

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO

20 August 1986

EXAMINER HEARING

IN THE MATTER OF:

Application of Foran Oil Company, or CASE  
in the alternative, Estoril Producing 8977  
Corporation for compulsory pooling, 8978  
Lea County, New Mexico.

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

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MR. CATANACH: Call next Case 8977.

MR. TAYLOR: The application of Foran Oil Company, or in the alternate, Estoril Producing Corporation, for compulsory pooling, Lea County, New Mexico.

MR. CATANACH: Are there appearances in this case?

MR. KELLAHIN: If the Examiner please, I'm Tom Kellahin of the Santa Fe law firm of Kellahin and Kellahin, appearing on behalf of the applicant.

We would request that you consolidate for hearing purposes the subject of this case with the next case, 8978. They are forced pooling cases involving the same parties in the same general area.

MR. CATANACH: Case 8977 will be consolidated with Case 8978.

Are there other appearances in this case?

MR. BATEMAN: Yes. Ken Bateman of White, Koch, Kelly, and McCarthy, appearing on behalf of Texaco.

I have one witness.

MR. CATANACH: Are there other appearances?

1 Will all of the witnesses  
2 please stand and be sworn in?

3

4 (Witnesses sworn.)

5

6 JOSEPH W. FORAN,  
7 being called as a witness and being duly sworn upon his  
8 oath, testified as follows, to-wit:

9

10 DIRECT EXAMINATION

11 BY MR. KELLAHIN:

12 Q Mr. Foran, for the record would you  
13 please state your name, sir?

14 A Joseph William Foran.

15 Q Mr. Foran, how do you spell your last  
16 name?

17 A F-O-R-A-N.

18 Q What is your relationship with the appli-  
19 cant, Foran Oil Company?

20 A I'm the President and owner of Foran Oil  
21 Company.

22 Q Let me direct your attention, Mr. Foran,  
23 to what we've marked as Exhibit One-A, which is a landman's  
24 plat, and let me ask you some questions about both of the  
25 compulsory pooling cases so that the Examiner is oriented to

1 what you and your company desire to accomplish.

2 First of all, sir, would you identify for  
3 us the spacing and proration unit that is the subject matter  
4 of the first case which is 8977, and that's the application  
5 in Section 1. Would you direct our attention to Section 1  
6 and then within Section 1 identify for us the spacing unit?

7 A Section 1 on Exhibit One-A is on the  
8 eastern part -- I mean the western part or left side of the  
9 exhibit. Within Section 1 of 16 South, 36 East, in the  
10 north half of the southeast quarter is an 80-acre proration  
11 unit.

12 Within that 80-acre proration unit in the  
13 north half of the southeast quarter I've marked with a red  
14 dot the approximate location of our proposed well.

15 Q To the right and down to that, in other  
16 words to the southeast, there is another red dot. Would  
17 you identify what that purports to represent?

18 A Yes, sir. That is our proposed location  
19 in Section 6 of Township 16 South, Range 37 East. That's  
20 located in the south half of the southwest quarter. This is  
21 our initial test well on this entire prospect.

22 Q The initial well is in Section 6. Sec-  
23 tion 6 is to the east on the plat. The second well is in  
24 Section 1 and it's the dot to the -- to the west of the  
25 first area.

1           A           That's correct.

2           Q           All right.    What is the pool or area in  
3 which you are subject to an 80-acre spacing rule?

4           A           Our objective formation is the Strawn  
5 formation, or the Pennsylvanian Strawn, which is the same  
6 Strawn formation that would be found in the Northeast  
7 Lovington Penn Field.

8           Q           The Northeast Lovington Penn Field rules  
9 in Lea County, New Mexico, are on 80-acre spacing?

10          A           Yes, sir, that's my understanding.

11          Q           And the spacing units that you have iden-  
12 tified for us will be laydown 80-acre tracts.    The one in  
13 Section 6 is the south half of the southwest quarter.    The  
14 one in Section 1 is the north half of the southeast quarter.

15          A           That's correct.

16          Q           All right.    So the Examiner understands  
17 the ownership arrangement that is of importance to him in  
18 this case, will you identify for us what the significance is  
19 of the area identified by the red outline?

20          A           There is a ranching family in this area  
21 by the name of Easley and Anderson and they own the minerals  
22 in this area, the family members.

23                        They executed a base lease with Mesa.  
24 This base lease provides that the three sections, or the  
25 parts of the three sections that this lease covers will all

1 be treated as the separate lease. In other words, although  
2 they're on a common lease form, Section 6 is treated as one  
3 lease; Section 12 is treated as another lease; and Section 1  
4 is treated as a third lease.

5 Q Why should that be of consequence in de-  
6 termining the forced pooling cases involved before the exa-  
7 miner today?

8 A The primary term of these leases is due  
9 to expire October 24 of 1986. This lease has an unusual or  
10 special provision that provides that these leases may be ex-  
11 tended for a period of two years by the payment of \$150 per  
12 net mineral acre on or before sixty days to the expiration  
13 date of the primary term.

14 In other words, if one of the lessees  
15 should be willing to pay \$150 for a net mineral acre on or  
16 before August, say, 25 or 26, then these leases could be ex-  
17 tended for two years.

18 Each tract is treated as a separate lease  
19 so the lessee has the right to renew part or all, depending  
20 on their choice.

21 Q You said the first of the two wells will  
22 be the well in Section 6?

23 A Yes, sir.

24 Q Let's focus in on Section 6 for a moment  
25 and have you treat that separately and then I'll ask you

1 questions about Section 1, but looking at Section 6, de-  
2 scribe for us what the significance is of the dark green  
3 shading versus the lighter yellow shaded areas?

4 A The original lessee was the MTS Partner-  
5 ship. That's Mesa, Texaco, Sequoia Partnership. That part-  
6 nership was dissolved on or about January 1 of this year, is  
7 my understanding. At that time Mesa was assigned 65 percent  
8 of the interest in this area. Texaco was assigned 25 per-  
9 cent, and Sequoia was assigned 10 percent.

10 Prior to January 1, Mesa had the absolute  
11 right to decide if the lease was going to be drilled or was  
12 going to be farmed out.

13 Subsequent to January 1 of this year,  
14 each of those three parties made their own elections whether  
15 to participate, farmout, or whatever.

16 Q What is you and your company's involve-  
17 ment with regards to the 80-acre spacing unit proposed for  
18 the well in Section 6?

19 A At the first of this year I was  
20 approached by Mesa. Mesa had decided that they did not  
21 have money in their budget to drill this and were interested  
22 in a farmout. The contacted me and asked me if I were in-  
23 terested. I replied I was interested in it, and met with  
24 them, and they had proposed a checkerboard pattern in what  
25 you see on Exhibit One-A. That's their decision on the

1 checkerboard, not mine.

2 I took that while I was negotiating with  
3 them on it, on or about March 18th, I contacted Texaco and  
4 asked them if they were interested in farming out or parti-  
5 cipating, or what they proposed to do with the well.

6 About this same time I contacted Sequoia  
7 and asked them the same question. I received responses from  
8 all three companies that they, you know, they believed they  
9 wanted to farm it out.

10 Q At this point, Mr. Foran, what is the  
11 status of the percentage of working interest owners that  
12 have reached an agreement with you on a voluntary basis to  
13 participate in the well you propose in Section 6?

14 A At the first of May Mesa sent me a  
15 commitment letter saying that they're willing to farmout  
16 this tract in this checkerboard pattern on certain terms and  
17 conditions; essentially that is on the yellow checkerboards  
18 Mesa farms out all their interest reserving a 1/32 overrid-  
19 ing royalty interest. They retain all rights to the green  
20 part of this Exhibit One-A.

21 Sequoia ratified the same lease with some  
22 changes in it.

23 At the first of May I sent a letter to  
24 Ms. Jeanette Hanson and Texaco's offices in Denver.

25 Q Trying to get the last 25 percent working

1 interest to voluntarily commit its share to the well?

2 A Yes, sir, that's correct. In my previous  
3 conversations with her I told her that when I received the  
4 Mesa commitment in writing I would mail her a copy of it for  
5 her information and await her response.

6 And in May 15 I sent her that letter and  
7 formally asked for Texaco's response.

8 Q Before we get into the details of your  
9 effort to obtain a voluntary agreement with Texaco, let me  
10 make sure that we are clear in understanding your testimony  
11 about the significance of these dates.

12 You've given us a lease expiration date  
13 on the Mesa lease of October 24, plus there is a factor in  
14 here of extending the leases by two years if there is a pre-  
15 payment on or before August 26th of month that can extend  
16 the leases. Why is that of significant to you in terms of  
17 this forced pooling order?

18 A The reason for Mesa's farming out is that  
19 they didn't want to pay any extension money. If they'd  
20 wanted to pay the extension money they wouldn't have farmed  
21 out. So they wanted to see me drill this prior to that,  
22 what I will call the extension date of August 24, 25, 26,  
23 whatever it is, and pursuant to that, they wanted me to  
24 commence the well originally by July 1st.

25 Q Were you able to commence the well by

1 July 1st?

2 A No, because I was unable to obtain Texa-  
3 co's agreement in writing.

4 Q What is your anticipated spud date for  
5 the well in Section 6 at this point?

6 A September 1. Mesa has made it very clear  
7 to me that I need to spud either by September 1 or I face  
8 the prospect of losing this entire farmout prospect.

9 Q Under the terms of the farmout are you  
10 required by Mesa to drill a well in order to earn your in-  
11 terest under that farmout agreement?

12 A Yes, sir, this is a drill to earn farmout  
13 and on each of the yellow checkerboards that you see, I earn  
14 no interest if -- if I do not drill a well.

15 In addition to the Mesa-Texaco-Sequoia, I  
16 obtained farmout agreements from Monsanto and Amerada, also  
17 which are keyed to spudding a well in Section 6 on or before  
18 September 15th.

19 Q Do you receive any benefit as the antici-  
20 pated operator or you're designated operator for this well  
21 if Mesa or someone else extends the leases by the payment of  
22 the amount of money required?

23 A Yes, sir. I've acquired approximately 40  
24 percent of the mineral interest in this area that -- that I  
25 would hope that they would -- they would pay me the exten-

1 sion monies, but even if I received that money, I still suf-  
2 fer the loss of earning the whole farmout. I mean that's  
3 just -- that's just the minerals and I would not earn any of  
4 the working interest and I would lose the right to earn  
5 these farmouts or acreage from Monsanto and Amerada, who  
6 have other acreage within this area marked on Exhibit One-A.

7 Q So insofar as the well is concerned on  
8 Section 6, in order to comply with the Mesa farmout obliga-  
9 tions you must commence that well on or before the August  
10 25th or 6th date?

11 A Yes, sir, and I would -- otherwise I  
12 would lose everything.

13 Q When we look at Section 1, does any of  
14 the activity that you propose to conduct on Section 6, in  
15 other words the spudding of a well, does that aid you or  
16 benefit you in terms of complying with your farmout obliga-  
17 tions for the well you propose in Section Number 1?

18 A Only in this respect. Under the farmout  
19 agreement I have 120 days between wells, but that will be of  
20 no benefit if I -- because the expiration date of that lease  
21 is set now for October 28th. These extensions haven't been  
22 paid and there's only three or four days left to pay them,  
23 and I have no control and I have no control over whether  
24 they're paid or not. I mean that's beyond my control.

25 All I can do is drill this well. Then I

1 must commence on or -- must be prepared to commence on or  
2 before October 24th that second well, or I shall lose that  
3 right.

4 Now, this situation is -- these dates are  
5 particularly critical because the situation gets very com-  
6 plicated. If, under the MTS agreement, if Mesa elects not  
7 to pay the extensions, then it's my understanding Texaco  
8 then can pay all the extensions and earn 100 percent of the  
9 rights and then I would earn nothing under Mesa. Their  
10 rights could expire October 28th. Texaco, by paying 100  
11 percent, could then have 100 percent of this prospect if I  
12 fail to be drilling at either of these locations on October  
13 28th.

14 Q Am I correct in understanding that your  
15 testimony is that time is absolutely critical to you in  
16 terms of obtaining a forced pooling order on both of these  
17 wells.

18 A Yes, sir, that's correct, and remember,  
19 each section is treated as a different lease, so even if I  
20 establish production in Section 6 on my first well, if I  
21 don't have a well spudded by October 28th on the second  
22 lease, Section 1, then I would lose all of those rights, and  
23 at this time I can't -- it's just conjecture to me whether  
24 the extensions are going to be paid or not. I certainly  
25 can't count on them and Mesa has indicated to me that they

1 don't want to pay the extensions. That was the reason that  
2 they wanted to farmout originally and if they don't pay the  
3 extensions, then I lose the benefit of both -- of my deal  
4 with Sequoia and Mesa.

5 Q Mr. Foran, have you continued your nego-  
6 tiations with Texaco in an effort to obtain a voluntary  
7 agreement from that company from May all the way, in fact,  
8 up through today?

9 A Yes, sir, I have. I've really worked on  
10 this. My partner first wrote them a letter in January and  
11 received, you know, no interest type of response.

12 Then I went up and made a personal visit  
13 to the Denver office that was handling this; made my appeal.  
14 I was informed at that time that Texaco in all likelihood  
15 would farm out and I followed that up with a letter of May  
16 15, numerous phone calls to and from the Denver office.

17 Then in June I was informed by Ms. Hanson  
18 that the Denver office had elected to farm out and I should  
19 receive shortly the formal written agreement.

20 Q And did you receive a farmout agreement?

21 A No, sir, I haven't.

22 Q Are you in a position to grant Texaco any  
23 further time in which to negotiate and try to reach a volun-  
24 tary agreement without jeopardizing your position with re-  
25 gards to these wells?

1           A           No, sir. There is -- I would do anything  
2 I could to make an agreement with Texaco and I've done --  
3 I've met with them in person in Midland. I've made calls to  
4 the man in Houston who is heading up the -- Texaco's end of  
5 the MTS Partnership. I've tried to leave no stone unturned  
6 in meeting with them.

7                       Estoril's met with me. We've written  
8 letters, phone calls and we've met with them here, and if  
9 there was any way that I could reach an agreement, I would  
10 do so.

11                      We've invited their participation and  
12 told them if they want to drill a -- if they like the area  
13 and want to drill a well, please join us. If they don't  
14 like it, please farm out.

15                      MR. BATEMAN: Mr. Examiner, if  
16 I could interject.

17                      There's no issue in my mind  
18 that there's been a good faith effort on all parties invol-  
19 ved here to make an agreement, so if it will assist, I cer-  
20 tainly will stipulate to that.

21                      MR. KELLAHIN: Thank you, Mr.  
22 Bateman.

23           Q           Can you clarify for us, Mr. Foran, the  
24 relationship between your company and the requested alterna-  
25 tive operator, Estoril Producing Corporation?

1           A           We -- Foran Oil Company has been in busi-  
2 ness for three and a half years and we do operate proper-  
3 ties, but I've had a long and enjoyable business relation-  
4 ship with Estoril Producing Corporation out of Midland for  
5 the past six years and we've operated wells, we've been in  
6 wells together. They've operated or I've been associated to  
7 the company that helped them operate.

8                       They have an excellent reputation. They  
9 don't have any debt. They're financially very stable. They  
10 do good work. If there's a problem I can go directly to the  
11 president, head engineer, I know the people; I trust them;  
12 and they're very easy to work with.

13                      When we got into this, Estoril has con-  
14 siderable experience in drilling wells to this depth with  
15 similar type casing programs. I know that they're solvent.

16                      I approached them and they were very  
17 eager to help me get a well drilled on this and to perform  
18 my farmout obligations to Mesa and to Sequoia.

19           Q           Has the 75 percent working interest  
20 ownership that has voluntarily committed themselves to hav-  
21 ing you drill the well, have they consented and agreed to  
22 have Estoril substitute as the operator?

23           A           Yes, sir. They've all agreed and we have  
24 a tentative agreement, you know, subject to getting all this  
25 together with Sun, and Sun has recognized that Estoril could

1 probably do a better job for less money than even Sun can.

2 Q Let's go quickly through the correspon-  
3 dence that we've identified as exhibits, Mr. Foran.

4 Would you identify for the record Exhibit  
5 Number One?

6 A Exhibit Number One is a letter dated May  
7 15, 1986, to Ms. Jeanette Hanson, Land Representative of  
8 Texaco in the Denver office.

9 Q And what, if any, response did you re-  
10 ceive from Ms. Hanson about this request?

11 A I've never received anything in writing  
12 from Texaco at any time during the course of my negotia-  
13 tions.

14 What I did hear from her was on the  
15 phone, tht it was her decision that -- and the decision of  
16 the Midland office -- that they were going to farm this out  
17 and that I was to receive it.

18 MR. BATEMAN: Excuse me, --

19 MR. KELLAHIN: Yes.

20 MR. BATEMAN: -- I want to  
21 clarify, did you say Midland office or Denver office?

22 A I mean Denver office, excuse me. Ms.  
23 Hanson is associated with the Denver office and that I was  
24 to receive this.

25 Q From the Denver office.

1           A           That's correct, yes, sir.

2           Q           Let's go to Exhibit Number Two and have  
3 you identify that piece of correspondence.

4           A           This is a letter that's mistakenly typed  
5 as May 15, it should have been July 15. It was on a word  
6 processor and my secretary has corrected it in her  
7 handwriting, also addressed to Ms. Jeanette Hanson, sending  
8 her a copy of the formal Mesa farmout agreement or trade  
9 agreement, and my fully executed conditional letter of  
10 acceptance.

11          Q           Would you identify for us Exhibit Number  
12 Three, now, please?

13          A           Exhibit Number Three is a letter to Mr.  
14 Curtis D. Smith of the Texaco Midland office, dated August  
15 7, 1986.

16          Q           We've now moved from Texaco Denver to  
17 Texaco Midland?

18          A           Yes, sir, that's correct; that the reason  
19 for this is that this was originally -- or is an exploratory  
20 prospect and the Denver office is responsible for  
21 exploratory prospects in Lea County.

22                       Then through some jurisdictional problem  
23 that I'm not fully aware of, Texaco Midland assumed respon-  
24 sibility for this farmout and it's remained in their hands.

25

1           Q           Did you submit to Texaco your proposed  
2 AFE that's attached to the letter dated August 7th, '86?

3           A           Yes, sir, we have.

4           Q           Have you received any objection from  
5 Texaco to the proposed costs for the dry hole and completion  
6 of this well?

7           A           None whatsoever.

8           Q           Turn to Exhibit Number Four, now, sir,  
9 and have you identify that for me.

10          A           This is a letter dated August 8, 1986,  
11 also to Mr. Curtis D. Smith Land Representative at Texaco  
12 Midland.

13          Q           And then, as of today, Mr. Foran, have  
14 you been able to successfully cause Texaco to either farm-  
15 out, lease, assign, or participate in the proposed well,  
16 either one of the wells?

17          A           No, sir, I have not.

18          Q           You've requested the Examiner to enter on  
19 behalf of the Division two separate forced pooling orders,  
20 is that correct?

21          A           Yes, sir.

22          Q           Are you aware of any way in which the Di-  
23 vision could time the election periods or the introduction  
24 of those forced pooling orders in such a way to grant to  
25 Texaco an election on the second well after you have com-

1 pleted the first well?

2 A No, sir, I do not and I've tried to ex-  
3 plain this to Texaco, is that we would like to accommodate  
4 them in any way possible, and if we had more time it would  
5 be a very easy thing to do.

6 Even three or four weeks ago it might  
7 very well could have been possible, but when we're looking  
8 at a September 1 date and Mesa is indicating to me an un-  
9 willingness to further extend, they've already given me a  
10 couple extensions from July 1 to July 15 and now to Septem-  
11 ber 1, in an effort to obtain this voluntary joinder from  
12 Texaco, and they've indicated that enough is enough, and  
13 that they're not going to do anything more; that my farmout  
14 agreement stands or falls on my ability to get these wells  
15 drilled, commenced by September 1 and certainly no later  
16 than October 24th date.

17 Q The Commission generally allows a party  
18 being pooled a thirty day election period after the order is  
19 entered in which to elect to participate or to go  
20 nonconsent. Are you familiar with that provision?

21 A Yes, sir, and that's one of the problems  
22 I tried to explain to Texaco, is that even if we -- our  
23 application is granted in full here today, it could be  
24 overturned by simple letter request, requesting a trial de  
25 novo, and even if wasn't, they would still generally have 30

1 days, as I understand it, to make an election. Therefore it  
2 would be the, it looks it would be the end of September be-  
3 fore I'd know whether Texaco is going to go nonconsent or  
4 join or what.

5 Then it takes about thirty to forty days  
6 to drill and complete these wells. So if I had to wait un-  
7 til end of September to commence a well, I would not have  
8 finished my first well before the October 24 deadline occur-  
9 red and my lease rights could very well have expired, lease  
10 or farmout rights.

11 Q I know you've given this subject consid-  
12 erably thought, Mr. Foran. Are you aware of any way that we  
13 can schedule the sequence of force pooling order and elec-  
14 tion so that Texaco will have the opportunity to exercise  
15 their election on the second well after the time in which  
16 the first well is completed?

17 A We tried very -- we tried very hard to  
18 accommodate them on that request and, you know, there's  
19 just, you know, there doesn't seem any way, because in deal-  
20 ing with them I've always seen it takes a long time for them  
21 to make up their mind, and even longer to get it in writing  
22 to where I feel comfortable or have a high comfort level  
23 that they will do what they say they'll do.

24 Q Would you resist and oppose a request by  
25 Texaco to run the forced pooling orders consecutively as

1 versus concurrently?

2           A           Yes, sir, I would. I think they've had  
3 -- they've had this lease that's been renewed three times in  
4 the last six years and if it's renewed again, it will be the  
5 third time.

6                       They've know of my interest on this since  
7 the first of January and they've known since the first of  
8 January that Mesa was not interested in drilling this, and  
9 so they've known this for nine months, that this thing was  
10 not going to be drilled it needed to either be farmed out or  
11 something done with it.

12                      Now, Mesa has tried on numerous occasions  
13 and furnished me with a letter indicating their efforts to  
14 notify Texaco that we needed to do something and they've  
15 been unable to obtain Texaco's joinder or agreement on what  
16 to do with this acreage.

17                      So I think nine months has been suffi-  
18 cient and giving the jurisdictional dates that I'm faces  
19 with on the -- my expiration date of my farmout agreement,  
20 and expiration date of the underlying leases on October  
21 24th, there just isn't enough time now to go ahead and I  
22 realize it's unusual, but it doesn't seem -- I have no con-  
23 trol whether Texaco will or will not do and given their po-  
24 sition, they could very well delay me procedurally through  
25 legal proceedings and destroy my lease and farmout rights.

1 MR. KELLAHIN: We tender the  
2 witness for cross examination.

3 MR. CATANACH: Mr. Bateman.

4 MR. KELLAHIN: We move the in-  
5 troduction of Exhibits One through Six at this time.

6 MR. CATANACH: Any objection,  
7 Mr. Bateman?

8 MR. BATEMAN: No, no objection.

9 MR. CATANACH: Exhibits One  
10 through Six will be admitted into evidence.

11 MR. KELLAHIN: I'm sorry, let  
12 me identify for the record Exhibits Five and Six are the re-  
13 turn receipt cards notifying Texaco of the hearing.

14 To make the record complete, I  
15 have marked One-A, the land plat that Mr. Foran has referred  
16 to to help describe his acreage interest.

17 For the record I would formally  
18 move to introduce Exhibits One-A and then Exhibits One  
19 through Six.

20 MR. CATANACH: Exhibit One-A  
21 and Exhibits One through Six will be admitted into evidence.

22 You may proceed.  
23  
24  
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## CROSS EXAMINATION

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BY MR. BATEMAN:

Q Mr. Foran, as I understand it, there are essentially three leases involved in this case, is that correct?

A There's -- I think it may be more accurate to say that there's one common lease and on that common lease they refer to three tracts, Section 1, Section 6, and Section 12, and then there's a special provision saying each of those three tracts shall be treated as a separate lease and just for the convenience of the parties they're included on one form.

Q All right. So it's correct to say that we're really dealing with three leases, is that correct?

A Yes, sir.

Q Now, would you state for the record where those -- well, which lease applies to which acreage?

A Sections -- I'm sorry, I don't quite understand your question.

Q Well, you have Tracts 1, 2, and 3, do you not?

A Yes, sir.

Q Would you identify those tracts?

A Tract 1 is Section 6. Tract 2 is Section 1, and Tract 3 is Section 12.

1           Q           All right, and they're treated indepen-  
2 dently under the -- under the terms of the lease with res-  
3 pect to renewal.

4           A           Now this base lease is not signed by just  
5 one party, but there's about eight or nine family members,  
6 each of whom has executed a separate lease.

7           Q           Right. The lessee has the option to re-  
8 new te lease with respect to each of these tracts  
9 independently.

10          A           Yes, sir.

11          Q           Is that correct? But your interest at  
12 this point is in Tract 1 and Tract 2.

13          A           Yes, sir.

14          Q           Now, you've indicated that you're in a  
15 time bind. Your intention, your stated intention on the re-  
16 cord is to drill the test well in Section 6. The spud date  
17 on the well in Section 1 depends, it's safe to say, upon  
18 legal considerations, essentially, spud date being achieved  
19 in order to protect your interest in Section 1.

20          A           I'm sorry, Mr. Bateman, I don't think I  
21 understand your question.

22          Q           Well, you're going to go ahead and drill  
23 Section 6, right?

24          A           We plan to, yes, sir.

25          Q           Now, that's going to be the test well.

1           A           Yes, sir.

2           Q           You'll spud the acreage in Section 1, I  
3 believe you stated, in order to protect your interest in  
4 that section when the time comes before October 24th.

5           A           I still don't understand your question.

6           Q           All right. You indicated on the record  
7 that you felt some jeopardy with respect to timing on Sec-  
8 tion 1. What is that jeopardy?

9           A           That jeopardy is this; is that the exten-  
10 sions may or may not be paid.

11                        The other jeopardy is that Texaco may or  
12 may not adhere to the decision of this hearing examiner.  
13 They may choose to appeal it.

14                        So there's both legal -- legal problems  
15 involved of when I can actually start my well. Second is  
16 there's problems on extension that I have no control over,  
17 and third is my farmout rights with Monsanto, Amerada, Mesa,  
18 and Sequoia, are dependent on me getting started on this as  
19 soon as possible.

20           Q           The farmout rights require you to start  
21 the second well within 120 days from the date of, what, the  
22 spudding of the first well?

23           A           Completion date.

24           Q           Completion date.

25           A           Yes, sir.

1           Q           Okay. So all things being equal, you got  
2 120 day period after the completion of -- of the well in  
3 Section 6 were it not for the question of the expiration of  
4 the lease in Section 1, is that correct?

5           A           As a practical matter, they may not --  
6 that may not be correct, Mr. Bateman.

7           Q           And why is that?

8           A           Well, I've got these farmout obligations  
9 to Monsanto and to Amerada, both, and they're also keyed to  
10 the drilling of this initial test well. So I may need to  
11 start this well in Section 1 prior to the 120 days in order  
12 that I can meet my farmout obligations to Monsanto and Amer-  
13 ada in a timely manner.

14                       That is one reason why the farmout agree-  
15 ment I have with Mesa and Sequoia provides that my time be-  
16 tween wells shall be accumulative, so if I could drill two  
17 wells quickly back to back, then I'm allowed to accumulate  
18 time so that I may on the third well, may have 180 days.

19                       This is real important because there's  
20 also economic, could be economic reasons to do so because  
21 sometimes if you drill wells back to back you can get a bet-  
22 ter rate from your drilling contractor than you do if you  
23 space them out.

24           Q           Drilling contractors want to move from  
25 one location to the other --

1           A            You'd get a better rate than if he had to  
2 move a rig in from 10 or 15 miles away.

3           Q            I understand that. Now, lyou mentioned  
4 that one of the concerns you have is whether you would be  
5 delayed by legal procedure on behalf by Texaco in this case.

6                        Has that ever been threatened, to your  
7 knowledge? Or are you just stating a hypothetical?

8           A            Could you explain what you mean by  
9 threatening?

10          Q            I think it's rather clear. Has anybody  
11 on behalf of Texaco ever said we're going to delay this pro-  
12 ceeding beyond the expiration date of your obligations on  
13 the farmout agreement, let's put it that way.

14          A            What Texaco has said is that, and what  
15 I've experienced in this, is they've protected themselves  
16 and exercise every possible legal right that they've exer-  
17 cised. No one from Texaco has told me in writing or -- that  
18 they were going to delay it.

19          Q            Or verbally?

20          A            Or verbally. On the other hand, nothing  
21 that Texaco has said or done to me in any way has indicated  
22 that they are going to cooperate.

23                        The best that I've heard is that perhaps  
24 they would not contest this hearing, and yet, you know, my  
25 experience has been that even though that they weren't going

1 to contest it, you're here today with Mr. Smith and the  
2 other gentleman and objecting to some parts of this forced  
3 pooling hearing.

4 Q Okay.

5 A So my experience has been and this is  
6 throughout this whole proceeding, is no matter what I've  
7 heard verbally from Texaco, or what they said, they have  
8 changed their position very quickly and I have no reason to  
9 believe they might not still do it, because this is -- there  
10 are strong feelings on both sides of this case.

11 Q I take your projected answer to be no,  
12 nobody's ever threatened that. Is that correct?

13 A No, that's not correct. I said what I  
14 said, Mr. Bateman, and you're free to make whatever inter-  
15 pretation you want but I think the implicit threat is there  
16 and they've never -- and their actions have all indicated  
17 that.

18 So you know, you can -- I've said what  
19 I've said, Mr. Bateman. I'm not trying to argue with you  
20 but --

21 Q Nobody's ever said it to you, correct?

22 A In so many words, if that's what you're  
23 asking.

24 Q Right. All right. Now, Texaco has  
25 stated to you unequivocally that Texaco is prepared to and

1 will on the record commit to extend the leases by payment of  
2 the necessary payment to the mineral owners, is that cor-  
3 rect?

4 A Mr. Bateman, again I'm not trying to ar-  
5 gue with you. I can't --

6 Q Simply yes or no.

7 A -- answer that question yes or no.

8 I cannot answer that question yes or no,  
9 huh-uh. I'm trying to answer your questions but that's an  
10 impossible question to answer.

11 Q Well, you have --

12 A May I make my -- my answer to that the  
13 best way that I can?

14 Q If you wish.

15 A All right. Is that what I've found with  
16 Texaco is that, throughout this thing, is it appears to be  
17 an agreement or something stated to me, and one of the real  
18 problems is who speaks for Texaco, because I've been told  
19 things by this Ms. Hanson, whose letters are in here, and  
20 then I'm told that she doesn't speak for Texaco.

21 So then I've been told by other people  
22 with Texaco, but then I've been told that they don't have  
23 authority to say what they said.

24 So when you say that Texaco has said, it  
25 brings a real question to my mind, are they really qualified

1 to speak for Texaco, so I think if you're trying to make a  
2 point that perhaps you have people here from Texaco today  
3 that would be better qualified to say what Texaco said or as  
4 to whether they're going to oppose the, than what I can of-  
5 fer.

6 Q Well, I'm simply asking with that quali-  
7 fication that you've already made whether you've been told  
8 unequivocally that Texaco will commit or has committed to  
9 make that payment?

10 A I wouldn't use the phrase unequivocally.  
11 I've told by a land representative from Texaco. It's the  
12 same land representative that told me that he has no author-  
13 ity to speak for Texaco.

14 Q All right, well, let's take it hypotheti-  
15 cally, then. Suppose Texaco does in fact perform a commit-  
16 ment -- I have no doubt that they will -- that takes the  
17 pressure off, does it not, with respect to the October 24th  
18 expiration date?

19 A No, sir, it doesn't because I don't have  
20 any farmout agreement with Texaco. If Texaco should pay 100  
21 percent of the extensions, then Mesa's rights will expire on  
22 October 24th, in which case I would be out entirely unless I  
23 were to make a separate deal with Texaco.

24 So if Texaco pays 100 percent, I'm still  
25 faced with the October 24th deadline because my farmout

1 rights come through Mesa and if Texaco pays 100 percent,  
2 then Mesa will have nothing and will have nothing for me to  
3 earn through them.

4 Q Mesa has the right to pay its proportion-  
5 ate share, does it not?

6 A It does have the right, yes, sir, but  
7 they've indicated to me that they were not going to pay it.  
8 That's the reason that they made the farmout, because they  
9 didn't want to pay the extensions; they wanted to see wells  
10 drilled in here.

11 Q Well, let's take it hypothetically. Mesa  
12 pays its proportionate share, that takes the pressure off,  
13 does it not?

14 A I think that's oversimplifying it, Mr.  
15 Bateman.

16 Q Perhaps it is but I think you can answer  
17 yes or no.

18 A No, sir I don't believe I can.

19 Q You haven't so far. I'd like you to.

20 A Well, I'm sure there's a lot of things  
21 you'd like for me to do, Mr. Bateman.

22 I know you've got to do your job but  
23 there are just certain things that I -- I'm trying to answer  
24 them truthfully and you're asking me to answer those ques-  
25 tions --

1           Q           You're stating -- are you trying to indi-  
2 cate to the examiner that October 24th is the absolute date  
3 in which there's no set of circumstances whatsoever in which  
4 it could be extended to your knowledge?

5           A           Again I think you're -- I think all we  
6 can do is deal with the facts that we have on hand. There's  
7 only three days before the extensions are due and they  
8 haven't been paid and there is nothing that I've received in  
9 writing from either of those -- any of those companies indi-  
10 cating that they will pay the extensions.

11                       Today was the first time Texaco has told  
12 me of their intention to pay those extensions.

13           Q           Well, I can see, but it's not responsive  
14 to my question.

15                       Is there any set of circumstances under  
16 which the October 24th date could be extended for your bene-  
17 fit?

18           A           There are sets of circumstances, but I  
19 think we're dealing with conjecture there. You know, it's  
20 just pure conjecture.

21           Q           Well, it's conjecture whether you're  
22 going to spud the well, too, I suppose, is that right?

23           A           I do have -- I do have control over  
24 whether I spud the well but I have no control over whether  
25 the extensions are paid. There's a big difference and I can

1 tell you I'm going to spud the well because I have some con-  
2 trol. Extensions I have no control whatsoever, and that's  
3 the point I'm trying to make, is that -- is in this forced  
4 pooling hearing I'm left to what I can control and whether  
5 Texaco or Mesa, what they're going to do, I have no control,  
6 and these wells need to be drilled. If the extensions are  
7 paid, it's likely these wells will not be drilled.

8 Q Well, let's talk again about something  
9 you can control.

10 Is it not your intention to gain as much  
11 geological information out of the drilling of the well in  
12 Section 6 prior to the drilling the well in Section 1?

13 A Yes, sir.

14 Q And is it not simply the request of Tex-  
15 aco to share in that information so that it can make a deci-  
16 sion at the same time you do whether to proceed?

17 A I'm -- it would be very nice to have  
18 that, but if they had wanted that luxury, then we should  
19 have been making a deal back in June, is my point, rather  
20 than waiting until we're under a time bind.

21 The second thing I would point out, Mr.  
22 Bateman, on these wells is that one, a dry hole in Section 6  
23 does not necessarily condemn a well in Section 1; that these  
24 are -- this type of formation, and the engineers will give  
25 you -- will tell you more much better than I can, that you

1 can drill a good well here and then have a 40-acre offset  
2 that's a dry hole.

3           So we could have a dry hole, but then  
4 gain enough information to see that maybe we're low struc-  
5 turally or some reason or encouraged to drill the well in  
6 Section 1 even though the well in Section 6 is dry. So it's  
7 -- one is not necessarily related to the other.

8           Q           I can see that. I'm simply stating that  
9 it's in your interest to have as much geological information  
10 as you can before you make a decision whether to proceed  
11 with the well in Section 1 and you're aware that purely and  
12 simply Texaco is asking share in that information so that it  
13 can make a decision whether or not to participate.

14          A           Right, and Mr. Bateman, that's the exact  
15 point that I made to Texaco back in May and in June and in  
16 July. Let's get something worked out between us, drill this  
17 well so that we've got the luxury of some time to watch our  
18 performance in our initial test well before drilling a  
19 second one, and it's Texaco that's kept us from enjoying  
20 that very benefit that you're trying to bring out.

21          Q           So at this point, then, you're not will-  
22 ing to grant it, is that correct?

23          A           I have no alternative. I have no choice,  
24 because I'm faced with a -- the very -- it's more probable  
25 than not that all of my rights will expire by October 24th.

1 Q Well --

2 A You've mentioned that there are circum-  
3 stances that might extend and take that off but, you know,  
4 the real question is, is what is the probability that Mesa  
5 is going to extend, because unless Mesa extends, I think we  
6 both can agree that I'm going to be out because Texaco isn't  
7 going to give me anything if they should extend 100 percent.

8 Therefore, you know, your probabilities  
9 of whether I'm going to be in a time bind are related to  
10 what Mesa's going to do and Mesa the whole way through this  
11 has consistently said they don't wish to extend.

12 Q Well, if you're able to do it, do you  
13 have any objection to the Commission requiring a very short  
14 decision making time after the submission of that informa-  
15 tion to Texaco for Texaco to make its decision whether to  
16 consent or not on the second well?

17 A Mr. Bateman, I'm not trying to argue with  
18 you because I'm -- except that what you're suggesting pre-  
19 supposes that the geological information in Section 6 is  
20 going to be critical to the drilling of Section 1, and my  
21 suggestion to you, that that's not critical, in fact, that  
22 these engineers, I think, will do a better job than I can to  
23 show you that each of these leases must be -- I mean each  
24 well must be drilled to find out what you have, because the  
25 seismic is inexact and even the drilling of a million barrel

1 well can be offset by a dry hole.

2           So even though you drill a million barrel  
3 well, find out all that geological information, that isn't  
4 going to necessarily tell you what kind of well you're going  
5 to get on a direct offset, and that's the point I keep mak-  
6 ing, is the geological information that you're -- you're  
7 basing your request for this -- this election, really isn't  
8 going to tell Texaco anything, and that's the thing I'm  
9 trying to suggest to you. It really isn't going to tell  
10 them anything. It just often is not that critical, because  
11 the only way you'd know this in these mound build-ups, these  
12 phylloid algae build-ups, is to actually drill the well.

13           Now this has a lot to do with the risk  
14 that we're facing on this, is that one well doesn't neces-  
15 sarily tell you the other one. The only way you can do it  
16 is to -- is to drill, and we're not talking about, you know,  
17 a simple San Andres-Grayburg well where you drill here and  
18 you know what you're going to get right across the fence.  
19 These things, it's a very erratic reservoir and the only  
20 thing that you can really do is -- is to drill, and that's  
21 the inescapable thing, and I think your request would be  
22 reasonable if the geological information was that critical  
23 --

24           Q           Well, it's in the eye of the beholder.

25           A           -- to the discovery.

1                   Q           It's really in the eye of the beholder,  
2 would you concede that? Some people may think it was quite  
3 important in making a decision for an offset. Would you  
4 concede that?

5                   A           No, sir, I don't think I could. I think  
6 that the reasonable engineers would tell you that one well,  
7 you cannot justify what one well does on the offsets, and  
8 that's --

9                   Q           Well, I would concede that there's no  
10 certainties but I think you ought to concede that one at-  
11 tempts to get as much information as possible before making  
12 an economic decision of the magnitude that's involved in the  
13 drilling of the well in Section 1, and that would involve  
14 geological information from the first well.

15                  A           I think we can all agree that it would be  
16 helpful to have such information. It would be useful, but  
17 the point that I'm trying to say is Texaco had that oppor-  
18 tunity if they would have just acted, made a decision back  
19 in May, June, July, or six months prior to that time, but  
20 they've chosen to put this thing off and they've told us  
21 face to face that they want 100 percent of this prospect,  
22 that they do not want us to make this deal or to drill this  
23 well, and so their delay was purposeful in order -- in an  
24 effort to obtain 100 percent of this prospect for them, and  
25 when it became clear that they would not --

1 Q That's simply an opinion.

2 A I was told that by the same Texaco repre-  
3 sentative that you've been asking me to recognize his opin-  
4 ion on whether the extension is going to be paid. That same  
5 Texaco representative told me today, you know, that they'd  
6 never made a decision and that another Texaco representa-  
7 tive, who would be his boss, told me and told the president  
8 of Estoril in his office, that he wanted 100 percent of this  
9 deal.

10 I'm not trying to get in an argument with  
11 you, I'm just trying to show you that this delay caused by  
12 Texaco was purposeful, and they --

13 Q Well --

14 A -- took a chance delaying in an effort to  
15 get 100 percent of the prospect, and when that gambit didn't  
16 work, I don't think it's reasonable for them to come back in  
17 here and say, what we need is the time to decide between  
18 them, because we need this geological information, when I  
19 think it's the opinion of most engineers that work this  
20 area, that information is not critical.

21 But I will let the engineers speak for  
22 themselves to how critical this information may be.

23 MR. BATEMAN: That's all I  
24 have.

25 MR. CATANACH: Anything

1 further, Mr. Kellahin?

2 MR. KELLAHIN: No, sir.

3 MR. CATANACH: Are there any  
4 questions of the witness? He may be excused.

5 Let's take about a ten minute  
6 recess.

7

8 (Thereupon a recess was taken.)

9

10 MR. KELLAHIN: Mr. Examiner,  
11 during the recess Mr. Bateman on behalf of his client and I  
12 discussed a stipulation with regards to the balance of my  
13 presentation and he and I have agreed to stipulate for your  
14 benefit that the proposed overhead charges to be included in  
15 the order or \$5500 per month drilling well rate and a \$550  
16 per month producing well rate are fair and reasonable.

17 In addition we have stipulated  
18 that the AFE, which would have been Foran Exhibit Number  
19 Seven, that that AFE, showing a total dry hole cost of  
20 \$340,150 and a completed well total cost of \$499,450, is al-  
21 so a fair and reasonable estimate and may be used by the ex-  
22 aminer as the AFE for the forced pooling orders in each of  
23 the two cases.

24 In addition, we have stipulated  
25 that Estoril Producing Corporation ought to be designated as

1 the appropriate operator for each of the wells, and finally,  
2 we have stipulated that the risk factor penalty to be asses-  
3 sed in this case of 200 percent is fair and reasonable.

4 With those stipulations, then,  
5 we rest our direct case, Mr. Examiner.

6 MR. CATANACH: Mr. Bateman?

7 MR. BATEMAN: That's correct.

8 I have objection to the stipulation and I would like to pro-  
9 ceed in our portion of the case.

10 MR. CATANACH: You may proceed.

11

12 CURTIS SMITH,

13 being called as a witness and being duly sworn upon his  
14 oath, testified as follows, to-wit:

15

16 DIRECT EXAMINATION

17 BY MR. BATEMAN:

18 Q Now, Mr. Smith, for the record we have  
19 stipulated that your qualifications as an expert witness are  
20 at least acceptable to us and we tender Mr. Smith as an ex-  
21 pert.

22 MR. KELLAHIN: He's a petroleum  
23 landman, I believe.

24 MR. BATEMAN: As a petroleum  
25 landman, excuse me.

1 MR. CATANACH: Could you give  
2 some background, please, of his qualifications, Mr. Bateman?

3 MR. BATEMAN: Certainly.

4 Q Mr. Smith, would you state what your work  
5 experience has been?

6 A Yes, sir. I worked for -- I've worked  
7 for Texaco so far for a little over a year and a half.

8 I graduated from Texas Tech University  
9 December of '84 with a degree in petroleum land management.

10 Prior to that I worked one year at Guar-  
11 antee Abstract and Title Company in Lubbock, Texas, and  
12 prior to that I worked one year for Doug Cone. He is a --  
13 he has a lot of mineral interests out of West Texas and New  
14 Mexico.

15 MR. CATANACH: Mr. Smith is  
16 considered qualified.

17 Q Mr. Smith, what has been your contact  
18 with Mr. Foran with respect to these applications?

19 Would you just briefly state what you  
20 have done on behalf of Texaco with respect to this applica-  
21 tion?

22 A Well, we received the concurrence from  
23 our Denver office and at that point we looked over the  
24 checkerboard pattern that Mesa and Foran and Sequoia had  
25 agreed on.

1           At that point we decided that we did not  
2 like the checkerboard pattern. I called Mr. Foran and told  
3 him that we were not interested in the checkerboard pattern  
4 the way it was set out; that we felt like it would not be to  
5 our best interest for Texaco to farm out that much acreage.

6           Mr. Foran called me on numerous occasions  
7 to discuss this and we brought it up at two of our develop-  
8 ment meetings and we were not able to reach a decision, and  
9 I told Mr. Foran that I -- we were not able to reach a deci-  
10 sion yet, and that we would contact him when we did.

11           And he -- he came out to our office, I  
12 believe it was one Thursday afternoon, one Thursday morning  
13 about 10:45. We tried to negotiate new checkerboard pat-  
14 terns with Mr. Foran and really we didn't accomplish much  
15 because the checkerboard fashion that Texaco wanted Foran  
16 said that his partners would not be interested in that pat-  
17 tern.

18           We came to the conclusion that we would  
19 present one checkerboard pattern to management. We  
20 presented that pattern in our development meeting and we de-  
21 cided that it would not be to Texaco's advantage to farm out  
22 that much acreage and farm out our 25 percent in the  
23 checkerboard pattern that they had presented to us.

24           I called Mr. Foran to tell him that we  
25 were not interested in farming out our acreage. I told him

1 the reason was one of our options was to renew the acreage  
2 and we could renew it on or before sixty days prior to the  
3 expiration of the primary term, which is October 24th of  
4 1986.

5 Q Mr. Smith, without asking you to go into  
6 all the details, we've stipulated that the parties have ne-  
7 gotiated in good faith for the resolution of these matters,  
8 and is that your position on that --

9 A Yes, sir.

10 Q Now would you state for the record what  
11 Texaco requests and to be clear about it, we are requesting  
12 relief with respect to only one of the cases and that is  
13 Case 8977 involving the well in Section 1, is that correct?

14 A Yes, sir. Yes, sir.

15 Q What does Texaco request?

16 A Texaco requests the opportunity to have  
17 the same option that Foran and his partners have to review  
18 the geological data before making a decision to join in or  
19 go nonconsent on the second well, which is the north half of  
20 the southeast quarter of Section 1.

21 We feel like being forced pooled on both  
22 of them at the same time we have to make a decision on two  
23 wells prior to the advantage of having geological informa-  
24 tion from the spudding or the completion of the first well,  
25 which Foran and his partners will have that advantage.

1           Q           To your knowledge does Texaco consider  
2 that information critical in making that decision?

3           A           Yes, it does.

4           Q           Now, to your knowledge, what is Texaco's  
5 commitment with respect to the extension of the leases in-  
6 volved in these two applications?

7           A           Texaco will go on record to say that we  
8 will renew these leases -- the lease of the three tracts.  
9 We will make that payment prior to, on or before, which-  
10 ever, the sixty days before the primary term.

11          Q           In order to extend the leases for a two-  
12 year period.

13          A           That's -- that is correct.

14          Q           Mr. Smith, you've also heard testimony  
15 from Mr. Foran concerning the critical time path involved in  
16 this thing.

17                       Do you have any knowledge of how long it  
18 will take Texaco to make a decision on whether to consent or  
19 not to -- excuse me, to join or not to join the well in Sec-  
20 tion 1 after it receives the necessary geological informa-  
21 tion?

22          A           We feel like we could make that decision,  
23 we're willing to say we could make that decision within  
24 seven days after we receive the geological information.

25          Q           Is it fair to say that it's not your in-

1       tention to delay Mr. Foran in any way with respect to his  
2 plans to proceed in Section 1?

3               A               That is correct.

4               Q               Now let's go on then with the testimony  
5 of Mr. Foran here. Any item with respect to his testimony  
6 you'd like to discuss?

7               A               Well, in his letter of August 7th, 1986,  
8 second paragraph, the second sentence, says, to date we have  
9 not received any commitment in writing from you although you  
10 have advised us or led us to believe that you would agree to  
11 participate or farm out the acreage described above.

12                               I never told Mr. Foran that we would farm  
13 out our interest. In fact, from day one, I told him that we  
14 had a problem with the way the checkerboard pattern was and  
15 our options were we could turn down the farmout and renew.

16               Q               You mentioned a letter of August 7. Is  
17 that the letter of August 8th? I'm not sure, just for the  
18 record we know which exhibit we're talking about.

19                               That's Exhibit Three.

20               A               Yeah.

21               Q               Okay, that's probably it. It has the  
22 date of August 6th on the second page and that's where I was  
23 confused.

24                               Do you have any further comments to make  
25 concerning the efforts of Foran and Texaco to come to an

1 agreement?

2           A           Well, I feel like Texaco has tried to ne-  
3 gotiate an agreement. I think that taking into considera-  
4 tion that we paid our proportionate share to purchase this  
5 lease to begin with, you know, we're entitled to certain  
6 rights and we feel like one of the rights is to have geolo-  
7 gical information and be given the opportunity to join in  
8 the second well.

9                       Also one point is that we are willing to  
10 pay the renewal cost, which is in the neighborhood of  
11 \$160,000, with taking the chance that if a well is spud on  
12 Section 6 and a well is spudded on Section 1 prior to Octo-  
13 ber 24th, Texaco has spent the amount of money generally for  
14 nothing.

15                      So we are willing to take a risk there  
16 and we do feel like that we're entitled to certain rights.

17                      One other point is that Mr. Foran said  
18 that the leases had been renewed three times within the last  
19 six years. I'm not aware of that because the leasehold it-  
20 self, the lease is dated October 24th, 1983, which was three  
21 years ago and unless it was renewed three years in a row  
22 prior to October 24th of 1983, I don't -- I don't see how it  
23 was renewed three times in six -- in the past six years.

24           Q           Thank you, Mr. Smith. Anything further?

25           A           No.

1 MR. BATEMAN: I have no further  
2 direct.

3 MR. CATANACH: Mr. Kellahin?

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

6

7

CROSS EXAMINATION

8 BY MR. KELLAHIN:

9 Q Mr. Smith, so that it's clear for us what  
10 Texaco will and will not do, let me ask you with regards to  
11 the first forced pooling order, and by that one I mean the  
12 well in Section 6 that Mr. Foran proposes to be the first  
13 well, with regards to that forced pooling order, can you  
14 tell us whether or not Texaco will participate under the  
15 pooling order, exercise its election, or whether it has de-  
16 cided to go nonconsent under the pooling order?

17 A I would say that right now Texaco, based  
18 on the information we have, the lack of seismic information,  
19 we do not know whether or not we're going to join in the  
20 first well. There's a possibility we could or could not.

21 Q When will you make the election about  
22 participating in the first well?

23 A I would say when we have enough informa-  
24 tion to make a good decision on this.

25 Q What more information will you have from

1 now to the date in which your election would normally expire  
2 under a pooling order? What additional information do you  
3 anticipate realizing?

4 A I believe that Foran and his parties have  
5 some seismic we don't have.

6 Q How would you propose to acquire that?

7 A Well, I don't -- I'm not sure if we would  
8 want to purchase it but in this case if -- I wouldn't know.  
9 If we joined in if we would have free access to that infor-  
10 mation.

11 My expertise does not get into that as  
12 land representative.

13 Q As a landman have you been involved in  
14 other forced pooling cases on behalf of your company, in any  
15 aspect of those cases?

16 A No, sir.

17 Q Have you made any review to educate your-  
18 self about the mechanics by which the Division implements  
19 and issues forced pooling orders?

20 A No, sir.

21 Q Do you know whether or not the custom and  
22 practice of the industry operating under a forced pooling  
23 order, would allow your company to share in that geologic  
24 information on the first well if you had not participated in  
25 that well?

1           A           Well, I'm not familiar enough with the  
2 forced pool provisions to know if we went nonconsent that we  
3 would not be allowed our -- that we would be allowed to  
4 share in that information.

5                       I know that normally if you go nonconsent  
6 under, say, a regular operating agreement, that if you're a  
7 working interest partner, that you would have access to that  
8 information.

9           Q           Under a typical operating agreement,  
10 though, you elect to and in fact prepay your share of the  
11 first well.

12           A           That is correct, if you sign the opera-  
13 ting agreement, that means you have elected to participate  
14 in the first well.

15           Q           And the nonconsent provisions of an oper-  
16 ating agreement apply to subsequent wells beyond the first  
17 well.

18           A           Repeat your question, please.

19           Q           Yes, sir. We were talking about how a  
20 working interest owner would receive geologic information  
21 from the operator, and I've asked you whether or not under  
22 the operating agreements, is it not characteristic for the  
23 working interest owners to prepay their share in the first  
24 well and afterwards, then, they would receive geologic  
25 information.

1           A           I would assume that if they prepaid then  
2 they are entitled to that information.

3           Q           And the nonconsent provisions of an oper-  
4 ating agreement do not apply to the first well, do they?

5           A           No.

6           Q           Those are all on subsequent wells.

7           A           Right.

8           Q           Have you examined the farmout agreements  
9 and the documents, the legal documents, involved between  
10 Mesa and Foran?

11          A           No.

12          Q           You cannot dispute Mr. Foran's statement  
13 that the Texaco payment of the bonus in order to get the  
14 two-year extension, the \$160,000 payment, you don't dispute  
15 what he's told us, that that payment does not allow him to  
16 maintain the position he has today with regards to this pro-  
17 perty.

18          A           Well, it's my understanding is, and this  
19 was indicated by Mr. Foran when he came out to Texaco to our  
20 office, when we indicated that we would renew 100 percent of  
21 the acreage, and if Mesa and Sequoia elected not to -- to  
22 renew their share, then 100 percent is ours, and Mr. Foran  
23 told us that there was no way that would happen because Mesa  
24 would renew their share and Sun, and the other parties would  
25 reimburse Mesa.

1           Q           Do you have a commitment in writing from  
2 Mesa and the others that they will participate as you've  
3 just described?

4           A           No. No, I've talked to them on the tele-  
5 phone and asked them to write me a letter; they have not  
6 done it.

7           Q           So Mr. Foran is correct, then, when he  
8 says if Texaco makes the payment without any other change in  
9 circumstances, that payment directly benefits Texaco. It  
10 inures to Texaco's benefit, and unless something else  
11 happens, Mesa repaying you, or doing something else, then  
12 the Mesa/Foran farmout is gone.

13          A           If Joe Foran does not spud the well  
14 before October 24th.

15          Q           Texaco doesn't propose to make this  
16 payment to get the two-year extension for the benefit of Mr.  
17 Foran.

18          A           Texaco wants to make this payment in  
19 order not to lose our leasehold, our 25 percent.

20          Q           But that payment is not going to be  
21 structured in a way that will preserve Mr. Foran's position  
22 as he's described it today.

23          A           That payment will be made in a way that  
24 Mr. Foran can pay his proportionate share through the Mesa  
25 farmout.

1           Q           But you will not undertake to do that.  
2 Mesa is going to have to reimburse you in some fashion to  
3 make the deal work.

4           A           Yeah, Mesa would have to reimburse us  
5 whether it's Joe Foran's money or not.

6           Q           And if Mesa doesn't do that and we don't  
7 have anything in writing from Mesa that they will, if Mesa  
8 doesn't do it, then Mr. Foran's out on his farmout.

9           A           I would expect Mr. Foran to protect his  
10 interest.

11          Q           Can you also protect his interest by  
12 spudding the second well prior to October 24th?

13          A           Yes, he can.

14          Q           When we're talking about the geologic in-  
15 formation, Mr. Smith, that Texaco would like to have in or-  
16 der to make its election within the 7-day period, exactly  
17 what is it that you want to see?

18          A           Logs and access to the rig.

19          Q           When you say access to the rig, for what  
20 period of time are you talking about?

21          A           During -- during the drilling of the  
22 well, I guess. I'm -- an engineer could speak better than a  
23 land representative. I'm assuming they'd have access to  
24 (unclear) during the drilling of the well.

25          Q           Well, you're the one that told us about

1 the geologic data and I want to make sure I am clear in  
2 understanding exactly what it is that you want Mr. Foran to  
3 give you in order to have the election if Mr. Catanach de-  
4 cides that's an appropriate provision in the order, he needs  
5 something to describe exactly what it is that you're seek-  
6 ing.

7 Are you talking about a suite of logs and  
8 access to the rig floor during the drilling and completion  
9 operations, I assume?

10 A Uh-huh.

11 Q We've talked about your proposal of exped-  
12 iting the sequence of elections to try to fit within the  
13 October 24th deadlines.

14 One of the proposals was that the elec-  
15 tion period for the well in Section 1 be reduced to seven  
16 days after you receive the log suite information.

17 Are you proposing to also reduce the  
18 election period on the first well in Section 6?

19 A No.

20 MR. KELLAHIN: We have nothing  
21 further, Mr. Catanach.

22 MR. CATANACH: Anything fur-  
23 ther, Mr. Bateman?

24 MR. BATEMAN: Nothing further.

25 MR. CATANACH: This witness may

1 be excused.

2 Mr. Bateman, are you calling  
3 another witness?

4 MR. BATEMAN: No. We have no  
5 further testimony.

6 MR. CATANACH: All right.  
7 Would you like to make a closing statement?

8 MR. BATEMAN: Thank you. I'll  
9 make it very brief.

10 I hope we've been able to state  
11 our position clearly enough. We are not in opposition to  
12 the applications; however, the sequence of the applications  
13 does give Texaco a problem; the sequence, essentially, being  
14 that in the ordinary course of events the orders on both of  
15 these applications will come out at the same time.

16 We see the distinct possibility  
17 that Texaco would be required, then, to make its decision on  
18 the second well in advance of the decision making on behalf  
19 of Mr. Foran and his partners; in advance in the sense that  
20 we would be unable to have the advantage of geological  
21 information on the first well before proceeding on the  
22 second one.

23 We simply are asking for the  
24 same opportunity to review that information prior to making  
25 a decision.

1 Texaco has indicated a  
2 willingness to expedite its procedure for making that deci-  
3 sion so that Mr. Foran and his partners, or Foran Oil Com-  
4 pany and its partners, would not be unduly delayed by what  
5 we propose. This seems to me to be quite reasonable. Mr.  
6 Foran himself has indicated, although there was some equivo-  
7 cation on his part, I would concede, that the geological  
8 information is important to the decision making, and with  
9 respect to additional economic risk in this area.

10 And I think it's fair to say  
11 that Mr. Foran will get as much information as he can, as he  
12 testified, before making a decision of whether or not to  
13 proceed with the second well.

14 Texaco has a significant inter-  
15 est in all of this acreage and simply wants the same bene-  
16 fit.

17 The question of the time dead-  
18 lines, I frankly believe is eliminated by the renewal of the  
19 leases. Of course we could argue forever hypothetically  
20 about what if; nevertheless, if the first well is going to  
21 be begun on September 1, we see no reason why he could not  
22 proceed in due course given completion within thirty days,  
23 to work within the time frame that Mr. Foran's indicated is  
24 necessary. We are not attempting to delay that procedure  
25 whatsoever; simply want the information as it becomes avail-

1 able and I think that's reasonable.

2 That purely and simply is Texa-  
3 co's position and we would ask your acceptance of that posi-  
4 tion and we would be willing, if you request, to submit a  
5 proposed order on that basis.

6 Thank you very much.

7 MR. CATANACH: Mr. Kellahin?

8 MR. KELLAIN: Mr. Catanach, I  
9 disagree with Mr. Bateman. I think what he's asked for is  
10 something novel, unusual, certainly without precedent as  
11 best I can recall and without question unjustified in this  
12 case.

13 Let me address the question of  
14 the payment by Texaco of the \$160,000 bonus to get the two  
15 year extension.

16 Mr. Smith told us that that  
17 payment benefits Texaco only. The unrefuted testimony of  
18 Mr. Foran is that he doesn't benefit by that payment. In  
19 fact he is jeopardized by that payment. It's, frankly, a  
20 meaningless gesture for him. He said that his farmout  
21 agreements between Mesa and himself were specifically  
22 phrased in such a way that unless and until Mesa undertook  
23 the responsibility to extend their proportionate share of  
24 these leases, he had no benefit.

25 There is no testimony today

1 that Mesa is going to make that extension. In fact the  
2 reasonable conclusion is just the opposite. That was the  
3 motivation by which Mesa did not drill the well themselves  
4 and farmed out to Mr. Foran.

5 They want him to spud the  
6 wells before the October 24th date.

7 If Texaco was willing to make  
8 that payment for the benefit of Mr. Foran and Mesa, then we  
9 have some breathing time in which to make the elections con-  
10 secutively.

11 They're unwilling to do that.  
12 It's a meaningless gesture. It helps him not at all.

13 Mr. Bateman has asked you for  
14 the sharing of geologic information. I tell you that that  
15 is highly unusual, it's novel, and it should not be allowed  
16 in this case because one of the compelling motivations to  
17 get a working interest owner such as Texaco, who certainly  
18 can afford it, to pay their 25 percent interest in a half  
19 million dollar well, \$125,000; they're prepared to spend  
20 \$160,000 to improve their acreage position. What they nor-  
21 mally do, it's a motivation to get them to participate in  
22 the well; to get the geologic data.

23 Under the pooling order, if  
24 they agree to prepay their share and participate, then of  
25 course they're entitled to the information, but I suggest to

1 you that it will be unique for you to allow Texaco to go  
2 nonconsent and be carried at Mr. Foran's expense on a 25  
3 percent interest, and yet have this geologic information  
4 which he's paid for, and they want that information in order  
5 to make an election on the second well.

6 We think that that ought to be  
7 withheld from them in order to compel them to participate  
8 in the first well. We think there is every reason and jus-  
9 tification to treat these cases separately and that you  
10 ought to do so. The time constraints involved for Mr. Foran  
11 preclude him from giving them any further time than he has.

12 Texaco is a sophisticated, ag-  
13 gressive company with lots of money. They can participate  
14 if they want to. He's worked on this since May, trying  
15 everything he can do to get them to participate and here we  
16 are today and they will not.

17 We believe that we're entitled  
18 to the standard pooling orders and we would ask that you en-  
19 ter them.

20 MR. CATANACH: Thank you, Mr.  
21 Kellahin.

22 We ask that both attorneys sub-  
23 mit rough draft orders for me, please.

24 Is there anything further in  
25 Case 8977 or 8978?

If not, they will be taken un-  
der advisement.

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record of the hearing prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 8977, 8978 heard by me on August 20 1986.

David R. Cetani, Examiner  
Oil Conservation Division