

NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARINGSANTA FE, NEW MEXICOHearing Date JANUARY 19, 1989 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
Bule Hulin Vic Byron James V. Jennings	Byram OCD Red Bluff	Santa Fe "

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION COMMISSION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6 19 January 1989

7 COMMISSION HEARING

8 IN THE MATTER OF:

9 Application of Mallon Oil Company CASE
10 for compulsory pooling, Eddy County, 9458
11 New Mexico. (De Novo)

12 BEFORE: William M. Humphries, Commissioner
13 Erling Brostuen, Commissioner

14 TRANSCRIPT OF HEARING

15 A P P E A R A N C E S

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1 MR. BROSTUEN: In that case,
2 we'll go to Case Number 9458, the de novo case, and read
3 that.

4 MR. STOVALL: Application of
5 Mallon Oil Company for compulsory pooling, Eddy County, New
6 Mexico.

7 MR. BROSTUEN: The applicant
8 in this case, it's a case that has been heard at one time
9 previous by the -- an examiner. We have a request for a de
10 novo hearing upon application of Red Bluff Water Power Con-
11 trol District. The applicant initially in the case was
12 Mallon Oil Company.

13 Have the attorneys in this
14 case decided upon how they wish to proceed in this?

15 MR. PADILLA: Mr. Chairman, my
16 name is Ernest L. Padilla, Santa Fe, New Mexico, for Mallon
17 Oil Company.

18 To answer your question, we
19 have have not gotten together as to how we shall proceed.

20 First, my inclination is that
21 the applicant of the hearing should proceed to challenge
22 the order of the Oil Conservation Division that was issued
23 on October 28th, and accordingly, I would request that Mr.
24 Jennings proceed with his part of the case first.

25 MR. BROSTUEN: In that case

1 I'll call for a response from Mr. Jennings.

2 MR. JENNINGS: Well, I am
3 James T. Jennings and I am here on behalf of Red Bluff
4 Reservoir. Unfortunately, our people aren't here. The
5 manager of the project died since the last hearing and
6 other people were not able to attend; however, it's my
7 thought that in a de novo hearing such as this that it
8 would be true de novo and we would hear all the evidence
9 again so that the complete evidence is before -- you don't
10 have the record before you or anything, and we would pro-
11 ceed and let Mr. Padilla go forward with his -- with his
12 case and again establish it.

13 If that is not -- I don't know
14 where we are unless he does that. I could put these wit-
15 nesses on and ask some things of them but it would be much
16 simpler, since Mr. Padilla has a stack of exhibits at this
17 time to let him proceed and go forward with that.

18 I might state at this time if
19 you would want a statement of Red Bluff's position at this
20 time --

21 MR. BROSTUEN: Mr. Jennings, I
22 think at this time I simply -- I really would want to know
23 if there's any agreement between attorneys.

24 I might call for appearances
25 and then we will go into this case.

1 Mr. Padilla.

2 MR. PADILLA: Mr. Chairman,
3 Mr. Humphries, my name is Ernest L. Padilla, Santa Fe, New
4 Mexico, for Mallon Oil Company.

5 MR. BROSTUEN: And to you have
6 any --

7 MR. PADILLA: I have three
8 witnesses to be sworn.

9 MR. BROSTUEN: And could you
10 give me the names of the witnesses, please?

11 MR. PADILLA: Yes, sir. I
12 have Karen McKlintock, Les Oppermann and Joe Cox.

13 They will be testifying. Ms.
14 McClintock will be first and Mr. Oppermann second, and Mr.
15 Cox third.

16 MR. BROSTUEN: Mr. Jennings,
17 do you -- do you want to enter your appearance and witnes-
18 ses?

19 MR. JENNINGS: I will. I
20 thought I had before, but I will enter it.

21 I'm James T. Jennings of Ros-
22 well, and I'll enter my appearance on behalf of Red Bluff
23 Water Power Control.

24 I do not have any witnesses.

25 MR. BROSTUEN: Would all those

1 testifying in Case Number 9458 please stand and take the
2 oath?

3

4

(Witnesses sworn.)

5

6

7

8

9

MR. BROSTUEN: Is there a
recommendation from the attorneys present as to whether we
should incorporate the record in the previous case in this
case, from either attorney?

10

11

12

13

MR. PADILLA: Mr. Chairman, I
request that that record be incorporated and that adminis-
trative notice be taken by the Commission of the record and
the transcript that was taken in that hearing.

14

15

MR. BROSTUEN: Thank you, Mr.
Padilla.

16

17

18

19

Mr. Jennings?

MR. JENNINGS: I don't object.

MR. BROSTUEN: You have no ob-
jection to that?

20

21

22

23

In that case, inasmuch as Red
Bluff Water Power Control District is the applicant in the
de novo case, I would request that Mr. Jennings go forward
with his case.

24

25

MR. JENNINGS: Well, I would
say that unfortunately I didn't contemplate having to be

1 called upon to present Red Bluff for the Mallon applica-
2 tion and I was further handicapped by the fact that I
3 thought that last Friday morning, I thought the case had
4 been continued until February the 16th and I learned this
5 week, Tuesday at 11:00 o'clock, from the Commission that
6 that is not the case and we would be on hand and we would
7 not possibly -- it would be very awkward, I can go forward
8 and bring out the points that I would want to bring out
9 with adverse witnesses, but I think it would be much more
10 orderly if Mr. Padilla went forward. He has his people
11 here and he can go forward and then the Commission would be
12 in a position to see -- to have the entire testimony pre-
13 sented to them and they would be able to interrogate them
14 and have the benefit of the other prior hearing, also.

15 I'd say that several things
16 that have happened since October. One thing that changed
17 the picture as of this date is the fact that the price of
18 crude has improved to about \$13, a little over \$13.00 a
19 barrel since October to -- now this is a spot market crude,
20 has improved to \$19.26 a barrel as of yesterday.

21 And there's also been a very
22 substantial increase in the posted price of crude, which is
23 up, as I understand, in some areas, and I don't know where
24 this crude has been marketed, but other parts of Eddy
25 County, is \$17.75 cents a barrel.

1 So this does make a substan-
2 tial difference in everything.

3 One other thing, I would like
4 at this time to make an offer on behalf of Red Bluff Re-
5 servoir to accept the proposal which was made, and I un-
6 derstand it's since been withdrawn, and I don't know their
7 position, it may be, but it would save everybody a lot of
8 time and a lot of effort and money, if we -- we will be
9 willing to assign Red Bluff's interest in the acreage to
10 the proposed drilling formation and retain only a 5 percent
11 overriding royalty and possibly Mr. Padilla would like to
12 review this and if we do that, why, we can all go home.

13 I wonder if there could be
14 some water, it's awfully dry.

15 MR. HUMPHRIES: I'll get some
16 for you.

17 Do you all want -- Mr. Chair-
18 man, if they want to discuss this, make some further state-
19 ments to the Commission, we could take a recess.

20 MR. BROSTUEN: Would you like
21 to, Mr. Padilla?

22 MR. PADILLA: Mr. Chairman,
23 Mr. Humphries, we have received the offer to accept a 5
24 percent override that Mr. Jennings is speaking about. That
25 was rejected last week.

1 Mr. Jennings comes to us to-
2 day without any witnesses, and he tells us he is unprepared
3 to proceed. That was the same case before the Oil Conser-
4 vation Division. The offer was made and actually withdrawn
5 prior to the Division hearing.

6 This is just simply too late
7 in the game to start making any deals and as the evidence
8 will show in this case, Mallon has had to obtain extensions
9 of its farmout agreement with Amoco three times as the re-
10 sult of delays in this case.

11 There has been simply no
12 agreement and at this point if Mr. Jennings' clients wish
13 to participate in the well, they obviously have the right
14 to participate, but to make deals on overriding royalty
15 interest, we believe it is far too late and so we wish to
16 proceed with our case. Mr. Jennings has asked that we pro-
17 ceed with our case and I have no objection to proceeding
18 with our part of the case, as long as the record reflects
19 that we do not waive what we believe is Mr. Jennings'
20 (unclear) of going forward first, but in the interest of
21 orderly conduct of this hearing, I don't mind putting on
22 my witnesses first.

23 MR. BROSTUEN: Thank you, Mr.
24 Padilla.

25 The Commission will incorpor-

1 ate the previous record in this case. I would -- I know
2 that Mr. Humphries and myself were not present when the
3 previous testimony was given before the hearing examiner,
4 and we believe we would like to incorporate the previous
5 testimony and record as a means of, you might say, saving
6 time and that sort of thing, because we don't really have
7 to re-plow the same ground; however, in this case I do be-
8 lieve that there should be full -- for myself, anyway, I
9 need to have some sort of a -- I would appreciate a review
10 of previous testimony and what was done in the past so that
11 I have a basis for finding the decision.

12 MR. PADILLA: Mr. Chairman, we
13 will present our testimony in the same fashion that we did
14 before with additions, so in that respect you will have
15 pretty much the same picture as we presented at the Oil
16 Conservation Division in Santa Fe.

17 MR. BROSTUEN: Very well, I'd
18 appreciate it.

19 Just a moment, we'll have a
20 short recess here, maybe five minutes, so that we can get
21 some water down here.

22 MR. JENNINGS: All right.

23
24 (Thereupon a recess was taken.)
25

1
2 MR. BROSTUEN: So we'll con-
3 tinue the hearing. Mr. Padilla?

4 MR. PADILLA: Mr. Chairman, we
5 call Karen McClintock.

6
7 KAREN E. MCCLINTOCK,
8 being called as a witness and being duly sworn upon her
9 oath, testified as follows, to-wit:

10
11 DIRECT EXAMINATION

12 BY MR. PADILLA:

13 Q Ms. McClintock, for the record would you
14 please state your name and where you're employed?

15 A My name is Karen McClintock and I'm a
16 landman for Mallon Oil Company.

17 Q Is Mallon Oil Company the applicant in
18 the original forced pooling application before the Oil Con-
19 servation Division?

20 A Yes.

21 Q Did you testify as land manager in that
22 previous case for Mallon Oil Company?

23 A Yes, I did.

24 Q Have you previously testified before the
25 Oil Conservation Division as a petroleum landman?

1 A Yes, I have.

2 Q Have your records been -- have your
3 credentials been accepted as a matter of record as a petro-
4 leum landman in previous hearings of the Oil Conservation
5 Division?

6 A Yes.

7 MR. PADILLA: Mr. Chairman, we
8 tender Ms. McClintock as a petroleum landman.

9 MR. BROSTUEN: Her qualifica-
10 tions are accepted.

11 Q Ms. McClintock, briefly would you please
12 state what your -- what the background of this hearing is,
13 if you would, please?

14 A Yes. Mallon Oil Company wants to drill
15 a well in the northwest quarter of the southwest quarter of
16 Section 27, Eddy County, New Mexico.

17 Mallon Oil Company did not control
18 through a farmout with Amoco 100 percent of the 40-acre
19 proration unit. Mallon Oil Company, through a farmout with
20 Amoco only controlled approximately 75 percent of the
21 40-acre unit. The remaining approximately 25 percent,
22 specifically 24.3175, is controlled by Red Bluff Water
23 Power Control District.

24 Q What efforts did you make to contact and
25 reach agreement with Red Bluff Water Control Power

1 District?

2 A Mallon Oil Company employed Les Oppermann,
3 landman who is very familiar with the area, and also
4 with Red Bluff Water Power Control District, to negotiate
5 with Red Bluff Water Power Control District, which he had
6 been doing for over a year for -- on behalf of Mallon Oil
7 Company.

8 Q When did you first start making efforts
9 to acquire the interest of -- controlled by Red Bluff?

10 A Mallon Oil Company contacted the BLM because
11 the acreage that Red Bluff Water Power Control District
12 controls now was not available for lease. When I
13 contacted the BLM there was a lot of confusion as to what
14 to do with the Red Bluff acreage.

15 Mallon Oil Company -- this was in 1987.
16 Subsequently Mallon found, after the initial contact with
17 the BLM, found that Mallon Oil Company was not eligible to
18 bid on the acreage. It was a compulsory royalty agreement
19 and due to the statutes, Red Bluff Water Power Control District,
20 who had the right-of-way on the reservoir, and Amoco
21 Production Company, who is the record title owner, were the
22 only two companies able to bid on the acreage that Mallon
23 Oil Company was interested in. The reservoir is pretty
24 extensive. There were some other companies involved but
25 Mallon Oil Company only had interest in acreage that Red

1 Bluff Reservoir controlled in Section 27 and 28.

2 Q When did you -- was a lease issued to
3 Red Bluff eventually?

4 A Yes, it was.

5 Q And what efforts did you make to acquire
6 that lease?

7 A Prior to the issuance of the lease we
8 had Mr. Oppermann contact Red Bluff Water Power Control
9 District. He contacted verbally and visited with both the
10 manager, a Mr. John Hayes, and Mr. Fuller, the President of
11 the Executive Committee of Red Bluff Water Power Control
12 District.

13 Q What were the results of those efforts
14 to obtain an agreement from Red Bluff?

15 A Mallon Oil Company had given Mr. Oppermann
16 (not clearly understood) to negotiate. We had in --
17 prior to issuance of a lease we had attempted to negotiate
18 an approximately 50 percent overriding royalty to Red Bluff
19 Water Power Control District. It would be to farmout with
20 no back in, simply an overriding royalty.

21 In June of last year Mr. Oppermann again
22 contacted Red Bluff Water Power Control District and offer-
23 ed a 5 percent overriding royalty.

24 Q Did they, did Red Bluff reject the 6 per
25 cent?

1 A Yes. The information that Mr. Oppermann
2 mann had given me over the phone after he had met with Mr.
3 Hayes and Mr. Fuller was that the 5 percent would possibly
4 be acceptable, and shortly after that Mr. Jennings, I was
5 contacted by Mr. Jennings and it was not acceptable.

6 Q When did you file for compulsory pooling
7 of the reservoir interest?

8 A It was in August of 1988.

9 Q And was an order issued by the Division
10 as a result of a hearing?

11 A No. The hearing for August, in the
12 latter part of August, was postponed. It was postponed
13 twice, due to the request of Mr. Jennings. It was issued
14 in October of 1988.

15 Q But an order was eventually issued?

16 Q Yes, that is correct.

17 Q Okay. Let me -- let me have you refer
18 to what we have marked as Exhibit Number One and have you
19 identify that for the Commission, and tell the Commission
20 what that contains.

21 A Certainly. This is a land plat of the
22 acreage in Section 27, the northwest of the southwest (not
23 clearly understood) the Amoco-Red Bluff Federal No. 1 Well,
24 and I've identified with pink the Federal Lease NM-71599.
25 That is the lease that is owned by Red Bluff Water Power

1 Control District.

2 In yellow is Federal Lease NM-38636,
3 which is a lease that Mallon Oil Company has continuous
4 drilling obligation with Amoco. It is owned currently,
5 record title and operating rights, by Amoco Production
6 Company. Mallon Oil Company has the farmout rights on that
7 section.

8 I have broken down the acres involved
9 pursuant to a plat prepared by John West Engineering. Ac-
10 cording to Mr. West's plat, Red Bluff Lease 71599, is ap-
11 proximately 9.727 acres, giving it a 24.3175 percent inter-
12 est in the 40-acre proration unit. The (not clearly under-
13 stood) payments would be the percentage they would pay.

14 Mallon Oil Company's lease, the Amoco
15 Production Company lease, is 30.273 acres with 75.68250
16 percent working interest, in the event that Red Bluff Water
17 Power Control District will (not clear.)

18 Q Is the State acreage under water? Is
19 that the -- do you know that?

20 A No, to my understanding it's not. Mr.
21 Cox will be able to -- he's been out on the location.

22 Q But it's the acreage attributable to the
23 Red Bluff lease?

24 A Correct.

25 Q Let's go on now to what we have marked

1 as -- well, do you have anything further concerning Exhi-
2 bit Number One, before we move on?

3 A I would like to mention, on the origi-
4 nal hearing that the interest is altered slightly from the
5 original hearing and let me identify these changes. Mallon
6 Oil Company, in the original hearing was under the impres-
7 sion that the proration unit was 38.5 acres. We have found
8 (unclear) 40-acre proration unit, that increases Red Bluff
9 Water Power Control District's interest, not their acres,
10 only their interest, by less than 1 percent on the original
11 interest that Mallon Oil Company identified in the hearing
12 was 25.26494 percent working interest for Red Bluff, and as
13 you can see, it dropped down to 24.3175, so that's less
14 than a 1 percent interest and I have contacted Mr. Jennings
15 with the change.

16 Q Was that error based upon your percep-
17 tion of the 40-acre tract being smaller than the standard
18 40-acre tract?

19 A Yes, we had originally identified it as
20 a 38.5 acre proration unit, and this, the changes, would
21 have identified Exhibit One as the correct breakdown in
22 terms of acreage and percentage.

23 Q Let's go on now to Exhibit Number Two,
24 Ms. McClintock, and have you identify that for the Com-
25 mission.

1 A Yes. This is a drilling title opinion
2 for the Amoco Red Bluff No. 1 Well. It was prepared by the
3 (unclear) in Denver and is (unclear).

4 Q What information does this drilling
5 title opinion contain as far as is relevant to this hear-
6 ing?

7 A It does identify that Red Bluff Water
8 Power Control District does indeed have the rights to
9 Federal Lease NM-71599 and that Amoco Production Company
10 had the rights to Federal Lease NM-38636, both of which are
11 involved in this northwest southwest of Section 27, our
12 drill site.

13 Q Let's go on to Exhibit Number Three, Ms.
14 McClintock, and have you identify that for the Commission.

15 A Yes. Exhibit Number Three is Mallon Oil
16 Company's operating agreement dated January 19, 1989,
17 proposed operating agreement between Mallon Oil Company and
18 Red Bluff Water Power Control District.

19 Q What is the area covered by that opera-
20 ting agreement?

21 A We have limited it to the drill site
22 itself, the northwest of the southwest of Section 27.

23 Q What -- let's turn now to the COPAS sec-
24 tion of that operating agreement, Ms. McClintock, and iden-
25 tify that location; in other words, what page is the COPAS

1 section of that agreement?

2 A Okay. The COPAS is attached as Exhibit
3 C to the operating agreement.

4 Q Let me have you turn to page 4 of that
5 COPAS section and have you tell the Commission what -- what
6 the overhead charges that you have identified in that
7 portion of the operating agreement are.

8 A The drilling well rate is \$3,056 and the
9 producing well rate \$334.

10 Q Is this indicative of the overhead char-
11 ges for this type of well in that area of New Mexico?

12 A Absolutely. These charges are the char-
13 ges that we billed to our working interest owners and (not
14 clearly audible) Mallon Oil Company.

15 Q How many wells is Mallon operating in
16 that area?

17 A We have 13 in the area; this will be our
18 14th well.

19 Q How many wells have you drilled using
20 these figures?

21 A This figure changes every year and I be-
22 lieve it was different as of last June.

23 Q Since last June are these figures stand-
24 ard for your operating agreements in that area?

25 A Absolutely.

1 Q Let's turn now to the penalty provisions
2 of the operating agreement and will you tell the Division
3 on what page those provisions are?

4 A They're on page 6 of the operating
5 agreement.

6 Q What are those penalty provisions, Ms.
7 McClintock?

8 A 400 percent.

9 Q Is that more than the penalty provision
10 allowed by the Oil Conservation Division as a result of the
11 compulsory pooling -- as a result of the compulsory pooling
12 hearing?

13 A Yes, it is.

14 Q You understand that under a compulsory
15 pooling hearing you cannot obtain 400 percent.

16 A That's correct.

17 Q Let me ask you, also, is this 400 per-
18 cent indicative of what's -- your standard operating agree-
19 ments in the area, this particular portion of Eddy County,
20 New Mexico?

21 A Yes, it is. Our operating agreements in
22 the area all carry a 400 percent penalty.

23 Q In your opinion is this a reasonable
24 penalty?

25 A Yes, I think it is totally appropriate.

1 Q Ms. McClintock, let's move on now to
2 what we have marked as Exhibit Number Four and have you
3 tell the Commission what Exhibit Number Four is and what it
4 contains.

5 A Yes. Mr. Jennings had mailed me a let-
6 ter dated November 23rd, 1988, outlining some concerns he
7 had concerning an operating agreement that I had mailed to
8 him previously.

9 Q What is the -- without going -- without
10 reading the entire contents of the letter, would you tell
11 us more or less what -- what the letter -- what the corres-
12 pondence is about?

13 A Yes. Mr. Jennings was concerned with
14 basically two issues. Number one was the nonconsent pen-
15 alty and the other one was the overhead charges in the
16 COPAS. He felt like they were in error as compared to the
17 ones previously mailed to him.

18 Q What was your response to his inquiries?

19 A My response was a letter dated November
20 29th. I explained to him that -- well, I apologized for
21 any confusion as to the content of any operating agreements
22 we had previously mailed, but we felt that they were exam-
23 ples.

24 We also felt that the penalty, although
25 the order had specified 300 percent, I am under the impres-

1 sion that the operating agreement we mailed to him would be
2 in the event that Red Bluff Water Power Control District
3 elected to participate in the well, the order would not
4 affect our operating agreement. I felt like a 400 percent
5 penalty was fair and reasonable and in line with the other
6 operating agreements everyone else has signed for this
7 particular prospect.

8 His other concern were the overhead
9 charges on the COPAS and that was an error and I explained
10 to him I was not changing it because of the order. He had
11 intimated in his letter that I needed to change it because
12 of the order. I changed it because it behooved our ac-
13 counting department to have one overhead charge as opposed
14 opposed to two overhead charges, so it would be fair to Mr.
15 Jennings and our accounting department to have one, the
16 same overhead charge.

17 Q Was that a lower overhead charge?

18 A Yes, it was. I originally had 4000 for
19 drilling and completing, 400 for producing, and I had re-
20 duced it to the 3056 for drilling and completing and 334
21 for producing.

22 Q Ms. McClintock, what other communica-
23 tions did you have with Mr. Jennings or anyone from Red
24 Bluff since the issuance of the Division order in October,
25 1988?

A (Unclear) Mr. Jennings contacted me last

Q And what was the substance of that con-

A Certainly. Mr. Jennings, offered to

I explained to Mr. Jennings that Mallon

Q What were those reasons?

A First of all, and most important, Mallon

We also had a rig deadline; we needed to

The second reason was because of the

1 amount of time, money, and effort we'd put into this, the
2 negotiations for Red Bluff Water Power Control District
3 with the Amoco No. 1 Well, Mallon Oil Company could not
4 justify economically accepting an offer that we had offered
5 eight months ago and they had rejected.

6 Q Was that offer of 5 percent withdrawn
7 before the Oil Conservation Division hearing in October?

8 A Yes.

9 Q After that offer was rejected, what was
10 your course of action insofar as compulsory pooling was
11 concerned? Did you have a choice as to what you wanted to
12 do? In other words, was your only avenue at that point
13 compulsory pooling?

14 A You mean as of last week or initially?

15 Q Well, initially.

16 A Initially? We had no other choice.
17 Mallon Oil Company, this was, according to our geologist
18 and engineer, this was the best location for us to drill
19 and we did not want to take a risk and jump over and drill
20 on property that Mallon Oil Company controlled 100 percent.
21 This was our best location, we felt. We had no other
22 choice. Red Bluff Water Power Control District did not
23 want to participate and they did not want to accept our
24 terms.

25 Q Ms. McClintock, before I forget, Mallon

1 Oil Company desires to be named the operator in any order
2 issued by the Oil Conservation Commission.

3 A That's correct.

4 Q Let me refer you to what we have marked
5 as Exhibit Number Five and have you identify that for the
6 Commission.

7 A This is a memo from Elizabeth Redmond in
8 our office to myself dated October 6, 1988. It was just an
9 outline of potential overriding royalties for Federal Lease
10 NM-38636, which is the Amoco Production Company lease that
11 Mallon Oil Company controls.

12 Q What is the effect of those numbers on
13 that memo?

14 A The overriding royalty identified on
15 this memo affects only Federal Lease NM-36 -- I'm sorry --
16 38636. It does not affect Red Bluff Waster Power Control
17 District's lease.

18 Q In terms of economics of drilling the
19 well, how does -- how does the total lease burden affect
20 your drilling plans?

21 A I believe Mr. Cox can best address that.

22 Q Okay. This simply is just a memorandum
23 from someone under your supervision telling you what the
24 burden is?

25 That's correct. Those burdens were

1 created through a farmout agreement Mallon Oil Company has.

2 Q Okay. Let me refer you to what we have
3 marked as Exhibit Number Six, and have you identify that,
4 please.

5 A Yes. This information is on completion
6 costs and administrative overhead costs for the Amoco Red
7 Bluff Federal No. 1 Well.

8 Q Have these figures been submitted to Red
9 Bluff for the drilling of this well?

10 A Yes, they have.

11 Q Ms. McClintock, do you have anything
12 further concerning your testimony with regard to Exhibits
13 One through Six?

14 A No.

15 MR. PADILLA: Mr. Chairman, we
16 would tender Exhibits One through Six.

17 MR. BROSTUEN: Without objec-
18 tion they will be admitted.

19 MR. PADILLA: And we pass the
20 witness at this time.

21 MR. BROSTUEN: Mr. Jennings?

22

23 CROSS EXAMINATION

24 BY MR. JENNINGS:

25 Q Ms. McClintock, when did you say you

1 first became aware of Red Bluff's interest in part of the
2 acreage under this particular 40-acre subdivision?

3 A We were aware that Amoco Production
4 Company did not control 100 percent of the 40-acre prora-
5 tion unit. At that time it was not leased. That acreage
6 was owned by the Red Bluff Reservoir and not by Red Bluff
7 Water Power Control District, and that was when we initial-
8 ly elected to drill that location.

9 Q Well, when did you -- is that the infor-
10 mation you obtained from the Bureau of Land Management?
11 The Bureau of Land Management (not clearly understood.)

12 A The Bureau of Land Management confirmed
13 that Red Bluff Reservoir had a portion of the acreage
14 within the proration unit.

15 Q Then I think you've testified that was
16 about the time that you were considering bidding on that
17 acreage?

18 A We elected or we had decided to try --
19 to attempt to bid on the acreage but I really don't remem-
20 ber if it was after or at the same time. I truly don't
21 remember.

22 Q When was the original location staked?

23 A I believe you'll have to ask Mr. Cox
24 that question.

25 Q Would you ask Mr. Cox and tell us?

1 MR. STOVALL: If I may inter-
2 ject, Mr. Chairman, is that information in the original
3 proceedings, do you remember, Mr. Padilla, in the trans-
4 cript?

5 MR. PADILLA: I believe -- I
6 can't recall for sure. I think that question was asked of
7 someone at the last hearing, if I'm not mistaken. That's
8 what I'm trying to establish.

9 MR. COX: Yeah, I think it was
10 -- I don't know the exact date, December of 1987, that's
11 when our APD was filed for the Amoco well at the time.

12 MR. PADILLA: Well, I'll stip-
13 ulate to that in the record.

14 MR. BROSTUEN: Excuse me, what
15 was the date again?

16 MR. COX: December, '87.

17 MR. JENNINGS: Well, can we
18 put it on the record?

19 MR. BROSTUEN: December, 1987,
20 will that suffice to answer your question, Mr. Jennings?

21 MR. JENNINGS: Yes.

22 Q At the time that you made this location,
23 were you aware -- you were not aware -- let me say this.
24 At the time you made the location you were not aware of Red
25 Bluff's position.

1 A Mr. Cox has identified the location in
2 December, '87. Mallon Oil Company was aware previous to
3 that the Mallon Oil Company, Amoco Production Company Fed-
4 eral lease did not cover the entire 40-acre proration unit,
5 so Mallon Oil Company was aware that Red Bluff Reservoir,
6 the interest of Red Bluff Reservoir controlled at least
7 part of the location.

8 We were aware prior to the staking.

9 Q Did your application show -- show that,
10 your application to drill?

11 A I believe the application to drill shows
12 the 40-acre proration unit in the quarter quarter section.

13 Q Do you know when the drilling pad was
14 constructed?

15 A Again, Mr. Cox handled that.

16 Q I believe you testified that your offer
17 of 5 percent, to pay a 5 percent overriding royalty was
18 withdrawn before the last hearing.

19 A Mallon Oil Company felt that the fact
20 that the offer had been rejected, and we were forced to go
21 through with a compulsory pooling, that it was not open for
22 negotiation. We felt like the forced pooling was actually
23 the way to proceed.

24 Q Well, you said that, that your offer was
25 withdrawn before the last hearing. I understood you to

1 testify that Mallon had withdrawn the offer, and I just
2 wanted to (not clearly audible).

3 A Yes, it had been withdrawn.

4 Q How?

5 A We had proceeded with the forced
6 pooling. Mallon Oil Company and Red Bluff Water Power
7 Control District had not settled on any type of percentage
8 or any type of penalty in terms of percentage or

9 Q Did you ever notify Red Bluff that the
10 offer was withdrawn?

11 A I feel that the notification of forced
12 pooling would be adequate.

13 Q Answer -- I mean not how you feel, did
14 you notify them?

15 A We notified them through the application
16 for forced pooling, Mr. Jennings.

17 Q That's the only way?

18 A Yes, at least from my standpoint.

19 Q Do you ever remember any conversation
20 with me about the time this location was first announced
21 telling you of Red Bluff's interest?

22 A Yes, I had a conversation with you when
23 this location was first announced, (not clearly understood)
24 Red Bluff Water Power Control District did not have a
25 lease.

1 Q Well, I know that but I told you at that
2 time it would be hazardous to go forward with the drilling,
3 announce a location and drilling without that other acre-
4 age, did I not?

5 A I believe so, but I felt that it was im-
6 material to how you felt about it when Mallon Oil Company
7 had every right to proceed. I contacted the BLM, question-
8 ed them, and I felt like Mallon Oil Company's best position
9 was to proceed.

10 Q Well, why did they -- why did they not
11 proceed, then?

12 A Mallon Oil Company cannot drill a well
13 without getting some type of settlement in terms of working
14 interest, overriding royalty, or whatever you want to call
15 it, in terms of having 100 percent of a proration unit.

16 Mallon Oil Company proceeded building,
17 staking, and things like that. We did proceed with that.
18 We did not proceed when I talked to you prior to Red Bluff
19 Water Power Control getting the lease because we felt we
20 could not drill without at least talking with Red Bluff.

21 Q But you were aware of all this when you
22 made the location.

23 A Yes, we were. The location is 100 per-
24 cent on NM-38636 lease. The location is not all on Red
25 Bluff's lease.

1 Q I'll refer you to your Exhibit Number
2 Five and ask you what your net revenue interest would be on
3 this lease NM-38636?

4 A The exhibit you're referring to is a
5 memo from Elizabeth Redmond (unclear)?

6 Q Yes. Elizabeth Redmond.

7 A Okay. For this particular well?

8 Q Yes.

9 A Amoco Red Bluff No. 1 Well would have a
10 burden of, Amoco Production Company, JSM Oil & Gas, Inc.,
11 and Interfirst Bank of Abilene, and Don and Micki Carol
12 Wright control that interest, and the Minerals Management
13 Service.

14 Q Well, I'm just asking you to state what
15 your net revenue interest will be in the well.

16 A I'd have to calculate that. I don't
17 have that written down anywhere right now, right offhand.

18 Q Well, if you have a 30 percent burden
19 and you have 100 percent --

20 A No, Mr. Jennings, you didn't listen to
21 me.

22 Mr. Bettis and Mr. Oppermann will have
23 an undivided royalty (not clearly understood).

24 Q And if you would accept Red Bluff's
25 offer and take an assignment of the lease, at least a

1 partial assignment of the lease, as to the other acreage,
2 as to the Red Bluff portion, you would then have 81 per-
3 cent net revenue interest.

4 A On the Red Bluff lease that would be
5 correct.

6 Q Wouldn't that be substantially better
7 than you have on what you're going to drill on?

8 A You've got to understand that the Lease
9 38636, Mallon Oil Company got their interest in that in
10 1983. We had no choice at that time (not clearly under-
11 stood) that lease. We felt they were acceptable at the
12 time. We feel that the 5 percent that we had offered to
13 you in June, or Red Bluff Water Power Control District, was
14 acceptable in June, without the added expense of attorneys
15 and the (not clearly understood) we had to have.

16 Q Well, what amount was that expense?

17 A The attorney's fees?

18 Q Yeah.

19 A The time --

20 Q What's the dollar amount?

21 A I don't have that figure, Mr. Jennings.

22 Q Well --

23 A Mr. Jennings, I don't have that figure.

24 Q Do you have any idea? Was it \$100,000,
25 a Million Dollars, or --

1 A Well, we have Mr. Padilla's expense, Mr.
2 Oppermann's expense, my time, Mr. Cox's time, and the trips
3 down here have all added in.

4 Q Well, you don't know whether it's \$5000,
5 \$10,000 or what?

6 A No, I don't.

7 Q You feel that -- it's your feeling, the
8 reason is that you just don't want to allow Red Bluff any
9 overriding royalty because you've been out some expense on
10 this?

11 A Not only that, Mr. Jennings, but as I
12 explained to you in my telephone conversation and earlier
13 in the hearing, is that we had two deadlines that we have
14 to meet, and when you initially offered this to us, and
15 now, we do not feel that we could accept a 5 percent over-
16 riding royalty.

17 Q You didn't tell me why, but didn't I
18 tell you that if we were going to do it, we could get it
19 done before the first of your deadlines?

20 A Yes, Mr. Jennings, you did mention that
21 that would be a possibility. Personally, I felt, and my
22 company felt, that we could not -- we did not want to take
23 that chance that something might prevent us from drilling
24 on the deadline. We did not accept that just because you
25 said that it could be done. We felt that we just could not

1 accept it.

2 Q You just didn't want to have anything to
3 do with it, is that it?

4 A Mr. Jennings, we felt like we'd been
5 fair with Red Bluff Water Power Control District in offer-
6 ing the same overriding royalty back in June; in fact, the
7 year before we'd offered them an additional 1 percent for a
8 total of 6 percent. We felt like we had a deal with Red
9 Bluff Water Power Control District; it had been changed
10 when we received a phone call from you.

11 We feel that we have given Red Bluff
12 Water Power Control District ample time and opportunity to
13 either participate or accept an overriding royalty from
14 Mallon Oil Company.

15 We felt your phone call a week before
16 this hearing and very close to our deadline, that was just
17 not acceptable.

18 Q Have you made any efforts -- what was
19 the last effort you made to settle this matter with --
20 with Red Bluff?

21 A If I recall correctly, we were scheduled
22 for an August hearing. That was postponed because we
23 thought perhaps there might be a chance to negotiate some
24 type of settlement. I believe it was extended into Septem-
25 ber. As of September we have not been able to reach a set-

1 tlement with Red Bluff Water Power Control District, so I
2 would say September was the last time we actively attempted
3 to negotiate with Red Bluff.

4 Q Well, do you feel that the additional 11
5 percent that you would get interest under this acreage com-
6 pared to the other acreage would not offset your legal ex-
7 penses, a substantial interest?

8 A We feel that the burdens (not clearly
9 understood) were not Mallon's choices or (unclear). We
10 feel that these people are entitled to some type of over-
11 riding royalty and whether accepting a higher net revenue
12 interest on Red Bluff's lease would offset our legal expen-
13 ses is not really for me to say or to calculate at this
14 time.

15 We feel the climate in the industry now
16 could not warrant a heavier burden than 5 percent; at least
17 we felt that was in June of 1988.

18 Q Well, have you re-evaluated it in the
19 light of the recent substantial increase in the price of
20 crude (not clearly audible)?

21 A If I understand what you're getting at,
22 this particular well --

23 Q Just answer my question.

24 A I'm sure that (unclear) more and more
25 detail. These are very expensive wells to drill and we

1 feel the price of crude is immaterial at this point, at
2 least in the industry as it stands now with the fluctuation
3 in the price of oil.

4 Q Have you ever made any offer, cash offer
5 to Red Bluff to acquire their interest in the lease?

6 A In the entire lease?

7 Q No, it this 40 acres, the acreage in
8 question, the 40 acres.

9 A No, we've not. At least I have not per-
10 sonally.

11 Q You haven't explored that?

12 A No, we haven't.

13 Q Do you think that lease has any value?

14 A I'm sure Mr. Cox will be able to answer
15 that from an engineering and geological standpoint.

16 Q Well, you're a qualified land person,
17 you ought to know that.

18 A I'm sure it would have some value large-
19 ly depending on the area and the wells we have drilled.

20 Q Well, what would you say the value is as
21 a qualified land person?

22 A I think that would be difficult to an-
23 swer because of the fact that we had to not pay for the
24 lease from Amoco. We earned it through a farmout. I be-
25 lieve Mr. Oppermann is more familiar with the dollar value

1 of acreage in that area.

2 Q Do you now feel that forced pooling will
3 allow Red Bluff to get a fair and equitable treatment to
4 protect their interest in this 40-acre subdivision?

5 A Yes, I do.

6 Q Are you not just using the forced pool-
7 ing statute to attempt to browbeat Red Bluff into giving
8 you a lease?

9 A I hardly think so, Mr. Jennings. I feel
10 like we've given Red Bluff Water Power Control District
11 ample opportunity to participate or accept an overriding
12 royalty. I would hardly call over nine months of negotia-
13 tions browbeating.

14 Q I think I understand you can't testify
15 to these negotiations because all these have been carried
16 out by Mr. Oppermann.

17 A At my direction.

18 Q One other thing, if Mr. Oppermann ac-
19 quired this lease would you have been obligated to pay Mr.
20 Oppermann and Mr. Bettis a 5 percent overriding royalty on
21 it?

22 A Under the terms of the Bettis/Oppermann
23 agreement which Mallon Oil Company was subject to by virtue
24 of the Amoco farmout, yes, if Les Oppermann was responsible
25

1 for the negotiation and the acceptances of some type of
2 settlement from Red Bluff Water Power Control District,
3 yes, under the terms of the contract they would, Bettis and
4 Oppermann would receive a 5 percent, 2-1/2 percent apiece,
5 which would be proportionately reduced.

6 Q But you were willing to give them 5
7 percent rather than deal direct with Red Bluff.

8 A I had hired Mr. Oppermann to handle the
9 negotiations because we are extremely busy and I did not
10 have time to do it. He's familiar with Red Bluff Water
11 Power Control District, specifically Mr. Haynes and Mr.
12 Fuller, and I felt at the time it was worth the expense to
13 have Mr. Oppermann negotiate it.

14 Since that time, not only have we (not
15 clearly understood) and of course that does change things
16 quite a bit.

17 Q But does that offset the 5 percent over-
18 riding royalty under a well? It seems to me that's a
19 pretty big bonus just to get the lease when you could get
20 it direct from someone else without having them in it.

21 A We were willing to pay Red Bluff Water
22 Power Control District. We were willing to give them a 5
23 percent overriding royalty regardless of what Mr. Oppermann
24 and Mr. Bettis' fee, but we feel that regardless of what
25 Mr. Oppermann and Bettis' fee, we feel that our offer to

1 Red Bluff Water Power Control District was fair and reason-
2 able.

3 Q Well, that would have involved you
4 having a better net revenue interest but you would still
5 not have -- you'd only have 76 percent in the event, would
6 you not, or 75 percent?

7 A In the event that Mr. Oppermann was suc-
8 cessful in his negotiations?

9 Q Yes.

10 A We offered a 5 percent and 5 percent
11 would have gone to Mr. Bettis and I believe that's 10 per-
12 cent overriding royalty.

13 Q 10 percent overriding royalty, and we
14 had (not clearly understood), but now you don't want to --
15 I understand -- are you going to give Mr. Oppermann 5 per-
16 cent overriding royalty on this well?

17 A He will have an overriding royalty on
18 Federal Lease 38636.

19 Q But do you have any obligation to him on
20 the Red Bluff Lease, which is No. 71599, or something like
21 that?

22 A Mr. Oppermann was not successful in his
23 negotiation, no, he's not entitled to an overriding royal-
24 ty.

25 Q Well, now, your position is better,

1 then, if you give Red Bluff their 5 percent, you -- you
2 would now be six points better off than you were.

3 A It's what you consider better, Mr. Jen-
4 nings, we've also put a lot of money into this particular
5 well in addition to the normal expenses in terms of legal
6 and having Mr. Oppermann, and Mr. Oppermann has put a lot
7 of time and effort into this, due to this sort of hearing,
8 and that type of thing.

9 Q Well, all these legal expenses will be
10 borne by all of your other people, all of your other par-
11 ticipants in the well, will they not?

12 A Yes, sir, but we do have an obligation
13 to our working interest partners to keep the expenses at a
14 minimum. We do agree to that in the operating agreement,
15 to be a prudent operator.

16 Q Yeah, but the clause in which you would
17 include the legal fees in your overhead, that would be
18 stricken from the operating agreement, would it not?

19 A We do not include our legal fees in our
20 overhead charge. No, we don't. They are billed out sep-
21 arately.

22 Q That is stricken from the COPAS form.
23 The COPAS form does (unclear) leave that out.

24 A We would have it stricken from the
25 actual operating agreement, part of the formal operating

1 agreement, not the COPAS. I believe it's in the COPAS,
2 also, but we've taken it out of the original operating
3 agreement, also.

4 Q Did you make any offer to Red Bluff for
5 its interest?

6 A We would like -- I have talked to Mr.
7 Fuller, we would like to follow through to Red Bluff on the
8 additional wells drilled the --

9 Q No, I'm talking about this one.

10 A If you wish to talk about the condition
11 of this particular well, the Amoco Federal No. 1 Well, no,
12 Mallon --

13 Q You're determined to force pool them and
14 nothing else. That's the only thing that will satisfy you.

15 A I believe you're the one determined, but
16 we at Mallon Oil Company feel that we have no other choice.

17 Q So you'll make money with any override,
18 you just want to earn it under the provisions of the
19 statute.

20 A We feel that they have every right to
21 participate.

22 Q I think we're well aware of that, but
23 that's the only thing they can do, is participate.

24 A At this stage of this hearing, yes.

25 Q And you have not made any effort since

1 last September to make a deal with Red Bluff and that ef-
2 fort was made when it would have been burdened by a 5 per-
3 cent overriding royalty for Mr. Oppermann and Mr. Bettis.

4 A Yes.

5 MR. JENNINGS: That's all.

6 MR. BROSTUEN: Mr. Padilla?

7

8 REDIRECT EXAMINATION

9 BY MR. PADILLA:

10 Q Ms. McClintock, has Red Bluff accepted
11 any offer that you have made to Red Bluff, any kind of
12 joinder or made any kind of a deal?

13 A Not to me, no. It was intimated by Mr.
14 Oppermann that they had agreed on 5 percent but we have
15 never received that in writing nor was that confirmed later
16 on by Red Bluff.

17 Q Have these delays -- you have -- well,
18 let me ask this question first. Do you have a continuous
19 drilling obligation in this project or this (unclear)?

20 A Yes, we do, under the Amoco farmout
21 we're required to drill a well every 90 days.

22 Q Have you been delayed in your drilling
23 program as a result of the delays that you have encountered
24 in this case?

25 A Yes.

1 Q Have you had to negotiate with Amoco
2 concerning extensions of time for your farmout agreements
3 as a result of the delays in this case?

4 A Yes, we have.

5 Q If you force pool the interest of Red
6 Bluff, you will have to pay and carry the working interest
7 of Red Bluff, is that correct?

8 A That is correct, and share it with our
9 working interest owners, if (not clearly audible).

10 Q Approximately how much money in rough
11 terms would you have to provide to drill or provide for Red
12 Bluff's interest?

13 A We would be responsible for 100 percent
14 of the working interest, which is the 24 percent identified
15 in Exhibit, the 24.3175, and the AFE charges, which are --
16 24 percent of whatever the AFE charges on Mallon Oil Com-
17 pany, et al, is responsible for carrying.

18 Q So very close to one-fourth, is that --

19 A That is correct.

20 Q And what are the total drilling costs
21 that you have shown on your exhibit? I believe it's
22 Exhibit Six.

23 A Yes. The total completed well costs are
24 \$313,600.

25 Q So in order to drill the well you would

1 have to provide one-fourth of that cost to carry the Red
2 Bluff interest.

3 A Yes, over and above Mallon Oil Company's
4 original working interest.

5 Q Are your economics for drilling this
6 well based on the entire 40-acre proration unit?

7 A Mr. Cox prepared the economics.

8 Q Okay. Ms. McClintock, do you believe
9 that all of the offers that you made to Red Bluff were
10 reasonable?

11 A Yes, I do.

12 MR. PADILLA: I believe that's
13 all I have, Mr. Chairman.

14 MR. BROSTUEN: All right,
15 thank you.

16 Mr. Jennings?

17 MR. JENNINGS: Just a couple
18 of questions.

19

20 RECROSS EXAMINATION

21 BY MR. JENNINGS:

22 Q How many -- when did you first get this
23 farmout from Worth?

24 A Worth took a farmout from Amoco, I mean
25 from Harry Bettis in September, 1983, and Mallon Oil Com-

1 pany negotiated with Worth Petroleum in 1985, I believe.

2 Q And how many extensions of -- since 1985
3 I believe, you've drilled how many wells? Six?

4 A No. Mallon Oil Company has only been
5 (unclear) made operator, so if you're talking about when
6 Mallon Oil Company was operator how many --

7 Q No, no, how many wells did you drill
8 since you became operator?

9 A Since we became operator, Mallon Oil
10 Company has drilled four, I believe -- five.

11 Q Five wells.

12 A Since Mallon Oil Company has been the
13 operator.

14 Q And you were named operator in 1985?

15 A To be quite honest with you, I don't re-
16 call when. It was over a length of time. We were invol-
17 ved in a lawsuit with Mr. Worth (not clearly audible) with
18 Worth Petroleum.

19 Q You don't know when you became operator?

20 A I do not --

21 Q Do you have the same operating agreement
22 now that you had with Worth?

23 A No, we don't.

24 Q Was the operating agreement that you had
25 with Worth, did that have a 400 percent penalty clause in

1 it?

2 A Yes, it did.

3 Q And you signed that one, too; you were a
4 non-operator in that one.

5 A We were a non-operator when we accepted
6 this farmout from Amoco.

7 Q Well, you said that you got a number of
8 extensions from Amoco. How many extensions have you gotten
9 or when did you get the last extension?

10 A For this particular well we've had to
11 request three different extensions, so I believe the last
12 extension was through October 1st to the 15th and then at
13 that time, we knew we would not meet that deadline and we
14 requested a February 1st deadline -- extension, which it
15 was granted.

16 Q Do you have a copy of that?

17 A No, I don't, not here.

18 Q Is it in your files?

19 A Yes, it is.

20 Q Would you furnish us and the Commission
21 copies of the 1st two extensions?

22 A Certainly.

23 MR. PADILLA: I have no objec-
24 tion.

25 MR. BROSTUEN: Does anyone

1 else have any further questions of the witness?

2 Bill?

3

4 QUESTIONS BY MR. HUMPHRIES:

5 Q When you first contacted -- maybe I'd
6 better restate that.

7 Were you first contacted by Red Bluff or
8 did you contact Red Bluff?

9 A In the initial negotiation?

10 Q Uh-huh.

11 A Mr. Oppermann contacted Red Bluff.

12 Q And at that time it was obvious that Red
13 Bluff did not have a lease?

14 A Mr. Oppermann contacted Red Bluff and
15 they did not have a lease. The lease was issued, I be-
16 lieve, in June of '88, so it was very recent.

17 Q The lease was issued in June of '88
18 under what authority?

19 A It's really (unclear), I think it's
20 actually a right-of-way and we've got a copy of that, I be-
21 lieve, or at least at the last hearing we did. It was a
22 compensatory royalty agreement and that's the authority it
23 was issued under. It was my understanding from the BLM it
24 was rather unusual.

25 Q So it was not issued subject to Federal

1 oil and gas leases.

2 A To be honest with you, I do not recall.
3 I do know when we got it it was different from the standard
4 oil and gas -- Federal oil and gas leases, and with the
5 drilling title opinion I believe my attorney went into some
6 detail concerning that issue and what are the differences
7 between the two leases. It's a very unusual lease.

8 Q So that at some point Red Bluff indi-
9 cated to you that they were certain they were going to ac-
10 quire this royalty interest and it was only a matter of
11 time.

12 A Yes. What had happened was when I talk-
13 ed to the BLM in order to be able to bid on the compensa-
14 tory royalty agreement, we were informed that Mallon Oil
15 Company, because they were not a record title owner, could
16 not bid; only Amoco Production Company, who is the record
17 title owner, could bid, as well as Red Bluff.

18 When I contacted Amoco to see if they
19 would bid, they informed me they could not tell me. It was
20 later on when I contacted I don't recall the name of the
21 individual, she said that it had been at least preliminar-
22 ily issued to Red Bluff Water Power Control District, only
23 a certain portion of it because they were waiting for the
24 final stamp of approval.

25 At that point we wanted to be -- we'd

1 been contacting Red Bluff, I mean Mr. Oppermann the year
2 before, and we actually waited until after a lease was
3 issued in order to finalize any agreement we could make,
4 you know, prior to the lease being issued.

5 Q When you say "bid" was it competitively
6 bid at one of the BLM sales?

7 A No. It was most unusual. What they do,
8 is they don't -- it's my understanding, Mr. Jennings might
9 be able to correct me, I don't believe it's bid in terms of
10 any monetary amount but actually bid on the royalty, how
11 much you're going to pay for a royalty, so no money is ac-
12 tually paid, I believe. I believe you just bid on the
13 royalty.

14 Q That would account for a 14 percent --

15 A Right.

16 Q -- royalty.

17 MR. PADILLA: I'll be glad to
18 inform the Commission about the lease.

19 MR. HUMPHRIES: No, I under-
20 stand now how -- why Red Bluff would have anticipated the
21 lease on the bid.

22 Q Now, you indicated and I apologize, I
23 was -- I didn't have the time to listen to your answer,
24 that you informed Red Bluff, I believe you and Mr. Jennings
25 did, that although the Commission not only is to allow for

1 a 400 percent penalty, you felt like that your agreement
2 was not subject to the ruling of the Oil Conservation Div-
3 ision examiner hearing?

4 A It was my understanding that we had 30
5 days from the decision of the hearing in which to allow
6 them time to participate. At that point I mailed them our
7 operating agreement and AFE giving them 30 days to elect to
8 participate.

9 Q To elect to participate as a working in-
10 terest.

11 A Correct. And to the operating agreement
12 we felt wouldn't deny -- was not affected by the decision
13 and we felt the 400 percent was fair and reasonable.

14 MR. HUMPHRIES: I have no fur-
15 there questions.

16 MR. BROSTUEN: I only have one
17 question for clarification.

18
19 QUESTIONS BY MR. BROSTUEN:

20 Q I've heard reference to the Red Bluff
21 Reservoir and the Red Bluff Water Power Control District.
22 What are the relationships between those two entities and
23 perhaps you can explain that to me.

24 A Perhaps Mr. Jennings would be better to
25 answer that.

1 MR. JENNINGS: We just refer
2 to it as Red Bluff. It's all one organization. It's a
3 water power control established in the early 1940's for ir-
4 rigation and power, although we no longer develop it for
5 power but it's all one and the same. They are not two
6 different entities. Red Bluff Reservoir is where the water
7 is but the right-of-way and the lease goes to Red Bluff
8 Water Power Control District.

9 MR. BROSTUEN: I see, it's all
10 one.

11 MR. HUMPHRIES: May I follow
12 up?

13 I'm not -- do I understand,
14 the, it's a Texas corporation and not a federally endorsed
15 irrigation project?

16 MR. JENNINGS: Well, I'm sure
17 the Federal put the money up for it.

18 MR. HUMPHRIES: But would it
19 be similar to --

20 MR. JENNINGS: The Bureau of
21 Reclamation was involved in it at that time, as I under-
22 stand, and they made the reservoir at the time, you know,
23 it's on the Pecos River.

24 MR. HUMPHRIES: Would it be
25 similar to a conservancy district or authorized irrigation

1 district?

2 MR. JENNINGS: I would say
3 that, yes. They're definitely not involved in (unclear) so
4 they can participate in the well; they're owned by the
5 water users or what not, and this -- this is under the act
6 of I believe it was May 21, 1930, (not clearly audible)

7 MR. HUMPHRIES: Thank you.

8

9

RE CROSS EXAMINATION

10 BY MR. JENNINGS:

11 Q There's one thing. Do you remember me
12 calling you in Santa Fe and I can't remember what -- just
13 after the sale had been conducted by the Bureau of Land
14 Management and advising you that Red Bluff Water Power Con-
15 trol District was successful bidder?

16 A Yes.

17 Q Do you remember me advising you a long
18 time ago just after I talked to the -- or just after I saw
19 your location of Red Bluff's interest?

20 A Yes.

21 MR. PADILLA: Mr. Chairman, I
22 have nothing further.

23 MR. BROSTUEN: Okay, did you
24 wish to enter these exhibits at this time?

25 MR. PADILLA: Yes, sir. We'll

1 offer Exhibits One through Six.

2 MR. BROSTUEN: They will be
3 admitted.

4 We'll recess for ten minutes.

5
6 (Thereupon a recess was taken.)

7
8 MR. BROSTUEN: Ms. McClintock,
9 we're going to recall you to the stand, please.

10 Mr. Jennings?

11 Q Ms. McClintock, I want to hand you here
12 a memorandum which I just took from my file concerning this
13 matter and the first date is August 20, 1987, and there's a
14 little note on there dated 8-24, and there's another memo-
15 randum dated September 21, 1987, about Red Bluff, and these
16 were -- this was taken from my file.

17 I want you to read this, it will take a
18 minute, it's three pages, if the Commission will bear with
19 me while she can read it and then tell me what statements
20 recited in this memorandum are not correct.

21 MR. PADILLA: May I have a
22 second to read that memorandum?

23 MR. BROSTUEN: Sure.

24 You may proceed, Mr. Jennings.

25 Q Ms. McClintock, after you've read that I

1 wish you would point out the areas that you want -- the
2 areas, the statements therein that you feel are not cor-
3 rect.

4 MR. BROSTUEN: Can we please
5 identify the memorandum?

6 MR. JENNINGS: I will -- I
7 will do it for this purpose. I -- I don't have any copies
8 yet but we will identify this as Red Bluff Exhibit Number
9 One.

10 MR. BROSTUEN: And it's a
11 memorandum from whom to whom?

12 MR. JENNINGS: It's a memoran-
13 dum, I thought I stated this, maybe I didn't, but from me
14 to my file in connection with the transactions. These are
15 memos made in the course of negotiations which I prepared
16 and placed in my file. I'm a pretty old guy and it's hard
17 to remember everything and I just want to offer these to
18 this witness.

19 MR. HUMPHRIES: Mr. Chairman,
20 may I suggest I'll take Mr. Jennings and get a copy of that
21 made so the Commission may have it.

22 MR. BROSTUEN: Very good.
23 Let's -- Mr. Padilla's got something.

24 MR. PADILLA: Mr. Chairman --

25 MR. JENNINGS: That's fine.

1 I'll be glad for you -- that would be great. You can read
2 it. I want you to read it now.

3 MR. BROSTUEN: Mr. Padilla.

4 MR. PADILLA: I'm going to
5 object to the -- to this introduction of this memorandum.
6 If Mr. Jennings wants to testify or bring witnesses, he may
7 bring witnesses to refute anything that Ms. McClintock may
8 have said. I'm not sure what the purpose of introducing
9 his own internal memorandum is. As I understand, that's an
10 internal memorandum and it's Mr. Jennings version of what-
11 ever may have occurred in conversation, or whatever was
12 said in conversation between Mr. Jennings and Ms. McClin-
13 tock here. Obviously he's trying to, I believe, refute
14 anything that -- something that she may have said in her
15 testimony.

16 On that basis I believe that's
17 hearsay. If Mr. Jennings is willing to take the stand and
18 testify concerning that, I suppose that he should be sworn
19 in to introduce this memorandum in that fashion.

20 MR. BROSTUEN: Well, I sustain
21 your objection.

22 Mr. Jennings, would it be your
23 intention to want to be placed under oath and present your
24 memorandum yourself?

25 MR. JENNINGS: No, sir. I'm

1 not a professional witness. I'm a lawyer and I don't
2 propose to testify. I think this is an exception to the
3 hearsay rule. It's a memorandum made in the ordinary
4 course of business. And this memorandum is a memorandum
5 that I made and placed in my file back in 1987 after con-
6 versations with Ms. McClintock, and I want to offer this to
7 show the history of the relations and conversations we had,
8 I have personally had with her about Red Bluff being --
9 containing a lease and then making a deal with Mallon and
10 -- concerning this lease in question, and I think it's an
11 exception to the hearsay rule. I think counsel would ad-
12 vise you it's a memorandum made in the ordinary course of
13 business. That's the only reason I offer it, to show what
14 -- maybe Mr. Hayes could -- but he's dead, unfortunately,
15 being in his position, he may have talked to the young lady
16 about some of the deal and I just want to show what -- and
17 this will give you some idea about Red Bluff's participa-
18 tion without Mr. Oppermann's help.

19 MR. PADILLA: Mr. Chairman, I
20 don't have any quarrel with Mr. Jennings' assessment of the
21 hearsay rule with respect to records used in the ordinary
22 course of business, if Mr. Jennings was a witness or some-
23 one in his organization or his side was the one presenting
24 the memorandum. I just don't think it's proper for Mr.
25 Jennings to try to discredit Ms. McClintock with something

1 that she did not write.

2 MR. BROSTUEN: I agree. Mr.
3 Jennings, if you would care to withhold the memorandum and
4 ask the questions from the memorandum in conversation, that
5 would be acceptable.

6 MR. JENNINGS: Well, this is
7 -- well, I'm must trying to -- I don't want to be here all
8 day and it's pretty lengthy. I just wanted her to point
9 out what -- if the notes I made were fine, that's all I
10 wanted to know, but if they're not correct, she can point
11 them out. That's the reason I was doing it this way was so
12 I wouldn't have to ask a specific question on each thing.

13 Now I can go through that and
14 do it, but I just think it would be pertinent. You can
15 take this and you don't want to consider it, why, that's
16 your business. If I show you that and she denies of the
17 statements I put down there, I just want her to point them
18 out to you.

19 Unfortunately I was a party to
20 the location at that time and I don't want to be in a
21 position to come up here and testify.

22 MR. BROSTUEN: What is the --
23 I guess I fail to see the direction we're going with this,
24 Mr. Jennings, for her to concur with that statement or --

25 MR. JENNINGS: Well, just I

1 told her to read it and point out anything that wasn't
2 correct and then I want to show it to you, or I'll be glad
3 to show it to you or we can get copies that would expedite it,
4 but maybe you wouldn't want to do that.

5 I'm just trying to save a lot
6 of time.

7 MR. BROSTUEN: Well, I've
8 sustained Mr. Padilla's objection and I will continue to,
9 so I think we should move on to something else.

10 If you want to present your --
11 this as evidence and present yourself as a witness, that
12 would be acceptable (not clearly audible) --

13 MR. JENNINGS: Well, do you
14 want me to ask her about all these things?

15 MR. BROSTUEN: What purpose
16 would it serve, Mr. Jennings?

17 MR. JENNINGS: Well, I wanted
18 to show the absurdity of her going to get Oppermann to deal
19 with Red Bluff and put another 5 percent on this lease,
20 when I originally -- in this document it shows that I
21 contacted her I believe it was in August of 1987 after I
22 noticed the notice of intention to drill.

23 And I advised her and she was
24 aware of it and she sent somebody, Mr. -- that man at the
25 BLM in Roswell -- Armando Lopez, had advised her to go

1 ahead -- they'd made -- they'd made this location for the
2 well, and he gave her this advice to go ahead and drill.

3 And I told her about the Red
4 Bluff position and that Red Bluff, I indicated that Red
5 Bluff was trying to get a lease and would get the lease,
6 and I indicated therein and we discussed a farmout, and
7 things like that in there, and then there was a later deal
8 when I talked to her and pointed out other things. And I
9 just want to show that -- if this is not correct, I just
10 want her to tell me that.

11 MR. BROSTUEN: Mr. Jennings,
12 is this -- has this been presented in previous hearings or
13 --

14 MR. JENNINGS: No. It's just
15 -- it's just a memorandum on yellow paper --

16 MR. BROSTUEN: At this time --

17 MR. JENNINGS: -- that I made
18 after my conversations with this lady about our -- the
19 nature of our discussion, discussions, because I couldn't
20 remember them, and this ties down the times and everything.

21 MR. BROSTUEN: I think at this
22 time we'll proceed with the -- with the next witness and at
23 the end of the -- at the end of the hearing, Mr. Jennings,
24 then we may consider your request.

25 The witness is excused.

1 Mr. Padilla.
2 MR. PADILLA: Mr. Chairman,
3 I'll call Mr. Oppermann.
4

5 L. E. OPPERMANN,
6 being called as a witness and being duly sworn upon his
7 oath, testified as follows, to-wit:
8

9 DIRECT EXAMINATION

10 BY MR. PADILLA:

11 Q Mr. Oppermann, would you for the record
12 please state your full name and where you reside?

13 A L. E. Oppermann, Midland, Texas.

14 Q Mr. Oppermann, were you a witness at the
15 Division hearing in this matter?

16 A Yes.

17 Q And have you previously testified before
18 the Oil Conservation Division as a petroleum landman?

19 A Yes.

20 Q And your credentials have been accepted
21 as a matter of record?

22 A Yes.

23 Q You were involved in the negotiations
24 over obtaining a joinder or some other agreement with Red
25 Bluff?

1 A Yes, sir.

2 MR. PADILLA: Mr. Chairman, we
3 tender Mr. Oppermann as a petroleum landman.

4 MR. BROSTUEN: His qualifica-
5 tions are acceptable.

6 Q Mr. Oppermann, let me ask you to detail
7 the -- in general, the negotiations that you had with Red
8 Bluff and in so doing I would ask you to start on the very
9 first time that you contacted Red Bluff concerning (not
10 clearly understood.)

11 A Well, first of all, we may go back a
12 little further in 1983 when we put the deal together we
13 were aware of the 200+ acres that were outstanding in the
14 Amoco lease when we received the farmout.

15 We made inquiries about it and then we
16 finally limited it to where -- where Red Bluff had the op-
17 tion as a right-of-way owner to acquire the lease.

18 So I talked on the telephone in March of
19 April, probably in April of 1988 with Mr. John Hayes and on
20 May the 24th, 1988 I met with Doug Fuller and John Hayes in
21 Pecos about the lease after it had been issued.

22 Q Mr. Hayes is the gentleman that is de-
23 ceased at this time.

24 A Yes, sir.

25 Q At that time you were dealing with Mr.

1 Fuller's well, is that correct?

2 A I had met with Mr. Fuller personally on
3 May the 24th. I was dealing with Mr. Hayes.

4 Q You mentioned that as far back as 1983
5 you were trying to buy this acreage. Was that trying to
6 acquire it on behalf of Mallon or on behalf of yourself, or
7 how was this --

8 A On behalf of myself and Worth Petroleum
9 Company.

10 Q Now, did you acquire that interest?

11 A No.

12 Q You mentioned 200 acres. Does that mean
13 200 acres that is not under the Red Bluff acreage or what
14 -- what --

15 A It's a 207.something acres that's
16 excepted out of the Amoco lease where the wells have been
17 drilled on.

18 Q And that is the Red Bluff acreage?

19 A That is the Red Bluff acreage.

20 Q Okay, now tell us, why were you trying
21 to acquire this acreage?

22 A Because we saw after we drilled the
23 first couple of wells, we had some producing oil wells and
24 we were trying to tie up the whole and trying to figure out
25 a way, what to do, and I first contacted Joe Shultz of

1 Shultz Abstract here in Santa Fe and he did the initial
2 investigation and everything lead to a deadend.

3 Q Why did it lead to a deadend?

4 A Because nobody -- it was unique situa-
5 tion and nobody at BLM knew actually what to do. So we
6 tried to get it put up as a bid with directional drilling
7 stipulation on the lake itself, just like any other BLM,
8 but we were told by statute it was set aside in a differ-
9 ent category. This is back, to the best of my memory here,
10 in '83 or '84.

11 Q Well, what happened after that? This,
12 well, how did this lease -- do you know how this lease be-
13 came an addition to Red Bluff?

14 A Not the details, no, sir, but I know it
15 was issued and it took a long time before the lease was
16 actually issued. I think Mr. Jennings had a lot to do with
17 getting the lease issued to Red Bluff, and I knew Red Bluff
18 was getting the lease and it probably took about six months
19 to a year before the lease was actually issued after they
20 advised that they were getting a lease on the -- on the
21 acreage.

22 Q Approximately what time did you start
23 negotiating with Red Bluff?

24 A Well, I wrote them a letter in '87. At
25 that time I was assuming that they were getting a lease

1 with a 12-1/2 percent burden and I sent them a letter. I
2 think a copy is there enclosed, where I was asking them to
3 furnish me an assignment retaining an override being the
4 difference between current burdens on the lease and 80 per-
5 cent.

6 Q Mr. Oppermann, I've handed you what we
7 have marked as Exhibit Number Seven and ask you to identify
8 that for the Commission, please.

9 Yes, that's a letter of April 22nd from
10 myself to John Hayes at Red Bluff; a letter dated June the
11 7th, 1988, from myself to Red Bluff; and a letter dated
12 September 9th, 1988, from myself to Karen McClintock, fur-
13 nishing copies of these letters showing my actual offers to
14 Red Bluff.

15 Q Why did Mallon contact you to acquire
16 this acreage?

17 A Back in 1983 when this deal was sold to
18 Worth Petroleum, an area of mutual interest was formed,
19 which included all of that township. I think that's Town-
20 ship 26 South, Range 29 East, and under the terms of the
21 agreement with Worth, which was later acquired by Mallon, I
22 was to do the land work and to acquire leases for the Fed-
23 eral accounts in this area.

24 Q As a result of the assignment from Worth
25 or the transfer, Mallon was under the basic contract --

1 A Right.

2 Q -- for you to do the land work.

3 A Yes, sir. Mallon assumed position in
4 the agreement.

5 Q And that was by virtue of an area of
6 mutual interest.

7 A Yes, sir.

8 Q That you had with Worth.

9 A Right.

10 Q Okay, now tell us what -- further about
11 your efforts to -- and meetings to acquire this interest
12 for Red Bluff.

13 A I first met with -- I mean talked with
14 Mr. Hayes on the telephone several times and finally agreed
15 to -- I knew, personally, I knew Dub Fuller, who was
16 President, I think is his title, of Red Bluff. I had
17 dealings with him before on the Texas side when I worked
18 for Exxon. I bought leases from Red Bluff and I met him.

19 So I made arrangements to meet with Mr.
20 Fuller and Mr. Hayes on May the 24th in their office in
21 Pecos.

22 We met. We discussed all the possibili-
23 ties and I left Pecos that afternoon with the assumption
24 that I felt like we had a deal on this present location,
25 being the Mallon Red Bluff No. 1, with a 5 percent over-

1 ride on it and possibly the same deal on the No. 14, which
2 was an offset to the 13, which is the most recent well
3 drilled in the area, and I left there with the feeling that
4 we had a deal at 5 percent.

5 Q What -- what happened after that?

6 A I contacted Ms. McClintock at Mallon,
7 told her I felt like we had a successful visit; we had a
8 deal, and they had to bring it up at the board and they
9 were meeting, I think their meeting is on the first Monday
10 or Tuesday in each month, so it would be probably two weeks
11 and they would come back.

12 I was wrong in my assumption and Mr.
13 Hayes come back and said that the 5 percent was not a sat-
14 isfactory deal.

15 Q Did he make -- did he give you an ex-
16 planation why 5 percent was not acceptable?

17 A Not that I can recall. He was asking
18 for a lot bigger override, I understand that.

19 Q Now you mentioned before that you had
20 dealt with Red Bluff on prior occasions in Texas. Can you
21 tell us about that?

22 A Yes. I was working for Exxon and they
23 had some acreage that we were interested in acquiring and
24 they had to go through the statute in Texas by advertising
25 it three weeks in the Pecos paper and I think two neighbor-

1 ing papers, and after that the lease was issued on a bid-
2 type bid being on bonus money, royalty and term.

3 Q About how many leases did you transact
4 with Red Bluff?

5 A I'd say roughly five to ten.

6 Q Well, did you consider the people you
7 dealt with as novices in the oil business?

8 A No, sir.

9 Q How recent did you have any communica-
10 tions from Red Bluff?

11 A After, say, about the middle of June, I
12 talked to them one or two times after they --

13 Q In what year?

14 A June of 1988, after they turned down the
15 offer which was a 5 percent offer that was made on the
16 visit of May 24th.

17 After that I furnished them with num-
18 erous production records and other information which I
19 think is stated in the letter. That was the last letter
20 whereby I justified our overriding offer of 5 percent.

21 And I've contacted, I've talked to Mr.
22 Hayes one or two times after that.

23 Q And I take it you failed to reach any
24 agreement.

25 A Right. I reported to Ms. McClintock

1 that my 5 percent override was not accepted.

2 MR. PADILLA: Mr. Chairman, I
3 believe that's all I have of this witness.

4 I will offer Exhibit Number
5 Seven.

6 MR. BROSTUEN: Any objection,
7 Mr. Jennings?

8 MR. JENNINGS: No.

9 MR. HUMPHRIES: I have a ques-
10 tion. I think it's just a misstatement. My letter says
11 September the 6th and Mr. Oppermann said September 9th.
12 Are we in fact looking at the same letter?

13 A Maybe I just looked at the wrong date. I
14 know --

15 MR. HUMPHRIES: You read it
16 upside down.

17 A Yeah, it is 6.

18 MR. HUMPHRIES: All right, I
19 just wanted to make sure I had the same letter.

20 A I'm sorry.

21 MR. HUMPHRIES: Thank you.

22 MR. BROSTUEN: Mr. Jennings?

23

24 CROSS EXAMINATION

25 BY MR. JENNINGS:

1 Q You said that offer was not -- Red Bluff
2 finally advised you that that offer was not acceptable.

3 A The offer of the 5 percent override?

4 Q Yes, sir.

5 A No, sir.

6 Q Did they tell you why?

7 A Yes, they told me why. They wanted a
8 higher override. They felt that the 5 percent was too low.

9 Q But if you had -- they had of accepted
10 that offer, then you would have -- in addition to the 5
11 percent that they would get, you would have gotten 5 per-
12 cent, too.

13 A Yes, sir.

14 Q Did -- and when did -- I believe you
15 stated you had these discussions in March and May, April
16 and May --

17 A April and May, yes.

18 Q -- of 1988.

19 A Yes, sir.

20 Q And you hadn't talked to Red Bluff about
21 this particular figure before that date.

22 A Yes, sir, there's a letter in there
23 where I talked to them in '87 and I talked to them in '86.
24 I probably talked to them every year since '83.

25 Q And did they advise you after the --

1 that's part of Exhibit Seven, is it not?

2 A Yes, sir.

3 Q And you wrote them in April of 1987?

4 A Yes, sir.

5 Q Were you working for yourself at that
6 time or for Mallon?

7 A I was working for myself in behalf of
8 Mallon, due to our area of mutual interest.

9 Q And at all times you felt that since
10 Mallon acquires this lease and even though they acquire it
11 direct, that you would be entitled to 5 percent?

12 A Yes, sir, that's part of the letter
13 agreement and the area of mutual interest.

14 Q So notwithstanding anything else, you're
15 entitled to 5 percent on this lease. If we force pooled it,
16 would you be entitled to 5 percent, too?

17 A No, sir.

18 Q So it's only if --

19 A Only if the lease is acquired.

20 Q By them?

21 A By them or me. If it's --

22 Q Well, are they forbidden under the
23 letter agreement from trying to acquire a lease directly
24 during the time that you were acquiring?

25 A They could acquire a lease but my over-

1 ride and my partner's override was still binding. In the
2 same light, if I acquired it, I had to offer that to them
3 first in that township before I could offer it to any other
4 party.

5 Q What was the term of that letter, did it
6 go forever, or what?

7 A There was no limitation on the term of
8 it.

9 Q Was this a letter dated February 23rd,
10 1983?

11 A Yes, sir, I think that is the letter,
12 agreement --

13 Q This letter?

14 A -- of mutual interest. Yes, sir.

15 Q To expedite matters, I think that was
16 Exhibit One in the -- Red Bluff Exhibit One -- that's the
17 first hearing. I'm sorry I confused you. This --
18

19 (Thereupon a discussion was had off the record.)
20

21 MR. PADILLA; To clarify the
22 record, that was Exhibit One at the division hearing, Red
23 Bluff Exhibit Number One.

24 Q Would you point out to me on Exhibit
25 Two, Red Bluff Exhibit Two, the language which gives you a

1 -- make that interest applicable to Red Bluff's acreage?

2 A You want me to read the whole thing or
3 just --

4 Q No, just to point out.

5 A "If Bettis, et al, is successful in ac-
6 quiring a farmout and/or leases in the AMI, Bettis --"

7 MR. BROSTUEN: What paragraph
8 is that?

9 A That is paragraph 4. "-- Bettis, et al,
10 shall retain a 2 percent of 8/8 override in any acreage
11 having a 75 [percent] net revenue interest or less and a 5
12 percent of 8/8 override in any acreage having a 77
13 [percent] net revenue interest or greater."

14 You want me to continue reading?

15 Q Well, whatever -- whatever it says. If
16 that's all it says, that's fine.

17 A "Worth shall pay 100 percent of all cost
18 in securing said additional acreage. Said override shall
19 apply to all rights acquired and shall not be limited to
20 depth. Worth shall pay L. E. Oppermann \$200 per diem plus
21 expenses to handle all landwork in the AMI. Said landwork
22 shall include acquiring farmouts, purchasing leases, curing
23 titles, ordering abstracts, and any other related work
24 which Worth may require. Worth shall pay to Harry M.
25 Bettis, Jr., \$200 per diem plus expenses to handle all

1 geologic work which Worth may require in the AMI. If Bettis
2 et al shall acquire any additional acreage in the AMI,
3 Worth shall have the right to acquire said acreage on the
4 terms set out above. If Worth does not wish to acquire the
5 acreage, Worth shall have ten days after -- after the
6 acreage is presented to advise Bettis et al in writing that
7 it does not wish to acquire the acreage. Bettis et al
8 shall have the right to retain the acreage for its own
9 account or assign the acreage to a third party."

10 Q Were you ever able to acquire a lease
11 from Red Bluff?

12 A Who?

13 Q Red Bluff.

14 A No.

15 Q Now this letter was dated 19 -- February
16 23rd, 1983.

17 A Yes, sir.

18 Q How many leases did you acquire under
19 the terms of this agreement after 1983?

20 A I acquired a farmout from Gulf Oil
21 Company, which is now Chevron.

22 I acquired a lease from Holly Energy,
23 which is now Enron.

24 I acquired a farmout from Exxon.

25 I think that's the extent of it.

1 Q When were those acquired?

2 A They were acquired in '83, '84 and '85.

3 Q After '85 you didn't acquire any more?

4 A No, sir.

5 Q And I believe you've already testified
6 you weren't able to complete a deal with Mr. Hayes and Mr.
7 Fuller in the spring of 19 --

8 A Yes, sir.

9 Q Now, you're a qualified landman, Mr. Op-
10 permann. Do you have any idea as to the value of acreage
11 in this area?

12 A Are you talking about straight lease?

13 Q Yes.

14 A I would say probably between \$50 and
15 \$100.

16 Q And did you -- have you acquired leases
17 in this township other than by farmout?

18 A No. Yes, we bought a lease from Holly
19 Energy Company and I don't recall the price. That was back
20 in 1984 and the price of oil was \$28.00.

21 Q Do you remember what overrides or bur-
22 dens were placed on the other farmouts that you acquired
23 from various major companies that you mentioned?

24 A Yes. They were usually 75 percent. I
25 think the Gulf was 77 and back to 75 after payout.

1 The Holly lease was 80-some percent, I
2 think. I think that's right, 81, or something.

3 Q And all these -- you had to drill to
4 earn them. They were all farmouts.

5 A Not the Holly lease.

6 Q Holly, that was not.

7 A Yes, sir, that was a straight --

8 Q And you don't remember the consideration
9 for that?

10 A It was 200 acres. I think the consider-
11 ation was -- I think somewhere around \$10,000, which would
12 make it \$50 an acre, but I -- somewhere in that range.

13 Q Well, where was -- where was that lease?

14 A It was in the section to the north.

15 Q It have a short term?

16 A It had a short term.

17 Q And has it now since expired?

18 A No. It has four drilling wells -- four
19 producing wells on it.

20 Q Those Mallon wells?

21 A Those are other wells.

22 Q Mallon didn't take that lease, that
23 acreage.

24 A Well, Worth petroleum did. This was be-
25 fore Mallon acquired Worth or their position in the acre-

1 age.

2 Q Well, what is a customary burden (not
3 clearly understood) the customary net revenue interest (not
4 understood) --

5 MR. PADILLA: For what area?

6 A I don't understand the question.

7 Q Well, what -- what -- on a farmout what
8 in this area, what do you generally -- what net revenue
9 interest do you generally earn?

10 A Generally, at that time, when the price
11 of oil was \$28.00, I'd say it was 75. Now I don't think
12 anybody would drill it unless it's about 78 to 80.

13 Q And if Mallon in this deal would get 81
14 percent net revenue interest it would be a good deal in
15 your opinion, wouldn't it?

16 A Well, in my opinion if they would take
17 that it would be a 76, it wouldn't be 81, because my part-
18 ner and myself would be then entitled to a 5 percent over-
19 ride.

20 Q Even if they assign it.

21 A Right.

22 Q So that makes this lease uneconomic, I
23 guess, the lease that was issued later, long since later,
24 to Red Bluff.

25 A I don't think I'm qualified to say it's

1 uneconomical or not.

2 MR. JENNINGS: I believe
3 that's all.

4 MR. PADILLA: I have no
5 further questions, Mr. Chairman.

6 MR. JENNINGS: Oh, let me -- I
7 forgot to offer -- I will offer Red Bluff Exhibit Two and
8 once again I don't have any copies, but it's a letter dated
9 February 23.

10 MR. BROSTUEN: Without objec-
11 tion it will be admitted.

12 Mr. Padilla.

13 MR. PADILLA: I would like to
14 all Mr. Cox at this time.

15 MR. BROSTUEN: Okay, if there
16 are no -- are there any further questions of Mr. -- I
17 thought you were going to redirect, I'm sorry. Any further
18 questions?

19 If not, he'll be excused.

20 Mr. Padilla?

21 MR. PADILLA: Yes, sir.

22 MR. BROSTUEN: How long do you
23 think we're going to be --

24 MR. PADILLA: Well, judging
25 from the -- I think we'll be probably an hour, to be safe.

1 MR. BROSTUEN: We have a
2 problem, at quarter to Mr. Humphries has to leave and we
3 require a quorum for the hearing. What is your pleasure?
4 Do you want to continue after lunch? Take a break till
5 1:30? We could perhaps take a recess at this time and
6 perhaps have a long, leisurely lunch.

7 MR. PADILLA: I'm just advised
8 that they all have planes at 2:20 but I think if Mr. Oppen-
9 mann is excused he can leave at this point.

10 MR. BROSTUEN: Do you have any
11 other questions, Mr. Jennings, recalling Mr. Oppermann?

12
13 (There followed a discussion off the record and the noon
14 recess was taken.)

15
16 MR. BROSTUEN: We'll get this
17 hearing back to order here.

18 MR. PADILLA: Mr. Chairman,
19 I'll call Joe Cox at this time.

20
21 JOE H. COX, JR.,
22 being called as a witness and being duly sworn upon his
23 oath, testified as follows, to-wit:

24
25

DIRECT EXAMINATION

BY MR. PADILLA:

Q Mr. Cox, for the record would you please state your name and by whom you're employed?

A Yes. My name is Joe H. Cox, Jr., and I'm with Mallon Oil Company.

Q What are your duties as -- for Mallon?

A I'm an engineer and I do engineering work and development geology work.

Q Have you previously been qualified as a geologist and as an engineer before the Division?

A Yes.

MR. PADILLA: We're going to stipulate his qualifications, Mr. Chairman.

MR. JENNINGS: (Unclear).

MR. BROSTUEN: Nevertheless, I will accept the qualifications, Mr. Jennings.

MR. PADILLA: As a geologist and an engineer.

MR. BROSTUEN: As a geologist and an engineer.

Q Mr. Cox, what has been your involvement in trying to make a deal with Red Bluff in this case?

A Well, I got involved with this when a -- oh, I guess it was back in early part of '88 when we were

1 negotiating with them, trying to help explain our economic
2 situation in drilling wells out there to Mr. Hayes and Mr.
3 --

4 Q I'd like for you to refer to Exhibit
5 Eight, which we have marked, and have you tell the Commis-
6 sion what that is and what it contains.

7 A It's a collection of letters, corres-
8 pondence between myself and John Hayes, some of which were
9 carbons to Mr. Jennings, I believe.

10 Q What do they say?

11 A The first ones were -- we sent an AFE
12 (not clearly understood) this was after we negotiated for
13 some time and decided that forced pooling was the only al-
14 ternative.

15 Q Was the AFE signed?

16 A No, they did not respond to that.

17 Q Is that AFE reasonable for that area?

18 A It -- it's with our actual costs on it.

19 Q Have the drilling costs changed in any
20 way from then to now?

21 A There hasn't been any substantial change
22 in any of the costs, no.

23 Q Are the figures on that AFE still valid?

24 A Yes.

25 Q And reasonable?

Q Mr. Cox, let me now refer you to our
Nine and I'll have you look at Exhibits Nine, Ten
even and have you tell the Commission what those
are and what they contain.

The second is a -- is a corrected copy of the same plat that tried to allow for later a survey change that was never done, that kept the original metes and bounds survey from closing.

A Well, in the second plat, the first plat is just going literally from the metes and bounds description; it lacked, I believe, 320.26 feet of closure, which meant that there was some sort of error in either the original survey or in this case I think we -- it was determined it was from a later change in the base map, base survey, that was done.

And the second plat tries to correct for

1 that by starting from the section corner which is described
2 in the survey and forcing closure with what they describe
3 in our papers as limits.

4 Q Did you ask the Bureau of Land Manage-
5 ment as to the reasonableness of the second plat?

6 A Yes. In a letter received from them
7 that, well, in confirmed our position and in this letter
8 they said this is probably the best approach to solving it,
9 since they'd have to stay with their original reserve esti-
10 mate.

11 Q And is that in the form of Exhibit
12 Eleven?

13 A Yes. It's a letter John Gumert of the
14 BLM.

15 Q Now what are exhibits -- what is Exhibit
16 Ten?

17 A Okay, it's a letter to the BLM request-
18 ing their assessment of this plat.

19 Q And does the BLM letter indicate that
20 the second plat is reasonably accurate for purposes of
21 pooling?

22 A Yes, Gumert states that in his letter.

23 Q Do you have anything further concerning
24 Exhibits Nine, Ten and Eleven?

25 A I don't believe so. The problem

1 basically is something that, according to the BLM, could
2 not be resolved in any other way than some form of reason-
3 able agreement such as this.

4 They would not re-survey it, in other
5 words.

6 Q Let's go on now to what we have marked
7 as Exhibit Number Twelve and have you identify that for the
8 Commission, please.

9 A Yes. This is just a xeroxed shot of a
10 topographic map, USGS base, with the Amoco Federal Lease
11 outlined in orange, excluding the -- the 40-acre tract
12 there in Section 27 and the 120 acres down in the lower
13 Part of Section 27, and excluding the Red Bluff right-of-
14 way acreage.

15 Q The only acreage you don't control is
16 that 40-acre tract and the Red Bluff property shown on this
17 labeled Red Bluff Reservoir, is that correct?

18 A That's right.

19 Q And I notice there are some other num-
20 bers in there. Are those the wells that are operated by
21 Mallon on the righthand side of that within the orange?

22 A That's correct, those are Mallon oper-
23 ated wells.

24 Q Okay.

25 A I might add that the pink outline is the

1 Red Bluff outline, the acreage was originally surveyed on
2 an elevation datum that was -- it will not be the spillway
3 elevation on the dam (unclear).

4 Q And is that a metes and bounds descrip-
5 tion?

6 A Right, that's that metes and bounds 1938
7 survey.

8 Q Let's go on to what we have marked as
9 Exhibit Number Thirteen.

10 A Okay, this is just some support data for
11 the lease operating expenses we used in the -- in the
12 economic assessment of a typical well drilled on a lease,
13 and that leaves about \$2200 a month (not clearly under-
14 stood) and that works out with this group of wells that was
15 in this exhibit.

16 Q What -- what does this show in relation
17 to the drilling of the proposed well?

18 A Well, it just -- in arriving at econo-
19 ics that we calculate for a well, it gives us a basis for
20 what we can expect to spend to operate that well after we
21 complete it, and the numbers that go into this sheet are
22 actual expenditures from the wells.

23 Q Where is the bottom line of this exhi-
24 bit, let me -- let me ask that question?

25 A Well, each -- each well has its own

1 figure. There's a line lefthand title there that says
2 "Total Operating Expenses" and then they have the respec-
3 tive months and a 6-month total and a year to date total,
4 and averaging the months is where we came up with our \$2200
5 a month cost.

6 Q Now, then looking at -- does each page,
7 does each page apply to a different well?

8 A Yes. I think this covers all wells
9 in the lease.

10 Q Okay, the bottom line is your profit, I
11 take it, is that what that is?

12 A Yes. It's not -- that is not a very
13 accurate figure because it doesn't take the royalties into
14 account, so it's -- you'd have to go back in there and down
15 for royalties paid.

16 Q And this is merely an expense itemiza-
17 tion, is that correct?

18 A Right, it's just an amortization of ex-
19 penses for the, but the useful information is really in the
20 lease operating expenses part.

21 Q Let me take that bottom figure on the
22 first page of 1499.29 and there's a minus sign after that.
23 What does that mean?

24 A What page?

25 Q On the first page.

1 A Okay, that's for the month of January.
2 Well, I think that month we must have done some work. In
3 fact there was a refrac done on that well, so that's not a
4 very representative number but it does show that we lost
5 \$15,000 on it, on the well that month.

6 Q Is that in hundreds, Mr. --

7 A \$1500, excuse me.

8 Q \$1500. In March you also lost money on
9 that well, is that correct?

10 A That's correct, and that was a more typ-
11 ical operating month.

12 Q In February you made \$73.79?

13 A Right. Again, these bottom line figures
14 are 8/8ths revenue figures, so they're not -- we're not
15 taking out the 30 percent royalty burden on these leases.
16 That bottom line is not a very useful number.

17 Q If we go through the rest of the exhibit
18 and look at the bottom line, you get to see what kind of
19 money you're making, is that correct, without considering
20 the royalty burden on the lease?

21 A That's correct.

22 Q Mr. Cox, which is the best well that you
23 have in the area? Why don't you tell us which is the best
24 and which is the worst well that you have?

25 A Well, right now probably No. 13 or No. 5

1 would be the best. No. 5 is in kind of sweet spot in the
2 lease and it's been -- it's got the highest cum, projected
3 to be the highest cum well, and the 13 is one -- is one of
4 the newer wells and it's still relatively early in its
5 decline, so it's showing a little higher revenue, too. In
6 fact it was quite a bit higher.

7 Q Mr. Cox, in your opinion are these wells
8 making a lot of money?

9 A Not -- not really. As far as the daily
10 operating revenue they're operating profitably, but as far
11 as the drilling wells, it's a -- pretty much of a break
12 even situation on the last four wells we've drilled.

13 Q What's the average payout for these
14 wells, for the wells that you have drilled out there?

15 A Well, --

16 Q The length of time?

17 A Oh, I imagine, of the wells that do pay
18 out, they probably are paying out in about five years.
19 Some of the wells that we've drilled will not pay out, how-
20 ever.

21 Q Let's go on to Exhibit Number Fourteen
22 and tell us what that is.

23 A Okay, this is just a group of the drill-
24 ing and completion cost records from the last four or five
25 wells drilled out there. I guess there's three wells, four

1 wells.

2 Q Does this exhibit support the data con-
3 tained in your AFE?

4 A Yeah. The -- out of these wells, the
5 No. 14, the first well listed, the second page of the exhi-
6 bit shows its cumulative cost at \$352,682. That well was
7 drilled to 6200 feet, as was No. 11, which is not included
8 in there. So of the four wells group 14 is the only one
9 that went as deep as the Amoco Federal -- Red Bluff Federal
10 No. 1 is supposed to go, and it also included the building
11 of a tank battery we're going to have to -- we're going to
12 need for that well, so it's the most closely representa-
13 tive.

14 Q Do you have anything further concerning
15 Exhibit Fourteen, Mr. Cox?

16 A I believe so. It shows that we've
17 brought the drilling costs down a little bit from previous
18 operators wells.

19 Q Mr. Cox, let's go on now to Exhibit Num-
20 ber Fifteen and have you identify that for the Commission
21 and tell us what that is.

22 A Okay, this is the economics done on the
23 -- using Michael Smith and Associates profit program. It's
24 just using certain parameters for economic assumptions. It
25 is a projection of economic life of the typical well out

1 there, and we input the same decline curve for both wells
2 and the different royalty rates in the two different cases.

3 Q What -- what's the value of oil that you
4 used in this exhibit?

5 A We used a flat \$15.00 a barrel price.

6 Q Why did you use \$15.00 per barrel?

7 A It's just based on about what the aver-
8 age has been for the last two years, and the same with gas,
9 about the average price for gas down there.

10 Q Mr. Cox, you used this same exhibit at
11 -- during your testimony in October at the first hearing.
12 Has the price of oil changed to an extent to where you
13 would consider changing the \$15.00 per barrel price?

14 A Well, actually since this time there are
15 a couple of changes. There was a downturned price and now
16 there's been an upturned price. Those are fairly short
17 term fluctuations and so until there's some basis to think
18 otherwise, I'm inclined to stay with this pricing.

19 Q Mr. Cox, Mr. Jennings this morning re-
20 ferred to the price of oil being at \$18.00 per barrel cur-
21 rently. What's your opinion with regard to using the
22 \$18.00 per barrel -- \$18.00 per barrel current price?

23 A I think for a prudent business decision
24 that would be probably wholly optimistic. We've reached an
25 \$18.00 oil within the last couple years but it hasn't

1 stayed there for very long, so it's -- I guess in the in-
2 terest of conservatism \$15.00 seems like a lot more reas-
3 onable number to me.

4 Q Is there any indication that you have
5 with regard to whether or not this price of oil is going to
6 remain at \$18.00 per barrel?

7 A I think that's always a question we ask
8 on writing these things, but I would say that there is no
9 new developments in the world oil market that make us think
10 that it is bound to stay there.

11 Q Are you familiar with any -- anything in
12 the futures market that would indicate that possibly your
13 \$15.00 per barrel would be more accurate?

14 A Well, this \$19.40 (unclear) price for
15 February was followed by decreasing prices for March,
16 April, May, which indicates that the prudent speculators
17 don't feel like the price is going to hold up.

18 That is probably as good an indication
19 as any, what the consensus is.

20 Q Mr. Cox, at this point I'd like for you
21 to explain this Exhibit Number Fifteen to the Commission in
22 terms of the profitability of the proposed well.

23 A Okay. Well, the first sheet presents a
24 70 percent net revenue interest on the Amoco Federal Lease
25 and it's using \$15.00 flat pricing, the lease operating ex-

1 penses coming from the history, and then everything else is
2 pretty much given. That shows with the actual drilling and
3 completion expenses of \$315,000 that that well would not
4 pay out. It would be -- on a discounted basis it would be
5 \$13,000 short of pay out.

6 Q What's on the second page of that exhi-
7 bit?

8 A That's just the input parameters for --
9 for the -- it gives the decline rate, gas/oil ratio, and
10 price of oil and severance tax, and what not.

11 Q Is the decline rate based upon the ex-
12 perience in the other wells in the field?

13 A That and particularly the western wells
14 in the field.

15 Q Okay, let's go on now to the third page
16 and have you tell us what that is.

17 A Okay, this is a -- at the time I ran
18 these we were looking into finding relief from excess roy-
19 alty burden. That would have been anything above and be-
20 yond the original reservoir's burden in the Federal royalty
21 82 percent, 82.5 percent, and everything else is the same
22 except for the royalty and it does give us a profitable
23 situation and we've since learned that that's probably not
24 feasible for us to get relief from those burdens at the
25 present time.

1 Q Why is that?

2 A What we have is the legal exposure to us
3 of being sued by the present royalty owners is just too
4 great to take the risk, and we weren't sure after we inves-
5 tigated that we really had the basis for filing.

6 Q Is that because the production exceeds
7 15 barrels per day?

8 A Yeah, that's a big part of it. That was
9 -- I remember mentioning some of the earlier assignments by
10 the Federal government a 15 barrel a day limit below which
11 you -- you get relief from any lease that's not averaging
12 less than 15 barrels a day, so that (not clearly under-
13 stood.)

14 Q What would be the profit on this second
15 work sheet that you would make from this well?

16 A Discounted 15 percent it's for \$65,000.

17 Q Over how long a period of time?

18 A Producing a well three months into the
19 year 2000, so it would be 12-1/2 years -- 11-1/2 years.

20 Q Mr. Cox, let me refer you now to Exhi-
21 bit -- is that all you have on Exhibit Number Fifteen?

22 A Yeah.

23 Q Let's go on to Exhibit Number Sixteen,
24 please, and have you identify that exhibit.

25 A Okay, this is an iso-cumulative plot of

1 the actual barrels of oil per day from the wells across the
2 Brushy Draw Field from the Williamson Sand, and which is
3 the primary field pay. There isn't any other commercial
4 pays found under it and it shows that around the northeast
5 corner of Section 27 and northwest corner of Section 26,
6 that area is an area of better production and decreasing in
7 cumulative production westward and eastward.

8 Q Where is the proposed location on this
9 exhibit?

10 A It's labeled as No. 12. It's in the
11 northwest of the southwest of Section 27.

12 Q What does the number 12 indicate on this
13 for the proposed well?

14 A Well, at the time, this was through
15 December, '87, it showed that it would project to, had been
16 producing at that time at around 10,000 barrels of cumula-
17 tive production.

18 Q Will that pay out the well?

19 A No. Of course I might add that that's
20 not a projected cumulative, our projected ultimate reserves
21 in the well, but it projected additionally that these re-
22 serves also declined in that direction, so we are in the
23 marginal are for payout in that area.

24 Q Mr. Cox, let me show you what we have
25 marked as Exhibit Number Seven that has been exhibited in

1 the prior hearing. We don't have this exhibit but it would
2 be Number Seven, and just -- we don't want to introduce it
3 at this point, since it's already part of the record, but
4 can you briefly tell the Commission what -- what the geolo-
5 gic characteristics are as we move towards your proposed
6 location from east to west?

7 A Okay. This just shows moving from east
8 to west from the Amoco No. 4 Well across to the Amoco 13
9 Well, a general thinning of the Williamson Sand, which is
10 recorded by orange there.

11 Q Is the Williamson Sand the proposed pro-
12 ductive interval?

13 A Yes.

14 Q Mr. Cox, do you have a recommendation to
15 the Commission as to what the penalty for risk factor
16 should be in this case?

17 A Well, every time in the last three or
18 four wells we drilled out there it's really been a decision
19 whether we can justify drilling the wells or not, so I
20 think that the maximum penalty for nonconsent is very just-
21 ifiable. We're drilling -- we're drilling now to hold the
22 farmout.

23 MR. PADILLA: Mr. Chairman, I
24 believe that's all I have of this witness.

25 We'd offer Exhibits Eight

1 through Sixteen.

2 MR. BROSTUEN: Without ob-
3 jection, they'll be accepted.

4 Mr. Jennings?

5

6

CROSS EXAMINATION

7

BY MR. JENNINGS:

8

Q Mr. Cox, what did you say the average
9 life of these wells was?

10

A Well, I think it's probably around --
11 again it would depend on the well, but I suppose the aver-
12 age life would be around ten years.

13

Q And then as I -- I read this, your ex-
14 hibit here, I believe it's Number 14, based on your pro-
15 jected payout, you drill that well, this is the well you
16 propose to drill and you estimate you'd lose \$13,000, is
17 that right?

18

A Discounted 15 percent.

19

Q Well, how can you justify drilling a
20 well that already has less than -- has that kind of a
21 chance of recovering?

22

A That's a good question and we always
23 kind of financially agonize over that decision, whether we
24 want to go ahead and drill another well in the farmout or
25 whether we should let it go, but we have drilled one well

1 recently that looks like it's a fairly good payout posi-
2 tion, the No. 13 Well, and done some mapping based on its
3 reserves and are hoping to find better reserves. In gen-
4 eral those around it have decreasing porosity and decreas-
5 ing pay sections.

6 Q Well, why do you contemplate another
7 well in Section 28 if that's where section -- if that's
8 where the 13 Well is?

9 A Right, it would be south offset to the
10 13, hoping to find that same improved porosity, same poro-
11 sity section that was encountered in that well.

12 Q Now, if you were to acquire the Red
13 Bluff lease and have a 81 percent working interest under
14 that 10 acres, 9 acres, whatever it is, wouldn't that ac-
15 tually change and make your -- your deal a whole lot
16 sweeter, a better deal 10 acres, 9 acres, wouldn't that
17 substantially change this and make your deal a whole lot
18 sweeter, better deal (unclear) a 12th of that?

19 A I haven't figured on 81. I figure on
20 86, that's approximately 25 percent of the standard spacing
21 on 86 percent (unclear) and the rest at 70 percent; comes
22 out to about 74 percent net for that drainage spacing, and
23 it would certainly improve the economics but it would put
24 it somewhere closer to the -- to the 70 percent case here
25 than the 82-1/2 percent case, and we'd still be looking at

1 a high risk situation from Mallon.

2 Q Well, but it would be better for Mallon,
3 wouldn't it? I can't understand why it wouldn't be better
4 for Mallon. Can you tell me that?

5 A Better for Mallon than what?

6 Q Than having (unclear) in there with a 70
7 percent.

8 A Well, it's better, as far as the 70 per-
9 cent area interest wells, the wells on a -- completely on
10 the Amoco acreage, we've really run out of reasonable pros-
11 pects.

12 Q Well, if you can get this other acreage
13 either by force pooling or by assignment from Mallon,
14 wouldn't it improve your recovery and wouldn't it sweeten
15 up the deal?

16 A Well, as was mentioned earlier today,
17 the deal that was made in 1983 was substantially different
18 well pricing period, and if we had the same deal offered to
19 us today, there's no doubt we would not take it.

20 Q Do you get many farmouts generally when
21 you get as much as an 81 percent net revenue interest?

22 A This is the only Delaware production
23 that Mallon operates. I really can't compare apples and
24 apples on that.

25 Q Well, I guess you'd recommend this to

1 your management notwithstanding it looks like (not under-
2 stood.)

3 A Well, based on our -- our Well No. 13,
4 my recommendation is that if we can pursue similar wells as
5 we're drilling, if we drill the sand a lot higher, the map
6 doesn't fit the proposed channel trends, I imagine we're
7 going to have to take a serious look at whether we'll con-
8 tinue drilling there or not.

9 Q Well, you have one other well. You have
10 this one you proposed, you have 70 percent interest in that
11 14 Well, looks like --

12 A 14 has been drilled. It's on the -- in
13 Section 28 in the southeast quarter and it was a tight well
14 that is projected to not pay out.

15 Q But that is across the -- across the
16 reservoir.

17 A Right.

18 Q Do you contemplate another well at this
19 time, I don't know what number it might be, in the section
20 northeast of 13?

21 A Southeast of 13 we have.

22 Q I see.

23 A (Unclear) prepared work on that is
24 because of the surface situation there where we're ap-
25 proaching Red Bluff Reservoir on the sloping topography the

1 BLM is concerned about the drill site. It will take longer
2 than our 90 days, probably, to get to -- or most of our 90
3 days to get a drill site approved by them.

4 Q Well, are you familiar with what has
5 been offered as Red Bluff Exhibit Number Two, which is the
6 letter of February 23, the area of mutual interest deal?

7 A Yeah, I've heard it discussed in the
8 hearing here. I haven't --

9 Q You haven't read it?

10 A I don't know if I have or not. Not
11 being in the land department I really don't have too much
12 to do with it.

13 Q Well, it contains this language and I
14 wish you'd explain it to me, explain to me why you are
15 paying 5 percent overriding royalty (not understandable).
16 This is paragraph 4 of this exhibit, it says: "If Bettis
17 is successful in acquiring farmouts or leases in the AMI,
18 Bettis shall retain a 2 percent of 8/8ths overriding
19 royalty in any acreage having a 75 percent net revenue in-
20 terest or less..."

21 A What is the date on that?

22 Q February 23rd, 1983.

23 A Okay, I think that would probably be a
24 -- the reason that something like that would be acceptable
25 to the parties at the time was the economic climate for oil

1 and gas was a lot different than it is now.

2 Q Well, my question to you is why, when
3 this -- when one gets together 25 percent interest under
4 this, gives you a 75 percent working interest, why are you
5 paying 2 -- why are you not paying 2 percent instead of 5
6 percent?

7 A I wasn't even employed by the company
8 when that was negotiated so I really am not qualified to
9 tell you why it is like that.

10 Q Well, apparently the company is still
11 making that payment.

12 A We're honoring an agreement we made.

13 Q Well, if someone here could explain to
14 me why that under Exhibit Number Five, Mallon's exhibit
15 shows that the total override for both (unclear) are 70 --
16 30 -- 30 percent results in you getting 70 percent, and
17 when you take that (unclear) that Bettis is doing, you've
18 only got a -- Bettis (not understandable) is 75 percent
19 working interest.

20 MR. PADILLA: Mr. Chairman,
21 I'm -- I think the document speaks for itself and I'm not
22 sure that -- that I read that the same way that Mr.
23 Jennings does.

24 This witness has basically
25 said he does -- really isn't familiar with this document.

1 And we're just not getting closer to a decision.

2 MR. BROSTUEN: I think we can
3 go on to something else, Mr. Jennings. The witness is not
4 familiar with the document and you may proceed with addi-
5 tional questions that you may have.

6 MR. JENNINGS: I can't under-
7 stand it. That's all.

8 Q Now I believe that you in one of your
9 last letters, I believe it was your September 6th letter,
10 you at that time wanted to proceed on obtaining a farmout
11 from Red Bluff.

12 MR. PADILLA: Is that Exhibit
13 Eight, Mr. Jennings?

14 MR. JENNINGS: Yes.

15 A Right. These negotiations went on and
16 on and I was involved, as I mentioned before, to the extent
17 I'm trying to -- to inform the Red Bluff people why we
18 thought we had a limit on what we could accept for over-
19 riding royalty burden on your lease, even though it was a
20 lower burden than we had on the Amoco lease at the time,
21 and we were encouraged from time to time during the discus-
22 sions with Mr. Hayes, and with you, too, as I recall, that
23 there was really hope for reaching an agreement. I think
24 that's what this letter was working toward.

25 Q Have you ever made any effort to reach

1 an agreement since that time, to your knowledge?

2 A Oh, we've talked with -- I don't have a
3 chronology of all the discussions we've had. I know as of
4 this time it was considerably well into the period that
5 we'd been negotiating it, we made this offer. I'm not sure
6 (not clearly understood).

7 Q To your knowledge, then, no additional
8 efforts have been made to make some kind of a treaty or
9 obtain a farmout other than this (unclear).

10 A Probably from this point on Karen was
11 more involved with negotiations than I was. I'm not really
12 aware of them.

13 Q Do you have any idea how long it would
14 take this lease to pay out in the event that it was force
15 pooled and you got the maximum 200 percent?

16 A Plus cost. I would, and I told Mr.
17 Hayes this on the phone well back in our discussions, I
18 said I doubt that this will reach sufficient payout for Red
19 Bluff to back into the well based on the performance of
20 surrounding wells.

21 Q And what I'm saying, what I understand
22 you to say, is that if the Commission should elect to force
23 pool this acreage and put the 200 percent penalty on it,
24 then Red Bluff would never receive anything for their
25 acreage.

1 A Under that assumption that would not
2 reach that point, that's true. Of course it also points to
3 the substantial risk that Mallon's taking in drilling it,
4 which is the reason for (unclear) in the first place.

5 Q Now, I assume that the Red Bluff acreage
6 would pay out more -- much sooner than the other acreage,
7 would it not?

8 A If Red Bluff were to go in there and
9 drill a well on --

10 Q No, no, no, under the -- either if it's
11 force pooled or they'd make an assignment, you will recover
12 -- you will get the money back from that 10 acres a lot
13 sooner than you will on the other 30, it's a possibility.

14 A Not a lot sooner. I think, as I stated,
15 that forced scenario is about 74 percent net to the working
16 interest partners in the Amoco lease, or the participants
17 in the well, I should say, and which would accelerate the
18 payout, but it's not tremendously different (unclear).

19 Q I don't understand how it's 74 percent
20 return on investment -- 74 percent of --

21 A 74 percent net revenue interest, which
22 would be what we (unclear) under this -- this particular
23 40-acre drill site to the 100 percent working interest.

24 Q You mean you would pick up 4 percent net
25 revenue interest by force pooling, is that what you're

1 saying?

2 A That's correct.

3 Q And you pick up, if you don't force pool
4 it, what would you pick up? Assuming the 5 percent over-
5 riding royalty, that's 19 percent. The difference between
6 19 and 30 is quite a bit.

7 A Yeah, I'd have to calculate that out;
8 whatever proportion, it may be somewhat less than 74 per-
9 cent.

10 Q It would be less than 74? It would be
11 more than 74 percent.

12 A No, it would be less. This -- the 74
13 percent is calculated on 25 percent of the gross spacing
14 having a 86 percent net revenue interest and 75 percent of
15 the gross spacing having a 70 percent (unclear) so if -- if
16 you had to cut 5 percent off that 25 percent portion, then
17 that would be about 73 percent net revenue interest.

18 Q Okay, but you're -- you're increasing
19 the net revenue interest either way, whether you assign it
20 or you get force pooled, is that right?

21 A That's true, over -- over the Amoco
22 lease, you're saying?

23 Q Yes.

24 A That's correct.

25 Q And as I understood your testimony this

1 morning, if this is force pooled, then you will be better
2 off, tell me if this is your understanding, because you
3 won't have to pay Oppermann anything, is that correct?
4 You'll be much better off because he won't get 5 percent on
5 that.

6 A On that 25 percent of the (unclear).

7 Q So then you won't have anything on that
8 and the only burden on that will be the 14 percent that the
9 government gets, that will be a substantial savings.

10 MR. PADILLA: Mr. Chairman, I
11 believe I'm going to object at this point because I believe
12 Mr. Oppermann's testimony was that if a lease was obtained
13 by him, either -- or -- or by Mallon, Oppermann would get 5
14 percent; it doesn't matter who gets the lease from Red
15 Bluff, Oppermann and Bettis would (unclear) at getting 5
16 percent, or a total of 10 percent. That would make the
17 lease worth -- there'd be another 10 percent royalty on
18 this, what it really comes out to, over and above the 14
19 percent.

20 MR. BROSTUEN: Mr. Padilla,
21 are you saying that -- that Mr. Oppermann would participate
22 if the well was forced pooled or if it were acquired by a
23 farmout or --

24 MR. PADILLA: No, we're not
25 saying that. We're saying simply that consistent with Mr.

1 Cox' testimony, that we would wind up with a lease of 86
2 percent net revenue interest should the forced pooling
3 occur, up until the time that Red Bluff would back in after
4 the penalty is paid out.

5 But should a deal be made with
6 Red Bluff for 5 percent or whatever the percent is, that
7 the Oppermann would automatically participate with his 5
8 percent. That has been one of the considerations and I
9 think that was Mr. Oppermann's testimony this morning, that
10 he would have that additional 10 percent whether or not a
11 deal was made or not at this point.

12 Our testimony has been that
13 that is not available any more, that we're here in a forced
14 pooling hearing. I don't know where Mr. Jennings is going
15 as far as this 5 percent, as to whether it's reasonable or
16 not, we've certainly heard enough testimony concerning that
17 from his side.

18 MR. BROSTUEN: I think that as
19 far as this hearing is concerned, the overrides in this
20 matter are of really no concern to this case as far as the
21 Commission is concerned. This is something that is going
22 to be between, probably between operators, and it simply
23 isn't germane to the determination of this case.

24 We are here to determine
25 whether or not the tract should be pooled, that the statute

1 was complied with insofar as efforts to -- to -- to reach a
2 negotiation, negotiate a settlement, and if it's not been
3 possible to do so, we see we have the -- Mallon, I think,
4 has a deadline insofar as a drilling rig, as far as the
5 expiration of a lease is concerned, that -- that determin-
6 ation we have to make, not really regarding the royalty
7 rights. I guess I'm not able to see the importance of this
8 discussion.

9 MR. JENNINGS: Well, I think
10 it's -- I think it's the policy of the Commission that
11 people will make a reasonable effort through bargaining and
12 not the policy to allow somebody to be force pooled for
13 their benefit, (unclear) everybody would get the opportun-
14 ity to get their fair share, and I think that it's very
15 important because there's no reason for Mallon to negotiate
16 and put Mr. Oppermann in for a 5 percent override, and if
17 you will read that deal, I don't think that covers a 5 per-
18 cent override in a situation such as this. Perhaps that's
19 the reason for showing the Commission just what the deal
20 is.

21 MR. BROSTUEN: I think we have
22 to determine at this time that the testimony is getting
23 cumulative and repetitive and I think we're plowing the
24 same old ground. I think at this point in time we should
25 move on to -- to other questions.

1 MR. JENNINGS: I have nothing
2 further of this witness.

3 MR. BROSTUEN: Are there any
4 other questions of the witness?

5
6 QUESTIONS BY MR. BROSTUEN:

7 Q Mr. Cox, I have one question. Referring
8 to your cumulative production isopach, you're showing pro-
9 duction through December, 1987, and that is from the ini-
10 tial producing data in any of these wells.

11 A That's correct.

12 Q And some of them have been in production
13 for how long? What is the --

14 A Since, I imagine over on the -- in
15 Section 26, that is probably late '82 and then '83 on for
16 the rest of them.

17 Q So what we're seeing here is not the
18 capability of the wells to produce but rather just the
19 cumulative production of those wells.

20 A Right. They're somewhat misleading
21 without having the dates of the wells on here, but the ini-
22 tial flush production from these wells accounts for a large
23 portion of their ultimate reserves and I think that the --
24 if we checked ultimate reserves on these wells it would
25 have a similar shape to it.

1 Q Thank you very much.

2 MR. BROSTUEN: Are there any
3 other questions of the witness?

4 MR. PADILLA: I have nothing.

5 MR. BROSTUEN: He may be ex-
6 cused.

7 Is there any further testimony
8 in this case? Or any reason for recall? Mr. Jennings, I
9 believe you have an exhibit here which has not been intro-
10 duced as yet. Did you want to introduce this exhibit?

11 MR. JENNINGS: Yes, I -- as I
12 stated, I do not have any witnesses here but I do have an
13 exhibit that I tendered before (not clearly audible).

14 MR. BROSTUEN: I think that
15 here again we're getting repetitive in this case, Mr.
16 Jennings. I think that not much point would be served by
17 that.

18 MR. JENNINGS: By considering
19 this exhibit?

20 MR. BROSTUEN: If you -- you
21 want to submit this exhibit?

22 MR. JENNINGS: Yes, sir,
23 that's what I said, I want to.

24 MR. BROSTUEN: Very well, you
25 made do that and (not clearly understood).

1 MR. JENNINGS: Well, if that's
2 what the Commission wants, I will.

3 MR. PADILLA: Mr. Chairman, if
4 he's going to introduce it as a part of -- well, my objec-
5 tion still stands. With regards to if Mr. Jennings wants
6 to take the stand, I can't really object to his introduc-
7 tions. Presumably if he's going to (unclear) some other
8 witness might have said, then I believe we would then look
9 at the weight of the evidence as to whether his assessment
10 is more correct than Ms. McClintock's.

11 I will cross examine him (not
12 clearly audible) --

13 MR. JENNINGS: (Not clearly
14 understood), I'll be glad to offer myself as a witness and
15 be sworn for the offer.

16 MR. BROSTUEN: Okay, we will
17 have you -- have Mr. Stovall administer the oath.

18 MR. STOVALL: Let me, if I
19 may, Mr. Chairman, may we go off the record for just a
20 moment and just --

21

22 (Thereupon a discussion was had off the record.)

23

24 (Witness sworn.)

25

1 JAMES T. JENNINGS,

2 being duly sworn upon his oath, testified as follows, to-
3 wit:

4
5 DIRECT TESTIMONY BY MR. JENNINGS
6

7 MR. JENNINGS: I haven't been
8 in this position very many times but this document which
9 has been marked Red Bluff's Exhibit One and which is before
10 each of you consists of a memorandum on yellow paper taken
11 from my office file in connection with the Red Bluff nego-
12 tiation with Mallon.

13 And the first memorandum is
14 dated April -- or, I'm sorry, August 20, 1987, has been in
15 my files and that's two pages and there are some handwrit-
16 ten notes about other conversations in 1987 with Karen
17 McClintock and they are on the page two.

18 And the other document, which
19 is dated September 21, 1987, is also a memorandum to, mark-
20 ed, so marked, to Red Bluff file. I initialed it and this
21 is concerning my later confirmation -- or conversation with
22 Ms. McClintock in September, 1987, concerning the negotia-
23 tions and issues in the lease and things like that.

24 MR. STOVALL: Do you have any-
25 thing further with respect to this exhibit?

1 MR. JENNINGS: No, sir.

2
3 QUESTIONS BY MR. STOVALL:

4 Q Are you going to move it -- I
5 guess I'll play the advocate for you for a moment.

6 Are you going to move it's admission?

7 A I've already --

8 Q Well, you're now doing it again as an --

9 A We'll again move the -- I'll again move
10 its admission.

11
12 QUESTIONS BY MR. PADILLA:

13 Q Mr. Jennings, I notice that this file
14 says to Red Bluff, your August 20th, 1987, memorandum says
15 to Red Bluff. Was that sent -- was this memorandum sent to
16 Red Bluff?

17 A No, This is -- this is a memorandum --
18 all this memorandum -- I'm an old guy and I can't remember
19 everything in the course of conversation and in 50 years of
20 practice I've learned it's always well to make a memorandum
21 about any conversation and put them in the file, and that's
22 my work product.

23 Q On the memorandum dated September 21st,
24 you refer to Danny and Gay's mineral interests.

25 A Now where is this?

1 Q In the first paragraph of the second
2 memorandum, there's a reference there to Gay's mineral
3 interests.

4 A Yes. When I filed this application to
5 get this lease in 1985, and it was before the BLM all that
6 time and they were -- just all kind of stuff, and it was
7 some other acreage in the area where somebody, another
8 party, might have had -- offset this acreage and had the
9 right to either bid on it or to -- to bid on it or to bid
10 -- pay compensatory royalty. The Gays had some way away
11 from this land, but they had some fee acreage up there and
12 they had leased it to some third party and that's -- she
13 asked me to get this information for her so that they could
14 determine who would be given an opportunity to bid.

15 Q Does that have anything to do with the
16 Red Bluff lease?

17 A Yes.

18 Q In that they would have an opportunity
19 to bid, is that --

20 A Well, the Gays, yeah, the Gays leased it
21 to Kerr McGee, or somebody like that, and then the lease
22 had expired and they wanted to know the status and the Gays
23 owned the minerals because anybody -- under the Mineral
24 Leasing Act any adjoining owner has a right to pay compen-
25 satory royalties, the only one to get the lease is directly

1 holder to the right-of-way for this assignee and nobody
2 else can -- it wasn't possible for Oppermann or anybody to
3 get that lease. Red Bluff had to get it and it's not easy.

4 Q Did -- Mr. Jennings, did you file the
5 application for Red Bluff --

6 A Yes, sir.

7 Q -- to acquire --

8 A Yes, sir.

9 Q Did you acquire any interest in the
10 lease as a result of --

11 A No, sir.

12 Q -- that work?

13 A I was well compensated.

14 Q You don't own an interest in the Red
15 Bluff --

16 A No, sir. I don't own an interest in Red
17 Bluff. I guess the only way you can get one is if you're a
18 farmer.

19 MR. PADILLA: I believe that's
20 all I have.

21 MR. BROSTUEN: Any other
22 questions?

23 MR. JENNINGS: Does the Com-
24 mission have some questions? I'll be glad to --

25 MR. HUMPHRIES: Yes, I have a

1 few questions.

2
3 QUESTIONS BY MR. HUMPHRIES:

4 Q Mr. Jennings, did Red Bluff pay any
5 bonus fees or advance rentals or advanced royalties in
6 acquiring this lease?

7 A It had to pay the rental, the first
8 year's rental. It's like -- just like you guys, you get
9 the first year's rental.

10 Q And that amounted to --

11 A A Dollar an acre, as I recall.

12 Q For some 9 acres?

13 A Oh, no, no, no. The lease, I guess it's
14 not before us but it's -- it was marked Exhibit Two in your
15 book there, in the transcript and the lease covered, you
16 can look at it, it's a lot a land that goes down through --
17 that goes from Section 8 all down through the township and
18 goes out down in the south end of Sections 33 and 34.

19 Q So their attempt was to obtain the
20 shoreline of the lake inclusive.

21 A Well, no. They were -- their attempt
22 was pursuant to this act of 1930 which allows the owner of
23 the right-of-way, owner of the right-of-way, to get the
24 lease on the right-of-way.

25 Q And that right-of-way was to be the

1 shoreline of the lake inclusive of all of that within the
2 shoreline, or did they seek a certain buffer zone?

3 A I can't tell you.

4 Q Okay.

5 A But I think -- I think that the testi-
6 mony that somebody stated this morning, that when you gave
7 the right-of-way the same level as the top of the dam, so
8 water wouldn't get any higher, shouldn't get much higher
9 than that because it would go over the dam.

10 Q But again, this specific acreage in
11 question is some approximately 9 acres but --

12 A Well, this is just part of a big lease.

13 Q I understand, but Red Bluff's economic
14 exposure to this 9 acres is approximately a dollar an acre
15 of advanced rental plus a royalty that whoever might be a
16 successful producer would pay to the federal government.

17 A That's right, but this -- this acreage,
18 I'm sure, with the federal government concerned, would be
19 not assignable because it would be (unclear) offsetting
20 production, you know. It would be competitive bidding as
21 far as the government was concerned if it was government
22 acreage.

23 Q But the competitive bidding was the
24 royalty rate, not an advance (interrupted) --

25 A It was in this but it isn't on the other

1 (not clearly understood) but what -- the other thing that
2 they did pay is -- you see, I have a file in the office
3 about that thick, and my efforts to get the lease issued by
4 the Bureau of Land Management is included; a number of
5 trips to Santa Fe and getting all the documentation that
6 they could think of. We started in April of 1985 and we
7 got the lease in 1987, I guess, '88, '88. I'm getting
8 behind myself.

9 And I might also add for information,
10 there was one bid for -- one of the offset operators bid
11 for the -- to pay compensatory royalty and that was -- he
12 owned Sections 3 -- or 33 and 34 which is south of this,
13 and he was awarded the right to pay compensatory royalty on
14 that, but he didn't do it and ultimately all the lands in
15 the reservoir in New Mexico were included. We went back
16 and got a lease on, on the lands that were -- they put --
17 amended the lease to put the lands in 33 and 34 back in the
18 lease, but it goes -- winds around all up through and this
19 is not going to be a one shot deal because everybody --
20 there's probably, in these two sections, 27 and 28, there's
21 probably ten 40's that Red Bluff has some or part of.

22 Q Let me again, my interpretation is that
23 in this right-of-way compensatory royalty lease, Red
24 Bluff's first endeavor to obtain it was -- consisted of of-
25 fering a 14 percent royalty, and subsequent to that they

1 had to pay a year's advance rental on the entire amount
2 that was approximately equal to the acreage that would be
3 at topographic line or the elevation line equal to the top
4 of the dam.

5 A And I think it was -- to hold me to
6 this, I could dig it out for you -- but I think it's in the
7 neighborhood of 11-or-1200 acres. This lease itself, as
8 you can see, has 300 -- it's close to 300 acres, but
9 there's more south of there and they've got some more
10 acreage and as the reservoir narrows down, it's just -- it
11 goes up there where it's not as wide in the reservoir
12 (inaudible).

13 Q But what we are dealing with out of that
14 entire lease that they got, is the question of completing a
15 40-acre tract that --

16 A That's right.

17 Q -- Mallon through multiple agreements,
18 assignments and farmouts, has obtained the lease on and
19 that remaining part belonging to Red Bluff is something ap-
20 proximately 9 acres.

21 A It's closer to 10, I think.

22 Q So again Red Bluff's economic exposure
23 to this particular piece of property is approximately \$9.00
24 per year.

25 A Well, I guess they can pay the rental.

1 They have to pay the rental. I guess it would go at
2 minimum royalty now if it gets right down to that. I think
3 it would go in minimum royalty, and if the royalties are
4 sufficient to pay the rental, why the rental would be paid,
5 otherwise, they would have to pay the rental on the rest of
6 it and maintain that.

7 If that's your question. Now I don't
8 know whether I'm --

9 Q No, that -- you've answered it. I
10 understood they had your legal opinion involved, and then
11 they made no bonus bid, nor did they make an advance roy-
12 alty payment of some undetermined amount.

13 A No, no, no, there wasn't any bonus in-
14 volved. All they did was to bid to pay the royalty or not.
15 The royalty on all of the rest of the acreage is at 12-1/2
16 percent except in Section 33 and 34 you get 14 percent
17 rather than 12-1/2.

18 Q And then my next question is, I think I
19 heard you say this but I want to be sure, that your inter-
20 nal problem in those, you did not send to Ms. McClintock
21 and ask her if she concurred. These are your own personal
22 files, your recollections --

23 A Oh, no, that's -- that was -- well, it's
24 my recollection made at the time, you know.

25 Q You don't -- you don't have her concur-

1 | rence. This is just your internal thoughts.

2 A That's what the purpose was, I wanted to
3 ask her concerning this, if -- to point out where I was
4 wrong in my statements that I put in those, my memorandums,
5 because my recollection based upon my memorandum was not
6 the same as hers this morning. That was my purpose.

7 MR. HUMPHRIES: I have no
8 further questions.

9 MR. BROSTUEN; Okay.

10

11 QUESTIONS BY MR. BROSTUEN:

12 Q Just to make sure I'm correct on this,
13 this is Exhibit One, is that the correct number, Sally?

14 THE REPORTER: Yes.

15 A Yes, for Red Bluff.

16 MR. BROSTUEN: That will be
17 admitted.

18 A And we also offered Exhibit Two.

19 MR. BROSTUEN: Exhibit Number
20 Two, yes.

21 | A And I would again offer Exhibit One.

22 MR. BROSTUEN: It will be ad-
23 mitted, thank you.

24 Do we have closing statements?

25 MR. PADILLA: I'll try to be

1 very brief, Mr. Chairman.

2 As I stated this morning and
3 throughout the course of our arguments here today, this
4 case started out way back a long time ago and I agree fully
5 with your remarks awhile ago that the question of overrid-
6 ing royalties really bears no relationship to this case.

7 Mr. Jennings somehow is trying
8 to say that we -- Mallon had some kind of continuing offer
9 for 5 percent royalty. There has been no evidence whether
10 that is reasonable or not. We have only heard Mr. Jennings
11 testimony here because, and I insisted on that, because at
12 least we testimony under oath and it's not a lawyer's
13 statements as to what -- what his perceptions would be.
14 His perceptions (not clearly understood) anyway. It's
15 almost insignificant at this stage, at this time, because
16 really there has been no deal made. The compulsory pooling
17 statute is clear. If you have a nonconsenting party,
18 that's the ballgame. We are here. We have met every con-
19 dition of the compulsory pooling statute in order to force
20 pool the interest of Red Bluff.

21 Mallon is ready to drill.
22 They have a drilling deadline. They have to get on the
23 lease, commence drilling, and retain their override.

24 The economics, the economic
25 testimony, which has not been refuted, is to the same

At the last hearing we had Mr. Jennings brought no witnesses. We went through the same proceeding as before. There's been testimony here, at least from a couple of the witnesses that their Mr. Fuller, a Mr. Fuller, I should say, had participated in some of the negotiations and some of Mr. Jennings statements this morning were that Mr. Hayes had died and therefore he was no longer -- somewhat handicapped by not having any witnesses. The truth of the fact is that we needed to have something to argue about and this has been a one-sided affair all along, and it's a little too late to start talking about the sufficiency of the royalty or that sort of thing. It's just simply far too late. We're here in the terms of the statute. We feel that we've met all of the conditions for compulsory pooling, and what overrides are available (not clearly audible) presumably Mr. Bettis and Mr. Oppermann should participate in anything if we're talking about the area of mutual interest agreement really

1 doesn't do anything except subject Mallon to a breach of
2 contract lawsuit.

3 So in short, we feel that the
4 Commission should issue its order and in so doing we would
5 request it being done expeditiously so that Mallon can pro-
6 ceed with drilling the well which is -- this hearing is
7 about.

8 MR. BROSTUEN: Mr. Jennings?

9 MR. JENNINGS: Well, as far as
10 (unclear) the Commission, I'm in a bad spot by not having
11 witnesses to testify, but since Mr. Hayes is gone (unclear)
12 to testify, (inaudible) and at short notice I couldn't get
13 them up here, but whether I would have or not, I don't
14 know.

15 But I do know one of the
16 things the Commission is supposed to find is some evidence
17 that the applicant made a reasonable attempt to obtain a
18 voluntary agreement, maybe it was a reasonable attempt but
19 they haven't made any more and we're here, we're still here
20 and the Commission hasn't ruled on it, so if the offer had
21 been made at the time, we probably would have saved every-
22 body's time today to take the 5 percent because you can't
23 afford to be (not understood) with them or anybody else.
24 This is not economic for Red Bluff and my purpose in try-
25 ing to call this to your attention was just to show that if

1
2 you do force pool, and I realize that you have -- but I
3 think some consideration should be given to the penalty. A
4 tract down there with wells all around it, and they're
5 doing it and they're getting -- Red Bluff's acreage is
6 nothing and Red Bluff never, according to the testimony of
7 the witness there, Mr. Cox, they won't ever pay out at that
8 rate, so they are actually being deprived of their proper-
9 ty.

10 I know the Commission doesn't
11 have any authority to allow them any overriding royalty
12 in it, but I think it's (not clearly understood) I guess,
13 but you get profit anyway out of the lease by this forced
14 pooling -- I know (unclear) I don't believe they've made a
15 good faith, reasonable effort to lease (unclear). I would
16 appreciate it if you would read the memo. I think that you
17 will find that some of the negotiations were a little less
18 than reasonable and especially since they've taken the case
19 of a deal, want to take a deal that will cost them much
20 more, much better than the deal that we had offered. They
21 wanted to pay another 5 percent to Mallon and you can read
22 that two ways, you can read where he's entitled to 5 per-
23 cent even if he doesn't get the lease, although I just
24 don't see that in there, and the other thing is that he is
25 -- he's been getting all along, they've given him 5 percent

1 when he was only entitled to 2 under his deal, and that
2 deal was made back in 1983 when (unclear) earning interest,
3 (unclear) the whole township, and you know how much a town-
4 ship is, that's a lot of -- lot of acreage in a township,
5 and then to come back and contend he gets 5 percent on this
6 and you force pool us, they're not going to get a --
7 they'll get a whole lot more out of than 5 percent. Of
8 course if you force pool it he doesn't get that 5 percent,
9 why then they stand to profit.

10 That's all.

11 MR. BROSTUEN: Thank you, Mr.
12 Jennings.

13 If there is nothing else to be
14 heard in this case --

15 MR. STOVALL: Mr. Examiner, I
16 would like to check one thing -- or Mr. Chairman -- what is
17 the deadline under which you're operating and I ask you
18 remembering this is a Commission hearing and they cannot
19 simply issue an order in an expedited manner as the Divi-
20 sion can. They have to have an open meeting in order to
21 discuss and issue an order.

22 What is your deadline in which
23 you're --

24 MR. PADILLA: February 1st.

25 MR. STOVALL: And when -- do

1 you know when your next open meeting is scheduled?

2 MR. BROSTUEN: Normally it
3 would be the first Thursday in the month, that is nor-
4 mally our --

5 MR. STOVALL: That would be
6 the 2nd of February, so we may have -- we may have an
7 issue, you gentlemen may need to consider calling a
8 special meeting of the Commission to discuss this order and
9 get it out, if you wish to do so to serve the Mallon in-
10 terest. I just was a little concerned about that date and
11 knew that would be a problem.

12 MR. PADILLA: Well, in any
13 event, I suppose for my clients protection we're going to
14 have to commence some kind of building activity in order to
15 preserve (inaudible).

16 MR. STOVALL: My biggest con-
17 cern with a special meeting is that I don't know the notice
18 requirements as far as conducting special meetings under
19 the open meetings law and I'd have to -- Bridget, do you
20 know offhand what that --

21

22 (Thereupon a discussion was held off the record.)

23

24 MR. BROSTUEN: This concludes
25 the January 19th hearing day, and the hearing is adjourned.

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