of the Bone Springs, 5570, I
9 assume that's the base of the Delaware.

10 Q. Now, you used that cost. Do you know what's
11 above the Bone Springs?

12 A. Delaware.

13 Q. Delaware?

14 A. Yes, sir.

15 Q. Do you think it would be prudent to -- When
16 you're drilling a -- looking for Delaware -- you could
17 drill through the Delaware to see what all the
18 potential pays in the Delaware were?

19 A. If I'm looking at the Delaware, to drill
20 through the Delaware?

21 MR. KELLAHIN: Objection, Mr. Examiner. The
22 Delaware is not a subject of discussion today.

23 EXAMINER STOGNER: I agree with Mr. Kellahin,
24 Mr. Padilla. I don't see where you're going on this.
25 Shall we move on to something else?

1 MR. PADILLA: Well, Mr. Examiner -- I think
2 I'll stop at this point.

3 EXAMINER STOGNER: Thank you, Mr. Padilla.
4 Any other questions of this witness?

5 MR. KELLAHIN: No redirect, Mr. Examiner.

6 EXAMINER STOGNER: Mr. Carr?

7 MR. CARR: I have no questions.

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

10 MR. STOVALL: I've got a couple.

11 EXAMINATION

12 BY MR. STOVALL:

13 Q. We've spent a great deal of time here in
14 cross-examination talking about cost to the Bone Spring
15 and cost to the San Andres. Let me put it in a context
16 that I can understand.

17 Now, if I understand what you've been saying,
18 is it correct to understand what you've been saying
19 that as far as Chevron's internal costs are concerned,
20 if you drill this -- Let's take your Sprinkle B Federal
21 Number 2 well, that's a good example. You drill it
22 down to the Bone Spring and create a dry hole, or find
23 a dry hole, let's say, you consider those costs sunk,
24 and as far as Chevron's concerned, the cost of that
25 well internally is the total cost going down and coming

1 back up; is that correct? If you --

2 A. I guess if you --

3 Q. -- If it's dry in the Bone Spring and back,
4 complete in the San Andres.

5 A. If you want to say how much money was spent
6 on this well from the beginning of time until you hit
7 the San Andres, yes.

8 But in terms of the way we handle our AFE
9 procedures, if we set pipe on the Bone Springs and we
10 come up with a dry hole in the Bone Springs, we shut
11 down. We're still looking, but to do a San Andres
12 completion requires a new scope of a new AFE, of which
13 it may be \$30,000, \$40,000 to go in and shoot holes and
14 perforate. And based on the merits of that, we've got
15 a new AFE written. So those costs -- That's why I said
16 the costs were sunk.

17 Q. Yes, I understand. I mean, you've spent the
18 money, is what you mean by the costs were sunk. You
19 can't go back and retrieve the money you've spent
20 already, is that -- That's what you're saying, right?

21 A. Right.

22 Q. Let me then phrase the second part of my
23 question. Let's assume, because I think it's an
24 analogous situation, that Chevron is the operator of
25 this well, it's dry in the Bone Spring, you've got a

1 working-interest owner in the San Andres who is not a
2 working-interest owner in the Bone Spring. You come
3 back up and complete a San Andres producer. How would
4 Chevron charge that working-interest owner who's in the
5 San Andres only for cost? Do you know?

6 A. I don't think I can answer that question in
7 terms of what our land department would do, based on
8 the farmout of requests of whatever the agreements
9 were, but I think based on what I've found in the COPAS
10 agreements and whatnot, that probably that allocation
11 factor would be used.

12 Q. You would recommend to your company that they
13 allocated in the same cost that you're suggesting that
14 Yates Energy allocate those costs; is that correct?

15 A. I would, I would. But that's --

16 Q. And you're also saying you don't have the
17 decision, you're not --

18 A. But that's a management decision, that's my
19 next phrase. That's a management decision, and the
20 land department handles those kinds of requests.

21 Q. If you look at your cost sheet on Exhibit 5,
22 you come up with a \$296,000 cost. If you were trying
23 to do this allocation that you're talking about,
24 comparable with what you've done with Yates, just to
25 make it simple for arithmetic purposes, you've already

1 mentioned the fact that you've set your intermediate
2 8-5/8-inch before you got to 4800 feet, and then you've
3 got your 5-1/2-inch casing.

4 Would it give you a reasonable allocation
5 just to, in fact, take out the 5-1/2-inch cost if you
6 were going to allocate back to the Bone Springs, use
7 that rather than eliminate the intermediate casing as a
8 way to appropriately charge the -- excuse me, the San
9 Andres for the rest of these costs?

10 A. Well, I think the COPAS agreement covers
11 tangible costs as well as same allocation of the
12 formula. You can apply those numbers if you want to.

13 Q. But you've testified that an intermediate
14 string is not necessary --

15 A. It is not required for a San Andres well.

16 Q. And in making your analysis on Exhibit 3,
17 you've said you have not put in any costs for the
18 intermediate?

19 A. That's correct.

20 Q. And making that analogous as much as possible
21 to the -- your Sprinkle B well, your Exhibit Number 5,
22 comes up with \$296,000; this one comes up with
23 \$251,000.

24 A. I think reasonable -- What I'm trying to
25 show, my whole point of showing these documents is that

1 reasonable cost is somewhere between \$250,000 and
2 \$300,000 as being the maximum number, because it has
3 two strings of pipe in it.

4 Q. Okay.

5 A. But as far as Chevron's position would go, we
6 would go with the Exhibit Number 3 at \$258,000.

7 Q. Okay. What these are, what you've done, if I
8 understand you correctly, then, with these exhibits is
9 you've run different analyses in different ways to see
10 how they compare with each other?

11 A. I said \$250,000. I meant to quote the number
12 \$251,000, because if you base the allocation factor
13 that I used of 10/24 against the entire well costs,
14 they come up remarkably close. And all I'm trying to
15 say is that whoever wrote the COPAS bulletin knew what
16 they were doing.

17 Q. Let me go through my notes. And therefore
18 you are saying there is a direct relationship between
19 the days spent on the well, per depth, and the dollars?

20 A. Correct.

21 MR. STOVALL: At least a good correlation,
22 anyway, to use the geologists' term.

23 I don't think I have any other questions.

24 EXAMINER STOGNER: Any redirect, Mr.
25 Kellahin?

1 MR. KELLAHIN: No, sir.

2 EXAMINER STOGNER: Any other questions of
3 this witness? If not, he may be excused.

4 Mr. Kellahin?

5 MR. KELLAHIN: That concludes our
6 presentation of the evidence, Mr. Examiner. I have an
7 argument to make on the risk factors, but that's all
8 the evidence we would propose for this afternoon.

9 EXAMINER STOGNER: So I assume with this will
10 be the closing argument.

11 MR. KELLAHIN: We're prepared to argue.

12 EXAMINER STOGNER: Okay, Mr. Kellahin, I'll
13 let you go first, and Mr. Padilla, I'll let you finish.

14 Mr. Kellahin?

15 MR. KELLAHIN: Thank you, Mr. Examiner. I'm
16 not going to attempt to try to paraphrase or repeat Mr.
17 Akins' testimony about the allocation. It speaks for
18 itself.

19 I would like to discuss the risk-factor
20 penalty concept with you. As I understood Mr.
21 Padilla's argument from the July hearing, it is that he
22 would want to take you back to the point in time at
23 which Yates commenced the well and, because there was
24 no immediately producing well in the San Andres, have
25 you apply a 200-percent risk factor penalty in this

1 case.

2 At the conclusion, as part of his closing
3 argument, Mr. Padilla says, on page 83 in discussing
4 this case with Mr. Catanach, says, "There is precedent,
5 I believe the Mallon case that the Examiner heard not
6 very long ago involved similar issues."

7 Let me share with you a copy of the Mallon
8 decision in what Mr. Padilla characterized as a similar
9 situation. The Mallon case did not involve the
10 allocation of costs, but it speaks very clearly to the
11 concept of the risk factor and how that ought to be
12 undertaken with regards to a case in which the well has
13 been drilled.

14 If you look on page 5 and you read findings
15 20, 21 and 22, it demonstrates what the Commission has
16 done in a prior instance where there may have initially
17 been a geologic evidence justifying the maximum risk.

18 However, Mallon in that case, and, we
19 contend, Yates in this case, assume that risk. And
20 because they've assumed that risk, there must be some
21 reduction in that penalty against the parties that did
22 not have an opportunity to participate in the San
23 Andres production.

24 I think this is a clear example of the
25 Commission recognizing that the operator has some

1 obligation to assume some of the risk when he completes
2 in a formation for which he does not have a pooling
3 order in place. And so they've reduced it in this
4 case.

5 In addition, there is another point to
6 consider, and Miss Hamilton has discussed it in the
7 prior transcript and discussed it again today. The
8 risk is one that Yates sold. They sold that risk. The
9 25-percent interest in production attributable to
10 Chevron is not money fronted by Yates. They sold that
11 to three other independent parties that are not before
12 you today, and those parties are going to live and die
13 by what we do here, I guess. But it's a curious
14 creature that you sell off a nonconsenting penalty.

15 And so the operator in the conventional sense
16 that assumes the risk for the nonconsenting party and
17 therefore should receive some compensation for having
18 carried that interest, they didn't do that. They went
19 out and protected themselves by selling the interest.
20 I'm astonished they did it, quite frankly. I think
21 it's beyond what they ought to be doing. And yet they
22 want a windfall out of this deal to extract from us a
23 penalty if -- in the event we go nonconsent.

24 I don't want to spend any more time about the
25 risk factor, but I think there are some interesting

1 issues in the context of this hearing that need to be
2 addressed, and not the least of which is that Yates
3 needs to bear some responsibility for not going in and
4 getting a pooling order on the entire vertical interval
5 from surface to total depth, and they had the
6 opportunity to do it and didn't do it, and it's not our
7 fault, and don't penalize us for it.

8 The letter in Exhibit Number 1 is Mr.
9 Cohlma's position on behalf of Chevron is that we'd
10 like to participate, we want the opportunity to
11 participate.

12 If they stonewall us, want us to pay for the
13 whole wellbore and all the costs for whatever zone it
14 may be, we think that's inappropriate.

15 And we believe that if you'll adopt a fair
16 and reasonable allocation formula, as Mr. Akins
17 suggests, then we can get on with something else,
18 because then we'll have a reasonable, reliable
19 resolution of this problem for which we can have
20 confidence and go on to something else.

21 Thank you.

22 MR. STOVALL: Mr. Kellahin, let me just ask
23 you one -- on a legal issue in that. You're
24 identifying the fact that the risk was, in effect, sold
25 off.

1 I think, operating on the assumption that
2 Yates is acting to -- is representative for those
3 interests to whom they sold the risk, what bearing does
4 that have on the risk penalty? I mean, the parties who
5 bought that risk, if you will, bought it with the idea
6 that they would recover some margin over their
7 investment. What difference does that make in terms of
8 what that risk penalty level is? How does that affect
9 it?

10 MR. KELLAHIN: Well, we contended at the
11 first hearing that Yates was not in a position to
12 represent those people and should have come -- Those
13 parties were indispensable parties and should have
14 brought in to determine whether or not they were
15 entitled to the penalty factor.

16 I think it's simply indicative of the fact
17 that there is no risk involved, and it -- and the fact
18 that they have received compensation, if there is a
19 penalty to be apportioned to someone, it's to parties
20 that did not participate in this hearing. And why do
21 we award it to Yates when, in fact, they didn't suffer
22 any risk?

23 You know, maybe I misunderstand, but it's --
24 from that perspective I'd say that there should not be
25 one because the operator was not exposed to a risk.

1 EXAMINER STOGNER: Thank you, Mr. Kellahin.
2 Mr. Padilla?

3 MR. PADILLA: Well, I think Mr. Stovall has
4 asked a very pertinent question as far as risk is
5 concerned, and I'll leave it at that, simply the
6 question that somebody is bearing the risk.

7 Certainly Exxon at no time has expended any
8 time or money on this well. They have not joined in
9 any of the wells, and I suppose that in this case they
10 simply want a free well down to the San Andres
11 formation, and only those costs do they want to pay
12 for.

13 I would like to elaborate a little bit on
14 this paragraph number -- on this Exhibit Number 5 that
15 Chevron has brought in here, and I'm very glad they did
16 because it simply illustrates the position that Yates
17 Energy finds itself at here.

18 I don't believe for a moment that Chevron is
19 going -- or Chevron's management is going to allocate
20 production to somebody in the shallower formation on
21 the basis of a well to be drilled only to the San
22 And- -- to that shallower formation.

23 I think if it's -- Total well costs should
24 include the total costs of going down to 9250, and I
25 think when they do stop down there and they get a dry

1 hole, they come back and figure out how much more the
2 logs are going to cost to recomplete and plug back to
3 the shallow formation, and that's simply in addition to
4 the total well costs.

5 It is not a subtraction of everything below
6 the completion level, as Mr. Akins tries to tell us. I
7 just don't see how in the world, from a business
8 standpoint, you simply do away with those costs when
9 you, in fact, are producing out of the same wellbore
10 you came upstairs on a continuous motion, as we have
11 had testimony in the prior hearing. There's no
12 abandonment at any time between the Bone Springs and
13 the completion up in the shallower formation, and that
14 would only have incurred further costs.

15 It was a prudent thing. Mr. Akins
16 understands by his testimony that it was prudent to
17 test on the way down and recomplete in the shallow
18 formation if your objective is dry. So I really don't
19 see what the issue here is, other than not wanting --
20 wanting a free well and wanting to pay as little as
21 possible to get into a well, which they already know is
22 a good well in the San Andres.

23 They say, Well, you know, we haven't been
24 told a darn thing, and therefore we should not bear the
25 responsibility of getting stuck with a whole bunch of

1 costs that we didn't agree to.

2 They never would have agreed to those costs
3 had this well not been a producer. If this well had
4 been a dry hole, they would never have -- Chevron would
5 never have borne any costs whatsoever.

6 The whole story of this case is trying to get
7 something for free, and that's what it comes down to.
8 But I don't think for a moment that Chevron accounts
9 for total well costs on the basis that Mr. Akins thinks
10 that management does. It's just a very poor way of
11 doing business, in my opinion, if that's what is being
12 done.

13 But I simply don't think that that is
14 accurate at all. I think that this Exhibit Number 5
15 illustrates exactly what the situation is, and the
16 Commission -- or the Division should not allow Chevron
17 to allocate costs to the San Andres only as though a
18 well had never been drilled.

19 The intermediate casing is totally ignored.
20 That's a cost that is already in a well that should not
21 be ignored, and to back out through an allocation
22 factor or an allocation procedure, a well only to the
23 San Andres with no intermediate casing, ignoring all
24 facts of the completion procedures, is inappropriate.
25 And we think that the Division should issue an order

1 force-pooling with the maximum penalty. This is a
2 wildcat area. Total well costs should be as we have
3 already proposed to the Division, and we're willing to
4 go on those costs.

5 Thank you.

6 EXAMINER STOGNER: Thank you, Mr. Padilla.

7 Does anybody else have anything further in
8 this case?

9 I would like a rough draft order from both
10 you gentlemen. When would be a good date? Bear in
11 mind I'm leaving the country on the 14th.

12 MR. STOVALL: I think sometime before that
13 might be a good time.

14 MR. PADILLA: November 14th?

15 EXAMINER STOGNER: Actually November 17th.
16 Perhaps that Monday of that week?

17 MR. KELLAHIN: Is -- What --

18 EXAMINER STOGNER: That would be the 12th.
19 The 14th is a Wednesday.

20 MR. STOVALL: How about Tuesday?

21 EXAMINER STOGNER: Tuesday would be the 13th.

22 MR. PADILLA: I'd be happy to present one
23 even the Friday before that.

24 EXAMINER STOGNER: Friday before? Mr.
25 Kellahin?

1 MR. KELLAHIN: Certainly, Mr. Examiner.

2 EXAMINER STOGNER: Let's try to get it in the
3 morning, that way -- And that is the --

4 MR. KELLAHIN: -- 7th, isn't it?

5 MR. STOVALL: What's election day?

6 EXAMINER STOGNER: You guys from Texas don't
7 know when election day is?

8 MR. STOVALL: Ninth, 9th. It's the 9th.
9 Sixth is Tuesday.

10 EXAMINER STOGNER: With that, I'll take this
11 case under advisement, and November 9th I will have an
12 order from both you gentlemen.

13 Thank you.

14 (Thereupon, these proceedings were concluded
15 at 4:35 p.m.)

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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
CASE 9998

EXAMINER HEARING

IN THE MATTER OF:

Application of Yates Energy Corporation to Amend
Division Order No. R-9093, as Amended,
Eddy County, New Mexico

TRANSCRIPT OF PROCEEDINGS

BEFORE: DAVID R. CATANACH, EXAMINER

STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO
August 22, 1990

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FOR THE DIVISION: ROBERT G. STOVALL
Attorney at Law
Legal Counsel to the Divison
State Land Office Building
Santa Fe, N.M. 87501

FOR THE APPLICANT: ERNEST L. PADILLA, ESQ.
Padilla & Snyder
Post Office Box 2523
Santa Fe, N.M. 87504-2523

FOR HARVEY E. YATES
COMPANY, (and others): WILLIAM F. CARR, ESQ.
Campbell & Black, P.A.
Post Office Box 2208
Santa Fe, N.M. 87504-2208

FOR CHEVRON (USA): W. THOMAS KELLAHIN, ESQ.
Kellahin, Kellahin & Aubrey
Post Office Box 2265
Santa Fe, N.M. 87504-2265

I N D E X

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By Mr. Padilla	6
By Mr. Kellahin	7
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1 EXAMINER CATANACH: At this time we'll call
2 Case 9998.

3 MR. STOVALL: Application of Yates Energy
4 Corporation to amend Division Order No. R-9093, as
5 amended, Eddy County, New Mexico.

6 EXAMINER CATANACH: Are there appearances
7 in this case?

8 MR. CARR: May it please the Examiner, my
9 name is William F. Carr, with the law firm of Campbell
10 & Black, P.A., of Santa Fe. In this matter we
11 represent Harvey E. Yates Company, Spiral, Inc.,
12 Explorers Petroleum Corporation, Heyco Employees Ltd.,
13 and W. T. Wynn. I have only a very brief statement in
14 this case.

15 MR. PADILLA: Mr. Examiner, my name is
16 Ernest L. Padilla of Santa Fe, New Mexico, for the
17 Applicant. I have no additional testimony or evidence
18 to present in this hearing.

19 MR. KELLAHIN: Mr. Examiner, I'm Tom
20 Kellahin of the Santa Fe Law Firm of Kellahin,
21 Kellahin & Aubrey, appearing on behalf of Chevron USA,
22 Inc.

23 MR. STOVALL: Do you have anything to say
24 in this case, Tom?

25 MR. KELLAHIN: As always, Mr. Stovall. We

1 have prepared a proposed order for entry in this case
2 based upon the presentation that Mr. Padilla presented
3 at the last hearing.

4 As you'll remember, this was readvertised
5 because of a deficiency in the notice, but we don't
6 propose to present witnesses. I have them here if the
7 Examiner now has any questions about the case. I
8 brought my witnesses, but we're prepared to submit it
9 to you on Yates' evidence, and request that you
10 dismiss the application. And we've prepared a draft
11 order that will accomplish that.

12 EXAMINER CATANACH: Mr. Carr, you may make
13 your statement.

14 MR. CARR: Mr. Catanach, each of the
15 parties I represent are owners of interest in the
16 Thornbush Federal Well #1, which is the subject of
17 this case.

18 As the Examiner may recall, this case was
19 heard on July the 25th and was continued for four
20 weeks to correct errors in the legal advertisements.
21 The record, I believe, was complete four weeks ago.

22 On August the 3rd, the director of the Oil
23 Conservation Division ordered that this well be shut
24 in pending the entry of an order in this case.

25 Our purpose in being here is to request

1 that the order in this matter be expedited to the
2 extent possible or, in the alternative, to request
3 that the Division permit the well to immediately be
4 returned to production so that those interest owners,
5 like each of the individuals I represent, who have
6 paid their share of the well, who do not have an
7 interest in controversy, may participate in the
8 current market production from the well.

9 MR. STOVALL: Mr. Carr, if I understand
10 correctly, what you are requesting is that the well be
11 turned on and any interest which may be in
12 controversy, the proceeds from the sale of any
13 hydrocarbons, will be--

14 MR. CARR: If they're escrowed, that would
15 be fine with us. But we have interests that are not
16 in dispute. We've paid our share, and our interest is
17 simply shut in and we're not able to produce because
18 of the dispute between other parties in the property.
19 We would request that either an order be expedited or
20 that the well be returned to production.

21 MR. STOVALL: If I understand correctly,
22 the well has been shut in by the Division because all
23 interests were not consolidated, is that correct, Mr.
24 Padilla?

25 MR. PADILLA: That's correct, Mr. Stovall,

1 and we would support Mr. Carr's statement to the
2 extent that the well should be turned on and be
3 allowed to produce under the current market.

4 MR. STOVALL: Mr. Kellahin, you represent
5 the party whose interest was not consolidated at the
6 time and was the reason for the shut in, is that
7 correct?

8 MR. KELLAHIN: Absolutely true, Mr.
9 Stovall. And while you weren't here, you might
10 remember from conversations, if you've looked at the
11 transcript, that there was absolutely no effort made
12 on the part of the Applicant to have my client's
13 interest pooled and participated in the San Andres.
14 There was no voluntarily effort at all.

15 There is a significant dispute over what
16 the reasonable costs are. The application is totally
17 deficient in our opinion. We think the Division acted
18 properly in shutting in production of this well. That
19 was the appropriate solution.

20 We can accommodate both Mr. Carr and Mr.
21 Padilla in their request for an expedited order. I
22 have one right here. The order sets forth the
23 appropriate findings that would grant our Motion to
24 Dismiss the Application, and we would request that the
25 Division do so.

1 MR. CARR: Mr. Catanach, just by way of
2 response to Mr. Kellahin's statement, the interest of
3 the parties I represent are not in dispute here, and
4 although I hate to use the term here, I guess we're
5 also being held hostage right now. We would request
6 you do whatever you can do to assure that we're able
7 to participate and share and sell into the current
8 market for production from this well.

9 MR. PADILLA: Mr. Examiner, I would like an
10 opportunity to submit a proposed order.

11 EXAMINER CATANACH: Absolutely, Mr.
12 Padilla.

13 MR. STOVALL: Mr. Kellahin, may I ask you a
14 question? I was not here for the Examiner hearing and
15 I have not read the transcript because I didn't
16 realize this would be a controversy this morning.

17 Is this a recompletion in different
18 intervals requiring different spacing, is that
19 correct?

20 MR. KELLAHIN: The original pooling order
21 specifically pooled only the Bone Springs Pool. The
22 operator drilled to that pool, was unable to obtain
23 any production from that pool and, rather than come
24 back and ask the parties that owned the shallower
25 formations that weren't pooled to participate in the

1 recompletion or to seek the Commission's directive on
2 amending or supplementing the order, none of those
3 things were done, and the operator simply took their
4 own risk and their own initiative and went back up
5 hole and completed in the San Andres.

6 And then after the fact, they have come
7 back in here, without an opportunity for Chevron to
8 participate in the shallow production, and have asked
9 the Division, then, to resurrect the prior order and
10 make that impact on us at a 200-percent risk factor
11 without any opportunity to participate.

12 In addition, they've asked us to pay, out
13 of the San Andres production, the costs of the entire
14 effort all the way down to total depth plus
15 recompletion and everything else they can think of
16 that they've applied to this well.

17 MR. STOVALL: If I'm not mistaken, then,
18 it's the same horizontal spacing unit, different
19 interests at different horizons, is that correct? So
20 Chevron comes in by virtue of owning an interest in a
21 horizon that was not included in the original order?

22 MR. KELLAHIN: Chevron had an interest in
23 both horizons, had an interest in the pool horizon and
24 the Bone Springs and also had an interest in the
25 shallow San Andres.

1 EXAMINER CATANACH: Are there any other
2 statements or anything in this case? If not, this
3 case will be taken under advisement.

4 Mr. Padilla, you may submit your rough
5 draft order in the next couple of weeks or week or
6 so.

7 MR. PADILLA: I will do that.

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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
CASE 9995, CASE 9997, CASE 9973,
CASE 9950, CASE 9998, CASE 10,002,
CASE 10,005, CASE 10,006, CASE 10,007
CASE 9979, CASE 9970

EXAMINER HEARING

IN THE MATTER OF:

Continued and Dismissed Cases

TRANSCRIPT OF PROCEEDINGS

BEFORE: MICHAEL E. STOGNER, EXAMINER

STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

July 11, 1990

OIL CONSERVATION DIVISION

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FOR THE DIVISION:

ROBERT G. STOVALL
Attorney at Law
Legal Counsel to the Division
State Land Office Building
Santa Fe, New Mexico 87504

ALSO PRESENT:

JAMES MORROW
Chief Engineer
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had
2 at 8:20 a.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order for Docket Number 19-90. Today's date, July
5 11th, 1990. I'm Michael E. Stogner, appointed hearing
6 officer for today's docket.

7

8 (Off the record)

9

10 EXAMINER STOGNER: Call first Case Number
11 9995.

12 MR. STOVALL: Application of Sendero
13 Petroleum, Inc., for compulsory pooling, Eddy County,
14 New Mexico.

15 Applicant requests this case be continued to
16 July 25th, 1990.

17 EXAMINER STOGNER: Case Number 9995 will be
18 so continued to the Examiner's hearing scheduled for
19 July 25.

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22 EXAMINER STOGNER: Call next case, Number
23 9997.

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25 MR. STOVALL: Application of TXO Production
for compulsory pooling, Eddy County, New Mexico.

1 Applicant requests this case be continued to
2 July 25th, 1990.

3 EXAMINER STOGNER: Case Number 9997 will be
4 so continued.

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8 EXAMINER STOGNER: Call next case, Number
9 9973.

10 MR. STOVALL: Application of Manzano Oil
11 Corporation for compulsory pooling and an unorthodox
12 gas well location, Lea County, New Mexico.

13 Applicant requests this case be continued to
14 July 25th.

15 EXAMINER STOGNER: Case Number 9973 will be
16 continued to the Examiner's hearing scheduled for July
17 25th.

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21 EXAMINER STOGNER: Call next case, Number
22 9950.

23 MR. STOVALL: Application of Meridian Oil,
24 Inc., for compulsory pooling, Eddy County, New Mexico.

25 Applicant requests this case be dismissed.

1 EXAMINER STOGNER: Case Number 9950 will be
2 dismissed.

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6 EXAMINER STOGNER: Call next case, Number
7 9998.

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9 MR. STOVALL: Application of Yates Energy
10 Corporation to amend Division Order Number R-9093, as
11 amended, Eddy County, New Mexico.

12 Applicant requests this case be continued to
13 July 25th, 1990.

14 EXAMINER STOGNER: Case Number 9998 will be
15 continued to the Examiner's hearing scheduled for July
16 25th, 1990.

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20 EXAMINER STOGNER: Call next case, Number
21 10,002.

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23 MR. STOVALL: Application of Bridge Oil
24 Company, L.P., for pool creation, special pool rules,
25 discovery allowable, and an unorthodox oil well
location, Lea County, New Mexico.

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Applicant requests this case be dismissed.

1 EXAMINER STOGNER: Case Number 10,002 will
2 be dismissed.

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6 EXAMINER STOGNER: On page 4, we'll call Case
7 Number 10,005.

8 MR. STOVALL: Application of the Estate of
9 Thelma Ford Simmons, d/b/a D.J. Simmons Company, for
10 compulsory pooling, San Juan County, New Mexico.

11 Applicant requests this case be continued to
12 July 25th, 1990.

13 EXAMINER STOGNER: Case Number 10,005 will be
14 so continued.

15 * * *

16 EXAMINER STOGNER: Call next case, Number
17 10,006.

18 MR. STOVALL: Application of the Estate of
19 Thelma Ford Simmons, d/b/a D.J. Simmons Company, for
20 compulsory pooling, San Juan County, New Mexico.

21 Applicant requests this case be continued to
22 July 25th.

23 EXAMINER STOGNER: Case Number 10,006 will be
24 so continued.

25 * * *

1 EXAMINER STOGNER: Call next case, Number
2 10,007.

3 MR. STOVALL: Application of the estate of
4 Thelma Ford Simmons, d/b/a D.J. Simmons Company, for
5 compulsory pooling, San Juan County, New Mexico.

6 Applicant requests this case be continued to
7 July 25th, 1990.

8 EXAMINER STOGNER: Case Number 10,007 will be
9 so continued.

10 * * *

11 EXAMINER STOGNER: Call next case, Number
12 9979.

13 MR. STOVALL: Application of Yates Petroleum
14 Corporation for downhole commingling, dual completion
15 and an exception to General Rule 303.A, Eddy County,
16 New Mexico.

17 Applicant requests this case be dismissed.

18 EXAMINER STOGNER: Case Number 9979 will be
19 dismissed.

20 * * *

21 EXAMINER STOGNER: Call next case, Number
22 9970.

23 MR. STOVALL: Application of Pacific
24 Enterprises Oil Company (USA) for compulsory pooling,
25 Eddy County, New Mexico.

1 Applicant requests this case be dismissed.

2 EXAMINER STOGNER: Case Number 9970 will be
3 dismissed.

4 * * *

5 EXAMINER STOGNER: Call next case, Number
6 10,008.

7 MR. STOVALL: Application of Doyle Hartman
8 for a nonstandard gas proration unit, compulsory
9 pooling, and an unorthodox gas well location, Lea
10 County, New Mexico.

11 Applicant requests this case be continued to
12 July 25th, 1990.

13 EXAMINER STOGNER: Case Number 10,008 will be
14 so continued.

15 (Thereupon, these proceedings were concluded
16 at 8:22 a.m.)

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