

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

IN THE MATTER OF:)
THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION)
TO CONSIDER:)

IN THE MATTER OF CASE NO. 8668 BEING) CASE NO. 8668
REOPENED UPON APPLICATION OF HOWARD)
OLSEN TO RECONSIDER THE PROVISIONS OF)
DIVISION ORDER NO. R-8031, ISSUED IN)
SAID CASE NO. 8668 AND DATED)
SEPTEMBER 27, 1985, WHICH GRANTED THE)
APPLICATION OF DOYLE HARTMAN TO)
COMPULSORILY POOL ALL MINERAL INTERESTS)
FROM THE SURFACE TO THE BASE OF THE)
LANGLIE-MATTIX POOL UNDERLYING THE SE/4)
SE/4 (UNIT P) OF SECTION 23,)
TOWNSHIP 25 SOUTH, RANGE 37 EAST.)

IN THE MATTER OF CASE NO. 8769 BEING) CASE NO. 8769
REOPENED UPON APPLICATION OF HOWARD)
OLSEN TO RECONSIDER THE PROVISIONS OF)
DIVISION ORDER NO. R-8991, ISSUED IN)
SAID CASE NO. 8769 AND DATED)
DECEMBER 6, 1985, WHICH GRANTED THE)
APPLICATION OF DOYLE HARTMAN TO)
COMPULSORILY POOL ALL MINERAL INTERESTS)
FROM THE SURFACE TO THE BASE OF THE)
LANGLIE-MATTIX POOL UNDERLYING THE SE/4)
NE/4 (UNIT H) OF SECTION 26,)
TOWNSHIP 25 SOUTH, RANGE 37 EAST.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: WILLIAM J. LeMAY, Chairman
WILLIAM WEISS, Commissioner
GARY CARLSON, Commissioner

For: OIL CONSERVATION By: SUSAN G. PTACEK
DIVISION Certified Court Reporter
CCR No. 124

February 28, 1991
1:30 p.m.
Santa Fe, New Mexico

This matter came on for hearing before the Oil
Conservation Commission on February 28, 1991, at 1:30 p.m.
at Mabry Hall, Education Building, Santa Fe, New Mexico,
before Susan G. Ptacek, a Certified Court Reporter No. 124,
State of New Mexico.

I N D E X

February 28, 1991
 Commissioner Hearing
 Case Nos. 8668 and 8769

	PAGE
APPEARANCES	6
OPENING STATEMENT BY MR. EZZELL	13
OPENING STATEMENT BY MR. CARR	23
HARTMAN WITNESSES:	
HOWARD OLSEN (By deposition)	
Direct Examination by Mr. Gallegos	31
GAROLD BOWLBY (By deposition)	
Direct Examination by Mr. Gallegos	96
WILLIAM P. AYCOCK	
Direct Examination by Mr. Gallegos	103
Cross-Examination by Mr. Ezzell	121
Examination by Commissioner Carlson	129
Examination by Commissioner LeMay	131
JAMES A. DAVIDSON	
Direct Examination by Mr. Gallegos	136
Examination by Commissioner Weiss	147
Examination by Commissioner LeMay	148
Examination by Commissioner Weiss (Resumed)	152
LISA WOODWARD	
Direct Examination by Mr. Gallegos	153
Examination by Mr. Stovall	163
Examination by Commissioner LeMay	164
CLOSING ARGUMENT BY MR. EZZELL	166
CLOSING ARGUMENT BY MR. CARR	171
REPORTER'S CERTIFICATE	179

* * *

	E X H I B I T S	ID	Admtd
1			
2			
3	OLSEN EXHIBIT		
4	1	16	17
5	2	59	59
6	HARTMAN EXHIBIT		
7	1	106	107
8	2	106	107
9	3	106	107
10	4	106	107
11	5	106	107
12	6	106	107
13	7	106	121
14	8	109	121
15	9	109	121
16	10	109	121
17	11	110	121
18	12	114	121
19	13	114	121
20	14	114	121
21	15	114	121
22	16	115	121
23	17	117	121
24	18	119	121
25	19	119	121

E X H I B I T S (Continued)

1			
2	20	139	147
3	21	238	147
4	22	141	147
5	23	142	147
6	24	142	147
7	25	143	147
8	26	154	166
9	27		
10	28		
11	29	120	121
12	30	156	163
13	31	160	163
14	32		
15	33		
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

A P P E A R A N C E S

FOR THE DIVISION: ROBERT G. STOVALL, ESQ.
General Counsel
Oil Conservation Division
State Land Office Building
Santa Fe, New Mexico 87504

FOR THE HOWARD OLSEN: HINKLE, COX, EATON, COFFIELD &
HENSLEY
Attorneys at Law
BY: T. CALDER EZZELL, JR., ESQ.
700 United Bank Plaza
400 N. Pennsylvania
Roswell, New Mexico 88202

FOR DOYLE HARTMAN: GALLEGOS LAW FIRM, P.C.
Attorneys at Law
BY: J. E. GALLEGOS, ESQ.
141 East Palace Avenue
Santa Fe, New Mexico 87501

and

CAMPBELL & BLACK, P.A.
Attorneys at Law
BY: WILLIAM F. CARR, ESQ.
110 N. Guadalupe
Santa Fe, New Mexico 87501

* * *

1 COMMISSIONER LEMAY: We shall resume with the Oil
2 Conservation Commission docket. Call Cases 8668 and 8769.

3 MR. STOVALL: 8668 is the matter of Case NO. 8668
4 being reopened upon application Howard Olsen to reconsider
5 the provision of Division Order No. R-8031 issued in said
6 Case No. 8668 and dated September 28, 1985, which granted
7 the application of Doyle Hartman to compulsorily pool all
8 mineral interest from the surface to the base of the
9 Langlie-Mattix Pool underlying the southeast quarter
10 southeast quarter (Unit P) Section 27, Township 25 South,
11 Range 27 East.

12 8769 is the matter of that case reopened to
13 reconsider the provisions of Order R-8091 issued in said
14 case dated December 6, 1985, with respect to the forced
15 pooling application of Doyle Hartman pooling all interests
16 from the surface to the base of the Langlie-Mattix
17 underlying the southeast of the northeast of Section 26,
18 Township 25 North, Range 37 East.

19 COMMISSIONER LEMAY: Appearances in theses cases, 8668
20 and 8769?

21 MR. EZZELL: May it please the Commission, I'm Calder
22 Ezzell with the Hinkle law firm of Roswell. I represent
23 the applicant Howard Olsen in the reopened and consolidated
24 cases 8668 and 8769. I have no witnesses to swear.

25 COMMISSIONER LEMAY: Thank you, Mr. Ezzell.

1 MR. CARR: May it please the Commission, my name is
2 William F. Carr with the law firm Campbell & Black, P.A.,
3 of Santa Fe. I'm appearing were today in association with
4 Mr. Gene Gallegos of the Gallegos Law Firm. We represent
5 Doyle Hartman. We have five witnesses, three we will
6 present live and two we intend to present through
7 deposition testimony.

8 COMMISSIONER LEMAY: Thank you, Mr. Carr. Those
9 witnesses that are here live, would you please stand and
10 raise your right hand and be sworn.

11 (Whereupon the witnesses were duly
12 sworn.)

13 COMMISSIONER LEMAY: Did you want to start with any
14 opening statements or just get right into it? What's your
15 pleasure?

16 MR. EZZELL: May it please the Commission, I'd like to
17 move the record from the September 9, 1989, examiner's
18 hearing, which was the reopened and consolidated examiner's
19 hearing in these cases, be incorporated into and be made a
20 part of the record for this de novo hearing. There have
21 never been any factual disputes in this matter. Obviously
22 everything that occurred, occurred long in the past. In
23 our opinion reintroduction of all the evidence that was
24 submitted originally would be a waste of the commission's
25 time, and so I would move that the entire record from the

1 examiner's hearing be incorporated into the record at this
2 hearing

3 COMMISSIONER LEMAY: Is there any objection to that?

4 MR. GALLEGOS: To which we object, Mr. Chairman and
5 Members of the Commission. This is a de novo proceeding.
6 That means this is fresh start. This is not a review
7 proceeding of what has gone before. This is a de novo
8 hearing, meaning all the evidence to be presented, of
9 course, which the applicant has the burden of proof on, is
10 to be heard at this time. And we object to anything as far
11 as the examiner's hearing being made a part of this record.

12 COMMISSIONER LEMAY: Mr. Gallegos, are you familiar
13 with the past history of the commission where we have
14 allowed the record of the examiner's hearings to be entered
15 into record?

16 MR. GALLEGOS: I can't say that I am or I am not,
17 Mr. Chairman, but I don't think the past history
18 necessarily makes it right. I don't think that would be
19 correct. I think it would be err to do so. That's what a
20 de novo hearing is all about. This commission, no one is
21 sitting here today has heard the evidence in this case.
22 That's why it is to be presented so that evidence can be
23 heard, the credibility of the witnesses judged, the
24 exhibits examined, and that is all that is material to this
25 commission; what comes in before it today.

1 COMMISSIONER LEMAY: Take a five-minute recess and we
2 will have a ruling on that. Mr. Carr?

3 MR. CARR: There is one other thing I just might point
4 out. In terms of past commission practice, I understand
5 you do take the record where the parties agree. But we are
6 not asking you to review the decision of the examiner. We
7 are asking you to enter a new order. The evidence which we
8 intend to present today is different in substantial ways
9 from what was presented below, and we think it is
10 appropriate -- we're here on Mr. Olsen's application --
11 that they prove their case and we're entitled to respond.

12 I think that it's a lengthy record, numerous
13 documents, and for an effective presentation of just
14 lobbying a mass of information into the commission's lap, we
15 would like to have the opportunity to go through, respond
16 to the arguments that are advanced and individually present
17 and emphasize our side on this case to you.

18 MR. STOVALL: Mr. Ezzell.

19 MR. EZZELL: I would like to point out that in the
20 September of 1989 hearing I did not have any witnesses and
21 did not have any exhibits to enter. Counsel at that time
22 had agreed that the only material facts, and only the
23 material facts, would lead to the decision of the case. We
24 stipulated as to, I think we called it, a chronological
25 statement of key facts. And it was on that -- and that

1 chronological statement of key facts, which is in the
2 record, established the prima facia case that learned
3 counsel are telling me that I have the burden of coming
4 forward with. That is in the record. I ask that it be
5 incorporated again.

6 All of the exhibits and all of the testimony
7 from 16 months ago was from Mr. Hartman's side. That
8 evidence was not persuasive on the division. I'm not going
9 to object to that which they want to present today. Other
10 than the extent that -- to the extent that it's already in
11 the record, and I imagine much of it will be a
12 reintroduction of those matters that are already of record
13 in the examiner's hearing.

14 I've never had an OCD case like this. We've got
15 depositions. We've had briefs. We had to spend the night
16 last time when none of us was planning to. I feel like in
17 the interest of time and the avoidance of redundancy that
18 the record that already exists be incorporated

19 COMMISSIONER LEMAY: I understand. Is there any
20 problem with the introduction of the stipulation of facts
21 from the examiner hearing as being introduced into the
22 record?

23 MR. GALLEGOS: Mr. Chairman, I don't think there was a
24 stipulation of facts. There was, if my memory serves me, a
25 one-and-a-half-page chronological listing of facts. That's

1 what we're talking about. That's the only thing we
2 stipulated to at that time. And as I say, this is a new
3 ball game.

4 COMMISSIONER LEMAY: Did the facts change or would
5 you be willing to stipulate to those same facts?

6 MR. GALLEGOS: There are different facts. Certain of
7 those facts obviously remain. There are additional facts.
8 There are additional witnesses to talk about certain of the
9 exhibits and the events that were stipulated to.

10 COMMISSIONER LEMAY: My question is, those
11 stipulations, the chronological statement of facts, you are
12 objecting to those being admitted into this record also?

13 MR. GALLEGOS: That's correct. Mr. Chairman, we
14 object to that. Our position is that this hearing is to
15 take the evidence on this case. What's happened before,
16 what the examiner did is not subject to -- is not a matter
17 of, as I say, review. It's not this commission looking
18 back and saying on that evidence, did the examiner make a
19 correct or incorrect decision. What we're here for is for
20 this commission to hear the evidence in this case.

21 COMMISSIONER LEMAY: Let's take a three-minute
22 recess. We will have a ruling on that.

23 (At 1:40 p.m. a recess was taken.)

24 COMMISSIONER LEMAY: What we're ruling is the record
25 of the examiner hearing on September 9 will not be admitted

1 into the record. However, in the event any portion of a
2 deposition is introduced as evidence, that whole deposition
3 will be introduced as evidence. In other words, we're not
4 going to take part of the deposition introduced, we're
5 going to take the whole thing or we're not going to take
6 any of it. Let's proceed.

7 (There was a short interruption.)

8 COMMISSIONER LEMAY: You may proceed, Mr. Ezzell.

9 MR. EZZELL: May it please the Commission, I will just
10 give a brief statement of the case, and I will introduce
11 the deposition of Mr. Hartman as probably my only exhibit.

12 This involves two separate forced pooling
13 actions. In each case Mr. Hartman was the applicant. My
14 client, Mr. Olsen -- it involved the same federal lease
15 covering two 40-acre tracts of land as you heard
16 Mr. Stovall identify them. Each 40-acre tract had a well
17 on it. Mr. Olsen had for a long time owned an undivided 25
18 percent interest in the lease. The lease was operated by
19 Sun. Mr. Hartman acquired Sun's interest. Mr. Hartman on
20 two separate occasions in 1985, one in July, I believe it
21 was, and one later in the fall, October I think, notified
22 Mr. Olsen of his desire to drill infill wells. Certain
23 negotiations were entered into. I'm sure we will hear much
24 more about that.

25 I will be the first to concede that Mr. Hartman

1 did everything humanly possible to come to an agreement
2 with Mr. Olsen on whether there would be a sale of the
3 lease, Mr. Olsen's interest in the lease; whether he would
4 participate or whether he would farm out. Mr. Hartman was
5 in a hurry to get the wells drilled. So simultaneously
6 with negotiating with Mr. Olsen, he applied for a
7 compulsory pooling order.

8 The facts are not in dispute. The commission in
9 the first case, 8668, which involved the drilling of the
10 Carlson Federal No. 4 well, the interest of Mr. Olsen was
11 covered by a forced pooling order. The forced pooling
12 order was of standard form, requiring the applicant to --
13 after the date of the order and within 30 days of the
14 drilling of the well give any affected parties, in this
15 case meaning Mr. Olsen who was the only other interest
16 owner, an itemized list of well costs and one final
17 opportunity to participate in the well. It is agreed by
18 all parties that that was not done.

19 The same thing happened on the second forced
20 pooling, which was 8769, dealing with the Carlson Federal
21 No. 5 well. The -- in the first situation the well was
22 actually spudded before the order was issued. In the
23 second situation the order was issued, the well immediately
24 spudded. But again, identical language in the order,
25 Mr. Hartman did not advise Mr. Olsen of the estimated well

1 costs; did not give him one last opportunity to
2 participate.

3 That does not mean that he didn't have all the
4 opportunity to participate in the world, because prior to
5 the hearings Mr. Hartman had sent Mr. Olsen AFEs. They
6 were still trying to work out a deal where Mr. Hartman
7 would acquire the interest of Mr. Olsen. And the facts
8 remain and, again they are undisputed, that in neither case
9 was the order of the commission adhered to in that after
10 the order was entered, and after the penalty was set -- and
11 that's why the orders read the way they do -- the affected
12 party was not given the one last opportunity to
13 participate, so he could properly evaluate his other
14 options. Knowing that there is a 200 percent penalty as
15 opposed to a 50 percent or 100 percent penalty would
16 certainly affect your decision on whether to participate,
17 farm out, sell or go under the terms of the order.

18 The only facts that I feel I need to put before
19 the commission to establish that case are the facts
20 contained in Mr. Hartman's deposition where he states that
21 technically no, the orders were not adhered to in that
22 after the entry of the order and within 30 days of drilling
23 the wells, there was no AFE or no estimate of well costs
24 sent and no opportunity given to Mr. Olsen to participate.

25 That I believe establishes the burden of proof

1 on the applicant, Mr. Olsen, for the reopening of the cases
2 to ask the commission as to the hearing examiner to enforce
3 the orders by giving him the opportunity to participate in
4 the wells. And so with that -- I cannot find the original
5 in here, but I have this and several copies of the
6 exhibits.

7 Will this copy of Mr. Hartman's deposition
8 suffice, save me from looking through here?

9 MR. GALLEGOS: Mr. Chairman, we would like to make an
10 opening at this time.

11 COMMISSIONER LEMAY: Is this your whole case or is
12 this just your opening?

13 MR. EZZELL: That's the case, sir.

14 MR. GALLEGOS: Don't you want to read it to the
15 commission?

16 MR. EZZELL: I assumed that we were going to enter the
17 entire deposition and contents thereof.

18 COMMISSIONER LEMAY: This is going to be your Exhibit
19 No. 1?

20 MR. EZZELL: If you would you like to hear excerpts.

21 COMMISSIONER LEMAY: We would like to see the exhibit
22 and also see if opposing counsel have any objection to that
23 particular document being entered as the deposition.

24 MR. CARR: We have no objection to the admission of
25 the deposition of Doyle Hartman.

1 COMMISSIONER LEMAY: Without objection the exhibit
2 we're about to see here will be admitted into evidence,
3 Olsen Exhibit No. 1.

4 (Olsen Exhibit 2 was admitted
5 in evidence.)

6 MR. EZZELL: Right. Yes, sir.

7 COMMISSIONER LEMAY: I take it you're presenting both
8 an opening statement -- you're not your own witness, we're
9 just accepting your presentation here.

10 MR. GALLEGOS: I have one extra copy here. Here's an
11 extra xerox.

12 MR. EZZELL: Will you all agree to the entry of that?

13 MR. GALLEGOS: No.

14 MR. EZZELL: Mr. Chairman, I do have from the original
15 files a copy -- the original executed by myself and
16 Mr. Carr of the chronological statement of key facts, which
17 given your initial ruling I would like to offer into
18 evidence, although I note Mr. Gallegos will object.

19 COMMISSIONER LEMAY: We'll see. Try it.

20 MR. EZZELL: I would like to offer the chronological
21 statement of the key facts stipulated to by the parties and
22 evidenced by their attorney's signature as our Exhibit
23 No. 2.

24 MR. GALLEGOS: I wouldn't want to disappoint
25 Mr. Ezzell. We do object. It is an exhibit from the prior

1 proceeding. I think the commission has already ruled on
2 that.

3 COMMISSIONER LEMAY: Can we look at it?

4 MR. EZZELL: If they have any of the facts that they
5 stipulated as being true then that they are now going to
6 say are not true, we can strike them.

7 MR. GALLEGOS: Mr. Chairman, that's not the point.
8 Let me say something, the commission has ruled and I think
9 that ruling carries on, but it's a different situation when
10 you're presenting the matter to a single examiner who is in
11 a position to take these documents back and read through
12 and then come up with a decision, presumably from that
13 evidence.

14 We're here dealing with three commissioners, all
15 of whom are busy people, with all of their schedules and
16 their demand, but who have to participate in making the
17 decision based on the evidence. That's why in the full
18 commission hearing the orderly presentation is to have all
19 that evidence presented, so that the three commissioners
20 can hear it today at the time set and make their decision.
21 That's what we were prepared to do, and we thought the
22 applicant would be prepared to do that. Our objection is
23 not simply --

24 COMMISSIONER LEMAY: I understand your argument,
25 Mr. Gallegos. That's why we ruled the way we did. My

1 concern over this would be do you at this hearing stipulate
2 as to any chronological order of facts, or are you saying
3 that you don't agree on the chronological order of facts?
4 Agreed, we're busy people. We want to see what you agree
5 on initially before we go on.

6 MR. GALLEGOS: We do not agree, but if it would help
7 the commissioners to look at this document, just as a
8 working piece, something to -- as notes, then we would be
9 happy for the commission to see it on that basis; not
10 admitted as evidence in this record because we don't
11 stipulate to that. We're going to present the facts, if
12 the burden -- if there is really anything to respond to.
13 But in the interest of just as an aid to the commission on
14 that basis --

15 COMMISSIONER LEMAY: It's going to be helpful to us
16 if we know what you agree on and what you don't agree on.
17 That's what we're trying to get to. So if you have
18 something similar to this, and we can compare them, that
19 might be helpful.

20 MR. GALLEGOS: We have an entire booklet of exhibits
21 which we will present with the witnesses, and index to that
22 booklet indexes various letters, documents and so forth,
23 and they're in a chronological order.

24 COMMISSIONER LEMAY: Using your words, we're busy
25 people. We would like to know what you agree on before we

1 get into letters and cross references and so forth. That
2 probably would be helpful, but your comments on it would
3 be, too.

4 MR. GALLEGOS: This is not complete. That, in
5 addition to the other grounds stated, would be a reason why
6 we would not agree to it. But I will repeat, if it's
7 helpful to the commission as something to merely note, to
8 be a guide, to some of the instances that occurred in a
9 chronology as what the index to our exhibits, then we have
10 no objection to it being used by the commission as that
11 kind of an aid. We object to it being marked and admitted
12 in evidence as part of the record.

13 COMMISSIONER LEMAY: As a guide, it would be helpful,
14 and I think the other commissioners would agree. Thank
15 you.

16 MR. EZZELL: I will withdraw the offer of admitting
17 that in evidence.

18 COMMISSIONER LEMAY: Do you have three of these?

19 MR. EZZELL: There should be.

20 MR. STOVALL: Mr. Chairman, perhaps to speed this, so
21 Mr. Ezzell doesn't have to go through both examiner case
22 files, if you need additional copies, if you can identify
23 all the documents, I can get you copies made.

24 COMMISSIONER LEMAY: That would be helpful. We have
25 two copies here.

1 MR. EZZELL: Number three.

2 COMMISSIONER LEMAY: We're okay. Thank you. Do you
3 have anything additional to present, Mr. Ezzell?

4 MR. EZZELL: Did you provide copies of the memorandum
5 to them?

6 MR. GALLEGOS: I was going to offer it at the
7 beginning of our case.

8 COMMISSIONER LEMAY: You are going to introduce this?

9 MR. GALLEGOS: I was going to offer that, yes. It
10 isn't evidence. It's a legal memorandum.

11 COMMISSIONER LEMAY: Another note pad that we can
12 refer to?

13 MR. EZZELL: Quoting from Mr. Hartman's counsel's
14 memorandum that they have presented to you, and it's
15 memorandum of Doyle Hartman in support of dismissal of
16 applications. First full paragraph on page 4 says,
17 "Olsen's case rests entirely on legalistic technicalities.
18 He did not receive estimated and actual well costs from the
19 Carlson Federal No. 4 and No. 5 wells in precisely the
20 manner prescribed by the forced pooling orders."

21 That is the case, and I stipulate to that. The
22 orders were not followed and that is the basis for our
23 application and was the basis for the original examiner's
24 hearing decision in the reopened cases. If it will speed
25 things along, I will rest.

1 COMMISSIONER LEMAY: Thank you, Mr. Ezzell. I think
2 we're -- for the benefit of clarification for my fellow
3 commissioners, it would help to give a little history of
4 this case so that we do have some background. And we have
5 this chronological key facts here. But we're also here to
6 try to decide, as I understand it -- correct me if there is
7 some disagreement as to -- there was an order in 1985, was
8 it?

9 MR. EZZELL: Two orders.

10 COMMISSIONER LEMAY: Two orders. And Mr. Olsen did
11 not join in the drilling of the well. He is saying that he
12 didn't -- he wasn't forced pool either. He just kind of
13 floated around in some neutral ground, that he's now
14 exerting his rights to that order.

15 MR. EZZELL: He would have been forced pooled had the
16 orders been complied with. The orders were not complied
17 with and therefore we are seeking compliance.

18 MR. CARR: May it please the Commission, I have a
19 brief opening statement.

20 COMMISSIONER LEMAY: Fine.

21 MR. CARR: I think if we could get both sides on the
22 table, then we more appropriately could respond to your
23 question.

24 COMMISSIONER LEMAY: Thank you, Mr. Carr. Please
25 proceed.

1 MR. CARR: May it please the Commission, Mr. Hartman
2 is before you today to respond to the applications of
3 Mr. Olsen. Mr. Olsen is seeking strict compliance with two
4 compulsory pooling orders that were entered in 1985. As we
5 have discussed previously today, the only question is, was
6 an AFE mailed after the order date and prior to drilling,
7 spudding the well. There is no dispute, that was not done.
8 We did not comply within those technical requirements of
9 the OCD order.

10 What we want to do is come before you and show
11 you what we did do and show that we were in substantial
12 compliance with the spirit and letter of the orders, and
13 what we did in fact was not supply an AFE too late. We
14 supplied it too early. We gave it to him before we came to
15 hearing, and he had that information in his hands and he
16 had an opportunity, repeated opportunity. Mr. Ezzell
17 admits Mr. Hartman did everything humanly possible to reach
18 a deal. He was kept advised, and he had the information in
19 his hand. He didn't do anything with it.

20 Then they complain that he wasn't given a full
21 accounting on the well after the fact. And as the examiner
22 order noted, that you rely on people, other operators,
23 other interest owners to come to you if there is a problem.
24 Mr. Olsen at that time did come to Mr. Hartman. When he
25 came to Mr. Hartman and questioned the costs, what did

1 Mr. Hartman do? He let them come and go through his
2 records for four full days in his office, bring their
3 auditor, and I believe those questions have been satisfied.

4 So now we're standing before you six years later
5 and Mr. Olsen wants technical compliance after the quality
6 of the well is known. He is complaining not that he didn't
7 get the information, that he got it too early, before the
8 order not after. And that he had concerns about the well
9 costs, and that we didn't give them to him within 90 days,
10 but when he asked, we let him come and look at our records
11 and satisfy his concern.

12 If we're talking about these technicalities; did
13 you do this on this date, then we all should go home. But
14 I would submit to you that when you evaluate and decide
15 whether or not to set aside an administrative decision,
16 you're called upon to look at all the facts; and you're
17 called upon to look at those facts in the context of
18 applicable law.

19 I have given to you a memorandum. It is a
20 memorandum in support of a motion to dismiss, which we are
21 going to make at the end of this proceeding. A motion
22 which was referenced in the prehearing statement filed by
23 Mr. Hartman. I give it to you know because it sets forth
24 the applicable law, and the law simply is this: With a
25 procedural error in either entering an order or complying

1 with an order, the test in setting aside it is whether or
2 not the party who is complaining has been prejudiced.
3 Mr. Ezzell stands before you, and he says, yes, we got an
4 order on this day and 30 days they didn't give us an AFE,
5 so boom, throw the order out.

6 It isn't that simple. This case simply cannot
7 be decided in that context. For what he has got to show
8 you to make his prima facia showing is that somehow
9 Mr. Olsen was prejudiced by having information before the
10 fact instead of after the order was entered. If there ever
11 was a case of harmless err, this is it.

12 Even counsel for Mr. Olsen says Mrs. Hartman did
13 everything humanly possible to put this deal together, and
14 yet now six years later what we are asking for is strict
15 compliance, but we still, representing Hartman, are left
16 with a quandary because although Mr. Olsen wants strict
17 compliance he still to this day has not indicated an
18 interest in joining in the well.

19 What he wants is to play a game on the risk
20 penalty. Wait until the history of the well has been
21 established and then come back to you and use this
22 administrative process to let him come in and let
23 Mr. Hartman, who has in good faith developed the property
24 and dealt with him, get hit by not being entitled to
25 recover the risk penalty provided in the order.

1 Now, if we look at this case, we have some
2 questions about where is the prejudice. We admit there is
3 no dispute, everything humanly possible was done to reach
4 an agreement. Mr. Olsen was offered a chance to purchase,
5 to farm out, to join. He didn't. He was given the AFE, as
6 I said, before the actual hearing, and it was the same AFE
7 that was utilized in drilling both of the wells. Where is
8 the prejudice? The examiner recognized that Mr. Olsen knew
9 of plans to drill, and could engage in negotiations on this
10 property.

11 We thought we had a deal. We went through the
12 entire process of drilling the well, and then what did
13 Mr. Olsen do? We found out later in the context of pending
14 litigation, that he instructed his agent not to pursue the
15 matter further; didn't tell us. The man who is standing
16 here complaining that he didn't get any information,
17 refused to accept mail from Mr. Hartman, mail in which
18 information could have been imparted to him.

19 Now, Mr. Olsen is not a novice in the business.
20 He's knowledgeable. He knows from operating wells how the
21 OCD functions. He knows how you pool acreage. He knows if
22 you don't show up, acreage is pooled and penalties are
23 imposed. He had the data. He was told of the hearing. He
24 admits he knew we were drilling the well, yet he wouldn't
25 talk to us and led us to believe that we had a deal, and

1 then after the fact he disappeared and he did nothing.

2 But he just didn't do nothing. He did nothing
3 for two full years before he even raised the question. We
4 had an established track record on that well before
5 Mr. Olsen enters the seen. He didn't show up. How is he
6 prejudiced? He didn't send counsel. How is he prejudiced?
7 He did nothing. How is he prejudiced? He was prejudiced
8 because he had the data he now complains that he didn't
9 have, and he didn't do anything with it.

10 We're going to ask you to dismiss this case
11 because they cannot show that Mr. Olsen was prejudiced by
12 anything Mr. Hartman did. He was prejudiced because he had
13 everything that he needed to make an informed decision, and
14 that's what the statute is intended to ensure that he had.
15 He had all the information he was supposed to have and he
16 did nothing with it. And now he wants to complain to you
17 about us because of what he did not do.

18 COMMISSIONER LEMAY: Thank you, Mr. Carr.

19 You're basically through, Mr. Ezzell? That's
20 fine. I just wanted to give you a chance to present any
21 more if you wanted to.

22 MR. EZZELL: I would only point out in response to
23 Mr. Carr's statement, that which Mr. Olsen did not have was
24 the knowledge that an order had been entered and that a
25 risk penalty had been imposed upon him. That is the

1 function of the provision in the order that requires
2 notification and sending an AFE after the order has been
3 entered. One can only weigh one's alternatives when one
4 knows what the alternatives are.

5 Admittedly, if he were as sophisticated in OCD
6 matters and Mr. Carr claims, he would probably have a
7 reasonable expectation that a uncontested OCD forced
8 pooling hearing would result in a 200 percent penalty. But
9 our point is that the provision in the order would not have
10 been there unless the OCD intended it to be there. To
11 allow noncompliance is to strip the OCD of its only way of
12 protecting the correlative rights of those parties that are
13 forced pool. That is why in this case, in the examiner's
14 hearing -- when it was reopened and in other cases where
15 because of technicalities the order was not complied with
16 by the sending of the AFE and giving one last opportunity
17 to participate, that is why the full commission has always
18 upheld the examiners on similar cases.

19 Taylor versus C&K Petroleum being the one that
20 comes to mind most prominently. I still think we're all in
21 complete agreement on the facts. I think counsel for the
22 division, as well as the hearing examiner from our
23 September of 1989 hearing -- I think they would both tell
24 you that this basically came down to legal arguments,
25 submission of briefs, and case law and authority.

1 I've seen a copy of the memorandum in support of
2 the dismissal application. If the commission, if the full
3 commission, would like to do it this way, since the facts
4 are not in dispute, if you would give me some time as the
5 hearing examiner did to file a response brief and let them
6 file a reply to that response. We can do it just exactly
7 the way we did last time around. I imagine that all the
8 arguments are going to be the same anyway, because there
9 are no factual arguments. There are just the arguments
10 such as Mr. Carr made. Whether if they are substantial
11 compliance arguments or they are prejudice arguments, I'm
12 not sure if the full commission wants to have to listen to
13 those arguments when they can be submitted on briefs.

14 MR. GALLEGOS: Mr. Chairman, we would like for the
15 commission to hear the evidence. I think it's heard enough
16 of the sounds of counsel which are not evidence. And we
17 contend that the applicant having rested has not met his
18 burden, and we do not waive that position, and we will
19 renew that motion. But we think it will be helpful for the
20 commission to know what the facts are. I think counsel for
21 the applicant would like for it to be just lawyers talking,
22 because the facts, as they come out -- and the first
23 witness I'm going to call is Mr. Olsen by deposition -- the
24 facts as they come out are devastating to the applicant
25 concerning the information that came to him that he did not

1 act on.

2 So without waiving our position that the
3 applicant has not made a case, this commission should right
4 here and now bring the gavel down and rule against the
5 applicant. We think what should guide the decision, if
6 it's going beyond that, is evidence. We're prepared to put
7 that on.

8 COMMISSIONER LEMAY: Thank you, Mr. Gallegos. Let's
9 continue.

10 Is that your case, Mr. Ezzell?

11 MR. EZZELL: Yes, sir.

12 COMMISSIONER LEMAY: Let's continue with the other
13 side then, Mr. Gallegos and Mr. Carr.

14 MR. GALLEGOS: Mr. Chairman, Members of the
15 Commission, we call Howard Olsen by deposition.

16 Mr. Ezzell, you have a copy?

17 MR. EZZELL: Yes.

18 MR. GALLEGOS: As in the case of any party offering
19 testimony in this matter, we will offer those portions of
20 the deposition that we think are material; and then if
21 Mr. Ezzell would at any given point or whichever way he
22 prefers, during or afterwards, want to offer any other
23 parts or remaining part of the deposition, then call him to
24 do so.

25 COMMISSIONER LEMAY: I think we ruled that if the

1 deposition was going to be entered in part, it would be
2 entered completely.

3 MR. GALLEGOS: I understand the ruling. That's
4 appropriate, but that doesn't mean my party has to offer
5 any evidence other than what they want to offer I'm sure.

6 MR. STOVALL: It will become part of the record,
7 though.

8 MR. GALLEGOS: That's fine. Let the record show that
9 co-counsel, Mr. Carr, is at the witness stand to read the
10 answers of the deposition of Howard Olsen transcribed from
11 the deposition taken by Mr. Olsen on August 25, 1989. Mr.
12 Olsen at that time was represented by counsel Harold
13 Hensley, Calder Ezzell. Mr. Hartman represented by myself,
14 Mr. Chairman. The deposition commences at page 4.

15 HOWARD OLSEN,
16 the Witness herein, having testified through his
17 deposition, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. GALLEGOS:

20 "Q. State your name?

21 A. My name is Howard Olsen, spelled O-l-s-e-n.

22 Q. Where do you live, Mr. Olsen?

23 A. I live in Phoenix, Arizona.

24 Q. Do you have an office in Phoenix?

25 A. I do.

1 "Q. At what address?

2 A. The address is 4636 East Foothill Drive
3 Paradise Valley.

4 Q. How long have you had that office?

5 A. Since 1981.

6 Q. What is the mailing address of that office?

7 A. It's Post Office Box 32279. And the zip code
8 on the P.O. box is 85064.

9 Q. Is this your card?

10 A. You may have it if you like.

11 Q. Thank you. What is your occupation?

12 A. I'm in investments, ranching, and cattle
13 business and oil business.

14 Q. Okay. Those are three different businesses?

15 A. Yes. The investments, I deal in
16 commodities. And I operate two ranch properties.

17 Q. Where are the ranch properties?

18 A. The ranch properties are in Dickens County,
19 Texas.

20 Q. And what does the oil business consist of?

21 A. Well, the oil business consists of
22 maintaining mineral interest, some leasing, and
23 general independent oil practices.

24 Q. Are you an operator?

25 A. No, sir.

1 "Q. Have you ever been an operator of wells?

2 A. Yes.

3 Q. And tell me about the time period that you
4 were an operator and in what local?

5 A. Well, I was an operator in Midland, Texas,
6 from 1957 to about 1964 as president of Jal Oil
7 Company. Prior to that, I was a drilling
8 contractor that drilled and completed a number of
9 wells in Lea County, New Mexico.

10 Q. Was your father in the oil and gas business
11 in Lea County, New Mexico?

12 A. Yes, that's correct.

13 Q. And he was known as simply R. Olsen?

14 A. R. Olsen, that's correct.

15 Q. Were in business with him?

16 A. Yes.

17 Q. Was Jal Oil Company a business that he was
18 also --

19 A. No. He had no interest in Jal Oil Company.
20 That was a thing that I put together and bought
21 properties from him. That's where title to the
22 Carlson came about.

23 Q. Okay. Approximately how many wells in New
24 Mexico would you say you and your father
25 developed or operated?

1 "A. I would say at least 300.

2 Q. And the lineage interest in the Carlson
3 lease came to you through your father?

4 A. That's correct.

5 Q. Do you know anything about his acquisition of
6 that lease?

7 A. No, I really don't.

8 Q. When did you obtain your interest?

9 A. I think at the time -- I'm not certain of
10 this, but I believe at the time of his death in
11 1967.

12 Q. What was the nature of the interest that
13 you acquired?

14 A. 25 percent working interest."

15 MR. GALLEGOS: We would go to page 8, line 14. Do you
16 want to offer anything, Mr. Ezzell?

17 MR. EZZELL: No. Carry on.

18 "Q. So your home is actually in Dallas?

19 A. Yes, sir.

20 Q. What you have on Foothill Drive in Phoenix
21 then is an office?

22 A. I have an office. That is considered an
23 office and a winter home.

24 Q. I see. About what time of the year do you
25 spend there?

1 "A. About half of the year, beginning late
2 September, and then coming back to Texas in the
3 latter part of May.

4 Q. Who is Carol A. Murphy?

5 A. She was a secretary for me for a number of
6 years, either two or three years, something like
7 that.

8 Q. During 1985 and 1986, she was in that
9 position?

10 A. I think so, yes.

11 Q. Was there anybody else employed in your
12 Phoenix office?

13 A. Yes, I had a lady that did the bookkeeping
14 and accounting, her name was Karen Mariner. Wait
15 a minute. Donna Mariner.

16 Q. Any other employees in your office during
17 1985 and 1986?

18 A. No.

19 Q. What is the whereabouts of Carol Murphy
20 now?

21 A. I haven't any idea. She left a couple of
22 years ago with a conflict with her husband and
23 her credit, and she left under -- and nobody can
24 find her. There are a lot of people that would
25 like to know where she is for car payments and

1 "things like that.

2 Q. Did she leave your employ on good standing?

3 A. No. I had to discharge her. She was not
4 satisfactory. She wasn't working out. She was
5 undependable.

6 Q. In what respect?

7 A. Well, she would not show up for work for a
8 day or two at a time.

9 Q. Do you have an office and employees in
10 Dallas?

11 A. No.

12 Q. So year-round, even though you are not
13 there, the Phoenix office constitutes the place
14 that you do business?

15 A. Yes.

16 Q. And have you continued to conduct the
17 business out of that office by the employment of
18 a secretary and a bookkeeper?

19 A. Yes.

20 Q. In other words, somebody has replaced Carol
21 Murphy in the same position?

22 A. Yes."

23 MR. GALLEGOS: I would go to page 11, line 23.

24 MR. EZZELL: Carry on.

25 "Q. In your experience, have you ever

1 "participated in the Oil Conservation Commission
2 or Oil Conservation Division hearings in New
3 Mexico?

4 A. No, not to any great degree.

5 Q. Have you ever been in any of those
6 proceedings as a party, whether you personally
7 appeared at the hearing?

8 A. Oh, I have had representation. I have been
9 at the hearings, but I have not testified at
10 those hearings.

11 Q. Who has represented you in those
12 proceedings from time to time in the past?

13 A. Dub Girand. Of course, he is dead now.
14 Robinson, Ship, Robertson & Barnes out of
15 Oklahoma City. I think that they are the firm
16 that is dissolved. And I believe they are dead
17 now also.

18 Q. Anybody else?

19 A. Not that I can recall off the top of my
20 head."

21 MR. GALLEGOS: We would go to page 20, line 2.

22 MR. EZZELL: Go ahead and see if I can catch up.

23 MR. GALLEGOS: I will give you time, see if there is
24 anything.

25 MR. EZZELL: If it please the Commission, the

1 intervening pages are mostly concerned with -- these
2 depositions were also taken in conjunction with a Lea
3 County district court case regarding the operating
4 practices on the existing two wells. So the 2 and 3 as
5 opposed to the 4 and 5 which were drilled pursuant to
6 forced pooling. There is a lot in here that has to do with
7 the other matter. Go ahead, Gene.

8 MR. GALLEGOS: We're at page 20, Mr. Carr.

9 MR. CARR: Right.

10 "Q. But I'm asking you about the indications,
11 if you had thoughts on it, of drilling infill
12 wells?

13 A. Myself?

14 Q. Yes.

15 A. Not seriously.

16 Q. Why not?

17 A. Because it's too hard for me to crank up
18 operations to go back into the operating
19 business.

20 Q. How about infill wells being drilled by the
21 operator?

22 A. Well, the present operator, I haven't got
23 into it to the extent to evaluate it that
24 closely.

25 Q. No, I'm talking about -- here we are in

1 "1985, and what I am asking you about is your
2 thinking about having the operator, Doyle
3 Hartman, enhance the recovery of reserves from
4 these Carlson leases by drilling infill wells.

5 A. Well, the AFE that was submitted on an
6 infill well, I thought the cost was rather high,
7 and I didn't feel that it was a reasonable price.

8 Q. Well, we will get do that, too. But my
9 question is whether you wanted to see or thought,
10 for reasons that anybody in the oil and gas
11 business would be motivated, that there ought to
12 be infill wells drilled?

13 A. Well, to me, gas is a store of value that
14 is in place and you don't always get the benefit
15 of it as quickly as you would like. And the fact
16 that it is a store of value, if it were maybe
17 developed by somebody at a later date at a price,
18 it might even be more efficient than trying to
19 jump in and do it right at this moment. That is
20 why I was not entertaining the first idea that
21 came along for an infill well.

22 Q. Okay. So you are saying that your position
23 was just let the existing Number 2 and Number 3
24 wells go along and do not drill infill wells?

25 A. Well, I would like to go along with an

1 "infill well if it would not eliminate my income
2 from 2 and 3, which had been pretty good for the
3 past years. And then and infill well is going to
4 put a lot of reserves out. It's going to pull
5 the capacity out of the other wells, and I needed
6 to be compensated for that loss.

7 Q. If an infill well was drilled on either of
8 those 40s, you were to have a 25 percent in that
9 production, were you not?

10 A. But it's a considerable gamble as to what
11 that well would do compared with the stable
12 production of what the other wells had been in
13 the past.

14 Q. What do you base that on? Tell me about --

15 A. Well, that's just my personal opinion. I
16 don't have an engineering reserve background to
17 substantiate that. So it's just my personal
18 opinion.

19 Q. So essentially you were not interested in
20 participation in the drilling of infill wells on
21 this Carlson lease?"

22 MR. GALLEGOS: There is an interjection by
23 Mr. Hensley. Do you want to read that?

24 MR. EZZELL: He says, "I don't think he said that, but
25 go ahead and answer the question."

1 "A. Well, I intended to convey that if it was a
2 reasonable -- I figured the \$390,000.00 on the
3 AFE which I received was rather substantial for
4 one of those wells. And I would have been
5 interested in maintaining my participation or
6 paying my working interest part had the AFE had
7 been of a lesser figure.

8 Q. So you did receive an AFE?

9 A. Yes, sir.

10 Q. And it showed a total through completion of
11 \$390,000.00?

12 A. Yes, sir.

13 Q. And that included a 15 percent contingency
14 factor, correct?

15 A. As far as I remember, I think that's correct.

16 Q. What amount of money would have been
17 appropriate for you, that you would have wanted
18 to participate in the well? What well cost?

19 A. Really, I don't know. I would have to have
20 compared that with other wells in the area were
21 being drilled at the time. I didn't know if that
22 was a reasonable figure or a high figure. But
23 off of top of -- it seemed a little high to me.

24 Q. Well, in order to conclude the 390,000.00
25 was too high, you had to have some idea of what a

1 "reasonable figure is, did you not?

2 A. I felt generally that it was about a third
3 high. If it was a third to 40 percent less, it
4 would have been more reasonable.

5 Q. So you thought a well, infill well, should
6 have been drilled --

7 A. For less than \$300,000.00.

8 Q. -- for less than 300,000.00?

9 A. Yes.

10 Q. And what did you base that on?

11 A. I was basing that on present drilling costs
12 in the area.

13 Q. And what experience were you having with
14 present drilling costs at that time?

15 A. Deals that was were submitted, submitted
16 AFEs, not precisely in that corner of Lea County,
17 but there were in a close enough area that it was
18 similar. I had participated in working interests
19 with other operators.

20 Q. In 1985 and around that period of time,
21 1986?

22 A. Yes. Even today, yes.

23 Q. Tell me what operators you participated
24 with in Lea County in 1985 and '86?

25 A. I would just have to be back and check my

1 "records. I couldn't pull them off the top of my
2 head.

3 Q. I don't expect you to be total or
4 comprehensive. But just what comes to your mind?

5 A. I just can't come up with one right now. I
6 can't think of one.

7 Q. Okay. But based on that, you are able to
8 say that an AFE reflecting a well completion cost
9 of \$300,000.00 would have been one that you would
10 have participated in?

11 A. I would have looked at it more seriously.

12 Q. Well, if it were \$275,000.00, that's when
13 you would have participated?

14 A. I would have looked at it very seriously.

15 Q. And \$250,000.00?

16 A. I would be delighted to go and meet at the
17 office, yes.

18 Q. Did you respond to Mr. Hartman's letter to
19 you? He says in his letter he would like to buy
20 your interest and please let us hear from you as
21 soon as is conveniently possible. This is the
22 January 24, 1985, letter.

23 A. If I did -- I'm sure that I did, but I
24 don't have a copy of it with me.

25 Q. You are sure that you did?

1 "A. Well, I believe that I did, because I
2 usually answer my correspondence.

3 Q. That is usually done in an answer in
4 writing signed by you?

5 A. Yes. Or if I should be out of town, I have
6 it signed by either my secretary or whoever
7 handles the matter, and then initial it down
8 there to show a source of my signature."

9 MR. GALLEGOS: Then this was just sort of about his
10 records and files. We would go to page 31, line 13,
11 Mr. Ezzell.

12 MR. EZZELL: I'd like to point out the only thing
13 we're skipping there is the response to Mr. Hartman's
14 letter that they were talking about. That we agreed to
15 pull out of our files which has been submitted, which we
16 had gotten from Mr. Hartman.

17 MR. GALLEGOS: Is there a part you want me to read?

18 MR. EZZELL: We ended up sounding like he hadn't
19 responded to the letter. I'm just pointing out that he
20 did.

21 MR. GALLEGOS: Let me help the chair and the
22 commission by saying that is Exhibit 2 to Mr. Olsen's
23 deposition; is also Exhibit 2 in the Hartman exhibits in
24 this booklet we provided to the commission. We would be
25 offering that as an exhibit in any event. So we invite the

1 commission's attention to that. That's a letter from Donna
2 Mariner to Doyle Hartman.

3 Then I will pick up, Mr. Chairman and Members of
4 the Commission -- and when I do I will be making reference
5 to Exhibit 3 to Mr. Olsen's deposition, which is Exhibit 3
6 in this exhibit book.

7 Back to the deposition and question at line 13.

8 "Q Let me hand you what has been marked as
9 Exhibit 3 to your deposition, and ask you to look
10 that over and see if you recognize it?

11 A. Yes, sir.

12 Q. Do you remember receiving that letter?

13 A. Yes, I think so.

14 Q. And that letter basically says to you that
15 the operator, that is Doyle Hartman, thinks an
16 infill well should be drilled. And here is the
17 attached authorization for expenditure and detail
18 estimate, correct?

19 A. I don't precisely remember it, but I'm
20 certain that it was attached and I got it.

21 Q. Okay.

22 A. But this is a breakdown of the cost of the
23 390,000.00. Yes, I do remember seeing it.

24 Q. Okay. And from your prior testimony,
25 without having to rehash that, your reaction was

1 "you didn't want to participate based on these
2 kinds of costs?

3 A. That wasn't something I was bound to do it.

4 Q. Well, you didn't want to?

5 A. I didn't want to, that's correct.

6 Q. So instead, were you interested in the
7 other alternatives that were provided by this
8 letter?

9 A. A farmout or a sale.

10 Q. Okay. The alternatives here are basically --
11 first of all, you can participate. Here is the
12 AFE, and you can pay up and participate?

13 A. Right.

14 Q. You didn't want to do that?

15 A. Right.

16 Q. The next alternative was a cash sale of
17 your interest?

18 A. Yes.

19 Q. Did you want to do that?

20 A. Yes.

21 Q. I'm not saying the 2,500.00 was
22 satisfactory.

23 A. I wanted to do that. But I considered that
24 an offer of negotiation like I described earlier.
25 Even though a draft wasn't submitted, I

1 "considered that an offer. And I countered with
2 the \$50,000.

3 Q. Okay. And I will follow up on that. But
4 the other alternatives were a farmout. You
5 weren't interested in that at that point?

6 A. Not really, no.

7 Q. And the fourth alternative would be that
8 you would be compulsorily forced pooled, as they
9 say, by the action of the OCD?

10 A. Uh-huh.

11 Q. You understood what that meant?

12 A. Sure.

13 Q. And you had been through those kinds of
14 proceedings?

15 A. Yes.

16 Q. Both probably as the forcer and the forcee?

17 A. Yes, sir.

18 Q. Okay. Now, tell me about your countering
19 for \$50,000. How was that communicated?

20 A. Well, to the best of my knowledge, I had a
21 geologist in Oklahoma City that was doing deal
22 evaluation, and he was rather interested in
23 handling the negotiations on this. And he was in
24 touch with Mrs. Sutton or Miss Sutton, or
25 whatever it is, in Doyle's office.

1 "And finally -- he almost became the
2 capacity of trying to broker it. 'Well, I can
3 get you \$50,000.00.' I said, 'I don't want to be
4 -- I don't want to keep hearing these deals,' I
5 said. 'If you get me a check, cashier's check,
6 for \$50,000.00, I will sell that 40 acres for the
7 infill well.'

8 He said, 'Okay. I think we can do that.'
9 So I said, 'Well, let's put a time frame around
10 it so it doesn't go on indefinitely.' The time
11 frame came and went, and I said, 'I don't want to
12 hear about it any more.'

13 Q. Who was the geologist?

14 A. Foraker.

15 Q. James P. Foraker?

16 A. That's correct.

17 Q. F-o-r-a-k-e-r?

18 A. Yes.

19 Q. These communications up through Exhibit 3
20 have been between Hartman or Hartman's office and
21 you, Mr. Olsen, correct?

22 A. That's correct.

23 Q. Why was Mr. Foraker needed?

24 A. Because he's representing me on the
25 evaluation of it, and I'm forwarding these

1 "letters to him and letting him handle the deal
2 so that I'm not involved in it really personally,
3 pretty much like he has Mrs. Sutton do it for
4 him.

5 Q. I see. So you are utilizing his geological
6 skills?

7 A. Knowledge, yes.

8 Q. To evaluate the lease?

9 A. Yes.

10 Q. To see whether 50,000.00 or 22,000.00 or
11 whatever was a proper value?

12 A. Yes, sir.

13 Q. Then since he had done the evaluation, you
14 let him go ahead and step in as your
15 representative on the negotiation?

16 A. Yes.

17 Q. How was he going to be paid?

18 A. Well, he had been evaluating all the
19 various things that come in, the drilling
20 opportunities. He's paid when he submits a bill,
21 in cash.

22 Q. Just for his time?

23 A. Yes.

24 Q. Not a percent of the mount that he would get?

25 A. No, no.

1 "Q. Now, did he keep you informed of the
2 various communications he had with Ruth Sutton at
3 the Doyle Hartman office?

4 A. Yes, he did.

5 Q. And did he tell you that around July 30th
6 he had come to an agreement that \$50,000.00 would
7 be an acceptable amount for the lease?

8 A. Yes, he did. Right.

9 Q. And then there were some conditions, I
10 think. He wanted a cashier's check?

11 A. Yes. That's correct.

12 Q. And a cashier's check had to be delivered
13 during banking hours and by October 1?

14 A. Yes, sir. I believe that's correct.

15 Q. And that was the time frame?

16 A. Yes, sir.

17 Q. October 1?

18 A. Yes, sir.

19 Q. And then did he tell you that, in fact, he
20 was sent a proposed assignment and bill of sale,
21 the paperwork for making the transaction?

22 A. I think that he did say that, yes."

23 MR. GALLEGOS: Mr. Chairman and Members of the
24 Commission, my reference to Exhibit 4 which is Exhibit 5.
25 Let me make sure of that. No. I think there is a mistake.

1 MR. EZZELL: 10.

2 MR. GALLEGOS: I think that's right. Exhibit 4 in
3 this deposition is Exhibit 10 in the exhibits before the
4 commission. It's an September 28, '85, letter from Sutton
5 to Foraker with a cashier's check and -- or speaking of the
6 cashier's and enclosing a partial assignment and bill of
7 sale.

8 Returning to the deposition, line 5, page 37.

9 MR. CARR: Line 8, page 37.

10 "Q. Just to keep things sort of in order, I'm
11 going to show you Exhibit 4 and ask you if you
12 received that?

13 A. Yes.

14 Q. Okay. So following the July 10, 1985,
15 letter from Mr. Hartman, Exhibit Number 4" --

16 MR. GALLEGOS: Oh, no. We have to change that. It
17 was Exhibit 5. Let me retract, Members of the Commission.
18 Exhibit 4 that I am referencing Mr. Olsen to at this stage
19 of the deposition is Mr. Carr's letter to him of July 22,
20 1985, which is Exhibit 5. I should have more faith in my
21 paralegal. Got it right.

22 "Q. Okay. So following the July 10, 1985,
23 letter from Hartman, Exhibit Number 4, the letter
24 from Mr. Carr, July 22, 1985, informed you that
25 Hartman was going ahead with the compulsory

1 "pooling case on the Number 4?

2 A. Yes, sir.

3 Q. Let me show you Exhibit Number 5 to your
4 deposition, Mr. Olsen, that's a letter of July
5 30, 1985, from Ruth Sutton to you?

6 A. Uh-huh."

7 MR. GALLEGOS: And Members of the Commission, that is
8 Exhibit 6 before you today.

9 Line 24, page 34.

10 "Q. Did you receive that letter?

11 A. Yes, I'm sure I did. I don't remember it
12 precisely, but I think that I received it.

13 Q. Mrs. Sutton, in that letter, is discussing
14 farmout terms as opposed to a cash buyout of your
15 property interest? Was that appealing to you?

16 A. No, it was not.

17 Q. You wanted to go the cash-out route?

18 A. Yes, sir.

19 Q. Now, you knew that was a case filed before
20 the Commission. And by Mr. Carr's letter, which
21 is Exhibit 4, you also knew that the date the
22 hearing was to be held, correct, July 31, 1985?

23 A. Uh-huh.

24 Q. Isn't that true?

25 A. Yes, sir.

1 "Q. Why didn't you attend that hearing?

2 A. Well, first of all, this letter was
3 received and was signed for me by my office. But
4 July is a very hot month, and I probably wasn't
5 in my office, and they read it to me on the phone
6 maybe a couple of weeks later.

7 So I'm assuming that based on this being
8 July that I just wasn't notified of it by my own
9 people. Be whose fault that it may, that's my
10 responsibility, but I didn't get it.

11 Q. Had your office advised you concurrently
12 with receipt of the letter --

13 A. I still probably wouldn't have gone.

14 Q. Would you have sent a lawyer?

15 A. Yes, I probably would have done that, yes.

16 Q. Why would you have done that?

17 A. Well, I want to represent my interest. I
18 think it should be handled properly.

19 Q. And with your experience in the business
20 and in OCD proceedings, you knew it was most
21 probable that if you were not there to oppose the
22 application, the application was going to be
23 granted?

24 A. It's vital to be there.

25 Q. Otherwise the application would be --

1 "A. I understand that, yes, sir.

2 Q. And this letter, Exhibit 5, by Ms. Sutton
3 again says the pooling hearing has already been
4 scheduled. So do you know whether your office
5 told you about that?

6 A. I can just assume that it's part of the
7 same -- handled in the same manner.

8 Q. Okay. In July, around this period that
9 we're talking about, late July, was Carol Murphy
10 in your office keeping informed of the
11 conversations that she was having with Ruth
12 Sutton about a farmout agreement?

13 A. Donna Mariner was supposed to be doing
14 that. Carol was primarily a secretary, and she
15 ran the word processor. But she was not -- Donna
16 Mariner was supposed to be doing that.

17 Q. Well, let me ask you this. If Carol Murphy
18 informed Ruth Sutton that the farmout agreement
19 was acceptable to you, that was false. Is
20 that --

21 A. Well, not necessarily, because Donna
22 Mariner was supposed to be handling the lease
23 files. Carol Murphy, if she was involved in what
24 we're talking about, simply acted on the
25 instructions of Donna Mariner and said, 'Well,

1 "call Ruth Sutton and tell her so and so.'

2 Q. I see. But Donna Mariner then would have
3 been in a position to make those kinds of --

4 A. The official capacity to represent me in my
5 lease files, yes, and negotiations.

6 Q. And to make decisions of that sort?

7 A. Yes, yes.

8 Q. So Donna Mariner would have been in the
9 position to represent you and make the decisions.
10 Carol Murphy would simply have been the
11 messenger?

12 A. Now you've got it. That's it.

13 Q. Okay. I suppose at some point Donna
14 Mariner would keep you advised of what she was
15 doing?

16 A. Yes.

17 Q. All right. This is Exhibit 6 to your
18 deposition, Mr. Olsen.

19 A. Okay.

20 Q. Take a look at that.

21 Have you been able to get through that,
22 Mr. Olsen?

23 A. Yes, I have. And I cannot say for sure
24 that I ever received this or the assignment.

25 And I will also add -- whether I should or not, I

1 "will add an explanation that I rather suspect
2 that Foraker was acting now, instead of
3 evaluation, is turning himself into a partial
4 broker and wants to submit it. And I don't think
5 I have a copy of that one. I don't remember
6 seeing it."

7 MR. GALLEGOS: Mr. Chairman, Members of the
8 Commission, now this is Exhibit 10 that I erroneously
9 identified before. This is the Sutton to Foraker letter of
10 September 20, 1985, with the attachment. It's Exhibit 6 in
11 the Olsen deposition.

12 Returning to the deposition, page 42, line 1.

13 "Q. Well, you should have, wouldn't you agree?

14 A. Sure, I should have. Yeah. But I'm not
15 sure that I did."

16 MR. GALLEGOS: Mr. Hensley says, "Can we get off the
17 record and clear it up?" Next question is line 10.

18 "Q. Exhibit 6 we have identified as a letter
19 from Ruth Sutton to James P. Foraker, September
20 20th. That was kind of small print that took a
21 while to read that one over?

22 A. Yes, sir.

23 Q. Now, it is quite clear from that letter
24 that the subject and terms of what Hartman's
25 office was dealing with was two 40-acre tracts;

1 "correct?

2 A. That is what this letter says. The
3 position I had with Foraker was I did not want to
4 have in mind two 40-acre tracts."

5 MR. GALLEGOS: "Did not have in mind."

6 MR. CARR: "The position I had with Foraker was I did
7 not have in mind two 40-acre tracts." Yes.

8 "Q. So evidently Mr. Foraker got off on the
9 wrong track, spelled t-r-a-c-k?

10 A. Yeah. We are saying things different."

11 MR. GALLEGOS: Then I would go to page 44, line 25.

12 MR. EZZELL: What was Exhibit 7?

13 MR. GALLEGOS: It was a letter between Foraker and
14 Olsen.

15 MR. EZZELL: Since the entire deposition, and
16 therefore the entire deposition exhibits, will be part of
17 the record, I'd just like to point out that -- where we're
18 leaving now is a letter from Foraker to Olsen dated October
19 4 when they -- when Foraker indicates that he is
20 advising -- that he is taking Mr. Olsen's instructions to
21 drop the matter, and refers to the confusion as to whether
22 they were trying to sell one 40-acre track for \$50,000.00
23 or two 40-acre tracks for \$50,000.

24 MR. GALLEGOS: Do you want to offer that, Mr. Ezzell?

25 MR. EZZELL: Yes. If I understand the chairman's

1 ruling --

2 COMMISSIONER LEMAY: The entire deposition will be an
3 exhibit and admitted into the record.

4 MR. EZZELL: -- the entire deposition is an exhibit.
5 And that is the exhibits to the deposition which are an
6 integral part.

7 MR. GALLEGOS: However you want to proceed. I just
8 want you to know it's not included in this.

9 MR. EZZELL: It's already been entered once before.

10 MR. GALLEGOS: Mr. Ezzell, I just want you to know
11 it's not -- it's not in this book, if you want to have a
12 complete record, I think you might mark that as an exhibit.
13 Proceed however you want to.

14 MR. EZZELL: I am assuming from the chair's ruling
15 that --

16 COMMISSIONER LEMAY: Let's put it in the record.

17 MR. EZZELL: -- that the entire deposition and all of
18 the exhibits will be a part of the record. And for
19 identification purposes that is --

20 MR. STOVALL: Mr. Ezzell, might I make a suggestion,
21 Mr. Chairman, that based upon the commission's ruling that
22 perhaps that exhibit can be marked in some unique way, so
23 as you don't have to go through and mark each separate
24 piece.

25 MR. GALLEGOS: Why don't we simply have that as

1 Olsen's Exhibit 2. We have no objection to it. We don't
2 need to copy it at this moment obviously, but then it will
3 be part of the record that way. Is that satisfactory?

4 MR. EZZELL: It's fine with me. It seems like it
5 would be much easier just to have the entire deposition as
6 being one exhibit.

7 MR. STOVALL: I think considering the way Mr. Gallegos
8 is presenting his case, I think that would enable us to
9 look at the record later and know what is what we're
10 talking about.

11 MR. EZZELL: Let the record then reflect --

12 MR. STOVALL: Talking about the entire exhibit book,
13 Mr. Ezzell, not just that particular exhibit.

14 MR. EZZELL: The entire exhibit book is a part of the
15 record attached --

16 MR. STOVALL: As Exhibit 2.

17 MR. EZZELL: As Exhibit 2.

18 COMMISSIONER LEMAY: Without objection Olsen Exhibit
19 2 then will be entered into the record.

20 (Olsen Exhibit 2 was admitted in
21 evidence.)

22 MR. GALLEGOS: I'm a little confused now. What
23 Mr. Ezzell is saying, all the exhibits from the Olsen
24 deposition he now wants to mark as Exhibit 2?

25 MR. STOVALL: That was my recommendation.

1 MR. GALLEGOS: We have no objection. There will be a
2 lot of duplication. A lot of them are now going to be
3 traveling under two exhibit --

4 MR. EZZELL: Triplication actually.

5 COMMISSIONER LEMAY: We will sort it out.

6 MR. STOVALL: Mr. Gallegos, just to make this clear
7 and make the record clear, as you and Mr. Carr have been
8 entering select portions of Mr. Olsen's deposition, you
9 have been making reference to both the exhibit number as
10 it's contained and identified in the deposition; is that
11 correct?

12 MR. GALLEGOS: And then giving the cross reference
13 over to the exhibit as it's identified in the Hartman
14 exhibits that are here before the commission today marked
15 and in the book that we provided for the commissioners. In
16 other words, in some instances they happen to bear the same
17 number. But, for example, Exhibit 6 in the Olsen
18 deposition is Exhibit 10 of the Hartman exhibits that are
19 before the commission today.

20 COMMISSIONER LEMAY: We understand the confusion
21 that's resulted, so we are going -- your exhibits will
22 carry your presentation. Because of Mr. Ezzell's request
23 we're having those exhibits entered for possible reference.

24 MR. GALLEGOS: Are we clear on how we're proceeding,
25 Mr. Stovall?

1 MR. STOVALL: If the chairman is clear, I'm clear.

2 MR. GALLEGOS: Line 25 at page 44.

3 "Q. Okay. I take it you weren't pleased with
4 the way he was handling this transaction?

5 A. Not at all. And others to boot.

6 Q. So now what we have in early October is you
7 knew there would be an unopposed forced pooling
8 application before the OCD on July 31, 1985, in
9 Santa Fe, correct?

10 A. Yes.

11 Q. So you knew that it was about 99.5 percent
12 sure that forced pooling would come about?

13 A. Yeah.

14 Q. In early October you also knew that these
15 negotiations to sell your interest in the lease
16 had come to an end?

17 A. Uh-huh.

18 Q. Okay. So your interest was force pooled
19 and --

20 A. Yeah, that's it. Force pooled.

21 Q. And what did you do to find out what was
22 going on as far as drilling that well into that
23 forced pooling proceeding?

24 A. I'm sure a period of time went by and I'm
25 not -- I really don't remember what I did at this

1 "moment. I would "have to refresh my memory to
2 correctly answer that question. And I just don't
3 have anything in front of me to stimulate it.

4 Q. Well, you knew that a well was being or
5 would be drilled at a cost that you thought was
6 too high?

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

8 Q. Okay. Can you tell us any steps you took
9 in a regard to asserting that position or
10 grievance in this period of time, let's say
11 before the end of 1985?

12 A. I just fired my only oil and gas man, so
13 I'm just not loaded with technical people to see
14 what I'm doing. But I had -- I just don't know.
15 I'd have to search my files.

16 Q. Well, let's take a look in case your files
17 reflect any action like that.

18 A. Okay.

19 Q. Because they're here. And Mr. Ezzell can
20 tell us if they show anything. If it's nothing,
21 it's nothing."

22 MR. GALLEGOS: Then there was a discussion between
23 Mr. Ezzell -- Mr. Ezzell says, "Any objection or any
24 correspondence relative to the drilling of the well after
25 the well --"

1 MR. GALLEGOS: I said, "Inquiry to Hartman, hiring an
2 attorney, doing anything."

3 Mr. Ezzell says, "I have seen nothing until
4 Mr. Olsen hired the attorney who subsequently referred him
5 to us, which did not occur in 1985."

6 I am now going to the deposition at line 4, page
7 47.

8 "Q. Mr. Olsen, I'm going to hand you an exhibit
9 marked Number 8 to your deposition. It's dated
10 October 1, 1985. It appears to be a letter from
11 Ruth Sutton to you in Phoenix. Would you look
12 that over, please?"

13 MR. GALLEGOS: Excuse, Mr. Carr. For the aid of the
14 commission that is Hartman Exhibit No. 12.

15 "A. I definitely remember receiving this one,
16 yes.

17 Q. Okay. It informs you that, in fact, there
18 was a hearing held on the application?

19 A. Uh-huh.

20 Q. It also informed what had gone on Hartman's
21 offices, the perception of their negotiations
22 with Mr. Foraker that they had made a deal,
23 correct?

24 A. Yes.

25 Q. Would it be fair to say from your testimony

1 "that Mr. Foraker had been off doing things
2 that --

3 A. In a different way, yes. I think it was
4 about this time that I had called Mr. Hartman.
5 And he was either out of town or unavailable or
6 something. And whether he got the call or not, I
7 don't know. But I remember in this period of
8 negotiation, I tried to talk to him myself.

9 Q. Okay. How about Ruth Sutton? Did you try
10 to talk to her?

11 A. No, I never tried to talk to Ruth Sutton.
12 Well, I may now. I may have. I'm not too sure.
13 No, I didn't talk to Ruth Sutton. I was going to
14 talk to Doyle.

15 Q. Let me hand you exhibit 9?

16 A. Okay."

17 MR. GALLEGOS: And let me just point to the commission
18 that is Hartman Exhibit 13.

19 "Q. And that appears to be a letter of October
20 4th, not from Ms. Sutton, but from Mr. Hartman to
21 you about this same subject of thinking that a
22 deal had been made to sell this Carlson Federal
23 lease?

24 A. I precisely remember receiving this letter.
25 And it further drove a wedge between us. It

1 "included two 40 acres for 50,000.00 rather than
2 a single 40 for an infill well for 50,000.

3 Q. It says that Hartman proceeded with the
4 drilling of the well. There was no question
5 about that?

6 A. Yes. But the 50,000 he was talking about
7 in his letter included two 40 acres. And I only
8 wanted to sell one 40 acres for \$50,000.

9 Q. Why didn't you write Mr. Hartman at least
10 and say that, 'I will sell you 40 acres for
11 \$50,000'?

12 A. Well, I really didn't think that there
13 would be much need, because I had tried to have
14 Foraker to express that we only had the one 40
15 for sale, and I didn't want two 40's to go at
16 that price."

17 MR. GALLEGOS: There was an exchange between counsel.
18 I will pick up at line 24. Is that all right, Mr. Ezzell?

19 MR. EZZELL: I note Mr. Hensley's comment that it's
20 his opinion that Mr. Foraker did make it clear to Olsen
21 that he was only talking about one and not about all --
22 about 40 and not 80 acres, but that's in the deposition.

23 MR. GALLEGOS: This was just argument of counsel.
24 It's not evidence.

25 Question at line 24, page 49.

1 "Q. The October 1 letter from the Hartman
2 office and the October 4 letter, 1985, were clear
3 statements that Hartman thought a deal had been
4 made for the lease for \$50,000, correct?

5 A. Uh-huh.

6 Q. Whether you agreed with it or not, you
7 understood that this was what was being said to
8 you?

9 A. Yes. But I also felt that we were getting
10 farther apart in that he was encompassing more
11 acreage than I had intended to put up for sale,
12 plus I felt that it would be a waste of time to
13 write a letter to answer this particular one.
14 Since he is setting out his side of it so
15 clearly, I don't think that there is anything I
16 could have added in writing or telephone
17 conversation that would have brought us any
18 closer together to buying that single 40 acres.
19 He wanted 22,000.00. I wanted to sell that 40
20 acres for \$50,000.

21 Q. The letters that we are talking about here,
22 Exhibits 8 and 9, are not simply saying, 'We
23 would like to buy such and such land for so
24 much.' They are saying, 'We believe a deal was
25 made.' That was communicating to you the

1 "position that might raise some legal
2 implications, wasn't it?

3 A. That was a great misunderstanding because I
4 never got any money. How can you make a deal
5 with no money?

6 Q. That's your answer, that a deal could only
7 be made with money?

8 A. Yes, sir.

9 Q. Not by agreement otherwise?

10 A. No, sir."

11 MR. GALLEGOS: We would go to page 52, line 25.

12 MR. EZZELL: I would just note the rest of the
13 testimony is just more of Mr. Olsen's opinion why the deal
14 fell apart. Go ahead.

15 MR. GALLEGOS: Thank you.

16 "Q. You are acquainted with the mechanism that
17 the OCD employs in compulsory pooling cases that
18 is sometimes referred to as a penalty factor or
19 risk factor, are you not?

20 A. Yes, sir.

21 Q. And you know that force pooled participants
22 in a well quite frequently are assessed a factor
23 of that nature that may vary from 100 to 300
24 percent?

25 A. Yes, sir.

1 "Q. You are acquainted with that. So knowing
2 what had gone on -- and I don't have to review it
3 all for this question -- we are aware there was a
4 well drilled and that you were certainly being
5 assessed some sort of penalty factor on those
6 costs?

7 A. Yes, sir."

8 MR. GALLEGOS: We marked Deposition Exhibit No. 10.
9 Mr. Chairman and Members of the Commission, that is Exhibit
10 15, Hartman Exhibit 15.

11 "Q. Would you mind identifying for us, Mr.
12 Olsen, Exhibit Number 10? Would you state what
13 it is, please?

14 A. It's a letter from Campbell & Black from
15 Santa Fe regarding case number -- addressed to
16 me, certified, Case Number. 8769, application of
17 Doyle Hartman for compulsory pooling. Do you
18 want me to read the letter?

19 Q. No. November 1985 would find you in
20 Phoenix, correct?

21 A. Yes, sir.

22 Q. And you received this?

23 A. Yes, I received it, yes.

24 Q. The notice is not only of the proceeding
25 but that there will be a hearing on this case on

1 "November 21, 1985. You were informed of that?

2 A. Yes, sir.

3 Q. Okay. And what did you do to make yourself
4 a participant in that proceeding?

5 A. I did not participate. I did not have a
6 representative.

7 Q. Now, on the July 31 hearing, if I recall
8 your testimony, you think maybe you didn't hear
9 from your office on that until possibly the
10 hearing was already held. But in this instance
11 you had the notice?

12 A. I think I had an opportunity to attend that
13 one if I had elected to.

14 Q. And even if you hadn't opted to attend
15 yourself, you could have obtained a lawyer to
16 represent your interest?

17 A. Sure.

18 Q. And your interest at that hearing would
19 have been to oppose the pooling of your interest
20 or at least oppose the drilling cost for the
21 prospect well, correct?

22 A. That's correct.

23 Q. Not attending and opposing the hearing, you
24 knew what the very probable results would be on
25 the application of Hartman; that is, the

1 "compulsory pooling would be allowed?

2 A. Not necessarily. I had counsel in Oklahoma
3 City. It was Dames, Dougherty and -- what is
4 that lawyer's name that represented me? Sid
5 Groom. Sid Groom had some doubt as to whether
6 the forced pooling is the way it was being --
7 that it was necessary to proceed with it at that
8 time. Now, I don't have correspondence. But in
9 generality, he indicated some doubt that the
10 forced pooling was that much of a problem. Now,
11 for what reason, I don't know.

12 Q. All right. I'm afraid I don't follow you,
13 what you are trying to say that he said.

14 A. I had Sid Groom representing me on this.
15 And he put it to one side that, 'Don't worry
16 about the forced pooling at this time.'

17 Q. Sid Groom is an attorney in Oklahoma City?

18 A. Yes.

19 Q. And he does oil and gas work?

20 A. Yes.

21 Q. And by November of 1985, he was
22 representing you on the matters of the Carlson
23 Federal lease?

24 A. Yes.

25 Q. Okay. What had you consulted with him?"

1 MR. GALLEGOS: I'm sorry. "Why had you consulted with
2 him?"

3 "A. Basically because I wanted revenue from
4 that lease on the same basis that I had been
5 getting revenue from it in the past. And by now
6 my revenues is dropping off.

7 Q. But I take it that you were also consulting
8 with him as to the regulatory proceedings
9 involving the forced pooling?

10 A. That's correct.

11 Q. Had you consulted with Mr. Groom on or
12 about the time of the July proceedings involving
13 the Number 4 well?

14 A. I really doubt it. I don't think that I
15 had.

16 Q. But you did consult with him on the
17 proceedings involving the Number 5 well?

18 A. At a later date, yes.

19 Q. Did he advise you not to participate, not
20 to be an intervenor in the hearing in Case 8769?

21 A. No, he didn't, that I remember.

22 Q. So the answer to my original question is
23 that you knew what the very likely outcome would
24 be in this second case on the Number 5 well?

25 A. Yes.

1 "Q. Geologically speaking, did you have any
2 reason to oppose the drilling of these wells? We
3 know your position on the cost. But I'm talking
4 about from a geology standpoint?

5 A. Well, it's somewhat of a tossup. That's
6 pretty close to El Paso's gas storage over there,
7 which is somewhat of a bonus. The other thing is
8 there is also a substantial water encroachment in
9 that area. And it takes some pretty good
10 engineering to go in and get the gas without
11 getting the water.

12 Q. What consideration had you given to
13 drainage of your reserves by offsetting wells
14 where you were only relying on these old wells,
15 the 2 and 3 for production?

16 A. Well, the 2 and 3 seemed to have a very
17 reasonable ratio of return without knowing the
18 intent or the program of the new operator. I was
19 rather satisfied with the runs to date rather
20 than spending a lot of money and not knowing
21 whether he would ever get it back, with
22 \$390,000.00 back.

23 Q. Would it surprise you if the data showed
24 that the Number 2 well had, for some period of
25 time, many months, been non-productive, that it

1 "was so weak it couldn't buck the line pressure?

2 A. Well, there are ways to offset that with
3 compressor or rework or squeeze job or packer.
4 There's ways to handle that.

5 Q. Well, answer my question first.

6 A. Was I aware it was going down? Yes. But I
7 didn't necessarily -- that's a normal decline
8 situation, because you have got to do something
9 to keep the well on production.

10 Q. So what you would have done was to put on
11 compression?

12 A. Well, you could have done that. There's a
13 lot of different avenues that all have different
14 ratios of return. But they need to be explored
15 and evaluated quite carefully.

16 Q. I'm handing you Exhibit 11, Mr. Olsen.
17 Would you mind identifying that? Just for the
18 record, state what it is."

19 MR. GALLEGOS: Mr. Chairman and Members of the
20 Commission, that is Hartman Exhibit 19 a January 6, '86,
21 letter.

22 "A. Well, it's a letter from Ruth Sutton of
23 Doyle Hartman's office regarding the Carlson 4
24 lease.

25 Q. All right. This letter was sent certified

1 "mail and was on the third notice returned, not
2 picked up.

3 A. Okay. Well, this again involves more
4 acreage for the same amount of money. This would
5 be the equivalent of selling the other acreage
6 for \$22,000.00.

7 Q. How did you know what the letter said if
8 you never --

9 A. I didn't. I only surmised from his other
10 two letters that he was going to try to stimulate
11 a sale.

12 Q. So you refused the letter?

13 A. So I refused the letter.

14 Q. Let me ask you as a follow-up to this Case
15 8769 for forced pooling, in order to drill the
16 Carlson Federal Number 5, did you take any steps
17 to ascertain what the costs had been on that
18 well?

19 A. Not that I recall.

20 Q. And I'm talking about in 1985 or early '86.

21 A. I didn't, no.

22 Q. You have since then, of course?

23 A. Not really, no.

24 Q. Didn't you have your auditors and lawyer
25 come to Hartman's office in the fall of 1987?

1 "A. That's just to see what the expenses were.
2 Maybe I misunderstood your question.

3 Q. Well, first I was asking you about whether
4 you did that kind of thing in '85 or early '86.
5 You said no. But then I said, at a later time
6 you did examine into those costs?

7 A. You bet.

8 Q. In August of 1987, a petition was filed
9 before the New Mexico Oil Conservation Division
10 on your behalf to reopen Cases 8668 and 8769.
11 Are you aware of that?

12 A. Yes, sir.

13 Q. Okay. Tell me what happened preceding that
14 in order for you to employ the Hinkle firm to
15 make that filing in your behalf?

16 A. I really don't understand the question.

17 Q. What did you do to --

18 A. That motivated me?

19 Q. Yes.

20 A. I wanted to get on a pay status. So I
21 hired this firm to get me back on a pay status.

22 Q. Now, how long had you not been on a pay
23 status?

24 A. Since Doyle Hartman took over the operation.

25 Q. And that was when?

1 "A. I don't know. '84 or '85, whatever the
2 records indicate.

3 Q. January 1985, when he took over from Sun?

4 A. Yes, sir. If that's when he took over, yes.

5 Q. And you haven't been on a pay status since
6 January of 1985?

7 A. No. I got some checks from Doyle. I was
8 on a pay status. But the production -- things
9 started dropping off shortly thereafter.

10 Q. Within, what, a few months after January of
11 '85?

12 A. Yes.

13 Q. So what did you provide to the Hinkle firm
14 so they could see about getting you back on a pay
15 status?

16 A. I provided them to the best of my ability
17 with the existing records that I had at that
18 time, which were rather marginal.

19 Q. The application filed in the OCD in August
20 of 1987 describes Case 8668 and the order in that
21 case. And it also describes Case 8769 and the
22 order entered in that case. Did you have those
23 orders?

24 A. Sir, I'm sure I did, but I don't know. I
25 didn't specifically note them in my own mind and

1 "make a record of them.

2 Q. They were obtainable by you at any time
3 from the OCD, correct?

4 A. Yes.

5 Q. And there is no other explanation as to
6 motivating circumstances so that you surfaced in
7 this matter in August of 1987, except you decide
8 you want to get back on a pay status?

9 A. The money is the only thing I'm interested
10 in, getting this thing cooking, maintaining the
11 production.

12 Q. And it had been since the spring of 1985
13 that you hadn't been on a pay status?

14 A. Yes, that's correct.

15 Q. Did you have a gas purchase agreement with
16 the pipeline purchaser of the gas from the
17 Carlson leases?

18 A. Yes.

19 Q. And that purchaser was who?

20 A. El Paso.

21 Q. And as a result of that purchase agreement,
22 your gas was sold by you and purchased by El
23 Paso. You were paid by El Paso, correct?

24 A. Yes.

25 Q. The checks were coming directly to you?

1 "A. Yes.

2 Q. Okay. That was true whether Doyle Hartman
3 was operator or Sun was operator. Isn't that
4 true?

5 A. No. That's not necessarily correct. Sun
6 had been making payments, then Doyle had been
7 making payments. Now, in the process, Doyle and
8 I have a falling-out over the way things are
9 being handled, so I have El Paso pay me direct.
10 And they did for a short period of time.

11 Q. Does that refer to the point where Hartman
12 paid you for the gas production and El Paso also
13 paid you for the gas production?

14 A. Yes, that's correct.

15 Q. And you kept both checks?

16 A. That's right. Yes, sir.

17 Q. Okay. And then from that point forward,
18 which would have been, what, the spring of 1986,
19 El Paso was paying you directly?

20 A. Yes, but they did only for a very short
21 period of time. And then they put the revenues
22 in suspense.

23 Q. El Paso did?

24 A. Yes. They didn't continue to pay me
25 indefinitely.

1 "Q. Well, what did you do about El Paso holding
2 your revenue?

3 A. I went to them about it.

4 Q. And them being the Hinkle firm?

5 A. Yes.

6 Q. And what did they do about it?

7 A. Gave it a great deal of study.

8 Q. And sent you bills. Sent a bill every
9 month?

10 A. Yes.

11 Q. Well, what happened besides that?

12 A. Well, I'm still not back on a pay status
13 with El Paso. And, frankly, I don't know how I
14 stand with El Paso. It's so mixed up and
15 confusing, I don't know how I stand with anybody.
16 I would like to get it all straightened out with
17 everybody. I'm not trying to hold anybody's
18 revenue. But by the same token, I would like to
19 get it straightened out.

20 Q. Are you saying you are still in suspense
21 with El Paso?

22 A. I'm still in suspense with El Paso. Oh,
23 sure.

24 Q. Mr. Olsen, did you get the February 1986
25 notice to sellers that El Paso sent out telling

1 "you how rough things were for them?

2 A. Yeah.

3 Q. And were you aware in March of 1986 they
4 essentially shut in all of the production in Lea
5 County?

6 A. Yes, but I'm used to that. I didn't pay
7 much attention to it. I have a lot of shut-in
8 gas wells in different places.

9 Q. It didn't bother you?

10 A. No.

11 Q. I guess then you weren't aware of Mr.
12 Hartman obtaining an injunction that went into
13 effect April of 1987, requiring El Paso to
14 produce those wells and pay the contract prices?

15 A. No, sir, I really wasn't. I didn't give it
16 that much time.

17 Q. Who is Garold Bowlby?

18 A. That's the gentleman down at the end of
19 table. That's my CPA.

20 Q. Where does he live?

21 A. He lives in Norman, Oklahoma.

22 Q. How long has he been your CPA?

23 A. Oh, for at least 25 years.

24 Q. And does he handle the financial and
25 accounting matters pertaining to your oil and gas

1 business?

2 A. Well, he audits, recommends, and advises.

3 Yes, he does.

4 Q. Okay. And, of course, he was doing that
5 for you in 1985?

6 A. Yes, years ago.

7 Q. Any reason in 1985, after you knew you were
8 force pooled on these wells and knew they had
9 been drilled under an estimated expense that you
10 thought was too high that you didn't have Mr.
11 Bowlby go in and do a joint interest audit?

12 A. Well, the material available to us is the
13 older files. Now, whether it was an internal
14 mistake, whether the files were deliberately lost
15 or thrown away as a result of being fired, which
16 I haven't ruled out, but that is why I have come
17 up with a void in my files during the period with
18 Carol Murphy.

19 But I sincerely wanted Carol -- I sent
20 Mr. Bowlby and an accountant, an assistant, to El
21 Paso to try to find out. El Paso is scared to
22 death to say anything because they didn't know
23 what their -- if they even knew it. I'm not sure
24 that they knew what to say. But if they did,
25 they're not going to tell me doodley, anything.

1 "So I sent the same group to audit Doyle
2 Hartman's office to try to find out where we
3 stand and didn't do any better there. So I still
4 don't know where we stand as to who owes who what
5 and for how much.

6 Q. With all due respect, you really lost me
7 with that answer.

8 A. I didn't intend to.

9 Q. I asked about sending somebody the joint
10 interest billing in 1985, and you talked
11 something about the files got lost and the person
12 who you fired and El Paso -- let's go back. I'm
13 sure you were trying to give an answer.

14 A. I was.

15 Q. I just wasn't following you. Let's take it
16 a step at a time. Okay. You are saying
17 something happened in your own Phoenix office as
18 to your records?

19 A. Yes.

20 Q. What happened?

21 A. They're just not available on this lease.

22 Q. And you attribute that at least possibly to
23 this Carol Murphy who you had to fire?

24 A. It's possible. I don't want to pin it that
25 tight, but I have that suspicion.

1 "Q. But you have been in this business a long
2 time, and you know as a working interest owner
3 that you got the right to go in and make a joint
4 interest billing audit of the operator's records?

5 A. Oh, I haven't be able to do that that easy.
6 That is easier said than done. I mean, you can
7 go in, but to put it altogether just doesn't work
8 quite that easy. It sounds very easy, but it
9 doesn't work that well.

10 Q. Let's break that down then.

11 A. Okay.

12 Q. First of all, you recognize that you have
13 the right to go in and examine the books at any
14 time?

15 A. Oh, sure. We did that.

16 Q. But what you are saying is sometimes that's
17 not -- or that's difficult as far as what you get
18 from the examination?

19 A. Yeah.

20 Q. All right. Now, the fact remains that in
21 1985 you did not request or instruct Mr. Bowlby
22 or anybody else to make a check of the expenses
23 and production or anything like that?

24 A. Right.

25 Q. And the fact remains in 1986 you did not

1 "take such a step?

2 A. To the best of my knowledge, I didn't, no.

3 Q. So is it accurate to say that it was the
4 fall of 1987 before you had anybody in your
5 behalf examine into the expenses, costs, and
6 revenues on these wells?

7 A. Yes.

8 Q. And when you did that, it was Mr. Bowlby
9 who you requested to do it?

10 A. Uh-huh."

11 MR. GALLEGOS: Then there was just discussion between
12 counsel what we were referring to. Well, I can read it.

13 Mr. Ezzell says, "Are you talking about the 4
14 and 5, not the 2 and 3?"

15 I said, "Well, all of them."

16 Then the next question is at line 4, page 70.

17 "Q. He was asked to look into all four of them,
18 isn't that right?

19 A. Sure.

20 Q. Do you have any correspondence relating to
21 the examination of the financial records or the
22 audit, as we might call it, to be done in your
23 behalf by Mr. Bowlby on the Carlson lease wells?

24 A. I'm sure he wrote me a letter in the form
25 of a report of his conclusion of what he found.

1 "I couldn't begin to give you a date on it or the
2 total that he put in the material of the letter.
3 But I would have a letter from him, yes."

4 MR. GALLEGOS: Discussion among counsel about getting
5 his file.

6 And then the next question is at line 3, page
7 71. It was deposition exhibit 12 that we will refer to,
8 and that is Hartman exhibit here today, Mr. Chairman and
9 Members of the Commission, 26. Exhibit 26 is the same as
10 12 in this deposition.

11 "Q. Let me hand you a copy of what has been
12 marked as Exhibit 12 to your deposition. It's a
13 letter from Ben Wilcox to Mr. Bowlby, dated
14 October 6, 1987, and ask if you have ever seen
15 that.

16 A. Yes, I have seen this.

17 Q. And how did it come to be provided to you?

18 A. I would assume that I got probably two
19 copies. One would be that Mr. Bowlby would have
20 sent me a copy. And the other would be that
21 Doyle Hartman's office would send me a copy.

22 Q. Were you having any trouble getting
23 information that you wanted?

24 A. No, sir. They were very cooperative.

25 Q. And this is Exhibit 13. Would you identify

1 "that, please?"

2 MR. GALLEGOS: Excuse me, Mr. Carr. Let me just point
3 out to the commission that's Hartman Exhibit 27 here today.

4 "A. Okay. Yes, I have seen that, and I have a
5 copy of that.

6 Q. And were you made aware by your audit team
7 visiting the Hartman offices as to well Number 4
8 and well Number 5, they were provided with the
9 C-115's for proof of production, with the
10 expenses from the well files?

11 A. Yes.

12 Q. With settlement statements to show all the
13 revenues?

14 A. Yes.

15 Q. And the pay-out files?

16 A. Yes.

17 Q. Now, this report from Mr. Bowlby is styled
18 as being tentative and rough. But was this, in
19 fact, the only report you received from him in
20 this audit? And you might consult with him if
21 you want to.

22 A. This was it, sure."

23 MR. GALLEGOS: And then Mr. Bowlby makes a comment.

24 Page 72, line 22.

25 "Q. I haven't added these items up, Mr. Olsen,

1 "but even if the exceptions on the 4 and 5 that
2 Mr. Bowlby alludes to are all legitimate, it
3 comes far from making the drilling of the wells
4 at a cost of \$300,000.00 or less. You agree with
5 that, don't you?

6 A. Well, let's see. I have never thought of
7 it that way.

8 Q. About how much was in question?

9 A. To try to answer that question correctly
10 and not knowing other things that might be
11 involved, it would only be an assumption that
12 that would be correct at this time, because I'm
13 not taking all factors into consideration.

14 Q. Let me ask the question this way.

15 A. Okay.

16 Q. What did you learn and conclude from the
17 audit results on the 4 and 5 well that were
18 provided you in November of 1987?

19 A. I take all audits with a grain of salt,
20 because I think there might be other things that
21 are left out or need to be included, or I'm
22 prepared for surprises. So I saw some figures
23 there, but to me they weren't struck on stone by
24 God. I mean, I saw some figures but I wasn't
25 that impressed with any figures that I saw from

1 "anybody. No disrespect.

2 Q. Well, you weren't satisfied with the work
3 done by Bowlby?

4 A. Well, I just took them rather lightly. I
5 mean, I paid for them, but they were just
6 figures. And I did not consider them gospel,
7 because I thought we might find something later
8 on that might contradict these figures.

9 Q. Well, having this information as a result
10 of the audit that you called for, did you decide
11 that you wanted to be a participant in the well,
12 a voluntary participant in the well? I should
13 say wells, the 4 and the 5.

14 A. Well, based on the experience that I had
15 had with corresponding and getting things done
16 with Doyle Hartman, I wasn't enthusiastic about
17 becoming a partner with him as operator.

18 Q. So you took no steps after receiving this
19 audit report in November of 1987 to express to
20 Doyle Hartman that you wanted to be a volunteer
21 participant in the well?

22 A. Right. I didn't want to be a voluntary
23 participant, because I had to get a court order
24 to get in there to get an audit. And I thought,
25 well, it's going to be difficult to get along as

1 "a working partner when the records are not
2 available to you freely for the first go-around.

3 Q. What are you referring to when you say you
4 had to get a court order?

5 A. Well, at one time I had to go to
6 considerable lengths to get in to get the
7 information on the wells at all."

8 MR. GALLEGOS: Mr. Ezzell said, "We filed the action."

9 "Q. Mr. Ezzell is saying that you filed a lawsuit."

10 MR. GALLEGOS: And then said, "Isn't that what you are
11 saying, Mr. Ezzell?" Mr. Ezzell said, "We did not get a
12 court order. They were very cooperative."

13 Then my next question is at line 11.

14 "Q. Doesn't Mr. Wilcox's letter that you have
15 already looked at, said you got a copy of, say to
16 Mr. Bowlby, 'In response to your telephone
17 conversation, here are these items, and we invite
18 you to perform an audit'?

19 A. We tried to get in there before, and it
20 hadn't been quite that easy. They postponed
21 dates. They would be foot-dragging. And it was
22 not that easy. It sounds rather easy based on
23 this letter. But it was not that easy to get
24 into Hartman's office to get these figures.

25 Q. You didn't have to get a court order to do

1 "it?

2 A. No, no.

3 Q. And just so the record is very clear on
4 this, once it was done -- I won't argue with you
5 about what you had to do to do it. But once it
6 was done, it was your decision that you did not
7 want to be a voluntary partner, as you put it, or
8 joint interest participant in the well, the
9 Number 4 and the Number 5?

10 A. That's correct.

11 Q. And the fact that Number 4 well was drilled
12 for a cost of some \$16,000.00 less than the AFE
13 and the Number 5 for sum \$75,000.00 less than the
14 AFE makes no difference to you?

15 A. No."

16 MR. GALLEGOS: Then we would go to page 81, line 20.

17 Is there any of the intervening portion you
18 would want, Mr. Ezzell?

19 MR. EZZELL: I would just point to Mr. Hensley's
20 questions referring to Olsen Deposition Exhibit No. 14 as
21 identified in the deposition exhibits, which is Olsen
22 Exhibit 2 now. Where they had been -- where Mr. Hartman's
23 accountants gave Mr. Olsen a breakdown on all costs and
24 revenue on the 4 and 5 wells, and the amount that they
25 claimed Mr. Olsen owed for operating expenses on the 2 and

1 3 wells. And the revenue that Mr. Hartman was holding in
2 suspense from Mr. Olsen's interest on the Number 2 well.

3 MR. GALLEGOS: I'm going to line 20, page 81.

4 "Q. Mr. Olsen, you wanted Mr. Bowlby and his
5 people to audit the Hartman records so you could
6 find out what the actual costs had been for the
7 drilling of the Number 4 and the Number 5 well,
8 isn't that right?

9 A. Yes.

10 Q. And he provided that information to you,
11 did he not?

12 A. Yes.

13 Q. And while it may not be in mind right now
14 as to those numbers, whatever they were, your
15 testimony has been that you weren't interested in
16 being a partner with Mr. Hartman. Isn't that
17 true?

18 A. No, that's not correct. I didn't intend to
19 leave that impression. I would like to be a
20 partner with Mr. Hartman, could we get these
21 figures together and sit down and have a meeting.

22 Q. Well, unless you have a specific
23 recollection from the audit results, if you will
24 assume for me the number -- the cost, the actual
25 cost in the Number 4 well was \$374,000.00, was

1 "that an acceptable amount to you?

2 A. Well, there are other figures involved. I
3 can't give you a direct answer. I'm trying to
4 figure out the total monies that had been paid to
5 date with El Paso and also some payments from
6 Doyle. And I don't know where I stand. So to
7 give you a precise -- taking that into
8 consideration, I can't give you a precise answer
9 on that.

10 Q. Well, setting aside whether El Paso has
11 paid you or what has gone on the Number 2 and 3
12 well, I'm just asking you about being a voluntary
13 participant in the Number 4 well, and assuming
14 that's within a thousand dollars here or there,
15 that \$374,000.00 was the cost in the Number 4
16 well. That's what was shown by the numbers. Is
17 that something that you want to voluntarily
18 participate in to the tune of 25 percent?

19 A. Yes. I wanted to participate in that well
20 to reserve and protect my 25 percent. But I had
21 run up against obstacles back in the early stages
22 of dealing with Doyle.

23 Q. Then since you wanted to do that, once you
24 had sent in Mr. Bowlby and his team and they had
25 obtained the actual costs, why did you not take

1 "steps to express to Mr. Hartman that you wanted
2 to be a voluntary participant and to pay your
3 share?"

4 MR. GALLEGOS: Mr. Hensley made an objection to the
5 question.

6 "A. There is no dispute about that.

7 Q. And so then being no dispute about that,
8 why did you not, when you had the audit done and
9 you had the results in November of 1987, step
10 forward and say, 'Here I am. I want to pay my
11 share'?

12 A. I'm not sure that I would have had a
13 correct accounting with my share, and I'm not
14 sure we could have gotten along as partners, even
15 had I come forward at that point.

16 Q. And for that reason you didn't come
17 forward?

18 A. No, no. I wasn't solicited by him, on the
19 other hand. Why didn't he come to me and say,
20 'Well, look, you have 25 percent of this. Here
21 is the report on what we have been doing. And
22 why don't you come along and participate?' He
23 never did that.

24 Q. Well, you had the audit done to get the
25 costs, and you had those results.

1 "A. But I didn't take the audit that seriously.

2 Q. Okay. What you are suggesting is that even
3 with the audit done by your CPA, you still
4 don't -- you are still not comfortable that those
5 are correct numbers?

6 A. That's correct.

7 Q. And so if I ask you the same questions
8 regarding the Number 5 well, only if I represent
9 that the costs of that well would be within a few
10 thousand of \$311,000.00, the drilling of it, your
11 answers would be the same?

12 A. No, because that's a different well, and
13 there would be different reserves, and there
14 would be different things to consider.

15 Q. Then having your knowledge about the
16 reserves and having knowledge of the well costs
17 once an audit was done --

18 A. But I don't have the knowledge of the
19 reserves.

20 Q. You don't have the knowledge of the
21 reserves?

22 A. No, I don't know how many cubic feet would
23 be bankable under that 40 acres.

24 Q. I see. So what does that mean, that you --

25 A. That means I don't know how many feet of

1 "gas are down there.

2 Q. And so what have you done to find that out?

3 A. I haven't paid much attention to it,
4 because I figured whatever it is, it's a stored
5 value, and it will be there for a long time or it
6 will get out whenever somebody drills for it.

7 Q. And as an experienced former operator and a
8 person in this business, you know how to find out
9 what those reserves are, don't you?

10 A. Yes, but you don't take them all that
11 seriously. Everybody has a different -- if you
12 go to nine engineers, you will get nine different
13 figures. If you go to nine lawyers, you will get
14 nine different solutions to your problem.

15 Q. So when do you ever make a decision?

16 A. Very slowly. Not all at once.

17 Q. And you didn't want to make a decision in
18 November of 1987?

19 A. No, not really.

20 Q. Are you ready to make a decision now?

21 A. I'm not sure. I don't think so.

22 Q. Okay. You don't think so?

23 A. No, sir."

24 MR. GALLEGOS: That completes our offer. There are a
25 few pages more if you want to offer anything further.

1 MR. EZZELL: I would just point out that, again, the
2 redirect and cross by Mr. Hensley is attached in there and
3 it's a part of the record, and I don't see any reason to
4 read it into the record.

5 MR. GALLEGOS: I have a short deposition. We want to
6 call Garold Bowlby by deposition. Deposition of Garold
7 Bowlby. That first name, by the way, is spelled
8 G-a-r-o-l-d, which was taken on August 25, 1989. And I
9 will begin at line 9, page 4 of the deposition.

10 GAROLD BOWLBY,
11 the Witness herein, having testified through his
12 deposition, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GALLEGOS:

15 "Q. State your name, please.

16 A. Garold Bowlby.

17 Q. Would you spell your first name, please?

18 A. G-a-r-o-l-d.

19 Q. Where do you live, Mr. Bowlby?

20 A. Norman, Oklahoma.

21 Q. What is your occupation?

22 A. Retired CPA.

23 Q. When did you retire?

24 A. 1986.

25 Q. Did you practice in Oklahoma?

1 "A. In Oklahoma City.

2 Q. For how many years?

3 A. Oh, 30 some odd years.

4 Q. Did your practice accounting and auditing
5 in the business of oil and gas?

6 A. Some oil and gas. Mostly construction,
7 though.

8 Q. Have you done auditing and accounting in
9 the oil and gas industry as it relates to the
10 interest of Howard Olsen?

11 A. Not while I was in practice, but when I
12 retired I did some work for him in Midland.

13 Q. Beginning when?

14 A. In 1987. I have always worked for Mr.
15 Olsen as tax advisor."

16 MR. GALLEGOS: I would go to line 4, page 6. Do you
17 want to offer anything?

18 MR. EZZELL: Carry on.

19 "Q. Now, as we are discussing this in your
20 testimony, are you referring to the examination
21 you made of certain records of Doyle Hartman in
22 Midland?

23 A. Yes.

24 Q. Tell us how it came about that you
25 conducted examination. What steps did you take

1 "in order to be able to do it?

2 A. Well, we just made arrangements -- and I
3 can't remember the man's name -- that we come and
4 he would make all the well records available to
5 us.

6 Q. Was the man's name Ben Wilcox? Does that
7 refresh your recollection?

8 A. Probably, yes.

9 Q. Did you go through any other person, Mr.
10 Olsen's attorneys, for example, or anyone else in
11 order to make those arrangements?

12 A. Well, I'm sure we talked about it, but we
13 had permission to go, sure.

14 Q. Do you remember any particular obstacles or
15 difficulties in obtaining that access to the
16 records?

17 A. No.

18 Q. And from testimony we previously have in
19 the record, it's indicated that this was done
20 sometime in early November of 1987. Does that
21 comport with your recollection?

22 A. Yes.

23 Q. How much time did you spend at the Hartman
24 offices?

25 A. Less than a week. Three or four days. I

1 "don't remember.

2 Q. Did you come in there having in mind
3 certain records that you wanted to see?

4 A. Yes, specifically the Number 4 and 5
5 Carlson wells.

6 Q. All right. As to those wells did you have
7 certain kinds of records or documents that you
8 wanted to view?

9 A. Sure. All the supporting invoices for
10 costs and so forth.

11 Q. Was it your objective, or at least one of
12 the objectives of your audit, to ascertain what
13 were the costs of drilling the Number 4 and
14 Number 5 well to completion?

15 A. Yes.

16 Q. And on appearing at the Hartman offices,
17 did you make a request for the records you wanted
18 to see?

19 A. Yes.

20 Q. Were those records furnished to you?

21 A. Yes.

22 Q. Did you examine them?

23 A. We did.

24 Q. And as a result of that examination, were
25 you able to ascertain what the actual well costs

1 "were on the Number 4 and Number 5 well?

2 A. All the invoices we examined. There were a
3 few holes that they didn't furnish us. One or
4 two invoices they never did find, and a few
5 questionably items. But, basically, if they were
6 proper, we came up with some numbers for cost.

7 Q. Do you recall the numbers that you came up
8 with?

9 A. I can't tell you. That's been two years.

10 Q. Will Exhibit 13 help you?

11 A. I'm trying to find a summary or something
12 that would give the full --

13 Q. I was looking for that, too.

14 A. Well, are these the operating statements?
15 I really can't find any totals.

16 Q. Sir, I couldn't either. And I'm wondering
17 if there isn't something else.

18 A. I may have something more to summarize. I
19 really think I do. And I didn't really realize
20 what this was or could remember what it was.

21 Q. I would expect that you would. And let me
22 just ask you this. Are you satisfied in your
23 mind that you did present to Mr. Olsen, as a
24 result of your audit, your findings as to the
25 actual well cost on the 4 and the 5?

1 "A. Yes, I'm sure I did.

2 Q. And that would have been presented somehow
3 in writing, would it not?

4 A. Yes. Figures or a schedule or something.

5 Q. Would that have been done on or about
6 November 9, 1987.

7 A. Yes. Should have been roughly this same
8 time."

9 MR. GALLEGOS: Then I would go to page 10 line 15.

10 MR. EZZELL: Okay.

11 "Q. Let me ask this. Exhibit 13 does show a
12 few exceptions. Was there any follow-up on
13 those?

14 A. We received, as I recall, answers to all
15 but one pretty sizable item. And I can't
16 remember what that was, frankly. I don't
17 remember. We never did -- they just didn't find
18 the invoice for it, a pretty good item.

19 Q. So were the others resolved to your
20 satisfaction except for whatever that item was?

21 A. Uh-huh.

22 Q. Would there also be some correspondence on
23 that, Mr. Bowlby?

24 A. It was probably by phone. I'm guessing
25 that Wilcox probably called me. The best I

1 "recall, he said, 'We just can't find that
2 particular invoice.' 'Well, if you can't find
3 it, you can't find it.'

4 Q. I mean on the others that were resolved,
5 they would supply you documentation?

6 A. Yes, yes. I know he did it.

7 Q. So that will be in the file?

8 A. Should be.

9 Q. And then did you report to Mr. Olsen
10 regarding this follow-up on the exceptions?

11 A. Sure did."

12 MR. GALLEGOS: End of our offer.

13 COMMISSIONER LEMAY: Are you in between witnesses
14 here?

15 MR. GALLEGOS: Yes, Mr. Chairman.

16 COMMISSIONER LEMAY: Let's take a break, a 15-minute
17 break and then resume.

18 (At 3:35 p.m. a recess was taken.)

19 COMMISSIONER LEMAY: We shall resume.

20 MR. GALLEGOS: Doyle Hartman calls Bill Aycock. You
21 have been sworn, have you not, Mr. Aycock?

22 THE WITNESS: Yes, sir, I have.

23 WILLIAM P. AYCOCK,
24 the Witness herein, having been first duly sworn, was
25 examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALLEGOS:

Q. Would you state your name.

A. William P. Aycock.

Q. Where do you live?

A. Midland, Texas.

Q. What is your occupation?

A. Consulting petroleum engineer.

Q. What is the extent of your college education and training for your profession?

A. I have a bachelor of science in petroleum engineering and a master of science in petroleum engineering from the University of Texas at Austin bestowed respectively in 1955 and 1957.

Q. How long have you been a practicing consulting engineer?

A. Been a practicing consulting engineer for 21 years.

MR. EZZELL: Excuse me, Mr. Gallegos. We will stipulate to his qualifications, unless you want them a matter of the record.

MR. GALLEGOS: No.

Q. (By Mr. Gallegos) You have testified before both the Oil Conservation Division and Commission on many occasions?

1 A. When I began my career as testifying, Mr. Carr
2 was counsel, Mr. Utz was the chief engineer, and Pete
3 Porter was the director. That was 21 years ago this
4 spring.

5 COMMISSIONER LEMAY: His qualifications are accepted
6 because of his age.

7 THE WITNESS: Thank you. I appreciate that.

8 Q. (By Mr. Gallegos) Have you served as a
9 consulting engineer for Doyle Hartman, an operator in
10 Midland, Texas?

11 A. Yes, I have.

12 Q. For how many years have you done that?

13 A. Since September 1, 1979.

14 Q. Mr. Aycock, in particular in connection with
15 your duties for Mr. Hartman did you become acquainted with
16 and involved on a first-hand basis with a proceeding before
17 the New Mexico Oil and Gas Commission or the division of
18 that commission leading up to the drilling of the Carlson
19 Federal No. 4 and the No. 5 well?

20 A. Yes, sir, I was intimately involved in the whole
21 controversy and the whole set of hearings and the attempts
22 to reach a voluntary agreement with Mr. Olsen.

23 Q. Did *your involvement include not only
24 preparation of those cases but an appearance before the
25 division to testify in Dockets 8668 and 8769?

1 A. Yes, sir, I was a witness in both of those
2 cases.

3 Q. In the interest of time, Mr. Aycock, there are a
4 few exhibits that we might address with some particularity.
5 But would you, in your own words, describe to the
6 commission what went on in regard to obtaining voluntarily
7 or involuntarily the participation of the 25 percent
8 interest owned by Howard Olsen in those two proposed wells?

9 A. Mr. Hartman and various members of his --
10 various of his employees made continuing determined
11 attempts, starting in early 1985, to achieve a voluntary
12 either joinder by Mr. Olsen in the drilling of two infill
13 development wells, or in the absence of his willingness to
14 join as a participating working interest owner, to either
15 sell his interest to Mr. Hartman and his group of employee
16 participants and Mr. Davidson, who was not an employee but
17 an associate of Mr. Hartman's. Or in the absence of that
18 to farm out the interest to Mr. Hartman so that he could
19 proceed with the drilling of the infill development wells
20 that we all felt were necessary to recover efficiently the
21 remaining reserves under both of these 40-acre tracts.

22 Q. Was there a circumstance at which point the
23 Hartman organization had made an agreement with a
24 representative of Mr. Olsen to purchase his interest?

25 A. They thought they had. Mr. Hartman thought they

1 had, and Mrs. Sutton who was his land person at that time
2 expressed on several occasions that she was satisfied that
3 a trade had been consummated, and that it was simply a
4 matter of flanging up the details. And that's why we felt
5 so confident that we testified to the commission that we
6 thought we had a trade made with Mr. Olsen, and it was
7 specified, I believe in 8668 that we would so notify the
8 commission when a voluntary agreement had been achieved,
9 but unfortunately it never was.

10 Q. Do Exhibits 1 through 6 of the Hartman exhibits
11 provide for the commission correspondence pertaining to the
12 negotiations with Mr. Olsen? At the same time do they also
13 demonstrate the forced pooling application that was filed
14 with the commission and noticed to Mr. Olsen concerning the
15 Number 4 well?

16 A. Yes, sir, they do. And the first Exhibit No. 1
17 is dated January 24, '85; Exhibit No. 2 is dated January
18 31, '85; Exhibit No. 3 is July 10, '85; Exhibit No. 4 is
19 dated July 19, '85; and Exhibit No. 5 is dated July the 22,
20 1985; and Exhibit No. 6 is dated July 30, 1985.

21 MR. GALLEGOS: Mr. Chairman, those exhibits with the
22 exception of No. 4 were also identified by Mr. Olsen and we
23 move their admission, Exhibits 1 through 6 at this time.

24 COMMISSIONER LEMAY: Without objection Exhibits 1
25 through 6 will be admitted into the record.

1 (Hartman Exhibits 1 through 6
2 were admitted in evidence.)

3 Q. (By Mr. Gallegos) Again without going into a
4 lot of detail, is Exhibit No. 7 the copy of transcript of
5 the proceedings where you testified before the -- before
6 the examiner on the first compulsory pooling case? That
7 would be case 8668 relating to the Carlson Federal Number
8 4?

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

10 Q. At that time what did you report to the examiner
11 in that proceeding concerning the equity of Mr. Olsen in
12 this well?

13 A. If you will give me just a moment to turn back
14 here, I think I can find it.

15 Q. I should say the lease.

16 A. The testimony begins on page 26 of the
17 transcript of Case No. 8668, and on line 6 I believe is the
18 first reference to it. The question was, "Have you
19 reviewed the correspondence and the efforts made by Hartman
20 to obtain the voluntary joinder of R. Howard Olsen?"

21 Q. Without reading it verbatim, can you help the
22 commission by just saying what was reported at that time as
23 to the status of the negotiations with Mr. Olsen?

24 A. Basically I cited in here these same group --
25 several of these same group of exhibits that have just been

1 submitted and accepted by the commission, and pointed out
2 to the examiner what was basically contained therein. And
3 also pointed out that there was a letter from Sun Oil
4 Company containing what was purported to be the operating
5 agreement that covered wells Number 2 and 3 and it would
6 presumably wells Number 4 and 5 as to the relationship
7 between Mr. Hartman as the successor in interest to Sun Oil
8 Company, and Mr. Olsen with his interest that predates the
9 assignment from Sun to Hartman.

10 Mr. Strand, who was an attorney, who is now
11 deceased, with the firm of Atwood, Malone, Mann and Turner
12 was the technical attorney who testified in both 8668 and
13 8769 as to later in the transcript that in his opinion
14 those did not constitute an operating agreement.

15 Q. Was it your belief, based on the negotiations
16 that had taken place, that Mr. Olsen's interest was going
17 to be obtained by purchase by Mr. Hartman, and the forced
18 pooling proceeding was only a safety measure to make sure
19 the drilling of the well could proceed?

20 A. Yes. I'm trying to find the exact statement
21 where I know I said that we thought that we had a voluntary
22 agreement with him.

23 Q. Well, I think over at page 21 you testify in
24 that regard. Actually page 18 you testify about the notice
25 to Mr. Olsen, and page 21 you testify that you learned --

1 A. Yes. You're correct, Mr. Gallegos. On page 21,
2 line 19 Mr. Carr asked me, "Does he have immediate plans to
3 go forward with the development of this acreage?" This is
4 the transcript for 8668.

5 And my answer was, "Yes, he does. As a matter
6 of fact we learned yesterday that Mr. Olsen is probably
7 going to farm out his interest to Mr. Hartman."

8 Q. Meanwhile and prior to that hearing Mr. Olsen
9 had been provided with notice of the hearing and AFE on the
10 well?

11 A. Yes, sir.

12 Q. Now, after Exhibit 7, then, just to move things
13 along with Exhibits 8 -- in particular, Exhibits 9 and 10
14 reflect further negotiations, in particular Exhibit 10
15 reflects that the Hartman organization believed it made an
16 agreement to buy Mr. Olsen's 25 percent interest in that
17 lease for \$50,000?

18 A. Yes, sir. Exhibit 8 is simply more of an ad lib
19 thing, because this was just Mr. Carr explaining to the
20 Bureau of Land Management what was going on. But Exhibit 9
21 is Miss Sutton's notes on her various contacts with
22 Mr. Olsen's representatives stretching from the period of
23 July 10, 1985, through August 29, 1985, in an attempt to
24 reach a voluntary agreement.

25 Q. All right.

1 A. Those are her notes, and she was a witness in
2 8769. And if the commission -- any member of the
3 commission cares to examine that transcript it's great
4 detail, her testimony, pertaining to all of these notes and
5 her varying continuing attempts to reach a voluntary
6 agreement with, first, Mr. Olsen's office, and then
7 Mr. Foraker -- after she had been in contact directly with
8 Mr. Olsen's office, then Mr. Foraker called her, and that's
9 when that series of negotiations began.

10 Q. Now, sir, let me direct your attention to
11 Exhibit No. 11, Hartman Exhibit No. 11. Is that the order
12 that issued on this first forced pooling case, Case 8668,
13 pertaining to the Carlson Federal No. 4?

14 A. Yes, sir. That's order No. R-8031.

15 Q. Was there a particular reason at that time
16 Mr. Hartman was anxious to proceed with dispatch in the
17 drilling of these wells?

18 A. Yes, he was. This was, as usual, during this
19 period of time -- this involved financial planning that
20 involved minimization of Federal income taxes. So he was
21 anxious to get the money effectively spent during the
22 calendar year 1985 if at all possible.

23 Q. In particular, Mr. Aycock, I would like to draw
24 your attention to what I call the order and decretal parts
25 of this order beginning at page 3, going over onto page 4.

1 Are you with me?

2 A. Yes, sir.

3 Q. Paragraph number 4 and paragraph number 5. Have
4 you read and examined those provisions before?

5 A. Yes, sir, I have.

6 Q. Are those familiar provisions to you in terms of
7 your extensive years of experience before this commission
8 in forced pooling cases?

9 A. Yes, sir, they are. In my experience and
10 recollection they're standard language that are
11 substantially included in any forced pooling order.

12 Q. Now, sir, does either one of those paragraphs
13 relate to the opportunity for voluntary participation by a
14 working interest owner who is being forced pool or has not
15 to that point consented?

16 A. Yes, sir. Number 4 specifically addresses that
17 point.

18 Q. Okay. And what does number 4 call for?

19 A. May I read it into the record as it is rather
20 than to attempt to interpret it and get involved in
21 ambiguities?

22 Q. I think it has that importance that you should
23 do that.

24 A. "Within 30 days from the date the schedule
25 of estimated well costs is furnished to him, any

1 nonconsenting working interest owner shall have
2 the right to pay his share of estimated well
3 costs to the operator in lieu of paying his share
4 of reasonable well costs out of production, and
5 any such owner who pays his share of estimated
6 well costs as provided above shall remain liable
7 for operating costs but shall not be liable for
8 risk charges."

9 Q. In both cases, that is the pooling case for the
10 Federal Carlson Number 4, Carlson Number 5, was Mr. Olsen
11 provided with AFEs?

12 A. Yes, sir.

13 Q. Within 30 days of being provided those AFEs did
14 he voluntarily express his interest in paying his share of
15 the well costs?

16 A. He apparently was -- based on -- I have read his
17 entire deposition and parts of have been repeated here, and
18 apparently as of 1989 he had still not made up his mind
19 whether or not he wanted to be a voluntary participant.
20 And he did admit that he had received the AFEs and he knew
21 what the costs were, so had he been able to make a
22 decision, he had the opportunity and knew that he had the
23 opportunity to voluntarily participate in the drilling of
24 both wells.

25 Q. Let me turn your attention to paragraph 5 now of

1 that order. And maybe it would merit reading that in its
2 entirety for the record.

3 A. "The operator shall furnish the Division
4 and each known working interest owner an itemized
5 schedule of actual well costs within 90 days
6 following completion of the well; if no objection
7 to actual well costs is received by the Division
8 and the Division has not objected within 45 days
9 following receipt of said schedule, the actual
10 well costs shall be the reasonable well costs;
11 provided however, if there is an objection to
12 actual well cost within said 45-day period the
13 Division will determine reasonable well costs
14 after public notice and hearing."

15 Q. Not only by its own language, but industry
16 practice, is it your testimony that that provision does not
17 relate to opportunity for participation?

18 A. No, sir.

19 Q. What does it pertain to?

20 A. Well, it pertains to if there is a dispute as to
21 the cost of achieving the end that both operators have in
22 mind.

23 Q. In your 21 years of experience, what has been
24 your observation in the industry concerning strict
25 compliance with that particular provision?

1 A. I'd say at least 50 percent of the time there is
2 not strict compliance with it.

3 Q. But if there is compliance or there is
4 information, it pertains to an attack or a questioning of
5 the reasonableness of the well costs as opposed to
6 opportunity for participation?

7 A. Most generally it has to do with the costs being
8 higher than either were anticipated, or than were hoped,
9 or -- for whatever reason that there is questioning of the
10 well costs as being unreasonable, yes, sir.

11 In my experience most operators don't have a
12 very difficult time making up their mind. For whatever
13 reason most people can assimilate whatever facts there are
14 available -- and the director can appreciate this, since he
15 was at one time an imminent consulting geologist in New
16 Mexico. They're able to assess those risk factors in their
17 mind and decide whether they wish to voluntarily assume
18 them or not.

19 Q. Again, in the interest of time, let's take as a
20 group Exhibits 12 through 15. And generally what do they
21 pertain to?

22 A. They pertain to continuing attempts to -- 12,
23 13 -- 13 and 13 pertain to continuing attempts to achieve a
24 voluntary resolution of Mr. Olsen's -- whether he is going
25 to participate, sell, farmout or what.

1 Q. Does Exhibit 13, Mr. Hartman's letter of Hoover
2 October 4, 1985, illustrate that the Hartman organization
3 believes so firmly that an agreement had been reached that
4 Mr. Hartman was threatening legal action?

5 A. Yes, sir. The last paragraph.

6 Q. And does Exhibit 15 -- actually Exhibits 14 and
7 15 represent the documentation, including notice to
8 Mr. Olsen given by Mr. Carr on the second forced pooling?

9 A. 8769, yes, sir, that's correct.

10 Q. And then Exhibit 16, were you reporting to the
11 commission at that hearing -- and I think that will appear
12 at page 26 and 27 of the transcript -- that the Hartman
13 organization believed that it was only a matter of the
14 agreement being obtained in the mail by Mr. Olsen for a
15 signature in order to

16 A. This is --

17 Q. -- wrap-up the deal?

18 A. Pardon me. Pardon my interrupting you.

19 Q. Sure.

20 A. On 26, this is Miss Sutton's testimony, not
21 mine, because as I previously indicated she was a witness
22 and it was not necessary for me to testify as to it since
23 she was available for 8769. And she had actually done the
24 negotiating and actually written the letters, and so she is
25 the one that did the testifying.

1 Q. Let me ask you this, Mr. Aycock. At the period
2 of time that we're talking about, running basically I would
3 say from the spring of 1985 until the fall of 1985, did you
4 or did it come to your attention that anyone in the Hartman
5 organization had any inkling of the fact that Mr. Olsen and
6 Mr. Foraker, who was representing him, seemed to have some
7 misunderstanding or different perception of what this
8 negotiation agreement was about?

9 A. I can only tell you that in numerous
10 conversations that I had with Ms. Sutton or Miss Sutton and
11 Mr. Hartman jointly, there was never any doubt in her mind
12 that to whomever she was speaking, whether it was either of
13 Mr. Olsen's secretaries or Mr. Foraker, that everybody
14 understood what they were attempting to do, which was to
15 either farm-in or purchase Mr. Olsen's interest in the two
16 40-acre tracts that were involved in the Carlson Federal 4
17 and Carlson Federal 5.

18 Q. Let me call your attention to Exhibit 10 for a
19 moment. Did you have a chance to look that over?

20 A. Yes, sir.

21 Q. Generally it's sending the assignment for the 80
22 acres, talking about exchanging the cashier's check in the
23 amount of \$50,000. Do you have some knowledge of the
24 circumstances where Ms. Sutton was called upon to meet with
25 Mr. Foraker and present the check?

1 A. To the best of my recollection she actually went
2 to the bank and got the check in preparation for the
3 meeting.

4 Q. Then what happened, do you know?

5 A. Then -- I don't remember the exact
6 circumstances. I think at that time she was working under
7 the delusion Mr. Foraker was an attorney. To the best of
8 my recollection he had not identified what his occupational
9 speciality was. He simply identified himself as
10 Mr. Olsen's representative. She assumed, based upon the
11 fact we were talking -- she was discussing with him a legal
12 transaction, that he was an attorney. And I remember her
13 specifically telling me she was surprised to find out that
14 he was not an attorney.

15 And this letter is the documentation of the fact
16 that she is sending forward the partial assignment of bill
17 of sale. She gives instructions as to how Mr. Howard Olsen
18 should sign, so whether he is a single man or a married
19 man. And then she says specifically, "After you had a
20 chance to look these over, we will discuss the methods of
21 exchanging our cashier's check in the amount of \$50,000 for
22 the executed assignment."

23 Mr. Gallegos, if I can impose on the commission,
24 in my 31 -- almost 31 years of experience in the business,
25 that is -- it is most unusual to consummate matters of this

1 kind except through drafts. It is not the usual thing.
2 I'm not saying there is anything wrong with it, but most
3 people are satisfied to have a draft payable that the
4 assignor executes, takes with the draft to his bank, and
5 puts in the collection department. And when his bank
6 notifies the assignee's bank that they have received the
7 document, and it's properly executed, the draft is paid.
8 At that point the document is released and it goes to the
9 assignee. That's the normal way these things are handled.

10 Q. Let me just ask this. until Mr. Olsen's
11 deposition was given in this proceeding in 1989, did
12 anybody in the Hartman organization know that Mr. Foraker
13 was making a deal for 80 acres for \$50,000 but back in
14 Phoenix, or wherever, Mr. Olsen thought it was \$50,000 for
15 40 acres?

16 A. Since no one was privy to the conversations or
17 the understandings between Mr. Foraker and Mr. Olsen no one
18 had any inkling that we were talking -- there had never
19 been any discussion, to my knowledge, of anything but both
20 40-acre tracts since the beginning. There never had been a
21 desire to purchase just one, because Mr. Hartman was
22 satisfied when he acquired the acreage from Sun that two
23 wells would be necessary.

24 Q. But notwithstanding whether the Hartman office
25 thought a deal was going to be made, did it proceed through

1 the normal channels to force pool Mr. Olsen's interest for
2 both purposes of drilling the Carlson 4 and the Carlson 5
3 as a safety or to be sure kind of process?

4 A. Yes, sir.

5 Q. And let me ask you to turn your attention now to
6 Exhibit 18. What is that.

7 A. That's the order of the division in Case 8769,
8 which was the Carlson Federal 5.

9 Q. Just to ask the obvious, do paragraphs 4 and 5
10 on page 4, that is the decretal portion of that order, have
11 just the same kind of language that we previously
12 spotlighted for the commission; that is 30 days for the AFE
13 to make up your mind for participation and then this 90-day
14 period if you want to challenge the reasonableness of the
15 well costs?

16 A. They appear to be identical on just a cursory
17 reading, yes, sir.

18 Q. Finally, what is Exhibit 19? Mr. Olsen
19 identified it, I believe, himself, but would you just point
20 that one out to the commission.

21 A. This is a letter from Ruth Sutton to Mr. Olsen,
22 dated January 6, 1986, and she's basically saying we
23 thought we had a deal. Let's go ahead and close it up.

24 Q. However would you point out to the commission
25 where that shows that Mr. Olsen refused to accept his mail

1 from Doyle Hartman?

2 A. Yes, sir.

3 Q. Where is that shown?

4 A. If we go over near the end, I believe it's the
5 next to the last page. It's just before the divider that's
6 labeled Exhibit 20. And there is a xerox copy of the
7 envelope in which this was mailed certified to Mr. Olsen.
8 And over on the left you will see all the certification and
9 here in the mid-right-hand side it says "unclaimed." There
10 is a -- post office says "unclaimed."

11 Q. I'd just ask that you direct your attention to
12 one more exhibit, and that is Exhibit 29. What is that,
13 sir?

14 A. Exhibit 29 is a United States Department of the
15 Interior, Bureau of Land Management transfer of operating
16 rights and a lease of oil and gas.

17 Q. Does that pertain to the Carlson Federal leases?

18 A. Yes. It pertains to both of them.

19 Q. On February 15, 1989, did Mr. Hartman close the
20 transaction with Meridian Oil whereby he transferred to
21 Meridian both his interest in that lease in those wells and
22 his operating rights?

23 A. Yes, sir, he did.

24 Q. Since that time Mr. Hartman has not been the
25 operator and interest owner?

1 A. No, sir, Meridian Oil, Inc., has been the
2 operator since that time.

3 MR. GALLEGOS: Mr. Chairman, we would offer Exhibits
4 7 through 19, and Exhibit 29. Pass the witness.

5 COMMISSIONER LEMAY: Without objection those exhibits
6 will be entered in the record.

7 (Hartman Exhibits 7 through 19 and
8 Exhibit 29 were admitted in
9 evidence.)

10 COMMISSIONER LEMAY: Mr. Ezzell?

11 CROSS-EXAMINATION

12 BY MR. EZZELL:

13 Q. You testified, Mr. Aycock, at the forced pooling
14 hearing for the Number 4 well, and Miss Sutton testified at
15 the hearing for the 5?

16 A. I testified in both cases, but in 8769 she
17 testified on her own as to the attempts to achieve
18 voluntary -- some sort of voluntary resolution with
19 Mr. Olsen. While I testified in 8668 because she was not
20 available to be a witness in 8668.

21 Q. You have testified here that Miss Sutton was
22 convinced that she had a deal through Mr. Foraker for the
23 sale?

24 A. I heard her say so on numerous occasions during
25 this period of time, yes, sir.

1 Q. That was for the sale of the two 40-acre --

2 A. Yes, sir.

3 Q. -- parcels of the lease?

4 And so the testimony at the first forced pooling
5 hearing, 8668, on page 19 where you testified and on page
6 28 where Mr. Strand testified that the deal was done by
7 virtue of an imminent farmout, that, in fact, was not in
8 agreement with Miss Sutton's thinking that she had a deal
9 for a sale?

10 A. She didn't think that she had an agreement for
11 sale until Mr. Foraker contacted her. That was near the
12 end of August. Originally he wanted to farm out, or that
13 was what Miss Sutton was under impression.

14 Q. Right.

15 A. She called us the day of the hearing. Mr. Carr
16 and I went out in the hall over at the land building and
17 called her to see what the status was so we could
18 truthfully and fully provide the commission with the best
19 information we had available. And she told me over the
20 phone that she thought a farmout was forthcoming, and that
21 is why we so testified. Then on the 29th, if you will
22 refer back to the exhibit where her notes are, you will
23 notice on August 29th when Mr. Foraker called her and it
24 was at that point that a sale of the interest began to be
25 discussed.

1 Q. That was the farmout agreement that was
2 discussed in the letter a day or two before the hearing?

3 A. It was 70 percent net revenue interest and a
4 hundred percent working interest, and Mr. Olsen would
5 absorb the one-eighth royalty out of his 30 percent total
6 proportionately reduced, yes, sir.

7 Q. There was some response from Mr. Olsen's office
8 but that was a letter that Mr. Olsen testified through
9 Mr. Carr that he didn't get until some weeks later because
10 he was not in Phoenix at the time?

11 A. I believe that's -- in our book the letter
12 you're talking about is probably -- no, this is the
13 purchase, I'm sorry. This is the one from Donna Mariner.

14 Q. You also testified that nobody in the Hartman
15 organization until Mr. Olsen's deposition had any idea of
16 the misunderstanding --

17 A. No, sir.

18 Q. -- apparently that Mr. Carr testified for
19 Mr. Olsen? Even in Mr. Olsen's deposition that he said the
20 deal for the sale fell apart because he was thinking he was
21 receiving an offer of 50,000?

22 A. It's perfectly understandable how he could when
23 Miss Sutton was talking to Mr. Foraker in terms of two
24 40-acre tracts, and he was talking in terms -- to Mr. Olsen
25 in terms of one. I can certainly understand how that could

1 happen.

2 Q. In your Exhibit 12, which is an October 1, '85,
3 letter from Miss Sutton to Mr. Olsen, she says, "I was
4 surprised and amazed to learn that you had not agreed to
5 execute the assignment because it included all of the
6 acreage associated with the lease."

7 Going back, you were wrong when you said nobody
8 in the organization until Mr. Olsen's deposition in 1989
9 knew anything --

10 A. I wasn't aware -- I hadn't read this letter in a
11 while. I wasn't aware that she learned that he would not.
12 I was not aware of that.

13 Q. Does it not say that?

14 A. Pardon me.

15 Q. Does it not say that?

16 A. It does say that.

17 Q. So in October you knew -- in October she knew
18 the deal for the sale was dead?

19 A. Well, she knew that he -- yes, she knew -- I
20 don't know whether she knew that it was dead but she
21 knew --

22 Q. It was sick.

23 A. -- it had not yet been executed -- had not yet
24 been consummated.

25 Q. So then the next correspondence was the letter

1 threatening to turn it over to Mr. Strand, and then the
2 next testimony on it was the November hearing when there
3 had been no response from Mr. Olsen when Miss Sutton
4 testified then that she expected an agreement in the mail
5 at any time?

6 A. That's correct.

7 Q. You indicated that all OCD forced pooling orders
8 are pretty standard, and you read --

9 A. I respectfully disagree with you. I don't think
10 I said they were all standard. I said to the best of my
11 recollection and experience, language of this type is --
12 every forced pooling order that I have ever seen has had
13 language if not absolutely identical with this
14 substantially identical with it.

15 Q. We are in agreement on that, yes, sir.

16 Mr. Gallegos had you read paragraph 4 from the
17 order, I believe on Order R-8031, which is your exhibit
18 behind your divider No. 11, on the fourth page?

19 A. Yes, sir.

20 Q. You discussed extensively paragraphs 4 and 5?

21 A. Yes, sir.

22 Q. Quoting paragraph 4, "Within 30 days from the
23 date the schedule of estimated of well costs is furnished,"
24 that is what triggers the opportunity to participate;
25 correct?

1 A. Yes, sir.

2 Q. What governs the date that the schedule is sent,
3 the schedule of estimated well costs? Paragraph 4 says
4 within 30 days from the date it's received. When does it
5 have to be received?

6 A. Well, I will have to review the order to see.

7 Q. I will just do what Mr. Gallegos did. Turn back
8 one page and read into the record paragraph 3.

9 A. Paragraph 3 says, "After the effective date
10 of this order and within 90 days prior to the
11 commencing of said well, the operator shall
12 furnish the Division and each known working
13 interest owner in the subject unit an itemized
14 schedule of estimated well costs."

15 Q. So the order clearly says that after the
16 effective date of the order, you've got to send an
17 estimated schedule of well costs?

18 A. That's correct.

19 Q. That was not done in this case?

20 A. He already had it on July the 10, 1985.

21 Q. But that was not after the effective date of the
22 order?

23 A. No, but it was the same AFE and he --

24 Q. Exactly.

25 A. -- he admitted that it was the AFE and he had

1 seen it.

2 Q. They were always the same APES. And, in fact,
3 it was not sent within 90 days prior to commencing the well
4 after the effective date of the order because that time
5 never existed?

6 A. Mr. Hartman commenced the well --

7 Q. Prior to --

8 A. -- prior to the order being rendered on the
9 Carlson Federal 4, and after order had been rendered but
10 before it had been published on the Carlson Federal 5, to
11 the best of my recollection.

12 Q. And in your experience, an operator who spuds a
13 well before he knows whether he's got a forced pooling
14 order or not, generally does so at his own risk, does he
15 not?

16 A. In an unopposed forced pooling hearing where
17 substantial evidence has been rendered, the business risk
18 that's involved would normally be considered to be minimal.

19 Q. So it is clear that in neither case the strict
20 provisions of paragraphs 3 and 4 of both orders, they were
21 not followed?

22 A. No, they were not. There was ongoing -- ongoing
23 negotiations to acquire it or farm it in, one of the two.
24 Whatever Mr. Olsen wanted, they were desperately trying to
25 accommodate whatever he wanted.

1 Q. And you discussed the fact that there was some
2 confusion as to whether there was ever a joint operating
3 agreement on the property?

4 A. Mr. Strand so testified in both cases to the
5 best of my recollection.

6 Q. And everybody was looking for one early on
7 because everybody was fighting about what the overhead
8 rates were going to be?

9 A. That is -- to the best of my recollection, the
10 search for the joint operating agreement was engendered by
11 the fact that Mr. Olsen disagreed with the overhead -- the
12 overhead charges --

13 Q. On the existing wells?

14 A. -- that Mr. Hartman rendered on his joint
15 interest billings to Mr. Olsen after Mr. Hartman assumed
16 ownership of the Sun interest and became the operator of
17 these leases.

18 Q. And so --

19 A. So they began to look for a joint operating
20 agreement, and Sun said they had one. And the only thing
21 that they could find they sent to Bob Strand, who examined
22 it and said that in his opinion as an attorney, to best of
23 my recollection, it involved a drilling contract and had
24 nothing to do with operations and did not apply to either
25 of these leases.

1 Q. So it's clear from both parties in the situation
2 that there was not a joint operating agreement governing
3 the relationship between Mr. Hartman and Mr. Olsen on the
4 initial two wells or the subsequent two wells?

5 A. That's to the best of my recollection, yes, sir.

6 MR. EZZELL: Thank you, sir. I have nothing more.

7 COMMISSIONER LEMAY: Additional questions?

8 MR. GALLEGOS: We have nothing additional.

9 COMMISSIONER LEMAY: I will ask my fellow
10 commissioners.

11 EXAMINATION

12 BY COMMISSIONER CARLSON:

13 Q. The AFE for the Number 4 was delivered July 10;
14 right?

15 A. Yes, sir, with the letter that went to --

16 Q. When was the AFE for the Number 5 delivered?

17 A. Let me see if I can find out for you without
18 making a big . . .

19 MR. EZZELL: It was your letter in November or
20 October. Is there an Exhibit 15, November 11, '85, letter
21 from Mr. Carr? May not be an AFE. That's just a docket.

22 THE WITNESS: That's correct.

23 MR. EZZELL: That may be the one we did not find. You
24 might consult with the chronological facts stipulation.

25 COMMISSIONER CARLSON: It's not on that.

1 MR. EZZELL: It's my recollection that we did not nail
2 down the letter where it was actually sent. We have no
3 qualms that Mr. Olsen did receive --

4 A. I can't tell you when he got it. I know he got
5 it on -- it was the same AFE that he got on July 10, and to
6 the best of my recollection in reading his entire
7 deposition he understood that those were the projected
8 costs for both wells; that they were no different. And I
9 so testified in both 8668 and 8769 that those costs were
10 based on Mr. Hartman's considerable experience, the most
11 active operator in the Jalmat-Eumont trend at that time.

12 But I can't answer your question as to when he
13 received a further AFE. The negotiations switched from
14 participation to either farm-in or acquisition, and from
15 that point forward, quite frankly, I think nobody ever
16 dreamed that the forced pooling was ever going to have to
17 go into effect until it did have to go into effect.

18 Q. (By Commissioner Carlson) But everybody agrees
19 it was before the hearing on the Number 5 forced pooling.

20 MR. EZZELL: If he got one at all, it was before the
21 hearing on the Number 5.

22 THE WITNESS: Yes, sir.

23 MR. EZZELL: We know that he got notice of the
24 hearing, and we know that he did not get an AFE after the
25 entry of the order.

1 COMMISSIONER LEMAY: Commissioner Weiss.

2 COMMISSIONER WEISS: I had the same question.

3 COMMISSIONER LEMAY: Anything else?

4 COMMISSIONER WEISS: No.

5 COMMISSIONER LEMAY: I have a question, Mr. Aycock.

6 EXAMINATION

7 BY COMMISSIONER LEMAY:

8 Q. With your experience on operating expenses in
9 the developing of gas reserves in the Jalmat-Eumont area,
10 what's been a common fair average price for drilling rates
11 in the administrative overhead for a well like that?

12 A. I testified in both 8668 and 8769 that the \$5500
13 that we asked for was within my experience a reasonable and
14 representative number.

15 Q. So that's pretty typical for the area, do you
16 think?

17 A. Yes, sir, I do. I think anybody that's --
18 unless they're hung with an out-of-date operating agreement
19 that dates to previous time, because, as you know, since
20 you were a practicing geologist, we had all this inflation
21 going on in the '70s. Unless you had an operating
22 agreement that pre-dated that, that hung you with low
23 costs, your actual costs on doing everything, including
24 drilling, completion, what have you, went up spectacularly
25 during the whole decade of the '70s. And these wells that

1 wound up costing nearly \$400,000, 10 years earlier probably
2 would have been \$200,000 wells just for that reason.

3 Q. Evidently the Sun form or whatever, the
4 operating agreement that Sun had with their operators was
5 not -- they couldn't find --

6 A. There was no -- according to Mr. Strand's
7 testimony in both 8668 and 8769, the only document that was
8 furnished to him -- I believe he stated, number one, that
9 it was not an operating agreement; and, two, that it did
10 not apply to the lands in question. It had to do with
11 drilling of wells.

12 Q. Do you happen to --

13 A. It was a drilling contract.

14 Q. Was there any talk or any agreement as to that
15 operating agreement having a nonconsent provision for
16 parties not participating in future development?

17 A. May I refer to the transcripts? If you would
18 like for me to, allow me to read Mr. Strand's responses in
19 or refer them to you for your examination, whichever you
20 would prefer, rather than me trying to quote him. I can
21 only give you my recollection, and that might not be
22 specifically accurate. If you would like for me to, I will
23 be glad to get the transcripts for both and read into the
24 record Mr. Strand's responses in that regard; or if not, if
25 you would prefer to look it up on your own, whichever will

1 accommodate you the most.

2 Q. I can -- what I'm trying to get at is, normally
3 if you're partners in a well or the development of a track
4 of land, one party proposes a well, the other party does
5 not want to go along, you're subject to the nonconsent
6 provision of the operating agreement not to a forced
7 pooling order.

8 A. Yes, sir, that's correct. Since there was no
9 operating agreement here, or Mr. Strand so advised
10 Mr. Hartman, he had to proceed through forced pooling
11 because he had no other alternative. If Mr. -- he offered
12 him the option to join. And if he would not join
13 voluntarily, there was no document that governed their
14 relationship in that connection. So after a lot of
15 experience in Lea County, he decided that the best thing
16 for him to do is to seek forced pooling protection, and
17 that was upon advice of counsel, Mr. Robert Strand.

18 Q. Was there an acknowledged operating agreement
19 that existed that they could not find, or was there just a
20 consensus that maybe they never had an agreement back --
21 there were some cases where they never signed agreements,
22 they just went ahead and drilled wells.

23 A. Once again, to the best of my recollection,
24 Mr. Strand said that there had been the assertion that
25 there was one, but that Sun could only furnish him one

1 document, and that document referred not to the operation
2 but to the drilling of wells, and further than that it did
3 not, in his opinion, apply to these lands.

4 COMMISSIONER LEMAY: Thank, Mr. Aycok.

5 MR. EZZELL: Mr. Chairman, I can supply you with a
6 copy of that instrument, if you would like it.

7 COMMISSIONER LEMAY: The Sun operating agreement?

8 MR. EZZELL: The -- it was a 1936 drilling contract.

9 MR. GALLEGOS: At page 30 of Exhibit 16, transcript of
10 that hearing, Mr. Strand says -- he's referring to this
11 drilling agreement.

12 MR. EZZELL: November 2, I think, or November 5.

13 MR. GALLEGOS: "I reviewed this agreement and it does
14 not appear to me to cover the lands involved or the
15 intervals, and as best we can determine at this point in
16 time, there is no formal operating agreement of any type
17 covering these lands."

18 And then the question was, "And so the way to
19 bring this acreage in, absent a new agreement with
20 Mr. Olsen, is to come seeking a pooling order?"

21 Mr. Strand said, "Yes."

22 COMMISSIONER LEMAY: So I guess just pay on the basis
23 of what they're invoiced without an agreement to cover
24 operations prior to Mr. Hartman taking over operations.

25 MR. EZZELL: That and the fact --

1 COMMISSIONER LEMAY: That would be an assumption. I
2 mean without an operating agreement, you would just pay off
3 the invoice.

4 MR. EZZELL: There was already one well on each 40 as
5 well, and the parties likely did not anticipate more
6 drilling.

7 COMMISSIONER LEMAY: I understand that. I just
8 wondered what governed the operations up to that point.
9 Gentleman's agreement I would assume.

10 MR. EZZELL: Periodically if Sun wanted to charge 12
11 bucks for employee benefits, they would send a letter to
12 Mr. Olsen. He said sure, that's okay with me, and send it
13 back. But there was no operating agreement as we know it,
14 and there was no subsequent well provision as anybody knows
15 it.

16 COMMISSIONER LEMAY: No agreement to the drilling
17 time or --

18 MR. EZZELL: There was agreement but it was \$25 a
19 month overhead. This is clearly outdated, and the parties
20 never entered into a new one until Mr. Hartman offered one
21 in 1987, an A.A.P.L. form 610, which was not executed.

22 COMMISSIONER LEMAY: That's all I need. Thank you.
23 Additional questions

24 MR. GALLEGOS: We have nothing further.

25 COMMISSIONER LEMAY: Thank you, Mr. Aycock.

1 MR. GALLEGOS: Call James A. Davidson.

2 JAMES A. DAVIDSON,

3 the Witness herein, having been first duly sworn, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GALLEGOS:

7 Q. State your name, please.

8 A. James A. Davidson.

9 Q. Where do you live, Mr. Davidson?

10 A. Midland, Texas.

11 Q. What is your occupation?

12 A. Independent landman.

13 Q. How long have you been an independent landman?

14 A. Since 1977.

15 Q. What education did you have as a training for
16 that profession?

17 A. I worked for four companies as a landman from
18 1953 to 1977.

19 Q. Prior to that did you receive a bachelor's
20 degree and a law degree from the University of Texas?

21 A. B.B.A. and a law degree from the University of
22 Texas.

23 Q. Have you previously testified as an expert oil
24 and gas landman before this commission or any other
25 regulatory bodies?

1 A. Yes, sir.

2 COMMISSIONER LEMAY: Again, because of his age, I
3 think Mr. Davidson's qualifications are accepted.

4 Q. (By Mr. Gallegos) Have you served as a landman
5 in connection with the business of Doyle Hartman?

6 A. Yes.

7 Q. How long have you been associated with
8 Mr. Hartman?

9 A. Since 1977.

10 Q. Generally what's been the nature of that
11 association, Mr. Davidson?

12 A. Well, I did all of his land work for a number of
13 years and also participated on an limited basis in his
14 wells. And then in the latter years I've done some work
15 with his land people and still participate on some of our
16 older properties.

17 Q. Were you a participant in the Carlson Federal
18 lease?

19 A. Yes.

20 Q. Have you been a participant in virtually all of
21 the Lea County leases that Doyle Hartman has developed
22 either by original drilling or by infill drilling?

23 A. Up until the last two years.

24 Q. For the period of time '70s and '80s?

25 A. Yes, sir.

1 Q. Now, sir, what I would like for you to do is to
2 inform the commission about some incidents that occurred in
3 connection with the relationship between Mr. Hartman, yours
4 and some other working interest participants in Hartman
5 operated wells and the purchaser of that gas production, El
6 Paso Natural Gas Company, in 1986?

7 A. In March -- on March 1, 1986, Mr. Hartman got
8 notice from El Paso to shut in a hundred plus wells, which
9 included these Carlson wells. And he started considering
10 some kind of action at that point to protect himself and
11 his partners.

12 Q. What would that shut-in mean to you,
13 Mr. Davidson?

14 A. It was an economic disaster because -- as to
15 Mr. Hartman and I, 95 percent of our income came from these
16 wells.

17 Q. Roughly what was your participating interest in
18 those wells?

19 A. From a 32nd to a 25 percent, on an average
20 probably about 20 percent. Some kind of weighted average.

21 Q. Did Mr. Hartman decide it was going to be
22 necessary to initiate litigation in order to protect his
23 interest?

24 A. Yes, sir.

25 Q. Did he invite other working interest owners to

1 participate in that litigation by sharing the cost and the
2 potential benefits, if any?

3 A. Yes, he did.

4 Q. Let me draw your attention to Exhibit No. 21.
5 Would you point out to the commission what that is?

6 A. That's the letter that he wrote on April 17,
7 1986, to the working interest owners, including me,
8 discussing this possible litigation with El Paso and giving
9 estimates of possible costs, and asking all these parties
10 if they wanted to participate in this -- in this suit.

11 Q. And these pages are not numbered, but attached
12 to that letter is there a mailing list or distribution list
13 of all the working interest participants who were sent that
14 letter?

15 A. Yes, it's a list of all his participants that
16 included me, among others, and Mr. Olsen, among others.

17 Q. The next to last page does that list show that
18 Howard Olsen was a recipient of the letter at P.O. Box
19 32279, Phoenix, Arizona?

20 A. Yes, sir.

21 Q. Let's turn to Exhibit 20. What is that?

22 A. Exhibit 20 is the copy of that letter that I
23 signed to participate in the suit.

24 Q. And does that reflect you have voluntarily
25 agreed to participate and pay your proportionate share of

1 costs?

2 A. Yes. I also signed it on behalf of my daughter
3 and son in a trust that I have for one of them and my
4 mother-in-law.

5 Q. What is Exhibit 24?

6 A. Exhibit 24 is a weighted average of the billings
7 that Mr. Hartman did on the lawsuit that he later filed --
8 what I will call the Lea County lawsuit. And this is the
9 way it was billed and paid for.

10 Q. And does this list reflect all of those working
11 interest participants who did return the April 17, 1986,
12 letter saying that they wanted to be a participant in
13 litigation and share the costs?

14 A. Yes. Everybody that returned the letter,
15 including me, is on this list.

16 Q. So Mr. Olsen was not one of those who made that
17 election?

18 A. No, he declined to join in the suit so he didn't
19 pay any of the costs.

20 Q. I don't have a count but roughly -- would you
21 say roughly there was about 20?

22 A. 21 or -2 people probably. I could count them.

23 Q. Can you tell the commission what the eventual
24 cost of that litigation was by the time that it was all
25 completed?

1 A. It was approximately \$3.2 million.

2 Q. Which you have paid your proportionate share?

3 A. Yes, sir. Mr. Hartman and I paid 95 percent of
4 it between us.

5 Q. Now, sir, let me ask you to take your attention
6 to Exhibit No. 22 and identify what that is.

7 A. 22 is a letter El Paso wrote everyone that had a
8 contract with them in May of -- May the 29, 1986. And the
9 net affect of it is that they were going to not honor the
10 contracts any longer, not pay the contract price, and start
11 out at this point paying, I believe, a dollar fifty per
12 MCF.

13 Q. In particular on the second page does El Paso
14 discuss the treatment to be afforded to nonswing gas and
15 that any gas of that nature with a WACOG over \$1.50 would
16 not be taken?

17 A. Yes, that's true, and these Carlson wells were
18 nonswing gas wells.

19 Q. Which is casing head gas?

20 A. Either casing head or gas wells in an oil pool.

21 Q. So would that be then the -- or beginning June
22 1, 1986, would that have been the payment status for
23 anybody who was a contracted seller to El Paso on the
24 Carlson Federal 4 and 5?

25 A. Yes. It goes on to say in here, if you go ahead

1 and tender gas in excess of what they thought they wanted
2 to take, you got 32.1 cents. That's on page 3.

3 Q. Now, did you, Mr. Hartman and the others who
4 were the participants in that Lea County litigation do
5 something to protect your particular rights in light of
6 this action by El Paso?

7 A. Well, we -- I believe at this time we had filed
8 the suit, and we then as shown on -- what, Exhibit 23?

9 Q. Yes, sir.

10 A. We got Judge Johnson -- we went before him at a
11 hearing, and he issued this order that El Paso would take
12 the casing head gas from Hartman's wells subject to refund.
13 But they would pay the contract price and take the prorated
14 part of the gas.

15 Q. By virtue of this order?

16 A. Yes, sir.

17 Q. What do you mean "subject to refund"?

18 A. Well, if later it was determined that we were
19 not in entitled to this relief, then we had to pay the
20 difference in the varying prices per month. But at that
21 particular month I think it was a dollar and a half, and
22 some of the contracts went all the way up to 3.24 or
23 something like that. So it was a considerable amount of
24 money involved in that liability.

25 Q. All right, sir, did it come to pass in that Lea

1 County litigation that Judge Johnson ruled that Doyle
2 Hartman could not proceed to enforce any claims or interest
3 other than those which were owned by him?

4 A. Yes. He severed the parties in his chambers one
5 day with the lawyers, and decided that Hartman could be the
6 only plaintiff.

7 Q. What does Exhibit No. 25 reflect?

8 A. 25 is a companion suit that was then filed by
9 what had then become known as the "privity group," which
10 was me and these other parties that were listed on that
11 billing sheet. And we filed a companion suit to
12 Mr. Hartman's suit, which the judge accepted.

13 Q. As a landman for Mr. Hartman, are you familiar
14 with the chain of title pertaining to the Carlson Federal
15 lease?

16 A. Yes.

17 Q. What is the -- what are the facts concerning
18 Howard Olsen's chain of title for his interest in that
19 lease?

20 A. Mr. Olsen's interest I think is derived through
21 R. Olsen, who was his father, and their interest predated
22 the Hartman interest by years. I don't know how many
23 years, but I'm sure R. Olsen acquired this lease back in
24 the '50s or the '60s at the latest. So his 25 percent
25 interest was in place when the Hartman group acquired their

1 interest.

2 Q. As to the other 75 percent interest, who are the
3 interest owners and can you tell us in what proportion or
4 generally what proportion?

5 A. I think it was me 25 percent, and Mr. Hartman 75
6 minus three-sixty-fourths, which three of his employees
7 had. That's the best of my recollection.

8 Q. Do you remember who those employees were?

9 A. It would be Mrs. Sutton, James Burr and Larry
10 Mermyr. Possibly Jack Fletcher had an interest too. But
11 at any rate Hartman and that group of employees I think had
12 75 percent. I had 25 percent. That's of the 75, then
13 Mr. Olsen had the other 25.

14 Q. So of the 75 percent interest, we're talking
15 about those people you identified are the ones who would be
16 taking buy-through or under the chain of title into
17 Mr. Hartman?

18 A. Yes.

19 Q. And then Mr. Olsen had a separate title as to
20 his 25 percent?

21 A. Yes.

22 Q. Did he likewise, Mr. Olsen, have separate gas
23 purchase contract and function as a seller to El Paso of
24 his interest?

25 A. I'm sure he did.

1 Q. Now, Mr. Davidson, I would like for you to state
2 to the commission what your opinion is as to the revenue
3 flow that would have inured to Mr. Olsen had he in 1985
4 elected to be a voluntary participant in the Carlson
5 Federal Number 4 and Number 5 wells?

6 A. Well, had he participated, and he was not in our
7 suit, so there is no way he could have gotten anything more
8 than what El Paso set out in the notice to sellers. And
9 that varied, but the most it could have been I think was a
10 dollar sixty, and it went up and down. Unless he had done
11 something else to protect himself, for which the record
12 doesn't reflect anything that I am aware of.

13 Q. It would have been spot market price at most?

14 A. It would be essentially the spot market price I
15 think.

16 Q. Now, let me ask you to turn to the compulsory
17 pooling order that was issued in Case 8668. That's Exhibit
18 No. 11. And particularly I draw your attention to numbered
19 paragraphs 3, 4, and 5 that appear beginning at page 3 and
20 go over to page 4 of that order. Are you with me, sir?

21 A. Yes, sir.

22 Q. Have you in your experience numerous times seen
23 these kinds of provisions in --

24 A. Yes, sir.

25 Q. -- compulsory pooling orders issued by the New

1 Mexico Oil Conservation Commission or its division?

2 A. Yes, sir.

3 Q. What has been your experience in the industry
4 regarding operator's compliance, strict compliance, with
5 such provisions?

6 A. Let me see. What numbers are you on,
7 Mr. Gallegos?

8 Q. Starting at the bottom of page 3, you have
9 numbered paragraph 3, and then you over --

10 A. On Exhibit 11?

11 Q. Yes, sir.

12 A. 3, 4, and 5?

13 Q. If you want to take a minute. This is in the
14 part after the findings and it's talking about order.

15 A. Let me get to order. Okay. I was over there in
16 the findings.

17 Q. Okay. Page 3?

18 A. Yes, sir. Okay, I'm on the order.

19 Q. Take a minute. It's paragraphs 3, 4, and 5.

20 A. Well, all I can say about that is that I have
21 personal experience with Marathon forced pooling me in Lea
22 County. It's my recollection that I never did get any of
23 this kind of data after that forced pooling order.

24 Q. You have experience with any other operators?

25 A. Not directly, but I am of the opinion that this

1 is not done very much. I think it's a very technical point
2 that a lot of people don't do. You know, just as a
3 practical matter.

4 MR. GALLEGOS: Mr. Chairman, I would like to move the
5 admission of Hartman Exhibits 20, 21, 22, 23, 24 and 25.
6 And pass the witness.

7 COMMISSIONER LEMAY: Without objection those exhibits
8 will be placed in the record.

9 MR. EZZELL: No examination.

10 COMMISSIONER LEMAY: Commissioner Weiss.

11 (Hartman Exhibits 20 through 25
12 were admitted in evidence.)

13 EXAMINATION

14 BY COMMISSIONER WEISS:

15 Q. Just out of curiosity what does Mr. Olsen get
16 for an MCF of gas, let's say, the Number 4 and what do you
17 get?

18 A. At the point in time that the well was drilled?

19 Q. During the payout period.

20 A. During the payout, okay. Had he participated,
21 is that what you're saying?

22 Q. Yes.

23 A. He would get the spot price, which I think right
24 now is all the way down to net back of like a dollar at the
25 wellhead. During the time that we had this injunction in

1 effect, we were getting the contract price, and I don't
2 remember what it was in this case. But those contract
3 prices went all the way up to 3.40 or something. Some of
4 them approached \$4. They varied. But they were
5 considerably more than these spot prices.

6 Q. So the same gas got two prices?

7 A. Yes, sir. Well, some --

8 MR. EZZELL: That's not correct, because Mr. Olsen
9 never got any of the gas. Mr. Hartman and Mr. Davidson
10 have gotten all of Mr. Olsen's gas.

11 COMMISSIONER WEISS: Until payout as I thought I read
12 the order.

13 MR. EZZELL: Right. Mr. Olsen has never gotten any
14 price for any gas.

15 A. We got his gas under the forced pooling order
16 and title didn't pass, of course. But in my opinion, that
17 was our gas during that period while we were complying with
18 the forced pooling order.

19 COMMISSIONER WEISS: Okay. Thank you.

20 COMMISSIONER LEMAY: Anything else?

21 EXAMINATION

22 BY COMMISSIONER LEMAY:

23 Q. Mr. Davidson, a couple of quick questions. Have
24 you signed an operating agreement with Mr. Hartman on the
25 wells that you've participated with him?

1 A. In most cases.

2 Q. On these two wells, have you?

3 A. Probably, Mr. LeMay. We had a lot of them. But
4 his land people were very good about sending out operating
5 agreements.

6 Q. Do you remember on those operating agreements,
7 maybe you signed a fee, the prices are the same, the
8 505,000 drilling and operating costs?

9 A. Yes, sir. I'm still participating in a few
10 wells with him, and we're drilling one now in Lea County.
11 We're trying to -- we just completed one, and I believe the
12 administrative overhead was 500 and the drilling well rate
13 was either 5,000 or 5500.

14 Q. So the rate that was granted here is -- from
15 your knowledge -- the same rate that other wells are
16 paying?

17 A. Yes, sir. It's not excessive. It's the age old
18 problem, that all the nonoperators like me always think
19 that those rates, whatever they are, are too high, and
20 operators always think they're too low. But that's just
21 the nature of the business. That's the way it's always
22 going to be.

23 Q. Constructing this chain of title, since he came
24 by his interest through a different chain, Mr. Olsen did
25 than you did, he's more or less more separate maybe than

1 you are in terms of -- you mentioned maybe a separate gas
2 contract, separate all the way through. Do you happen to
3 know if there is any talk of wanting a split connection or,
4 two, if there is a gas balancing agreement that pertains to
5 these wells at all?

6 A. No, sir. I'm sure they weren't split streaming
7 this well. It just wouldn't be -- wouldn't have enough
8 volume I don't think to warrant it. And that would only be
9 in the case of two purchasers anyway. I think where two
10 parties are selling to one purchaser, you probably would
11 never split stream it anyway.

12 Q. What I was thinking in terms of -- and I know --
13 what I am trying to get at is, given El Paso's letter,
14 given the idea that you're dissatisfied with the purchaser
15 and the option of either joining the lawsuit or accepting
16 El Paso's offer, or was there a third or fourth alternative
17 that they had? Could they pursue a split connection with
18 another operator? Could they have terminated their
19 contract?

20 A. It would be virtually impossible, because El
21 Paso had all the transportation facilities in that part of
22 Lea County. Northern takes a little bit of gas down there
23 but not much. You know, what is it, 90 percent of it goes
24 to El Paso, and roughly 10 percent to Northern. Basically
25 we were captive and are to the El Paso system.

1 Q. And for review purchases, all those people that
2 were offered participation in the lawsuit virtually had
3 only two options; they could accept the costs and benefits
4 of the lawsuit, or they could take their chances with the
5 El Paso letter and pursue separate courses of action
6 against El Paso?

7 A. Yes, sir. A lot of them did. If you count the
8 numbers of people in this copy of that letter that
9 Mr. Hartman sent out, you will see a lot more people there
10 than the 21 or -2 that participated in the lawsuit. So a
11 number of them chose to go a different way for one reason
12 or another.

13 Q. Do you know which way they went?

14 A. Well, basically I think they just accepted what
15 El Paso paid. As far as the balancing agreement, absent an
16 operating agreement, I have never seen a case where people
17 had just a balancing agreement. In my experience it's
18 always attached to an operating agreement. So here you
19 didn't have an operating agreement, so you wouldn't have a
20 balancing agreement.

21 Q. Didn't you say you had an operating agreement
22 with Mr. Hartman?

23 A. Yes, we had one with him I think on those wells.
24 I'm not absolutely sure, but we had ones on nearly all the
25 wells with him.

1 Q. Do you remember what the nonconsent provisions
2 of those operating agreements were that you had with
3 Mr. Hartman?

4 A. It was either -- I want to say they were 400
5 percent, but I'd have to look at one of them. But it's a
6 stiff penalty. But I never did exercise the nonconsent, so
7 I don't really know. I think it was somewhere in terms of
8 400 percent. It's more than a forced pooling order.

9 Q. More than forced pooling?

10 A. Yes, sir.

11 COMMISSIONER LEMAY: Commissioner Weiss.

12 EXAMINATION (Resumed)

13 BY COMMISSIONER WEISS:

14 Q. Now, if I understand this order here back in --
15 back in '85. Since Mr. Olsen went nonconsent, he had to
16 pay 200 percent interest penalty; right?

17 A. Yes, sir.

18 Q. 200 percent penalty. You took that out of gas.

19 A. Yes.

20 Q. Did he get \$1.50 for that gas you took out or
21 the \$3? Was his fee being paid of \$3 or \$1.50?

22 A. He was in an fortunate position in a way that as
23 to the payout account, it was credited with the higher
24 price, I think. But had he sold that gas himself, he would
25 have gotten the \$1.50 or less.

1 COMMISSIONER WEISS: Thank you.

2 THE WITNESS: I will have to defer to Mr. Hartman's
3 accountant, who is going to testify about that particular
4 point. I believe that's the situation.

5 COMMISSIONER LEMAY: You have another witness who --

6 MR. GALLEGOS: Yes, we do. He is going to show that
7 on the payout basis.

8 THE WITNESS: I believe that's the situation.

9 COMMISSIONER LEMAY: Thank you. The witness may be
10 excused.

11 MR. GALLEGOS: We call Lisa Woodward.

12 LISA WOODWARD,
13 the Witness herein, having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GALLEGOS:

17 Q. Would you state your name, please?

18 A. Lisa A. Woodward.

19 Q. Where do you live, Miss Woodward?

20 A. Odessa, Texas.

21 Q. What is your occupation?

22 A. I'm a CPA working for Doyle Hartman.

23 Q. How long have you worked for Doyle Hartman?

24 A. Almost five years now.

25 Q. Are you the -- I know there's not very many

1 titles in the organization, but do you head up the
2 accounting department?

3 A. Yes, I'm more or less a controller for the
4 accounting department, oversee all areas.

5 Q. You are certified public accountant practicing
6 in Texas?

7 A. That's correct.

8 Q. What was your education?

9 A. I have a B.B.A. in accounting and finance from
10 Texas Tech University that I received in 1982, and a master
11 of science and finance I received in 1985.

12 Q. And how long have you worked as an accountant?

13 A. I worked about a year and a half with a CPA firm
14 and then five years for Mr. Hartman.

15 Q. Are you acquainted with all of the business of
16 Mr. Hartman in terms of the financial and accounting
17 administration of the wells that he operates or has been a
18 participant in?

19 A. Yes, I am.

20 Q. Now, I would like to draw your attention briefly
21 to Exhibit 26. That's a letter from Mr. Wilcox to
22 Mr. Bowlby in October of 1987?

23 A. Right.

24 Q. Do you know who Mr. Wilcox is?

25 A. Mr. Wilcox was Mr. Hartman's chief financial

1 officer previous to me.

2 Q. Is he any longer there?

3 A. No, sir.

4 Q. Have you taken over his duties?

5 A. Yes, I have.

6 Q. Were you familiar with this audit that was done
7 in behalf of Mr. Olsen in October of 1987?

8 A. Yes, I was. They came in about -- I believe
9 November; October, November of 1987, Mr. Bowlby and an
10 attorney, I believe.

11 Q. And what did your accounting department do in
12 regard to that audit?

13 A. They came in and anything that they really
14 desired we tried to present them. We gave them everything
15 they wanted.

16 Q. Give them full cooperation as far as any kind of
17 information they wanted regarding the Carlson Federal 4 and
18 5?

19 A. And the 2 and the 3.

20 Q. Would that include all costs of the well and
21 verification of those costs?

22 A. Yes, sir.

23 Q. Did it also include all information on
24 continuing operational costs and revenues?

25 A. That's correct. We presented everything to

1 them.

2 Q. Since that time has there been any request for
3 further information or to additionally audit or anything of
4 that sort?

5 A. No.

6 Q. Now, Miss Woodward, have we requested that you
7 make some calculations concerning the payout status of the
8 Number 4 and Number 5 wells that we're interested in here?

9 A. Yes, sir.

10 Q. And have you done that from the books and
11 records of Mr. Hartman's organization?

12 A. Yes, I have.

13 Q. I direct your attention to Exhibit No. 30. Was
14 that prepared by you?

15 A. This one was prepared by me and Carol Farmer,
16 who is also an accountant for Doyle Hartman.

17 Q. Working with you?

18 A. Yes.

19 Q. Now, are there two approaches here for the
20 Number 4 well and two approaches of calculating payout of
21 the Number 5 well?

22 A. That's correct. We -- the first approach was
23 assuming Mr. Olsen was forced pool, and that would be 100
24 percent of the well. All the well costs are shown at 100
25 percent, and the revenue less production taxes, royalty

1 this is all shown in gross, a hundred percent.

2 Q. Let's slow down a minute and just take the first
3 page.

4 A. Okay.

5 Q. Here we're dealing with the Number 4; is that
6 correct?

7 A. Yes, sir.

8 Q. And here you're treating the finances of this
9 well on the basis that Mr. Olsen's interest was forced
10 pooled?

11 A. That's correct.

12 Q. Which would mean essentially that his interest,
13 his equity, would belong to the other participants?

14 A. That's correct.

15 Q. And when you did that, did that change anything
16 as to the particular expenses?

17 A. No. All the expenses stay the same. We just
18 took them off the books and showed them at a hundred
19 percent to what Mr. Hartman and the working interest owners
20 paid.

21 Q. When you calculated your revenue, however, did
22 that call for a different treatment than if you were to
23 try to replicate Mr. Olsen being a voluntary participant?

24 A. Yes, sir. On the revenue, we -- on the forced
25 pool one, that would be Mr. Hartman and the working

1 interest owners would be enable to get the injunction
2 price, which is the contract price. Whereas Mr. Olsen was
3 not privy to the injunction, so he would be paid at the
4 spot market price.

5 Q. Is it also true, however, that in a forced
6 pooling situation by virtue of the OCD orders there was a
7 risk penalty assessed?

8 A. That's correct.

9 Q. So then will you just briefly recap, show the
10 commission how you made this calculation?

11 A. Okay. As of 12-87 the initial investment was
12 recapped and it was paid out at 99.14 percent. And then
13 there is an additional 200 percent penalty that needed to
14 be recouped of 664,967. So as of February of 1989, which
15 is the time that Meridian took over operations of the well,
16 the 200 percent penalty was 53.1 percent paid out.

17 Q. Just to repeat, as of February 15, 1989,
18 Mr. Hartman conveyed away to Meridian both his status as
19 operator and as a working interest owner?

20 A. That's correct.

21 Q. Closed the books?

22 A. Absolutely.

23 Q. Now, then did we request you to make a
24 calculation which would attempt to hypothetically represent
25 the circumstance as though Mr. Olsen in 1985 would have

1 received strict compliance with the forced pooling order in
2 8668 on the Carlson Federal 4 and had proceeded to sell his
3 gas to El Paso as he testified he was doing in a direct
4 sell/purchase basis?

5 A. That's correct. I have done that in the next
6 schedule of assuming R. Howard Olsen was participating in
7 the well. In June of 1986, that's when El Paso started
8 marketing out the gas due to that May 29 notice to sellers,
9 so we did the spreadsheets assuming that he would receive
10 the market out price or the spot market price effective
11 June 1986.

12 Q. Let me ask you, did you --

13 A. They put two of the forced pooling in here.

14 COMMISSIONER LEMAY: The second one is the same thing,
15 isn't it?

16 THE WITNESS: Count to the third page and you will be
17 okay. It's assuming Olsen participating in well.

18 MR. GALLEGOS: That for some reason just got copied
19 twice.

20 Q. (By Mr. Gallegos) The second page in this
21 exhibit should be headed "Schedule Assuming R. Howard Olsen
22 Participating In Well"?

23 A. That's correct.

24 Q. Go ahead. What does that show? What is the
25 result of that?

1 A. This is showing Mr. Olsen's individual payout of
2 this well with his 25 percent working interest. So
3 everything -- all the costs are netted to 25 percent
4 interest where he would have a total initial investment of
5 \$93,454.95. And then the revenue is netted to his net
6 revenue interest, and you will see his revenue up until
7 June 1986 would have been the contract price, because that
8 was before El Paso started marketing out the gas. Then
9 effective June '86 we used the effective spot market price.
10 At that point in time, February of '89, he was 76.32
11 percent paid out.

12 Q. Did you make this calculation as though he was
13 getting that revenue flow, even though you heard his own
14 testimony that, in fact, his funds were suspended by El
15 Paso?

16 A. Right. Really he never received his revenue
17 because we were under the assumption that the well was
18 being forced pool. So we had to make the assumption. This
19 is just if he had been contracted by himself he would have
20 received the spot market price, and so that's how we
21 presented this spreadsheet.

22 Q. Let me just have you take the commission to a
23 backup exhibit where we're talking about this cash flow
24 situation. That's Exhibit 31. Would you explain what that
25 shows?

1 A. This is how I derived the figures. I went
2 through and got the MCF at 15,025 and at 14,073 is how it
3 settled. And took the BTU factor, and that gave me an
4 MMBTU. And Mr. Olsen's net revenue interest was 21.875
5 percent, so that brought him down from the gross to his
6 actual MMBTUs. Then I went through and found out what the
7 actual spot price was that El Paso paid everyone, and got
8 his gross revenue times production taxes to bring us down
9 to Mr. Olsen's net revenue.

10 Q. In fact, it is your personal knowledge that
11 many, many working interests participants who were not
12 parties to the Lea County litigation were paid by El Paso
13 in their sales at the spot market price?

14 A. There was a whole lot of them, almost all of
15 them were right down to the spot price.

16 Q. Is this sheet here just a graph that helps
17 illustrate the price lines?

18 A. Yes, sir. This is showing the compulsory
19 pooling point, which was in January '86, and what the
20 contract price was at that time. And then May 29, 1986,
21 notice to sellers, that was line going down, and it shows
22 what the price that El Paso is paying, which Mr. Olsen
23 would be participating in down at the lower price of \$1.50,
24 and swings down to \$1.30, and then goes back up. Whereas
25 all the -- Mr. Hartman's group -- the privity group and

1 Mr. Hartman received the contract price due to the
2 injunction.

3 Q. But that was confined to only those parties who
4 were in the --

5 A. Just Mr. Hartman and people who received their
6 interest through or assigned by Mr. Hartman.

7 Q. Now, let me just ask you to turn back to Exhibit
8 30, and to the two pages that relate to the Number 5 well.
9 You basically have the same kind of calculation on these
10 two assumptions for the Number 5 well; that is Olsen's
11 interest was forced pool --

12 A. That's correct.

13 Q. -- and then replicating as though he had elected
14 to voluntarily participate?

15 A. Right. If he had participated, we went back to
16 using the spot market price.

17 Q. What does this show as to the Number 5 well?

18 A. If he had participated, he had a total initial
19 investment of \$77,844.57. And as of February '89 he would
20 have been 70 percent at payout.

21 Q. And being forced pool as he in fact was what do
22 your calculations reveal?

23 A. At February of '89 he was -- it paid out at
24 September of 1987, and as of February of '89 during the 200
25 percent penalty, he was at 36 percent.

1 THE WITNESS: It says zero, yes.

2 COMMISSIONER LEMAY: What should that be?

3 THE WITNESS: Be 2 times \$271,291.93.

4 MR. EZZELL: On the copy you sent me it's got
5 \$542,581.86.

6 THE WITNESS: Thank you.

7 MR. GALLEGOS: Sounds about right. Could I have that
8 figure again?

9 MR. EZZELL: 542,581.86.

10 MR. GALLEGOS: Mr. Chairman, could we amend that third
11 page of Exhibit 30 to show that?

12 COMMISSIONER LEMAY: Please do. I have just amended
13 this exhibit here to show that.

14 MR. GALLEGOS: Would you change it on the reporter's
15 copy?

16 THE WITNESS: What is it?

17 MR. GALLEGOS: It's 542,581.86. Thank you,
18 Mr. Stovall, for catching that.

19 MR. EZZELL: I have no questions.

20 EXAMINATION

21 BY COMMISSIONER LEMAY:

22 Q. Miss Woodward, do you happen to know on the
23 lease operating expenses as listed there, is that
24 reduced -- the lease covers more than one well. Is this
25 just the accounting of the one well operating expenses?

1 A. Yes, sir. It would be just for 4 or the Number
2 5 respectively.

3 Q. With forced pooling assumptions, do you happen
4 to know if any of the legal costs were amortized within
5 those operating expenses, or if they are just actual
6 operating expenses according to the --

7 A. They are just the actual operating expenses.

8 Q. No legal expenses in there for the court case?

9 A. Not -- for the Lea County lawsuit?

10 Q. Yes.

11 A. No, sir. There was none in there.

12 Q. These are a hundred percent, so if you're going
13 to take out Mr. Olsen's interest, you would take the .21
14 times that?

15 A. His lease operating expenses would be at 25
16 percent.

17 Q. .25 on the lease operating. .21 on net revenue.

18 A. Really it's at 25 percent. If you try to go
19 from one schedule to another, because this is revenue less
20 production taxes and royalty. So the royalty is already
21 taken out of that, so you should -- on his participating
22 interest should be just 25 percent also since the royalty
23 is already taken out.

24 Q. 25 on each?

25 A. Right.

1 Q. They look to be rather expensive operating
2 expenses. Were there water disposal problems do you happen
3 to know on that well, or the depth they -- they just appear
4 to be fairly high.

5 A. I'm not aware of any water disposal problems
6 offhand, but I didn't look into that.

7 COMMISSIONER LEMAY: I have no further questions.
8 The witness may be excused.

9 MR. GALLEGOS: Mr. Chairman, I think -- according to
10 my note -- the only exhibit that we have talked about and
11 haven't moved the admission of is 26. I would like to have
12 that admitted, please.

13 COMMISSIONER LEMAY: Exhibit 26 will be admitted into
14 the record without objection.

15 MR. EZZELL: No objection.

16 (Hartman Exhibit 26 was admitted
17 in evidence.)

18 MR. GALLEGOS: That concludes the evidence on behalf
19 of Doyle Hartman.

20 COMMISSIONER LEMAY: Thank you, Mr. Gallegos.

21 Do you all want to wind it up or let it stand as
22 is?

23 MR. EZZELL: Quick windup so I can get on the road.

24 Play it please the Commission, I feel like we
25 are basically where we were at 1:30 with absolutely no

1 disagreement as to any of the facts. The last two
2 witnesses' testimony, Mr. Davidson and Miss Woodward, dealt
3 with a price that Mr. Olsen would have gotten for gas.
4 That is pure speculation, in my opinion. Mr. Davidson
5 testified that all working interest owners did have the
6 right to either join the lawsuit, join with Mr. Hartman, or
7 have a lawsuit on their own. In this case, although we're
8 not sure of it, Mr. Olsen testified in deposition that he
9 had his own contract.

10 One of the letters Mr. Olsen -- Mr. Hartman sent
11 out to all working interest owners is, "Be careful, go look
12 at your contract. If it's like mine, you can do the same
13 thing I'm doing." So the fact that he might or might not
14 have gotten a buck fifty versus 3.20 to me has no relevance
15 at all on the issues before the commission. Mainly because
16 Mr. Olsen -- neither Mr. Olsen nor Mr. Hartman at that time
17 felt that that was his gas because they both were under the
18 mistaken assumption that it was forced pool; the interest
19 was forced pool. As to the 2 and 3 wells, we know that Mr.
20 Hartman was marketing that gas for Mr. Olsen's benefit.

21 The law is quite clear on situations where there
22 is no operating agreement, we are dealing with a situation
23 of a cotenancy. The possessory cotenant is under a duty in
24 New Mexico, and every other state I know, to make an
25 accounting to the nonpossessory cotenant for rents and

1 profits. There are specific cases dealing with mineral
2 extraction where if a possessory cotenant, absent some
3 other agreement, can go out and drill a well; but if it's a
4 speculative endeavor and it comes up a dry whole, he can go
5 to his cotenants for contributions. If it is a successful
6 endeavor, he can't go to his cotenants for contributions
7 but he can recoup his costs out of his cotenant's share of
8 proceeds from production.

9 That is exactly why we have a forced pooling
10 statute in the state of New Mexico. In situations where
11 there is not a contractual relationship between the
12 parties, just as there was here, the legislature passed the
13 forced pooling statute saying this is what we're -- this is
14 how you're going to do it. They protected the correlative
15 rights of any parties affected by the application by making
16 very strict and clear requirements as to what notices must
17 be sent when, and when any forced pool party would be given
18 an opportunity to participate.

19 As I have said before, this has happened before
20 in New Mexico. The commission has always done what the
21 hearing examiner did in the rehearing, and what I expect
22 the commission to do here; and that is enforce the order.

23 As far as the pricing controversy, again I
24 question its relevance. I don't think that that's going to
25 be \$3 gas if it's Mr. Hartman's and a buck fifty gas if

1 it's Mr. Olsen's. I know for a fact that if we prevail and
2 they tender our proceeds based on 1.50, I know for a fact
3 Mr. Hartman is not going to give the difference back to El
4 Paso. So it was our gas. He converted it to dollars. And
5 those dollars would be our dollars.

6 The main thing is, we're talking about a
7 situation. We've got testimony. It's clear that on the
8 Number 4 well, the well was drilled before the AFE --
9 before the AFE or the schedule of well costs ordered by
10 Order R-8031 was sent out. It was never sent out. What I
11 advise my clients to do on a forced pooling, if they've got
12 to drill the well, as the testimony today was,
13 Mr. Hartman was in a hurry to drill the well for tax
14 purposes -- but I tell my clients to tight-hole it until
15 they comply with the order, and then they can go ahead and
16 comply with the order and let any forced pool parties
17 participate or not participate.

18 With the Number 5 well, not only -- well, with
19 the Number 4 well, Mr. Gallegos and Mr. Carr have argued
20 that they didn't need to send an AFE in compliance with the
21 order because they sent one before the order was issued.
22 That's just not what the order says. The reason for the
23 order requiring an AFE to be sent after the order is issued
24 is clear, and we have already discussed the reasons.

25 With the Number 5 well, we don't know if there

1 was an AFE ever sent at all, either before or after. We
2 know for a fact there wasn't one sent afterwards. We feel
3 like there may have been one sent before, but we have no
4 proof of it.

5 In that situation, again, for tax reasons
6 Mr. Hartman went ahead and drilled the well prior to
7 complying with the order. This time he had an opportunity
8 to. The order came out on the 6th, and the well wasn't
9 spudded until the 10th. He could have sent a copy of the
10 order and the schedule of well costs while the well was
11 drilling.

12 I think in our audit we found out they were over
13 hole for 18 dates. That would have given him a good jump
14 on his 30-day period to give Mr. Olsen the right to
15 participate. The fact is I think we had to listen to Mr.
16 Olsen's deposition read to us to establish the fact that or
17 the assumption on the part of Mr. Hartman's counsel that he
18 still had not made up his mind whether he wanted to
19 participate or not at the time of the deposition.

20 I submit to you that if he had not made up his
21 mind whether he wanted to participate, he would not have
22 hired our firm in August of '87 when we first found out
23 that he probably had not been pooled properly; he would not
24 have hired us and authorized us to file the application to
25 reopen the hearings. Those depositions were mainly

1 concerning the lawsuit that was going on in Lea County,
2 which was for an accounting because of the drastic changes
3 in the revenues on the 2 and 3, and the drastic increases
4 of the operating expenses. But those points are not
5 material to the issues before the commission now.

6 What we have is clear and concise orders of the
7 commission. They wouldn't have been written that way if
8 they weren't intended to be followed. It is clear that
9 compliance did not occur. It was clear that when Mr. Olsen
10 found out that he had this action, or this potential
11 action, he acted on it by filing the application for the
12 rehearings. And I feel that the actions of the division on
13 reopening the case were entirely proper, and I think the
14 commission should give the same result in ordering strict
15 compliance with the two forced pooling orders.

16 Thank you.

17 COMMISSIONER LEMAY: Thank you, Mr. Ezzell.

18 Mr. Carr.

19 MR. CARR: May it please the Commission, I would
20 submit that the reason Mr. Olsen is exactly where he was
21 several hours ago in context of this hearing is because he
22 hasn't presented any evidence. He hasn't brought anything
23 before you for consideration. You've heard Mr. Ezzell
24 stand before you and say, "Gosh, Mr. Olsen really wants in
25 the well. He's hired my firm to get me in." And yet not

1 at any time has he ever suggested that he actually wants --
2 what he is squabbling over is a risk penalty after he let
3 Doyle Hartman in good faith incur the risk. He sat back
4 and he has done nothing to assist him, and now he wants to
5 reap benefit from his own inaction.

6 I am moving at this time that the applications
7 of Howard Olsen be dismissed. And I have filed a
8 memorandum setting forth the legal authority in support of
9 that memorandum. I think it is important for you to
10 recognize that there are only two provisions in the orders
11 at issue that Mr. Ezzell is citing as the provisions which
12 Mr. Hartman has technically violated.

13 One of those provisions relates to providing
14 information after the well is drilled so the reasonableness
15 of a well cost can actually be determined. That does not
16 relate to the question we have presented to you here today.
17 That question has been resolved. The questions about the
18 reasonableness of the well costs have come up, audits have
19 been run and that is behind us. The question here is do
20 you set aside this order, and do you have Mr. Olsen come in
21 and participate free of a risk penalty? There is only one
22 question there, and that question is: Because of the
23 technical failure to provide an AFE after the order was
24 entered, has he been somehow prejudiced, based on the
25 authority set forth in our memo, that you now should set

1 your order aside?

2 I think that's an absurd position to take.
3 Because while he stands here and says he didn't get it
4 after the order, and he suggests maybe we ought to have
5 told Hartman to tight hole it and not tell you it was
6 spudding, which is ridiculous. But he says of getting the
7 AFE after the order, he got it first.

8 If you look at the legal authority before you,
9 what Mr. Ezzell had to shown you today was that this
10 failure somehow prejudiced Mr. Olsen. How could it
11 prejudice him? He had the information. He admits that we
12 were in good faith trying to negotiate some sort of
13 arrangement for the voluntary development of this property.
14 Somehow today he suggests that the order ought to be set
15 aside because of prejudice. We have shown you that he had
16 the AFE; he had the information that he needed; that we
17 tried to work a deal with him; that we attempted to
18 cooperate; that we cooperated when he wanted it or not; we
19 have tried to send the information and he wouldn't even
20 accept his mail. And yet, somehow, he was prejudiced.
21 Well, if he was, we are back where we were two hours ago
22 and that is he is prejudiced because he didn't do anything.

23 On the other hand, there are some benefits in
24 this as we have show you today. He actually will be
25 benefited if he was forced pool, because all of the

1 accounting information and the calculations showing where
2 he would stand on the payout schedule, forced pool and
3 standing alone and having to sell at the spot market price,
4 all of that shows you that he wasn't prejudiced. This
5 action, in fact, would benefit him.

6 It's pretty simple. There is one issue. The
7 issue boils down to all of this -- to one thing: Was
8 Mr. Olsen prejudiced by having the AFE before the order
9 pooling the land was entered? I think the answer clearly
10 has to be known. With that before you, we submit you have
11 no choice but to grant the motion and dismiss these
12 applications, so six years after this started we can
13 finally put this matter aside. The lands can be pooled.
14 Olsen can be benefited from having his land pooled and
15 getting the benefits of the efforts that Mr. Hartman has
16 taken. We can get this matter behind us and get on to
17 other business.

18 I move that the applications of Howard Olsen be
19 dismissed.

20 COMMISSIONER LEMAY: Thank you. Mr. Carr.

21 I think we shall -- are there any other
22 statements or comments in the case -- or statements in the
23 case? We're going to deny your motion and take the case
24 under advisement.

25 Is there anything else that -- you're looking

1 like you want to say --

2 MR. EZZELL: Expectantly? Yes, sir. To the extent
3 that the commission will be using and relying on this
4 memorandum, since I have not had a chance to see it, I
5 would like an opportunity to respond to it within 10 days,
6 something like that. I don't know whether -- if you are
7 denying the motion, you may be handing this back.

8 COMMISSIONER LEMAY: I think we will keep it. Let me
9 withdraw what I just said about denying the motion. I need
10 some legal advice.

11 MR. STOVALL: I think what the chairman really meant
12 to say was that he is not at this time acting on the
13 motion, and they will take the application of Mr. Olsen and
14 the motion to deny that application or to dismiss that
15 application under advisement to be ruled upon after the
16 commission has a chance to review it.

17 MR. CARR: Mr. Chairman, we would hope that the
18 memorandum that has been provided would provide you with
19 some guidance as to the legal framework within which you
20 can evaluate the facts we have presented here today.
21 Whether you deny our motion to dismiss, or whether you deny
22 Mr. Olsen's application.

23 COMMISSIONER LEMAY: I guess that's what I was getting
24 at. Were you looking for an immediate ruling from the
25 bench at this point in time that the motion would -- that

1 we uphold your motion and dismiss the Olsen application?

2 MR. CARR: As with all motions we would like as
3 expeditious ruling as possible.

4 COMMISSIONER LEMAY: What I was trying to say is that
5 we weren't going to rule from the bench to support your
6 motion. However, we will take that motion, as well as
7 other evidence in the case, under advisement. You
8 certainly have an opportunity, please, to respond to the
9 memorandum in support to dismiss the application.

10 MR. EZZELL: My initial response would be that they
11 should not be allowed to submit it, because they quote
12 extensively from the order on the rehearing, which is a
13 part of the record that they would not let me introduce and
14 incorporate.

15 MR. CARR: That is ridiculous. Mr. Ezzell doesn't
16 understand the difference between the record and an order
17 that is public record and any of us can refer to. It's
18 just saying if I don't get to admit the examiner
19 transcript, that we have to pretend that orders were
20 entered pooling the land.

21 MR. EZZELL: Mr. Gallegos pointed out that in a
22 hearing de novo we act as though the original hearing did
23 not occur at all, therefore there could not have been an
24 order from it.

25 COMMISSIONER LEMAY: I'm not sure that I'd go

1 farther. I think that if there is an order, that the order
2 stands on its own. It's an order and published order. But
3 my understanding was they were referring to the evidence
4 presented in the case. That was not automatically admitted
5 in this case. The order itself I think has to stand
6 because it's a valid order.

7 MR. STOVALL: Mr. Chairman, I can recommend that you
8 are perfectly within your rights to accept the brief and
9 offer Mr. Ezzell the opportunity to respond to that. It's
10 legal argument. It's not evidentiary but it's legal
11 argument.

12 COMMISSIONER LEMAY: I thought that's what we were
13 doing. I think we accepted the chronological statement of
14 key facts that you presented. I think I accept this under
15 the same general -- what do you call it? -- category. It's
16 not evidence but it's something that we can consider,
17 really consider. You can certainly respond to this; and if
18 Mr. Carr or Mr. Gallegos want to respond to the
19 chronological statement of key facts, he's perfectly -- his
20 right to do so.

21 MR. EZZELL: What time frame?

22 COMMISSIONER LEMAY: Seven days. Can you do that?
23 10 days?

24 MR. EZZELL: 10 would be great.

25 COMMISSIONER LEMAY: We will leave the record open

1 for 10 days.

2 MR. STOVALL: Mr. Chairman, I make one recommendation
3 just in terms of you made the statement they can respond to
4 the statement of key facts. I think there is a difference
5 in the nature of them. I think you can get yourself into a
6 briefing war. I would suggest that you stick with
7 Mr. Ezzell 10 days to respond to the memorandum; and then
8 if Mr. Carr wants to request a rebuttal --

9 MR. CARR: Five working days after that should be fine
10 if we need to.

11 MR. STOVALL: Just leave it on the briefs.

12 COMMISSIONER LEMAY: This is a brief? Is that what
13 this is, this memorandum?

14 MR. STOVALL: The memorandum is a brief.

15 COMMISSIONER LEMAY: That is a brief. So that carries
16 different weight than this I take it.

17 MR. STOVALL: The memorandum is legal argument. The
18 other one is just sort of a guide through the maze of
19 historical events.

20 COMMISSIONER LEMAY: If there is nothing else, we will
21 have this 10 and 5, and we will take the case under
22 advisement.

23 (Whereupon, the hearing was concluded at the
24 approximate hour of 5:35 p.m.)

25 * * *

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

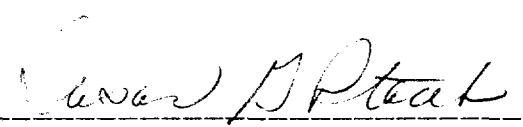
3 REPORTER'S CERTIFICATE

4
5 I, Susan G. Ptacek, a Certified Court Reporter and
6 Notary Public, do HEREBY CERTIFY that I stenographically
7 reported the proceedings before the Oil Conservation
8 Division, and that the foregoing is a true, complete and
9 accurate transcript of the proceedings of said hearing as
10 appears from my stenographic notes so taken and transcribed
11 under my personal supervision.

12 I FURTHER CERTIFY that I am not related to nor
13 employed by any of the parties hereto, and have no interest
14 in the outcome thereof.

15 DATED at Santa Fe, New Mexico, this 15th day of April,
16 1991.

17
18
19 My Commission Expires:
December 10, 1993



SUSAN G. PTACEK
Certified Court Reporter
Notary Public