

1 NEW MEXICO OIL CONSERVATION COMMISSION

2 STATE LAND OFFICE BUILDING

3 STATE OF NEW MEXICO

4 CASE NOS. 10446, 10447, 10448, 10449

5 Consolidated

6
7 IN THE MATTER OF:8
9 The Application of Yates Petroleum
10 Corporation for Authorization to
Drill, Eddy County, New Mexico

11 VOLUME VIII

12
13 BEFORE:

14 CHAIRMAN WILLIAM LEMAY

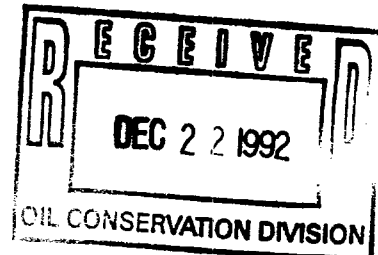
15 COMMISSIONER GARY CARLSON

16 COMMISSIONER BILL WEISS

17
18 FLORENE DAVIDSON, Senior Staff Specialist19
20 State Land Office Building

21 December 2, 1992

22 REPORTED BY:

23 DEBORAH O'BINE
24 Certified Shorthand Reporter
25 for the State of New Mexico

A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

ROBERT G. STOVALL, ESQ.

General Counsel

State Land Office Building

Santa Fe, New Mexico 87504-2088

FOR YATES PETROLEUM CORPORATION:

LOSEE, CARSON, HAAS & CARROLL, P.A.

300 American Home Building

P.O. Drawer 239

Artesia, New Mexico 88211-0289

BY: ERNEST L. CARROLL, ESQ.

FOR NEW MEXICO POTASH CORPORATION:

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

P.O. Drawer 2800

El Paso, Texas 79999

BY: CHARLES C. HIGH, JR., ESQ.

I N D E X

	Page Number
Appearances	1846

WITNESS FOR NEW MEXICO POTASH CORPORATION:

- | | | |
|----|-------------------------------|------|
| 1. | <u>BILL PIERCE</u> | |
| | Examination by Mr. High | 1851 |
| | Examination by Mr. Weiss | 1865 |
| | Examination by Chairman LeMay | 1866 |

REBUTTAL

WITNESS FOR YATES PETROLEUM CORPORATION:

- | | | |
|----|-------------------------------|------|
| 1. | <u>GARY HUTCHINSON</u> | |
| | Examination by Mr. Carroll | 1871 |
| | Examination by Mr. High | 1885 |
| 2. | <u>TIM WOOMER</u> | |
| | Examination by Chairman LeMay | 1896 |

Certificate of Reporter	1934
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E X H I B I T S

Page Admitted

NEW MEXICO POTASH CORPORATION:

Exhibit No. 27A	1848
Exhibit No. 54A	1870, 1884

1
2 CHAIRMAN LEMAY: We'll reconvene on the old
3 potash hearings. Mr. High, I think it's your --

4 MR. HIGH: Yes, Mr. LeMay. We have two
5 exhibits that we mentioned yesterday afternoon. I
6 have given to each of the Commissioners and to the
7 court reporter a document marked Exhibit 27A.

8 In reviewing Exhibit 27, as Mr. Carroll
9 pointed out yesterday, we did transpose two numbers on
10 one of the pages. So we have revised the entire
11 exhibit and submitted it as Exhibit 27A.

12 CHARIMAN LEMAY: To replace the one we have
13 in?

14 MR. HIGH: That's correct.

15 We've also prepared, as we said we would
16 yesterday, Exhibit 54A, which is a three-page
17 explanation and comparison of the state and federal
18 royalties. Pages 1 and 2 explain the state and
19 federal royalties and also illustrate what the
20 comparative royalty payments would be based upon
21 10,000 tons of ore product.

22 And on page 3, we have summarized -- page 3
23 of Exhibit 54A -- we have summarized and shown what
24 the respective royalties would have been. In the late
25 1960's, for example, at \$20 a ton, the state royalty

1 would have been \$1,280, the federal royalty \$1,310,
2 and we just carried it on up to the present to give a
3 sense of comparison between the state and federal
4 royalties.

5 What is shown in the summary on page 3 is
6 explained on pages 1 and 2. I think, hopefully, that
7 will put that issue to rest.

8 CHAIRMAN LEMAY: Thank you Mr. High. Is
9 there any objection to these particular exhibits being
10 substituted for the -- do you want 54A to be
11 substituted or just added to 54?

12 MR. HIGH: Just added to them.

13 CHAIRMAN LEMAY: And the other one you
14 would like to be substituted; correct?

15 MR. HIGH: Yes, sir.

16 MR. CARROLL: No objection.

17 CHAIRMAN LEMAY: Without objection, then,
18 Exhibit 54A will be added to the record, and the other
19 Exhibit, 27, was it, will be substituted for the
20 previous 27.

21 I might mention, it's been Commission
22 policy, although I hope I'm not springing something on
23 you gentlemen that you had not anticipated -- it's
24 been Commission policy after all testimony is through
25 to, at the discretion of the Commissioners, to recall

1 certain witnesses just for clarification, because it's
2 been a long, disjointed hearing, and sometimes
3 questions will arise after you hear all the witnesses
4 that weren't -- those questions you didn't contemplate
5 them prior to hearing the full record.

6 MR. HIGH: We certainly have no objection
7 to that.

8 MR. CARROLL: No problem.

9 MR. HIGH: We'll make whoever you want
10 available.

11 Let me also, if I may, Mr. LeMay, I think
12 I've covered all of my exhibits so far. In the event
13 I have not, I would at this time move into evidence
14 Exhibits 1 through 33, which are in the bound volume.
15 I think all the others I've handled, but I would move
16 those into evidence.

17 CHAIRMAN LEMAY: Without objection,
18 Exhibits 1 through 33 will be admitted into the
19 record.

20 MR. STOVALL: Most of those have already
21 been admitted, haven't they, Mr. High?

22 MR. HIGH: I believe they have, Mr.
23 Stovall, but in an abundance of caution, I'm just
24 moving all of them into evidence.

25 CHAIRMAN LEMAY: We'll admit them twice.

1 MR. HIGH: We would at this time call Mr.
2 Bill Pierce. Mr. Pierce has not been sworn.

3 MR. CARROLL: Mr. Chairman, in light of our
4 conversations that we had at the close of yesterday,
5 and since we still don't know exactly what this
6 witness is going to testify, I'm willing to let Mr.
7 High lay some kind of a foundation, but I don't want
8 my silence to be interpreted as agreeing that this
9 witness has something that can be considered in the
10 record. And I'll sit and wait until we see what kind
11 of a foundation Mr. High is going to lay.

12 CHAIRMAN LEMAY: Yes, sir.

13 BILL PIERCE,
14 the witness herein, after having been first duly sworn
15 upon his oath, was examined and testified as follows:

16 EXAMINATION

17 BY HIGH:

18 Q. Would you state your name, please.

19 A. Bill Pierce.

20 Q. Where are you employed, Mr. Pierce?

21 A. At IMC Fertilizer in Carlsbad.

22 Q. How long have you -- I take it that's a
23 potash mine?

24 A. Yes, sir.

25 Q. How long have you worked in the potash

1 mining industry?

2 A. Well, I started February the 20th, 1969. I
3 worked at IMC until '81. Me and a friend of mine went
4 into a welding business. Things didn't work out there
5 too well; so I went back to work at IMC in '83, and
6 I've been there ever since.

7 Q. So you have somewhere around 20 years in
8 the mining industry?

9 A. Twenty, 21 years, somewhere around there,
10 yes, sir.

11 Q. Do you participate in any way with safety
12 inspection?

13 A. Yes, I do, now that I'm the -- I'm
14 President, also President of the United Steel Workers,
15 Local 188-A. And I go with the MSHA inspector four
16 times a year. Once every three months, we tour
17 underground and surface.

18 Q. What do you look for?

19 A. Oh, infractions in the rules of MSHA and
20 stuff like that, you know, like when we're
21 underground, we're looking for a bad back. Electrical
22 is one main concern. They check to see whether the
23 powder, the explosives, and that stuff is in relation
24 to the face.

25 We check the equipment for -- you know, a

1 lot of diesel equipment, they would check the exhaust
2 emissions on that equipment. The quality of air --
3 there's various and sundry things that they check.

4 We've had the one inspector out there,
5 Randy Haynes, for the last two years, and he's
6 been pretty thorough. He doesn't miss much of
7 anything.

8 We started with a new inspector, Candy
9 Mesa. He was here at the last part of October. And
10 Candy seems to be pretty thorough. He goes a little
11 faster than Randy Haynes did. But basically they're
12 just looking for general infractions of the MSHA
13 safety rules, you know, top and underground surface,
14 both.

15 Q. Do you participate with them during these
16 walk-arounds in the sampling for methane gas?

17 A. Yes, sir, we do.

18 Q. And how is that done?

19 A. They've got an instrument -- I don't know
20 what its called -- methanometer or something to that
21 effect that they check in the panel, in the face, and
22 on the exhaust side of the working panel.

23 Q. Is methane something you as a miner know
24 something about?

25 A. I know of it. Myself, I'm not so involved

1 with it. I work on the surface. But from talking
2 with the people in the safety department and going on
3 these inspections, I'm fairly familiar with the
4 methane, you know.

5 Q. As President of Local 188 of the Steel
6 Workers, do you have responsibility in the field of
7 safety?

8 A. Yes, sir, I do. I have responsibility of
9 the safety and well-being of the people that work, the
10 hourly, especially, and of course my concern is for
11 all of them that work out there, hourly, salary, every
12 one of them, you know.

13 Q. Are you familiar with the rules of the
14 State of New Mexico concerning drilling of oil and gas
15 wells in and around the underground potash mines?

16 A. Yes, sir, I am.

17 Q. How long have you been aware of those, Mr.
18 Pierce?

19 A. Well, really, to be very much aware of them
20 in the last couple of years. Now, I've known about
21 them for several years. I've been the President of
22 the Steel Workers at Local 188-A for two years now,
23 and I've been involved in the Union ever since I went
24 to work in '69, but you know how you kind of let other
25 people carry the ball until you get in the position

1 you have to. I've probably let it slide a little bit
2 in the past.

3 Since I've been President the last two
4 years, I've become a little more involved in it.

5 Q. Based upon your employment and experience
6 in the potash mining industry, do you feel that you
7 have something you'd like to tell these Commissioners
8 before they allow any or consider allowing any
9 drilling of additional oil and gas wells in the potash
10 basin?

11 A. Yes, sir, I do. The thing --

12 MR. HIGH: Excuse me. Let me stop you
13 right there, Mr. Pierce.

14 THE WITNESS: Okay.

15 MR. HIGH: We would ask the Commission to
16 accept the credentials of this witness.

17 CHAIRMAN LEMAY: His credentials are
18 acceptable --

19 MR. CARROLL: For what?

20 CHAIRMAN LEMAY: Yes, that's right. I was
21 going to say, his credentials are acceptable to
22 discuss safety concerns, certainly, if that's what
23 he's going to -- I think our fear yesterday was that
24 there would be testimony pertaining to a blanket
25 attack on our Order R-111-P as far as allowing

1 exceptions because the Commission did vote initially,
2 if you remember at our first meeting, to consider an
3 exception to the rule. And our concern was that we
4 instructed all of you that we didn't want a collateral
5 attack on the R-111-P. We're looking at this
6 particular area.

7 Do you get the gist of what I'm saying,
8 Counselor?

9 MR. HIGH: Well, I do, Mr. LeMay, and
10 that's why he's here. That's why this witness is
11 here.

12 CHAIRMAN LEMAY: We're here on Section 2.

13 MR. HIGH: Pardon?

14 CHAIRMAN LEMAY: Mr. Weiss?

15 COMMISSIONER WEISS: The purpose is, I
16 thought this involved Section 2.

17 MR. HIGH: Well, I thought there along, Mr.
18 Weiss, but I'm not sure that's true because this
19 Commission has said it is considering an exception to
20 R-111-P. No notice has been sent out to anyone
21 involved in R-111-P about a possible exception to that
22 order. We don't agree this Commission has the
23 authority to modify R-111-P without giving notice to
24 the people or parties of R-111-P.

25 This person is one of them. The steel

1 workers were parties to R-111-P, and if you recall,
2 Mr. LeMay, they were participants every step of the
3 way, as represented by the underground miners.

4 MR. STOVALL: Mr. High, let me point out
5 that the Commission's interpretation is not that they
6 are modifying or changing R-111-P. The legal
7 structure is that they are saying that R-111-P has in
8 it the authority to grant an exception to the no
9 drilling provisions of the specific rules.

10 The facts are in -- what is in question is
11 should that exception be granted in the specific
12 instance of Section 2 in the wells that are applied
13 for.

14 MR. HIGH: But they are taking that
15 position, Mr. Stovall, without any notice whatsoever
16 to the people who are parties to R-111-P.

17 MR. STOVALL: I don't believe this is a --
18 I don't think notice is necessary. They've
19 interpreted the rule.

20 MR. HIGH: You and I can disagree over
21 that, but from a legal standpoint, before R-111-P can
22 be modified -- and that's what would have to happen in
23 this particular case to allow these wells -- it would
24 have to be modified in this particular case.

25 MR. STOVALL: No, I don't believe that's

1 the Commission's interpretation.

2 MR. HIGH: We can call it an exception or a
3 modification, whatever you want to. We call it a
4 modification. You can call it an exception. But this
5 witness has some things to say about that.

6 MR. STOVALL: More specifically, Mr. High,
7 I want to know, is the witness being offered to
8 express expert opinion, or is he being --

9 MR. HIGH: Based upon his experience and
10 qualification. I will ask him the questions, and if
11 Mr. Carroll wants to object, he can object.

12 MR. STOVALL: The question then becomes, if
13 he's going to offer expert opinions, what is the
14 specific expertise? Let's clarify that so when he
15 offers opinions, it is in the area in which he's
16 qualified as an expert. That's the only thing that I
17 think we're all --

18 MR. HIGH: Mr. Stovall, I have offered his
19 credentials. They've been accepted. He has almost 20
20 years' experience in the potash industry, and he has
21 some things he wants to say about methane gas and
22 safety. I don't know what all -- I met with this
23 witness for the first time last night. I don't know
24 everything he wants to tell you people.

25 He is concerned about what this Commission

1 might do in this case. And I can't -- I'm not a
2 fortune teller. I don't know everything he's going to
3 say. I will ask him the questions, and if Mr. Carroll
4 wants to object and you don't want to allow the
5 testimony, I'm not going to force you.

6 CHAIRMAN LEMAY: Mr. High, I think you can
7 pretty well control his testimony by the questions you
8 ask. By qualifying him as an expert, we certainly
9 consider him an expert in underground mining and
10 safety. If your questions get into drilling
11 specifically in Section 2 and the effects thereon,
12 because we've had testimony, I think that's acceptable
13 testimony, but if you try and stray from this
14 exception to broad-based exemptions and the
15 ramification of those exemptions, then we'll lead him
16 astray from what we're trying to do.

17 MR. HIGH: I'm going to ask two questions.
18 Number one, I'm going to ask him whether or not he
19 asked me if he could testify in this proceeding.

20 CHAIRMAN LEMAY: Right.

21 MR. HIGH: Okay? The second question I'm
22 going to say is, what do you want to say to these
23 people. That's all I'm going to ask. All right?

24 MR. CARROLL: I'm going to object to those
25 questions. That's just turning the man loose. This

1 is not a public forum-type hearing. This is an
2 administrative hearing based on an application or four
3 applications to drill four wells in Section 2.

4 This man does not work for New Mexico
5 Potash. He has no connection to Section 2. He wants
6 to come in and make some broad public policy
7 statements, I think that's a clear indication -- I
8 don't think that's appropriate. That kind of
9 testimony has no place in the record. If the
10 Commission wants to hear it, then they might hear it
11 like they heard Tony Herrell and just hear it, but I
12 don't think it has a part at all of the official
13 record.

14 CHAIRMAN LEMAY: Mr. High -- I do not agree
15 with that, Mr. Carroll, because we don't know what
16 he's going to say. We're all speculating as to what
17 he's going to say.

18 MR. CARROLL: The thing is, we just heard
19 the questions that he's going to be asked, and we know
20 where he's coming from.

21 CHAIRMAN LEMAY: We're going to take a
22 little break here, and I think, Mr. High, you can
23 direct the questions to be more specific to the case.
24 Since you are very knowledgeable in this area, we look
25 to you to be able to narrow in this testimony. He's

1 your witness. Just turning him loose I think is
2 abrogating your responsibilities in this area.

3 MR. HIGH: I'll do what I can, Mr. LeMay.

4 CHAIRMAN LEMAY: Let's take about a five-
5 minute break and discuss this. Do you all have
6 anything else to say concerning this?

7 MR. HIGH: No, sir, I have nothing.

8 (Thereupon, a recess was taken.)

9 CHAIRMAN LEMAY: We're back on the record.

10 Mr. High, Mr. Carroll, the Commission is
11 very anxious to hear what Mr. Pierce has to say. He's
12 certainly qualified in the area of mine safety, and
13 his operational experience is something that I think
14 will be a significant contribution to the case.

15 We look to you, because you know the
16 background and legal framework of the case, to help
17 channel his testimony so it would be germane to this
18 case and not necessarily be an indirect attack on
19 R-111-P, which we discussed before.

20 With that broad framework, we certainly
21 accept the witness's qualifications and look forward
22 to hearing his testimony.

23 MR. HIGH: May I proceed?

24 CHAIRMAN LEMAY: Please do.

25 Q. (BY MR. HIGH) Mr. Pierce, did you ask me

1 if you could testify in these proceedings?

2 A. Yes, sir, I did.

3 Q. Would you give the Commission your -- or a
4 miner's view, should I say, of the safety concerns
5 over methane and underground mines?

6 A. Well, the main concern I have with the
7 methane underground is that, you know, we're working
8 in a confined area pertaining to one panel, one face,
9 one area like that. Our ventilation draws air in from
10 one shaft on the surface, circulates it through the
11 mine and out an exhaust shaft.

12 And the workings at our mine, there's about
13 2,600 miles of open mine under there. If you took all
14 those breakthroughs, the panels, and everything and
15 straightened them out, you're looking at about 2,600
16 miles of being actual roadway under there.

17 The problem I'm having with the methane and
18 stuff leaking into the mine, say it leaks into an old
19 working, and it builds up back in an old working, and
20 then our ventilation gradually picks up this methane,
21 and it comes into a working area -- okay, we've got
22 the exhaust fans, we've got ventilation fans of all
23 types in there, all the equipment underground
24 basically is electrical except for ram carts, which
25 are diesel, but when this methane builds up in, say,

1 the old workings and gets into a power source or a
2 heat source in the panel or in the face, we're looking
3 at a catastrophe here. And that's my main concern is
4 the safety and well-being of the people working
5 underground.

6 As you all well know, methane is
7 explosive. When it gets mixed, you know -- when
8 oxygen comes through the ventilation shafts there,
9 we're looking at the loss of lives of many people if
10 that did happen to happen. And, like I say, this is
11 basically my main concern with it.

12 The reason I want to be here is just to let
13 people know what our concerns are and ask you if
14 there's any way that the panel could put every effort
15 into maybe testing for this stuff or figuring out some
16 plan where we could save lives or keep something like
17 this from happening. So that's my main concern about
18 the whole deal right there.

19 Q. What do you see as the consequences to your
20 people, the people you represent, if methane gets into
21 the mines?

22 A. Well, the worst case would be, you know,
23 loss of lives. But if there was no loss of lives, and
24 we got the methane in the mine, and MSHA come in and
25 declared it a gassy mine, we're looking at several

1 hundred people out of work. And that's another thing.
2 I'm the Union President. I need to try to protect and
3 save the jobs that we have, plus the safety and
4 well-being of the people working there. And those two
5 items there are my main concern.

6 Q. Have you expressed these concerns to other
7 people before you came here today?

8 A. Yes, I have.

9 Q. Who have you talked to about it?

10 A. There was a committee meeting in Carlsbad,
11 New Mexico, here a few weeks back, and Representative
12 Stell and Representative Light, Senator Tom Benavides,
13 Senator Tenco, Representative Whitaker, Warren Baca,
14 and Senator Harvey, and they were all at that panel on
15 --

16 Q. You expressed these same concerns to them?

17 A. Yes, sir, I did.

18 Q. Any other people that you've contacted
19 about your concerns?

20 A. Well, I've written a letter to the Governor
21 and to Miss Anita Lockwood, all the senators,
22 representatives, all the steel workers unions, the
23 locals in Carlsbad there involved in the potash
24 industry, to the Chamber of Commerce in Carlsbad, to
25 the mayor and the past mayor and past president.

1 Q. Does that express the same concerns you've
2 told us about here today?

3 A. Yes, sir.

4 Q. I don't know what other question to ask
5 you, Mr. Pierce. Have I asked you the questions that
6 have let you tell the Commissioners what you want to
7 tell them?

8 A. Yes, sir, I believe so.

9 MR. HIGH: Very good. Thank you.
10 That's all I have Mr. LeMay.

11 CHAIRMAN LEMAY: Than you, Mr. High.
12 Mr. Carroll?

13 MR. CARROLL: No questions.

14 MR. HIGH: Thank you, Mr. Pierce.

15 THE WITNESS: Thank y'all very much.

16 CHAIRMAN LEMAY: We may want to ask you
17 some questions.

18 THE WITNESS: Okay.

19 CHAIRMAN LEMAY: Commissioner Carlson?

20 COMMISSIONER CARLSON: I don't have any
21 questions.

22 CHAIRMAN LEMAY: Commissioner Weiss?

23 EXAMINATION

24 BY MR. WEISS:

25 Q. Yes. It's interesting that you serve on a

1 committee, as I take it, this safety inspection team?

2 A. Yes, sir.

3 Q. Could you visualize such a committee, a
4 joint committee with oil field people and mining
5 people --

6 A. Yes, sir, I think that would be great.

7 Q. -- to look into the problem or to get some
8 actual facts and data?

9 A. Yes, sir, I think that would be excellent.
10 That's what I was wanting to ask for.

11 COMMISSIONER WEISS: Thank you. That's the
12 only question.

13 EXAMINATION

14 BY CHAIRMAN LEMAY:

15 Q. You give me an idea. Mr. Pierce, you
16 mentioned the old workings. Have you had experience
17 in the old workings with the methanometer, the one
18 that would register methane gas around maybe some of
19 the old wells that were drilled in the old workings or
20 the wells that were there prior to the mining
21 operations?

22 A. No, sir, I have not. You know, our old
23 workings, they've got barricades up. They're not
24 sealed off. They've got barricades up, keeping us out
25 of the old workings because some of the old workings

1 have bad backs and, you know, roots coming in and
2 things like that. So they won't allow personnel back
3 in some of those areas.

4 The places that I'm more acquainted with
5 is, we go through some of the old workings on the
6 roadways to the faces and panels where they are doing
7 the actual mining. Some instances we're a mile or so
8 from the shaft. Some places we're five miles from the
9 shaft. And we travel through some of the old workings
10 in the better areas of the old workings.

11 A lot of times they'll have to go in and
12 shoot the back down, raise the roadway up, because of
13 the bad back. What they'll do, they'll come in, and
14 they'll go up to a mud seam, and they'll blast down,
15 say, four or five feet, and they'll bring the roadway
16 up. That way they keep a good back over men. You can
17 go a long way on the site, you can see where they've
18 blown the back down, and you can look into the old
19 drifts and things leading off the roadway, and you can
20 see where the top is coming in.

21 So the old workings, they won't really
22 allow any personnel back in the old workings, say, 20
23 years ago or something like that. The workings that
24 we're going through now of course, we go through some
25 of that old workings into the newer, and it's, you

1 know, progressing every day. It's changing all the
2 time. But to say that I'm familiar with the old
3 workings in that area, no, sir, I'm not.

4 Q. I'm really more curious about the use of
5 the -- call it a methanometer, that measures methane
6 gas. Whereabouts do you take that generally? Is it
7 just in the new areas, or do you monitor the openings
8 to the old workings, or is there any special program
9 that you have in monitoring methane gas in the mine?

10 A. Most of the monitoring of the methane is in
11 the working face or the panel. They'll take a
12 reading, and you've got a panel that's set up with so
13 many faces. Some of it, there may be anywhere from
14 two -- there's always -- there's a minimum of two up
15 to 25 faces working at one time.

16 And when we go underground, we'll come in
17 on the intake side of the working panel, go into each
18 face, and they'll take a methane read in the face, up
19 next to the actual face itself. And then on the
20 exhaust side, they'll run their gas samples and stuff
21 down there. Once in awhile, they'll run a methane
22 test at the exhaust site, but usually it's right up in
23 the face where you've got some air circulation.
24 You've got a small fan blowing air in on the right
25 side of the face and letting it circulate in that face

1 and back out into the mainstream ventilation.

2 So they really test more right in the
3 working face than they do -- you know, in the main
4 roadways and up and down the ventilation lines like
5 that.

6 CHAIRMAN LEMAY: If they would catch
7 methane gas in the exhaust part, they couldn't tell
8 really where it was coming from; they had to trace it
9 back?

10 A. Right, they would have to trace it back.

11 Q. To try and find its source?

12 A. And I'm sure, you know, then like always,
13 there's a small trace of methane in those workings.
14 There was an inspector up there one time, had a
15 methanometer with a probe on it, and he stuck it up
16 into a -- they drilled air-relief holes into the back
17 and then put the roof bolts into that or rock bolts,
18 whatever, and he took his methanometer and put it up
19 into that hole, and he got a fairly high reading of
20 methane in the -- well, you know, as it seeped out or
21 whatever from this borehole in the back, it mixed with
22 air. You know, you're not getting a reading in the
23 main air stream per se, you know, anything very
24 high --

25 Q. You didn't continue, I take it; it was just

1 kind of a buffer?

2 A. Yeah, just right in a small area, yes, sir.

3 CHAIRMAN LEMAY: I have no further
4 questions. Anyone else have any questions?

5 Thank you very much, Mr. Pierce. We
6 appreciate your testimony.

7 THE WITNESS: Thank you all very much.

8 MR. LEMAY: Do you have any other ones at
9 this point?

10 MR. HIGH: We have no other witnesses, Mr.
11 LeMay, but, again, we would certainly make any of our
12 people available that you have additional questions
13 for.

14 CHAIRMAN LEMAY: Do you have a rebuttal
15 witness?

16 MR. CARROLL: I would like to put Mr.
17 Hutchinson on for just a brief moment or two.

18 CHAIRMAN LEMAY: Okay. You may call your
19 witness.

20 MR. CARROLL: We call Gary Hutchinson back
21 to the stand.

22 I wanted to -- this is an exhibit you've
23 seen before. This is Exhibit 54, and I've marked this
24 one 54A. I'm sorry, I don't have -- I thought it
25 would be easier -- this is to help speed what Mr.

1 Hutchinson -- do you need it? Okay. I've got two, if
2 the Commissioners wouldn't mind sharing one.

3
4 R E B U T T A L

5
6 GARY HUTCHINSON,
7 the witness herein, after having been previously sworn
8 upon his oath, was examined and testified as follows:

9 EXAMINATION

10 BY MR. CARROLL:

11 Q. You are the same Gary Hutchinson that has
12 testified previously in this hearing, are you not?

13 A. Yes, I am.

14 Q. All right. Mr. Hutchinson, after the last
15 set of hearing days that we had in early November, I
16 think, or at the end of October, the Commissioners
17 asked if it would be possible if you might meet with
18 New Mexico Potash personnel and try to refine some of
19 the numbers that you had; is that correct?

20 A. That's correct.

21 Q. Did you actually meet with New Mexico
22 Potash personnel?

23 A. Yes, I did.

24 Q. When was that?

25 A. I believe it was November 10.

1 Q. Who did you meet with?

2 A. I met with Walter Case, the mine manager,
3 and Ken Woomer, the chief mine engineer.

4 Q. Could you just briefly explain to the
5 Commissioners what you've learned during that visit,
6 and if that information that you learned would --
7 could it be used to better define some of the
8 testimony you gave earlier, and would you clarify
9 that, on the basis of that information, for us?

10 A. Certainly. You may recall the information
11 that I used earlier was from public sources, primarily
12 maps turned into the OCD, open mine workings. I had a
13 series of three maps, I believe, and from those maps I
14 took the outlines of the mined-out areas and tried to
15 come up with a recent rate of mining, as well as an
16 overall rate of mining for the 26-year history of the
17 New Mexico Potash mine.

18 The rates of mining in terms of net acres
19 disturbed per year, net acres being the gross acres
20 disturbed, applying a factor to that number for
21 recovery of the actual openings. The net numbers that
22 I had come up with were quite a bit smaller than what
23 New Mexico Potash personnel testified to.

24 So I traveled down there, and this time I
25 was allowed to go to the mine and met with Mr. Woomer,

1 Mr. Case. I was shown a 1-inch equals 800-foot scale
2 map, which was quite nice. It shows -- as far as I
3 could tell, it shows every entry, every panel, every
4 pillar, exactly where they have mined. It had some
5 dates on it that showed where they were on certain
6 dates. And it was a very good map to determine where
7 they had been mining exactly. It was very
8 professionally done, as most mine working maps are.

9 I suspect, if they didn't tell me -- they
10 may have told me this, but it looked like a map that
11 they may have submitted to MSHA under their MSHA
12 requirements that they submit periodically, if they're
13 open mine workings.

14 We had a discussion about the guessing that
15 I had done in my mine plan about why they mined
16 certain areas before other areas, and they were very
17 open and free with information and very cooperative.

18 As mining people, we were able to discuss
19 the problems of mining. And at a point in time during
20 the day, a draftsman who works for Mr. Woomer came in
21 with overlays to their main mine map. And those
22 overlays showed the areas that they had worked in in
23 the calendar years 1989, 1990, and 1991.

24 We put those tracings over their major mine
25 map, and while I planimetered or measured those

1 advances, Tim Woomer calculated the recovery rates for
2 those different parts of the mine that they had mined
3 in that three-year period.

4 At the end of that period, we compared that
5 to the tracings that I had made of the OCD-submitted
6 map, and we found several discrepancies. First of
7 all, the most glaring difference in what I had done
8 earlier is that I had assumed some -- from public
9 information, some much higher recovery rates than they
10 are actually experiencing.

11 They have some very sophisticated, I think
12 unique mining techniques that they're carrying on now
13 and have been carrying on in the recent past that are
14 quite good and efficient. We took those into
15 account. We found some areas that had been mined,
16 according to their draftsmen, in that three-year
17 period, that had inadvertently been omitted from the
18 much smaller scale map that was submitted to the OCD.
19 So there were some areas that I hadn't counted because
20 they weren't on the OCD map.

21 After our discussion about what their
22 mining plans were and my questions about where they
23 had been mining, discussions of those, I asked for a
24 copy of their -- or at least those areas that we had
25 worked on, their mine map, and they didn't feel

1 comfortable letting me have that. So I went back with
2 just my notes, showing the areas that they had mined,
3 took one of my maps and showed what areas those were
4 so I could associate those, and Mr. Woomer's estimate
5 of the recovery rates.

6 I, at that time, gave him my calculations
7 of coming up with the gross acres, using the original
8 OCD map over the 26-year period, and I think -- and
9 from testimony yesterday, they confirmed that, yes,
10 there has been a gross area, just the outlines of the
11 mined area without any consideration for recovery
12 rates, that they had disturbed an average of 370 gross
13 acres per year.

14 I knew that with their recovery rates that
15 my original rate of 136 net acres per year with
16 adjustments for their actual recovery rates that were
17 shown to me and the sketches that Mr. Woomer and I
18 reviewed, that my number would go up considerably, not
19 only with the recovery rates, but in adding those
20 areas that had been mined but not reported over the
21 short period of time I had measured would increase the
22 net acres consumed considerably, also.

23 I knew that we were going to be in
24 relatively the same ballpark. So at that point I
25 left, and I went back to my office. I sent a copy of

1 my notes back to Tim Woomer. We had a conversation.
2 He said he was trying to get this information on his
3 computer so he could calculate these areas also, but I
4 sent him my notes so that we both had the same
5 information.

6 And after my calculations, revising my
7 original numbers with the adjustments that reflected
8 their actual mining recoveries, and where they had
9 actually mined, increased my number to about 220 net
10 acres per year over that three-year period.

11 Using the areas and the recovery rates that
12 Tim Woomer gave me and that I looked at, and they
13 seemed to be quite reasonable, we had calculated a
14 weighted average for that three-year period, the last
15 three years, of about 240 acres per year. Well, that,
16 in my view, was close enough, given the tremendous
17 difference in scales of the two maps that we were
18 working with, the OCD map and their mine map, that I
19 said, you know, that their number was, in my
20 measurement, close enough to use.

21 So I went back to my mine plan, which was
22 originally Exhibit 54, and from my notes of the
23 meeting had a much better idea of what their plans
24 were for the mine, and I found out some geologic
25 information from them, and I tried to apply all of

1 those things to update my map, and my thinking in how
2 many -- you know, what their mining progress really
3 is.

4 The map, originally Exhibit 54, that you
5 have before you, I marked up with some of the
6 information I got from them.

7 First of all, I discovered where the dike
8 is located, and that certainly takes out a block of
9 area in the upper left-hand corner, marked block D.
10 The dike goes right through there. So I had not known
11 that, and it was not marked anywhere on the OCD map.
12 So, in my view, that block, the west D block, must be
13 eliminated. It's just not going to be mined. It's
14 not conceivable that it will be. The dike runs
15 through the north part of the main D's lot, just to
16 the east of the block eliminated. And so a portion of
17 that will have to be eliminated.

18 The rest of my blocks A, B and C are in
19 their Phase II plan. They want to mine that later.
20 And they had mined up into that area I think when -- I
21 was informed when New Mexico Potash bought the mine,
22 that they felt that they had a better place to put
23 their equipment, and they moved out of that area.

24 I also learned that in the south part of my
25 block C, I have a note there that the deposit was

1 rolling down. That means that the potash deposit was
2 rolling down in both potash and coal. That's kind of
3 a bad situation. It causes problems with
4 transportation, with conveyor belts, and so forth.
5 And with the barren area just to the east of that,
6 that may be a questionable area to go back into. So I
7 eliminated the south part of block C from my mine
8 plan.

9 In the lower part to the right, I just
10 would classify that as geologically unfavorable.

11 Going back over to the midwest side above
12 block K, where I had indicated that there might be
13 some waste with a question mark in my original
14 document, that's the state section which they have
15 informed me that they are going to mine in the near
16 future. And in blocks K and L they have current
17 mining; so I have no reason to doubt that they will go
18 around that barren zone that they have identified and
19 mine that state section. So that added some acreage
20 that I hadn't considered before.

21 In the areas of blocks E and F on the east
22 side, about the center, that's where they're currently
23 mining. And they are, from the location of their
24 shaft, if they come due south, as they have indicated
25 that they intend to do, into the north edge of block

1 I, there are three federal leases and a quarter
2 section that's a federal or federal potash. They're
3 not federal leases. It's apparently unleased
4 according to our records. But yet throughout a
5 portion of that, they had indicated that that was --
6 that had the potential for good ore.

7 I think that there are provisions in the
8 federal leasing situations where adjacent acreage can
9 be leased, and I would encourage New Mexico Potash to
10 take those leases, if they know that that potash is
11 good, and I think they have some drilling indications
12 that might show that to be the case.

13 Other than that, the slanted entry heading
14 across I seems to be an entry that they plan on using
15 to head towards Section 2, which is block O to the
16 south, as well as, if you'll look in my block H, I
17 have a southern heading entry there that I believe
18 they intend to develop that block soon, too, as it is
19 fairly close to the shaft.

20 Having made all those adjustments to my
21 thinking, I used the 240 net acres -- and, by the way,
22 gross acres are a difficult thing to understand, not
23 for the whole mine for its 26-year life; I mean, we
24 know what the outline of the mine is, but when you
25 start picking out a three-year period or a one-year

1 period or a two-year period, because of the
2 development work and the first mining and the second
3 mining, you end up counting some of those gross acres
4 twice.

5 So in the three-year period that we used, I
6 came up with some gross acres of 1,170 for that
7 three-year period, but they had been counted more than
8 once. Using that gross number, however, and what they
9 actually mined in that three-year period, I came up
10 with a 65 percent recovery. All that tells me is that
11 they mine at least 65 percent. That's the lower
12 limit.

13 Then when I went back to their current
14 recovery rates for their current type of mining and
15 applied it to the 26-year period, I show that their
16 rate of recovery is over 70 percent. So their
17 estimate of 75 percent, they know more about it than I
18 do, but I certainly got very close to that, and I
19 think it's an accurate number, much more accurate than
20 the much higher numbers that have been published for
21 the potash basin that I had been using earlier.

22 After learning what their plans were, their
23 concerns, their objective to do what they call Phase I
24 -- and that's to mine the southerly part of their
25 mined -- leased area first and then the northerly part

1 last, that all made pretty good sense to me. So I
2 went back and said that, if I make the net effect of
3 the acreage adjustments, assuming they take the
4 federal leases, delete the blocks that I've
5 highlighted would be taken off of my mine plan, it
6 adds approximately 1,000 acres.

7 And at their present rate of mining, if
8 they use my concept and mine closest to the shaft
9 first, which would be part of their Phase I -- Phase
10 II would come before, part of Phase II -- the arrival
11 at Section 2 would be approximately 36 years.

12 Now, certainly it's been conjectured that
13 they could mine straight through with one entry all
14 the way to Section 2, and they could be there in a
15 much shorter period of time, but that really hasn't
16 been the history of how the mine has been conducted.
17 They'll go into a block, as most mines do, and develop
18 that large block, and then they'll develop another
19 block, or in the case of New Mexico Potash, they try
20 to keep at least two major areas functioning at the
21 same time so they can leap frog and not be stuck with
22 just development, low-production work, but they'll
23 have high-production ore available for them to mine so
24 that they can get the proper grade and volume to their
25 mill, which is the real nut that they have to work

1 with every day.

2 Now, if blocks A, B and C, as modified in
3 the north part, that they call their Phase II are not
4 mined before Section 2 -- this is a, if they mine to
5 the south and mine to Section 2 and then go back up
6 and get those, I, in using the 240 net acres per year,
7 I came up with they would get to Section 2 in about 23
8 years, using this block concept and mining it out
9 rather than just shooting down there and mining back.
10 To me it's too far a distance to do that, and that
11 hasn't been the way they have mined in the past.

12 Now if I follow their mine plan, and they
13 do not take the federal leases, then they would be at
14 Section 2 in about 20 years by mining these blocks, as
15 I've indicated on mine. I'm sure they have a
16 different type of block setup than I do that depends
17 on the drilling information they have and the grades
18 that they need to get to their mill and their
19 economics, but that information isn't available to me;
20 so I'm just using what I have available. So that's
21 what I came up with.

22 The core boring that will have to be done
23 in the state sections to the north of Section 2 will
24 certainly be done within the five-year plan. As Mr.
25 Woomer brought out yesterday, that seems to be a

1 reasonable way of doing things for them and all the
2 mines there, and it's a very good practice. They need
3 to be able to plan out five years, get the holes
4 drilled, and if they don't find what they're looking
5 for in a detrimental way, they've got to do some more
6 drilling and change their mine plan.

7 If they find something better than they
8 anticipated, then they could revise their mine plan to
9 mix that better ore in with the areas that are already
10 opened up at lower grade for mixing purposes.

11 So I anticipate there will be a
12 considerable amount of core boring in those areas
13 north of Section 2 on state land long before they get
14 to Section 2 that will really tell the tale. As Mr.
15 Woomer testified yesterday, if they find that the
16 barren areas are more prolific to the south with their
17 drilling, or the grade is lower, they're going to have
18 to go where the best grade is to keep their mine
19 open. They're in a very difficult economic situation,
20 as I've described in my earlier testimony.

21 So that's where we ended up with. I think
22 I've covered the major points. The one thing I wanted
23 to bring out was to try to explain what seems to be a
24 simple concept of taking the outline of a mine for its
25 life and coming up with 370 gross acres per year is a

1 fine thing to do, but when you actually get down to
2 the mining of the thing with the three phases of
3 mining being development, then the first development
4 of the panels, and then the second mining, high-
5 production mining, the real way it's done in the
6 industry is exactly what Mr. Woomer said yesterday.
7 It's on a tunnage basis. And they know the height of
8 their ore body, and how they're doing it, but for
9 purposes of this hearing and from information I had,
10 the most reasonable thing seemed to be with this
11 fairly consistent height 10th zone, to use an acreage
12 situation.

13 That's complicated somewhat in being able
14 to calculate the net acres, but I think we have that
15 now, and we agree, and I certainly appreciated their
16 cooperation, and I would have loved to have had that
17 information earlier. Saved us all some time.

18 MR. CARROLL: Mr. LeMay, at this time I
19 would move admission of Exhibit 54A, since it
20 complements the original exhibit.

21 CHAIRMAN LEMAY: Without objection, Exhibit
22 54A will be admitted into the record.

23 MR. CARROLL: And I pass the witness.

24 CHAIRMAN LEMAY: Mr. High.

25 EXAMINATION

1 BY MR. HIGH:

2 Q. Mr. Hutchinson, the testimony of Bob Lane
3 about what New Mexico Potash was doing was more
4 accurate than your earlier testimony, and I guess what
5 you're saying is because he had more information?

6 A. Oh, no question about it. As Tim Woomer
7 said, I wasn't really playing with enough information
8 to compare to this number.

9 Q. But that really didn't stop you before in
10 testifying about this 136 --

11 A. No. I testified on that basis with the
12 best information that I had that had been submitted to
13 the OCD.

14 Q. And the more information you get, the
15 better your testimony would be?

16 A. Usually, you get to be more accurate as you
17 get more information, yes, sir.

18 Q. And this 54B, like your Exhibit 54, is
19 simply your best guess based upon the information that
20 you have?

21 A. That's true.

22 Q. And this revision, as shown on Exhibit 54A,
23 is based upon the additional information you got down
24 when you were trying to work out a stipulation on this
25 net acre business?

1 A. Yes. This is from information that they've
2 had for a long time.

3 Q. And if you got more information, this could
4 even change again?

5 A. Particularly core information. Core
6 geologic information is really the key that we seem to
7 be glossing over. But without the geologic
8 information, anything from any source is highly
9 speculative.

10 Q. What you've shown on 54 and 54A is based on
11 certain assumptions you have made, not that New Mexico
12 Potash has made; right?

13 A. Oh, correct, but I used it on information
14 they submitted to the OCD initially and revised it
15 with additional information I was given by the mine.

16 Q. Do you think it's a prudent mining practice
17 to mine around your shaft before you develop outlying
18 areas?

19 A. It is foolhardy to mine too close to the
20 shaft for subsidence reasons. Once you're far enough
21 away from the shaft that its structural integrity can
22 be maintained, then that's usually where you want to
23 start mining because that shaft in the original
24 situation is located near the best reserves you have
25 so that you can pay out your -- you know, the high

1 capital cost of the shaft in the mill.

2 Q. If that's your assumption, do you know
3 whether or not New Mexico shares that assumption that
4 you ought to mine close to the shaft first?

5 A. With as far away from the shaft as they are
6 now, assuming that all of the areas that they have not
7 blocked out as being barren or low grade or
8 noncommercial -- assuming that that grade is all the
9 same, which I have to do without geologic information,
10 yes, I think that that keeps their cost down to be
11 closer to the shaft, the travel time of the men is
12 shorter and so forth.

13 Q. My question was, do you know whether or not
14 New Mexico Potash shares your assumption that you are
15 to mine around the shaft first?

16 A. I think they do.

17 Q. And is it your testimony that that's
18 reflected in your exhibits?

19 A. In my original exhibit, the sequence of
20 mining was closest to the shaft, an estimate of what
21 the royalty differential might be as an economic
22 concern, and the number of transfers that the millions
23 of tons per year have to flow through in a change of
24 direction of conveyors -- I took those three things
25 into consideration when I came up with my sequence.

1 Q. My question is, do your exhibits reflect
2 the fact that New Mexico Potash has mined around its
3 shaft first?

4 A. Yes, they do, in part.

5 Q. Now, is it your opinion, Mr. Hutchinson,
6 that it is a correct way to measure the time it would
7 take a mine to get from Point A to Point B by using
8 this net acres disturbed?

9 A. No. I think I just testified that there's
10 a better way to do it. The mining companies certainly
11 use their tonnage. Everything in a mine is dependent
12 on the amount of tonnage that's, in this case, hoisted
13 every day. That's of primary importance.

14 Secondary importance is that grade that
15 will supply their mill with the proper ore to make it
16 efficient.

17 Q. Your estimates, you gave several of them,
18 36 years, 23 years, and 20 years --

19 A. Right.

20 Q. That's based upon net acres disturbed?

21 A. Yes, it is.

22 Q. And a better way would be using tons?

23 A. After you know the geology. You can't --
24 you're just throwing darts if you don't know the
25 geology and the grade.

1 Q. If you use net acres disturbed, aren't you
2 assuming that from your present location, as you
3 progress toward Section 2, that you're second mining
4 along with the progression?

5 A. In a block area, a large block area.

6 Q. So under your assumption, by the time we
7 got to Section 2, we would have second mined behind
8 ourselves; right?

9 A. No. If you'll notice on the Exhibits 54
10 and 54A, there are some dark lines, about 3/16's of an
11 inch wide, those I put in there as first mined,
12 synonymous with development, and you'll find that by
13 keeping those open, as they've done in the past, you
14 can get all the way back to the shaft.

15 By the way, a couple of notes I put in
16 here, between the block labeled D is an entry, and
17 below that they're doing some current mining. They're
18 pulling some pillars there of some fairly high
19 production nature. And it's very close to the shaft.

20 There was some disagreement, and with the
21 time available, we didn't get an answer as to whether
22 the entry, the permanent entry that goes between the
23 two D blocks, whether the pillars have been pulled.
24 Likewise, for that entry that goes up into the center
25 of D, north-south from the shaft, those pillars may

1 have been pulled.

2 So there is production mining close to the
3 shaft. I'm not sure, because Mr. Case and Mr. Woomer
4 were not sure that day, that those pillars have been
5 pulled. If they have been pulled, then what you're
6 implying is correct, they can't get back in to D
7 through those entries. They have to go another
8 direction.

9 Q. Does or does not the use of net acres
10 disturbed as a measurement for movement assume you're
11 doing second mining behind yourself?

12 A. Right. I don't know --

13 Q. Yes or no? Does it, or does it not?
14 That's not a hard question.

15 A. It's impossible to pull the pillars behind
16 you and keep those entries open. They'll collapse.
17 So you must keep the permanent entries open, as they
18 have done, to be able to get back to the shaft.
19 Everything has to go back to the shaft. So you don't
20 want to prevent yourself from doing it.

21 Q. Let me ask it a different way, Mr.
22 Hutchinson. I didn't think the question was that
23 difficult, but let me ask it a different way. Assume
24 I have just drawn a section of land on my legal pad
25 that I am holding up. I go in there and I have first

1 mined that entire section, only first mined it, in
2 three years. How many net acres have I disturbed in
3 those three years?

4 A. If the first mining is done, as they're
5 doing it now, in the east-west portion of the areas
6 between blocks I and F and G and N, you're only
7 recovering about 30 percent, I believe, of the ore in
8 place, and I think as on your Exhibit 38, it shows a
9 lot of small tunnels coming off of that, and that
10 takes those into consideration also. They've got a
11 slick way of doing that.

12 Q. How many acres have I disturbed in the
13 example I just gave you?

14 A. If you will provide me with the recovery
15 rate, it's fairly easy to calculate. You take the
16 recovery rate as a percent times the gross areas
17 disturbed, that would be the net acres that had been
18 disturbed in that first mining.

19 Q. So I guess you're saying it will be less
20 than 640?

21 A. Yes.

22 Q. Considerably less than 640?

23 A. If that's -- it depends on what number you
24 give me for the recovery rate.

25 Q. And if I stay in this same section for an

1 additional three years, pulling pillars, will that
2 affect a net acres per year?

3 A. Yes.

4 Q. If I stay in this same section an
5 additional three years, still pulling pillars, am I
6 increasing my net acres disturbed?

7 A. Yes.

8 Q. So everything would be based upon the rate
9 of mining?

10 A. Yeah. It's generally measured in tons, but
11 for purposes here, that's what we've done.

12 Q. But your testimony is not based on tons?

13 A. Right, I don't know their production.

14 Q. And that's what I'm saying. Your testimony
15 of 36 years and 23 years and 20 years is not based on
16 tons, is it?

17 A. No. It's aerial extent acres.

18 Q. And you know that if a mine wants to
19 develop into an area, it does what is called
20 development mining?

21 A. That's correct.

22 Q. And if we are in the southern part of our
23 LMR, and we want to go to the outer boundaries of that
24 and then mine back -- and you agree that's a good
25 practice, isn't it?

1 A. This is a not a good practice. That hasn't
2 been the practice of a mine. If you go to the total
3 extent of the leased acreage and mine back, that's
4 never been done at this mine. I don't know of any
5 mine it's been done at, and I don't think that's a
6 good practice.

7 Q. If you want to develop into an area, you
8 can drive development drifts, can't you?

9 A. Yes, you can.

10 Q. You're not telling this Commission, it's
11 going to take New Mexico Potash 36 years or 23 or 20
12 to drive a development drift into Section 2, are you?

13 A. Oh no, I think I said that, that there's
14 been some comments, if they were to take off from
15 where they are now and drive straight down to Section
16 2, they could be down there in a short period of time,
17 but that's not a good practice. I don't think they'll
18 do that.

19 Q. You've heard Mr. Tim Woomer and Mr. Bob
20 Lane both testify that, using their assumption, not
21 yours, using their assumption, that they plan to be
22 mining in Section 2 in from 8 to I believe it was 15
23 years?

24 A. Yes, I heard that.

25 Q. You heard that. There is nothing

1 physically that would keep that from being done that
2 you know of, is there?

3 A. No. I think that's a physical possibility.

4 Q. So to do that, it's obvious, I guess to you
5 then, that they've used some different mining
6 assumptions, and they have different mining plans than
7 what you would do if you owned New Mexico Potash?

8 A. Well, from my conversations at the mine,
9 you can't have your cake and eat it. If you're going
10 to main that State Section 18 and the one to the west
11 of it, and if you go into the federal leases, if this
12 is a good potash, and if you continue the current
13 mining practices in what appears to be quite good ore
14 in blocks E, F and G, then if that's done first, it's
15 going to materially delay the time that it would take
16 to get to Section 2.

17 Q. You did learn, I take it, a lot of
18 information beyond working on this stipulation, but in
19 the course of that, you did learn that it's New Mexico
20 Potash's plan to mine the southern part of its leases,
21 which includes Section 2, before it goes back up and
22 mines the northeast part of its leases; correct?

23 A. Yes. And I calculated that in my testimony
24 to the Commission.

25 MR. HIGH: That's all we have Mr. LeMay.

1 Thank you.

2 CHAIRMAN LEMAY: Thank you.

3 Mr. Weiss do you have anything?

4 COMMISSIONER WEISS: No, I don't. Thank
5 you.

6 CHAIRMAN LEMAY: I don't have anything, Mr.
7 Hutchinson. Thank you. Does that conclude your --

8 MR. CARROLL: That would conclude.

9 CHAIRMAN LEMAY: At this point, Mr.
10 Stovall, can I just ask the previous witnesses to
11 stand up for a question or two, or do you want to
12 bring them up here for lots of discussion?

13 MR. STOVALL: I think since we're not using
14 the recorder, I don't think it makes any difference.
15 Remind them all that they are still under oath, and I
16 think for efficiency, I think they can do it from the
17 chair, as long as they speak loudly enough so the
18 court reporter can hear them.

19 CHAIRMAN LEMAY: I'd like to ask Tim Woomer
20 a question.

21 MR. WOOMER: Yes.

22 TIM WOOMER,
23 the witness herein, after having been previously sworn
24 upon his oath, was examined and testified as follows:

25 EXAMINATION

1 BY CHAIRMAN LEMAY:

2 Q. Is it New Mexico Potash's policy to mine
3 blocks closest to the shaft or to drive to the end of
4 what they consider reserve like Section 2 and then
5 mine back?

6 A. It's the policy of New Mexico to develop
7 blocks not particularly close to the shaft, since
8 we're already quite a distance away, but you've got to
9 realize that Mr. Hutchinson doesn't know how many
10 machines we have, and it's a matter of juggling our
11 schedule around with the amount of machines. We'll
12 keep two active areas open with at least four or five
13 machines in every area.

14 In consideration of Section 2, it is a
15 block in itself. It will have to be developed that
16 way, which will require us to drive to the end to
17 Section 2 and pull that back.

18 Q. If you look at his Exhibit 54A, those other
19 blocks between Section 2 and Unit O and the shaft, did
20 you mine those before you built below and mined it?

21 A. Yes, O would be mined as a first. That
22 would be part of the block.

23 MR. HIGH: O is Section 2, by the way.

24 THE WITNESS: Yes, okay. And that would be
25 another block mined by another mining area. The

1 blocks that he has marked as I, M, and O, O, we would
2 have to mine parts of I -- what we would do is we
3 would drive down to O. In the meantime, we would have
4 smaller blocks off of these to keep production up
5 while we did the development work.

6 You don't make a lot of money on
7 development work. Your gravy is after you've gotten
8 to the end. Once you've gotten to the end of that
9 block, then you started making money. As your
10 recovery comes up, your tons come up, and your grade
11 comes up.

12 Q. (BY CHAIRMAN LEMAY) Why would you drive
13 all the way to O if you could drive to M and N?

14 A. Well, if you'll notice, there's a narrow
15 area.

16 Q. Right.

17 A. Between M and I.

18 Q. Right.

19 A. That area is not large enough to develop
20 and second mine. It must be driven through to get to
21 these blocks down here.

22 Then if you look at our LMR line, which is
23 our cut-off grade, which is 11 percent, that area is
24 very small. In other words, it will have to develop
25 to the end and pull. There's not enough room to leave

1 the protection for the development entries to keep it
2 open for that period of time.

3 Q. I guess my question more specifically is,
4 what's the difference in driving to M and N to that
5 restriction, mining back and then going after O, or
6 driving strictly -- once you drive through, drive to O
7 and then mine back? Is there an economic or a reason
8 to keep driving to O before you start mining M and N?

9 A. One of the problems with this map is that
10 we're not -- we don't have a lot of -- if you'll
11 remember, early 6 is up there right where that letter
12 N is practically -- we're not sure we can mine this
13 from the same side. It will probably have to be mined
14 from both sides of that low-grade area.

15 Do you understand what I mean?

16 Q. Yes, I see that. I'm just trying to focus
17 on driving to O first or not driving to -- this map
18 stops here at both, and you're saying you would keep
19 driving through O and then mine back?

20 A. Yes. You would have to because that's only
21 a mile wide. You want to get that before the pressure
22 gets your development entry to the northeast or the
23 northwest, if you're going up that way, then you're
24 going to have to develop that first.

25 Q. Is there anything beyond O that you might

1 develop?

2 A. At this time, there are several wells
3 already in place in Section 11 in the northeast
4 quarter. It is doubtful, and with the technology we
5 have now, this is probably the limit of our
6 extension.

7 Q. You're getting too far away from your main
8 shaft, and you couldn't afford --

9 A. We're getting -- if those wells weren't in
10 Section 11, we could probably mine part of the
11 northern section of Section 11, but with those wells
12 stopping us, and the distance getting a little bit too
13 great, there is really -- economically, it wouldn't be
14 feasible to go much further down. So that would be as
15 far as we would go.

16 Q. So you're saying that the base of Section 2
17 in the south line of Section 2 would be as far south
18 as you could go?

19 A. And if we had the lease, the Section 11,
20 which I think Yates is saying -- I don't know who has
21 it. We don't own that lease, but we could practically
22 mine parts of the northwest quarter of Section 11
23 also.

24 Q. But the northeast portion of Section 11 --

25 A. Is drilled.

1 Q. It's drilled?

2 A. Yes.

3 Q. So it would be the northwest portion?

4 A. That's correct, that could be mined still.

5 Q. That would be the limit as far as you could
6 to go get ore without the sinking of a shaft?

7 A. At this time, at this time. Like I said,
8 within the last three years, we've improved our
9 transportation to give us three more miles of travel
10 time. So, you know, technology is continually
11 changing. There is a possibility in ten years when
12 we'll be there, that we can go further.

13 CHAIRMAN LEMAY: Do you have a question?

14 COMMISSIONER WEISS: Mr. Case, please. I
15 think you're the guy to ask.

16 MR. CASE: Okay.

17 COMMISSIONER WEISS: The tunnel, is what
18 I'll call it, that goes from the mine shaft on Exhibit
19 38 to the far northeast?

20 MR. CASE: Yes, sir.

21 COMMISSIONER WEISS: When did you start
22 digging that?

23 MR. CASE: Mr. Weiss, without going back to
24 my records, I really can't say. It was done before I
25 took over as manager in 1980. In other words, when we

1 took off from the shaft and headed out that direction,
2 it was pre-1980.

3 COMMISSIONER WEISS: Okay. Would Mr. Lane
4 know?

5 THE WITNESS: He would know better than I
6 would.

7 COMMISSIONER WEISS: Oh, okay. Perhaps --
8 do you have a feel for that?

9 MR. HIGH: Mr. Weiss, you're talking about
10 the development entry that goes up to the northeast
11 that we've been talking about?

12 COMMISSIONER WEISS: Yeah, right up there,
13 and it stops at Section 36. When did you start
14 digging that.

15 MR. LANE: Started east of the main shaft
16 area in '72.

17 COMMISSIONER WEISS: Thank you. That's all
18 I have.

19 COMMISSIONER CARLSON: I have a question
20 for Mr. Hutchinson.

21 When you first testified, you stated that
22 it appeared to you that New Mexico Potash was
23 deliberately bypassing their state leases probably
24 because of a higher royalty rate. Given the testimony
25 that New Mexico Potash has presented concerning when

1 they acquired those leases, the difference in royalty
2 rates, and the fact or their statements that they
3 don't take royalty rates into consideration, do you
4 still have that opinion?

5 MR. HUTCHINSON: The opinion that they're
6 avoiding state --

7 COMMISSIONER CARLSON: That they are
8 avoiding state leases, probably because of a royalty
9 rate difference?

10 MR. HUTCHINSON: I was looking for -- I
11 wasn't trying to find fault with them. I was trying
12 to reinforce what they do and looking for an economic
13 reason why they would mine on three sides of 18 and
14 only partially into Section 32 up in the north part
15 and stop at Section 36. I was looking for a way to
16 develop their mine to see what it would take to get to
17 the outreaches.

18 Now, I've been accused of accusing them of
19 doing that, but to me, to save \$2 million in a section
20 in royalty, not counting overriding royalty, to me
21 that's a reasonable consideration regardless of who
22 owns the potash. It just is a coincidence that in
23 this area it's either federal potash or state potash.

24 And I would think that the state -- and I
25 think I suggested in my earlier testimony, that

1 royalty is a big economic consideration, and no matter
2 who does it at what level of management, it won't
3 override grade and tonnage production, but it is
4 certainly a consideration.

5 I don't believe that I've heard anything
6 that indicates that since the Section 18 was acquired,
7 that the royalty rate is more advantageous there than
8 in the federal section. I think it's quite -- it's
9 the opposite. It's a function of grade, again, but
10 the grade apparently is good on three sides of Section
11 18 because they mined it as late as 1991 on the east
12 side, according to the OCD maps. And, unfortunately,
13 they second mined it, which makes it, as Mr. High
14 indicated, hard to get back into the area, but they
15 still have access to it from other areas.

16 They told me they definitely planned to
17 mine that, but if they're mining -- if the grade in
18 their federal acreage is low and the grade in the
19 state acreage is high, it will more than compensate
20 for that royalty differential, then they're going to
21 do the most -- take the most economic alternative, I
22 would think.

23 COMMISSIONER CARLSON: Thank you.

24 CHAIRMAN LEMAY: Commissioner Weiss?

25 COMMISSIONER WEISS: I have a question for

1 Dave Boneau.

2 What do you expect the reservoir pressure
3 to be in eight years?

4 MR. BONEAU: Below 1,000 pounds, 500
5 pounds.

6 COMMISSIONER WEISS: Thank you.

7 CHAIRMAN LEMAY: I've got one for Randy
8 Patterson.

9 Have the feds issued your potash lease yet?

10 MR. PATTERSON: No, sir, they have not.

11 CHAIRMAN LEMAY: What do you hear from
12 them, or do you have any indication whether they are
13 going to or not?

14 MR. PATTERSON: They had issued a decision,
15 as you know, that said that they were not going to
16 issue it. Some of our people, including Mr. Losee,
17 went to Santa Fe here and had a meeting with the state
18 director and gave them our reasons for bidding on the
19 lease. We have recently, in fact, I think end of last
20 week, received a decision which temporarily rescinded
21 the first decision pending their thinking about it.

22 And they said that they would issue a third
23 decision, telling us whether or not we will get the
24 lease. But they issued the second decision rescinding
25 the first decision because the time was running out

1 for an IBLA appeal. So, therefore, they had to
2 withdraw the first decision to stop the clock on the
3 IBLA appeal because we were going to have to go ahead
4 and put it in an IBLA, and when it gets there, it's
5 difficult to get it back to the state level.

6 CHAIRMAN LEMAY: So the net result is you
7 really don't know anything more --

8 THE WITNESS: We don't know, and they're
9 thinking about it.

10 CHAIRMAN LEMAY: Any other questions?

11 Let's take about a 15-minute break. Then
12 we can wrap this up with some summations of issues I
13 think we talked about and close it up.

14 (Thereupon, a recess was taken.)

15 CHAIRMAN LEMAY: Are we ready to wrap this
16 thing up? Which one of you gentlemen wants to go
17 first?

18 MR. HIGH: Mr. Carroll?

19 MR. CARROLL: Are you volunteering me
20 today, Charlie?

21 MR. HIGH: I was asked the question. I
22 answered it. I'm quicker than you.

23 MR. CARROLL: Charlie desperately wants the
24 last word, as I think we have noticed throughout this
25 hearing.

1 MR. HIGH: I never get that with you, Mr.
2 Carroll.

3 MR. CARROLL: I don't think the record
4 would reflect that.

5 The role of the Commission in these
6 particular four cases, I think is clearly defined in
7 R-111-P. And that role is that it should not abdicate
8 its power in granting exceptions, and that it should
9 look to whether or not commercial potash is going to
10 be wasted.

11 And it asks -- and in R-111-P it uses the
12 language "clear demonstration." Therefore, the duty
13 or the role of this Commission is, first, to determine
14 whether or not there's commercial potash. It's almost
15 a step-by-step process, because if you don't get past
16 point A, you stop. If there is no commercial potash,
17 or it hasn't been reasonably shown to this Commission
18 that there is, there is nothing else it can do. It
19 should grant the drilling applications.

20 The evidence before this Commission clearly
21 shows that based on an economic point of view, which
22 is what commercial is or is tied to, that Section 2,
23 one, won't support a stand-alone mine, and, two, the
24 development is so far down the road in time, plus
25 subject to, in Mr. Woomer's testimony, so many

1 contingencies, the least of which is the drilling of
2 more coreholes, that there has been no clear
3 demonstration whatsoever that there is even any
4 commercial potash in Section 2.

5 New Mexico Potash has invited this
6 Commission to speculate. It wants this Commission to
7 speculate that there is commercial potash, and
8 therefore deny the applications. It wants you to
9 speculate as to whether there's sufficient quantity.
10 It wants you to speculate as to whether or not there's
11 sufficient grade. It wants you to speculate that
12 they'll even get down there, 10, 15, 20, or 30 years.
13 They want you to speculate that they'll even be in
14 business at that time, or that there will even be a
15 potash industry left in the United States.

16 On that basis alone, this Commission is
17 justified in granting all four applications. Let's,
18 for a moment, go a step farther, and just for purposes
19 of argument, let's assume that maybe there is potash
20 there. I thought long and hard, how do I bring forth
21 the issues that we've been trying to put forth. The
22 best way that I came up with is for us to take a
23 moment, and let's just look at the fact that this is a
24 case of first impression. This is a very important
25 case. This kind of evidence has never been presented

1 in this kind of detail before the New Mexico OCD or
2 the Commission.

3 What has all this testimony done to
4 delineate the issues faced by you three
5 Commissioners? The best way to look at it, I think,
6 is let's go through and see what we would not have
7 known but for the evidence we've heard.

8 First of all, without this hearing, we
9 wouldn't have known that the real reason behind the
10 confidentiality provision was not to protect them from
11 competition but to protect the potash industry from
12 antitrust.

13 The next thing that we wouldn't have known
14 is that the potash industry in southeastern New Mexico
15 is in dire straits with respect to its ability to
16 compete against other North American competitors or
17 producers of potash.

18 The next thing that we wouldn't have known
19 is that all of these prior studies that have been
20 handed out that were done by the potash companies on
21 oil seeps and encounters in the potash basin, we
22 wouldn't have known that none of those have documented
23 a single incident as having been related to an oil and
24 gas well.

25 We wouldn't have known that all of those

1 reported seeps were found in an area overlying the
2 Capitan Reef, and that they were all in an area
3 associated with breccia pipes. We wouldn't have known
4 that Section 2 doesn't overlie the Capitan Reef and is
5 not in an area where you have breccia pipes.

6 We wouldn't have known that the potash
7 mines, including New Mexico Potash, have oil wells
8 within their mine workings, and that there have been
9 no problems to date.

10 We wouldn't have known that the potash
11 companies drilled coreholes throughout this basin.
12 They don't set casing. They just drill down to the
13 potash, and, in some cases, they just set sporadic
14 plugs. Sometimes they just fill the hole with
15 cement. We know that those coreholes occur where
16 they're mining, areas subject to subsidence, and no
17 reported problems.

18 We wouldn't have known that the two
19 principal disasters Belle Isle, Kane Creek were not
20 caused or contributed to by oil and gas drilling, but
21 they were caused by naturally occurring methane gas,
22 and, in particular, with the Belle Isle, that it was
23 the failure of mine management and the mine inspectors
24 who full well knew the threat to adhere to that and to
25 do what was right. We don't have anything to do with

1 do with oil and gas drilling. It's something totally
2 different.

3 We wouldn't have known that coal mines are
4 mining through oil and gas wells, and that it's
5 commonplace, that it's handled by administrative
6 procedure. We wouldn't have known that.

7 We wouldn't have known that New Mexico
8 Potash changed its LMR after Yates gave notice to it
9 of its intent to drill the four wells in Section 2
10 with which we are concerned.

11 We wouldn't have known that New Mexico
12 Potash did not have sufficient interest in Section 2
13 to even drill a corehole prior to Yates giving notice
14 of its intent to drill these wells.

15 We wouldn't have known at the time they
16 drilled the corehole that they had an agreement to
17 assign Section 2 to the IMC. And we wouldn't have
18 known that it was only in the last few months after
19 these cases were filed that New Mexico Potash went out
20 and hired a consultant to develop a long-range plan to
21 develop Section 2.

22 We wouldn't have known that ERDA-6, the
23 corehole just north of Section 2, is barren in the
24 10th ore zone. We wouldn't have known the three oil
25 wells, the two Pogo wells and the southern Yates well

1 in Section 2, were barren of mineralization in the
2 10th ore zone.

3 We wouldn't have known that corehole F-65
4 was being incorrectly or unfairly utilized in
5 expanding the LMR of New Mexico Potash because they
6 were over two thirds of the mineralization being
7 included so they would ride at the BLM standard, not a
8 true economic standard, but at least the BLM
9 standard. They were using carnalite, something they
10 can't even mine.

11 We wouldn't have known that the corehole to
12 the west, FC-81, is barren.

13 We wouldn't have known that the danger of
14 subsidence is something that has been studied and
15 dealt with on a day-to-day basis out here in this
16 potash basin of southeastern New Mexico. We wouldn't
17 have known that they have measured subsidence.

18 We wouldn't have known that the angle of
19 draw is an interesting concept, as a concept goes, but
20 it's really the angle of break where you have this
21 maximum tension is the true angle that we should be
22 looking at.

23 We wouldn't have known that angle of draw
24 is just -- it's something this is defined by man's
25 ability to measure. It doesn't have anything to do

1 with damage or safety concerns. That's not the
2 issue.

3 We wouldn't have known that actual studies
4 in the potash basin have shown the angle of this break
5 or maximum tension to be, in one calculation, a minus
6 3 degrees. It was inside of the area mined.

7 We wouldn't have known that the stresses
8 that are caused by subsidence can be calculated and
9 that a single strand of casing is designed to
10 withstand three times the maximum stresses that we
11 would be encountering out here.

12 We wouldn't have known that each additional
13 string of casing, which we know we have three in these
14 wells, adds additional strength.

15 We wouldn't have known that the real area
16 of influence where we're going to have our damage is
17 always going to be above the mined-out area, and that
18 these wells are going to be bottomed well below that.

19 We wouldn't have therefore known that a
20 plugged-and-abandoned well should therefore never be
21 adversely affected by subsidence.

22 And, for that matter, we wouldn't have
23 known that we could actually calculate these stresses
24 and subsidence and leave pillars at least so long as
25 the well is producing.

1 This list goes on. I don't want to bore
2 you with it. We could talk about the impermeability
3 of salt and its effect; the plastic and sealing nature
4 of that salt; the possible pass of gas, if there is
5 damage, how it would go to the surface rather than
6 into the salt zones.

7 The point to be made here, and I think this
8 is the issue -- there is one issue -- is that we've
9 become enlightened. This is the issue here. We need
10 to become enlightened. And we have had a great
11 awakening, I think, throughout the many days of this
12 hearing. The potash industry has been almost medieval
13 in its dissemination of information. It's the old
14 ostrich in the sand: Don't tell me about the facts.
15 I don't want to know about them. They're out there
16 because we were able to bring it to the fore to be
17 examined.

18 In other words, let's look at facts and
19 science, not fictional speculation and horror
20 stories. I don't want to downplay the fact that an
21 explosion in a mine is horrible. Only a fool would do
22 that. But if the reasons those explosions occurred
23 somewhere else won't occur in our area of concern,
24 then it is not proper to use those horror stories to
25 prevent the development of the oil and gas in that

1 Section 2.

2 We have heard the term "yellow journalism"
3 bandied about, and "don't accuse me of this and that"
4 and what have you. The term "yellow journalism" has
5 significance in United States history because it was a
6 time when certain individuals exploited problems
7 unfairly. And basically that's the situation that we
8 have here. And all I have to say with respect to that
9 issue is that if the shoe fits, wear it.

10 The evidence is abundant. This Commission
11 should grant these four applications. Commercial
12 potash hasn't even been shown to exist. In fact,
13 we've shown to the contrary. But even if it were to
14 be found to exist, we can develop them both. Show me
15 one place in any statute of the State of New Mexico,
16 federal statute, that says, potash has a preference;
17 that we must prefer it, because I don't think you'll
18 ever find one.

19 And, in fact, our state statutes are quite
20 to the contrary, because if you can't show you've got
21 commercial potash and it's going to be unduly wasted
22 or the development of oil and gas is going to unduly
23 interfere with the development of commercial potash,
24 then you don't have waste, and this Commission is not
25 empowered to deny the drilling applications before

1 it.

2 Thank you.

3 CHAIRMAN LEMAY: Thank you, Mr. Carroll.

4 Mr. High.

5 MR. HIGH: Mr. LeMay, fellow Commissioners,
6 thank you.

7 I agree with Mr. Carroll on one point, this
8 is a very, very important case. The issues may be
9 related to Section 2, but we all know that this
10 decision will have impact far beyond Section 2.
11 R-111-P has served this state well. It has served
12 both industries well.

13 What is overlooked by Mr. Carroll is that a
14 lot of effort went into R-111-P, and Mr. Weiss even
15 asked Mr. Pierce the question about setting up a
16 committee. We did that. I am sorry that Mr. Carlson
17 and Mr. Weiss were not involved to participate in that
18 experience. We went through that joint committee of
19 oil and gas people, potash people, of union
20 representatives, of governmental leaders, of public
21 members, everyone serving on a committee, to come up
22 with rules to regulate what we're talking about
23 today.

24 We spent 13 months doing that. And I dare
25 say, Mr. LeMay, as you well know, we haven't covered

1 one thing in this hearing that we didn't cover in
2 those committee meetings. We discussed the very
3 issues that were covered in this hearing in those
4 committee meetings, and we came up with a way to
5 resolve them. And that's set forth in the industry
6 agreement which Yates signed. There is nothing in
7 R-111-P that Yates didn't agree to, and it has served
8 us well.

9 Since that order was adopted in 1988,
10 February of 1988, this is the first hearing before the
11 OCC that we've had on this issue. That is success.
12 R-111-P set forth an orderly way to develop both
13 resources. And what this Commission now is being
14 asked to do is to go back on that and send us back to
15 doing it the way we did it before, because under
16 R-111-P, the potash people gave up areas of low-grade
17 ore in exchange for protection of higher grade ores.

18 And you saw evidence of that from this
19 witness stand. You heard the BLM say that their blue
20 area is based upon four feet of 10 percent ore. You
21 heard testimony that New Mexico Potash doesn't try to
22 protect everything that's blue anymore. We used to.
23 Before R-111-P, we tried to protect everything that's
24 blue. But you heard the testimony that we no longer
25 do that because of R-111-P. Their LMR cutoff is more,

1 is higher than the 10 percent.

2 We gave up that much ore so the oil and gas
3 people could develop. So we've had more wells drilled
4 as a result of R-111-P, and we've had our potash
5 protected. It serves both industries well, and it
6 should continue to serve both industries well.

7 If an exception was granted, R-111-P, can
8 be kissed good-bye, because I will tell you, and I'm
9 not a fortune teller, but I will tell you that there
10 is not an oil and gas producer in the basin who won't
11 be in here trying to get the same exception. So what
12 we will see, if one exception is granted, is an
13 absolute flood of APD's for exceptions to R-111-P.
14 And instead of having the peace that we have had from
15 1988 until 1992, we will be up here for every
16 Commission docket. We will be up here for every
17 hearing examiner docket on other requested exceptions
18 to R-111-P.

19 The exceptions will absolutely swallow the
20 rule. There will no longer be an orderly way to
21 accommodate both industries. Drilling will no longer
22 be predictable. Mining will no longer be
23 predictable. It will all be subject to whether or not
24 somebody can come up here and convince you people to
25 grant them exceptions or whether or not the potash

1 people can come up here and convince you that one
2 should not be granted.

3 So you're going to hear this same evidence
4 time and time and time again if you create one
5 exception to R-111-P. There are policy reasons,
6 strong policy reasons, aside from the evidence, that
7 this Commission should very seriously consider before
8 it ever crosses the threshold of granting an exception
9 to R-111-P. And we would urge you to consider those
10 policy reasons.

11 Beyond that, the evidence in this case,
12 unlike what Mr. Carroll just told you, I think shows
13 without question that Section 2 contains a commercial
14 deposit of potash. All of Yates' witnesses said no,
15 that it does not. But the state land office said it
16 did. The state land office says Section 2 contains a
17 commercial deposit of potash. The BLM says it
18 contains a commercial deposit of potash. Walt Case,
19 who runs the mine, says that it contains a commercial
20 deposit of potash. Bob Lane, who has been there 30
21 years, says it contains a commercial deposit of
22 potash, and so did Tim Woomer and Professor
23 Grosvenor. All testified that there is a commercial
24 deposit of potash in Section 2.

25 That's based upon corehole data that shows

1 the grade of the potash in that area. And you have
2 evidence here, Exhibit No. 25, which shows you how or
3 what grade New Mexico Potash can mine. And the grade
4 that they can mine is a long way below the grade of
5 ore shown by Corehole 162 in Section 2.

6 From our perspective, the evidence is
7 simply undisputed that Section 2 does in fact contain
8 a commercial deposit of potash, notwithstanding what
9 Yates says.

10 The second issue is whether or not New
11 Mexico Potash can mine that. I don't think that issue
12 is even in dispute. With Exhibit No. 25 showing the
13 production report, showing the grades of potash
14 actually mined by New Mexico Potash, no conclusion can
15 be reached other than that, yes, New Mexico Potash can
16 mine the ore that is in Section 2.

17 Walt Case also said New Mexico Potash could
18 mine it, as did Bob Lane, Tim Woomer, Professor
19 Grosvenor, and Tony Herrell. And you heard Tony
20 Herrell testify as to the average grade of ore being
21 mined in the basin, and it is considerably below the
22 grade of ore that is in Section 2.

23 Will New Mexico Potash mine it? The answer
24 to that question is, certainly, they will. It's
25 important for this Commission to understand also the

1 nature of the mining industry. The viability of any
2 mine, unlike an oil and gas operator, depends on
3 having long-term reserves.

4 We feel a little bit handicapped here, and
5 I don't mean to be critical, but we're not in a
6 situation where we are preaching to the choir. We are
7 talking to three members of a Commission, none of whom
8 have a background in mining, and it is a great deal of
9 concern to us. Again, I'm not being critical. I'm
10 just making an observation that that is one of our
11 concerns.

12 And we would urge this Commission to
13 consider very carefully how the mining industry is
14 different from the oil and gas industry. We don't
15 think the same way. We don't operate the same way.

16 And you have in evidence Exhibit No. 36,
17 and I would urge you to please take a look at it,
18 because it points out how mining is different from
19 other industries. It says, for example, that: "The
20 prudent miner conserves his ore by planning mining in
21 such a way as to maximize his profit from it over the
22 life of the deposit. In mining, it is essential to
23 view the financial outcome on the basis of the full
24 life of the operation as nearly as can be anticipated,
25 which is not necessarily the case in other

1 businesses."

2 We need long-term reserves. We can't mine
3 everything that we have as reserve in the next year or
4 two, but we can't stay in business if we don't have
5 30, 40 and 50 years' worth of reserves. That's the
6 way the mining business operates. And for this
7 Commission to take a view of that that doesn't take
8 into account that mining philosophy, you could
9 literally put us out of business by saying, "Well, gee
10 whiz, they're not going to mine this for another 20
11 years. Therefore, it's not important to them."

12 That is so wrong that it scares us that
13 that may be lost in the shuffle of the evidence. So I
14 would urge you to please consider how the mining
15 industry operates and why it needs these long-term
16 reserves.

17 As far as these reserves in Section 2 are
18 concerned, we think the evidence shows very clearly,
19 as Mr. Bob Lane testified and Mr. Tim Woomer, that we
20 will be in Section 2 in from 8 to 15 years. If it's
21 there, we intend to mine it. If you allow these
22 wells, you're going to waste it. It's that simple. I
23 can't say it any clearer than that.

24 We can't wait to mine it. When we get down
25 there, we will have to mine what is there. And if

1 it's not ready to be mined, then we will have to pull
2 out and go away because we can't sit around like some
3 industries, waiting on ore to become available because
4 of the subsidence and the fact that we're an
5 underground operation. So if it's there, we will mine
6 it in 8 to 15 years. If it's not, we'll go away and
7 pull out, and that ore will be wasted.

8 It is our position, as we've said
9 throughout, that if this Commission grants the APD's
10 in this case, it will constitute an undue waste of
11 potash in violation of the Oil and Gas Act, which this
12 Commission is charged with protecting for simply two
13 reasons.

14 The first, of course, is that the allowance
15 of these wells will constitute a safety hazard. Mr.
16 Carroll poo-poops that a little bit and calls it --
17 again, he used the words of "yellow journalism." We
18 resent that. We are safety-minded. We're safety-
19 conscience. We're not knee-jerk reaction people. We
20 think like miners. We don't think like oil and gas
21 operators.

22 And we have brought in and put on this
23 witness stand every expert we could think of that
24 might have information you would be interested in
25 hearing, including a safety expert. Yates called no

1 underground mining safety expert. And, quite frankly,
2 that doesn't surprise me because I think I know what
3 an underground mining safety expert would say when it
4 comes to methane gas because it is such a hazard to
5 underground mining.

6 T.B. O'Brien urged you to allow these
7 because he said there was no hazard to mining. If you
8 recall, you allowed Mr. O'Brien to offer expert
9 opinions on what is or is not a hazard to mining, over
10 my objection, even though he testified he's never been
11 in a mine. Mr. O'Brien doesn't have any more idea of
12 what is a hazard in an underground mine than the man
13 in the moon. He may be an excellent oil and gas
14 person, and I don't doubt that for one second, but he
15 doesn't know what is or is not safe in an underground
16 mine.

17 You heard Dr. Mitchell lay out for you
18 point by point the various ways that methane gas can
19 and will escape from the casing, get outside the
20 casing, and find its way to the Salado. That evidence
21 is before you. Dr. Mitchell even said, in all candor,
22 that with the thousand or so wells that we already
23 have in the basin, that in his professional opinion
24 and experience, that from 3 to 4 out of every 100 of
25 those wells would have gas on the outside of the

1 casing.

2 That is scary to us, and it should be scary
3 to you. Once that gas gets outside the casing, you
4 heard Professor Grosvenor talk about subsidence and
5 how it disturbs the strata and creates paths for
6 migration.

7 You heard how Warren Traweck explained the
8 instances of oil spots in seeps that have been found.
9 Yates poo-poops the fact that this oil spots in the
10 Salado formation. You have in evidence a report from
11 Dr. George Griswald prepared back in 1982 that lays
12 out as clear as words can say that there is no
13 historical reason to find any carbonaceous material in
14 the Salado formation. That oil that is in the Salado,
15 the oil seeps that have been found, came from
16 somewhere. It had to migrate from somewhere to get
17 inside the mine. We don't know where it came from.

18 What we do know is that it is within 700 to
19 1400 feet of some old oil wells. That to us is
20 evidence, absent some other explanation that we
21 haven't heard, that oil is seeping from some wells in
22 the basin, and it will migrate up to 1400 feet.

23 And despite that evidence, Yates wants to
24 drill and leave a pillar of 125 feet. That is an
25 absolute disregard for the safety of our underground

1 miners.

2 If this Commission allows these wells, or
3 if other oil and gas wells already in the basin cause
4 methane gas to migrate into our underground mines, or
5 if it's loose in the Salado formation and we later
6 encounter it, the impact on the industry is
7 undisputed. This Commission will wipe out an entire
8 industry and over 2,000 jobs. The potash industry
9 simply cannot, given its economic condition, stand to
10 comply with the additional requirements that would be
11 imposed on it if it was moved from category 4 to
12 category 3 and requires it to comply with all the
13 requirements of a gassy mine.

14 There are some wells which we have
15 acknowledged that have pillars of 300 to 400 feet.
16 Those wells were drilled long ago, and they were mined
17 around long ago. They were mined during a time when
18 the safety regulations were different than they are
19 today. The consequences back when that occurred are
20 not what they are today. The consequences today are
21 absolutely devastating, and what occurred years ago
22 under a different safety regulation should not be a
23 guide to this Commission on what it does in this case
24 when we have different safety regulations.

25 The waste of potash, we believe, is clear.

1 We have submitted as Exhibit No. 27 our calculations
2 that have been unchallenged except for the inverse of
3 two numbers, which we have corrected.

4 And you will see from those documents, if
5 this Commission allows these wells, you will with the
6 stroke of a pen waste \$41 million worth of potash.
7 You will deprive the State of New Mexico of over
8 \$1,600,000 in royalties. That's the price you will
9 pay for granting these wells.

10 Beyond that, if you don't let us mine
11 Section 2, you are going to tell 260 miners that we're
12 going to take three years off of the work you're going
13 to be able to do. You will be depriving citizens of
14 this state of the right to work in the profession they
15 have chosen. There is no need for an exception in
16 this case. There is no need to grant these APD's.

17 These wells, more than any I've ever seen,
18 cry out for a directional drilling. This Commission
19 has not required directional drilling except in rare
20 instances. New Mexico is probably at the bottom of
21 the states in terms of directional drilling. If you
22 look at the directional drilling going on around the
23 country, with California at the forefront, you will
24 see that directional drilling is much more prevalent
25 in those areas than here.

1 These wells cry out for directional
2 drilling. The technology is there. It's undisputed.
3 Dr. Mitchell said the additional cost would be in the
4 neighborhood of \$135,000. We're talking about
5 avoiding an expense of \$135,000 to create what expert
6 witnesses have told you will be a safety hazard and
7 waste \$41 million in potash, all for \$135,000. We
8 think the answer to that issue is very clear.

9 We will also suggest to the Commission
10 another alternative. We would ask this Commission to
11 encourage directional drilling. And we think this
12 Commission can do so in a way in which it is done with
13 the potash industry. There have been instances where
14 the potash industry has asked for royalty reductions
15 and received those due to hardships. There is no
16 reason why this Commission can't encourage in these
17 particular circumstances directional drilling by
18 giving a royalty adjustment to an oil and gas operator
19 to help offset the additional cost of directional
20 drilling and prorate that over the life of the well.

21 And through that simple procedure, this
22 Commission could ensure that the citizens of this
23 state will get the benefit of royalties from both the
24 potash production, as well as the oil and gas
25 reserves. That, we believe, is an alternative that

1 has not been pursued. It should be pursued, and is a
2 way that we would urge this Commission to look and
3 encourage Yates to pursue that with respect to these
4 wells.

5 In short, we don't believe this Commission
6 should impose on the potash industry the risk, the
7 safety and health risk of the oil and gas industry's
8 economic ventures. There is no question that given
9 the evidence in this case, that these wells are
10 allowed. The potash industry bears the risk that
11 something bad will happen, and the oil and gas people
12 get the benefit. They do not get the risk. That is
13 not the way to develop two resources. And it's not
14 the way a regulatory body should allow various
15 resources to be developed.

16 We would urge you to deny the APD's on all
17 wells.

18 Thank you very much.

19 CHAIRMAN LEMAY: Thank you, Mr. High.

20 Does anyone have any statements to make
21 further in these cases? If not, I think the schedule
22 is to request your briefs -- findings; is that a fair
23 statement, Mr. Stovall?

24 MR. STOVALL: Well, I think -- I had some
25 discussion before you came back during the break. I

1 estimate it will probably take a couple of weeks to
2 get the transcript, at least. Probably have the
3 transcript before Christmas. Mr. Carroll has
4 indicated he has a trial in January that will take a
5 couple of weeks. Mr. High claims he is being very
6 gracious to Mr. Carroll to extend any time Mr. Carroll
7 would like. They'd just as soon go to the middle of
8 February for briefs.

9 CHAIRMAN LEMAY: What about February 1? Is
10 that something that you can work against?

11 MR. CARROLL: Mr. LeMay, it would need to
12 be the end of February. I am really covered, plus I
13 have the same thing and am the sole attorney for
14 drafting it in the Noranda case.

15 I would like one clarification. I don't
16 really -- I have not understood the briefs to be
17 really legal briefs, but they are for us to set forth
18 findings, and then present the support from the record
19 for those findings. And that's really the nature of
20 the document that you're asking us to prepare.

21 Am I correct, or is there something more
22 anticipated in this case?

23 MR. STOVALL: I think if there are legal
24 arguments also, behind that -- I think there are three
25 parts of it or two parts of it is the factual basis

1 for making the legal decisions.

2 MR. CARROLL: Okay. So you're also wanting
3 to us make -- also findings of fact, or I guess
4 requested findings on behalf, suggest those too, and
5 of course then that would have to be supported with
6 its own argument outside of the record then. Am I
7 correct?

8 MR. STOVALL: Legal argument outside of the
9 record and the factual basis within the record for the
10 --

11 MR. CARROLL: The findings.

12 MR. STOVALL: -- for the conclusion that
13 you reach in the findings.

14 MR. CARROLL: I better understand then. I
15 would ask that we be given to the end of February,
16 just because my schedule is -- and I apologize, but I
17 am covered.

18 CHAIRMAN LEMAY: I think the end of
19 February, the 28th, would be fine, but we are looking
20 for draft findings to help us with our deliberations.

21 MR. HIGH: Is this a simultaneous
22 exchange? Do we get a response to the other side, or
23 what's the deal?

24 CHAIRMAN LEMAY: I think we haven't done
25 that. Submit a copy first to the opposing attorney.

1 We'll leave the record open till the end of February.

2 MR. STOVALL: Mr. Chairman, the 28th of
3 February falls on a Sunday; so I think we ought to
4 pick the 26th or the 1st of March. The 26th is a
5 Friday. The 1st is a Monday. I would suggest the
6 1st. That allows them to finish up on the 26th and
7 get it into Express Mail to be received by the
8 Commission on Monday.

9 MR. CARROLL: Appreciate that.

10 CHAIRMAN LEMAY: The 1st of March then.

11 MR. CARROLL: March 1?

12 CHAIRMAN LEMAY: March 1.

13 Thank you all, including everyone in the
14 audience and the witnesses and both lawyers. It's
15 been the longest Commission hearing I think we've ever
16 been involved in. I think the issues are critical.
17 We certainly appreciate all the effort all of you have
18 made. We shall take this case under advisement March
19 1.

20 MS. HARRIS: Commissioner LeMay?

21 CHAIRMAN LEMAY: Yes?

22 MS. HARRIS: I should have spoke up
23 earlier. My name is Elizabeth Harris, and I represent
24 Phillips Petroleum Company.

25 CHAIRMAN LEMAY: Yes.

1 MS. HARRIS: We've made an appearance in
2 this case and are interested in this case and do
3 support Yates in this case, and we'd like to have the
4 opportunity also to submit something in writing. Is
5 that all right?

6 CHAIRMAN LEMAY: Oh, yes. When I said left
7 the record open, I meant not only for the draft briefs
8 of findings, but also for anyone else that would like
9 to present a statement in the case, the record will be
10 left open until March 1.

11 MS. HARRIS: Okay. Thank you.

12 CHAIRMAN LEMAY: Thank you.

13 Is there anyone else that has any questions
14 or would like to say something before we close this
15 off?

16 MR. STOVALL: Mr. Chairman, I would point
17 out one thing for Phillips or anybody else that would
18 do that, that this is an adjudicatory hearing, and any
19 submission should be based upon the record of the
20 case, unlike a rule-making comment type approach.

21 MS. HARRIS: We understand that.

22 MR. HIGH: How are we going to control that
23 because, given what the Commission said about the
24 testimony of Mr. Bill Pierce, how do we know that
25 Phillips is going to submit a broad ranging policy-

1 type argument, and I suggest to you that the other
2 potash companies may very well want to send in their
3 broad-ranging policy statements, too.

4 CHAIRMAN LEMAY: Generally, we've been
5 pretty lenient on what we accept. We can certainly
6 weigh those policy statements. We always weigh them
7 less than testimony because they're not subject to
8 cross-examination. And, two, if they're broad policy,
9 we don't have to weigh them at all.

10 I think everyone who is going to submit a
11 comment recognizes where we're coming from on the
12 Commission, and if they want to get way out in left
13 field, so to speak, they can certainly submit it, but
14 we don't have to consider it.

15 Anything else?

16 Thank you all. Take this case under
17 advisement.

18 (Thereupon, the proceedings
19 were concluded at 11:30 a.m.)
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1 CERTIFICATE OF REPORTER

2
3 STATE OF NEW MEXICO)
4) ss.
5 COUNTY OF SANTA FE)

6 I, Deborah O'Bine, Certified Shorthand
7 Reporter and Notary Public, HEREBY CERTIFY that the
8 foregoing transcript of proceedings before the Oil
9 Conservation Commission was reported by me; that I
10 transcribed my notes; and that the foregoing is a true
11 and accurate record of the proceedings.

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

16 WITNESS MY HAND AND SEAL, December 10,
17 1992.

18 *Deborah O'Bine*

19 DEBORAH O'BINE
20 CCR No. 63

