

BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO
APRIL 29, 1993

COMMISSION HEARING

IN THE MATTER OF:

Application of Mitchell Energy Corporation
for compulsory pooling and an unorthodox
gas well location, Lea County, New Mexico.

CASE 10656
(DE NOVO)

BEFORE: William J. LeMay, Director

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the New Mexico Oil

Conservation Commission:

Robert G. Stovall
Legal Counsel for the Commission
State Land Office Building
Santa Fe, New Mexico

MR. LEMAY: The hearing will come to order. Call Case 10656.

MR. STOVALL: Case 10656, the application of Mitchell Energy Corporation for compulsory pooling and an unorthodox gas well location, Lea County, New Mexico, to be heard De Novo upon the application of Strata Production Company. The applicant has requested that this case be dismissed.

MR. LEMAY: Without objection Case 10656 De Novo is hereby dismissed.

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NEW MEXICO OIL CONSERVATION DIVISION

STATE LAND OFFICE BUILDING

STATE OF NEW MEXICO

Docket No. 3-93

Case No. 10656

IN THE MATTER OF:

Application of Mitchell Energy
Corporation for compulsory pooling
and an unorthodox gas well location,
Lea County, New Mexico

BEFORE:

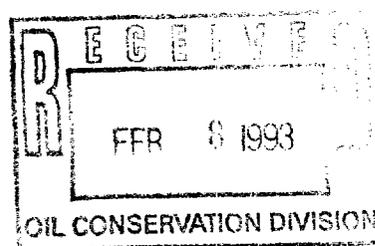
EXAMINER MICHAEL E. STOGNER

January 21, 1993

REPORTED BY:

ORIGINAL

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



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A P P E A R A N C E S

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16 BY: SEALY H. CAVIN, JR., ESQ.

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CUMBRE COURT REPORTING

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1 EXAMINER STOGNER: At this time I'll call
2 Case No. 10656.

3 MR. STOVALL: Application of Mitchell
4 Energy Corporation for compulsory pooling and an
5 unorthodox gas well location, Lea County, New Mexico.

6 EXAMINER STOGNER: Call for appearances?

7 MR. KELLAHIN: Mr. Examiner, I'm Tom
8 Kellahin of the Santa Fe law firm of Kellahin &
9 Kellahin, appearing on behalf of the Applicant,
10 Mitchell Energy Corporation. I have three witnesses
11 to be sworn.

12 EXAMINER STOGNER: Any additional
13 appearances?

14 MR. CAVIN: Mr. Examiner, my name is Sealy
15 Cavin. I'm an attorney with the Stratton & Cavin law
16 firm in Albuquerque. I'm representing Strata
17 Production Company, and I have two witnesses.

18 EXAMINER STOGNER: Any other appearances?

19 Will the witnesses please stand and be
20 sworn at this time?

21 (Thereupon, the witnesses were sworn.)

22 EXAMINER STOGNER: Mr. Kellahin?

23 MR. KELLAHIN: Thank you, Mr. Examiner.
24 During the break, Mr. Examiner, Mr. Stovall and Mr.
25 Cavin and I discussed potential issues for

1 consideration by the Division Examiner in this
2 compulsory pooling case, which also includes a request
3 for an orthodox gas well location.

4 In trying to identify the issues, Mr. Cavin
5 has raised a notice question, and subject to your
6 desires perhaps we ought to address the notice issue
7 first. Mr. Cavin has made mention of it in his
8 prehearing statement, and I would suggest that if he
9 desires to raise an issue about notice, that he ought
10 to go forward and describe for us what his concern is
11 with regards to notification. Let us deal with that
12 issue and, based upon the outcome of that issue,
13 determine whether we go forward or whether some other
14 solution is appropriate.

15 EXAMINER STOGNER: Mr. Cavin?

16 MR. CAVIN: Yes, Mr. Examiner. Our notice
17 issue goes to the question of whether, in connection
18 with compulsory pooling action, Mitchell has
19 adequately notified all interest owners in the west
20 half of Section 28. We have advised on several
21 occasions -- we have advised Mitchell there is a
22 Strata -- Mr. Mark Murphy, who will be called as a
23 witness, has advised Mitchell on several occasions
24 that there are various partners in a particular lease
25 that Mitchell seeks to force pool. We have indicated

1 to Mitchell that we would -- while we were trying to
2 strike an agreement, try to coordinate the deal
3 between the various partners. When the deal fell
4 apart, we told Mitchell in good faith that we couldn't
5 speak for the partners, if there was going to be a --
6 if it would be necessary to go forward with the forced
7 pooling, that they would need to notify the partners.

8 At that time we sent them a list of the
9 partners and their addresses and I believe suggested
10 they may want to contact these parties. We believe
11 these parties are entitled to notice, and we cannot
12 speak for their interest at this time, Mr. Examiner.

13 MR. KELLAHIN: In response, Mr. Examiner,
14 let me submit to you part of my tender of proof on
15 this issue. To aid you in understanding what Mr.
16 Cavin's concern is, let me show you what is going to
17 be Exhibit No. 6. It's simply an ownership plat.

18 Mitchell's proposal is to formulate a
19 320-acre gas spacing unit. There is not yet gas
20 spacing in Section 28. We are proposing to orient the
21 spacing unit so that there is a west half dedication.
22 The ownership within the section is such that Mitchell
23 has consolidated on a voluntary basis all ownership
24 with the exclusion of the south half of the southwest
25 west quarter. It's an unshaded tract, and it's

1 labeled "Strata."

2 Our tender of proof is that based upon a
3 title opinion rendered to Mitchell Energy by the
4 Hinkle law firm, that as of the date of the
5 application and as of the date the application for
6 compulsory pooling was served on Strata, which is
7 December 9, that Strata Production Company was the
8 owner of the operating rights for that particular
9 federal lease.

10 That during the course of the negotiations,
11 our landman will testify that Strata represented that
12 they had the ability to make deals on behalf of the
13 operating interest for that lease. And that while
14 there may be other partners of Strata, they were
15 undisclosed to us. It was not until negotiations
16 terminated unsuccessfully, that by letter dated
17 January 13, we were informed that Strata now was
18 telling us they had other interest owners that would
19 hold operating rights.

20 Application was filed on December 7.
21 Strata was served on the 9th. The case was originally
22 scheduled for the 7th of January, was continued to
23 this docket to give the parties additional time in
24 which to see if they could come to an agreement.

25 In addition, we will submit to you as part

1 of our proof a certificate from a certified abstract
2 company that does business in Lea County, New Mexico,
3 that has attested to the fact that they've made a
4 search of the public records of Lea County, New
5 Mexico, from a period beginning November 6 of '92,
6 ending January 19, 1992, and it shows that Strata
7 Production Company is still the owner of all those
8 operating rights.

9 Our point is the last-minute effort to
10 disburse their interests simply frustrates our efforts
11 to consolidate the interest and to formulate on a
12 compulsory pooling basis the drilling of the well. We
13 believe we've complied with the notice requirements.
14 We have dealt in good faith with Strata Production
15 Company. And it is not our obligation now to go out
16 and search and find these now disclosed parties that
17 Strata says we are now obligated to seek.

18 The certificate is here for your
19 consideration.

20 MR. STOVALL: Mr. Cavin, you are not
21 representing these other parties; is that correct?

22 MR. CAVIN: No, sir.

23 MR. STOVALL: Mr. Examiner, I don't think
24 that at this time it's necessary to rule on that
25 matter, quite frankly. Strata is here and appearing.

1 The other parties -- if a pooling order is entered,
2 the parties may object to that order as not being
3 applicable to them. And if Mitchell goes forward,
4 chooses to go forward at this time, it does so with
5 the risk, knowing that there may be other parties out
6 there at this time who possibly were entitled to
7 notice.

8 And without making that determination, I
9 would say that at this time Mitchell may go forward,
10 if it so desires, and that those other parties, if Mr.
11 Cavin doesn't speak for them, will have to assert
12 their interest. And Mitchell needs to be aware that
13 that may happen, and they may come back in here and
14 have to do it again. But so I would say that the
15 decision is up to Mitchell at this point.

16 Only those interests over whom the
17 Commission has jurisdiction will be pooled, and
18 whether it has jurisdiction over those interests is
19 not a decision that has to be addressed today because
20 there's --

21 MR. KELLAHIN: I beg to differ with Mr.
22 Stovall. I think it's critically important for us to
23 know before we go through this exercise if we are
24 pooling Strata and the 25 percent working interest
25 ownership in that lease or whether we're only pooling

1 Strata as to 18.5 percent. I think that makes a
2 material difference as to what we do. We think we
3 have a tender of proof that meets the requirements on
4 notification. And I disagree with Mr. Stovall. I
5 think we need some decision from the examiner as to
6 whether we've notified the proper properties.

7 MR. CAVIN: Might I interject, Mr.
8 Examiner? We agree that there is a due process
9 question as to these interest owners that were
10 previously identified to Mitchell as far back as
11 October 26. Perhaps they were identified in generic
12 terms, but they were nonetheless advised that they
13 were silent partners.

14 It is not unusual, as you know, to have
15 other recorded interests, and we, Strata, did its best
16 to advise Mitchell of this situation. In fact, under
17 the definition of the federal regulations, these
18 parties do in fact have operating rights even though
19 they're not reflected in the public records.

20 We would be happy to submit that to the
21 Division.

22 EXAMINER STOGNER: I suppose you have a
23 land witness prepared today to testify on their work
24 to contact all unleased parties at this point; is that
25 correct, Mr. Kellahin?

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1 MR. KELLAHIN: Yes, sir, and our testimony
2 is that party is Strata. And while they said they had
3 other interest owners, as late as January 12, they
4 represent that those interest owners are undisclosed
5 to us. And so that is the issue is whether, having
6 dealt with and exhausted the efforts with Strata, and
7 been unsuccessful to get a voluntary agreement because
8 they now disclose to us on the 15th of January -- 13th
9 of January, some 15 other individuals and entities,
10 must we now restart the process and go and try to find
11 those people?

12 MR. CAVIN: Mr. Examiner, if I might,
13 Strata -- and I don't think there's been any
14 indication otherwise -- has offered to provide these
15 names. Mitchell has not pursued that. And it wasn't
16 until -- and we also did not indicate that we had the
17 authority to speak for these individuals. We
18 indicated that we would try to work a deal. And
19 that's what we were doing in a good faith effort.
20 When the deal came apart, we said, look, this is
21 getting too complicated. You're going to have to go
22 to these parties directly. Frankly, some of them may
23 want to participate, some of them you may just have to
24 force pool, and others may accept the farm-out terms.
25 And it's incumbent on the applicant, it

1 seems to me, and certainly we would take that position
2 if we were force pooling, to contact anybody that we
3 were aware of. It's not just constructive notice of
4 the record. It's actual notice that you receive in
5 the process.

6 EXAMINER STOGNER: That's part of the
7 forced pooling provisions and part of the forced
8 pooling statutes in which a reasonable determination
9 or reasonable effort was made, and I think we can hear
10 that today and that determination can be made. And,
11 as always, any party who doesn't feel they're up to
12 the forced pooling provision, they can seek the
13 Division's assistance or the provisions either through
14 hearing or whatever means, but obviously we have them
15 here today, and we haven't made that determination yet
16 by listening to any of the testimony.

17 Mr. Kellahin?

18 MR. KELLAHIN: We're ready to go forward.

19 EXAMINER STOGNER: Are there any other
20 issues, Mr. Stovall, that you see -- that you
21 mentioned prior?

22 MR. STOVALL: No. I think if you're
23 prepared to go with the land case and then, I think --
24 the legal issue I see here, and I think Mr. Cavin is
25 raising -- and, Mr. Kellahin, get your response to

1 this -- it appears that you have complied with the
2 requirements with respect to notifying all those
3 having a record title interest?

4 MR. KELLAHIN: Yes, sir.

5 MR. STOVALL: Are you required to notify
6 those -- two questions is, have you been given actual
7 notice of interests which are not recorded; and,
8 secondly, are you required to notify those interests?
9 To what extent do they have due process rights to
10 receive notice; is that correct?

11 MR. KELLAHIN: And then as an additional
12 item, whether or not Mitchell could rely on what they
13 believe were representations by Strata that Strata was
14 representing all those undisclosed interests as we
15 dealt with this issue. And if you make that
16 determination, then we don't have any obligation to
17 notify these undisclosed people.

18 MR. STOVALL: Mr. Kellahin, again, the only
19 question I would ask you is what if one of these
20 undisclosed parties comes back in and seeks an order
21 from the Commission that their interests have not been
22 pooled by the order because they did not receive
23 notice?

24 MR. KELLAHIN: We would obviously have to
25 have a hearing and discuss that issue, but our defense

1 is that their interest is bound by the activities of
2 Strata.

3 MR. STOVALL: I think we need to go forward
4 with the land testimony to flesh out the facts.

5 MR. CAVIN: We can say without
6 equivocation, their interests are not bound by Strata,
7 and if there is a case for misrepresentation, I doubt
8 that this is the forum for that.

9 We would also also assert that Strata has
10 not represented that. We have made a good faith
11 effort. We continued until the 13th. Just so long as
12 everyone is aware of that as we press into this.
13 We're perfectly willing to hear this case today. I
14 can also assure you that there will-- I would be
15 surprised if none of these parties objects to not
16 having notice. And I just say that for the record
17 today.

18 MR. KELLAHIN: One final point. Mr.
19 Cavin's representation is inconsistent with the
20 proof. There is a December 20 letter from his client
21 that purports an arrangement and attaches to it the
22 federal assignment form by which, if we accept their
23 proposal, they are prepared to execute that assignment
24 form on behalf of the full 25 percent working
25 interests. You can't have it both ways, Mr. Examiner.

1 MR. CAVIN: It also states there are
2 undisclosed owners, that we have been in contact with
3 these owners and we have tried to -- it expresses that
4 in black and white. And it's consistent with the
5 whole pattern. There are undisclosed owners. We have
6 tried to work out a deal. Where we can't work out
7 this deal, we said, look, this thing is too
8 complicated. You're going to have to deal with these
9 people directly. We set that forth in the agreement
10 precisely. Our correspondence is consistent. All the
11 telephone conversations are consistent. And it was
12 just a lazy landman that didn't want to contact these
13 folks. We would have been happy to give the
14 information --

15 MR. STOVALL: Let's pass on those kind of
16 judgments, Mr. Cavin.

17 MR. KELLAHIN: That's unfair.

18 MR. STOVALL: I guess the question is, we
19 don't even know at this point whether the people have
20 the property interests which is -- we don't have a
21 record on that. So let's proceed with the land case,
22 and the records we have before us at this point show
23 no interest other than Strata, and so therefore we
24 don't even know who they are.

25 Mr. Cavin, I will advise that you cannot

1 represent these people because you are -- you have
2 represented to this Division this morning that you do
3 not represent these people.

4 MR. CAVIN: That's true.

5 MR. STOVALL: There's a little bit of a
6 problem there as far as your now taking up their flag.

7 MR. CAVIN: I am not attempting to
8 represent these parties at this hearing. I want to
9 make that perfectly clear. If there's any
10 misunderstanding on that, I would state that for the
11 record.

12 MR. KELLAHIN: My choice of presentation is
13 to present the geologic data first. That's the heart
14 of the case. We're interested in the geology by which
15 we fully develop the section, and I'm going to call
16 Mr. Gawloski first rather than deal with the land
17 testimony.

18 EXAMINER STOGNER: I'd rather hear the land
19 testimony at this time because, after all, there is a
20 separate issue here. Granted, geology and engineering
21 and the overhead charges, but we need to proceed with
22 the land testimony at this time and get these other
23 issues raised up because if there is a problem, why
24 hear the other things at this point?

25 MR. KELLAHIN: Well, that's my point.

1 We're raising this in terms of response to Mr. Sealy's
2 motion. My tender of proof on behalf of the landmen
3 is what I've summarized at this point. And if we're
4 going to address the notice issue, then I need to draw
5 him out of the regular sequence of presentation, and
6 we'll talk about the notice.

7 MR. STOVALL: It's unusual. Normally, the
8 land testimony comes first in most forced poolings.

9 MR. KELLAHIN: I understand.

10 MR. STOVALL: And probably the reason for
11 that is because the fundamental issue in the previous
12 case is, you know, is there an agreement and has there
13 been any good faith negotiations.

14 MR. KELLAHIN: I had understood the
15 fundamental issue in this case was the orientation of
16 the spacing units.

17 MR. STOVALL: That's the issue between the
18 parties.

19 MR. KELLAHIN: Yes, sir.

20 MR. STOVALL: The issue before the
21 Commission is you've got to have the basis for a
22 forced pooling order in the first place before you get
23 into the issues of how will that order be drafted.

24 MR. KELLAHIN: It's already admitted
25 between these two parties that they can't come to an

1 agreement despite their efforts to do so. And the
2 only remaining issue is whether Strata represented the
3 25 percent or whether they don't. And if they don't,
4 then we need to go back and find the rest of them.

5 EXAMINER STOGNER: I don't see any reason
6 why we have to veer from the norm. I think the land
7 testimony at this time is appropriate.

8 MR. KELLAHIN: If you'll excuse the fact
9 that the exhibits are numbered in the sequence such
10 that the geologic displays are first, we'll present
11 Mr. Steve Smith, who is the landman, first,
12 recognizing that the numbers are out of sequence.

13 EXAMINER STOGNER: It will be noted.

14 MR. KELLAHIN: With your permission.

15 EXAMINER STOGNER: You have my permission.

16 MR. KELLAHIN: Let me call Steve Smith.

17 If I might, before we start, I'd like to
18 apologize for my comment towards Mr. Smith.

19 EXAMINER STOGNER: The record will so
20 note.

21 Just for the record, Mr. Kellahin, your
22 Exhibits are 5 through 19; is that correct?

23 MR. KELLAHIN: Mr. Smith is going to talk
24 about Exhibit 6. Exhibit 5 had to do with the
25 topographic constraints on the surface. Mr. Smith

1 will talk about Exhibit 6, and then he will take us
2 through, I want to say 17. I have an engineer here to
3 authenticate the AFE. Mr. Smith will also talk about
4 the certification, which is Exhibit 19.

5 EXAMINER STOGNER: Exhibits 6 through 17
6 and Exhibit 19 will be the topics for this witness.

7 Mr. Kellahin?

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

9 STEPHEN J. SMITH,
10 the witness herein, after having been first duly sworn
11 upon his oath, was examined and testified as follows:

12 EXAMINATION

13 BY MR. KELLAHIN:

14 Q. Mr. Smith, for the record, would you please
15 state your name and occupation?

16 A. My name is Stephen J. Smith. I'm a senior
17 landman for Mitchell Energy Corporation.

18 Q. Where do you reside, sir?

19 A. Midland, Texas.

20 Q. Have you on prior occasion testified as an
21 expert petroleum landman before the Oil Conservation
22 Division?

23 A. Yes, I have.

24 Q. Summarize for us your experience as a
25 petroleum landman for your company.

1 A. I went to work for Mitchell Energy
2 Corporation in 1985. I spent six months, a little
3 over six months in their Denver office as a senior
4 landman and was transferred to Midland in April of
5 1986. I have functioned as a senior landman in that
6 office since then, working areas mostly in southeast
7 New Mexico, but I also do work in Texas as well.

8 Q. Describe for us in a general way the kinds
9 of documents, instruments, and negotiations that you
10 deal with on a regular daily basis in the course of
11 performing your duties as a petroleum landman.

12 A. Fee oil and gas leases, checks of fee title
13 to minerals, federal and state ownership checks. I
14 negotiate farm-ins and farmouts between oil and gas
15 partners, terms of operating agreements. It's the
16 full gamut that landmen are expected to do.

17 Q. Were you the principal landman on behalf of
18 your company that negotiated with the working interest
19 owners for the formulation of a spacing unit on a
20 voluntary basis for the west half of Section 28 that's
21 the subject of this hearing?

22 A. Yes, I was.

23 MR. KELLAHIN: We tender Mr. Smith as an
24 expert petroleum landman.

25 EXAMINER STOGNER: Are there any objections

1 to Mr. Smith's qualifications?

2 MR. CAVIN: No, Mr. Examiner.

3 EXAMINER STOGNER: Mr. Smith is so
4 qualified.

5 Q. (BY MR. KELLAHIN) Mr. Smith, let me have
6 you turn to what is marked as Mitchell Exhibit No. 6.
7 Identify that for me, please.

8 A. That is a blow-up of the Midland map
9 representing the leasehold ownership centering Section
10 28, Township 20 South, Range 33 East, Lea County, New
11 Mexico.

12 Q. Have you independently verified the
13 accuracy of the information shown within the
14 boundaries of Section 28 in terms of the configuration
15 of those leases?

16 A. Yes, I have.

17 Q. Looking entirely at Section 28 and starting
18 wherever you choose to start, show us how that tract
19 is divided in terms of the leasehold.

20 A. Well, Mitchell Energy Corporation and its
21 partners own 100 percent of the federal leases in the
22 north half northeast quarter, the southeast northeast
23 quarter, and the north half southeast quarter, that
24 being Federal Lease 62228.

25 As to the federal lease covering the

1 northwest quarter and the northeast southwest quarter,
2 Mitchell Energy Corporation and its partners have 100
3 percent of the operating rights below 3,500 feet.

4 And as to the northwest southwest quarter,
5 Mitchell and its partners have 100 percent of the
6 operating rights as to the federal lease to all
7 depths. There is an unleased federal tract, being the
8 southwest northeast quarter.

9 Q. And that's the approximately 40-acre tract
10 that is uncolored and totally surrounded by yellow
11 shading?

12 A. That's correct.

13 Q. Continue.

14 A. Based upon my check of the county records
15 and instruments provided to us from the federal
16 abstract company and the county abstract, Strata
17 Production Company is the record title owner and owner
18 of 100 percent of the operating rights to the south
19 half southwest quarter and the southwest southeast
20 quarter of Section 28. And there is also a federal
21 lease in the southeast southeast quarter, being 40
22 acres, and it's owned by Pitch Energy Corporation.

23 Q. Let me ask you, in examining the documents
24 that affect the opportunity to participate on a
25 voluntary basis in a well to be drilled to depths

1 below the top of the Wolfcamp targeting the Morrow in
2 the west half of 28, did you find any voluntary
3 agreements entered into by any of the working interest
4 owners that would have affected their interest in the
5 west half?

6 A. There is an operating agreement in place
7 between Mitchell Energy Corporation and the partners
8 covering all of Section 28 and the majority of this
9 township and range and parts of surrounding townships
10 and ranges that governs the interaction and
11 development of any wells drilled in the area between
12 the parties to that agreement.

13 Q. When you talk about the Joint Operating
14 Agreement affecting all of 28, does that include any
15 interest for the federal lease identified in the south
16 half of the southwest quarter?

17 A. No. It only covers the interests colored
18 in yellow, being the interests owned by Mitchell
19 Energy Corporation and its partners.

20 Q. Who are the parties to the Joint Operating
21 Agreement that you describe?

22 A. Mitchell Energy Corporation is named as
23 operator of this operating agreement, and we have a 50
24 percent interest in the leasehold. Santa Fe Energy
25 Operating has a 25 percent interest in the yellow

1 acreage, and Maralo, Inc., has a 25 percent in the
2 yellow acreage as well.

3 Q. Has the well that is the subject of this
4 hearing been proposed to the interest owners pursuant
5 to the Joint Operating Agreement?

6 A. Yes, it has.

7 Q. And what decision have those interest
8 owners made with regards to this well?

9 A. They have agreed to participate in this
10 well pursuant to the operating agreement.

11 Q. Have they approved the authority for
12 expenditures of the well?

13 A. Yes, they have.

14 Q. And they have agreed upon the well
15 location?

16 A. Yes, they have.

17 Q. And they have agreed upon the formation of
18 the west half as the spacing unit for the well?

19 A. Yes, they have.

20 Q. What efforts have you made to identify the
21 working interest owners that would be able to commit
22 their interest for the west half of 28 that are not
23 currently committed under the Joint Operating
24 Agreement?

25 A. We conducted a search of the county and

1 federal records in order to determine who had record
2 title.

3 Q. As part of the ordinary custom and course
4 of doing business with your company, do you retain
5 outside counsel to prepare title opinions with regards
6 to drill sites and spacing units?

7 A. Always.

8 Q. And did you do so in this case?

9 A. Yes, we did.

10 Q. Let me ask you to turn to Mitchell Exhibit
11 No. 7 and identify that document?

12 A. That is a title opinion dated December 29,
13 1992, rendered for Mitchell Energy Corporation by Mr.
14 William B. Burford of the Hinkle, Cox, Eaton, Coffield
15 & Hensley law firm.

16 Q. The opinion is voluminous, and you have
17 only attached the first six pages?

18 A. That's correct. And it purports to cover
19 all interests in the west half except for depths above
20 3,500 feet as to Tract 1 identified on that title
21 opinion. And we requested that they exclude those
22 depths because we had no ownership in them.

23 Q. Based upon your own information, what had
24 you determined to be the working interest owners for
25 that portion of Section 28 that's identified as being

1 included in the south half of the southwest quarter?

2 A. Could you restate your question, please.

3 Q. Yes, sir. Based upon your information,
4 whom did you believe or what entity did you believe
5 controlled the operating rights for the south half of
6 the southwest quarter?

7 A. Based upon the best information obtainable
8 on the records indicated that Strata Production
9 Company owned those rights.

10 Q. Then as of December 29th when Mr. Burford
11 rendered his opinion, did he come to any different
12 conclusion than you have?

13 A. No, he did not.

14 Q. Have you subsequently taken additional
15 action to verify whether there was placed of record in
16 Lea County, New Mexico, any assignments, transfers, or
17 conveyances from Strata Production Company that would
18 disclose the identity and the address of subsequent
19 interest owners for that tract?

20 A. Once we were put on notice by Strata
21 Production Company of their desire to scatter this
22 lease to the wind, we obtained a limited certificate
23 from Elliott & Waldron Abstract Company, who prepared
24 the base abstract examined by Mr. Burford to
25 complement that abstract, to come forward from the

1 closing date which is stated in this title opinion as
2 to the fee tract, November 6, 1992, at 9:00 a.m.,
3 coming forward from that date through January 19,
4 '92.

5 And the search was conducted specifically
6 to determine whether or not Strata had assigned out
7 any interest to any parties. And the conclusion
8 rendered in this limited certificate is, of course,
9 they have not.

10 Q. And that is through the ending of what
11 particular date?

12 A. December 19, 199- -- well -- there appears
13 to be a typographical error.

14 Q. Yes, it's obviously a typo.

15 A. It should be -- its date, 1993, January 19,
16 1993, at 7 a.m.

17 Q. You mentioned awhile ago, Mr. Smith, that
18 Strata disclosed to you the identity of these
19 previously undisclosed interest owners?

20 A. Yes.

21 Q. When did they do that?

22 A. By letter dated January 13, 1993, received
23 by Mitchell on January 14, 1993.

24 Q. Prior to that time, Mr. Smith, had Strata
25 or anyone representing Strata disclosed to you the

1 identity and the address of those partners?

2 A. No, they had not.

3 Q. What was your understanding and belief with
4 regards to the appropriate party with whom to enter
5 negotiations for the commitment of that operating
6 interest in the south half of the southwest quarter?

7 A. Based upon the information we obtained from
8 the records, Strata appeared to be the 100 percent
9 owner. We contacted them and entered into
10 negotiations.

11 It was stated early on by Strata, by Mr.
12 Murphy, that they did have silent partners, but at no
13 time did he indicate that we would have to have their
14 joinder in order to enter into any agreement; that
15 throughout all of our negotiations, until the very
16 end, he represented himself as having the capacity to
17 enter into agreements binding all the parties should
18 we have reached agreement as to terms.

19 Q. Let me interrupt you for a moment and go
20 now to Mitchell Exhibit 9, which is the next Exhibit
21 in sequence?

22 A. Okay.

23 Q. Identify and describe for me what Exhibit 9
24 means to you.

25 A. Exhibit 9 is a letter, an internal

1 memorandum, to me from Mrs. Harriet Minton. Mrs.
2 Minton is the assistant manager of Joint Venture
3 Accounting for our corporation. And among other
4 things, her responsibilities include overseeing the
5 accounting procedures involved in joint operated
6 properties, which includes overseeing the overhead
7 rates charged under operating agreements.

8 And the letter represents, at my request,
9 she looked at the operating agreement that's in place
10 that I previously described between Mitchell and its
11 partners. It covers a large part of this area, under
12 which there are currently two producing wells, both in
13 the Morrow, and looked at the overhead rates that were
14 stated in that operating agreement, and provided me
15 with a summary of the escalations of the overhead
16 rates from the effective date, September 1, 1989, to
17 the present to show what current overhead rates are
18 currently being charged under that operating
19 agreement.

20 Q. Having received that information, do you
21 have a recommendation to the examiner as to the
22 overhead rates you're seeking to have applied in this
23 compulsory pooling case?

24 A. Yes, I do. Based upon the fact that the
25 parties that have agreed to participate in this well

1 under this operating will be charged the rates stated
2 at the bottom of the two drilling and producing rate
3 summaries, we would recommend that Strata be also
4 charged the same overhead rates being for a drilling
5 well, \$6,470, and for a producing well, \$647.

6 Q. If the Examiner adopts your recommendation,
7 that level of rate will be consistent then with the
8 rate being charged those interest owners voluntarily
9 committing their interest under the existing Joint
10 Operating Agreement?

11 A. That is correct.

12 Q. Let's turn now specifically, Mr. Smith, to
13 your efforts to obtain Strata Production Company's
14 voluntary participation.

15 A. Okay.

16 Q. And without going into great detail about
17 all the correspondence and telephone calls, let me ask
18 you when you first provided written opportunity to
19 Strata specifically proposing this well and this
20 spacing unit, submitting to them an AFE and asking
21 them, as one of their choices, to voluntarily
22 participate in the well. Did you do that?

23 A. Yes, we did.

24 Q. When?

25 A. By letter dated November 20, 1992.

1 Q. And how is that marked?

2 A. It's Exhibit 10.

3 Q. Did you provide to Strata any other options
4 or alternatives in addition to participating --

5 A. Yes, sir.

6 Q. -- by paying their share of the cost of the
7 well?

8 A. Yes, we did. We offered them as an
9 alternative an industry standard, what we consider an
10 industry standard farmout.

11 Q. Did you provide them, in addition to a
12 farmout, any other options to handle their interest in
13 the spacing unit?

14 A. Not at that time.

15 Q. What, if any, response did you receive to
16 the November 10 letter?

17 A. I received a written response from Strata.
18 That written response is a letter dated December 9,
19 1992, marked Exhibit 11.

20 Therein Strata offered to Mitchell Energy
21 Corporation terms to either buy their oil and gas
22 lease that are stated in there, or, in the
23 alternative, they offered to farm out to Mitchell
24 Energy Corporation under substantially the same terms
25 proposed by Mitchell Energy Corporation by letter

1 dated November 20. However, the main difference in
2 their letter or in their proposal to farm out was that
3 they would retain an increased overriding royalty
4 interest above and beyond that proposed by Mitchell.

5 Q. You're describing the Strata letter of
6 December 9, Exhibit No. 11?

7 A. That's correct.

8 Q. What did you do in response then to this
9 letter? How did you reply to Mr. Murphy?

10 A. Well, first, as we always do, I had to seek
11 Mitchell management's approval to do anything. We
12 contacted the people in our Woodlands office to tell
13 them what the terms were and seek their approval for a
14 trade. We did that.

15 They approved, accepting Strata's farmout
16 as written, and verbally asked me to make sure that it
17 was clearly understood, as it clearly states here,
18 that if anyone under the terms of this farmout
19 proposal wanted to back in under the terms of that
20 farmout, that they would have to convert 100 percent
21 of their override. That means that they couldn't keep
22 a portion of their override and convert the other
23 portion for a working interest. And it clearly stated
24 that. It was just simply to make sure all parties
25 understood that.

1 Q. What had you thought you had done then in
2 response to Mr. Murphy's letter of December 9? Had
3 you fully examined the options that he had presented
4 to your company with regards to forming a voluntary
5 unit?

6 A. Yes, we had.

7 Q. And were any of those options acceptable to
8 you, or did you make a counterproposal to him?

9 A. No. We decided to take their second option
10 listed in their letter, and I made a phone call to Mr.
11 Murphy and informed him that Mitchell Energy
12 Corporation would take the terms of his farmout as
13 proposed.

14 Again, I restated, wanted to make sure it
15 was clear that everybody understood that all parties
16 had to convert 100 percent of their override for
17 working interest.

18 Q. Were you able to take that information and
19 discussion and reduce it to a written document that
20 all parties were willing to execute?

21 A. No, we weren't. When I called Mr. Murphy
22 to tell him that, he reminded me, and as it states in
23 his letter and as it states in all of my letters, that
24 the terms stated in his letter were subject to
25 approval by his partner. He informed me that, while

1 he felt he had the authority to write the letter, he
2 did have to seek his partners' approval. He felt he
3 stood a better chance of obtaining their approval if
4 Mitchell Energy Corporation would buy their lease.

5 And we got into a discussion about, you
6 know, that's all good and well, but we've got a deal
7 here. And the terms proposed in your December 9
8 letter for buyout were unacceptable. That's why we
9 didn't take that option. We discussed perhaps
10 Mitchell making them the very best cash offer to buy
11 out Strata.

12 Q. At this point did Mr. Murphy notify you
13 that you were going to have to deal directly with
14 these undisclosed interest owners that shared his
15 interest?

16 A. No, he did not.

17 Q. What then happened?

18 A. Well, he told me to, you know, go back to
19 your management and see what you can do and call me
20 back. And I did that.

21 Again, we went back to our management in
22 Woodlands and told them what had been discussed, and
23 that Strata, rather than farming out, even though they
24 had offered one, would still rather sell, and they had
25 asked us to make them our best cash offer to buy their

1 lease. They, in turn, gave me authority to make
2 Strata an offer to buy their lease.

3 Q. How did we get from the December 9 letter,
4 which is Exhibit 11, to the December 30 letter, which
5 is Exhibit 12?

6 A. There were various phone calls after
7 receiving the December 9 letter and after Mr. Murphy's
8 and my telephone conversation where he asked us to
9 make him an offer. I called him back at some later
10 date between those December 9th and 30th dates and
11 told him that I had in fact received authority to buy
12 their lease and offered to do that, paying Strata \$150
13 per net acre, being a total of \$18,000, and Strata, in
14 turn, could also retain an override equal to the
15 difference by which 20 percent exceeded lease burdens,
16 thereby assigning Mitchell an 80 percent net revenue
17 lease.

18 Q. Let me talk to you for a moment about the
19 cash offer.

20 A. Right.

21 Q. Based upon your experience in this area,
22 what does \$150 an acre represent to you as being a
23 fair and competitive price by which to acquire this
24 kind of interest?

25 A. It is higher than what we've paid in the

1 area, but in the interest of compromise, we decided it
2 would perhaps be better to buy Strata out and have 100
3 percent of the proration unit, take over control, and
4 march on down the road.

5 Q. What were you accustomed to paying to
6 acquire all rights at all depths from the surface to
7 the base of any production?

8 A. I acquired most of the leasehold in
9 Township 22 South, 33 East, that Mitchell has in
10 various acquisitions and paid probably on average
11 around \$85 per net acre on assignments covering all
12 depths, and on average received net revenues of around
13 82 percent in those assignments, 82-1/2.

14 Q. Let me ask you about the vertical interval
15 that you're dealing with, Mr. Smith. The pooling case
16 asked to pool all 320 gas spacing from the top of the
17 Wolfcamp on down.

18 A. That's correct.

19 Q. What formations were you dealing with Mr.
20 Murphy on?

21 A. All depths, all depths.

22 Q. The Exhibit 12 --

23 A. Yes.

24 Q. What is that, sir?

25 A. That is a letter dated December 30, 1992.

1 That was received by Mitchell two ways, once via fax,
2 and once via certified mail.

3 I believe in a later letter that's marked
4 -- it's a later exhibit, where we attempted to
5 summarize [sic] the correspondence and the
6 conversations, I failed to mention that we received a
7 faxed copy of this on January 4. That was the first
8 time we saw this letter.

9 In my summation, I said we received it on
10 December 30. We did not. We got it on January 4.
11 And it was sent to me after Mr. Murphy had called me
12 to tell me basically what the contents of it would be.

13 Q. Without giving me all the details, tell me
14 how to summarize the agreement as Mr. Murphy presents
15 it to you.

16 A. Well, basically, it correctly described the
17 acreage to be conveyed, the lease to be conveyed, the
18 dollar per acre consideration, and the override and
19 sum to be -- well, it didn't correctly describe the
20 override. It went on beyond what was discussed when
21 Mr. Murphy and I -- when I made the dollar offer to
22 Mr. Murphy to buy Strata's interest.

23 It included terms such as a requirement for
24 us to pool Strata's retained override underneath the
25 entire section of 28. And, in turn, they would reduce

1 proportionately the override retained on their lease.

2 The effect was, they were seeking to have
3 an override under the entire section as opposed to
4 retaining an override underneath the lease which they
5 owned.

6 Q. Give me an idea how the mechanics worked.

7 A. Mechanically, again, in return for reducing
8 the override retained on their lease, we would have to
9 turn around and assign to them overriding royalty
10 interest against our leasehold, which they previously
11 had no interest in.

12 Q. Did you have authority to accept that
13 provision?

14 A. No, I did not.

15 Q. Did you discuss it with your management?

16 A. Not until receipt of this letter, which we
17 received on January 4.

18 Q. Did you review then this proposal with your
19 management, and what action, if any, did they take?

20 A. We were told -- I was told that it was
21 unacceptable; that was not something we would
22 consider, and that I was to write a letter back to Mr.
23 Murphy, stating the terms that we believed were agreed
24 to in our telephone conversation.

25 Q. As of the December 20, '92, letter from Mr.

1 Murphy to you, did you understand that you were
2 dealing with Mr. Murphy for the total interest on
3 behalf of this company, or were you dealing with
4 others?

5 A. Well, up until this point, again, he had
6 informed me that there were partners, and he clearly
7 stated it would require partner approval for the
8 farmout, but I would point out, in the December 30
9 letter, again, this is Exhibit 12, that an exhibit to
10 this letter agreement that purported to control the
11 terms of the sale in Strata's lease to Mitchell,
12 there's an Exhibit A attached wherein Strata
13 represented itself as being capable of assigned
14 Mitchell Energy Corporation 100 percent record title
15 to this lease.

16 Q. How do you reach that conclusion by looking
17 at this proposed assignment form?

18 A. It's a standard form, federal form
19 assignment of record title, and if you look down about
20 the middle of the page where it describes the acreage
21 to be conveyed, there's a column labeled Percentage of
22 Interest, and there are three subcolumns labeled
23 Owned, Conveyed, and Retained.

24 In the Owned column, it clearly shows that
25 Strata claims to own 100 percent record title. Under

1 the Conveyed column, it clearly shows that Strata
2 purports to be able to convey 100 percent record title
3 to this lease, and that they intend to retain no
4 record title interest.

5 Q. Having come to the decision that that
6 provision is not acceptable to Mitchell, what then did
7 you do?

8 A. After -- of course, I took this letter,
9 once we got it, as I told Mr. Murphy I would -- like I
10 said, he called me that day and faxed it to me to tell
11 me the contents of it. In that phone conversation, I
12 told him that that's not the trade; that was not what
13 was presented to Mitchell management, but go ahead and
14 send it on. I had no authority to pass on whether or
15 not it was acceptable to Mitchell.

16 I did send it in to Mitchell, our
17 management in Houston. It was turned down flat. I
18 was told to write a letter back, stating what our
19 understanding, the terms were, and I did that.

20 Q. And how did you do that?

21 A. By letter dated January 5, 1993.

22 Q. That's Exhibit 13?

23 A. That's correct.

24 Q. What then happened?

25 A. I, as it clearly shows, I sent it to Strata

1 via fax and by certified return receipt mail. I faxed
2 it early in the morning. Mr. Murphy got it, called me
3 up, and asked me what -- you know, what do you mean;
4 this is not what we agreed to.

5 And I reminded him or advised him that, you
6 know, this is what we agreed to on the phone. These
7 were the terms that were discussed, and this letter is
8 intended to represent the terms agreed to and
9 discussed in our telephone conversation.

10 Q. At this point, then, there is a difference
11 of opinion as to what the agreement was, and the end
12 result is you can't get it reduced to a written
13 agreement?

14 A. That's the bottom line.

15 Q. Identify for us Exhibit 14. What is this?

16 A. This is a letter again sent to us by Strata
17 dated January 6. It was sent via fax and by hard copy
18 by return receipt mail. It was a letter basically
19 where Mr. Murphy advised that he had talked to his
20 partners and advised them that we had refused to
21 execute their letter agreement.

22 He states that "it appears we are unable to
23 resolve the sale, farmout or participate by Strata"
24 prior to the January 7 original hearing date. And it
25 states, as I told him, that we, Mitchell, would

1 request, in an effort to accommodate them and to
2 continue to work this deal out, we would request to
3 extend or seek a continuance to the next docket date.
4 We did that.

5 It also states that they now thought they
6 perhaps -- well, they might now consider wish to join
7 the well. To be honest with you, this is the first
8 time -- it purports to say that we had discussed
9 Strata's participation. I would go on record saying
10 that this is the first point in time where Strata ever
11 indicated any interest in participating in our well,
12 and asked that we send them an AFE or send them a
13 joint --

14 Q. A JOA?

15 A. JOA, and asked to be put on notice of any
16 people that were opposing our unorthodox location.

17 Q. At any point during the negotiations with
18 Strata, did you provide them or cause to be provided
19 any geologic data?

20 A. I did not.

21 Q. Do you know whether or not your company
22 provided geologic data to them?

23 A. It's my understanding that we have, that
24 Mitchell Energy Corporation has provided Strata with
25 geological data to show them our picture of why we're

1 doing what we're doing.

2 Q. After the January 6 letter, Exhibit 14,
3 what then happened, Mr. Smith?

4 A. Well, I wrote a letter back. Again, Mr.
5 Murphy in his previous letter acted as if we were --
6 had moved the location unbeknownst to him, and I
7 reminded him in our January 6 letter -- this is
8 Exhibit 15, Mr. Examiner -- that the location remained
9 as originally proposed. And I reminded him that the
10 location, while it was unorthodox, was unorthodox only
11 because of archeological and topographical reasons.
12 And that we were unaware of any opposition from the
13 parties who were notified of our unorthodox location,
14 and expected none.

15 Q. Did you respond to his request for a
16 proposed Joint Operating Agreement?

17 A. I did include -- again, I prepared for
18 Strata an operating agreement which was virtually
19 identical to the operating agreement that would have
20 governed the operations between the agreeing parties
21 to drill this well.

22 Q. You tailored your proposed operating
23 agreement with Mr. Murphy and Strata Production based
24 upon what document?

25 A. Again, it's the operating agreement that is

1 in place between Mitchell partners that would have
2 governed or will govern their participation in this
3 well.

4 Q. Did you have any discussions with Strata
5 Production Company with regards to what formations or
6 vertical intervals were being asked to finally be
7 committed to this well?

8 A. Well, we proposed all depths in all
9 formations. That was our intent.

10 Q. Exhibit 15, you've summarized various
11 activities. At the end of there anywhere, did you
12 leave open the opportunity for the exercise of any
13 other solutions?

14 A. Well, basically, yes. I basically offered
15 to Strata the three options that Mitchell was willing
16 to consider to resolve the problem, and I listed them
17 in our order of prevention: one, they participate in
18 the well as we proposed; two, that they agree to farm
19 out to Mitchell under the terms they proposed to us.
20 We were more than happy to accept those terms; or,
21 three -- or, excuse me, two, that they sell certain
22 terms that we believed to be agreed to; or, three,
23 farm out as agreed in their letter to us.

24 Q. Identify for us what is Exhibit No. 16.

25 A. Exhibit 16 is a letter from Strata

1 Production Company to Mitchell Energy Corporation
2 dated January 12.

3 Q. I'm not going to ask you to go through the
4 letter, Mr. Smith. Am I correct in concluding that
5 you and Mr. Murphy disagree with some of the specific
6 items with regards to this letter?

7 A. I would say that there is minor agreement
8 as to minor details, and I would say that there are
9 colorizations of conversations that are perhaps
10 inaccurate in both but --

11 Q. I don't want to get into that, Mr. Smith.

12 A. The gist of the deal is that it both
13 clearly summized [sic] the meat of the terms or the
14 efforts to reach agreement. And there's not really
15 any substantial difference in either summation of the
16 facts.

17 Q. Let me ask you to turn to the last page of
18 that letter, Exhibit 16, and the last paragraph,
19 second to the last sentence says, "Since you have had
20 notice that these undisclosed owners exist, we would
21 ask that you grant another two weeks' continuance and
22 notify these parties of your application."

23 Did you do that?

24 A. No, we didn't.

25 Q. At what point did you receive, if at all,

1 from Strata Production Company, a list of the names
2 and addresses of these undisclosed interest owners?

3 A. The first actual notice of the entities
4 that had been heretofore characterized as partners
5 with Strata was received via fax on January 13, 1993,
6 and we received a certified copy on January 14.

7 Q. And that is Exhibit No. 17?

8 A. That's correct.

9 Q. Let me ask you to help me deal with another
10 item. If you'll look at Exhibit 19, which is my
11 certificate of notice for hearing --

12 A. That's correct.

13 Q. -- and go back, sir, to the plat which is
14 Exhibit 6, the unorthodox location is 1,650 from the
15 north line of the spacing unit?

16 A. That's correct.

17 Q. And so it is moving in a northerly
18 direction as it becomes unorthodox?

19 A. That's correct.

20 Q. Did you determine the offsetting operators
21 for whom notice of that location was to be provided?

22 A. Yes, we did.

23 Q. Can you identify for me, using Exhibit 19
24 and Exhibit 6, and confirm whether or not the parties
25 that were entitled to notice of the location have in

1 fact received notification?

2 A. Yes, I would. Again, the movement or the
3 direction in which we encroached went northward, and
4 therefore we were required to notify the parties in
5 Section 21 and I believe the southwest quarter of 20
6 of that encroachment. And those parties were
7 Southwest Royalties, who had a 50 percent interest in
8 the southeast quarter of Section 20; Enerlock
9 Resources, who had the other 50 percent interest in
10 the southeast quarter of Section 20.

11 We notified Santa Fe Energy Operating
12 Partners and Maralo because we knew that at the time,
13 they were in negotiations to purchase Southwest
14 Royalties and Enerlock's interests; so we included
15 them.

16 As to the -- we also notified Phillips
17 Petroleum Company, who has a partial interest in the
18 west half southwest quarter and the northeast quarter
19 of Section 21.

20 We also notified Oryx, who also has a
21 partial interest in that same lease, and we notified
22 Grace Petroleum Corporation, who owns the leasehold
23 covering the southeast quarter and the northeast
24 southwest quarter of Section 28.

25 Q. And then the first notification was to

1 Strata Production Company because they were the party
2 to be pooled in the spacing unit?

3 A. That's correct.

4 MR. KELLAHIN: That concludes my
5 examination of Mr. Smith. We move the introduction of
6 Exhibits 6 through 17 and Exhibit 19.

7 EXAMINER STOGNER: Any objections?

8 MR. CAVIN: No, sir.

9 EXAMINER STOGNER: Exhibits 6 through 17
10 and Exhibit No. 19 will be admitted into evidence at
11 this time.

12 Mr. Cavin, your witness.

13 MR. CAVIN: Thank you.

14 MR. STOVALL: Let me do one thing first to
15 make sure we clear the record. I notice that on the
16 list of interest owners is an S.H. Cavin. Any
17 relation?

18 MR. CAVIN: Yes. That's my father.

19 MR. STOVALL: And you are not representing
20 your father here today?

21 MR. CAVIN: No. He's smarter than that.

22 MR. STOVALL: I won't go any further with
23 that one.

24 EXAMINATION

25 BY MR. CAVIN:

*Cavin
father*

1 Q. Mr. Smith, I'd like to ask you a few
2 questions on what I think -- you may be able to help
3 me. I can't see the exhibit number on this?

4 A. Six.

5 MR. KELLAHIN: Six. It's on the back.

6 Q. (BY MR. CAVIN) Exhibit No. 6. Can you
7 tell me what the status of ownership is on the
8 southwest of the northwest quarter?

9 A. That is an unleased federal tract.

10 MR. KELLAHIN: I'm sorry. I think you
11 misspoke. Say it again.

12 Q. (BY MR. CAVIN) I'm sorry, the southwest of
13 the northeast quarter of Section 28?

14 A. That's correct. That is an unleased
15 federal tract.

16 Q. Has there been any attempt to lease this
17 tract and put it up for nomination?

18 A. We wrote a letter to Miss Martha Rivera in
19 September of 1992 in an effort to nominate it, and we
20 had every belief that it would be as appeared in this
21 most recent federal sale; however, by letter from Miss
22 Rivera, it did not reach the sale because they failed
23 to verify that the lease had actually terminated.
24 They felt that they would probably have it up on the
25 next sale.

1 Q. Okay. When would the next sale be?

2 A. I believe it will be April 21.

3 Q. Okay. Can you tell me what the status --
4 and if you've already testified to this, I apologize
5 -- the status of the ownership or status of the lease
6 in the northwest quarter of the southwest quarter of
7 Section 28?

8 A. It is a federal lease that, again, as I
9 stated, is owned by Mitchell Energy Corporation and
10 its partners, and it will be scheduled to expire on
11 10-1-93.

12 Q. Have there been any comments throughout
13 your negotiations with Mr. Murphy that would indicate
14 that he had the unfettered authority to act for his
15 partners in this matter?

16 A. I would say there were no comments made by
17 him that said he didn't have. And I would point again
18 to that letter agreement that he sent for our
19 execution where it was obvious that he had attached an
20 exhibit that had a federal assignment that Strata
21 purported to have authority to act on all parts.

22 Q. That's consistent with your understanding
23 thought that he had the unfettered authority to deal
24 for these parties?

25 A. He had the authority to sign an agreement

1 binding all parties to whatever agreement we reached.

2 Q. So in his earlier correspondence where he
3 said it would be subject to partner approval, you felt
4 like that was just a misstatement?

5 A. No. That to me, it's a standard -- I put
6 it in my letters. That's an industry standard thing.

7 Q. Would it be typical for you to require any
8 documentation where someone says they have the
9 authority to deal for other parties?

10 A. I -- as part of the title examination, it's
11 generally required that we determine the status of
12 whoever it is and from the search of the county
13 records determine whether they have record title to
14 the property, and we did that.

15 Q. As part of your due diligence you would
16 normally do, if a party told you they have undisclosed
17 partners, would it be typical to ascertain the
18 authority of those parties?

19 A. As long as I'm under the -- it's not
20 uncommon out here for companies like Strata to have
21 lots of silent partners. I mean, Mitchell Energy
22 Corporation is made up by lots of silent shareholders,
23 and we do not have to seek their joinder to enter into
24 any agreements.

25 Q. Would it be unusual for Mitchell to have

silent
partners

1 unfettered authority to deal for these partners?

2 A. We never seek the shareholders' authority
3 to enter into operating agreements or sell or farm
4 out.

5 Q. I guess I mean partners, not shareholders.
6 I'm not speaking of shareholders of Mitchell. I'm
7 saying your partners. You say you have partners quite
8 --

9 A. Well, when we have entered into an
10 operating agreement and we have obtained agreement
11 from our partners to drill a well, and that operating
12 agreement would govern what would happen if we
13 acquired an interest within the contract area, we can
14 act on our own behalf. And if the partners didn't
15 like what we did, we have to suffer the consequences
16 with those interactions.

17 Q. As far as the disposition of an interest or
18 the farming out of an interest, is it unusual for
19 Mitchell to have the unfettered authority to deal for
20 its partners?

21 A. I wouldn't ever purport to farm out --
22 let's just, as an example, turn this around. If I
23 were attempting or had entered into negotiations with
24 Strata to farm out Mitchell's leasehold for a well
25 proposed by Strata in the west half, no, I would not

1 purport to be able to bind either Maralo's or Santa Fe
2 Energy's interest.

3 Q. You mentioned the overhead rate. How does
4 that -- are you familiar with the Ernst and Whinney's
5 --

6 A. Absolutely.

7 Q. -- proposed overhead rate?

8 A. Sure.

9 Q. Does your overhead rate -- how does that
10 compare to the proposed overhead rates there?

11 A. The average in Ernst & Whinney I believe
12 right now is around -- it's lower than what we
13 proposed. I don't know exactly what it is. But the
14 schedule that we put forth, again, is what's currently
15 being charged in the area.

16 We operate two Morrow wells in this
17 township, and if you expand out into surrounding
18 townships, we have seven or eight or nine. And we
19 simply were asking Strata to pay the same overhead
20 rate everyone else is in the area.

21 Q. Would you have any problem using the Ernst
22 & Whinney overhead rate for the Strata and its
23 partners?

24 A. I would believe that the rates proposed by
25 Mitchell are reasonable, and that's what we would want

1 to stay with.

2 Q. So you wouldn't be agreeable to the Ernst &
3 Whinney's overhead rates?

4 A. I don't believe I, as a senior landman,
5 have the authority to make that decision on Mitchell
6 Energy Corporation's behalf. I would have to seek
7 management approval to make that statement.

8 Q. Would it surprise you that just
9 catty-corner to that Section 28 lease in Section 32
10 Meridian recently acquired interest at a price of
11 \$1,000 an acre?

12 A. Would it surprise me? I'm not aware of it.

13 Q. Based on the price that Mitchell's been
14 paying in this area that are much lower than \$150?

15 A. Well, I will say that I'm a landman, and
16 terms of a trade are always governed by what two
17 people think things are worth. And if for whatever
18 reason Meridian thought something was worth \$1,000,
19 that's between them and whoever they struck their
20 trade with.

21 Q. It might be possible that \$150 isn't an
22 inflated price, though?

23 A. We have no qualms about paying \$150 an
24 acre. We, in writing, offered to pay that and would
25 gladly accept that today.

1 Q. Okay. Based on the correspondence and
2 communications with Mr. Murphy, did you ever believe
3 if you weren't able to strike agreement that you might
4 have to deal with these partners directly?

5 A. Not until receipt of the January 14 or 13
6 letter.

7 Q. Did you ever ask Mr. Murphy for information
8 on the partners?

9 A. He always described them as silent
10 partners, and I've dealt with any number of companies
11 in the past who had silent partners. And when I'm led
12 to believe that the individual with whom I am dealing
13 has the capacity to bind those silent partners, I
14 don't need to know who they are.

15 Q. Okay. So you didn't ask for that
16 information?

17 A. Based upon the representations by Mr.
18 Murphy that he had the capacity to bind those
19 interests, no, I didn't.

20 Q. Did you ever consider getting something in
21 writing from Mr. Murphy that he had the authority to
22 represent these parties?

23 MR. STOVALL: Let me interrupt this at this
24 point and say, let's go back to Exhibit 12. I'd like
25 to -- you referred to the attachment to Exhibit 12,

Silent
Partners

1 and pardon me for doing this. I think we can
2 short-circuit this line of questioning.

3 THE WITNESS: The attachment to Exhibit
4 12?

5 MR. STOVALL: Did you read this letter, Mr.
6 Smith, at the time?

7 THE WITNESS: You're talking Exhibit 12?

8 MR. STOVALL: I'm talking Exhibit 12, the
9 December 30th letter.

10 THE WITNESS: Yes, I did.

11 EXAMINER STOGNER: Third page.

12 MR. STOVALL: Let's dispose of it by just
13 going to paragraphs No. 5, No. 7, and No. 8.

14 MR. KELLAHIN: I'm sorry, I'm not with
15 you. Which exhibit?

16 THE WITNESS: Twelve.

17 MR. KELLAHIN: And which paragraphs?

18 MR. STOVALL: Paragraphs 5, 7, and 8.

19 MR. KELLAHIN: Of the body of the --

20 MR. STOVALL: Of the body of the letter
21 itself.

22 THE WITNESS: I did read it.

23 MR. STOVALL: With that information in the
24 record, Mr. Cavin, do you wish to pursue this line of
25 questioning?

1 MR. CAVIN: Absolutely, and I'd be happy to
2 explain, too, because I was responsible for drafting
3 this. This was sent to Mitchell --

4 MR. STOVALL: Mr. Cavin, please don't
5 testify. Use a witness.

6 MR. CAVIN: All right.

7 Q. At any time prior to December 30th, did you
8 request anything in writing from Mr. Murphy regarding
9 his authority to act for the partners?

10 A. No, I didn't.

11 Q. Was it your understanding Mr. Murphy could
12 cut just any deal, or were there just certain deals?

13 A. No. He told me that it would take his
14 partners' approval. As I stated in my letters, it
15 takes management approval. I understood that he was
16 acting as a go-between, as I was.

17 Q. Referencing your Exhibit 12, did you
18 interpret that paragraph 7 to be unlimited or tied to
19 this agreement?

20 A. Direct me again.

21 Q. I'm sorry, your Exhibit 12, it's on page 3,
22 it's paragraph 7.

23 A. Undisclosed Owners. Restate your question,
24 please.

25 Q. Did you interpret this to be applicable to

"go-between"

1 just any agreement or specific to this agreement?

2 A. Well, I would state that if it's possible
3 for Strata to make this statement in this agreement,
4 then it would imply that Strata has the capacity to
5 bind those partners in any agreement should the
6 partners have agreed to it.

7 Q. Do you see any difference between a sale
8 and a joint operating venture as far as the partners
9 would be concerned and Strata binding them to those?

10 A. Well, as long as Strata retained 100
11 percent record title interest, no.

12 Q. Did you ever -- in your conversations with
13 Mr. Murphy, did you ever allude to reasons for a west
14 half proration unit?

15 A. I alluded to one of.

16 Q. What would that reason be?

17 A. One of the reasons is that I did state to
18 him was that we have an expiring lease, and we would
19 certainly like to save it, but I did clearly state to
20 him that it was one of many reasons.

21 And I would clarify by stating that that
22 was a landman to landman kind of reasoning. I won't
23 purport to be a geologist; that that's just one of
24 many reasons. There were other reasons; i.e., an
25 unleased federal tract in the southwest northeast that

1 any reasonable and prudent operator would not include
2 within a proration unit.

3 Q. Was there any discussion if you set up a
4 west half proration unit that, in that fashion, you
5 could drill two wells in the north half? Was that
6 ever discussed with Mr. Murphy?

7 A. That was the main geologic reasoning and
8 really the main reasoning to do it the way we're doing
9 it is that we believe -- and I don't want to get into
10 geology because I'm not a geologist -- but that is the
11 main reason for doing what we're doing.

12 Q. Do you keep a phone log, Mr. Smith?

13 A. Not in detail.

14 MR. CAVIN: I have no further questions,
15 Mr. Examiner.

16 EXAMINER STOGNER: Mr. Stovall?

17 MR. STOVALL: I don't think I have any.
18 Well, let me --

19 EXAMINATION

20 BY MR. STOVALL:

21 Q. Is there any indication that you have, Mr.
22 Smith, do you know the nature of the interest or the
23 interest of the partnership as its referred to?

24 A. No. We were relying on the fact that
25 Strata is of record, the record title owner to 100

1 percent interest, and they are a New Mexico
2 corporation capable of conducting business in New
3 Mexico, and his representation to us that he spoke for
4 these silent partners and was capable of binding them
5 in an agreement.

6 Q. Based upon your experience as a
7 professional landman, you've been involved in
8 situations before where there are -- I think you've
9 stated that --

10 A. Investors?

11 Q. Investors in the well?

12 A. Sure.

13 Q. Is it necessarily the case that they always
14 own a working interest in leases, that those investors
15 own working interest in leases?

16 A. When you say -- I'm not sure I understand
17 your direction.

18 Q. As an operator and the owner of oil and gas
19 leases, and you invested and put up money to
20 participate in your operations, do those investors
21 always, unequivocally have an interest in the real
22 property, or do they have an interest in the
23 production or --

24 A. Mr. Examiner, I would say that I've never
25 worked for a company that operated that way and would

1 not be able to comment. I've only worked for a major
2 corporation in my capacity as a senior landman, and we
3 don't have investors. We have shareholders.

4 MR. STOVALL: Okay. I don't think I have
5 anything further.

6 MR. KELLAHIN: I have one follow-up
7 question, Mr. Examiner.

8 EXAMINER STOGNER: Mr. Kellahin.

9 FURTHER EXAMINATION

10 BY MR. KELLAHIN:

11 Q. From a landman's perspective, Mr. Smith,
12 tell me, what, if any, difficulties are created with
13 regards to the unleased federal tract in the southeast
14 of the northeast, if, for example, the spacing unit is
15 the east half or the north half, and you have to now
16 include that tract as an unleased tract in the spacing
17 unit. What are your reservations, concerns, or
18 observations?

19 A. Well, the federal government or the BLM
20 would allow you to drill a well and approve a
21 communitization agreement covering the proration unit
22 containing an unleased federal tract as long as it
23 wasn't the drill site lease and as long as it did not
24 constitute a majority of the proration unit.

25 In doing that, they would allow you to

1 drill your well, and at such times as that lease then
2 came up for sale, on the next sale that it did come up
3 on, a condition would be placed upon the issuance of
4 that lease to the winner that the winner would be
5 required to sign a communitization agreement covering
6 the well in that -- or covering that tract as it
7 applied to that well.

8 Q. Is that a viable option for Mitchell to
9 exercise in order to form a spacing unit?

10 A. It's not what would be considered
11 reasonable and prudent because you would then be
12 putting for sale an interest in a known quantity up
13 for auction. You would be leaving a hole in your
14 proration unit for anyone to step in and buy it and
15 bid the price up to whatever it might go to. It's
16 just not something a reasonable and prudent operator
17 would do.

18 MR. KELLAHIN: That's all the questions I
19 have.

20 MR. CAVIN: I have a follow-up, Mr.
21 Examiner.

22 EXAMINER STOGNER: Mr. Cavin.

23 FURTHER EXAMINATION

24 BY MR. CAVIN:

25 Q. Mr. Smith, you have experience with federal

1 leases, I believe you stated?

2 A. Yes.

3 Q. Do you have any reason to doubt, based on
4 your conversations with the BLM, that this lease will
5 be put up at the next sale?

6 A. We have a letter in our files from Martha
7 that it did not make -- we inquired as to why it did
8 not make this most recent sale, and the reason was
9 that they had failed to verify, through whatever
10 procedure they do so, that the lease had actually
11 expired; that they felt and assured us that, as long
12 as the lease has expired, it should make the next
13 federal sale.

14 Q. Which again you say that was --

15 A. I believe it's April 21st of this year.

16 Q. Are there any considerations that would
17 require you to drill this well before that date?

18 A. We have signed AFE's with our partners
19 covering the proposed well that under the operating
20 agreement will expire after a certain period of time.

21 Q. Your partners being --

22 A. Santa Fe Energy and Maralo. And we would
23 proceed -- prefer to get on with our business.

24 MR. CAVIN: Oh, sure. I have no further
25 questions.

1 EXAMINER STOGNER: Any other questions of
2 Mr. Smith?

3 MR. KELLAHIN: No, sir.

4 EXAMINER STOGNER: He may be excused.

5 Mr. Kellahin.

6 MR. KELLAHIN: I'm prepared to continue
7 with my witnesses, if you desire. If you want to deal
8 with the notice issue, I guess we can do that, too.
9 However you would like to proceed.

10 EXAMINER STOGNER: You may continue, Mr.
11 Kellahin.

12 MR. CAVIN: Could I take a 60-second break?

13 EXAMINER STOGNER: We'll take five minutes.

14 (Thereupon, a recess was taken.)

15 EXAMINER STOGNER: Mr. Kellahin?

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

17 We'd call at this time Mr. Ted Galowski.

18 TED GAWLOSKI

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

21 EXAMINATION

22 BY MR. KELLAHIN:

23 Q. Mr. Gawloski, would you please state your
24 name and occupation.

25 A. I'm Ted Gawloski. I'm a staff geologist

1 for Mitchell Energy Corporation in Midland, Texas.

2 Q. Mr. Gawloski, on prior occasions, have you
3 testified as an expert petroleum geologist before the
4 Oil Conservation Division?

5 A. Yes, I have.

6 Q. Describe for us what it is that you have
7 done for your company with regards to the area in Lea
8 County, New Mexico, that your company is exploring for
9 Morrow gas production. What is it that you do in that
10 process?

11 A. I'm essentially the geologist who works the
12 exploration end of defining the first location in an
13 area for the Morrow, using all available geologic data
14 that we have to determine the best possible locations
15 to develop Morrow gas in the area.

16 Q. Section 28 that's the subject of this case
17 is your own personal project?

18 A. Yes, it is.

19 Q. And you are the exploration geologist that
20 is attempting to find Morrow production in this
21 section and other areas in the township?

22 A. That's correct.

23 Q. Based upon that study, have you done
24 certain mapping and reached certain conclusions with
25 regards to issues that are relevant to this hearing?

1 A. Yes, I have.

2 MR. KELLAHIN: We tender Mr. Gawloski as an
3 expert petroleum geologist.

4 EXAMINER STOGNER: Any objections?

5 MR. CAVIN: No, Mr. Examiner.

6 EXAMINER STOGNER: Mr. Gawloski is so
7 qualified.

8 Q. (BY MR. KELLAHIN) Mr. Gawloski, let me ask
9 you to take Mitchell Exhibit No. 1. Is this an
10 exhibit that you prepared?

11 A. Yes, it is.

12 Q. Identify for us the Section 28 that's the
13 subject or the topic of this hearing. Where is it?

14 A. Section 28 is in the lower portion of this
15 map. It is in Township 20 South, Range 33 East -- I
16 mean, there's a green dot showing the approximate
17 location of the well, the Tomahawk 28 Federal Com or
18 Federal #1.

19 Q. Give us a general overview of the
20 development and exploration that is occurring in this
21 area with regards to those gas formations below the
22 top of the Wolfcamp. What is happening to develop
23 those potential gas reserves?

24 A. From a Mitchell point of view or from
25 just --

1 Q. From anybody's point of view.

2 A. There is some Morrow activity ongoing in
3 the area, a lot of it by Mitchell Energy; some of it
4 by other operators. There's wells being drilled to
5 the north and some to the south and east, as well, for
6 the Morrow horizon in here.

7 Q. Using the legend, Mr. Gawloski, how have
8 you identified Morrow wells?

9 A. Currently active Morrow wells?

10 Q. Yes, sir.

11 A. Using the arrow. However, that's also for
12 other wells. It's not just for Morrow activity in
13 here.

14 Q. If I find a light blue dot, the legend says
15 that's a Morrow. A Morrow what?

16 A. A Morrow producer. It's produced gas out
17 of the Morrow formation.

18 Q. What is the nearest Morrow producer in this
19 area in relationship to Section 28?

20 A. There are two approximately the same
21 distance away, a well in Section 33, just to the
22 south. However, that well did not make any commercial
23 quantities of gas, just essentially a show. The other
24 well closest to it is our Mitchell Energy well, Top
25 Hat Federal Well, which has just been on line for

1 approximately a year right now.

2 So there's really not a whole lot of Morrow
3 wells within that general vicinity, producers.

4 Q. When I move north of 28 about three
5 sections and get up into Section 9, there's a blue dot
6 and then a red arrow?

7 A. That's correct.

8 Q. What is represented in that section?

9 A. The blue dot was a Mitchell Morrow
10 discovery. That was just completed, oh, approximately
11 three or four months ago, the Anasazi Federal Mine #1,
12 and we are currently in the process of developing
13 plans to drill an offset to this well.

14 Q. Let me talk to you for a moment about your
15 personal experience as an exploration geologist
16 looking for Morrow production in this area. How long
17 have you been engaged in that activity for your
18 company?

19 A. Ever since I started at Mitchell in 1984, I
20 have been engaged in Morrow exploration activity and
21 in years before that when I was working for Amoco
22 Production Company in the same area.

23 Q. Can you give us any of your personal
24 experience in how successful you are in applying your
25 geologic interpretations and geologic methodology to

1 successfully finding, locating, and ultimately
2 producing Morrow gas?

3 A. We have been successful in numerous Morrow
4 wells in this area and are currently ongoing drilling
5 wells in here right now at present. And the success
6 rate we've had in this area has been excellent.

7 Q. Give us a sense of the range of your
8 successes in the recent period. How many wells have
9 you personally been involved in picking locations for,
10 and what has been the success of those attempts?

11 A. We've had -- within the area, approximately
12 seven to eight Morrow wells that I've been responsible
13 for. And each one we have, are producing gas out of,
14 run pipe and produce gas out of it. Most of the wells
15 are new and the cum's of them are yet to be
16 determined.

17 Q. When you target Morrow production, is there
18 any particular portion of the Morrow that you're
19 looking at as a way to then determine where to locate
20 a well?

21 A. Yes. Our primary target in this area is
22 our package of Morrow sands, we call the Morrow B
23 interval, which most of the production in this area
24 does come out of.

25 Q. For you as an exploration geologist looking

1 for Morrow B, what geologic tools are you using by
2 which then to develop a strategy for exploration of
3 the Morrow?

4 A. We use -- primarily, we'll go in there and
5 isopach the Morrow B Section, and then we would
6 construct a structure map, using all available well
7 data. In our structure map, we use all available
8 seismic data that we have in the area, and it's quite
9 extensive in this particular area. We use that in
10 conjunction with the well data to make our structure
11 map.

12 And we also use cross-sections to show the
13 lateral continuity or discontinuity of the Morrow
14 sands.

15 Q. What is your exploration strategy or method
16 by which, having found an area that you want to
17 develop within a section, what decisions do you make
18 about how to drill for Morrow production?

19 A. When we go into an area like this, and this
20 is what we've done numerous occasions in here prior to
21 this well, we determine what our primary target
22 formation is in here. And, in this case, it's the
23 Morrow formation, and primarily the Morrow B sands
24 section.

25 We then determine the proration units,

1 establish for that, in this case, the Morrow being 320
2 acres. We then use an approach in here how to best
3 develop that section for the Morrow, using both our
4 tools that we have, using the isopach and the
5 structure maps.

6 Q. What is the objective that you're trying to
7 achieve with your selection of a spacing unit and the
8 orientation of that unit within a single section?

9 A. We're trying to achieve how best to develop
10 our primary target formation within that section.

11 Q. Is this a single well per section concept,
12 or is it a two well, 320-acre development concept or
13 exploration concept?

14 A. It's a two-well concept that we've used in
15 this area. It's something that we've done in the
16 past, and we would do in the future.

17 Q. What do you achieve by looking at the
18 orientation of spacing units whereby within a section
19 then you give yourself two spacing units and two
20 potential locations, one for each of those spacing
21 units?

22 A. Can you --

23 Q. Yes, sir. What's the objective, what is
24 the goal that you're trying to achieve within a
25 section by looking at the whole section as opposed to

1 a single 320 spacing unit?

2 A. We're trying to maximize our potential for
3 that target formation within a section.

4 Q. How do you do that?

5 A. We do that using our geological maps that
6 we have constructed for that area.

7 Q. Let me ask you now to turn to the structure
8 map. Again, is this a display that has been prepared
9 by you?

10 A. Yes, it has.

11 Q. Before we look at the specific conclusions
12 that you reach about 28, tell us how to read and
13 understand the information.

14 A. This is a structure map, again, using all
15 available well data, as well as the seismic data, and
16 you can see them mainly on the section lines, all the
17 seismic data that Mitchell has in this area. It's an
18 extensive database that we use in here to develop
19 regional trends for the Morrow. We use these maps in
20 a regional sense and then hone in on the area that
21 we're working on.

22 You can see that there's extensive
23 structural component structure in the area, numerous
24 faults and structures and things that show in this
25 area here.

1 Q. Analyze the structure map for us as it
2 applies to Section 28 and tell us how, if at all, that
3 information affected how you proposed to orient the
4 spacing unit in 28.

5 A. You can see in Section 28 -- it's the
6 section that has the green outline on it? As you move
7 into the northern half of Section 28, there's actually
8 a structural closure that is developed in Section 28.
9 And the northern part of that section is the best
10 developed structure.

11 As you move south in that section, you lose
12 a considerable amount of structure, which greatly
13 increases your risk in this area for finding Morrow
14 production.

15 Q. The arrow, the point of the arrow, is that
16 attempting to locate the standard location, or is this
17 locating the proposed unorthodox location?

18 A. That approximates the unorthodox location.

19 Q. The scale is so small, I guess it's hard to
20 see, but that is intended to represent the 1,650 from
21 the north line?

22 A. That's correct.

23 Q. As opposed to 1,980 from the north line?

24 Give us an understanding of the well
25 control information that you have to help you infer

1 the structure and the closure of the minus 9400 line
2 within Section 28. What's your control?

3 A. Well, there's a well in Section 27, a well
4 in Section 26, a well to the south in 33, and farther
5 to the north, our well in Section 9.

6 Q. Let's talk about the seismic control.
7 Where is that?

8 A. There's extensive seismic control east-west
9 along the southern part of Section 28, north-south
10 across the western portion of Section 28, another
11 east-west line running across Section 21, and in the
12 middle portion of Section 21, and another line,
13 east-west line along the northern portion of Section
14 21 and several other lines north-south through the
15 area. Very extensive seismic base we have here.

16 Q. Based upon the structure map, do you have
17 an opinion as to the level of risk factor the
18 examiner, in your recommendation, should assess
19 against any nonconsenting interest owner regardless of
20 where the well is located in Section 28?

21 A. The risk for drilling a well in this area
22 is that we are on, essentially on a structure that has
23 been untested. That would be the primary risk. The
24 closest well to us has tested the Morrow in Section 27
25 and did not produce out of the Morrow section. It did

1 produce out of the Atoka section.

2 Q. When you consider all those factors that
3 you as a geologist rely upon, what is the risk factor
4 in terms of a percentage as assessed by the Division
5 that you would recommend that be applied in this case?

6 A. I believe the maximum penalty should be
7 applied in this case, that being 200 percent plus
8 costs.

9 Q. Does the risk diminish so that the penalty
10 factor ought to be less than 200 percent, if you move
11 the location from the closest standard location to the
12 proposed unorthodox location?

13 A. No, I don't believe that should change at
14 all.

15 Q. Why not?

16 A. It's a minimal distance that you're moving
17 structurally, and the risk is still going to be there
18 because the structure is untested.

19 Q. Can you reach that same conclusion then
20 with regards to wherever the well is located within
21 the spacing unit, it's not going to have a material
22 effect so that the maximum penalty should be less than
23 200 percent?

24 A. That's correct.

25 Q. Let's turn now to the isopach information.

1 In addition to making a structural interpretation,
2 what else do you do?

3 A. I go into the Morrow section, and I isopach
4 what we call the Morrow B section. I take the
5 porosity cutoff of a density porosity of 7 percent,
6 which we used as a limitation for production, and we
7 isopach those values using all the available well
8 control that we have.

9 Q. And you have done that with this isopach
10 that's identified as Exhibit No. 3?

11 A. That's correct.

12 Q. This is your work?

13 A. That's correct.

14 Q. In making a decision in Section 28 about
15 how to orient the spacing units so that you can
16 achieve maximum development on 320 gas spacing for
17 that section, how does the isopach help you make those
18 choices?

19 A. The isopach is used in conjunction with the
20 structure map. You determine, you try to get the best
21 possible isopach value area that your thickest sand by
22 in there, and use that in conjunction with your
23 structure map to maximize your potential within
24 Section 28.

25 Q. Looking at the isopach, can you give us an

1 example or an illustration of the ranges of
2 differences you achieve with a well based upon
3 thickness of the Morrow B?

4 A. The Morrow B, the way I have it mapped, has
5 approximately 30 feet of thickness in the west half,
6 increases to approximately 50 and a little bit toward
7 the center part of the section. It goes back down to
8 approximately 40 feet on the eastern portion of the
9 section.

10 Q. In relation to offsetting or wells in the
11 area, I guess you have to go over to 26, two sections
12 away, what was the success of that well in relation to
13 thickness of the Morrow B sand?

14 A. That well was a successful Morrow test
15 based upon this same isopach that we used in this
16 area.

17 Q. And that had approximately 60 feet in it?

18 A. Yes.

19 Q. As we move south into Section 33, we find a
20 Morrow test in Section 33 in the southwest quarter
21 that is about 30 feet of thickness?

22 A. That's correct.

23 Q. Were you able to obtain a successful Morrow
24 well?

25 A. That well was essentially an extremely poor

1 producer, 226,000 cubic feet. So it really is a
2 nonproducer, just a little show of gas.

3 Q. How do you use the isopach to help you
4 decide the orientation of the spacing unit you want?

5 A. We use the isopach to try to get into the
6 thickest sand body that we can in the best structural
7 position and using our two-well concept to best
8 develop the section.

9 Q. If it is a north half-south half
10 orientation, how does the integration of the two
11 exhibits, the structure map and the isopach, affect
12 that decision?

13 A. The isopach value shows that the thick go
14 through the north-south. However, the structure map
15 shows a preferred orientation or a preferred structure
16 in the north half. So as you move south into the
17 section, you will be getting off structure, and it
18 would inspect your risk considerably.

19 So we'd use the isopach and structure map
20 in conjunction. And, therefore, the best locations
21 would be in the northwest quarter and northeast
22 quarter of Section 28.

23 Q. What happens if the orientation of the
24 spacing unit is such that there's a north half and a
25 south half? How does that affect your ability to

1 develop the whole section?

2 A. It would limit our ability to develop the
3 whole section. The first well would fit the mapping,
4 meet our criteria, but the south well would be at such
5 a risk that, based upon our mapping here right now, we
6 would not recommend a well if it was in the south
7 half.

8 Q. What do you achieve if you stand the
9 spacing units up and you have a west half and an east
10 half orientation to the 320 gas spacing units?

11 A. It gives us the opportunity to fully
12 develop the section. I have a location in the
13 northwest quarter and the northeast quarter.

14 Q. Each of which is upstructure from the south
15 half?

16 A. That's correct.

17 Q. And is comparable then in structural
18 position?

19 A. That's correct.

20 Q. Let's turn now to Exhibit No. 4 and look at
21 your stratigraphic cross-section. Before we discuss
22 the conclusions you reach about Exhibit No. 4, Mr.
23 Gawloski, show us the line of cross-section, what
24 wells you've picked.

25 A. This cross-section goes from the north end

1 across our Geronimo prospect. It's the well on the
2 far left. It goes through a well in Section 9, which
3 is our new discovery, the Mitchell Energy Anasazi
4 Federal #9 well, moves further south to our proposed
5 location in Section 28, and ties in a couple of the
6 wells in the Salt Lake south Morrow field, which is
7 the closest production to the south of us.

8 Q. Why have you chosen those wells to form a
9 line for the cross-section?

10 A. It gives us a link of production that we
11 have to the north and to the south, and it shows us
12 the character and nature of the sands that we are
13 chasing in this area.

14 Q. Excluding for a moment the Morrow B sand,
15 describe and characterize the potential in the other
16 Morrow sands for us.

17 A. There is potential in the other Morrow
18 packages, but we feel that it's somewhat limited in
19 the area. Our well in Section 9 did not have a very
20 good development of the Morrow C. So our primary
21 target in here is the Morrow B sand section.

22 Q. Let's look specifically at the Morrow B now
23 and describe that for us. What do you see about the
24 continuity of the sands from well to well?

25 A. The Morrow B or the sand package that lies

1 below that yellow line on the cross-section, and as
2 you can see as you go across this section here the
3 variability and discontinuous nature of these Morrow
4 sands. And we have more experience in this area and
5 have found that you need to develop this Morrow on a
6 320-acre proration to adequately develop the entire
7 section. The nature of these sands have a tendency to
8 come and go, and we do find new reservoirs in drilling
9 within the 320-acre proration unit.

10 Q. Based upon your experience in this area
11 with drilling Morrow wells, what is your conclusion
12 about the component of risk that you undertake in
13 drilling a well such as this?

14 A. Because of the nature of the Morrow in this
15 area, there is always a risk of not finding sands in
16 one area and finding them in another. The
17 discontinuous nature always increases the risk of
18 drilling for the Morrow in this area.

19 Q. Can you characterize this as step-out
20 development of the existing established Morrow
21 production?

22 A. To me, from our -- the way Mitchell is
23 looking at it, it is a wildcat well. We are drilling
24 north of a field, of the Salt Lake field, which we
25 feel has strong structural component to it and feel

1 that we're on another structural trend north of it
2 that has yet to be fully developed, and our closest
3 other production is up to the north where we are
4 currently active right now.

5 Q. Using this stratigraphic cross-section,
6 help us identify the interval that you have used to
7 isopach for Exhibit No. 3.

8 A. The interval I used to isopach is the
9 interval between what's marked on the exhibit as Top
10 of the Morrow B and Top of the Morrow C. That's the
11 interval that I used to isopach.

12 Q. Having taken that interval then, how do you
13 calculate the thickness within that interval by which
14 you then had prepared the isopach?

15 A. I go through that section and determine
16 what is the sand in here, and I've used the porosity
17 cutoff that is what we use as a standard for
18 production.

19 Q. That's the 7 percent?

20 A. 7 percent density. And then I essentially
21 go in there and add up the thicknesses within that
22 section.

23 Q. The isopach that's been generated then is a
24 net sand isopach?

25 A. A net sand isopach of this Morrow B

1 interval.

2 Q. Using the 7 percent cutoff?

3 A. That's correct.

4 Q. Let me ask you to turn to Exhibit No. 5
5 now. Exhibit 5 doesn't have the quarter section or
6 the section lines on it, and you're going to have to
7 help us not get confused in the display, Mr.
8 Gawloski. If you'll, before we talk about the
9 conclusions, look at 5 and tell us where it came
10 from. What is this?

11 A. This is a plat that was prepared by
12 archeologists. When you go into a federal leasehold
13 and you're proposing a well, you have to have an
14 archeological survey done on the location and the pad
15 site before you can proceed with your permitting.

16 Q. You had chosen for the development of the
17 section a well located in the west half 1,980 from the
18 north and 1,980 from the west?

19 A. That's correct.

20 Q. Where do we find that location on Exhibit
21 5?

22 A. It's marked in the center portion of the
23 diagram right there under the word "ridge" on dune
24 ridge, on the lower portion of the dune.

25 Q. Were your field people successful in

1 obtaining surface clearance for a well to be located
2 as you had initially proposed?

3 A. No, they were not.

4 Q. What happened?

5 A. First off, there is a topographical
6 consideration. There was a large dune ridge, and
7 that's shown in there by the dashed line, essentially
8 trending northeast-southwest, and that location was on
9 the edge of that dune ridge.

10 The other consideration in here, which goes
11 along with the topographical consideration, is an
12 archeological site, and you can see it has a
13 designation there, and it's shown by the bolder dark
14 line on the dune ridge. Essentially, the dune ridge
15 was a topographical feature that he found
16 archeological -- whatever -- artifacts on there. So
17 that we did not have clearance then to proceed with
18 that location.

19 Q. Were you able to locate a well that
20 satisfied the surface limitations within the west half
21 of Section 28?

22 A. That's correct.

23 Q. And where did you ultimately find that you
24 had an approvable surface location?

25 A. Moving a little bit to the north where the

1 location would be approximately 1,650 from the north
2 line instead of 1,980. That would give -- you can see
3 the box around that location is the boundary of the
4 well pad. That would be essentially the minimum
5 distance we could move from there and still conduct
6 our business in a manner that would have been approved
7 by the archeologist and probably the BLM.

8 Q. In assessing the risk, is there a material
9 difference or a change in the risk if you moved from
10 the closest standard location to this unorthodox
11 location?

12 A. No, the risk is about the same. It's a
13 minimal distance that we're moving here.

14 Q. The choices you've made about the
15 methodology for exploration of the section, the two-
16 well concept, is that made by you as a geologist
17 independent initially of any other limitations or
18 considerations?

19 A. No, sir. There's other considerations that
20 we use in conjunction with the geological information.

21 Q. Initially, however, what goes into the
22 decision that you make as a geologist about how to
23 orient the spacing units?

24 A. Initially, it's what I do with the
25 geological end of it is what I do initially, and then

1 if there's any other considerations, we address them.

2 Q. Apart from other considerations now,
3 initially then the decision is made upon your geologic
4 work independent of ownership and surface limitations?

5 A. That's correct.

6 Q. And what was that decision that you made
7 for Section 28?

8 A. That the best way to develop Section 28
9 would be to have stand-up proration units in the east
10 half and the west half and have a well posed in the
11 northwest quarter of that section.

12 Q. If that is approved by the examiner, what
13 does that allow Mitchell to do then with the
14 subsequent development of the section?

15 A. It allows Mitchell to then proceed with a
16 well. If deemed productive, the first well deemed
17 productive, we could then proceed with a well in the
18 northeast quarter of that section.

19 Q. Having made that initial decision, were
20 there any other informations or facts brought to you
21 subsequently that caused you to change your opinion
22 about the orientation of the spacing units?

23 A. A leasehold consideration was brought to my
24 attention of an unleased partial in the northeast
25 quarter.

1 Q. The topographic limitation was brought to
2 your attention?

3 A. That's correct.

4 Q. And you've had to adjust for that?

5 A. That's correct.

6 Q. Any other thing that's affected your choice
7 about how to orient the spacing units?

8 A. No.

9 Q. Having selected the orientation, summarize
10 for us the criteria then that gets you to the ultimate
11 conclusion about the stand-ups. What's the criteria?

12 A. The criteria is one that we used in this
13 area, that we have used in this area. We take our
14 geologic maps, cross-sections. We take the isopachs,
15 determine where the best -- area of best thickness in
16 the Morrow B, which is our primary target. We then
17 look at our structure map. And then we look at both
18 of those and take those into consideration to
19 determine what the best locations would be to
20 adequately develop the section.

21 And in this case, using their structure and
22 isopach, locations in the northwest quarter and
23 northeast quarter on the east and west half proration
24 units were the best way to fully develop Section 28.

25 Q. Describe for us the criteria you use in

1 selecting the well location for each of the two
2 spacing units once you've decided the orientation.

3 A. Well, once we decide the orientation, in
4 this case a west-half proration unit, we normally go
5 to what we feel is our best orthodox location, which
6 is what we did in this case. And then we submit that
7 to get permitted based upon clearance of BLM approval
8 of that location.

9 MR. KELLAHIN: That concludes my
10 examination of Mr. Gawloski. We would move the
11 introduction of Exhibits 1 through 5.

12 EXAMINER STOGNER: Exhibits 1 through 5
13 will be admitted into evidence at this time. Thank
14 you, Mr. Kellahin.

15 Mr. Cavin, your witness.

16 MR. CAVIN: Thank you, Mr. Examiner.

17 EXAMINATION

18 BY MR. CAVIN:

19 Q. Can you help me with your name, please.
20 I'm sorry, I'd just like to pronounce it correctly.

21 A. Ted Gawloski.

22 Q. Gawloski, okay. If I mispronounce it, you
23 have my apologies in advance.

24 A. I'm used to it.

25 Q. Well, Sealy is not a real winner either for

1 easy names to pronounce.

2 Let me refer you to Exhibit 5 as far as the
3 various locations you have looked at, and can you tell
4 me where is it on this map that you can't drill? I
5 guess I didn't understand that, from a topographical
6 --

7 A. The center portion of the plat, essentially
8 right under the "g" in "ridge" was the initial
9 proposed location, orthodox location.

10 Q. And that would be, right under the "g"
11 would be 1,980?

12 A. Right. You can see right to the right of
13 that, it says 1,980 from the north and west and the
14 arrow pointing there. That is the location.

15 Q. Is that where the crosshatch is?

16 A. Yes.

17 Q. The crosshatch is 1,980, 1,980?

18 A. Yes.

19 Q. So that crosshatch is on the ridge, so to
20 speak?

21 A. It's right on the edge of the ridge and
22 extremely close to the archeological site. The thing
23 we didn't have drawn here is the size of the well pad
24 which would be what you see on each of those other
25 ones; so the well pad would essentially be in the

1 middle of that dune ridge and archeological site.

2 Q. How large is that well pad?

3 A. It says up there 400 by 400.

4 Q. Okay, 400 by 400. Am I correct, if you
5 move the 1,980, 1,980 location south, you have to move
6 it south at least 200 feet because of the well pad?

7 A. That's approximately it, yes.

8 Q. So you have to have a well pad that's 400
9 by 400; is that pretty much --

10 A. That's what we normally do for our Morrow
11 wells. That's not my area of expertise, but he has
12 this drawn in here as such. That's what he would do.

13 Q. So that's standard for your Morrow wells?

14 A. I'm led to believe that, yes.

15 Q. Do you make any exceptions for these
16 location sizes, your pad, I should say?

17 A. Very rarely, because I do know this, you
18 have to have so much spacing out there for safety
19 reasons that you have to have enough room to do that,
20 and this is probably pretty standard for BLM deep gas
21 wells.

22 Q. Can you tell me, and I should probably know
23 this, but IF #1 means?

24 A. That is an isolated find, I believe, is how
25 he describes that. There's isolated finds outside of

1 that dune ridge that he found and he's numbered.

2 Q. And IF #2 is the same sort of thing?

3 A. Yes.

4 Q. Okay. And it looks like that's an access
5 road that passes through there?

6 A. That's correct.

7 Q. The location 2,180 by 2,180, that is what's
8 acceptable for archeological and topographical
9 reasons; is that right?

10 A. That's correct.

11 Q. But not for geologic reasons?

12 A. That's correct. Well, there was two -- we
13 had two locations here, and we chose the northern one
14 based upon geological considerations.

15 Q. But 2,180 and 2,180 is acceptable from
16 archeological --

17 A. Yes.

18 Q. Can you tell me, I think you've said you
19 work in the Permian Basin area. What other areas do
20 you work?

21 A. I've worked the southeast New Mexico for
22 all 12 of my years as a geologist.

23 Q. So that's basically 100 percent of your
24 work?

25 A. It's been in the Delaware Basin, southeast

1 New Mexico, that's correct.

2 Q. It sounds like you've got quite an
3 impressive amount of geologic data. Is that something
4 you would share with the parties you're seeking to
5 join, in your interpretations?

6 A. It's something we do not normally do unless
7 we're bound by some sort of agreement. The other
8 parties usually make up their own decisions, have
9 their own staff of geologists and usually will do that
10 themselves. So we don't normally do that.

11 Q. Would you consider it in this case if it
12 would help facilitate the -- what would Mitchell's
13 position be?

14 A. We already did. I sent a portion of this
15 structure map to geologists at Strata to help in these
16 discussions we were having so that we might alleviate
17 some of these problems, and I sent a portion of that
18 structure map up to them, and it was confirmed that he
19 did receive that map.

20 It's something that we sometimes do to help
21 alleviate a problem in an area to get something going,
22 but normally it's not something that we do. It's more
23 above and beyond what we usually do.

24 Q. Did you share that information with Maralo
25 and is it Santa Fe that your other partner is?

1 A. That's correct. We did not -- they have
2 their own geologists, and they work that up
3 themselves.

4 Q. Do they have access to the information that
5 your maps are based on?

6 A. I do not know. I'm sure they have the well
7 control. Now, the seismic data, I do not know. I
8 cannot speak for them on that. I know we have a very
9 extensive seismic database in this area.

10 Q. I would refer you to your Exhibit No. 2,
11 and I take it this is a structure map showing the top
12 of the Morrow. Now, can you tell me, if you could,
13 where would you locate this well if you could pick the
14 prime location within this structure without
15 considerations to the north line?

16 A. Without considerations -- you would still
17 have to be within legal bounds of a location. You'd
18 have to have some sort of consideration of the north
19 line.

20 Q. I guess I'm trying to get your opinion,
21 what is the best location, legal location, if you had
22 a north half proration unit in the north half of
23 Section 28 according to your structure map?

24 A. If you were looking at it from a one-well
25 standpoint, you could drill a location a little bit

1 better on the structure, but our methodology in here
2 is to maximize our potential for the sections. And
3 we've done that with several wells in this area,
4 several Morrow wells, including the well in Section 9,
5 and we have not changed our approach for this location
6 at all.

7 Q. So basically what you're saying is, if you
8 had to pick the best structural position in 28 that
9 was a legal location for the north half, it would be
10 further north than the proposed location?

11 A. You could move it a little further north if
12 you were looking at it from a one-well standpoint.

13 Q. And that would be a better geologic
14 location for this one well?

15 A. For this one well.

16 Q. So it's your opinion that the risk should
17 be the same throughout any part of Section 28, and
18 that's the 200 percent plus costs?

19 A. That's correct.

20 Q. And it's your opinion that the south half
21 location is just too risky, and you don't see any
22 geologic merit to that?

23 A. If we were forced to do north half-south
24 half, based upon this mapping, I would not recommend
25 it to my management. Structure in here does play an

1 important role. The field on the south and west on
2 this map is, as you can see, on a structural feature
3 at Salt Lake South Field, and as you get off of that
4 structure, you do get wells that you get into some
5 zones that do not produce and are wet.

6 Q. It appears that some of these wells are
7 pretty good producers that are offstructure; is that
8 correct?

9 A. Which wells are you referring to?

10 Q. Well, I guess the -- up in Section 14 up in
11 that Quail Ridge area, those wells up there, it would
12 appear they're somewhat offstructure?

13 A. That well is on the edge of a structure. I
14 would interpret it as being on the edge of a
15 structure, and there's stratigraphic and structural
16 components to the wells in here.

17 Q. How about the well in Section 19 of that
18 same township and range?

19 A. There is no producer in Section 19 of that
20 township and range. Which one are you referring to?

21 Q. Let me get my bearings here. I believe
22 that would be 19-33. Let me confirm that for you.

23 A. That well in 19 of 19-33 is an extremely
24 poor producer. Eight million out of the Morrow I
25 would not call a good Morrow producer.

1 Q. Eight?

2 A. Eight million. That's something we
3 certainly would not call -- I'm sure you can go
4 through here and find one or two exceptions, but
5 you're going to find most of them that are going to be
6 either on or on the edge of a structure, and the well
7 field to the south definitely has a structural
8 component to it.

9 Q. So I guess your position is it's structural
10 and stratigraphic?

11 A. Structure plays a very important part in
12 this area, and I think it's obvious from the map here.

13 Q. What would be more significant, the age of
14 structure or the top of the structure, in your opinion
15 -- I'm sorry, the edge?

16 A. The edge of the structure versus the top of
17 the structure?

18 Q. Um-hm. Let me just rephrase this. If you
19 had your druthers, you're saying you'd come right in
20 at the very top of the structure?

21 A. That's not correct. If I was looking at
22 this one map by itself, that may be what you would
23 do. That is not the way we do business. I can find a
24 structure out here that has no sand in it, and it's
25 not going to do me any good to drill it. So I do not

1 use this map by itself.

2 The well in Section 5 is in a nice
3 structural position, and it had very little sand in
4 it; so it didn't do any good to be on the structure.
5 You've got to use all the tools you have available to
6 you. In this case, you use your isopach and your
7 structure.

8 Q. Do you feel like this is a pretty precise
9 art here to pick these locations?

10 A. This is as precise as we can get it with
11 the data we have.

12 Q. Is the -- and I believe this is the correct
13 name -- the Anasazi well up in Section 9 to the north,
14 Section 28, is that onstructure or offstructure or on
15 the edge?

16 A. It came in mapped on the edge of a
17 structure. And, again, this is a prime example of how
18 we work a section in this area. We determined that
19 this section with the isopach and the structure to
20 maximize the development of that section, we were
21 going to have lay-down proration units, and we're
22 currently in the process of permitting a well in the
23 south half of Section 9, again, under the same
24 methodology as we're doing in Section 28, get a good
25 thickness necessary of sand and in it a good

1 structural position.

2 Q. But your well you're proposing in the south
3 half of 9 would be as far offstructure as the
4 alternate location you propose in Section 28; is that
5 correct?

6 A. As far offstructure?

7 Q. Let me see. You said you proposed a well
8 in Section 9?

9 A. That's correct.

10 Q. In the south half?

11 A. That's correct.

12 Q. Now, there were two locations that you told
13 me were approved on the Exhibit 5?

14 A. I never said they were approved yet. They
15 were proposed locations.

16 Q. Would be acceptable as far as topographic
17 and archeological?

18 A. Yes.

19 Q. Now, based on your mapping, the location
20 2,180 from north line, 2,180 from the west line, my
21 question is, you're saying that's too far
22 offstructure, I believe?

23 A. No, I didn't say that. I said it is
24 farther offstructure. If I was going to move the
25 location, if I had two choices to move the location, I

1 would move it to get a little bit better structural
2 position. That's just a good geological decision to
3 make. Why move further downstructure when you don't
4 have to?

5 Q. So if I heard you correctly, your primary
6 reason from a geologic standpoint for this location as
7 opposed -- or, I'm sorry, a west half spacing unit is
8 so that you can get two wells in the north half of
9 Section 28?

10 A. That's correct.

11 Q. And this we can talk to Mr. Smith about
12 this, to recall him, but under the operating
13 agreement, would you have any problem sharing your
14 geologic information with the participants? Would
15 that be a problem for the participants who participate
16 in the well you're proposing?

17 A. We are doing that right now. I believe
18 we're sharing the geologic data right now. It is not
19 something we normally do because we take a lot of
20 time, and we have a lot more data than most people do
21 to do this. And we've already gone above and beyond
22 and shared structure maps with seismic data on there
23 that we don't normally do.

24 We've sort of bent over backwards to try to
25 work with you, with Strata on this; so it's not

1 something we normally do, but we're doing it right
2 now.

3 MR. CAVIN: I have no further questions,
4 Mr. Examiner.

5 EXAMINER STOGNER: Thank you Mr. Cavin.

6 Mr. Kellahin, any redirect?

7 Mr. Kellahin?

8 MR. STOVALL: He already said no, but I
9 don't have any.

10 EXAMINER STOGNER: Mr. Stovall, my
11 apologies. I have no other questions of this
12 witness.

13 At this particular time, we'll take a
14 recess for lunch until --

15 MR. STOVALL: Tom, how long is your
16 engineer?

17 MR. KELLAHIN: Five minutes. He's going to
18 authenticate the AFE. If that's not a dispute, maybe
19 we can just put it in the record.

20 EXAMINER STOGNER: Let's go ahead and hear
21 the engineer's testimony at this time.

22 (Thereupon, a discussion was held
23 off the record.)

24 MR. KELLAHIN: Mr. Examiner, with the
25 stipulation of opposing counsel that Mitchell's

1 Exhibit 18 may be introduced and accepted as
2 reasonable cost for the drilling and completion of
3 this well, I will choose not to present Mr. Richard,
4 the engineer who would otherwise authenticate this
5 exhibit.

6 With that stipulation then we would seek
7 the introduction of Exhibit No. 18.

8 MR. STOVALL: Mr. Kellahin, who can answer
9 the current status of the APD, Application for Permit
10 to Drill?

11 MR. KELLAHIN: We've got somebody here that
12 can.

13 EXAMINER STOGNER: I thought your
14 engineering witness was going to do that at this time.

15 MR. KELLAHIN: No. He was going to
16 authenticate this AFE.

17 EXAMINER STOGNER: As far as authenticity
18 of the AFE, I have no --

19 MR. STOVALL: We can admit Exhibit 18 as
20 the proposed Authorization For Expenditure without
21 objection and contest.

22 MR. KELLAHIN: Our APD with the BLM is on
23 file and has not yet been approved. I think that's a
24 correct representation.

25 EXAMINER STOGNER: I'd like to hear from

1 your witness, if you've got one.

2 MR. STOVALL: Has he been sworn?

3 MR. KELLAHIN: We may have to take a break
4 and put him on after lunch and get our act together on
5 APD because I wasn't prepared to present the status of
6 approval of the APD.

7 MR. STOVALL: Mr. Kellahin, so you can
8 prepare properly, since you are not, the concerns that
9 we're expressing with this is with respect to the
10 status of approval of the specific location and
11 whether you've got the clearances necessary or whether
12 it's still in a review or it's simply an
13 administrative process to get the approval done.

14 MR. KELLAHIN: I need to double-check and
15 make sure we give you the right answer.

16 MR. STOVALL: With those considerations,
17 that's what you need to talk to your --

18 EXAMINER STOGNER: So with that, we'll take
19 a break for lunch and reconvene as 1:45

20 (Thereupon, the lunch recess was taken.)

21 EXAMINER STOGNER: The hearing will come to
22 order. Mr. Kellahin?

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

24 MR. STOVALL: Has this witness been sworn,
25 Mr. Kellahin?

1 MR. KELLAHIN: No, sir, he has not. I'd
2 like to call Mr. Mark Stephenson at this time.

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

6 EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Mr. Stephenson, would you please state your
9 name and occupation?

10 A. My name is Mark Stephenson. That's spelled
11 with a p-h instead of a v. I'm employed by Mitchell
12 Energy Corporation as the manager of the production
13 regulatory affairs department.

14 Q. Do you have a technical degree in any
15 professional area, Mr. Stephenson?

16 A. No, sir, I don't. I have a business degree
17 from Sam Houston State University in Huntsville,
18 Texas. I graduated in December of 1979, and I've been
19 employed by Mitchell Energy Corporation since January
20 of 1980, various capacities in the field of regulatory
21 affairs. I've been in my current capacity as manager
22 of the production regulatory affairs department since
23 January of 1988.

24 Q. As part of your duties and among your
25 experiences, have you participated on behalf of your

1 company with regards to drilling, permitting, and
2 examining rules and regulations for oil and gas wells
3 to be drilled in what is called the Division Order
4 R-111-P area?

5 A. Yes, sir, I have.

6 Q. Are you also familiar with the Secretary of
7 the Interior's Federal Potash Enclave and the rules
8 and regulations that apply to drilling in those areas?

9 A. Unfortunately, yes, I'm very familiar with
10 that order also.

11 Q. With regards to your company's efforts to
12 obtain an approved APD from the Bureau of Land
13 Management for the drilling of a specific well, have
14 you been involved in that process?

15 A. Yes, I have.

16 MR. KELLAHIN: We tender Mr. Stephenson as
17 an expert in regulatory affairs dealing with drilling
18 in the potash area.

19 EXAMINER STOGNER: Any objections?

20 MR. CAVIN: No, sir.

21 EXAMINER STOGNER: So qualified.

22 Q. (BY MR. KELLAHIN) Mr. Stephenson, let me
23 ask you, sir, to identify for the record what has been
24 marked as Mitchell Exhibit No. 20.

25 A. Exhibit No. 20 is a copy of the

1 Application for Permit to Drill for the subject well.
2 It was filed by Mitchell with the Bureau of Land
3 Management's Carlsbad office on November 20, 1992.

4 Q. This APD was filed over the signature of
5 George Mullen. Who is George Mullen?

6 A. George Mullen is an employee of my
7 department. He is the one who files most of the APD's
8 in the southeast New Mexico area. Occasionally I file
9 a few of those. In this particular case, Mr. Mullen
10 is the one that filed this APD.

11 Q. This request was filed under letter dated
12 November 20 of 1992, and you're seeking approval of
13 the location as specified before this examiner, being
14 the unorthodox well location we've described?

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

16 Q. As to that location, what are the
17 applicable rules as you know them concerning drilling
18 in the potash area or within R-111-P? Where is this
19 acreage?

20 A. This particular acreage is located on
21 federal acreage. There's no state acreage involved in
22 Section 28. And, as such, we're really operating
23 under the '86 secretarial order rather than R-111-P.

24 Q. Where are we in relation to R-111-P
25 acreage? Are we within or without that boundary?

1 A. We're actually within the boundary of the
2 designated R-111-P area.

3 Q. But you are more than a mile away from an
4 LMR?

5 A. I'm not certain that we're more than a mile
6 from an LMR.

7 Q. With regards to the notice requirements
8 under R-111-P, what is the requirement that applies to
9 this tract and what, if anything, have you done?

10 A. What we do and our procedure basically on
11 permitting wells with the BLM, wells that are subject
12 to the 1986 secretarial order, the BLM has less formal
13 guidelines on permitting wells within the designated
14 potash area, that area designated under the '86
15 secretarial order. They don't have strict guidelines
16 as far as notice requirements are concerned, as you
17 have, for example, in R-111-P.

18 Our normal course of action for any well
19 within the designated secretarial area, potash area,
20 is to contact the BLM prior to the time we file the
21 Application for Permit to Drill. We consult with the
22 mine engineers in the BLM's Carlsbad office.

23 Q. Was that done in this case?

24 A. Yes, sir, it was. I did that myself in an
25 attempt to determine whether or not the BLM would

1 envision any difficulty with respect to this location
2 due to potash restrictions. We do that in an effort
3 to save ourselves and BLM some time and trouble, if
4 possible. There's some cases where it's very clearly
5 going to create a problem, say, if you're encroaching
6 upon an LMR or a certain part of the enclave. There's
7 other areas where I think they can look at the
8 information they have in that office and give you a
9 fairly good educated guess as to whether or not they
10 would anticipate any problem with permitting the well
11 at that location. That's part of what we do.

12 The other part of what we do is we
13 determine through contact within the parties that
14 would be required to be notified of the application,
15 and we give notice to those parties.

16 Q. Was that done in this case?

17 A. Yes, sir, it was.

18 Q. Let me direct your attention to Exhibit 21
19 and have you identify and describe that exhibit.

20 A. Exhibit No. 21 is a letter dated November
21 17, 1992. It's addressed to Mr. Randy Foote with
22 Mississippi Chemical Corporation in Carlsbad, New
23 Mexico. It's a letter giving notice to Mr. Foote and
24 Mississippi Chemical Corporation that Mitchell
25 intended to file a Permit to Drill with the BLM at

1 this location.

2 Q. What, if any, response have you received
3 from Mississippi Chemical Corporation concerning this
4 application?

5 A. We have filed no response. We have
6 received no response at all, affirmative or negative,
7 no indication of protest from Mississippi Chemical.

8 We do periodically check on the status of
9 these APD's. As you can see, this particular
10 application has been pending for over two months now,
11 and we did communicate with the Carlsbad office of the
12 BLM last week, and we're advised that the application
13 was still pending, but we are informed that it had
14 been reviewed with respect to potash restrictions, and
15 there didn't appear to be a problem there. Of course,
16 that won't be determined definitively until the permit
17 is actually issued, but that's what we were told last
18 week.

19 Q. In terms of obtaining an approvable APD,
20 are you aware of any other regulations, restrictions,
21 or limitations on the approval of the APD?

22 A. No, sir, I'm not.

23 Q. Have you satisfied the requirements for the
24 surface use in terms of its location with regards to
25 archeological sites or surface limitations such as the

1 dunes involved in this case?

2 A. I believe we have. As has been previously
3 testified, this site has been reviewed by an
4 archeologist with the BLM or one that was retained to
5 conduct an archeological survey on behalf of the BLM.
6 And as a result of that archeological survey, we had
7 to move the location. But my understanding is that
8 the proposed location is acceptable with the BLM.

9 Q. Based upon your current information on this
10 particular proposal and your experience in general
11 with this type of permitting, what is your conclusion
12 about the approvability of this location as we've
13 requested it from the examiner?

14 A. After several checks with the BLM, again,
15 we have no indication that there's any problem in
16 permitting this well. My expectation would be that
17 this permit will be approved.

18 MR. KELLAHIN: That concludes my
19 examination of Mr. Stephenson. Move the introduction
20 of Mitchell's Exhibits 20 and 21.

21 EXAMINER STOGNER: Thank you, Mr.
22 Kellahin. Do you have any questions?

23 MR. CAVIN: Yes, sir.

24 EXAMINATION

25 BY MR. CAVIN:

1 Q. Mr. Stephenson, can you tell me where the
2 -- I'm looking at Exhibit 20, and it's the map with
3 the one-mile radius, I guess. Can you tell me where
4 the LMR is just for --

5 A. Well, I don't know how familiar you are
6 with BLM regulations or the OCD regulations on potash
7 and specifically with respect to LMR's, but LMR's are
8 considered confidential by the potash companies and
9 the regulatory agencies, and that's proprietary
10 information. We don't have that information.

11 What we have to do is rely on the agencies
12 to tell us whether or not we're within a certain
13 distance from the LMR.

14 Q. Okay. When do you expect to receive
15 approval based on your experience?

16 A. Based on our communication with the BLM
17 last week, I would think it would be in the next
18 couple of weeks.

19 Q. Can you tell me, Mr. Stephenson, where the
20 proposed location is with respect to either proven or
21 probable potash reserves?

22 A. I don't have a copy of the BLM's 1984
23 potash map in front of me. I think the examiner may
24 have one. I'd be happy to look at his map and try to
25 help you with that question.

1 MR. STOVALL: Before we even bring that
2 into the thing, what's the relevance of that to the
3 forced pooling application?

4 MR. CAVIN: Well, I guess if I knew a
5 little more about the potash, it might move our
6 location one way or another. I just don't know.

7 MR. STOVALL: If the location gets
8 approved, it gets approved by the BLM, and we don't
9 have any input into that whatsoever because it's all
10 federal land. If it were state or fee lands, then we
11 would have an approval process, the OCD.

12 MR. CAVIN: Just as to the casing then is
13 all the OCD has involvement in or not even that?

14 MR. STOVALL: Well, even the casing. This
15 is a federally regulated well. The only thing the OCD
16 really has jurisdiction over with respect to this well
17 is the consolidation of interests. Although BLM and
18 OCD are generally consistent on those requirements,
19 they are administered in this case by the BLM.

20 MR. CAVIN: So it's not a matter to be
21 decided by the OCD?

22 MR. STOVALL: Correct.

23 MR. CAVIN: I have no further questions.

24 EXAMINATION

25 BY MR. STOGNER:

Fed
Regulated
OCD
Cmt's
auth

1 Q. Mr. Stephenson, really what I asked you up
2 here today for was essentially, in looking at Exhibit
3 No. 5, 1,980, 1,980 is marked on this exhibit?

4 A. Yes, sir.

5 Q. What I wanted to find out was, did the BLM
6 come out and request you move this location? You had
7 two locations to choose from. I was just trying to
8 find what the status was as opposed to the surface
9 location and what kind of BLM requirements were made
10 and what were the steps as far as the on-site review
11 and how much did Mitchell Energy really have a say in
12 moving this location?

13 A. Okay. I'd be happy to go through that with
14 you, Mr. Examiner.

15 Q. Just keep it brief but do cover it.

16 A. All right. Well, anytime we drill a well
17 on federal acreage, we're required to have an
18 archeological survey conducted. We did retain an
19 archeologist to do that here. As a result of this
20 survey, they determined that the original proposed
21 location was not acceptable due to topographic and
22 archeological reasons.

23 When they do find a location unacceptable,
24 we do try to give them alternate locations to look at
25 or at least an area that would be acceptable. In this

1 particular case, the archeologist came up with two
2 alternate locations. We looked at, I guess, the
3 options and decided that the northern location,
4 northern alternative here, was the best option in this
5 particular case.

6 Q. Now, this option that was, has it had an
7 on-site review by the BLM personnel at this point?

8 A. By the archeologist?

9 Q. Anybody else in the BLM's bureaucracy that
10 required on-site. I know it changes in different
11 areas.

12 A. I don't know the answer to that, Mr.
13 Stogner. I do know the archeologist has approved it.
14 They do have to do an environmental assessment, and
15 I'm not sure whether that has been completed at this
16 particular location. Again, our last communication
17 with the BLM indicated that there appeared to be no
18 problem with this location.

19 EXAMINATION

20 BY MR. STOVALL:

21 Q. There are more than just archeological
22 considerations?

23 A. That's right. And during a permitting
24 process, we don't try to communicate with each
25 individual that's involved in the permitting process

1 at the BLM. That would just be impossible to track
2 that.

3 What we do try to do is find out what stage
4 of the permitting process it's in and when we can
5 anticipate approval, or if there's any complications,
6 we certainly want to know about that, but we don't try
7 to monitor these things with every person at the BLM
8 that touches the paper.

9 Q. In your experience with the BLM and based
10 on where you are at this stage of the process, do you
11 believe you would have heard from them if the surface
12 location were unacceptable for any reason?

13 A. Yes, sir. I can certainly say that in the
14 past, anytime that they determine there's a problem
15 with the permit, they're very expeditious in advising
16 you of such.

17 Q. Both locations are unorthodox; is that
18 correct?

19 A. Both locations?

20 Q. Both of the alternate locations, the
21 southern one and the northern one? If I'm reading
22 your measurements right, it's a standard size section,
23 you're too close to the east line of the proration
24 unit at 2,180?

25 A. That's correct.

1 EXAMINER STOGNER: That's all I have for
2 this witness. Any other questions for Mr. Stephenson?

3 MR. KELLAHIN: No, sir.

4 EXAMINER STOGNER: Can he be excused?

5 MR. CAVIN: May I ask one question, please,
6 Mr. Examiner?

7 FURTHER EXAMINATION

8 BY MR. CAVIN:

9 Q. We heard earlier about the pad size. It's
10 400 by 400. Is that a requirement of the BLM, or is
11 that a Mitchell practice?

12 A. I think that's something that's probably
13 jointly determined by both parties. I can tell you
14 that 400 by 400 is our standard pad size for a Morrow
15 well location.

16 MR. CAVIN: Okay.

17 EXAMINER STOGNER: Any other questions?

18 MR. CAVIN: No further questions, sir.

19 EXAMINER STOGNER: Mr. Stephenson may be
20 excused. Mr. Kellahin, do you have anything further?

21 MR. KELLAHIN: No, sir, we have nothing
22 further to present in evidence.

23 EXAMINER STOGNER: Okay, Mr. Cavin.

24 MR. CAVIN: Mr. Examiner, our first witness
25 is Mark Murphy, president of Strata Production

Doesn't Geo Scott have
an "int. P-ck affidavit

Why didn't TK quest
Geo. re his "interest"?

BRUCE KING
GOVERNOR



State of New
ENERGY, MINERALS and NATURA
Santa Fe, New N

At May '96 Irving Murphy
referred to (p. 8) "other
owners of leasehold operating
rights in that lease" —
Does Murphy ever use
that term in testimony
in '93

State of New
ENERGY, MINERALS and NATURA
Santa Fe, New M



BRUCE KING
GOVERNOR

1 Company.

2 MARK MURPHY,

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

5 EXAMINATION

6 BY MR. CAVIN:

7 Q. Mr. Murphy, can you please tell the
8 examiner your background in the oil and gas business?

9 A. Yes. My name is Mark Bertram Murphy. I'm
10 president of Strata Production Company. I've been
11 involved in the oil and gas business since I was 15
12 years old when I started as a roustabout in
13 southeastern New Mexico and west Texas. My family has
14 been actively involved in oil and gas ventures in
15 southeastern New Mexico and west Texas since 1957.

16 I've worked as a landman for Eagle Oil and
17 Gas out of Dallas, Texas, a Dallas independent, and
18 Robb Hart Oil and Gas out of Lockhart, Texas. In
19 1983, I joined my father and sister in a New Mexico
20 oil and gas company by the name of Murphy Operating
21 Corporation. We operated at our peak approximately
22 400 wells, primarily in southeastern New Mexico and
23 west Texas. We appeared numerous times at the Oil
24 Conservation Commission, seeking unitization approval
25 on waterfloods, primarily, San Andres waterfloods

1 located in Roosevelt and Chaves Counties.

2 I currently serve as president and have
3 since late 1991, as president of Strata Production
4 Company. We operate approximately 70 wells. We
5 produce a little over 2,000 barrels a day.

6 I serve as an industry adviser to the
7 Petroleum Recovery Research Center at New Mexico Tech
8 in Socorro. I've testified in front of numerous
9 legislative hearings on issues from the enhanced oil
10 recovery legislation that was passed a couple years
11 ago to state land policy to federal land policy. I'm
12 currently a past board member and treasurer of the New
13 Mexico Oil and Gas Association. I'm currently the
14 director and vice president of the Independent
15 Petroleum Association of New Mexico.

16 I've served as a three-year term with the
17 National Public Lands Advisory Council, which advises
18 the Bureau of Land Management and the Department of
19 Interior, specifically in the last administration,
20 Secretary Lujan and Director Sy Jamison on federal
21 lands policy. I served as vice chairman for that
22 council. Last year I served as chairman for that
23 council. I've been reappointed for a three-year
24 term.

25 I could go on, but I hope that will do it.

1 MR. CAVIN: Mr. Examiner, I'd like to
2 tender Mr. Murphy as an expert qualified to testify on
3 land matters and also as an oil and gas operator.

4 EXAMINER STOGNER: Are there any
5 objections?

6 MR. KELLAHIN: Is Mr. Murphy going to be
7 testifying about geologic or engineering aspects with
8 regards to this case?

9 MR. CAVIN: No.

10 MR. KELLAHIN: No objection.

11 EXAMINER STOGNER: Mr. Murphy is so
12 qualified.

13 THE WITNESS: Thank you.

14 Q. (BY MR. CAVIN) Mr. Murphy, I would refer
15 you to what is marked as Strata Exhibit A and ask if
16 you could describe that for the examiner?

17 A. Yes. Exhibit A is a reproduction of a
18 Midland Map Company, 1 inch I believe to 4,000 scale,
19 for a portion of Lea County and specifically shows
20 Township 20 South, Range 33 East. Somewhat centered
21 on that map is Section 28.

22 It is color-coded. The pink acreage is
23 acreage that Mitchell apparently has an interest in.
24 There are three leases involved in that. The one
25 marked No. 1 expires April 1, 1994, and I believe it's

1 Lease No. 57280. No. 2 expires 9-1-95, I believe;
2 it's lease No. 62228. And No. 3 expires 10-1-93, and
3 it's lease No. 77074.

4 The lease shown in blue, which is the
5 southwest quarter of the northeast quarter of Section
6 28, expired on or about July 1 of 1992. The Midland
7 map indicates that the southeast of the southeast is
8 owned by one Bulldog Energy. It's shown in yellow.
9 It expires 4-1-96. And Strata's lease No. 82927 is
10 shown in green, and it expires November 1, 1994.

11 During our initial conversations, my
12 initial conversations with Mr. Smith of Mitchell, I
13 suggested to him that they consider a north half
14 proration unit. That, based on my understanding of
15 the arrangement between Mitchell and Santa Fe and
16 Maralo, had that been done, would result in Mitchell
17 owning 50 percent, Santa Fe owning 25 percent, and
18 Maralo owning 25 percent.

19 At one point it was pointed out to me that
20 that lease had expired on July 1 of 1992, some seven
21 months ago, ample time, in my opinion, to nominate and
22 purchase that lease. Once again, I believe it was
23 testified this morning that a request was made
24 sometime in September, some two months after the lease
25 had expired.

1 Had a south half proration unit been
2 formed, then Mitchell would own approximately 25
3 percent, Santa Fe and Maralo would own approximately
4 12-1/2 percent apiece, Strata would own 37-1/2
5 percent, Bulldog would own 12-1/2 percent.

6 Q. When were you first contacted by Mitchell,
7 Mr. Murphy, in connection with their proposed well?

8 A. If I could, I would like to refer to our
9 Exhibit No. 2, which is Strata Production Company's
10 letter dated January 12, 1993. It has also been
11 entered this morning as Mitchell's Exhibit No. 16.

12 Q. Okay.

13 A. In this letter beginning on page 2, I
14 summarized the telephone conversations and relevant
15 correspondence --

16 Q. Can I ask you, before you begin, do you
17 keep a telephone log, Mr. Murphy?

18 A. Yes, I do.

19 Q. Thank you.

20 A. On October 26, Mr. Mitchell -- excuse me --
21 Mr. Smith with Mitchell contacted me and said that
22 they were considering -- "they" being Mitchell -- were
23 considering drilling a Morrow well somewhere in the
24 northwest quarter of Section 28, and that they would
25 like to form a west half proration unit, if I recall,

1 and that a portion of our lease being the south half
2 of the southwest quarter be included therein in that
3 proration unit.

4 I advised them at that time that we would
5 probably not participate but that we would consider
6 it. We would also consider or farming out. I
7 informed Mr. Smith at that time that we had other
8 partners; that until a deal, specific deal was
9 negotiated that we could recommend, that I couldn't
10 represent those partners; that, however, historically,
11 normally when we reached an agreement that we could
12 recommend to our partners, they would, in most cases,
13 go along with that deal, but I could not guarantee
14 that.

15 Since we're on this subject, I would else
16 bring to your attention Mitchell's Exhibit No. 11,
17 which is Strata correspondence dated December 9,
18 1992. The last sentence in the bottom of page 1 --
19 and I don't have it in front of me -- but it goes on
20 to say that any terms would have to be approved by
21 Strata's partners, and I believe the word "partners"
22 is on the top of page 2 of that letter.

23 Q. Let me just ask you, in the process --

24 A. Sure.

25 Q. -- did you ever say anything in connection

Murphy

1 with these conversations that would indicate that you
2 had the unfettered authority to represent these
3 partners?

4 A. Absolutely not. As a matter of fact, I
5 informed Mr. Smith to the contrary. Each of these
6 partners had their own interest in here. That there
7 were numerous partners; I believe I said 10 or 15. I
8 think the actual number may be closer to 16. But that
9 the process we normally go through in this case is
10 that we would negotiate to the best of our ability.
11 If we felt like that we could recommend the deal to
12 our partners, I'd be happy to try to facilitate the
13 deal by working with my partners directly.

14 Q. Why don't you continue and tell me what
15 happened next?

16 A. We had a series of telephone conversations,
17 and they're summarized under Nos. 2 and 3 of Strata's
18 Exhibit 2, Mitchell's Exhibit 16, where we went back
19 and forth on various terms.

20 At one point on December 16, as a result of
21 Strata's correspondence dated December 9, which is
22 Mitchell's Exhibit 11, Mr. Smith called me and said
23 that they were inclined to go along with our farmout
24 proposal; however, it was subject to certain
25 conditions. And the condition that he mentioned was

1 that we would be required to convert all of our
2 override to working interest.

3 I reminded him that we had numerous
4 partners, and that each partner may want to do
5 something different. Some may elect to convert at
6 payout; some may not, and that that would be extremely
7 difficult to do. I reminded him of these partners
8 also in the context of administrative burdens that it
9 would take and suggested that they reconsider a
10 purchase of the lease.

11 Q. Did Mr. Smith ever ask for a list of these
12 partners?

13 A. No, he did not.

14 Q. Did you ever do anything to indicate to Mr.
15 Smith you would provide that list?

16 A. Well, yeah, he did not up to this point.
17 We had a subsequent conversation on January 13. And
18 at that point, in response to a letter where I
19 suggested that he contact the partners directly, I
20 asked if he was going to do that. He said no, that he
21 had no intention of doing that; that they felt like
22 they had met the notice requirements. I told him that
23 he was aware of these partners all along. He said
24 that he had never been provided a list of those
25 partners.

*Murphy
11/11/11
buy
lease*

1 So I wrote a letter dated January 13, I
2 believe, but I don't have the Mitchell exhibit number,
3 but it was entered into the record this morning, which
4 listed the parties, their addresses, and their
5 interests.

6 Q. Sorry to divert you. Go ahead --

7 A. That's okay. Once we had made agreement on
8 our deal, I contacted, either myself or other people
9 in Strata, contacted the partners outlying^[sic] the deal
10 terms to them. Everybody was agreeable to doing it.
11 We went ahead and drafted the letter agreement dated
12 December 30.

13 Prior to sending that letter agreement, I
14 called Mr. Smith and said -- and reviewed the letter
15 agreement, specifically reviewing with him the
16 overriding royalty interest pooling provision. He
17 responded that when he had gone back to management, he
18 had failed to bring that to their attention but to go
19 ahead and send the letter anyway. And so I did.

20 I didn't hear anything from him until I got
21 the January 5th, I guess the next day, Mitchell
22 correspondence. I was surprised to get that
23 correspondence because it basically did not reflect
24 the deal terms that we had agreed to. I had just
25 spent a lot of time and effort constructing a letter

1 agreement, the December 30th letter agreement, and we
2 talked on January 5th just shortly after that
3 agreement was faxed to me.

4 That conversation is summarized under No.
5 13 on page 5 of Mitchell's Exhibit No. 16.

6 Q. Let me ask you a question regarding the
7 letter dated December 30, '92, which is really a
8 letter agreement, because there's been some question
9 raised regarding paragraph 7 of the letter agreement.
10 Where did you get that provision, that language?

11 A. From a previous letter agreement that we
12 did with another company.

13 Q. Was that a lease sale?

14 A. Yes, it was. It was a federal lease sale.

15 Q. Was it your intention for this to be deal
16 specific, or was this to represent that you had
17 authority to make any kind of deal that they wanted to
18 make?

19 A. It was deal specific.

20 Q. And that was certainly your intention,
21 wasn't it?

22 A. That was certainly my intention, and until
23 we communicated -- I had no -- I never represented
24 that I could bind the other parties until they
25 approved the terms of the deal. And once we arrived

1 at terms that I thought we had agreed upon, and I
2 communicated that deal to the parties, they agreed.
3 And at that point then I could represent them and did
4 so in that letter because I had their approval to do
5 so on those specific terms.

6 Q. What's the big deal between override and
7 working interest? Why would they mind not taking an
8 interest under the farmout?

9 A. They would be subject to operating
10 agreements and other contractual agreements, and I
11 simply would not feel comfortable in -- I could not
12 represent their interest. They'd have to sign those
13 things as individuals.

14 Q. Who are these parties, as a general rule?

15 A. As a general rule, they're long-term
16 investors of Strata.

17 Q. So you had some familiarity with what they
18 typically invest in?

19 A. Absolutely.

20 Q. Do you find them to be the kind of folks to
21 take working interest with big companies?

22 A. Generally not.

23 Q. That's all the questions for that.

24 Could you explain for me, again, I got a
25 little bit confused there, the chronology on the

long-term
investors

1 farmout agreement and how exactly it was that that
2 didn't work out?

3 A. Oh, the farmout agreement terms. We sent a
4 letter, I believe it's dated December 9, it's Mitchell
5 Exhibit No. 11, whereby we proposed to either sell or
6 farm out. And then that resulted in our telephone
7 conversation of December 16. And that's when Mr.
8 Smith advised me that they would be inclined to accept
9 the farmout provisions. However, it was a conditional
10 acceptance, which I've always taken to be a
11 counterproposal. And the condition was that all of
12 the override had to be converted to working interest.

13 Q. Did you think that \$150 was a fair price?

14 A. Absolutely. As a matter of fact, and once
15 again it's summarized, telephone conversation, this is
16 No. 3 on page 2 of Mitchell Exhibit No. 16 -- that Mr.
17 Smith said he felt that the acreage price of \$300 an
18 acre originally was excessive. I informed him that I
19 did not feel it was excessive, that it was consistent,
20 if not lower, to what recent state and federal sales
21 had brought in this area. I was familiar that
22 Meridian had purchased the Exxon acreage in Section
23 32, which is immediately adjacent to the Strata
24 acreage for \$1,000 an acre. I'm not sure -- I'm sure
25 I did not specifically mention that, but what my point

1 was is that it was not out of line.

2 When he came back with \$150 an acre, he
3 said that was somewhat higher than what he had been
4 paying to the north; however, the acreage to the north
5 generally is not involved in what is now a very hot
6 play concerning Delaware and Bone Springs, primarily
7 Delaware rights.

8 Q. So you have some familiarity with this area
9 in general?

10 A. Yes, I do. We operate approximately ten
11 wells in Sections 32 and 33 of 20-33 and Section 4 of
12 whatever the township is immediately to the south.

13 Q. These partners that are listed in your
14 January 13 letter, which is Mitchell Exhibit 17, are
15 these long-term partners that have had an interest in
16 this property, or are these just people you just went
17 out and sold it to?

18 A. These are long-term partners. As a matter
19 of fact, those partners actually own a similar
20 interest in Section 33 immediately offset. They were
21 existing partners in Section 33 when this came up for
22 bid. Even though we did not have a formal area of
23 mutual interest, we offered it to those partners so
24 they could participate.

25 Q. Is there anything you said to Mr. Smith

*Ps
Own a
similar
interest (suz)
in §33
immediately
offset*

1 throughout these conversations you think could be
2 construed as the kind of representation that he
3 indicated you made as to your authority to deal for
4 these partners?

5 A. Absolutely not and to the contrary. I told
6 him all along that we had numerous partners; that the
7 way we've handled this in the past is that we'd
8 negotiate the best deal we could, and we'd either
9 recommend it or not recommend it to our partners. But
10 that I could not bind them in any way, but as a
11 general rule that they would go along with our
12 recommendation.

13 Q. Do you have experience in this area? Do
14 you deal with any parties where you have undisclosed
15 owners or parties contacting you to see whether you're
16 interested in selling a lease or farming out?

17 A. Absolutely. As a matter of fact, many
18 times in leasehold situations like this, you don't
19 immediately make assignments to all the parties until
20 a well is drilled or some action taken. So if you do
21 sell it, you only have to handle one assignment from
22 Strata to whoever the purchaser is. If we assign this
23 out to all these parties, they would have to gather up
24 -- we'd have to gather up 15 assignments into
25 Mitchell or to whomever.

*convenience
not 15 assignments
rather than
many*

1 Q. Is there anything further you'd like to say
2 with respect to the January 12 letter, Mr. Murphy?

3 A. Excuse me just a second. Let me review it
4 here quickly.

5 Q. We can come back to it later.

6 A. Not at this time. I may wish to return to
7 it later.

8 Q. Okay. Next I'd refer you to what is marked
9 as Strata Exhibit C, and that's a Model Form Operating
10 Agreement.

11 A. Yes, sir.

12 MR. STOVALL: Exhibit C or Exhibit 3, Mr.
13 Cavin?

14 THE WITNESS: Well, I hope -- have we.

15 MR. STOVALL: Change them to numeric,
16 please.

17 MR. CAVIN: I apologize for that. It
18 should be Exhibit 3.

19 THE WITNESS: Yes. This was an operating
20 agreement that was forwarded to me by Mr. Smith at
21 Mitchell.

22 Q. (BY MR. CAVIN) Are there any provisions
23 that you feel unusual, particularly in the context of
24 a forced pool where you really don't have any choice
25 and you're being sort of married by shotgun, so to

1 speak?

2 A. There's a number of provisions that I find
3 unusual. The first, I draw your attention to Article
4 V.B.1. as found on page 4. This has to do with the
5 Resignation or Removal of the Operator. It's industry
6 practice that -- and it's on the preprinted form --
7 this has been deleted and stricken in this case, if
8 the operator fails and refuses to carry out its
9 duties, then the remaining parties have the right to
10 vote the operator out. In this case, it puts the
11 burden of actually have to bring a suit, actually
12 initiating some sort of legal action. That would be a
13 very difficult burden on a small independent oil and
14 gas company.

15 Q. Have you ever seen a provision like that?

16 A. No.

17 Q. How many operating agreements have you
18 reviewed in your capacity as an operator over the
19 years?

20 A. Hundreds.

21 I would also draw your attention to Article
22 VI.B.1. This article basically says an operator
23 should only use its best efforts to provide
24 nonoperators 24 hours advance notice of any work to be
25 conducted on Saturday, Sunday, and legal holidays.

1 It is common practice in the oil and gas
2 industry, recognizing that it's a seven day a week, 24
3 hour business, that you always provide weekend and
4 nighttime numbers in case of discussion or
5 notification is required. This lessens that burden on
6 the operator having to make proper notice and consult
7 its partners.

8 I also draw your attention to Article XVI.
9 It's the Other Provisions towards the back of the
10 operating agreement. This is -- excuse me. Did I say
11 XVI? It's XV. Excuse me.

12 This provision provides that if the
13 operator's interest is under common control of another
14 company or transferred, then the voting provisions of
15 the operating agreement are not necessary. In other
16 words, the operations go with the operator, and in
17 this case Mitchell.

18 That is not so unusual really, but what is
19 somewhat unusual is, if they sell "substantially all,"
20 and I'm quoting, "substantially all of operator's oil
21 and gas properties, then the transferee shall
22 automatically become the successor operator without
23 the approval of the nonoperators."

24 This does not give the partners a chance to
25 vote on this new operator. In other words, we're

1 basically -- whoever Mitchell, should they elect and
2 decide to sell to somebody else, that becomes the
3 partner's operator whether we like it or not.

4 Q. So it's anybody? There's no limitations
5 that you're aware of?

6 A. No limitations.

7 Q. How would that normally be handled?

8 A. Normally, when you sell a property like
9 that, you no longer own an interest in the contract
10 area. Therefore, then the partners would vote on whom
11 the operator would be.

12 Q. Okay.

13 A. I'd also draw your attention to Exhibit C,
14 COPAS Form Accounting Procedure Joint Operations, page
15 4, provision III, Overhead, which is 1.A.(1). I'm
16 referring to the drilling well rate of \$6,500 and the
17 producing well rate of \$650 per month.

18 At this time I'd like to reference Strata's
19 Exhibit No. 4 (indicated). This was faxed to us by
20 Ernst & Young. I did not have -- and I believe they
21 were referred to this morning as Ernst & Whinney.
22 They are now known as Ernst & Young. They publish the
23 monthly drilling and monthly producing well rates.

24 You'll note that the 1992 brochure has not
25 come out, or at least I have not received it. So the

1 one that I had before was 1991. We did, however, call
2 Ernst & Young and asked them to fax us their most
3 recent, and you'll note that it has the 1992 amounts
4 on there. It shows the median drilling rate for a gas
5 well in west Texas and eastern New Mexico to be
6 \$5,000, and the producing rate, the median, to be
7 \$500.

8 Q. Are those numbers actually going the other
9 way? I look at '91. Can you tell me, are they
10 decreasing from '91 to '92, or am I misreading this?

11 A. The '91 and '92 median on the drilling well
12 rates were the same. The mean increased, it appears
13 to me.

14 Q. From '91 to '92?

15 A. Yes. It depends on whether you're talking
16 about the median or the mean. The 1991 median for
17 10,000 to 15,000 foot wells was \$5,000. The 1992 was
18 also \$5,000.

19 Q. Are you looking at oil or gas?

20 A. I'm looking at gas.

21 Q. I'm sorry, can you tell me again what the
22 median is for that depth well?

23 A. 1991 is \$5,000. 1992 is \$5,000.

24 Q. And then?

25 A. Producing well rates, 1991 median is 513,

1 1992 median is 500.

2 Q. You're right. I'm sorry. I was reading --
3 I guess I need bifocals.

4 Let me ask you, it's my understanding from
5 testimony earlier this morning that the \$6,500 and the
6 \$650 is the charge made to Mitchell's other partners.
7 Is there any problem -- you're an operator -- is there
8 any problem for most accounting systems breaking that
9 out and charging different people different operating
10 rents?

11 A. No. As a matter of fact, it's fairly
12 common. In many cases, you have to -- especially in
13 some of the older properties, you have to administer
14 many times two or more operating agreements. They not
15 only have different overhead rates; they also have
16 different conditions and procedures. So that's fairly
17 common.

18 Q. Would you have a rate to propose to
19 Mitchell under that agreement?

20 A. I take issue with their rate, and I cite as
21 the industry standard the Ernst & Young amounts which
22 are shown as Exhibit 4.

23 Q. Are there any other comments regarding the
24 operating agreement?

25 A. No.

1 Q. Next I would refer you to Exhibit 5, Strata
2 Exhibit 5, and ask if you would describe that for the
3 examiner?

4 A. Yes. That's a notice of staking for the
5 Pavo No. 2 to be located 810 feet from the south line
6 and 1,980 from the west line. This well, a formal APD
7 has not been submitted yet, but the BLM and the
8 archeologist have approved the drill site.

9 Q. Is that an orthodox location for a south
10 half spacing unit?

11 A. Yes, it is.

12 I'd like to, during our conversation -- and
13 I say "our" -- my conversation with Mr. Smith of
14 November 18 -- this is shown as No. 3 on page 2 of
15 Strata's Exhibit No. 2 -- I had stated early on in our
16 conversations that we would prefer that Mitchell form
17 a north half proration unit and leave the Strata lease
18 out of it so that we would have -- one option, of
19 course, is to drill a well in the south half.

20 He said that they intended to form the west
21 half proration unit based on lease exploration
22 considerations. And that was the exploration of the
23 northwest quarter of the the southwest quarter in
24 October of 1983. I said that we did not see any
25 technical basis for that and asked him to reconsider.

1 Later on he pointed out to me -- during one
2 of the points of my December 30, 1992, letter
3 agreement was the sharing of geologic information,
4 which is relatively customary in the industry -- he
5 pointed out that there was an expired lease, the
6 southwest quarter of the northeast quarter shown as
7 lease No. 2 -- excuse me, it's colored blue on Exhibit
8 A.

9 Q. Exhibit 1?

10 A. Exhibit 1, excuse me. He said that they
11 were concerned that if the information got out, that
12 when that lease did come available, that they would
13 have additional competition as a result of the
14 knowledge of the geologic information on the well they
15 proposed in the northwest quarter. And I suggested
16 the way to handle that, that it was not our intent to
17 go and try to compete with them there, that we would
18 be happy to sign a confidentiality and non-compete
19 provision as it pertains to that information in that
20 lease.

21 Q. If you could complete the sale that you
22 proposed; was that the context?

23 A. That's exactly right.

24 Q. What are your plans with this location?

25 You state 1,980 from the west line and 810 from the

1 south line of Section 28.

2 A. We are going to seek a voluntary approval
3 of a south half proration unit, and absent that, then
4 we will move for compulsory pooling.

5 Q. For what?

6 A. For the south half of Section 28.

7 Q. What type of well are you contemplating
8 there?

9 A. A Morrow well.

10 Q. Is it your feeling that Mitchell has made a
11 good faith effort to provide notice to all interested
12 parties, Mr. Murphy?

13 A. No, it's not. I had informed Mr. Smith all
14 along that we had undisclosed owners. I had asked,
15 and I would have to check the correspondence, but I
16 believe -- excuse me.

17 MR. KELLAHIN: While Mr. Murphy is
18 searching for his response to the question, I will
19 introduce an objection. I don't think it's the
20 province of this witness to determine whether or not
21 the notification is correct.

22 EXAMINER STOGNER: I agree with Mr.
23 Kellahin. I believe you have already stipulated, Mr.
24 Cavin, that Strata has no problem with the
25 notification today or as far as Strata's interest.

1 You might want to move on, please.

2 MR. CAVIN: Okay.

3 Q. Mr. Murphy, is there anything in Mitchell's
4 exhibits that you would like to refer to? Do you have
5 a copy of those?

6 A. No, I do not have a copy.

7 Q. For further comment (indicated)?

8 A. I don't believe so at this time.

9 Q. Any further testimony you'd like to put on
10 the record?

11 A. No, sir.

12 MR. CAVIN: Mr. Examiner, at this time I
13 would like to move to admit Strata Exhibits 1 through
14 5.

15 EXAMINER STOGNER: Are there any
16 objections?

17 MR. KELLAHIN: No objections.

18 EXAMINER STOGNER: Exhibits 1 through 5
19 will be admitted at this time.

20 Mr. Kellahin?

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

22 EXAMINATION

23 BY MR. KELLAHIN:

24 Q. Mr. Murphy, was the Hinkle law firm
25 attorney correct in his analysis of the abstracts and

1 the ownership when he concluded in his title opinion,
2 which is presented as Mitchell Exhibit 7, that as of
3 the appropriate date of that title opinion, the
4 working interest ownership or the operating rights, if
5 you will, for that portion of the south half of the
6 southwest quarter that was proposed to be included in
7 the west half spacing unit was owned and controlled by
8 Strata Production Company?

M "owned & controlled"

9 A. He lists here that we're -- I think the
10 term is record title holder or leasehold holder.

11 Q. Yes. Is that correct?

12 A. That's correct.

13 Q. And at that point had you as record title
14 owner of that lease assigned out any of the working
15 interest ownership in that lease?

16 A. No.

17 Q. So the operating rights and the record
18 title were still held by Strata Production Company?

19 A. That's right, with the proviso that Mr.
20 Smith had been given notice that there were
21 undisclosed owners.

22 Q. You told him there were silent interest
23 owners that -- the identity of those individuals was
24 not disclosed to him?

25 A. It was not disclosed until he requested

1 them during a telephone conversation of January 13
2 And, by the way, I take objection to the term "sil
3 partners." I never used that term.

4 Q. Undisclosed partners?

5 A. I believe the term was, we have partners
6 this lease.

7 Q. And you did not disclose to Mr. Smith the
8 name and address of those individuals or companies?

9 A. Not until so requested, no.

10 Q. Is Elliott and Waldron Title & Abstract
11 Company correct in their certification that for the
12 period from November 6, of '92, ending on January 19,
13 1993, that their search of the Lea County records
14 shows that, as of public record information, Strata
15 Production Company is still the owner of the federal
16 lease record title and operating rights?

17 A. To the best of my knowledge, yes.

18 Q. The Joint Operating Agreement that you've
19 described in your testimony, the one that Mr. Smith
20 provided to you?

21 A. Um-hm.

22 Q. You've given us three or four items of
23 concern to you. If we change all those, will that
24 cause you to commit Strata's interest to the west half
25 spacing unit? Will that solve the problem?

Murphy
"Not
Silent
partners"
current status
& public record

1 A. No. We have been -- I point these out
2 because of it being shown as a model form and the
3 number of changes that have been made to this model
4 form. It is our position that we would maintain that
5 the proration unit be a north half proration unit;
6 that the footage location that is proposed by Mitchell
7 is orthodox for a north half proration unit.

8 Q. So the language and terms of the Joint
9 Operating Agreement is not the dispositive issue that
10 resolves this matter?

11 A. No.

12 Q. The unorthodox well location that Mitchell
13 is seeking approval for in fact moves farther away
14 from any acreage that Strata controls?

15 A. It moves to the north, that's true.

16 Q. Away from you?

17 A. That's correct.

18 Q. You described a while ago that there were
19 ten wells in this area in which Strata Production
20 Company either had an interest in or operated? Did
21 you say --

22 A. We serve as operator and have an interest
23 in.

24 Q. Are any of those Morrow gas wells?

25 A. New Mexico Federal #1, which is located in

1 Section 4, was a Morrow gas well. It was recompleted
2 in the Bone Springs and later in the Delaware.

3 Q. At the time it was a Morrow well, did you
4 act as the operator?

5 A. I believe that well was purchased or farmed
6 out -- I can't recall -- from Grace Petroleum, and I
7 am unsure as to the status when we took possession.

8 Q. It was originally drilled by Grace
9 Petroleum?

10 A. That's what I recall, yes, sir.

11 MR. STOVALL: Excuse me just a second, make
12 sure that we know what you're talking about. Is that
13 1 in 33, 20-33, Mr. Murphy?

14 THE WITNESS: No, I'm sorry. It would be
15 New Mexico Federal #1. It would be in Section 4 down
16 to the southwest of the colored acreage. It's shown
17 with a circle around it as a discovery well.

18 MR. KELLAHIN: I can help you find that on
19 Exhibit --

20 MR. STOVALL: That's in that 32, what is
21 it, 19 and I guess -- 21 and 32; is that correct?

22 EXAMINER STOGNER: Long section to the
23 south?

24 THE WITNESS: Yes, sir, that's correct.

25 MR. STOVALL: It's in the northwest corner

1 of Section 4?

2 EXAMINER STOGNER: That would be Lot 6 of
3 that long section?

4 MR. STOVALL: You're looking, Mr. Kellahin,
5 at Mitchell Exhibit 1, I think?

6 MR. KELLAHIN: Mitchell Exhibit 1 shows
7 that same well, Mr. Stovall.

8 MR. STOVALL: Just to know where we are in
9 relation to -- please continue.

10 Q. (BY MR. KELLAHIN) Within the area, and
11 we're looking at, I guess, your Exhibit No. 1, is it,
12 sir? Is that what you mean by -- or Exhibit A, yeah,
13 that one?

14 A. Exhibit 1. I believe I referred to it as A
15 before.

16 Q. Within that area, does Strata Production
17 Company currently operate any producing Morrow gas
18 wells?

19 A. Not shown on this, I don't believe so
20 that's shown on this map. There would be one slightly
21 off of the map to the west. I believe it's the Snowdy
22 Federal #1. I can't remember the precise location,
23 but it would be a mile or two west of the edge of the
24 map.

25 Q. Are you the operator of that well?

1 A. And actually I think that well has recently
2 been recompleted in the Wolfcamp, if I recall.

3 Q. When you look at Mr. Gawloski's Exhibit No.
4 1, the Mitchell exhibit, are there any wells on that
5 plat that are producing Morrow gas wells that Strata
6 Production Company operates?

7 A. There's a lot of wells shown on this map,
8 and I haven't spent -- I didn't think about this. I
9 haven't spent a lot of time, but I don't believe so.

10 Q. Do you have a working interest in any of
11 the Morrow gas wells shown on either one of those
12 displays?

13 A. Absent the New Mexico Federal #1 and the --
14 oh, you mean wells operated by somebody else that we
15 may own a working interest in?

16 Q. Yes, sir.

17 A. I don't believe so.

18 Q. Let me go to the topic of the overhead
19 rates?

20 A. Yes.

21 Q. Have you taken the Ernst & Young
22 tabulation, which I understood is 1991 information --

23 A. 1992.

24 Q. Have you taken that information and applied
25 the escalator to it under the COPAS attachment?

1 A. The escalator will not take effect until
2 April of 1993. So those rates are current for '92,
3 and normally the operating agreement, the excalation
4 provision, once a rate has been agreed to, escalates
5 annually the 1st day of April.

6 Q. It's consistent with the custom and
7 practice to have these operating agreements to have
8 COPAS attachments to them that have these escalators
9 in them?

10 A. Yes. If you're asking whether the COPAS
11 form is a model form that's used quite a bit in the
12 industry, the answer is yes.

13 Q. Yes. And it has an escalator in it?

14 A. Yes, it does.

15 Q. Is it unusual to you as an expert in this
16 area to find on Mitchell Exhibit 9 that an original
17 Joint Operating Agreement in fact had the overhead
18 rates escalated?

19 A. No, it's not unusual. Once an agreement
20 has been reached between parties, since you can't
21 pre-determine what the escalator will be, it's
22 provided by Ernst & Young annually. However, that is
23 not to say that a party coming into an agreement is
24 bound the same way the parties have already -- that
25 are already part of that agreement are bound.

*COPAS
escalator*

1 Q. Exhibit No. 5?

2 A. Yes.

3 Q. The Division Form C-102?

4 A. Yes.

5 Q. How come that's not fully completed?

6 A. Well, it's completed as far as the staking
7 and a plat. This is what I had in my file.

8 Q. Have you filed that yet?

9 A. I don't know. I don't believe so, but I --
10 well, no, I take that back. We filed three of them.
11 We filed the Pavo 1, Pavo 2, and Pavo 3 in each
12 proration unit of Section 28 along our lease, the
13 southwest quarter -- southwest southwest, southeast,
14 and so forth.

15 Q. I need to get that back from you so we can
16 figure this out. Do you have another copy?

17 MR. CAVIN: Let me see. Oh, yes we've got
18 one.

19 Q. (BY MR. KELLAHIN) Tell me again now, in
20 Section 28, you've got this Pavo Federal 2 which is
21 down here in the southeast of the southwest. You've
22 got that one on this C-102. You said there were some
23 others?

24 A. Yes. There's one in the southwest of the
25 southwest.

1 Q. Southwest southwest, okay?

2 A. Southeast southwest, and southwest
3 southeast. There's one in each of those 40's. No,
4 excuse me, not that one but that one.

5 Q. Okay. You haven't declared a spacing unit
6 for the Pavo Federal #2 on the form?

7 A. I didn't complete this form, but no, I
8 don't see one on there. The reason that we've staked
9 those wells is that Meridian is currently drilling
10 some Delaware wells in Section 32. I believe they
11 have four locations staked. They've completed two of
12 those.

13 Q. These are Delaware stakings?

14 A. These are Delaware stakings with the intent
15 that the Pavo #2 could either be drilled to the
16 Delaware, if it's successful, or to the Morrow. In
17 other words, a deep well would more than likely be
18 drilled if there are shallow proven pays.

19 Q. And your plan then would be a south half
20 dedication?

21 A. That's correct.

22 Q. When are you going to share that plan with
23 Mitchell?

24 A. We are right now.

25 Q. Prior to this very moment, have you ever

1 proposed that as a Morrow well submission?

2 A. We're watching the drilling activity out
3 there, Mr. Kellahin, trying to determine what is
4 prudent for us to do.

5 Q. Have you filed an APD?

6 A. No, we have not. We have not filed any
7 APD's because we have not determined the depths that
8 these wells will be drilled.

9 MR. KELLAHIN: No further questions.

10 EXAMINER STOGNER: Mr. Cavin, any
11 redirect?

12 FURTHER EXAMINATION

13 BY MR. CAVIN:

14 Q. Yes. Why is it you haven't filed an APD?
15 It's just seven days ago that negotiations broke
16 down. Were you still trying to work something out?

17 A. Well, that and there's two other wells.
18 Mitchell has just completed their well in the
19 northeast of the southwest, and they have also got two
20 wells staked. I do not know the status of the
21 drilling. One in the southwest of the northeast and
22 one in the southeast of the northeast of Section 32.

23 We also have plans to work on it over our
24 Gavilan Federal #1 which is in Section 33.

25 Q. What about Section 32 lands that Meridian

1 just acquired? You've worked pretty close with
2 Meridian. Do you know if they have any plans in
3 Section 32?

4 A. My understanding is they have drilled and
5 completed their second well, and they have two more
6 staked.

7 Q. So there's a lot going on out in this area?

8 A. That's correct. There's a tremendous
9 amount of Delaware activity out in this area.

10 Q. Have you critically reviewed the gas
11 balancing agreement and some of the other provisions,
12 the special provisions of the operating agreement?

13 A. No, I have not. The only thing I noted on
14 the gas balancing agreement, it is not the model form
15 that we use. I believe -- and it may be reprinted by
16 Mitchell, using the same language. I just don't know,
17 but there is a model form, I believe, that's been done
18 by Mountain States Legal Foundation or Rocky Mountain
19 Oil and Gas or RMOGA or somebody, but there is a model
20 form that we're used to using. And I have not
21 reviewed that against the gas balancing agreement.

22 Q. Would you propose, if a gas balancing
23 agreement is even necessary, would you propose that
24 model form as opposed to -- since you're familiar with
25 it and since it is a model form, as opposed to this

1 gas balancing agreement?

2 A. I don't know without reviewing this gas
3 balancing agreement. It may be substantially the same
4 as the model form agreement. I'm not sure.

5 MR. CAVIN: I have no further questions.

6 EXAMINER STOGNER: Mr. Stovall?

7 MR. STOVALL: All of my questions have been
8 answered.

9 (Thereupon, a discussion was held
10 off the record.)

11 EXAMINER STOGNER: I have no questions of
12 Mr. Murphy at this time. Any other questions? He may
13 be excused.

14 Mr. Cavin?

15 MR. CAVIN: Mr. Examiner, I'd like to call
16 George Scott as a witness.

17 MR. STOVALL: Mr. Scott, would you sit at
18 the end of the table, please.

19 GEORGE L. SCOTT, JR.

20 The witness herein, after having been first duly sworn
21 upon his oath, was examined and testified as follows:

22 EXAMINATION

23 BY MR. CAVIN:

24 Q. Mr. Scott, could you state for the examiner
25 your background in the oil and gas industry?

1 MR. STOVALL: State your name first,
2 please.

3 THE WITNESS: George L. Scott, Jr.,
4 Roswell, New Mexico.

5 Q. (BY MR. CAVIN) And your association with
6 Strata?

7 A. With Strata, I own some of the stock in
8 Strata. Also my organization, Scott Exploration, is
9 involved with Strata in the sense that we try to
10 originate prospects, and Strata operates them.

"Stock
in
Strata"

11 Q. Could you give us -- state your background
12 in the oil and gas industry, please, Mr. Scott.

13 A. It goes back to 1952. I have a B.S. and a
14 M.S. in geology from the University of Oklahoma. I
15 worked nine years for the old Humble Company. That's
16 Exxon now. And I've been an independent for nearly 30
17 years in Roswell, New Mexico.

18 MR. CAVIN: ~~Mr. Examiner,~~ I would tender
19 Mr. Scott as an expert in petroleum geology.

20 EXAMINER STOGNER: Any objections, Mr.
21 Kellahin?

22 MR. KELLAHIN: No objection.

23 EXAMINER STOGNER: Mr. Scott, let me make
24 sure I've got this straight. You're here today with
25 Mr. Cavin as a geologist, or you're here with Strata

1 today as a geologist?

2 THE WITNESS: Yes.

3 EXAMINER STOGNER: Is that correct?

4 THE WITNESS: Yes.

5 EXAMINER STOGNER: Thank you. You may
6 proceed.

7 Q. (BY MR. CAVIN) Mr. Scott, I was wondering
8 if you could refer to the various exhibits that
9 Mitchell presented earlier in the day, and let's see
10 if we can go over those.

11 MR. KELLAHIN: Do you want an extra copy of
12 those?

13 MR. CAVIN: That would be great. As you
14 can tell, I've memorized them but --

15 Q. Mr. Scott, if you would, please, I'd like
16 to refer you to the structure map that was prepared by
17 Mitchell Energy, Exhibit No. 2. It was admitted
18 earlier as Exhibit No. 2, and ask if you would
19 describe the critical wells, as far as Strata is
20 concerned, please, and tell me what role you think
21 structure plays in --

22 A. Okay. Let me preface, if I might, my
23 remarks by saying that we have a lot of respect for
24 Mr. Gawloski as a geologist. I know the geologists
25 that work for me have been in contact with him over

1 the years over various matters. And in looking at his
2 map, I basically -- we're talking here now about the
3 structure map -- I have no serious objection to the
4 way he interpreted this. There's always a little
5 difference in how geologists will contour maps.

6 The one thing that I would question a
7 little bit here is in the vicinity of the prospect in
8 Section 28, he made -- used the phrase, there was
9 "extensive" seismic. I wouldn't consider that you
10 have extensive seismic here. There is no north-south
11 line down the middle of Section 28, nor along the east
12 line of Section 28, nor north-south line in the middle
13 of Section 27 to the east.

14 So although there is fairly good, perhaps
15 we would say, seismic coverage, it's certainly not
16 extensive. And as to exactly how the structure would
17 result in the north half of Section 28 when it's all
18 said and done could be a little bit different than the
19 way he has it mapped. But by and large, I can find no
20 fault with the way he contoured.

21 Q. Mr. Scott, it seems that the decision is
22 based primarily on, first of all, two wells in the
23 north half and, secondly, on structure. Can you tell
24 me, in your opinion, how important structure is?

25 A. There are lots of Morrow wells that are low

1 structure wells. This is true in eastern Eddy County
2 and southwestern Lea County. There are wells that are
3 on top of the structure. There are wells on the flank
4 of structures. And this exhibit that they have
5 furnished us, Exhibit 2, shows many wells that are
6 down the flank or way down the nose, the plunge, the
7 structural plunge of these closed features that they
8 show here.

9 I personally don't consider it critical
10 whether you drill on top of a closed feature or not.
11 The sands are all lenticular, and the controlling
12 facet, criteria, in my opinion, on Morrow sand
13 production is whether or not you get the sand
14 channel. And those may occur low on the flank of the
15 structure as well as over the crest of a structure.

16 So I guess one could say, well, yes, I'd
17 prefer to catch a sand channel up high on a feature,
18 but, as a practical matter, we find them all over the
19 area out here. And many times the sands are actually
20 thicker and better developed in the structural lows.

21 Q. Mr. Scott, do you have much experience in
22 the Morrow, dealing with the Morrow formation?

23 A. Over the years, many times I've been
24 involved in the Morrow. I've made a lot of structural
25 maps. I've worked for -- when I was doing largely

1 consulting, I did work for many clients, structural
2 mapping, porosity isopaching cross-sections,
3 recommending locations, recommending reentries, and
4 then I have acquired some interest in Morrow wells,
5 too, as a result of this.

6 Q. So you have some -- how many wells would
7 you say we're talking about over the years?

8 A. Well, that's a tough one. I don't know.
9 Goodness. I've looked at and examined probably
10 several hundred Morrow wells in the course of my
11 investigations. I've been involved in, oh, I guess
12 four or five Morrow deals, perhaps, and been closely
13 associated with people drilling Morrow wells or
14 putting Morrow prospects together.

15 Q. Could you look at the production map, which
16 is Mitchell Exhibit 1, and also the structure map at
17 the same time and show us which wells -- I'd like to
18 have an idea of which of the wells are good producers
19 that are offstructure. Just give us a quick review,
20 if you would.

21 A. I haven't sat down and made a detailed
22 study of which are good wells and what are bad wells.
23 And when you say good wells and bad wells, that
24 depends on the price of gas.

25 Q. Sure.

1 A. You know, a well that's not too swift at 90
2 cents a thousand can be a hell of a well at \$5 a
3 thousand. So that enters into your judgment. All I
4 could submit to you is, in looking at the map here,
5 and all the wells are indicated as Morrow completions,
6 there are many of them that are on the flank of
7 structures and even in synclinal lows.

8 Q. Is it your conclusion then that structure,
9 while it may be a factor, it's certainly not the
10 controlling factor in a Morrow gas well?

11 A. Well, you've got to have the reservoir
12 rock. You've got to be in one of these sand
13 channels.

14 I guess you could give equal consideration,
15 perhaps, to structural position as well as your sand,
16 but I can tell you that many of the channels are found
17 on the flanks of structures.

18 I would like to submit in regard to that an
19 exhibit here. This is not a particularly fancy
20 exhibit, but we made a quick copy of this before we
21 left Roswell yesterday, and I would like to show you
22 an area in the next township south of here where
23 Morrow wells do not appear to have any close
24 structural association.

25 MR. CAVIN: We'd like to admit this as

1 Exhibit 6, Mr. Examiner, if there's no objection.

2 EXAMINER STOGNER: Are there any
3 objections, Mr. Kellahin?

4 MR. KELLAHIN: Has the witness
5 authenticated the exhibit?

6 THE WITNESS: Me? Yes. It was done
7 directly under my supervision.

8 MR. KELLAHIN: No objections.

9 EXAMINER STOGNER: No. 6 will be admitted.

10 Q. (BY MR. CAVIN) Could you tell us what is
11 contained on Exhibit 6, Mr. Scott?

12 A. Well, that is map contoured on top of the
13 Morrow Clastic Unit, an important division of the
14 Morrow, and a fairly good structural marker. And
15 encircled in orange are a number of Morrow wells. And
16 all you see are some minor structural nosing and minor
17 reentrance, southeast plunging dip. So I would submit
18 that probably the stratigraphy, the development of the
19 sands is equally important there.

20 Also, I noticed on the porosity, on the
21 isopach map, the sand isopach map --

22 Q. Which exhibit is that, please, Mr. Scott.

23 A. That is Exhibit No. 3.

24 Q. Mitchell Exhibit No. 3?

25 A. Yes -- that they display an area of very

1 thin sandstone down here coming across the southeast
2 corner of Section 32, trending right across the top of
3 the structure. So you can drill right on top of these
4 structures and not encounter with sand development.

5 Q. What else can you tell us about Mitchell
6 Exhibit 3, Mr. Scott, that would indicate that --

7 A. Well, Exhibit 3 --

8 MR. KELLAHIN: Excuse me, there wasn't a
9 question there.

10 Q. (BY MR. CAVIN) -- that would indicate that
11 the location proposed by Mitchell is maybe not the end
12 all or perhaps the best location?

13 A. Okay. On this exhibit, there is very
14 little well control in the vicinity of Section 28 or
15 21 or 20 or 16 or 17, back over to the east in 15,
16 22. This is a subsurface isopach map based on well
17 control, and yet the well control is very, very sparse
18 out there.

19 And this map, the isopach map purports to
20 show the thick and thins of the sands and I suppose a
21 representation of the way these channels, these
22 lenticular sand bodies in the Morrow, are developed.
23 And this approach is a valid approach, in my opinion.
24 I just want to point out that the well control is
25 very, very scarce out in here. There is no way of

1 predicting at this location that there's going to be
2 45 feet of net sand. There may be 80, or there may be
3 none based on contouring from well control.

4 Now, we all think in terms of trends,
5 sandstone trends, and it would appear that Mr.
6 Gawloski, down at the south here, saw a thick and made
7 an effort to connect it up with a thick six miles
8 north. And that might be a little risky, you know.
9 That would be my comment there.

10 Another thing about these kinds of maps, if
11 you'll look at the cross-section exhibit, these sands
12 do not all occur in the same place in this Morrow B
13 Unit. This type of map is a lumping map. You take
14 all of the sands in a particular interval and a
15 particular well, and then you contour to those values
16 from well to well. It doesn't mean that these are
17 going to be the same sands. These individual sands
18 may have completely different trends and orientations
19 than you would -- you might expect from looking at a
20 map like this.

21 Now, once again, this is about all you can
22 do with the Morrow until you actually drill some
23 wells. And then once you've drilled some close-in
24 wells, you can contour individual sands and work your
25 trends. But it's based on very poor remote well

1 control. So there is an element of risk right there
2 in Section 28 as to what you're going to find.

3 Q. What would you say about the Morrow
4 location that Mr. Murphy discussed earlier that Strata
5 is proposing in the southwest -- I'm sorry, the
6 southeast quarter of the southwest quarter of Section
7 28 based on the isopach map prepared by Mitchell and
8 also the structure map?

9 A. Well, the isopach map would indicate about
10 the same thickness of sand as for a location in the
11 north half, and the structure map would indicate you
12 would be coming down the flank of the structure, but
13 you're still without being the lowest position
14 structurally compared to areas adjacent there several
15 miles away.

16 So to answer your question simply, you
17 would be drilling on the flank of a closed structure,
18 just like many of the wells that are on this map.

19 Q. Is there anything you would like to add as
20 far as the structure map is concerned, Mr. Scott, as
21 far as your evaluation of it?

22 A. I believe that I've pretty well covered
23 that. I can't think of any other thing here. Let me
24 check my notes.

25 I guess I could state the obvious. If you

1 made a good well in the north half of the section, I
2 sure would feel safe about drilling in the south half.
3 You know, it gives us an important control well out
4 there.

5 Q. Would you see a need to drill another well
6 in the north half if you make a good well where they
7 have proposed?

8 A. I would not see a necessity to, no. Once
9 again, things like that depend on how thick your sands
10 are, what you think the orientation of those sands
11 are. And in this day and time, there are logging
12 techniques we can employ that give us trends of these
13 sand trends. Both Schlumberger and Halliburton have
14 logging tools that give you orientation of these sand
15 bodies.

16 So depending on the information gained from
17 that well, it could tell you whether you ought to
18 drill in the north half or the south half. My guess
19 is just as good a location could be made in the south
20 half as the north half as far as the information we
21 have here.

22 Q. Mr. Scott, I'd ask you to look at the -- I
23 believe that was the structure map -- the isopach map
24 prepared by Mitchell and tell the examiner if you have
25 any further critique or comment on that map.

1 A. I've already covered that, I believe, in
2 some of the remarks.

3 Q. Is there anything you'd like to add with
4 respect to Strata Exhibit 6 that you've provided?

5 MR. STOVALL: I'll take that as a no, Mr.
6 Scott.

7 MR. CAVIN: I'm sorry.

8 Q. Just one further question. Mr. Scott, is
9 it your opinion as an expert in petroleum geology that
10 a west half spacing unit is not warranted in this case
11 in light of the location of the well?

12 A. Say it again.

13 Q. A west half spacing unit in Section 28, in
14 light of the location of the well, is it your opinion
15 that that should be warranted in this case?

16 A. Well, my opinion is that it would probably
17 be better to drill in the north half and the south
18 half. You know, I think I've already addressed that
19 in discussing the trends of these sandstones.

20 I would like to make one more remark here,
21 if I might, about this area.

22 MR. KELLAHIN: I'm going to object to the
23 narrative answer to a question that's not asked.

24 EXAMINER STOGNER: I'm going to agree with
25 Mr. Kellahin, Mr. Cavin.

1 Q. (BY MR. CAVIN) Mr. Scott, do you have any
2 closing remarks that you'd like to make regarding the
3 Morrow in this area, the area of Section 28?

4 A. No, I have none regarding the Morrow.

5 MR. CAVIN: I have no further questions.

6 EXAMINER STOGNER: Thank you, Mr. Cavin.

7 Mr. Kellahin, do you have any?

8 MR. KELLAHIN: Just a few, Mr. Examiner.

9 EXAMINATION

10 BY MR. KELLAHIN:

11 Q. Mr. Scott, when were you asked to be an
12 expert in this case?

13 A. Oh, several days ago, I guess.

14 Q. How many hours would you estimate that you
15 devoted to studying what would be the appropriate way
16 to maximize development in Section 28?

17 A. I've looked at the seismic map that you all
18 furnished or Mitchell furnished to Strata, looked at
19 it and had one of my geologists who is responsible for
20 the Lea County District review the Morrow wells in the
21 area, and I discussed this with him sometime back, I
22 guess about the time we got your seismic map.

23 Q. Approximately when did you get that map?

24 A. Oh, let me think. When -- I believe that
25 was -- you brought that downstairs to our office the

1 day it was received up there.

2 MR. MURPHY: I think so.

3 THE WITNESS: I'm referring to this exhibit
4 right here.

5 MR. STOVALL: Mr. Scott, the question is
6 being asked of you, so just to the best of your
7 recollection; okay?

8 THE WITNESS: Oh, okay. Heck, three or
9 four weeks ago, I suppose.

10 MR. KELLAHIN: Let me see what was provided
11 to you, sir.

12 THE WITNESS: Okay.

13 Q. (BY MR. KELLAHIN) You were provided a
14 portion of Mr. Gawloski's structure map?

15 A. Yes.

16 Q. And it is an area that's approximately two
17 sections on each side north and south, east and west,
18 of Section 28?

19 A. It's four sections wide.

20 Q. Yes, sir. My question for you, sir, is,
21 once you were asked to be involved as an expert, how
22 many hours did you personally devote to studying what
23 to do with Section 28?

24 A. I spent all day yesterday and until about
25 eleven o'clock last night reviewing data. And this

1 doesn't -- okay, your question was after I was asked
2 to be a witness.

3 Q. Yes, sir.

4 A. That doesn't take into account the many
5 hours I've been involved in this area before.

6 Q. Let's look at Mr. Gawloski's structure map,
7 this area. Identify for me any of the Morrow wells in
8 which you were the exploration geologist that proposed
9 that Morrow well.

10 A. This is just a small segment of Lea
11 County. I have not been involved in any Morrow wells
12 in this area right here, to the best of my knowledge.
13 Let me think for just a minute, because this is -- let
14 me think. I have to go back about 25 years here in
15 this area, and I may well have been, but to tell you
16 the truth, I would have to go back and check my
17 facts.

18 I have generated Morrow prospects in this
19 area, put it this way -- that I have tried to get
20 clients to move on them, yes, over the years.

21 Q. My question was that as an exploration
22 geologist, there's none of these Morrow wells on that
23 display that you were the primary geologist that
24 proposed that well and got it drilled?

25 A. I don't believe so.

1 Q. Let me look at the structure map that
2 you've introduced as Exhibit No. 6.

3 A. Yes.

4 Q. If I can orient myself as to where you are,
5 I think your map ends, the north end of your map ends
6 --

7 A. It does.

8 Q. -- just about where Mr. Gawloski's south
9 end of his map stops?

10 A. That is correct, yes. I just wanted to
11 show that south of here but still in the general area,
12 what it looked like there.

13 Q. You have circled a portion of your display
14 with an orange elliptical shape?

15 A. Yes.

16 Q. Just north of that shape, Hat Mesa?

17 A. Yes.

18 Q. Does that not show you as a geologist that
19 there is a significant structural component to the
20 success of Morrow wells when they're drilled on
21 structure?

22 A. No, not at all because there's some wells
23 right on top of there that have nearly no sand at all.

24 Q. The best wells in that Hat Mesa are on the
25 best structural position in that pool, are they not,

1 sir?

2 A. No, I can't deny that. Where these sand
3 channels cross that big structure, yes, that is true
4 of some wells but not all. Where there are no sands,
5 your production is very poor, or poorly developed
6 sands, your production is poor.

7 Q. On your Exhibit No. 6 prepared in December
8 of '92, did you prepare a structure map that would
9 take into Section 28 just to the north?

10 A. We have other maps. This one particular
11 map is one that -- let me say, this is a work map, a
12 map that we keep up, we keep current, try to keep up
13 with the activity on, and we have other mapping
14 segments up there. Now, I don't --

15 Q. But you chose not to bring any of those and
16 utilize them today to utilize your points about
17 Section 28?

18 A. It was not up-to-date. No, I did not
19 choose to bring it because we do not keep up with
20 current Morrow activity in those two townships up
21 north.

22 Q. How about an isopach, did you prepare an
23 isopach that involves Section 28 so we can see what
24 your opinion is with regards to thickness?

25 A. I really didn't think that was necessary

1 because I have no objection to the values that Mr.
2 Gawloski puts on his map here.

3 Q. You didn't see his isopach until today, did
4 you?

5 A. No, that is correct but --

6 Q. How did you independently verify the
7 accuracy of that exhibit if you've just seen it?

8 A. I have to go by the reputation of Mr.
9 Gawloski.

10 Q. And it's pretty good, isn't it?

11 A. In my opinion, as I said when I started, I
12 have a high regard for him. I also said that the way
13 he contoured the map in here, his isopach map, is
14 subject to question.

15 Q. Mr. Gawloski's conclusion was that any well
16 drilled in Section 28 because of the inherent risk in
17 drilling Morrow gas wells was going to justify the
18 maximum risk factor penalty of 200 percent. Do you
19 concur in that opinion?

20 A. I would have to give that some serious
21 thought.

22 Q. Let's talk about some of your comments.
23 You said there was very little well control, very,
24 very sparse information, and you said it was high
25 risk.

1 A. If I used the word "high" risk, I'd like to
2 modify that. There is risk, certainly. There's
3 considerable risk there because you don't have any
4 close-by wells. You're projecting sand trends across
5 a map with very little control; so there has to be
6 risk. We're in a game of risk, obviously.

7 MR. KELLAHIN: No further questions, Mr.
8 Examiner.

9 EXAMINER STOGNER: Any other questions of
10 of this witness? He may be excused.

11 Do you have anything further, Mr. Cavin.

12 MR. CAVIN: Yeah, I'd like to ask -- first
13 of all, I'd like to ask Mr. Scott a question, if you
14 don't mind, Mr. Examiner.

15 EXAMINER STOGNER: Okay, Redirect?

16 MR. CAVIN: Yes

17 FURTHER EXAMINATION

18 BY MR. CAVIN:

19 Q. Mr. Scott, do you think your experiences in
20 the Morrow, in other areas of Lea County in the
21 Permian Basin, are valid when we're looking at Section
22 28 here?

23 A. I certainly do.

24 Q. So you don't see anything that's unique
25 about this area that would not allow you to pull on

1 your 30-some years' experience in the Permian Basin?

2 A. Certainly, experience helps, you know. I
3 would think yes, that I'm pretty competent. I'm not
4 sure I'm answering your question exactly.

5 MR. CAVIN: I have no further questions for
6 Mr. Scott.

7 I would like to ask -- these are the
8 notices of staking, and I was going to see, if there's
9 no objection, admitting those, or I can have Mr.
10 Murphy admit them, but they're the notices of staking
11 for the wells for the locations that Mr. Murphy has
12 described.

13 MR. STOVALL: Why don't you hand those to
14 Mr. Kellahin and let him look at them so he can refer
15 to them?

16 MR. CAVIN: We can make more copies.

17 THE WITNESS: Am I excused?

18 MR. KELLAHIN: No objection.

19 MR. STOVALL: Mr. Cavin, I'll return these
20 to you, please make copies, two for us and copies for
21 everybody else after the conclusion of the hearing.

22 EXAMINER STOGNER: Is there anything
23 further, Mr. Cavin?

24 MR. CAVIN: Do you mean a closing
25 statement?

1 EXAMINER STOGNER: It's up to you if you'd
2 like to make a closing.

3 MR. STOVALL: We'd like to hear the
4 testimony first.

5 MR. CAVIN: We have no further testimony,
6 Mr. Examiner.

7 EXAMINER STOGNER: I guess we're ready for
8 closing statements, if you care to go first, Mr.
9 Cavin.

10 MR. CAVIN: Mr. Examiner, what we have here
11 is a case where Mitchell wants everything its own
12 way. They want a west half proration unit. They want
13 the location they want. They want the operating
14 agreement they want. And they just want to sort of
15 shove it down Strata's throat.

16 Mitchell has stated that the location could
17 be improved by moving it to the north. Certainly if
18 that's the critical consideration, then maybe they
19 should be satisfied with one well in the north half.
20 We believe Mitchell should move the location to the
21 north and dedicate the well to the north half spacing
22 unit.

23 Strata has staked the south half location,
24 the legal location for the Morrow well. Strata
25 intends to seek participation for Mitchell and other

1 owners in the south half of Section 28 or,
2 alternatively, seek force pooling of these interests.

3 In summary, Mitchell's request for an
4 unorthodox well should be denied for the reasons
5 stated.

6 Mr. Examiner, I would also note, while I do
7 not represent any of the partners at this time, Strata
8 is concerned that its partners have not received
9 adequate notice required by both the State and Federal
10 Constitution. We believe these partners should have a
11 chance to address this body either in support or
12 opposition to Mitchell's application. And, frankly,
13 we don't know which they would do. We would note that
14 it's difficult to believe that Mitchell has made a
15 good faith, diligent effort to provide such notice.

16 Thank you, Mr. Examiner.

17 EXAMINER STOGNER: Thank you, Mr. Cavin.

18 Mr. Kellahin.

19 MR. KELLAHIN: Couple of quick points, Mr.
20 Examiner. The efforts that Mr. Smith has extended on
21 behalf of his company to reach a voluntary agreement
22 have been exhaustive. Despite his efforts, the
23 parties admit there is no agreement.

24 The issue of notification to these
25 undisclosed partners is a red herring in this case.

1 It would set an unusual and onerous precedent for the
2 examiner in a situation such as this to allow a party
3 that has required us to go through this exhaustive
4 effort of compulsory pooling to frustrate and escape
5 pooling by, at the last minute, a week before hearing,
6 now telling us for the first time the identity and
7 addresses of some 15 or 16 individuals. Our
8 obligations are to deal with the public record and
9 with representations made to us with regards to that
10 interest, and we have in good faith complied with that
11 obligation.

12 It would be an unusual precedent to allow a
13 party being pooled at the last minute, after all this
14 effort, to then come in and tell you they now have 10,
15 20, 1,500 people that they're assigning their interest
16 to. That's not how we need to do this.

17 I must tell you about Mr. Gawloski's
18 geology that Mr. Scott hasn't already confirmed for
19 us. He admits that Mr. Gawloski is well recognized
20 among his peers as being very good at what he does,
21 and part of what he does is not unusual for Section
22 28. It's a development methodology that Mitchell is
23 utilizing for the Morrow play. It's a high-risk play,
24 and he's looking for two locations in the section, and
25 that's the way you optimize the development of the

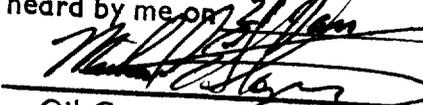
1 section. You take your best thickness and your best
2 structural position, and the only way to accomplish
3 that is to stand them up.

4 The notion that Strata is serious now about
5 this well location they have proposed today in Section
6 5 is made ridiculous when you look at the last
7 exhibits that Mr. Cavin submitted to you. On the very
8 face of those exhibits, every one of those three
9 wells, including this one, is specifically identified
10 to be a shallow, Delaware oil well. There is no
11 effort, no intent nor execution on their part to
12 propose a south half orientation. We think we've done
13 all we need to do and more, and we would like to have
14 our forced pooling order.

15 EXAMINER STOGNER: Thank you, Mr.
16 Kellahin.

17 Does anybody else have anything further in
18 Case 10,656? If not, this case will be taken under
19 advisement.

20 Take a five-minute recess.

21
22 I do hereby certify that the foregoing is
23 a complete record of the proceedings in
24 the Examiner hearing of Case No. 10656
25 heard by me on 3/1/93 1993.

Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

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STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Deborah O'Bine, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that I caused my notes to be transcribed under my personal supervision, and that the foregoing transcript is a true and accurate record of the proceedings of said hearing.

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

WITNESS MY HAND AND SEAL, February 1, 1993.

Deborah O'Bine

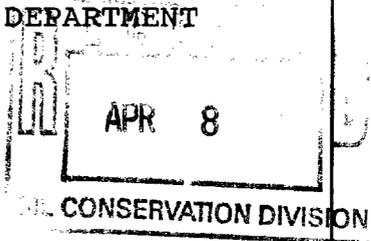
DEBORAH O'BINE
CCR No. 63



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION



IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:)
)
 APPLICATION OF BRANKO, INC., ET AL., TO)
 REOPEN CASE NUMBER 10,656, LEA COUNTY,)
 NEW MEXICO)
)

CASE NO. 11,510

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

April 4th, 1996

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, April 4th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

April 4th, 1996
Examiner Hearing
CASE NO. 11,510

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REPORTER'S CERTIFICATE

4

* * *

A P P E A R A N C E S

FOR THE DIVISION:

RAND L. CARROLL
Attorney at Law
Legal Counsel to the Division
2040 South Pacheco
Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 11:27 a.m.:

3 EXAMINER STOGNER: Call Case Number 11,510,
4 Application of Branko, Inc., et al., to reopen Case Number
5 10,656, Lea County, New Mexico.

6 There's nobody else in the room, Mr. Carroll. Do
7 you have anything on this matter at this time?

8 MR. CARROLL: May it please the Examiner, my name
9 is Rand Carroll, appearing on behalf of the New Mexico Oil
10 Conservation Division.

11 Mr. Examiner, I was contacted by both Mr. Tom
12 Kellahin, who appeared in this case on behalf of Mitchell
13 Energy Corporation, and by Mr. Hal Stratton, counsel for
14 Branko, Inc.

15 Due to scheduling conflicts, this case was asked
16 to be continued to May 2nd, and with the Examiner's
17 permission I ask that this case be continued to May 2nd.

18 EXAMINER STOGNER: Case Number 11,510 will be so
19 continued to the Examiner's hearing scheduled for May 2nd,
20 1996.

21 And with that, hearing is adjourned.

22 (Thereupon, these proceedings were concluded at
23 11:28 a.m.)

24 * * *

25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL April 14th, 1996.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 11510, heard by me on 4 April 1996.


Examiner
Oil Conservation Division

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

RECEIVED

OIL CONSERVATION DIVISION

MAY 6

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 11,510
)
 APPLICATION OF BRANKO, INC., *et al.*, TO)
 REOPEN CASE NUMBER 10,656, LEA COUNTY,)
 NEW MEXICO)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

May 2nd, 1996

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, May 2nd, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

May 2nd, 1996
 Examiner Hearing
 CASE NO. 11,510

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* * *

Mitchell Energy Exhibit	Identified	Admitted
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* * *

A P P E A R A N C E S

FOR THE DIVISION:

RAND L. CARROLL
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Legal Counsel to the Division
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

STRATTON & CAVIN, P.A.
320 Gold Avenue, SW
Albuquerque, New Mexico 87102
P.O. Box 1216
Albuquerque, New Mexico 87103
By: HAL STRATTON
and
SEALY H. CAVIN, JR.

FOR MITCHELL ENERGY CORPORATION:

KELLAHIN & KELLAHIN
117 N. Guadalupe
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
By: W. THOMAS KELLAHIN

* * *

1 WHEREUPON, the following proceedings were had at
2 3:20 p.m.:

3 EXAMINER STOGNER: Hearing will come to order.

4 At this time I'll call Case Number 11,510.

5 MR. CARROLL: Application of Branko, Inc., et
6 al., to reopen Case Number 10,656, Lea County, New Mexico.

7 EXAMINER STOGNER: At this time i'll call for
8 appearances.

9 MR. STRATTON: Mr. Stogner, my name is Hal
10 Stratton. I'm here with Sealy Cavin. We're both with the
11 firm of Stratton and Cavin. We represent Movant Branko,
12 Inc., and the entire list of them is listed there in our
13 motion.

14 We've got one witness to call today. We have a
15 stack of exhibits that have been stipulated to for you, and
16 we're prepared to go.

17 EXAMINER STOGNER: Any other appearances?

18 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
19 the Santa Fe law firm of Kellahin and Kellahin, appearing
20 on behalf of Mitchell Energy Corporation.

21 EXAMINER STOGNER: Other appearances?

22 Do you have any witnesses, Mr. Kellahin?

23 MR. KELLAHIN: I have Mr. Steve Smith, the
24 landman that was involved in the transaction. He's
25 available. I don't anticipate calling him as a witness,

1 but he is here if there's questions by the Division of Mr.
2 Smith.

3 EXAMINER STOGNER: Mr. Stratton, do we need to
4 swear your witness in at this time, or do you wish to make
5 some opening statements?

6 MR. STRATTON: I'd just make a brief opening
7 statement, if that's okay, and then at that time I'd like
8 to present you with the exhibits. So I think that will be
9 quicker than to move for their introduction, and then we
10 can swear Mr. Murphy in.

11 EXAMINER STOGNER: Any objection with those
12 proceedings, Mr. Kellahin?

13 MR. KELLAHIN: Subject to the clarification of
14 the affidavit issue, Mr. Stratton and I have stipulated as
15 to these documents. So when we get to that point I'll
16 clarify for you what I think we're doing.

17 EXAMINER STOGNER: Okay, thank you, Mr. Kellahin.
18 Mr. Stratton?

19 MR. STRATTON: Thank you, Mr. Examiner.

20 This is a case on behalf of a number of working
21 interest owners and overriding royalty interest owners in
22 the tract of property which is the subject of this
23 particular proceeding. We have affidavits which are
24 Exhibits 1 through, I think, 17, of all these people that
25 indicate what their interest is.

1 They -- Almost all of them got their interest in
2 the 1989 area, and it's listed there in the affidavit for
3 you, and we're going to have those affidavits, as well as
4 testimony from Mr. Mark Murphy of Strata Production
5 Company, as to what the business records of Strata show.
6 And I really don't think there's any question -- and
7 certainly we're stipulated to the evidence, and so I don't
8 think that's a question.

9 The problem was, is that they were never included
10 or noticed in this proceeding, and the Commission never
11 gained jurisdiction over these working interest and
12 overriding royalty interest owners, as far as the previous
13 proceeding was concerned.

14 Notwithstanding the fact that Mitchell, through
15 Mr. Smith, had knowledge as early as two or three months
16 before that there were other participants, other than
17 Strata, in this particular tract of property, and that
18 knowledge ran from telephone conversations with Mr. Murphy
19 through correspondence, through what I know you all are
20 aware of is the final letter that came a week or so before
21 the hearing, listing those particular interests, the
22 individuals, and where they could be reached.

23 And this Commission need look no farther in this
24 case -- although you certainly can, and you'll get
25 corroborating law. But to determine the law you need look

1 no farther than *Uhden v. New Mexico Oil Conservation*
2 *Commission*, and that case stands for just the following
3 proposition. I just want to read it, because it's so
4 important, not only to this proceeding but to all the other
5 proceedings before the Commission.

6 That case holds that if a party's identity and
7 whereabouts are known or could be ascertained through due
8 diligence, the due-process clause of the New Mexico and the
9 United States Constitutions requires the party who filed a
10 spacing application to provide notice of the pending
11 proceeding by personal service to such parties whose
12 property rights may be affected as a result.

13 And if that doesn't happen, *Uhden* continues to
14 hold that all of the proceedings obviously are void because
15 -- as to those individuals, not to the parties that were
16 here; the order is obviously valid as to the parties that
17 were here -- but is void as to the individuals that did not
18 have an opportunity to participate in the hearing.

19 And that is exactly what has happened in this
20 particular case, and our clients, the Movants, are only
21 asking for an opportunity to participate. And so they are
22 asking you to reopen the hearing, which is -- I was going
23 to -- It's the only remedy for this Commission. They may
24 have other remedies outside of that, but it's the proper
25 way to go and allow them to have a hearing on this

1 particular -- on the pooling issue that's at stake here.

2 Thank you.

3 EXAMINER STOGNER: Thank you, Mr. Stratton.

4 Mr. Kellahin?

5 MR. KELLAHIN: Mr. Examiner, Mr. Stratton and I
6 have agreed upon a procedure for your consideration. That
7 is to present in a summary fashion some additional evidence
8 with regards to the relationship, the dealings of the
9 parties, both before and after the pooling order, and then
10 let you decide the notice issue.

11 If you decide in favor of Mr. Stratton's
12 position, then we would ask for an evidentiary hearing
13 before you with regards to the engineering aspects of the
14 producing well and the participation in that well and
15 whatever else is involved in that exercise.

16 The motion to reopen the case has got several
17 parts to it, one of which was to ask that the case be
18 reopened, and that's what we're here today to consider.

19 The second aspect was, if it's reopened and
20 they're entitled to participate, then how does that
21 activity take place with an existing well already having
22 been produced?

23 And then finally, there was a portion of the
24 motion asking for some control and supervision over
25 operations of the well. It was specific in asking for an

1 injunction of any other activities on the wellbore, such as
2 adding additional perforations, workover, abandonment,
3 those kinds of issues.

4 Mr. Cavin and I have discussed that issue, and he
5 and I will try to work through that problem. If you decide
6 to reopen the case, we would ask that you let us do that
7 before any operations on this well are interrupted.

8 In addition, Mr. Stratton has filed a memorandum
9 in support of his position, so that you have a memorandum
10 in writing. I have not yet filed mine, in order to
11 expedite the hearing today. If you'll grant me an
12 additional period of time, I will file a written brief in
13 support of the documents I've already filed.

14 Our position is very simple, Mr. Examiner. The
15 position is that Steve Smith of Mitchell was induced to
16 rely upon Mr. Murphy as a representative of Strata for the
17 entire 25-percent working interest, induced to believe, and
18 in fact relied upon, Mr. Murphy's representations that he
19 could deal with all these parties in their behalf. The
20 record is that he in fact did so.

21 The record also reflects that as of the date the
22 force-pooling application was filed -- that date was
23 December 7th of 1993; Strata was served on December 9th of
24 1993 -- during that period of time, there was no public
25 record to disclose to Mitchell the identify of these

1 interest owners.

2 It was not until January 13th, approximately
3 eight days before the compulsory pooling hearing, that Mr.
4 Murphy sent a letter to Mr. Smith, disclosing the identity
5 of the previously undisclosed parties.

6 My argument here, sir, is that this is not a
7 notice question, it's a question of representation by Mr.
8 Murphy, and whether or not Mitchell can rely upon that
9 representation as we go through the force-pooling process.

10 We'll provide you the documents that we have
11 stipulated to, and I have copies of all the documents I
12 think were relevant out of the Examiner hearing. We've
13 duplicated those for your convenience.

14 I have reviewed Mr. Stratton's proposed
15 affidavits and documents; we're stipulating to those -- the
16 admissibility of those documents.

17 The stipulation on the admissibility of the
18 affidavits for these partners is conditioned on the fact
19 that counsel for those parties has agreed to assist me in
20 providing a supplemental stipulation, and we will obtain
21 from those parties by stipulation, then, information from
22 their point of view as to when they knew about the proposed
23 well, when they knew about the force-pooling application,
24 when they knew about the force-pooling order, and a
25 sequence of what they knew from their perspective.

1 I understand that Mr. Murphy is here, and he can,
2 from his perspective, tell us what he thought his
3 arrangement was with these parties.

4 With the supplemental stipulation, then, we
5 certainly are willing to have these affidavits introduced
6 for your consideration, at this hearing only, to save these
7 parties the expense of traveling from wherever they're
8 coming from, providing a few minutes of testimony which we
9 can accomplish in a different fashion. So we are proposing
10 to stipulate for purposes of the Examiner hearing only that
11 these affidavits be accepted.

12 MR. CARROLL: I'm a little confused. What's this
13 supplemental stipulation?

14 MR. KELLAHIN: That subsequent to this hearing
15 and at some time that's appropriate for you, I will prepare
16 a stipulation for these parties to sign or a supplemental
17 affidavit by which they will disclose information that is
18 not currently in the affidavit that's being submitted
19 today.

20 MR. STRATTON: If I may, just so I understand the
21 stipulation -- I thought I understood it, but I'm not sure
22 I do now -- you would propose that that be considered in
23 this particular hearing, prior to a decision by the
24 Examiner?

25 MR. KELLAHIN: I think it would be helpful in

1 terms of knowing the sequence by which they had that
2 information.

3 If you don't feel that's necessary in order to
4 have that decision, then we simply could postpone obtaining
5 it. My idea was to complete the transaction from their
6 point of view and find out when they knew the dates of
7 these various items.

8 MR. STRATTON: I don't understand. My question
9 is whether you intend these -- you want the supplemental
10 stipulations for this proceeding or for a possible
11 subsequent proceeding before the Commission, say?

12 MR. KELLAHIN: My proposal is to have it
13 available to you when you make your decision at this level.

14 MR. STRATTON: This -- Okay.

15 MR. CARROLL: We want it before we issue a
16 decision.

17 MR. STRATTON: Okay, I didn't understand that.
18 That stipulation is fine with us. It may take us just a
19 little bit of time to get those, so -- I mean, we can't get
20 them tomorrow or by Monday, but -- I mean, it may take --

21 MR. CAVIN: -- ten days.

22 MR. STRATTON: -- ten days to get those. So as
23 long as Mr. Kellahin understands that it's going to be ten
24 days before we can provide those and the Examiner
25 understands that, then that's fine.

1 EXAMINER STOGNER: Is ten days sufficient, Mr.
2 Kellahin?

3 MR. KELLAHIN: Yes, sir, if we might use the same
4 time period within that ten-day period, then, I will file a
5 written brief in support of my position so that you will
6 have a complete record, hopefully within the next days.

7 MR. STRATTON: I would also like an opportunity
8 to reply to that brief as well, and I'll do it in whatever
9 period of time you think is convenient. It doesn't have to
10 be another ten days. But since that brief is coming after
11 the evidence and after the hearing, I'd certainly want an
12 opportunity to file a reply to it.

13 EXAMINER STOGNER: How many days do you feel is
14 sufficient, Mr. Stratton?

15 MR. STRATTON: Ten days is -- would be okay. If
16 you feel like shorter would be helpful, fine. I mean, we
17 want to get the case decided as soon as possible, but I
18 guess I'd like to have ten days.

19 EXAMINER STOGNER: So in all we're looking at 30
20 days?

21 MR. STRATTON: I think we're looking at 20 days.

22 EXAMINER STOGNER: Twenty days.

23 MR. KELLAHIN: Yes, sir, 20 days.

24 EXAMINER STOGNER: Okay, I put an extra 10 on
25 that, I'm sorry.

1 Okay, would you wish to present what you have at
2 this time, Mr. Stratton?

3 MR. STRATTON: I move the admission of our -- of
4 the Movant's Exhibits 1 through 28, and I have three
5 copies. They're in chronological order, and they're -- we
6 have an index. I've already provided those to Mr. Kellahin
7 so that he has those.

8 MR. KELLAHIN: I don't wish to interrupt counsel,
9 but perhaps it might be convenient for you if I simply give
10 you my documents too, so that we have the documents
11 stipulated in front of you before Mr. Murphy testifies, so
12 that you have a complete paper trail.

13 EXAMINER STOGNER: Do you have any problem with
14 that, Mr. Stratton?

15 MR. STRATTON: No, sir, I think it would be
16 appropriate to do it now.

17 EXAMINER STOGNER: Okay, Mr. Kellahin?

18 MR. KELLAHIN: Mr. Examiner, I looked for the
19 exhibit stamp and I'm not sure it's here, but in any event,
20 I will mark for you, sir, what is Mitchell Energy Exhibit 1
21 for today's hearing. It's a package of correspondence, the
22 cover sheet of which is dated February 17th of 1993, and it
23 represents Mitchell's letter to Strata for joining pursuant
24 to the compulsory pooling order, after the order has been
25 issued. So that's the top sheet.

1 EXAMINER STOGNER: And this should be marked
2 Exhibit Number 1 --

3 MR. KELLAHIN: Yes, sir.

4 EXAMINER STOGNER: -- Mr. Kellahin, of Mitchell?

5 MR. KELLAHIN: In addition, I have duplicated
6 copies of the Examiner exhibits that may be of use.

7 EXAMINER STOGNER: And this package you just
8 handed to me is all of Exhibit Number 2?

9 MR. KELLAHIN: No, sir, I have not marked it as
10 an exhibit. They continue to have the original exhibit
11 numbers from the Examiner case that was heard before you
12 back on January 21st of 1993.

13 EXAMINER STOGNER: And that's what you will be
14 referring to?

15 MR. KELLAHIN: Yes, sir.

16 EXAMINER STOGNER: Mr. Stratton?

17 MR. STRATTON: Mr. Examiner, we call Mr. Murphy
18 as a witness, and I believe he needs to be sworn.

19 EXAMINER STOGNER: Let's have Mr. Murphy stand
20 and be sworn at this time.

21 MR. CARROLL: Shall we swear in Mr. Smith at this
22 time, just in case?

23 EXAMINER STOGNER: Do you think that will be --
24 Let's go ahead and swear Mr. Smith in. That way we'll have
25 that over with at this time.

1 (Thereupon, the witnesses were sworn.)

2 MARK B. MURPHY,

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

5 DIRECT EXAMINATION

6 BY MR. STRATTON:

7 Q. Mr. Murphy, would you state your name and address
8 for the record, please?

9 A. Yes, my name is Mark Murphy. I'm President of
10 Strata Production Company. We're located in Suite 700 of
11 the Roswell Petroleum Building in Roswell, New Mexico.

12 Q. And Strata Production Company was a party or is a
13 party in this case; is that correct?

14 A. We were a party, yes.

15 Q. But you are not a Movant in this case?

16 A. That's correct.

17 Q. Okay. Let me ask you, if I could, and you have a
18 copy of the exhibits there, and I'd ask you to use those as
19 you see fit, but let me ask you to tell the Examiner when
20 you first learned of Mitchell's desire to proceed with the
21 Tomahawk well.

22 A. To proceed with the Tomahawk well?

23 Q. To proceed with their pooling application.

24 A. I'd have to look at these. Let's see.

25 Q. Let me be more specific. Did you get a telephone

1 call from Mr. Smith about the project back in October of
2 19- -- Was it 1992?

3 A. Yes, I did.

4 Q. Okay. Can you tell us what transpired after
5 that?

6 A. Yes. Towards the end of October of 1992, Mr.
7 Smith called, and I don't believe I talked to him the first
8 time, but I returned his call a few days after that, and he
9 said that Mitchell was proposing a well in the West half of
10 Section 28 that was going to test, if I recall, the Atoka
11 or Morrow zones.

12 He stated that Strata was the owner of a lease,
13 which was the south half of the southwest quarter of
14 Section 28, and that that would be in the proposed 320-acre
15 proration unit for the Tomahawk well. He asked -- He
16 inquired whether we would be interested in participating.

17 I told him that given the depth of the well, we
18 would probably not be interested in participating and
19 advised him at the time that in addition to Strata there
20 were other owners of leasehold operating rights in that
21 lease and that while generally they would -- "they" being
22 these other partners, would generally go with whatever
23 Strata recommended, I certainly couldn't guarantee that.

24 Q. Okay. Do you have something that helps you
25 refresh your recollection on these -- on this telephone

1 conversation or others?

2 A. Yes, I do, I've got a letter dated January 12th
3 from me to Mr. Smith, outlining the series of telephone
4 conversations and correspondence, and that would also be
5 your Exhibit 23.

6 Q. So you're using that to refresh your recollection
7 on these particular telephone conversations?

8 A. I am.

9 Q. Okay. And the first conversation, you say, on
10 October 26th, you informed Mr. Smith of other ownership
11 interests in the property?

12 A. Yes, I did.

13 Q. Okay. Was there another occasion that you had an
14 opportunity to talk to him after that?

15 A. Yes, a few days later, October 29th, I called Mr.
16 Smith and informed him that Strata would recommend to its
17 partners that we sell the south half of the southwest
18 quarter of Section 28 to Mitchell for \$300 an acre,
19 delivering a 78-percent net revenue interest.

20 He said that they would consider that, but that
21 he would call me back when they got closer to doing
22 something, in other words, further along in the process
23 they were going through to get their well drilled.

24 Q. Who were you referring to when you used the word
25 "partners" when you were talking to him?

1 A. Well, we have -- The history of that project is
2 that we have a lease in Section 33 that we call the Gavilon
3 lease, and there's a producing well there, and we have a
4 number of working interest owners in that well.

5 When this particular lease -- the lease being in
6 the south half of 28 and also another 40 acres adjoining
7 it -- came up for sale, I believe, in the latter part of
8 1989, I would -- yeah, I think that's about right, August
9 of 1989 --

10 Q. Let me just move things along, just ask you --
11 When I'm asking that question, were you referring to any of
12 the Movants that are in this case?

13 A. Yes.

14 Q. Okay.

15 A. Yeah.

16 Q. And so when you say "partner", what did you mean?
17 Are you talking about somebody that has a limited
18 partnership interest, a general partner, or what does that
19 mean?

20 A. No, they're a leasehold owner, they own operating
21 rights. Basically when we purchased that lease, we offered
22 it to the same people that were in the adjoining lease, and
23 many if not all of them purchased their part of the
24 interest, and so they reimbursed us for the cost of
25 purchasing the lease and acquisition costs and so forth.

1 Q. Is it common to use the word "partners" for that
2 type of interest?

3 A. In a general sense, yes.

4 Q. Have you ever heard Mr. Smith use that same term
5 for Mitchell's investors or partners?

6 A. Yes, I think he referred to Santa Fe and Maralo,
7 who were their partners in the Tomahawk well.

8 Q. In the hearing, in the last hearing --

9 A. I believe so.

10 Q. -- or in your conversations?

11 A. I don't recall, but I believe that that's --

12 Q. Okay, so that's a common term for that type of --

13 A. It is.

14 Q. All right. Let's go on, if we might, and
15 continue the discussions with Mr. Smith.

16 A. Well, let's see here. On November 18th, I
17 returned his call. Mitchell said they would not accept our
18 proposal, the one we had made on October 29th. He said
19 that they would make a -- and I'm summarizing here; this is
20 all outlined in the letter -- informed me that Mitchell
21 would make a formal farmout request, that I told them that
22 we had some problems with the west-half proration unit.

23 He outlined one of the reasons -- He stated that
24 the reason they wanted the west-half proration unit was to
25 save an expiring lease, specifically the northwest of the

1 southwest quarter of Section 28.

2 Q. Okay, let me -- I hate to interrupt you, but I
3 want to ask you a couple other questions.

4 A. Sure.

5 Q. Let me ask you to refer to Exhibit 20 and ask you
6 if you can identify that.

7 I'm sorry, make that Exhibit 19.

8 A. 19, okay.

9 Q. I want to ask you in that particular letter,
10 which appears to be sent by you to Mitchell Energy, did you
11 make any particular statements regarding what type of
12 approval you might need from these working interest
13 partners?

14 A. Yes, at the bottom of the first page it says,
15 "...I offer as an alternative to the proposal set forth
16 above the following general farmout terms which are subject
17 to final approval by Strata and it's [sic] partners."

18 Q. Okay, let's look at Exhibit 21 --

19 A. Okay.

20 Q. -- and that appears to be a letter sent on
21 January 6th to Mitchell; is that correct?

22 A. Uh-huh.

23 Q. And did you talk to -- or did you mention to
24 Mitchell anything regarding your partners in that
25 particular letter?

1 A. Yeah, I state that Mitchell had refused to
2 execute Strata's letter agreement and that I had spoken to
3 the partners.

4 Q. Okay. Did Mr. Smith ever inquire as to who the
5 partners were?

6 A. I think generically he did during the course of
7 conversations, and I've described them as long-term
8 investors of Strata's or people that we've been involved
9 in. It wasn't until sometime in early January that he
10 stated some concern about not knowing specifically who they
11 were.

12 Q. And did he -- What did he say at that time?

13 A. Well, I think the conversation was along the
14 lines of -- excuse me, let me refer to the -- At some
15 point, one of the early conversations in January, he stated
16 that we had never provided him with a list of the partners
17 or their interests, and I told him that he knew that they
18 existed and we would be happy to provide that to him.

19 Q. And did you subsequently provide that to him?

20 A. Yes, I did.

21 Q. And how did you do that?

22 A. I wrote him a letter on January 13th, that's your
23 Exhibit Number 24 --

24 Q. Okay.

25 A. -- that gives the names and addresses and

1 leasehold ownership positions of the various partners --

2 Q. Okay.

3 A. -- and a list of the overriding and royalty
4 interest owners.

5 Q. Okay. I want to go back to Exhibit 20 and ask
6 you what Exhibit 20 is.

7 A. Exhibit 20 is a letter agreement concerning the
8 purchase and sale of the lease in question between Mitchell
9 and Strata. It was drafted -- or sent on Strata
10 letterhead.

11 Q. And was that sent on December 30th, 1992, as it
12 indicates?

13 A. Yes.

14 Q. Okay. Does it have anything in it regarding
15 other owners of the property, the leasehold?

16 A. Yes, it refers in 7 to undisclosed owners.

17 Q. Okay. And under that particular provision,
18 there's another provision that says "Authority". What is
19 that paragraph about?

20 A. It says, "The undersigned signatories..." have
21 the authority to execute the "...Agreement and bind their
22 respective companies..."

23 Q. Okay. Was this particular contract ever
24 executed?

25 A. No.

1 Q. Okay. Did you ever represent to Mr. Smith that
2 you had authority to bind them without discussing the
3 matters with them?

4 A. No, I did not. I had -- Given that we were under
5 the impression that we had a deal with Mitchell, I did
6 speak to the -- I'm not sure all of them, but the -- many
7 of the undisclosed partners, and I felt like that given the
8 specific terms that are outlined in this letter, that I had
9 the authority to bind them, but only under these
10 conditions.

11 Q. Okay. Did you ever tell him you had the
12 authority to represent them in any Oil Conservation
13 Division matter?

14 A. No, to the contrary, I stressed to him that once
15 the deal had fallen apart, we weren't able to get -- Strata
16 was attempting to accommodate a deal between Mitchell and
17 Strata and the undisclosed partners, and once it was
18 apparent that we could not come to terms, I stressed to
19 them that they should contact the other leasehold owners
20 and give them an opportunity to make their own election to
21 either deal with Mitchell on their own, to participate in
22 the well, or to be represented at the hearings, whatever.

23 Q. Okay. Let me just ask you one other question.
24 The affidavits have been stipulated to. Have you reviewed
25 the affidavits of the Movants?

1 A. Yes, I have.

2 Q. And does the interest in those particular
3 affidavits comport with the business records of Strata as
4 far as what those owners own?

5 A. Yes, they do.

6 Q. And is that consistent with the January 13th
7 letter, which is Exhibit 23 -- I'm sorry, Exhibit 24 that
8 you've --

9 A. They are.

10 MR. STRATTON: -- initialed?

11 Okay, that's all I have, thank you.

12 EXAMINER STOGNER: Mr. Kellahin?

13 CROSS-EXAMINATION

14 BY MR. KELLAHIN:

15 Q. Mr. Murphy, let me take you back to the locator
16 map. I think I've given you one there on -- Yes, sir,
17 that's it.

18 When we look at the locator map, the Mitchell
19 pooling case involved the west half of Section 28, and the
20 Strata acreage that's shown on that, that was ultimately
21 pooled, would have been the south half of the southwest
22 quarter?

23 A. Yes, the acreage that Strata and others own an
24 interest in the south half of the southwest quarter of
25 Section 28.

1 Q. Strata Producing Company, is that a production --
2 A. Corpora- --
3 Q. -- company?
4 A. Production company.
5 Q. Strata Production Company?
6 A. That's correct.
7 Q. Are you simply doing business under that name, or
8 is that a corporation?
9 A. It's a New Mexico corporation.
10 Q. Is that a federal oil and gas lease for that
11 property?
12 A. Yes, it is.
13 Q. And was the federal oil and gas lease issued to
14 Strata Production Company?
15 A. Yes, it was.
16 Q. Your arrangement with the partners in Section 33
17 for the well, the Arrowhead well -- What do you call that?
18 What's your well in 33 to the south?
19 A. The Gavilon Federal Number 1.
20 Q. All right.
21 A. Are you referring to the well in the northwest of
22 the southwest of 33?
23 Q. I think so. That's the only symbol here. Is
24 that the Gavilon well?
25 A. Yes, it is.

1 Q. All right. Your arrangement with those partners
2 caused you to create an arrangement where they had the same
3 type of relationship in a percentage way in the south half
4 of 28?

5 A. Well, I'm not sure it was as formal as that.
6 This was done in 1989, and I joined the company in 1992, so
7 I'm relying on the records that are in the files.

8 But typically, the way these matters are handled
9 is that if we have an existing lease and we purchase an
10 offset lease, then in many cases -- not in all, but in many
11 cases, we'll allow the working interest owners under the
12 property that we operate, adjoining the property that we've
13 purchased, to participate.

14 Q. All right. Let me ask you this. That occurred
15 for the south half of the southwest quarter of 28 in
16 approximately August of 1989. Was that --

17 A. I believe that's correct.

18 Q. All right. From August of 1989 --

19 A. It was the fall of 1989.

20 Q. The fall of 1989.

21 A. Yeah.

22 Q. Did that arrangement in the fall of 1989 between
23 these partners and Strata remain the same arrangement all
24 the way till today?

25 A. Well, I -- you know, I guess it's not -- they're

1 not a formal agreement, there's not a partnership
2 agreement. In Section 33 there is a joint operating
3 agreement that governs the relationship.

4 Q. I see. What I'm looking for is --

5 A. In the south half in the lease, I think that the
6 way it was handled is, a letter was sent out and said, if
7 you want to participate, purchase your part of this lease,
8 you may do so by paying your part of the acquisition costs
9 and the expenses related to purchase of the lease, and also
10 there will be a one-and-a-half percent retained geologic
11 override.

12 Q. All right, that's what I'm asking.

13 A. And --

14 Q. With regards to that deal, then, there at least
15 was a letter sent by Strata to these partners describing
16 the arrangement?

17 A. Yes.

18 Q. All right. Was it formalized beyond the letter
19 whereby there's a written agreement as to this
20 relationship?

21 A. Not to my knowledge, no.

22 Q. Okay. And to the best of your recollection, that
23 arrangement remained the same from the fall of 1989, on to
24 at least December of 1995?

25 A. I would guess so, yeah.

1 Q. All right. Is that the only kind of arrangement
2 you have with these particular partners, or do you have
3 other arrangements with this same group of people with
4 regards to other properties?

5 A. Well, many of these -- many of the leasehold
6 owners in the south half of -- in the Section 28 lease, if
7 I may refer to it as that, also have a working interest
8 with us in other properties.

9 Q. When I look at the south half of the southwest
10 quarter of the section, the Strata interest --

11 A. Uh-huh.

12 Q. -- at the time the force-pooling case was served
13 on Strata, on December 9th of 1992, a search of the public
14 record would have disclosed that that interest was still
15 held by Strata Production Company; is that not true?

16 A. Yes.

17 Q. All right. When I look at the letter you sent
18 Mr. Smith, dated January 13th of 1993, it was introduced in
19 the Examiner hearing, and it's also in the package of
20 documents today.

21 A. This is the letter that lists the owners, their
22 addresses and their interests.

23 Q. Yes, sir. Yes, sir. I was trying to compare the
24 list of affidavits introduced in today's exhibits with the
25 list on the letter, and I do not find an affidavit from

1 something called Arrowhead Oil Corporation.

2 A. Uh-huh.

3 Q. Why do I not find an affidavit from them?

4 A. I do not know.

5 Q. Okay. When I go through the list, I find an
6 affidavit for the parties with the exclusion of Warren,
7 Inc. I don't find an affidavit today for Warren, Inc. Is
8 there an affidavit from Warren, Inc.?

9 A. If it's not in this package, there must not be
10 one.

11 Q. All right. For either of those two companies,
12 did you assign them an interest in December of 1995 with
13 regards to the south half of the southwest of Section 28?

14 A. We assigned out the interest, yes.

15 Q. So they were --

16 A. Without looking at the document, I can't tell you
17 exactly who we assigned it to and what the percentages, but
18 it should be consistent with this, because this is the
19 ownership.

20 Q. All right. This letter of January 13th, 1993,
21 then, represents the undisclosed partners?

22 A. That's correct.

23 Q. And the absence of those parties' affidavits in
24 the record today is no indication that they don't have an
25 interest?

1 A. That's correct.

2 Q. All right. When I look through the list on the
3 January 13th, 1993, letter, I see -- and I compare the
4 affidavits -- I see Larry Lunt has signed a number of those
5 affidavits on behalf of Landwest, Permian Hunter
6 Corporation, Xion Investments.

7 Is that the same individual for all those
8 companies?

9 A. I believe so, yes.

10 Q. And who is Larry Lunt? Do you know him?

11 A. He's a gentleman that resides in Utah, Salt Lake
12 City, I believe, and he has a number of entities that
13 participate, invest in oil and gas ventures.

14 Q. All right. When I look at the partnership list
15 here, I -- the partners list, it's not a partnership list
16 -- the partner list here, I find the name Scott associated
17 with a number of these names.

18 Is there a relationship between the Scotts
19 involved on the list?

20 A. Yes.

21 Q. And what is that relationship?

22 A. They're family, generally.

23 Q. All right.

24 A. For example, Scott Exploration is obviously a
25 company.

1 Q. In what we've marked as Mitchell Exhibit 1 to
2 today's hearing, there is a letter from you to Mr. Smith
3 dated March 16th of 1993.

4 MR. STRATTON: I'm sorry, I was --

5 MR. KELLAHIN: Yes, sir.

6 MR. STRATTON: -- I was asleep when you did your
7 exhibits. Is all of this Exhibit 1?

8 MR. KELLAHIN: It is, and I --

9 MR. STRATTON: Okay.

10 MR. KELLAHIN: -- apologize --

11 MR. STRATTON: All right.

12 MR. KELLAHIN: -- for doing it that way, but if
13 you'll thumb through with me, Mr. Murphy, can you find the
14 March 16th letter? Do you find that?

15 THE WITNESS: Yes, I do.

16 Q. (By Mr. Kellahin) All right. If you'll look
17 down in the bottom of the first paragraph, it says in your
18 letter, "Strata can only negotiate for it's [sic] own
19 account and I encourage you to notify the other leasehold
20 partners before taking any further action."

21 Do you see that?

22 A. Yes, I do.

23 Q. Do you find any documentation in any of your
24 letters to Mr. Smith or to Mitchell prior to that date
25 where you advise him in writing that you're negotiating

1 only for your own account?

2 A. Yes.

3 Q. All right.

4 A. I think you'll find it throughout the documents
5 where it's subject to partner approval.

6 And also, during our numerous conversations I
7 told him that -- and -- that the arrangement would be that
8 Strata would attempt to negotiate a deal with Mitchell, and
9 if we could recommend that deal to the other partners, we
10 would do so, we would try to facilitate it. But if we
11 couldn't, we won't. And --

12 Q. Show me where that has occurred in the
13 correspondence prior to March 16th of 1993.

14 A. Well, December 9th -- If you're looking for those
15 exact words somewhere else, I'm not familiar that they're
16 there. They may or may not be. It's been some time since
17 I've looked at this document -- these letters.

18 But it's obvious that on December 9th, that you
19 find final approval by Strata and its partners. You find
20 that consistently throughout the documents.

21 Q. All right. When Mr. Smith called you in October
22 to propose the Tomahawk well --

23 A. Excuse me, and also I think that you should
24 probably go back to the first paragraph of the January 13th
25 correspondence. He has expressed, "During our telephone

1 conversation this morning you expressed some concern that
2 you had not been provided a list of leasehold partners and
3 ownership in the above referenced lease...I provide this
4 information to facilitate your notification of said
5 owners."

6 Q. Yes, sir, I'm talking about something different.
7 When I look at the March 16th letter --

8 A. Yes.

9 Q. -- it's a direct written communication to Mr.
10 Smith, putting him on notice that you are only responsible
11 for negotiating for your own account to Strata.

12 MR. STRATTON: I'm going to object.

13 Q. (By Mr. Kellahin) Isn't that what that says?

14 A. I think that says what it says, but I would also
15 say that "I provide this information to facilitate your
16 notification of said owners" is found specifically in
17 January 13th, and that was consistent with Mr. Smith's and
18 my telephone conversations, beginning in October.

19 Q. All right. When you got the well proposal for
20 the Tomahawk well in October, 1992 --

21 A. I don't think we actually got the proposal, but
22 if I recall -- and once again, we'd have to look at the
23 documents.

24 Q. All right, October --

25 A. I think we got a telephone call that said that

1 we're considering drilling this well, is what --

2 Q. By then, November 20th of 1992, there's a letter
3 from Mitchell to Strata, formally proposing the Tomahawk
4 well. I think that's the proposal date of the actual well
5 in writing, where you get an AFE.

6 MR. STRATTON: Is there an exhibit number on that
7 so that we can refer to it, or --

8 THE WITNESS: Well, it's your 18.

9 MR. KELLAHIN: It's Exhibit 10 in the prior
10 hearing, Mr. Examiner.

11 Q. (By Mr. Kellahin) All right, when you got --

12 A. Excuse me, if I could. I want to -- You asked me
13 if this was the first formal notice --

14 Q. Yes, sir.

15 A. -- and if I could take just a minute here...

16 He notifies that they intend to drill a well,
17 describes the location, reviews -- "have reviewed your
18 proposal to sell the deep rights...", found them to be
19 unacceptable, and then make a farmout request, it looks
20 like, subject to Mitchell management approval, goes into
21 those terms and says that if we don't wish to farm out on
22 that basis, they propose that we join, and he includes
23 AFE --

24 Q. That's a well proposal, isn't it?

25 A. That's a well proposal.

1 Q. All right. When you got the well proposal, did
2 you transmit that document to any of your partners?

3 A. No.

4 Q. When you got a copy of the compulsory pooling
5 application on December 9th of 1992, did you transmit that
6 pooling application to any of these partners?

7 A. Not that I recall, no.

8 Q. All right. Prior to the hearing --

9 A. And you need to understand, Mr. Kellahin, we were
10 still in negotiations at that point. You know, we were
11 still negotiating for either the sale or the farmout of the
12 lease.

13 Q. I understand.

14 A. Okay.

15 Q. The hearing on January 21st, did you notify any
16 of these partners prior to the hearing that there was a
17 compulsory pooling hearing to be scheduled on that date?

18 A. No, not that I recall, not in a formal way.

19 Q. How about in an informal way?

20 A. No.

21 Q. Prior to the pooling hearing, had you talked to
22 these partners about the well proposal?

23 A. No, I talked to -- I had talked to some of them
24 with respect to the terms that were outlined in the
25 December 30th of 1992.

1 Now, remember this is in the middle of the
2 holidays. We've got 16 partners, and -- but I know them
3 fairly well and I felt like that those that I could not
4 contact directly would go along with these terms, since I
5 had talked to enough people about the sale terms that are
6 outlined in the December 30th agreement, that I felt like I
7 could execute it on that basis.

8 Q. All right, let me set a time frame for you.

9 A. Okay

10 Q. December 9th of 1993, you've got a compulsory
11 pooling application in your hand which docketed the case for
12 hearing on January 7th. That's the sequence, all right?

13 A. December of 1993?

14 Q. December of 1992, I'm sorry, I misspoke. It's
15 December of 1992.

16 A. All right.

17 Q. December of 1992, you've been served with a
18 pooling application that's going to hearing on January 7th
19 of 1993. Within that period of time, did you talk to any
20 of your partners about the well proposal?

21 A. Not about the well proposal, I don't think,
22 because we were coming very close to a deal to sell to
23 Mitchell, so we were talking on the basis of the terms that
24 -- of sale terms.

25 Q. I understand. What I'm asking you is, did you

1 communicate to these partners that there was any kind of
2 time deadline that required this thing to be resolved in
3 some fashion because you were facing a compulsory pooling
4 hearing on the 7th of January?

5 A. I don't recall doing that, no.

6 Q. All right. The case was continued, then, and
7 finally heard on January 21st of 1993?

8 A. Okay, sounds about right.

9 Q. All right. From January 7th to January 21st, did
10 you communicate with any of your partners?

11 A. I don't recall, but no, I don't think so.

12 Q. All right, you -- To the best of your
13 recollection --

14 A. To the best of my recollection, the answer is no.

15 Q. -- you didn't talk to them about the deal, and
16 you didn't talk to them about the compulsory pooling
17 hearing?

18 A. I don't think so, no.

19 Q. All right. The Division -- you came to the
20 hearing, you testified, you had a geologic witness that
21 also testified on behalf of --

22 A. Yes.

23 Q. -- your position?

24 A. Yes.

25 Q. All right. Was there anything about your

1 presentation with regards to that hearing that did not
2 adequately represent your position at that hearing?

3 A. Represent Strata's position?

4 Q. Yes, sir.

5 A. I don't believe so.

6 Q. Okay. Can you think of anything that in your
7 representation at that hearing would not have also
8 represented these partners in terms of their position?

9 A. I can't make that determination, Mr. Kellahin.
10 They -- The partners would have to have the opportunity to
11 represent themselves, if they -- you know, to determine
12 what they feel is adequate.

13 Q. Following the compulsory pooling order that was
14 issued in this case -- The order is issued on February 15th
15 of 1993, and then if you'll look at Mitchell Exhibit 1 to
16 today's hearing, it's a package of correspondence, and then
17 we look on February 17th of 1993, Mr. Smith is sending to
18 you a copy of the pooling order and a copy of the
19 notification of election pursuant to the pooling order.
20 Did you communicate this letter to any of your partners?

21 A. No.

22 Q. Did you transmit the pooling order to any of your
23 partners?

24 A. No, I don't believe so.

25 Q. After February 17th, on February 19th, you send a

1 letter to Mr. Smith -- this is after the hearing and after
2 the order -- again proposing that you are going to assign
3 to Mitchell this interest, and I assume you're talking
4 about not just Strata's interest but the total interest of
5 you and the partners?

6 A. Well, once again, this was a proposal, and it was
7 once again made subject to partner approval.

8 Q. All right.

9 A. And it was -- we were trying to -- we're
10 continuing to try to resolve this.

11 Q. All right. February 24th, it's post-order --
12 post-notice for your election, and on February 24th, you're
13 again writing Mr. Smith, and you're following up some
14 conversations, and again you're proposing that you strike a
15 deal with him with regards to the entire interest that
16 Strata had, which would include the partners' interest?

17 A. You might want to refer to the second full
18 paragraph: "It is my intention to discuss Mitchell's
19 proposal..." I'm confirming a proposal that was made by
20 Mitchell, and in order to -- it appears, to avoid any
21 misunderstanding about what that proposal was.

22 And I say that this is a follow-up to our
23 conversation, I outline -- I'm trying to restate the terms.
24 And then I say, "It is my intention to discuss Mitchell's
25 proposal with the other lease owners therefore, if the

1 above does not accurately reflect Mitchell's proposal
2 please advise me immediately."

3 Q. All right. If I remember correctly, the
4 assignment of Strata -- the assignment by Strata to the
5 undisclosed partners, the actual assignment, was placed of
6 record in December of 1995?

7 A. That sounds about right, but I'd have to look at
8 it to be sure.

9 Q. All right. Why did you wait until November or
10 December of 1995 to record that assignment?

11 A. Well, actually we made a number of recorded
12 assignments last year. We had a landman come in and spend
13 many months in our office recording leases that were under
14 Strata's name but in fact were owned by Strata and others,
15 and it was done as part of that process, is what I recall.

16 Q. You referred with Mr. Stratton to a letter of
17 January 12th of 1993. It was Mitchell's Exhibit 16 at the
18 prior hearing. It's on your exhibit list for today as
19 Exhibit 23. Do you have a copy of that?

20 A. I do.

21 Q. All right. When you testified at the last
22 hearing -- and I believe you've used this document to
23 refresh your recollection today -- I believe you testified
24 then and are testifying now that this represents an
25 accurate recollection of the details concerning these

1 various phone calls with Mr. Smith?

2 A. Yeah, and actually you need to recall that this
3 isn't, once again, a response to Mitchell correspondence.
4 Mr. Smith had written a letter and had provided a summary
5 of his recollections of the telephone calls. I went back
6 and looked at my phone logs and my other records and took
7 issue with him on a number of points. And so this was to
8 clarify, supplement and basically outline what my notes
9 indicated the conversations were.

10 Q. All right. There was a prior letter from Smith
11 to you in which he went into some detail summarizing his
12 phone calls and his understanding of what you were talking
13 about, and this is your response, if you will, where you
14 detail what your notes reflected?

15 A. That's correct.

16 Q. All right. And both those documents were
17 introduced before the Examiner at the prior hearing?

18 A. I believe so.

19 Q. All right. Turn with me to page 3, and let's
20 look at the top paragraph on that page. If you start
21 reading after "October, 1993", does your letter indicate
22 and do your notes confirm, referring to Smith, you say,
23 "You went on to say that it was your intent to make a
24 formal farmout request in writing based upon what you
25 considered to be 'reasonable terms' and if Strata did not

1 accept then you would 'force pool' us."

2 EXAMINER STOGNER: Mr. Kellahin -- ?

3 MR. CARROLL: Pardon me, Mr. Kellahin?

4 MR. KELLAHIN: Are you with me?

5 EXAMINER STOGNER: No.

6 MR. CARROLL: No.

7 MR. KELLAHIN: All right. January 12th --

8 MR. CARROLL: Okay.

9 MR. KELLAHIN: -- page 3, top of the page.

10 MR. CARROLL: All right.

11 Q. (By Mr. Kellahin) These are your notes from a
12 telephone conversation that has occurred on November 18th
13 of 1992; is that not right, sir?

14 A. Uh-huh.

15 Q. All right. And do your notes not reflect the
16 following sentence in that paragraph: "I informed you...",
17 meaning you informing Smith, "...that due to the lack of
18 technical basis, a point you admitted, Strata would defend
19 itself and it's [sic] partners rights during any proceeding
20 including a force pooling hearing."?

21 A. That's right.

22 MR. KELLAHIN: No further questions.

23 MR. STRATTON: I don't have any further
24 questions.

25 EXAMINER STOGNER: No further questions, Mr.

1 Stratton?

2 MR. STRATTON: (Shakes head)

3 EXAMINATION

4 BY MR. CARROLL:

5 Q. Mr. Murphy, in your January 12th letter to Mr.
6 Mitchell where you set forth this phone log --

7 A. Uh-huh.

8 Q. -- that you maintained -- and I think this --
9 between December 9th and December 30th, you note that you
10 talked to a number of the partners regarding the proposed
11 transfer or assignment; is that correct?

12 A. Yes -- Well, I talked to some of them with
13 respect to the terms that were outlined in the December
14 30th, 1992, letter, is what I recall.

15 Q. Well, that was in the future, so you're talking
16 about the terms that would be set forth in a future letter,
17 which was December 30th; is that correct?

18 A. Well, let me see. I'm sorry, you're asking about
19 the time frame between December 9th and December 30th?

20 Q. Right, which in your January 12th letter puts
21 down your phone log as to -- that you called a number of
22 these partners and discussed this deal with them?

23 A. Yes. I mean, that's what I recall, is that once
24 we -- once I felt like that we had an agreement with
25 Mitchell, that was set forth in the December -- and I

1 probably -- if I recall, I had a draft of the December
2 30th, 1992, agreement.

3 Q. Okay, that would be set forth in it?

4 A. Yeah, because that was -- remember, that was --
5 that document outlined the terms that Mr. Smith and I had
6 agreed upon, at least my understanding.

7 Q. And you discussed these terms with your partners
8 in these conversations?

9 A. Yes, with some of them. And once again, as I
10 say, that was during the holidays, and there were 16 of
11 them, so I'm not sure how many I reached. But I felt like
12 that was a deal that they could -- they would accept, given
13 that I had received acceptance from the ones that I had
14 talked to.

15 Q. And you didn't mention the compulsory pooling
16 application in any of those conversations?

17 A. Not that I recall, no, sir.

18 Q. Why was that?

19 A. I can't give you a specific answer except to say
20 that we had struck a deal for the sale of it, and it was
21 moot, in my mind. I mean, we were selling our interests to
22 Mitchell. So...

23 Q. Did any of your partners show up for the January
24 21st hearing?

25 A. Not that I recall, but I -- I'd have to -- Are

1 you talking about the force-pooling hearing?

2 Q. Right.

3 A. I don't think so, no.

4 Q. And then after the force pooling order was
5 issued, even though you had -- it looks like numerous
6 conversations with your undisclosed partners regarding
7 continued attempts to assign this lease to Mitchell; is
8 that correct?

9 A. Well, I think we were still -- Once again, I was
10 making all of those subject to partner approval, and --

11 Q. Were you in contact with your partners during
12 these negotiations?

13 A. I don't recall, but I don't think so. I mean,
14 basically once again we were trying to come to terms that
15 Strata could recommend. And, you know, the -- We were
16 making that subject to partner approval. Once the terms
17 had been agreed upon between Mitchell and Strata, then once
18 again I would seek to get partner approval.

19 Q. But not until you came to terms with Mitchell?

20 A. Right. I mean, there were numerous conversations
21 going back, and trying to relay all of those to 16
22 different people would be impossible.

23 Q. Okay.

24 A. And once again, Mitchell had been provided with a
25 list of the names and addresses. My feeling was that with

1 respect to the force-pooling application and activities,
2 they were the operator, they were responsible, and they
3 also knew the details of the operation.

4 Q. Regarding the notice of election that Mitchell
5 sent to Strata, what did Strata do with that? Decline to
6 participate?

7 A. Which one are you referring to? Is this the
8 November 20th?

9 Q. No, this is after the force-pooling order was
10 issued. February 17th is the notice from Mitchell to you,
11 notifying you of your election rights under the order.

12 A. Well, it appears that -- from the letters and
13 documents that come after that, we're continuing to try to
14 work a deal out with Mitchell, so we never made a formal
15 election --

16 Q. Was Strata a participating interest owner in this
17 well under the force-pooling order?

18 A. I'm sorry?

19 Q. Did Strata elect to participate in the well under
20 the force-pooling order?

21 A. I don't think we formally made an election.

22 Q. So you did not elect to participate. So you were
23 assessed a 200-percent penalty?

24 A. Yes, that's what I recall.

25 Q. Now, Mitchell, it looks like, offered you an all-

1 or-none approach: Either you elect as to the entire 25-
2 percent working interest in the unit that Strata had record
3 title to -- and it couldn't just elect as to the 18.5-
4 percent interest; is that correct?

5 A. That's correct.

6 Q. So you turned it down, saying you're not going to
7 elect and pay for other partners' interests?

8 A. Well, I think we turned it down because we didn't
9 see that that was really an alternative for us. And I'm
10 not sure "turned it down" is really the right way. We just
11 simply didn't make an election, because it could not be a
12 meaningful election if it was an all-or-none election, and
13 we could only elect to our 18.75 percent of the leasehold
14 rights. The other parties would have had to elect to their
15 portion of it.

16 Q. But you didn't inform those other parties of this
17 election, right?

18 A. No, because once again, I mean, if you look at --

19 Q. Well, it seems to me this was a, you know,
20 formalized proposal put forth to Strata, and when a
21 proposal was put forth before by Mitchell regarding the
22 assignment of the interest, you said you have to go back to
23 your partners. But when you were presented -- when Strata
24 was presented with an election right under the force-
25 pooling order, it didn't go back to its partners; is that

1 correct?

2 A. Well, we were granted a -- it appears, on
3 February 17, an election, an all-or-nothing election.

4 Q. That you didn't relate to your partners?

5 A. That's correct. We then had a series of
6 conversations and correspondence going back and forth
7 between Mitchell and Strata, trying to negotiate a sale of
8 this property. Those letters are in Mr. Kellahin's Exhibit
9 1.

10 Q. Were they subject to the other partners'
11 approval?

12 A. Yes.

13 Q. Why, in the -- let's see, November 6th of 1995,
14 did you then send a letter to the partners regarding the
15 well in question and their rights under the force-pooling
16 order?

17 You didn't -- Strata didn't inform them prior to
18 1995, and let over two and a half years elapse and then
19 sent them notice that they had some rights under the force-
20 pooling order. Why is that? I don't understand.

21 A. I can't give you a good answer, except to say
22 that we were making assignments at that time, and this was
23 an issue that we felt like, as part of the assignment
24 process, they should be aware of, and I probably did that
25 under advice of counsel, I would assume.

1 Q. Did you have advice of counsel as to whether to
2 give them notice after the force-pooling order?

3 MR. STRATTON: Well, I'm going to object to that.
4 I mean, the advice of counsel is attorney-client privilege.
5 It's also irrelevant, so -- and I don't --

6 Q. (By Mr. Carroll) How many people did you deal
7 with, with these 16 partners?

8 It sounded like all the Salt Lake City interests
9 were the same person and all the Scott interests were the
10 same person.

11 A. I don't recall. I tried to contact -- The only
12 time I remember making a -- trying to get a feel for what
13 people wanted to do was with respect to the terms that were
14 done and the deal that was set forth in the December 30th,
15 1992, correspondence.

16 Q. So even though 16 partners were listed, there was
17 considerably a lesser number of people to contact regarding
18 these 16 interests?

19 A. That's probably right. Maybe it was 10 or 12. I
20 don't know.

21 Q. Why haven't Arrowhead and Warren been included in
22 this action?

23 A. I don't know. Once again, I'm not a Movant to
24 this; I just am here to testify.

25 Q. What, in your opinion, did paragraph 7 of the

1 December 30th letter mean, where you have authority to bind
2 the other partners?

3 A. It means that with respect to the terms that were
4 outlined in that letter, that I felt like I could make that
5 representation, that these were partners that I had some
6 knowledge of, and -- You know, it's one thing, Mr. Carroll,
7 to feel comfortable about making a sale of a lease for cash
8 consideration and an override, and another thing to try to
9 say that, well, we're going to represent -- we're going to
10 make an election under a very expensive well on your
11 behalf, or we're going to try to represent you in some sort
12 of hearing. Those are two very different sorts of things.

13 This was a specific deal with consideration of
14 cash and override that I felt like I had enough comfort to
15 say that we would do this deal, based on the conversations
16 with the people that I had.

17 Q. And what did you mean by, I guess Mr. Kellahin's
18 last question, about the January 12th letter where you said
19 you would assert your partners' rights at the hearing?

20 A. I think the -- Let's look at that.

21 Q. It's on page 3 at the end of the top paragraph.

22 A. We said that Strata would defend itself. And --

23 Q. "...and it's partners...", right?

24 A. "...and it's partners..." And that, you know --

25 Q. Did you do that?

1 A. -- my view was that we ought to have -- Remember
2 now, this is in November -- This is November 18th. And it
3 was my view that we -- that, based on what Mr. Smith had
4 told me, is that the primary reason that they wanted to
5 form a west-half proration unit was for lease-expiration
6 purposes, and that with the lack of the technical basis, we
7 felt like that was unjustified and that Strata would defend
8 itself, and --

9 Q. And it says "and it's partners rights". What did
10 you mean by that?

11 A. What I meant by that is that the partners ought
12 to have a right to be defended too, whether we did it or
13 somebody else did it, but they certainly ought to be heard.

14 Q. But you didn't inform them of the December 9th
15 application for the force-pool hearing?

16 A. I don't believe under statute I'm required to do
17 that.

18 Q. I guess I--

19 A. Remember --

20 Q. -- don't understand --

21 A. Remember --

22 Q. -- why on November 18th --

23 A. Remember, Mr. Carroll --

24 Q. -- you said --

25 EXAMINER STOGNER: One at a time.

1 THE WITNESS: -- this is a generalization, a
2 summation; this isn't transcripts with direct quotes.

3 EXAMINER STOGNER: Mr. Carroll?

4 MR. CARROLL: I guess I find it hard to
5 understand why you asserted you would assert your partners'
6 rights during a force-pooling hearing and then, when you
7 receive a force-pooling application, don't even inform them
8 that it's been filed.

9 A. Well, maybe it had something to do with the fact
10 that we were about to make a deal on a sale. We had --
11 Once again, looking at the timing. You see that there are
12 proposals and counterproposals going back, and we're about
13 to -- we're about to sign a deal as set forth on the
14 December 30th.

15 And when it finally broke down, I encouraged
16 Mitchell to notify those partners and gave them their names
17 and addresses to do so, because those partners needed to
18 make their own election with respect to this well and what
19 they may want to do.

20 Q. So you had continued to represent the partners
21 regarding the assignment of the lease but wouldn't even
22 tell them about the force-pooling case or the election
23 under the force-pooling order?

24 A. Well, we were negotiating a lease sale that had
25 cash and override as consideration, and I spoke to enough

1 of them to feel like that they would go along with this,
2 because, as I had told Mr. Smith to begin with, that
3 generally they would go along with what we recommended.
4 And I felt comfortable in doing that. And that -- If
5 somebody took issue with it, then that was an issue between
6 Strata and undisclosed partners.

7 It took Mitchell out of the loop, which is
8 something that I believe they wanted with respect to the
9 sale.

10 Q. Did you keep detailed phone logs of all your
11 phone conversations?

12 A. Generally, yes.

13 Q. Do you have detailed phone logs with these
14 undisclosed partners?

15 A. I have logs of most of my phone conversations.
16 Sometimes I don't have that log at the phone that I may be
17 calling from, if I'm calling from the house and -- But in
18 most cases, I keep the phone logs of -- I keep a phone log.

19 Now, I'm not saying that there's a recording of
20 every call I've ever had. But with respect to certainly
21 important deals, I try to list who I talk to and what we
22 talk about.

23 Q. So you regard the finalization of the terms of an
24 assignment with Mitchell as an important phone conversation
25 with an undisclosed --

1 A. And I may --

2 Q. -- partner?

3 A. -- or may not have it, I don't know. I know that
4 I kept track of the phone calls that I had with Mitchell,
5 that I referred to in drafting the January 12th letter.
6 That's all I can tell you.

7 Q. Mitchell never asked you for a list of the
8 undisclosed partners prior to early January, and then you
9 sent them the January 13th letter?

10 A. (Nods)

11 Q. You didn't volunteer it up to that point either?

12 A. I don't recall. They knew that they existed
13 and -- the undisclosed or the other leasehold owners
14 existed in a generic sense.

15 And what I recall -- and I think it's maybe in
16 here -- is that Mr. Smith stated some concern that he had
17 never been provided with that.

18 And I said something like, Well, you've never
19 asked for it, but I'm happy to send it to you. So here it
20 is, and given that our deal's broken down, you need to
21 contact these people.

22 Q. But you kept in contact with them regarding the
23 assignment?

24 A. No, I got comfortable that I could make the deal
25 as set forth in the December 30th letter.

1 Q. Okay. So there's two relationships -- you could
2 represent -- Well, you were under the impression you could
3 represent the undisclosed partners in negotiation with
4 Mitchell, but not the finalization?

5 A. No, no, not at all. Look. What I --

6 Q. So --

7 A. What I told Mr. Smith, which is common in these
8 cases, is that we own interest and we had undisclosed
9 owners that own interest, we could not bind them, but that
10 once we got to a deal that we felt comfortable that we
11 could recommend, that we would recommend it to those other
12 owners, and that typically -- not guaranteed but
13 typically -- those owners would go with our recommendation.

14 So we negotiated for ourself through this period
15 of time. And when we finally struck a deal, that's
16 outlined on the December 30th, 1992 letter, I discussed
17 that with some of the partners, I don't remember who. But
18 I got comfortable that they would go along with that, that
19 the undisclosed owners would agree to the terms outlined in
20 the December 30th, 1992, agreement.

21 Now, logistically and from a practical
22 standpoint, it's -- You can't talk to 10 or 12 people every
23 day about every nuance of a negotiation. It's impractical.

24 So with the deal that is specifically outlined in
25 the December 30th letter, I got comfortable.

1 Now, if one of the leasehold owners had not liked
2 that, then they would be coming after Strata. But I felt
3 like that I could do that.

4 Q. So you didn't have authority to bind the, but you
5 had the duty to let them know of the final terms of the
6 deal prior to signing on their behalf?

7 A. I had the -- I got comfortable with the deal that
8 was outlined in the December 30th letter agreement, that I
9 could sign that.

10 Q. With their approval?

11 A. Well --

12 Q. You had their prior approval then?

13 A. No, I didn't have all of their prior approval. I
14 got a comfort level, Mr. Carroll.

15 In other words, we're in the middle of the
16 holidays, there's ten or twelve leasehold owners, we've got
17 a deal that's just been verbally agreed to between Mitchell
18 and Strata, and I made some phone calls and said, Here's
19 the deal, we recommend that we take it, we want to get this
20 thing flanged up, I'm going to sign this letter agreement,
21 how do you guys feel about it?

22 It probably went something like that, and I may
23 have talked to one of them or two or them -- I don't
24 remember. But I got comfortable that I could sign that
25 deal.

1 Q. Okay. You felt that Strata didn't have a duty to
2 inform the undisclosed partners of the force-pooling
3 hearing or of their election to participate under the
4 force-pooling order, that's correct?

5 A. That's correct.

6 Q. Why did you all of a sudden, then, have a duty in
7 November of 1995 to inform them of their rights under the
8 force-pooling order?

9 A. Well, I was making an assignment and probably
10 felt like that since this affected the property, they
11 needed to know about it. We were assigning the interest
12 out.

13 Q. Would you have said anything if the well had been
14 a dryhole?

15 A. I don't know. My feeling was that we were making
16 an assignment, they needed to know what I knew about it.

17 Q. And is it your opinion that these undisclosed
18 partners had no knowledge of the force-pooling hearing or
19 of their election to participate or of the performance of
20 the well prior to November 6th when you -- of 1995, when
21 you informed --

22 A. That's my understanding, and I -- You know,
23 there's a whole stack of the affidavits there that you can
24 look at.

25 Q. Your documentation as to these interests -- I

1 know they've been stipulated to, but you joined the
2 corporation in 1991 or 1992?

3 A. Late 1991 or early 1992.

4 Q. And their interests were already on the books, so
5 you don't know what transpired for them to acquire those
6 interests?

7 A. Not the details of it, no.

8 MR. CARROLL: That's all I have.

9 EXAMINER STOGNER: Thank you, Mr. Carroll.

10 Mr. Stratton, redirect?

11 MR. STRATTON: I don't have anything else.

12 EXAMINER STOGNER: Any other questions?

13 You may be excused.

14 Mr. Stratton, do you have anything further to
15 present?

16 MR. STRATTON: Since Mr. Smith is here, let's
17 call Mr. Smith and see what he has to say.

18 EXAMINER STOGNER: Mr. Kellahin?

19 MR. KELLAHIN: Mr. Smith, have a seat.

20 EXAMINER STOGNER: Let the record show that Mr.
21 Smith has been sworn in.

22 Mr. Kellahin?

23 MR. KELLAHIN: Mr. Stratton's witness.

24 MR. STRATTON: My witness, Mr. Examiner.

25 EXAMINER STOGNER: I'm sorry.

1 STEVEN J. SMITH,

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

4 DIRECT EXAMINATION

5 BY MR. STRATTON:

6 Q. Mr. Smith, will you state your name for the
7 record, please?

8 A. My name is Steven James Smith.

9 Q. And what is your current occupation?

10 A. I'm a senior landman for Mitchell Energy
11 Corporation.

12 Q. And were you -- You were also senior landman, as
13 we discussed here, back when this application was
14 happening; is that not correct?

15 A. That's correct.

16 Q. And you've heard Mr. Murphy's testimony here
17 today; is that correct?

18 A. I have.

19 Q. And he's testified that in October you all
20 discussed the fact that there were other partners in this
21 leasehold; is that correct?

22 A. That's correct.

23 Q. Do you agree with that?

24 A. He mentioned that he had undisclosed partners,
25 that he didn't feel the need to disclose them to me. I

1 didn't -- as long as he had -- Strata had record title,
2 both county and federal, to the lease, and based upon
3 assurances the he could negotiate on behalf of all his
4 partners, no, I didn't.

5 Q. So your position is that record title is what is
6 important as far as who the owners of the leasehold are?

7 A. As far as taking an assignment or -- Yeah, if the
8 person who has record title is -- tantamount to the owner
9 of record, public notice.

10 Q. So if I buy a particular piece of property from
11 someone and I don't record that interest with the county
12 clerk, is it your position that I don't own that property?

13 A. It's my position that there's no public ownership
14 of your owner --

15 Q. What do you mean --

16 A. -- or public record -- or public notice of your
17 ownership.

18 Q. Okay, so your position is, there's no public
19 notice. But I do own that property, do I not?

20 A. You have title to it in some color.

21 Q. Tell me what you mean by that. What type of
22 color would that be?

23 A. Well, you hold a hip -- what they call a dresser-
24 drawer deed.

25 Q. I don't -- You're going to have to explain what a

1 dresser-drawer deed is for me.

2 A. Well, it is a deed that's not of record, that
3 doesn't provide anyone public notice of your ownership.

4 Q. Are there other ways to provide notice of my
5 ownership, other than filing it in the real estate records?

6 A. None that provide actual public notice.

7 Q. What does that mean?

8 A. That in the normal course of business, a prudent
9 buyer must ascertain the ownership from the public records.

10 Q. Your position is that in proceeding with this
11 application, that Mitchell only had to notify record
12 interest owners of public record, recorded in the real
13 estate records?

14 A. Along with the assurances by Strata that they had
15 the capacity to negotiate for and represent their
16 undisclosed partners, which they chose to leave undisclosed
17 until it became convenient for them not to.

18 Q. Let me ask you this question, Mr. Smith. I don't
19 represent Strata in this case, as you know; I represent
20 some other Movants who are listed in the motion, and I
21 think you're aware of them. You certainly received a
22 letter about them?

23 A. Yes, I did.

24 Q. Now, what do you have from them that indicates
25 that Strata could represent their interests in a formal

1 proceeding?

2 A. Nothing. I have nothing other than a letter from
3 him claiming that they own something.

4 Q. So is it your position, then, for instance, that
5 some other party could come in and say they represent
6 Mitchell, and then you wouldn't have to notify Mitchell in
7 a similar proceeding?

8 A. Well -- Repeat your question, please.

9 Q. If I was noticed in a pooling application like
10 this, and I had half an interest in the leasehold, as did
11 Mitchell, and I came in and said, you know, I've talked to
12 Mitchell and they said I can represent them here, so you
13 don't even need to contact them, and they say, Okay, we'll
14 just deal with you, not with Mitchell, is that reasonable?

15 A. Depends upon the assurances of the parties
16 involved.

17 Q. I assure 100 percent.

18 A. Well --

19 Q. Mitchell told me they can do it, and I'm assuring
20 that I can represent Mitchell. You don't even go to talk
21 to them.

22 A. Do you have 100-percent record title, though, the
23 property you're --

24 Q. Let's assume that I do.

25 A. If -- Well, if you had 100-percent record title

1 and you assured me you were in the capacity to represent
2 them and negotiate for them, I would talk to you. I might
3 out of an abundance of caution, before we actually signed
4 any documents transferring title, seek the joinder.

5 Q. Did you seek the joinder in this case, in regard
6 to the pooling application that would affect all of these
7 interests, that you're aware of?

8 A. Based upon Mr. Murphy's assurances of record that
9 he was representing his undisclosed partners, no.

10 Q. You said an abundance of caution in my
11 hypothetical that you would seek the joinder of those
12 parties. Why didn't you do that in this particular case?

13 A. I can't answer that question.

14 Q. Why can't you answer it?

15 A. We proceeded through the compulsory pooling
16 proceeding dealing with the record title owner and dealing
17 with -- even though he had put us on notice that he had
18 undisclosed partners, he assured us he had the capacity to
19 represent them. We proceeded through the compulsory
20 pooling proceedings, based upon that.

21 Q. So you were on, as you just stated, notice that
22 there were other parties of record -- or not of record --

23 A. We --

24 Q. -- I'm sorry --

25 A. He --

1 Q. -- but other parties that had interest?

2 A. We were notified early on that he had undisclosed
3 parties that he was going to represent.

4 Q. Did you do anything in an attempt, early on when
5 you were notified, to discover the identities?

6 A. No.

7 Q. And why did you not do that?

8 A. I did not. Because. The answer is because.

9 Q. Are you familiar with the *Udden vs. New Mexico*
10 *Oil Conservation Commission* case?

11 A. Not in great detail.

12 Q. Are you familiar with any case or statute that
13 says when you file an application before this Commission or
14 this Division, that only interests of record need be
15 notified?

16 A. I'm not an attorney --

17 MR. KELLAHIN: I'm going to object --

18 THE WITNESS: -- I can't answer that question.

19 MR. KELLAHIN: -- I'm going to object to him
20 answering that question. It calls for a legal conclusion
21 of this witness. He's a landman and this is a legal
22 question.

23 EXAMINER STOGNER: Mr. Stratton?

24 MR. STRATTON: I'm just asking what his
25 understanding is. We've certainly been doing that with Mr.

1 Murphy. I've heard a lot of questions about what his
2 understanding of the law is, so I'm just interested in Mr.
3 Smith. I -- You know, the fact is, there wasn't any
4 notification, so I guess that's the important point. But
5 it seems like it would be interesting to hear what he has
6 to say.

7 EXAMINER STOGNER: I'll allow it in that aspect,
8 Mr. Stratton.

9 Mr. Kellahin?

10 MR. STRATTON: I'm sorry, I didn't --

11 EXAMINER STOGNER: I will allow you to ask it in
12 the manner in which you did, what his understanding is.

13 Q. (By Mr. Stratton) Okay. What is your
14 understanding regarding who has to be notified when you
15 file an application?

16 A. Record title owner.

17 Q. And what do you have -- Can you tell us from
18 whence you derive that understanding, whether it's a
19 statute, a regulation of the Commission?

20 A. I can't quote a statute.

21 Q. All right. So it's my understanding that you, on
22 behalf of Mitchell, felt no duty to notify these people
23 that you had notice of for Mr. Murphy; is that correct?

24 A. Based upon his assurances that he represented
25 them, no.

1 MR. STRATTON: Okay, that's all.

2 EXAMINER STOGNER: Thank you, Mr. Stratton. I'm
3 sorry, I knew I was going to do that. Mr. Stratton.

4 Mr. Kellahin?

5 CROSS-EXAMINATION

6 BY MR. KELLAHIN:

7 Q. Mr. Smith, let me refer you to Mr. Murphy's
8 summary of January 12th and his conversation with you on
9 November 18th of 1992. Do you have a copy of that --

10 A. Yes, I do.

11 Q. -- page 3?

12 A. Yes.

13 Q. Did you rely upon -- Is your recollection the
14 same as Mr. Murphy's recollection about this particular
15 conversation --

16 A. Very much.

17 Q. -- that in addition to representing he could deal
18 with regards to the interest, he also represented to you on
19 that date that he could proceed to defend their rights at a
20 compulsory-pooling hearing, if one came about?

21 A. Absolutely.

22 Q. So you and he both agree as to that conversation?

23 A. I do.

24 MR. KELLAHIN: No further questions.

25 EXAMINER STOGNER: Mr. Carroll?

1 MR. STRATTON: I'm sorry, is it my --

2 MR. CARROLL: Mr. Stratton.

3 MR. STRATTON: -- turn again or your all's turn?

4 MR. CARROLL: Your turn.

5 MR. STRATTON: Okay. Well, I just have one last
6 question.

7 REDIRECT EXAMINATION

8 BY MR. STRATTON:

9 Q. Based upon your understanding, Mr. Smith, in an
10 application proceeding like this, who has the duty to
11 notify those interest owners?

12 MR. KELLAHIN: I'm going to ask that that not be
13 answered. That's why we're here with all these lawyers and
14 all this conversation. That's the ultimate issue here, and
15 it's our position that it's Mr. Murphy's responsibility and
16 not ours.

17 MR. CARROLL: We'll let Mr. Smith answer the
18 question.

19 THE WITNESS: Please restate your question.

20 Q. (By Mr. Stratton) I'm asking in an application
21 like this, that Mitchell filed before the Commission, who
22 has the duty to notify the interest owners that would be
23 affected?

24 A. The applicant has the duty to notify record
25 owners.

1 MR. STRATTON: That's all, thank you.

2 EXAMINER STOGNER: Mr. Carroll?

3 EXAMINATION

4 BY MR. CARROLL:

5 Q. The original January 7th, 1993, hearing, why was
6 that postponed two weeks? To allow you additional time to
7 negotiate?

8 A. Right, based upon Mr. Murphy's request and out of
9 a desire to resolve the problem, we agreed to delay the
10 hearing in an effort to reach agreement.

11 Q. Once you received notice of these undisclosed
12 interest owners, why didn't you continue it for another two
13 weeks, so they would get the 20 days' notice?

14 A. I can't say that I recall a specific reason,
15 other than we felt we were in good standing in our original
16 application, we decided to proceed forward with it.

17 Q. I guess it still troubles me that you received
18 notice of the actual owners finally and not only did not
19 postpone the hearing two weeks to give them the 20 days'
20 notice, but then you didn't send them separate notices to
21 elect to participate under the rule. Why didn't you do it
22 after the pooling order?

23 A. Well, there were -- Well, we had expiring AFES
24 for partners to drill the well, we had leasehold that we
25 were trying to maintain in the area. We had been in

1 negotiations with Mr. Murphy to proceed forward to get this
2 deal done, and based upon his representations he could act
3 on behalf of his partners, we dealt with him.

4 Q. Why do you think Mr. Murphy sent you a list of
5 the owners, then, to notify if you thought he could he
6 could act on their behalf?

7 A. My personal feeling is that he was trying to
8 prevent us from being able to get the well drilled before
9 our leases expired.

10 Q. So he sent you the list of owners just to delay
11 the proceedings?

12 A. To delay the proceedings.

13 Q. And he sent it at the last moment --

14 A. Basically, that was my -- That's my opinion.

15 Q. And when did these documents expire, or these
16 instruments?

17 A. I have -- I don't have the actual AFEs, and I
18 can't recall the exact dates. We had a lease expiring in
19 the proposed proration unit in -- I believe it was
20 September 30th of the year.

21 Q. Of 1993?

22 A. Yes. And we had -- knowing that we -- well,
23 there -- In looking at all the things that can happen at
24 compulsory-pooling proceedings, you can project out delay
25 after delay after delay, and we decided to move forward

1 with what we had when we did.

2 Q. So you thought two weeks was critical, and you
3 couldn't delay it another two weeks?

4 A. Well, is it just two weeks? I may not be able to
5 recall the exact -- the way time tacks on when you --
6 provide notice, then they have 30 days to respond or -- I
7 have to admit, I have been away from force pooling for some
8 time. I am no longer working this area.

9 MR. CARROLL: That's all the questions I have.

10 EXAMINER STOGNER: Mr. Stratton, any redirect?

11 FURTHER EXAMINATION

12 BY MR. STRATTON:

13 Q. Just one follow-up question, Mr. Smith. When was
14 the well drilled?

15 A. I can't give you an exact date. I don't know.

16 Q. Was it in May of 1993?

17 A. I believe it was.

18 Q. So it was a considerable time after the hearing?

19 A. Yes.

20 Q. And what delays were you concerned about in light
21 of the two weeks that Mr. Carroll's asking about that would
22 extend that beyond September 30th?

23 A. The fact that you can get a compulsory pooling
24 order that can then also be challenged, you have to go to
25 de novo hearings that then can -- those things add up and

1 take time that can result in delays, resulting in leases
2 expiring, AFEs expiring and such.

3 Q. But you don't disagree that interest owners in
4 the lease should have an opportunity to be heard before the
5 Commission, regardless of that, do you?

6 A. Well, again, I'll go back to the fact that I was
7 depending upon assurances by Mr. Murphy that he would
8 represent his parties, and then I assumed he put them on
9 notice when he made the assurances to me that he would do
10 so.

11 Q. So you, the applicant, Mitchell, was depending
12 upon Strata to put the other working interest owners on
13 notice?

14 A. He assured us he would.

15 MR. STRATTON: Okay, that's all. Thank you.

16 EXAMINER STOGNER: Any other questions?

17 FURTHER EXAMINATION

18 BY MR. KELLAHIN:

19 Q. In terms of the sequence of when the well was
20 drilled, do you recall, Mr. Smith, the fact that after the
21 order was entered, that Strata filed for a *de novo*
22 Commission hearing?

23 A. Absolutely.

24 Q. Do you remember that?

25 A. Absolutely.

1 Q. And that it was scheduled for a Commission
2 hearing on April 29th, 1993?

3 A. Right.

4 Q. And that shortly before that hearing date, then,
5 Strata abandoned the *de novo* hearing --

6 A. Right.

7 Q. -- and the case was dismissed?

8 A. Right.

9 Q. If you'll look at the locator map, I think maybe
10 you misspoke. It's been a long time since you've touched
11 this thing.

12 A. Yes, it has.

13 Q. If you'll look at the locator map, when you look
14 at the west half of Section 28, the expiring lease that you
15 referred to, I think you said September of 1993, this may
16 indicate a slightly different date.

17 A. Yes, it's October 1st.

18 Q. So that's the lease that you were referring to --

19 A. Yes, it is.

20 Q. -- and that's the expiration date?

21 A. That's correct.

22 MR. KELLAHIN: All right, nothing further, Mr.
23 Examiner.

24 EXAMINER STOGNER: Any other questions?

25 MR. STRATTON: No.

1 EXAMINER STOGNER: You may be excused.

2 Mr. Kellahin, again what do you seek at this
3 point?

4 MR. KELLAHIN: A decision on the notice issue,
5 and permission to file a brief in response to Mr.
6 Stratton's brief with regards to this matter, and that if
7 you rule in my favor, then that's the end of this at this
8 proceeding.

9 If you rule in favor of Mr. Stratton's moving
10 parties, then he and I are both in agreement that if we're
11 unable to resolve among ourselves what happens with those
12 undisclosed partners in terms of participation in the well,
13 then we'll be back to a hearing before you to talk about
14 what happens.

15 By November of 1995, the well in fact is paid
16 out, and there are some questions about whether the penalty
17 continues do apply and, if so, to whom. If there's
18 subsequent operations on the well, what happens in terms of
19 their elections? And there's a whole set of other problems
20 that occur, based upon the decision made for today.

21 So rather than going forward today with
22 engineering witnesses and talking about what happens if, we
23 thought we would wait for you to decide the "if".

24 MR. STRATTON: Can I just amend my understand- --

25 EXAMINER STOGNER: Mr. Stratton?

1 MR. STRATTON: -- or just note my understanding?
2 I'm not sure my understanding goes that far.

3 Today we're here to decide whether to reopen.
4 It's a notice issue, whether to reopen. We need a decision
5 on that, and then I think we decide what to do after that.
6 I mean, then we either proceed the way Mr. Kellahin has
7 indicated, there's possible appeals, whatever the case may
8 be. But I think we just have to take it one step at a
9 time. We're certainly not here to talk about engineering
10 or to redo the case today.

11 (Off the record)

12 MR. STRATTON: And Mr. Examiner, may I make just
13 a couple of brief closing comments about the evidence
14 today, or do you prefer to wait to see my reply brief?

15 EXAMINER STOGNER: At this time, I think we need
16 to obtain from Mr. Kellahin his documentation.

17 MR. KELLAHIN: A brief.

18 EXAMINER STOGNER: The brief, and then allow the
19 ten days additional for your comments at that point.

20 MR. CARROLL: What's the order, now? The
21 subsequent stipulation is going to be submitted within ten
22 days?

23 MR. STRATTON: Yeah, I guess affidavits that
24 would indicate when our clients, the Movants, became aware
25 of -- what, the proceedings?

*Did OGD
receive
these?*

1 MR. KELLAHIN: Well, there was a number of
2 components: when they became aware of the well proposal,
3 when they became aware of the force-pooling application,
4 when they became aware of the pooling order itself.

5 MR. CARROLL: And these are just the named
6 Movants, not the Arrowhead and Warren? They won't be
7 included, I guess?

8 MR. STRATTON: I don't know anything about them.
9 I'm here representing who's in the motion, so --

10 MR. KELLAHIN: So I guess we'll leave those off
11 the list, because they're apparently not Movants in this
12 proceeding, and it's as to those parties who Mr. Stratton
13 has access to that have already executed.

14 MR. CARROLL: I guess I'd just be curious to see
15 whether they had actual notice, even though they're not
16 part of the action right here. But if you can't get --

17 MR. STRATTON: I don't plan to get affidavits
18 from them because they're not Movants, I don't think it's
19 relevant, so...

20 MR. CARROLL: Well, I think it's relevant even
21 though they're not Movants. If they had notice and the
22 others didn't, I'd wonder why.

23 MR. STRATTON: You know, at the risk of -- I'm
24 not trying to be argumentative, but our position clearly is
25 -- and if you read the United States Supreme Court cases,

1 is, you can't just have casual notice of a hearing. I
2 mean, you can't have somebody walk off the street and say,
3 Hey, a Commission hearing is going on up there and it's
4 affecting your interest, you'd better see what the deal is.
5 And *Uhden* says you get personal service of notice.

6 So our position is, all of that information is
7 irrelevant. We're willing to provide it to Mr. Kellahin in
8 this case, because he's been kind enough and reasonable
9 enough to agree to stipulate to those affidavits.

10 But I want to make clear, we're not doing it
11 because we think that solves the problem of our clients not
12 being notified either by Strata or by Mitchell. To us, we
13 don't -- it doesn't make any difference who didn't notify
14 us. The fact is, we didn't get notified, or by the
15 Commission.

16 So I just want to make it clear that because
17 we're getting these affidavits doesn't mean that we think
18 that's relevant information, but we're doing it as an
19 accommodation.

20 MR. CARROLL: Well, I beg to differ. I did a
21 little, very little, legal research before this case, and
22 at least in Oklahoma, where interest owners received actual
23 notice, although not statutory or rule notice, they were
24 barred from asserting their claim later to come back into a
25 well that was compulsory pooled. So I do believe it's

1 relevant when they receive notice of the hearing, even
2 though they might not have received a 20-day statutory
3 notice.

4 MR. STRATTON: Well, once again, I don't want to
5 be argumentative, but I'll refer you to the law of the
6 United States Supreme Court on that issue, which we've
7 cited in our brief, which I'm sure you've had an
8 opportunity to look at as well. But as early as 1915, the
9 U.S. Supreme Court has ruled that that is not sufficient
10 notice to --

11 MR. CARROLL: Well, let's hold this for the
12 brief. We don't have to argue this right now.

13 MR. STRATTON: Okay, well, I was responding to
14 your comments.

15 EXAMINER STOGNER: So at this time we're going to
16 obtain affidavits. And, yes, I agree with Mr. Carroll in
17 this instance of affidavits for Mr. -- or from Arrowhead
18 and -- Who was the other party?

19 MR. CARROLL: Warren.

20 EXAMINER STOGNER: Warren, is important in this
21 instance.

22 MR. STRATTON: We will attempt to get those.
23 They're not our client, but we'll attempt to get those
24 affidavits as well, to complete the record, if that's what
25 you'd like.

1 EXAMINER STOGNER: I'd like that, and I think
2 that would be very cooperative and also --

3 MR. CAVIN: Let me just say, some of these
4 parties are scattered out as far as Canada. So ten days,
5 we'll do the best -- We can get most of them, but it may
6 not be possible to get them all in ten days.

7 EXAMINER STOGNER: If additional time is needed
8 in the interim, contact Mr. Kellahin and then come back in
9 and request it. I believe we can probably accommodate
10 that. But I'll leave it to Mr. Kellahin's --

11 MR. KELLAHIN: We'll do our very best to make
12 this work smoothly, Mr. Examiner.

13 EXAMINER STOGNER: I would appreciate that.

14 Okay, and I believe we stand adjourned on this
15 particular issue at point.

16 Thank you.

17 MR. KELLAHIN: Yes, sir. Thank you.

18 EXAMINER STOGNER: Thank you.

19 (Thereupon, these proceedings were concluded at
20 4:58 p.m.)

21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
the Examiner hearing of Case No. _____,
heard by me on _____ 19 ____.

23 _____, Examiner
24 Oil Conservation Division

25

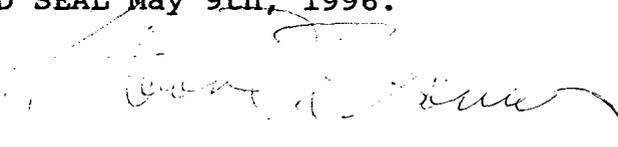
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) SS.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL May 9th, 1996.


 STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

CASE NOS. 11,510, 11,515 AND 11,579
(CONTINUED AND DISMISSED CASES)

CASE NOS. 11,596, 11,514, 11,507, 11,508 AND 11,509
(CASES AWAITING FINAL COMMISSION ACTION
NO EVIDENCE OR TESTIMONY TAKEN)

TRANSCRIPT OF PROCEEDINGS

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
JAMI BAILEY, COMMISSIONER

December 12th, 1996

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Thursday, December 12th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

1 WHEREUPON, the following proceedings were had at
2 9:06 a.m.:

3 CHAIRMAN LEMAY: Good morning, the Oil
4 Conservation Commission, December 12th, 1996. The three
5 Commissioners are: Bill Weiss to my left; Commissioner, and
6 Director, Jami Bailey to my right -- promotion -- and
7 myself, Bill LeMay.

8 We'll start by calling Case Number 11,510, which
9 is the Application of Branko, et al., to reopen Case Number
10 10,656. I understand without objection this case will be
11 continued to the January 16th docket.

12 And call Case Number 11,515, which is a *de novo*
13 case called by the Division to permit Woosley, Great
14 American Insurance Company and other parties to show cause
15 why a well should not be plugged. That's to be continued
16 to February 13th.

17 And then we'll call Case 11,579, Application of
18 Pogo Producing Company for a pressure maintenance project,
19 Lea County, New Mexico. Without objection, that case will
20 be continued to the January 16th hearing.

21 Before we get into the case -- Let's see. We
22 have the minutes of the previous meeting, and is it your
23 intention to approve the minutes, fellow Commissioners?

24 COMMISSIONER BAILEY: Yes, it is.

25 COMMISSIONER WEISS: Yes, it is.

1 CHAIRMAN LEMAY: Thank you. Let the record show
2 the minutes are approved.

3 And also we have a number of cases here which
4 final action will be taken on with your approval, fellow
5 Commissioners.

6 Case Number 11,596, which is the order
7 authorizing telephone conferences by Commissioners. Is it
8 your approval to take final action on that?

9 COMMISSIONER BAILEY: Yes, it is.

10 COMMISSIONER WEISS: Yes, it is.

11 CHAIRMAN LEMAY: And Case Number 11,514, which is
12 the order relating to the Read and Stevens unorthodox
13 location, Chaves County, New Mexico, is it your intention
14 to take final action on this?

15 Commissioner Weiss?

16 COMMISSIONER WEISS: Yes, it is.

17 CHAIRMAN LEMAY: Commissioner Bailey?

18 COMMISSIONER BAILEY: Yes, it is.

19 CHAIRMAN LEMAY: Thank you.

20 And Case Number 11,507, which is a plugging case.

21 Is it your intention to take final action on this case,

22 Commissioner Weiss?

23 COMMISSIONER WEISS: Yes, it is.

24 CHAIRMAN LEMAY: Commissioner Bailey?

25 COMMISSIONER BAILEY: Yes, it is.

STATE OF NEW MEXICO
 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
 OIL CONSERVATION COMMISSION

IAN 3

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION COMMISSION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 11,510
)
 APPLICATION OF BRANKO, INC., et al.,)
 TO REOPEN CASE NO. 10,656 (ORDER NO.)
 R-9845) LEA COUNTY, NEW MEXICO)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
 WILLIAM WEISS, COMMISSIONER
 JAMI BAILEY, COMMISSIONER

January 16th, 1997

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Thursday, January 16th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

January 16th, 1997
 Commission Hearing
 CASE NO. 11,510

PAGE

REPORTER'S CERTIFICATE

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* * *

A P P E A R A N C E S

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FOR MITCHELL ENERGY CORPORATION:

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 By: W. THOMAS KELLAHIN

* * *

1 WHEREUPON, the following proceedings were had at
2 3:10 p.m.:

3 CHAIRMAN LEMAY: Okay, we shall reconvene, and
4 call Case Number 11,510, which is the Application of
5 Branko, Inc., et al., to reopen Case Number 10,656, Lea
6 County, New Mexico.

7 Appearances in Case 11,510?

8 MR. STRATTON: Mr. Chairman, Hal Stratton for
9 Branko, et al.

10 CHAIRMAN LEMAY: Thank you, Mr. Stratton.

11 MR. KELLAHIN: Mr. Chairman, I'm Tom Kellahin of
12 the Santa Fe law firm of Kellahin and Kellahin, appearing
13 on behalf of Mitchell Energy Corporation.

14 MR. CARROLL: May it please the Commission, Rand
15 Carroll on behalf of the Oil Conservation Division.

16 CHAIRMAN LEMAY: Thank you, Mr. Carroll.

17 How many witnesses will you be presenting or -- I
18 understood there will be no witnesses?

19 MR. KELLAHIN: We have a surprise for you. There
20 are no witnesses.

21 MR. STRATTON: And no testimony.

22 CHAIRMAN LEMAY: And no testimony.

23 MR. STRATTON: And no argument, if you desire,
24 Mr. Chairman.

25 CHAIRMAN LEMAY: I don't know why we're here,

1 gentlemen. We should be --

2 Mr. Chairman, if I might, I guess this is a *de*
3 *novo* hearing, so I suppose -- I don't know who you intend
4 to go first.

5 CHAIRMAN LEMAY: Well, generally the Applicant;
6 isn't that true?

7 MR. KELLAHIN: I'm the one stuck as the
8 appellant, Mr. Chairman --

9 CHAIRMAN LEMAY: Uh-huh.

10 MR. KELLAHIN: -- and, you know, I'll defer to
11 Mr. Stratton if he would like to go first. I'm happy to go
12 first.

13 CHAIRMAN LEMAY: You can work that out,
14 gentlemen, but we don't care as a Commission.

15 MR. STRATTON: Why don't I go first, Mr.
16 Chairman, since --

17 CHAIRMAN LEMAY: Okay, that would be fine.

18 MR. STRATTON: -- it's our *de novo* and it's
19 technically our motion to reopen?

20 What we've done is, we have agreed and stipulated
21 that we would introduce exhibits and testimony from the
22 previous two hearings in this case.

23 And the first thing -- and I think Ms. Hebert may
24 -- Do you have these now?

25 MS. HEBERT: We do have them.

1 MR. STRATTON: Okay. Can we use the originals
2 for the record, or do want us to sub- -- I've got others
3 here that we can use, but --

4 MS. HEBERT: No, I think we can just incorporate
5 the hearing below. We have the record here.

6 MR. STRATTON: Okay. Well, let me -- What I'd
7 like to do just for purposes of the record is to make clear
8 what I understand is in the record. And Mr. Kellahin, I'm
9 sure, will want to do that as well.

10 First of all, there's the January 21st, 1993,
11 hearing transcript on the Mitchell application.

12 Then there's Strata's Exhibits 1 through 7 to
13 that particular hearing.

14 Next, the transcript of the testimony for the May
15 2nd, 1996, hearing. That was our motion to reopen.

16 And then we have actually 44 exhibits from that
17 particular hearing that we would like to submit, as well as
18 one additional letter, which would be Exhibit 45, which
19 we've stipulated to, for the record. And what we've agreed
20 to do here today, Mr. Chairman, is to submit all of this on
21 the record.

22 Just so the Commission will know, the Exhibits 1
23 through 16 are affidavits from our clients -- from my
24 clients, indicating what they would testify about their
25 interest in the property in this case. And we are

1 stipulating that that would be their testimony. We're not
2 stipulating that, certainly, the Commission is bound by
3 their conclusions. It's to what they own as -- that that's
4 what they would testify to if they were here today, and
5 there are no hearsay exceptions to that testimony.

6 And so those for the witnesses. We'd be
7 traipsing in 16 witnesses here today if we didn't do that.
8 So we've limited down their testimony to what's in the
9 exhibits, and I believe -- It's what I think is relevant
10 and what I want the Commission to have in regard to their
11 testimony.

12 And also, just while I'm talking about
13 affidavits, at the end of the last hearing, the hearing
14 officer asked that we submit more exhibits from those
15 individuals regarding when they knew about the previous
16 Mitchell hearing and when they knew about Mitchell's
17 Tomahawk well. And although that's not something I would
18 have submitted, I did it in deference to the hearing
19 officer, because he thought it was relevant, and I don't
20 think it's relevant, but we submitted them and they're into
21 evidence.

22 So I guess I'd like to formally move the
23 admission of all those, and -- with the one other, which
24 would be Exhibit 45 here.

25 CHAIRMAN LEMAY: For the benefit of my fellow

1 Commissioners, did you want to sum up the case in any way
2 or form?

3 MR. STRATTON: Sure.

4 CHAIRMAN LEMAY: Is that going to be a
5 presentation on your part?

6 MR. STRATTON: That's what I'm going to --

7 CHAIRMAN LEMAY: Yeah, okay, that's fine. I
8 don't think Commissioner Weiss or Commissioner Bailey are
9 familiar with the case in any form or fashion.

10 COMMISSIONER WEISS: I have no idea.

11 CHAIRMAN LEMAY: Yeah.

12 MR. STRATTON: Well, I came here expecting no one
13 would be familiar with the case, but since we are on the
14 record, should there be an appeal, I wanted to make sure
15 that all the evidentiary matters were taken care of, since
16 we don't have any witnesses or exhibits, Mr. Chairman.

17 CHAIRMAN LEMAY: Right.

18 MR. STRATTON: Unless -- I think Mr. Kellahin
19 should --

20 MR. KELLAHIN: I need to ask Mr. Stratton a
21 question.

22 (Off the record)

23 MR. KELLAHIN: A procedural matter, Mr. Chairman,
24 to complete the submittal formally of the exhibits.

25 It is our intention by what Mr. Stratton just

1 requested, is that the transcript of the original force-
2 pooling hearing, back in 1993, which includes all the
3 Mitchell exhibits -- and they're identified in the
4 transcript -- all of those that are identified in the
5 transcript would be included before the Commission.

6 In addition, in the hearing on May 2nd of 1996,
7 there was a package of correspondence, was marked as
8 Mitchell Exhibit 1. We want that entire transcript and
9 exhibits before you.

10 In addition, Mr. Stratton is correct, there were
11 some supplemental affidavits that Examiner Stogner
12 requested. There was some difference among counsel about
13 what was to be contained in those affidavits, but they were
14 submitted, and I believe they should be -- form part of the
15 record.

16 In addition, there was an exchange of letters
17 between Mr. Cavin and I. Mr. Stratton has introduced one
18 of the letters.

19 And the last exhibit, then, would be my Mitchell
20 Exhibit 2 to Case 11,510, which was my response to Mr.
21 Cavin. I don't think it's particularly important for
22 discussion this afternoon, but that document would complete
23 our presentation of evidence.

24 CHAIRMAN LEMAY: Will there be an opportunity
25 anywhere here for questions of you gentlemen, or is that

1 just not --

2 MR. KELLAHIN: When we talk about how to organize
3 this, I would be most delighted if I could attempt to
4 answer questions as you had them.

5 Both of us have filed memorandums of law and
6 arguments. If those copies are not available to you, I
7 have additional copies for you to consider.

8 We have attempted to organize ourselves on both
9 sides of this, so that we could give you the facts in a
10 summary fashion. They're all detailed at great length in
11 my memorandum, and my support for my position is included
12 in that document. And if you would like, I have more
13 copies of that.

14 CHAIRMAN LEMAY: Let me ask something here, just
15 off the record.

16 (Off the record)

17 CHAIRMAN LEMAY: Because of the unusual nature of
18 this case -- I have to admit, I have not had a *de novo* case
19 presented where there have been no witnesses and just
20 summaries by the attorneys. It's helpful for us to be able
21 to ask you questions.

22 And also, one of my Commissioners would like, as
23 just an opening, to each one of you, for one sentence, tell
24 him what this is all about. And then from there you can --
25 you kind of go into it. Because right now, they have no

1 idea what's going on.

2 MR. KELLAHIN: Well, perhaps -- May I suggest
3 that Mr. Stratton go first with maybe a five-minute summary
4 of the major points, and I'll take five minutes and try to
5 give you a framework of really what this dispute is about,
6 and then we can go in more detail as you begin to become
7 familiar with what we -- ?

8 CHAIRMAN LEMAY: I think that would be helpful.
9 I mean, yeah, before we even get into any of this, they
10 can't see the significance of it until they know what this
11 is about.

12 So if you would do that, Mr. Stratton, we'd
13 appreciate it.

14 MR. STRATTON: Your Honor, I'm not sure my
15 presentation is much longer than that, so I think it will
16 take me about two sentences to make things clear.

17 I might add that a first for me is also having
18 the judge ask me if he can ask me questions. I wasn't
19 quite sure how to respond to that. I thought about saying
20 now, but obviously, you can ask us questions, and certainly
21 I would hope that you would ask questions to clarify this,
22 because this is -- it is unusual. You're not seeing the
23 witnesses, you don't have the testimony, I know you haven't
24 had time to read it.

25 And so we're -- so we sort of have a duty, I

1 think, I to try to get you up to speed on this.

2 What this case is about is, we represent a number
3 of 16 working interest and overriding royalty interest
4 owners in a particular piece of property that Mitchell
5 filed an application to pool, that were not given notice of
6 the hearing and did not appear at the hearing and did not
7 receive any notice of the order that was entered pursuant
8 to that hearing.

9 So once they learned of that, they came and filed
10 an application to reopen and say, due process has not been
11 afforded us, the order is void as to us, and you need to
12 reopen the case and have the matter heard with our
13 interests before the Commission.

14 So that's -- in a couple of sentences, is what
15 the whole case is about.

16 But the facts that we think are relevant began
17 back on October 26th of 1992 when Steve Smith, a landman
18 for Mitchell, called Mark Murphy, the president of Strata,
19 and started talking about drilling this Tomahawk Well and
20 tried to negotiate a deal.

21 Strata had some of the working interests, and
22 when we looked at the real estate records, it appeared they
23 had 25 percent of the working interest.

24 At that time, Mr. Murphy advised Mr. Smith that
25 he would consider it, that there were other people who had

1 interests in the property, and he was going to talk to him,
2 and that they would proceed to consider this.

3 There then were a number of telephone calls
4 during this period as they negotiated this well. There
5 were a number of pieces of correspondence that were passed
6 back and forth, and we -- they're in the record, and
7 they're in our briefs.

8 On December 9th, Mr. Murphy sent a letter,
9 Exhibit 19, that talked about the negotiations that were
10 involved.

11 The important issues, when it comes to these
12 exhibits, from my client's standpoint, is whether Mitchell
13 or their representatives knew about or had reason to know
14 about or could have determined by due diligence whether
15 their interests were -- whether they had interests in the
16 property.

17 And we allege, and if you'll look at the record
18 and testimony and also these exhibits, Exhibits 19, 20, 21
19 and 23, all of them had references to other individuals who
20 had ownership in this particular piece of property, giving
21 that to Mr. Smith.

22 It appeared that things weren't going well, so I
23 think it was about December 8th, an application was filed
24 for pooling, and an unconventional -- or an unorthodox
25 site, or whatever you guys call it, as well.

1 Negotiations continued, and it continued, and
2 then it appears that like on about January 12th -- actually
3 January 13th, I guess, things broke down between the
4 parties. And Mr. Smith from Mitchell said, Well now, who
5 are these other interest owners that you have?

6 And then on the 13th, Mr. Murphy faxed to Mr.
7 Smith Exhibit 24. And Exhibit 24 is a letter which lists
8 each and every interest owner, their address, and their
9 percentage of interest in the leasehold. And there's no
10 dispute about that, Mr. Smith's got it, he was aware of it.

11 Now, the hearing on the Application was scheduled
12 for January 21st. And so rather than continuing the
13 hearing or rather than providing notice to the interest
14 owners, they went ahead and had the hearing, and the
15 pooling order was entered, and -- I think on February the
16 15th.

17 That order, then, was never sent to these working
18 interest owners and overriding royalty interest owners.

19 And then finally the Tomahawk well was drilled on
20 May 18th, 1993. And just for purposes of just a little
21 preview down the line as to what the arguments may be and
22 what really happened, the leases -- or the ability to drill
23 the well under the leases, I understand, expired -- would
24 have expired on October 31st.

25 So the issue is whether under due process of law,

1 the US Constitution and the New Mexico Constitution our
2 clients got the requisite notice and opportunity to be
3 heard at this particular hearing. Of course, we allege
4 they didn't; we wouldn't be here if we did.

5 Now, sometimes in New Mexico law we have problems
6 finding authority for things. Sometimes you have to look
7 at a lot of different cases and in a lot of different
8 places for authority. But in this particular case we're
9 lucky, because we have one case that controls everything
10 here. We have a lot of interesting US Supreme Court cases
11 in the briefs. If you don't have anything else to do,
12 they're interesting reading. They go back to notice
13 issues, to 1915.

14 But it's all contained in *Uhdén vs. New Mexico*
15 *Oil Conservation Commission*.

16 And the operative language -- There are two
17 things I want to pass along to the Commission that are
18 important in *Uhdén*.

19 One is -- and it's hard to really believe they
20 have to say this, but they say it and it's important --
21 Administrative proceedings must conform to fundamental
22 principles of justice and the requirements of due process
23 of law.

24 It seems odd, and I know this Commission finds it
25 odd that they would have to say that. But when you look

1 across the breadth of administrative hearings, sometimes as
2 an individual representing people before those, you wonder
3 whether the administrative agencies really believe that.

4 So the New Mexico courts continue to tell us that
5 you have the same due process rights when somebody's
6 getting ready to deprive you of your property, when you
7 come before an administrative agency as you do, before the
8 courts in New Mexico.

9 And then they give us a paragraph here which is
10 tremendous, and I hadn't read it before this particular
11 case, but this says it all right here, and this can be used
12 throughout New Mexico by administrative agencies, by courts
13 or anybody else and throughout the country, for what the
14 standard and what the rule is when it comes to due process
15 and notice. And it's on page 531, and I just want to read
16 it to you. It's very brief.

17

18 If a party's identity and whereabouts are known
19 or could be ascertained through due diligence, the
20 due-process clause of the New Mexico and United States
21 Constitutions requires the party who filed the spacing
22 application --

23

24 -- this happened to be a spacing application in this
25 case --

1 -- to provide notice of the pending proceeding by
2 personal service to such parties whose property rights
3 my be affected as a result.

4
5 That's the rule. It works in any forum in New
6 Mexico, and I'm just briefly going to apply that to this
7 particular fact situation, using the *Udden* language.

8 First of all, the question who do you have to
9 notify?

10 You have to notify those individuals in the
11 property, who you know, or who you can ascertain through
12 due diligence. They don't have to be recorded; there's no
13 issue about that. Some people think that -- there's a lot
14 of people that think that you have to have any interest in
15 real estate recorded. That's not the case. The issue is
16 knowledge, the issue is whether you know about that
17 particular interest.

18 If I have a next-door neighbor who doesn't have
19 his deed recorded but I know he lives there and I'm getting
20 ready to do a foreclosure case or a quiet-title case, even
21 though his interest is not recorded, since he lives there I
22 know he has a claim to that property. I have to put him in
23 the lawsuit. If I don't, then that lawsuit does not apply
24 to him. Just like the Mitchell application hearing doesn't
25 apply to our clients, that doesn't apply to him.

1 So it's not a question of recording. And that
2 was one of the big arguments in the case. It's not in the
3 most recent brief, but that was an argument down below, is
4 that these interests weren't recorded, therefore, they're
5 no good. That's not the case.

6 *Uhden* says, If a party's identity and whereabouts
7 are known or could be ascertained through due diligence...
8 Here, Mr. Smith of Mitchell, on October 26th, 1992, was put
9 on notice that there were other interests in this property
10 that was going to be pooled, and he did nothing. At that
11 time, under *Uhden*, he had a duty to ascertain those
12 interests using due diligence. He could have done it then.
13 He didn't, he didn't do it. There were more telephone
14 calls, as I indicated, throughout the fall where they
15 talked about these interests. There are exhibits that were
16 exchanged where these interests are mentioned, and he still
17 didn't do it.

18 And then finally, on January 13th, he was sent a
19 letter where he didn't have to look anywhere for these
20 interests. He had their names, telephone numbers, and the
21 extent of the interests. And he still -- Still, no notice
22 was given.

23 Now, there's been another issue here which
24 really, when I conclude here, isn't that important, but I
25 want to talk about it because it's going to be talked

1 about, and that is, who had the duty to give the notice?

2 There's been a lot of allegations, a lot of
3 argument in this case, down below, that Strata had the duty
4 to give notice, or that our clients had the duty to come
5 talk to somebody and obtain notice themselves, or somebody
6 other than Mitchell was supposed to give notice. Well,
7 that's just not what the law says. *Udden* says that the
8 party who filed the spacing application must give notice.
9 Your Rule 1207 says that the applicant has to give notice.
10 And Mr. Smith, when he testified in our hearing here, from
11 which this appeal emanates, said that it was the applicant
12 who is supposed to give notice.

13 So one of the ruses that's been used so far is
14 that, well, Strata knew about this; they should have told
15 all these people about this hearing, and then they would
16 have had proper notice. They didn't have a duty to do it,
17 it wasn't them who were supposed to do it.

18 But more importantly, the real point is, it
19 doesn't matter to our clients who was supposed to give
20 notice, because they don't care, they need the notice. And
21 if this Commission doesn't have -- If they are not served
22 by somebody -- it doesn't matter who it is, but if they're
23 not served by somebody, this Commission doesn't have
24 jurisdiction over their property rights.

25 So it really doesn't matter who was supposed to

1 give notice to us. We weren't given notice. And it's
2 clear the applicant is supposed to give notice. You all
3 know that. You sit through these cases all the time, so
4 you know who gives the notice in these particular cases.

5 The next issue -- this maybe isn't an issue here;
6 it's just slightly an issue -- is, what type of notice do
7 you have to give? What type of notice does the Commission
8 have to give?

9 Well, you can't do it by publication. I mean,
10 you know that because you've had *Uhdén*. *Uhdén* -- The New
11 Mexico Supreme Court has told you in *Uhdén* that you can't
12 use publication for notice when it comes to due-process
13 rights and protective property interests.

14 Most places in the country -- and this has been
15 approved by the United States Supreme Court -- will allow
16 notice by mail. But I'm afraid that in New Mexico, due to
17 *Uhdén*, mail isn't even good enough. *Uhdén* says that to
18 provide notice, the Commission, in a Commission proceeding,
19 must be by personal service to the parties.

20 And I've had people in the industry say, Personal
21 service? Oh my gosh. There's hundreds, there's thousands
22 of interests. Or, There's a whole lot of interests in
23 these cases.

24 Well, there might be, and it might be burdensome.
25 But that's what the New Mexico Supreme Court says has to be

1 done. And it seems rather -- it does seem harsh but, you
2 know, that is the rule, as you're well aware, in the court
3 system. If you're going to serve somebody in New Mexico,
4 you can't mail it to them, you can't call them on the
5 phone, you can't publish it in the newspaper. You have to
6 give them personal service. And the New Mexico Supreme
7 Court now says the Commission now has to give personal
8 service.

9 Here, you know, it doesn't matter. No service
10 was given whatsoever. There's no allegation that any
11 service was given, whether it was by mail or personal or
12 whatever. There was publication, I think, although I don't
13 know that. But publication certainly doesn't work.

14 And then finally -- I mean, the only issue that
15 really remains at this point is, then, well, what type of
16 people do you have to give it to? And you have to give it
17 to people who have interests in the property.

18 And in this particular piece of property, all 16
19 of our clients had interest, which they all acquired in
20 1989, which was three years -- three years before the
21 application. And they are working interest owners. We
22 have, I think -- 14 are working interest owners and I think
23 two are overriding royalty interest owners. That's in the
24 affidavits.

25 But what type of interest it is, it really

1 doesn't matter, as long as it's an interest that is
2 protected, it's a property right. And when I say
3 "property", I don't necessarily mean real property; it's a
4 property right.

5 So that's what happened in this case, and that's
6 why we're here today, is because we didn't get notice of
7 that previous hearing. We're entitled to it, and we're
8 here asking the Commission -- We asked the Division to
9 reopen the case, which they did, and we're asking the
10 Commission at a *de novo* hearing now to reopen the case.

11 Now, what is the effect of not giving notice?
12 That question always arises when it comes to notice cases.
13 People say, Well, maybe we would have gone back and --
14 Well, let's go back and we'll do the same thing. Or, Let's
15 -- We would have done the same thing anyway, even if they
16 had been here. Or something like that.

17 Doesn't work, because the order is not effective.
18 It's totally ineffective.

19 The words that *Uhden* used -- We're back to *Uhden*
20 again, which is the case that has everything in it. *Uhden*
21 found that the orders entered by the Commission without
22 notice to Ms. *Uhden* are hereby void as to *Uhden*.

23 "Void" means as if it had never happened, when it
24 comes to these particular individuals. It's not voidable.
25 You hear "voidable" and "void". "Voidable" means unless

1 somebody does something to void it, it's still okay.
2 "Void" means void from its inception, as if it never
3 happened; the order is ineffective to the people who were
4 not given notice. And that's clearly the case.

5 And the United States Supreme Court has also
6 defined it as -- "void" as being that, and meaning that you
7 have to come back and start all over.

8 So that's the issue.

9 And I just want to point out a couple of things,
10 and I'm finished here today, with the exhibits and
11 everything you have, certainly with my opening. But I'm,
12 once again, certainly happy to open or answer questions.

13 There were -- I'm not quite going to try to
14 quantify it, but there were many things that could have
15 happened in this case, short of personal service or
16 anything else, that would avoid us being here today. There
17 are plenty of opportunities to avoid this.

18 I mean, first of all, on October 26th, Mr. Smith
19 could have gone out and done the right thing. I mean, he
20 could have gone out, ascertained the interests and then
21 provided notice when a hearing came up, or any time after
22 that.

23 The same thing could have been done on January
24 13th. You know, it's my understanding that if that hearing
25 had been delayed, it would have been a two-week delay. The

1 well wasn't drilled until May, and the well didn't have to
2 be drilled until October. So it seemed like a very small
3 thing to -- in order to get the right people before the
4 Commission, to delay the hearing.

5 Next, and this wouldn't have been
6 Constitutionally firm, but practically we wouldn't be here
7 if after the order was entered it had been sent to these
8 individuals. But even on February 15th, the order didn't
9 get sent. Does that cure the Constitutional infirmity of
10 the hearing? No. Would that have practically taken care
11 of things? Very well -- Very well might have.

12 And Mr. Smith, in our last hearing, testified as
13 to the real reason this doesn't happen, and he actually
14 testified to it, and I think he was honest about it. He
15 said they didn't want to be delayed in doing this, that
16 stopping and waiting two weeks and providing notice to all
17 these people -- they just didn't want to be delayed by it.

18 And I think it's just slightly more -- I think
19 not only did they not want to be delayed, they didn't want
20 to have to deal with my clients who had these interests.
21 And I think he believed that that was a good enough reason
22 to do this.

23 But I can tell you, when it gets to the New
24 Mexico Supreme Court, they're not going to agree with that.
25 They're not going to say, Well, because it inconvenienced

1 you we're not going to afford these people these due-
2 process rights.

3 Those of us who engage in litigation in
4 Constitutional cases and all types of litigation do
5 everything we can to get everybody we can, in front of the
6 court, so we can get them bound. I mean, we serve people
7 we shouldn't even serve.

8 Here, it appears to me that it's just the
9 opposite, that the idea is, if an applicant comes in and
10 they can get away with not serving people and slip things
11 through, that that's the way to do it.

12 That doesn't work in the court system. And I can
13 predict for you that when this gets to the court system,
14 the court is going to look at it and use its standards and
15 say, My goodness, you knew about all these people and you
16 didn't notify them? What are you thinking about? Get in
17 there and notify them and get it over with, just as the
18 case in *Udden*.

19 So Mr. Chairman, that's my presentation. I'm
20 happy to answer any questions.

21 I've got two briefs in -- before the Division,
22 and what I'd like to do is leave those with you. Mr.
23 Kellahin has filed another brief with the Commission. I
24 think everything is covered, so I wouldn't intend to reply
25 to that, but I would like to just leave you the briefs that

1 I did before the Division.

2 CHAIRMAN LEMAY: Okay, it still may be helpful if
3 we hear Mr. Kellahin's presentation, and then we could ask
4 some questions of either one.

5 COMMISSIONER WEISS: Yeah, yeah.

6 CHAIRMAN LEMAY: Is that okay?

7 COMMISSIONER BAILEY: Fine.

8 CHAIRMAN LEMAY: Mr. Kellahin?

9 MR. KELLAHIN: Thank you, Mr. Chairman.

10 The brief I've handed out, filed earlier is the
11 one in the -- it's got a plastic cover sheet and it's got a
12 spiral on it, and it should be on top of that stack in
13 front of you, Mr. Chairman, there's a case file. Farther
14 ahead, towards me, sir. Yes, sir.

15 CHAIRMAN LEMAY: Okay.

16 MR. KELLAHIN: Let me describe for you how it's
17 organized.

18 In the back end I've attempted to separate by a
19 blue tab -- and I may have missed it in some of the
20 booklets, but there will be an Exhibit A which represents
21 Examiner Stogner's order in 1993 on the Mitchell force-
22 pooling application. So you'll have that to look at.

23 The next order that's in the book is marked
24 Exhibit B, and that's Mr. Stogner's decision from the May,
25 1996, hearing which was issued on October 2nd of 1996.

1 The brief is organized so that commencing on page
2 6, there is the start of numbered paragraphs, which are
3 numbered 1 through 33. And I've attempted to outline for
4 you in detail the chronology of the specific events.

5 Ahead of the factual summary is about five pages
6 in which I have cited to the transcript, and I have written
7 in paragraph 4 the basic argument of our position and why
8 we disagree with Branko's position.

9 And then after that I have subdivided the
10 memorandum to deal with the specific topics that have been
11 discussed, and this is my effort to consolidate, revise,
12 analyze and provide footnotes for you so that this
13 document, if read by itself independent of anything else,
14 would represent Mitchell's position.

15 The fundamental issue that you have before you is
16 the question of when the Strata partners acquired a
17 property interest that needs to be protected. We contend
18 that unfortunately for Strata and Mr. Murphy and all his
19 partners, that that interest did not arise until November
20 6th of 1995, some 32 months after Strata was force-pooled.
21 How could that be? Well, let me tell you how.

22 In 1992, when Mitchell is beginning to propose
23 the well, Mr. Steve Smith commences discussion with Mark
24 Murphy of Strata, and Mr. Murphy tells Mr. Smith that he is
25 dealing for and on behalf of a bunch of partners. He

1 characterizes them as long-term investors.

2 In October of 1992, Mr. Smith has conducted a
3 title search of the county records, and he has determined
4 that the federal lease for which he's attempting to get
5 Strata's cooperation and support is a federal lease held by
6 Strata.

7 Strata has the record title, they have the
8 operating rights, they have the entire 25 percent of what
9 turns out to be a 320-acre spacing unit. Mr. Smith has
10 consolidated all the rest of the interest, and this is the
11 outstanding interest remaining. He has gotten Santa Fe
12 Energy and Maralo and others to buy into it.

13 So he's got 75 percent of the interest in the
14 spacing unit, and he's going out and looking for the
15 balance. And he makes a contact with Mr. Murphy who, of
16 record through Strata, has the remaining 25 percent.

17 So from October 26th of 1992 to January 23rd of
18 1993, Mr. Murphy is characterizing these people as his
19 partners and his long-time investors.

20 Prior to January 13th -- and that's a significant
21 date because it's just a week before the hearing -- January
22 13th, 1993, Mr. Murphy has told Strata that he's got
23 partners, long-time investors, but he doesn't disclose that
24 they, in fact, own an interest, that -- doesn't disclose
25 their identity, who they are, what percentage they have or

1 how to contact them.

2 In November of 1992, Mr. Murphy tells Smith that
3 Strata will defend itself and all its partners during a
4 proceeding, including force-pooling. And there's numerous
5 phone calls, and there's lots of correspondence back and
6 forth.

7 Finally, on November 20th, 1992, Mitchell
8 formally proposes the Tomahawk well to Strata and to
9 Murphy.

10 On December 7th, Mitchell files its compulsory
11 pooling application, which is set for hearing on January
12 7th. It later gets delayed.

13 But on December 9th, 1992, in accordance with how
14 we practice the notifications, Strata is served and signs
15 the green card, receiving notice of the hearing and a copy
16 of the compulsory pooling application.

17 Even after that date, Mr. Murphy continues to
18 deal on behalf of his partners and on behalf of Strata to
19 sell or farm out the interest to Mitchell.

20 In fact, you'll find in the transcript, and we've
21 cited the document, on December 30th, 1992, Mark Murphy has
22 signed a letter, and he communicates it to Mitchell, and he
23 talks about his undisclosed owners. He even characterizes
24 them as undisclosed owners. And he says, Strata hereby
25 represents and warrants unto Mitchell that it has the

1 power, the right and authority to sell 100 percent of the
2 subject lease for benefit of the undisclosed owners.

3 Mr. Mitchell -- I'm sorry, Mr. Smith, on behalf
4 of Mitchell, attempts to accept the proposal from Strata.
5 There's a difference between Smith and Mitchell about what
6 the deal is, and it finally falls apart.

7 And so the afternoon before the hearing, 30 days
8 after Strata has been served, then we receive notification
9 that Mr. Cavin is going to enter his appearance for Strata,
10 and we continue the case.

11 The case is continued. And then in January, on
12 the 12th of January, 1993, Strata sends Mitchell this list
13 of partners. The problem is that Mr. Murphy doesn't sign
14 and deliver the assignments until November 7th of 1995.
15 Thirty-one months later, he delivers the assignments, puts
16 them of record, and writes them a letter to the effect,
17 Dear partners, it's come to my knowledge that Mitchell's
18 Tomahawk well has now paid out, and you might have a claim
19 against them to recover your proportionate share of the
20 risk-factor penalty.

21 Mr. Murphy, after the pooling order was issued,
22 wrote Mitchell and said, I'm going to communicate all this
23 stuff to my partners. And then apparently he doesn't do
24 it, because he waits and it doesn't happen.

25 In fact, February 24th, 1993, Murphy advises

1 Mitchell, It is my -- Mr. Murphy's -- intention to discuss
2 Mitchell's proposal with the other lease owners, and it
3 goes on and on.

4 So here's the problem. The fundamental issue is
5 to decide -- someone decide, maybe not us, but eventually
6 we have to decide for force-pooling cases, and in this
7 case, when do the undisclosed Strata partners have a
8 property interest that needs to be protected?

9 We look at the statutory language. Under New
10 Mexico law it says all assignments and other instruments of
11 transfer are supposed to be recorded. And it says, No
12 assignment or other instrument affecting the title -- in
13 this one we're talking about royalties, but there's an
14 applicable provision with regards to interest -- it says,
15 Such royalties not recorded are herein provided shall -- no
16 assignment shall affect record unless they're of record or
17 without knowledge of the existence of such unrecorded
18 instrument.

19 Mr. Stratton wants to charge Mitchell with notice
20 of a document before it's even executed, much less
21 recorded, and the question is, how is Mitchell supposed to
22 know this unrecorded instrument exists until the instrument
23 is executed and recorded?

24 Branko maintains that simply by telling somebody
25 you've got partners and investors should trigger an

1 obligation on Mitchell's part to go out and look for all
2 these people. And yet when you look, you can't find them
3 of public record.

4 And therein lies the dilemma, I think, for all of
5 us that do this kind of work, is that after a party is
6 served with a compulsory pooling application, that service
7 taking place on December 9th, 1992, thereafter, the
8 following month and the next year, Mr. Murphy discloses a
9 list of what he says is his partners.

10 And the issue is whether or not that should cause
11 Mitchell to engage in anything else. We believe the law of
12 New Mexico requires us to do nothing else, that having
13 found and determined and served the parties at the time
14 those interests were known and of record to everyone else,
15 is the time you fix for notification.

16 The Division has agreed with us on that issue.
17 They have characterized this in one of the orders as a
18 cutoff date for notification.

19 You may investigate and examine that decision,
20 but I'm in agreement with what the Division did with
21 regards to notice -- notice of hearings for the cutoff
22 date, and that's the notice you're served for hearing.

23 What has occurred is that after the force-pooling
24 order was issued, Mitchell made the choice to provide the
25 election to the parties post-order to Strata. And you can

1 look at Mr. Stogner's first order, and he goes on at
2 incredible length, talking about this issue.

3 We spent a lot of time back in 1993 with Mr.
4 Cavin and Mr. Murphy, talking about their desire to
5 continue the case, so that Mitchell would be required to
6 provide notice to all these interest owners. It was
7 debated, discussed and decided. Their motion to continue
8 was denied and we went forward.

9 The order was entered. Subsequent to the order,
10 Strata was notified. We did not choose to chase after all
11 the rest of these 15 investors. It's our position that we
12 have no obligation to chase after them until an instrument
13 is executed and delivered to us, to let us know that they
14 have that interest.

15 You're not required to record it, necessarily,
16 but if you have an instrument, an assignment that's signed,
17 appears valid on its face, notarized and signed by the
18 right people and they deliver it to you, then at that point
19 you have an obligation to substitute them in. And we would
20 have substituted them in, in the shoes of Strata, and then
21 we'd go forward and, we contend, still be subject to the
22 200-percent risk factor.

23 So what's occurring here is, Mr. Murphy chooses
24 not to tell his partners, apparently -- although it's hard
25 to believe that they did not know until a year after the

1 lease in which they held an interest expired, but that's
2 the position they take, that they didn't know. He chooses
3 not to tell them; he says he's going to.

4 And then the assignment is 31 months later, after
5 the well is paid out conveniently, and he knows that. He
6 tells them, Here's your assignment, I've placed it of
7 record, you have it now, and by the way, you now have a
8 claim against Mitchell to recover some of the penalty.

9 Mr. Stratton wants to rely on the *Uhden* case. I
10 think his reliance is misplaced. Let's talk about that
11 case. It's a starting point for convenience.

12 You may remember the *Uhden* case. It had to do
13 with Cedar Hills, the first coal gas pool we adopted up
14 there in the San Juan Basin. Amoco had done a couple of
15 wells in Cedar Hills and were running some interference
16 tests, and had originally developed it on statewide 160 gas
17 spacing, because it was the appropriate rule to apply. It
18 had some initial wells, two of which were on 160-acre
19 spacing units, in which Mr. *Uhden* had an interest.

20 And how did we know she had an interest? She was
21 Amoco's lessee. Amoco had replaced her original lessee,
22 and Amoco knew Mrs. *Uhden*. They knew where to find her,
23 they knew her interest was of record, it was an assignment
24 to their company. You could check public records and find
25 out who she was. They were paying her money. She had an

1 interest in the spacing unit.

2 Substantial difference between Mrs. Uhden and the
3 Strata undisclosed partners. You can't find them by public
4 record, they're not your payees, you're relying on Strata
5 and they tell you, Hey, we defend for these people, we
6 represent these people, they're our long-time investors,
7 and we deal with Strata.

8 Mrs. Uhden was being paid on 160-acre spacing for
9 the wells on her unit.

10 After Amoco developed the interference test, they
11 developed enough science to demonstrate to the Division
12 that we could temporarily expand spacing in Cedar Hills and
13 go to 320 gas spacing. And Amoco filed the application to
14 do that.

15 They did not choose to notify Mrs. Uhden, one of
16 their payees. They argued that under her lease they had
17 the right to change the spacing because there was a clause
18 provision in her lease that let them change the spacing to
19 conform to New Mexico Oil Conservation Division rules.

20 So they ignored her, changed the spacing, got it
21 approved by the Division and went to 320 spacing. Do you
22 see what happened to her interest? Divided right in half.
23 And all of a sudden, Mrs. Uhden's nice check got cut in
24 half, and she says, What are you people doing to me?

25 And they said, Well, we changed the rules.

1 She said, You should have told me, you affected
2 my interest.

3 The New Mexico Supreme Court says this woman has
4 a property interest, you can find it, it's there, it's
5 vested in her, and she's entitled to notice as one of these
6 payees.

7 I think there's a substantial difference in Mrs.
8 Uhden who, you know, you find, her interest is by a
9 conveyance, it exists, and yet Strata partners want to be
10 in Mrs. Uhden's shoes. And I think what happens is, the
11 system gets manipulated, we get taken advantage of, and we
12 run the risk of having this game played before the Division
13 in terms of compulsory pooling orders.

14 The problem is this: Once you serve the
15 individuals, then the obligation shifts to those
16 individuals served, to either defend their interest or, if
17 they assign their interest, to make sure the parties they
18 assign their interest to are properly substituted.

19 And that's the way it goes in district court.
20 You can file quiet-title suit, and if I look in the records
21 and I find that Commissioner LeMay has a house over next to
22 me and he's affected, then I'm going to serve him. And I
23 may not know he's got investors, and I may not know that he
24 just agreed and took a check to sell his house to somebody
25 else. I don't know about that person at all. But once

1 I've served him, the obligation is upon Commissioner LeMay
2 to get his purchaser, his grantee, his assignee, the person
3 he's going to convey the property, notified and properly
4 substituted. Why should I chase after your assignee? And
5 what happens if you decide, in order to defeat the pooling
6 process, to assign your interest to everybody in the
7 Artesia phone book? Now what happens? I'll never get this
8 pooled. I'll never find all these people.

9 The dilemma with what we have before us now is
10 that the Division has established a cutoff date, for which
11 I have no disagreement. I think it's fair and appropriate
12 for the Division to say that when a party is served, that
13 party is the party. And if it's to be somebody else, they
14 need to figure out how to substitute them in.

15 What I disagree with for the Division is that
16 they have fixed another point in time to set up a different
17 set of people to be served with the elections after the
18 order. And I don't think they intended to do that; it's
19 simply the way the order got drafted.

20 And here's what's the problem with the order:
21 We've got the parties fixed as of the date they receive
22 application, go through the hearing process, get an order.
23 You then, under what the Division has told us to do, must
24 again search the record, you must again go out and find all
25 the things that may have happened between the date the

1 application is served and the order is issued for which
2 you're going to serve people again.

3 I don't think that should be our burden. I'm not
4 sure it helps Branko, because the search doesn't tell us
5 anything. What we did know is, here's a list of investors.

6 If you decide that that list of investors being
7 told to Mitchell is enough, that we should have done
8 something else but we didn't do it, we don't think it's
9 wrong, but you'll have to decide that issue, because that's
10 what Mr. Stratton is debating.

11 My problem is, with the Division order, is, they
12 say, All right, you knew that these people existed. You
13 may not know of what they had, but you should have given
14 them the order and given an election after the order.

15 It begs the question. It lets Strata do exactly
16 what the Division was trying to preclude when they fixed
17 the cutoff date for notification. It just shifts the point
18 in time where you get to manipulate and play the game of
19 who gets notice and what happens, when.

20 And look how far they played the game. They
21 waited 31 months. And why? Well, because the well paid
22 out. And we're talking about big bucks. This is a
23 million-dollar well. Twenty-five percent of a million
24 dollars is a bunch. And it's paid out one time, and it's
25 moving towards twice. We're looking at \$300,000 in dispute

1 here, and that's why we have got people coming out of the
2 woodwork after the fact, wanting their money back.

3 This is a matter of policy for the Division, it's
4 a matter of precedent and policy for the Commission, and
5 you need to decide the fundamental issue, is, when and how
6 is an applicant before your agency supposed to know and
7 determine the individuals for which you're going to serve
8 in order to commit their interest, in order that they share
9 in the costs of the well?

10 It's our contention, as you can read in the
11 brief, is that event did not occur until November 7th,
12 1995.

13 The Division order, as it now stands, unless
14 modified, has required us to come back to a hearing to be
15 scheduled at the Division level, to go through a hearing to
16 talk about how the Strata partners are to share in the cost
17 and what's supposed to happen.

18 We believe that that's not necessary. Our
19 opinion and our position is that the Strata partners --
20 Strata went nonconsent. They were served. They received a
21 small share, and they kept a small share, and they assigned
22 the rest of it. And I forgot the percentages, but it's in
23 the brief. They kept part of it and assigned the rest.

24 They were served with a notice. They failed to
25 make the election.

1 Interesting thing happened after the Examiner
2 order: They went *de novo*. We were ready to come before
3 you, and the afternoon before the *de novo* hearing I got a
4 transmission from Mr. Cavin, Mr. Stratton's partner, saying
5 they were abandoning the appeal. You know, the issue that
6 would have come before you in 1993 would have been the
7 debate over these partners, and they pulled the plug on it,
8 and it went away.

9 So we're saying that that interest, that 25
10 percent, stayed locked at that point in time, until such
11 time as Mitchell recovers the 200-percent penalty that was
12 awarded, that Strata and its undisclosed partners are not
13 entitled to any other elections.

14 Interesting what's about to happen: The Morrow
15 zone in the well is beginning to deplete. There's concern
16 about how long the well is going to sustain itself. It's
17 on compression now. The evidence would demonstrate that a
18 decision has got to be made soon about election to
19 perforate another Morrow interval. It will not surprise me
20 to see Strata wanting to have a free ride on that election,
21 and yet we need that production to pay off the penalty.

22 The position is, they're not entitled to any
23 other elections until we get paid out, and they're not
24 parties with an affected interest until they at least take
25 the step of signing an instrument, making that interest

1 exist and giving us a way to find out about that interest.

2 The orders are interesting. You can see how hard
3 Mr. Carroll and Mr. Stogner struggled with the order. It
4 goes into incredible length, talking about how disappointed
5 the Division is with the tactics that Strata has utilized
6 here.

7 Ultimately, they decided to open the hearing for
8 this election. And I think, in reflection, that that
9 wasn't necessary, because you need to look to two things:
10 One, when did the Strata partners get their interest?
11 November of 1995. And if you provide as a matter of policy
12 that the notifications are tied back into the date the
13 application is served on you, this is an effective and
14 efficient means by which everyone's interest is protected,
15 not only Mitchell's but Strata.

16 I can't imagine it would be any fairer than if
17 you're the party of record, you're the party I'm dealing
18 with, and you tell me you're going to defend and represent
19 these interests, and I serve you, and you later tell me
20 otherwise, it should be your obligation to get them into
21 the hearing room, and not mine.

22 Thank you, that's all I have.

23 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

24 Okay, did you have anything to say, or is it --
25 your presence here is to ask questions too or --

1 MR. CARROLL: Mr. Chairman, as you're probably
2 well aware of, the Division is a very interested party in
3 this case, and your decision in this matter is going to
4 affect how we conduct our proceedings from here on out.

5 At the case heard in May where the Division
6 reopened the case, we looked at the evidence and determined
7 that there should be a cutoff date. And I could ask a
8 million questions regarding the circumstances and pose
9 scenarios to you as to the terrible outcomes that could
10 occur before the Division, based upon similar-type factual
11 situations.

12 For instance, if Strata said it had partners and
13 in this case also represented -- it had partners in this
14 lease it represented, it could also sell the lease on
15 behalf of its partners, and they would represent the
16 partners in a force-pooling proceeding and then said, Well,
17 I'm not going to tell you who my partners are.

18 I mean, where does that leave an applicant? They
19 know that there's partners out there, but they don't know
20 who to serve, and the party won't tell them. Well, unless
21 it's of record, they won't know who to serve, so they'll
22 have to proceed just against the party of record.

23 Now, as to the second cutoff date -- The first
24 cutoff date is for application for hearing, who should be
25 notified of the hearing. And in the Division decision we

1 decided that the party of record and any other actual
2 owners known to Mitchell should be notified. And at the
3 time the application was filed Mitchell did not know the
4 names of any of these undisclosed partners and relied upon
5 representations of Strata.

6 The Division -- thing about the election period
7 said that Mitchell had the names of the working interest
8 owners in hand and did not notify them of their election
9 rights.

10 Now, there's a bunch of questions regarding that
11 too. For instance, a party could say, Well, my partners --
12 using Mr. Kellahin's example -- are those listed in the
13 Artesia phone book. And then you'll notify all of them and
14 say, Hey, these people in the Artesia phone book don't own
15 an interest.

16 And then the party will say, Well, I made a
17 mistake, I actually didn't convey all these interests. And
18 a party could really impose a lot of obstacles to an
19 applicant ever getting an order from the Division by
20 playing a lot of games with notice.

21 I think what the Division would like from the
22 Commission is definitely guidance and some firm rules.

23 In this situation what would help, I guess, is
24 that the applicant stick with the parties of record unless
25 they receive notice and an executed instrument showing that

1 a transfer actually occurred, rather than just a bald
2 statement saying, These are my partners, whether it be 15
3 or the Artesia phone book, and here are the executed
4 instruments that they have signed, even if they're not
5 recorded. In this situation it wouldn't have helped
6 because there was no executed instruments.

7 I could pose a number of other scenarios. We're
8 just -- The Division is very wary, especially, of Mr.
9 Stratton's suggestion that personal service would be
10 required of all parties in our proceedings, and not service
11 by mail, by certified mail.

12 I think -- I don't know the Constitutionality of
13 providing notice just by certified mail, as we currently
14 do, versus personal service. But as you well know, that
15 would cost the industry many -- probably millions of
16 dollars every year, hiring personal process servers.

17 So I guess the Division appears as an interested
18 party, and a frightened party.

19 MR. STRATTON: Mr. Chairman, could I just -- I'll
20 be very brief. I mean, I'd like to respond to a couple of
21 those --

22 CHAIRMAN LEMAY: Sure.

23 MR. STRATTON: -- things and just a couple of...

24 I didn't suggest personal service. Uhden says
25 personal service. I appreciate the elevation to the court,

1 but it wasn't me that did that; it's *Udden* that says that.
2 I don't think personal service ought to be necessary, but
3 the New Mexico Supreme Court says it's necessary.

4 Secondly, I'm not representing Strata here. None
5 of my clients are Strata, none of my clients are
6 represented by Strata, none of my clients gave Strata any
7 authority to accept service of process on their behalf.

8 And so Strata was here, they got notice, they
9 made their election, they're out. But -- And so I know the
10 attempt is to confuse Strata and impute everything that
11 Strata did to my clients.

12 But a party can't come in here and say, Oh, I
13 represent everybody in the Artesia phone book, and then
14 accept service on behalf of everybody in the Artesia phone
15 book. You've got to -- We have ways we do that in New
16 Mexico. You file under the law. You get a registered
17 service agent and you can serve him. Otherwise, you have
18 to serve the party personally.

19 So to suggest that we are somehow bound because
20 Strata had negotiations with these people is just
21 ridiculous.

22 And then finally, I just want to say that every
23 one of Mr. Carroll's suggestions fits under the *Udden* rule.
24 If a party's identity and whereabouts are known or could be
25 ascertained with due diligence -- if I told you I had

1 undisclosed partners and I'm not going to tell you who they
2 are, and the undisclosed partners -- we're really talking
3 about investors, because that's the term that all these oil
4 and gas guys use -- don't have their interests recorded,
5 and I as an applicant can't figure out who you are, you're
6 stuck, you don't deserve notice, because you couldn't have
7 been found, you weren't known or you could not have been
8 ascertained through due diligence.

9 But that that's not what happened in this
10 particular case. I mean, the want -- You can come up with
11 all kinds of scenarios about that.

12 This letter listing the interest owner, their
13 address and their leasehold percentage ownership over here,
14 this is Exhibit 24, this is the one, when you look at this,
15 you'll come to, was given to Mitchell. This is what they
16 had. It wasn't undisclosed. This is disclosure if you ask
17 me, not nondisclosure.

18 So if they're not disclosed and you don't have
19 your interests recorded, then you have an interest at your
20 peril.

21 I mean, you're going to have -- If Mr. Murphy
22 hadn't have sent this letter, for instance, to Mitchell,
23 then other than the fact that Mitchell had the duty to use
24 due diligence, which they never did -- I mean, that's
25 certainly an argument. But if this hadn't been sent to

1 them, we probably wouldn't be here today, because this is
2 the notice that they got and this is the knowledge they
3 had. To suggest they didn't know where to find them is
4 just not right. You'll see that when you look at the
5 exhibit.

6 So that's all I wanted to say.

7 CHAIRMAN LEMAY: I'm sorry, Mr. Carroll, do you
8 want to say something?

9 MR. CARROLL: Mr. Chairman, I might interject.
10 There's a lot of agency issues in this case. We didn't
11 hear the testimony of these undisclosed partners. We do
12 know that Strata represented that it could sell the lease
13 on behalf of the partners and that it would represent its
14 partners' rights in any force-pooling proceeding. So --
15 I'm just saying maybe there's some agency or partnership
16 issues that are better decided by a court more familiar
17 with such issues.

18 CHAIRMAN LEMAY: Okay.

19 MR. CARROLL: And to comment on Mr. Stratton's
20 last -- holding up the letter, Strata always took the
21 position that it had no duty to inform its partners. I
22 guess the duty was to Mitchell in this case, to disclose
23 the partners.

24 This is getting very esoteric legal theory, but
25 who is the duty owed to? It seemed like Strata had a duty

1 to protect its partners by submitting this list of partners
2 to Mitchell but had no duty to then inform its partners
3 that there's a force-pooling proceeding.

4 And then -- To begin with, Mr. Stratton said, you
5 know, once these partners became aware of the order and of
6 the well, they came forward. Well, it was Strata that
7 somehow had a duty arise to inform these partners of the
8 proceeding. For a long time they said no duty to inform
9 their partners. But then later they somehow had a duty to
10 inform them they had a right against Mitchell.

11 And it's -- the agency issues are confusing and
12 where the duties lie. If Mr. Stratton can answer those...

13 MR. STRATTON: Mr. Chairman, I didn't say that.
14 I didn't say that once they became aware, they came
15 forward. So I have a hard time answering that since I
16 didn't say that.

17 MR. CARROLL: Well, the transcript will say that.

18 MR. STRATTON: I don't see -- To me that's not an
19 issue. I mean, we know when they became aware, because Mr.
20 Carroll asked us to get affidavits from them, which we did,
21 that indicated when each individual became aware of the
22 well and when the proceedings occurred.

23 And those affidavits are in the record at --
24 They're our last set of affidavits. I don't know, they're
25 the last 16 exhibits.

1 But why that is important I don't know,
2 because --

3 CHAIRMAN LEMAY: Okay, I guess we can dig that
4 out of the record, what that says. It sounds like an open
5 issue.

6 Are you ready to take some questions from the
7 Commissioners? I'd like to include Lyn Hebert in the
8 question-and-answer, and she can -- Since this is a lot of
9 legal issues, if you have a question, Lyn, I would
10 appreciate, on the legal side, you asking them for
11 clarification.

12 Start with Commissioner Weiss.

13 COMMISSIONER WEISS: Yeah, I don't hear any
14 issues here about correlative rights or waste. I think we
15 need to form a committee of law professors, is what I
16 think, and study this sucker.

17 CHAIRMAN LEMAY: There are some heavy legal
18 issues involved. I --

19 COMMISSIONER WEISS: I mean, this is...

20 CHAIRMAN LEMAY: Commissioner Bailey, with your
21 law hat on, do you --

22 COMMISSIONER BAILEY: Did Strata receive any
23 disbursements from Mitchell or any billings concerning this
24 well?

25 MR. KELLAHIN: Yes, ma'am.

1 COMMISSIONER BAILEY: On behalf of its partners?

2 MR. KELLAHIN: Yeah, I can't characterize it on
3 behalf of their partners, but as information is distributed
4 it went to Strata, even after the -- We had the force-
5 pooling application and the notice, and then they gave us
6 the list. But all the information has been sent to Strata.

7 COMMISSIONER BAILEY: And were there any moneys
8 paid to Strata?

9 MR. KELLAHIN: No, ma'am, because we are still
10 trying to recover the penalty component of the Order. And
11 we have recovered the costs of their share one time, and
12 we're moving towards the two-time number, and so we haven't
13 got to 300 yet.

14 COMMISSIONER BAILEY: That's all I have.

15 CHAIRMAN LEMAY: I guess I had a couple questions
16 about the structure of the partnership arrangement. These
17 have been characterized as Strata partners. Now, these
18 Strata partners, I take it, are your clients, Mr. Stratton?

19 MR. STRATTON: I wouldn't characterize them as
20 Strata partners --

21 CHAIRMAN LEMAY: Okay.

22 MR. STRATTON: -- Mr. Chairman, but --

23 CHAIRMAN LEMAY: Well, how would you characterize
24 them, then?

25 MR. STRATTON: Working interest owners and

1 overriding royalty interest owners.

2 CHAIRMAN LEMAY: Okay.

3 MR. STRATTON: I think, Mr. Chairman --

4 CHAIRMAN LEMAY: Is there a relationship between
5 these working interest owners and Strata?

6 MR. STRATTON: They know each other. But do you
7 mean is there a legal relationship between them --

8 CHAIRMAN LEMAY: Both.

9 MR. STRATTON: -- like a partnership or --

10 CHAIRMAN LEMAY: Okay, both.

11 MR. STRATTON: No.

12 CHAIRMAN LEMAY: No legal relationship --

13 MR. STRATTON: No.

14 CHAIRMAN LEMAY: -- it's not a limited
15 partnership --

16 MR. STRATTON: No.

17 CHAIRMAN LEMAY: -- it's not a -- There's no
18 corporate identity there, so they are working interest
19 partners?

20 MR. STRATTON: Some are individuals, some are
21 corporations, some are -- you know, all kinds of different
22 folks. But there is no legal relationship, whether it's
23 corporate, limited liability company, limited partnership
24 or partnership, between these individuals.

25 I find that oil men and oil people use the word

1 "partner" as "investor", and -- these are partners, they're
2 our partners in this well. They don't mean they have a
3 partnership --

4 CHAIRMAN LEMAY: Okay.

5 MR. STRATTON: -- under New Mexico law; they mean
6 they're investing in this well.

7 CHAIRMAN LEMAY: But they're partners in a lease,
8 then; wouldn't they be that? Or co-owners in the lease?

9 MR. STRATTON: No.

10 CHAIRMAN LEMAY: How do they get their interest
11 in this 25 percent that became part of the proration unit?

12 MR. STRATTON: They go purchase an interest, and
13 then they get a percentage interest, like a 1-percent
14 interest, working interest, in the lease.

15 CHAIRMAN LEMAY: And who do they purchase that
16 from?

17 MR. STRATTON: These -- Our clients purchased it
18 from Strata --

19 CHAIRMAN LEMAY: Okay.

20 MR. STRATTON: -- in 1989 and 1990.

21 CHAIRMAN LEMAY: Okay. Why didn't they receive
22 an assignment, then?

23 MR. STRATTON: You know, I don't know the answer
24 to that, Mr. Chairman. You mean a written assignment?

25 CHAIRMAN LEMAY: Well, something to show they

1 have interest. I mean, anytime you have a financial
2 transaction, real estate transaction, there's usually some
3 paper that's signed designating the interest if you pay
4 money.

5 MR. STRATTON: They may have some of what you're
6 talking about. I mean, not necessarily an assignment that
7 occurred prior to this time.

8 But I find that that isn't always the case in the
9 oil and gas industry. I see a lot of these deals where
10 people are using -- where people don't have that right
11 away, and they don't assign the interest right away. And I
12 -- I mean, I see a lot of it; I'm surprised you all don't
13 see it a lot.

14 Maybe by the time it gets here, we're at this
15 situation and a lot of water has gone under the bridge.
16 But when -- I certainly know the deals I've been involved
17 in and that my clients have been involved in, that that
18 doesn't always happen right away.

19 CHAIRMAN LEMAY: Would you characterize these
20 people, these investors, as knowledgeable oil people?

21 MR. STRATTON: Some of them certainly are, yes,
22 sir, absolutely. Some of them are oil companies.

23 CHAIRMAN LEMAY: So they pretty well know what's
24 going on in the patch and how things are done and --

25 MR. STRATTON: Some of them -- most -- I would

1 say most of them do. I would say most of them do. I'm not
2 testifying here; I'm giving you my opinion.

3 CHAIRMAN LEMAY: Well, yeah, I'm trying to --
4 We're trying to characterize --

5 MR. STRATTON: Right, I understand.

6 CHAIRMAN LEMAY: -- these partners, the
7 relationship between Strata and the investors, working
8 interest owners, partners, whatever. And that
9 relationship, I think, is important to this Commission's
10 deliberations. What constitutes a relationship -- What
11 constitutes these relationships? They can be confusing, it
12 sounds like.

13 MR. STRATTON: Well, the one thing I would say,
14 Mr. Chairman, is, the reason *Uhdén* and other cases in New
15 Mexico have this fairly strict Constitutional notice
16 requirement is so that you don't have to do that. You all
17 have been very patient sitting here today, listening to our
18 esoteric legal arguments, and I know they're very
19 difficult, and they're very difficult for the best of
20 lawyers.

21 But what solves all of this is to make sure you
22 have them here. I mean, what if, for instance, they had
23 notified them and then somebody decided they didn't have
24 to? I mean, that wouldn't have been the worst thing to
25 happen in the world.

1 But the idea to try to get around notifying
2 somebody is what puts us in these situations, where we're
3 going to have to do that.

4 So my suggestion to you is, it almost doesn't
5 matter how you characterize their interest. You can
6 characterize it any way you want, but the fact is, they do
7 have a protected property right, because they had purchased
8 this interest back in 1989 and 1990.

9 And so they're entitled to notice, if somebody
10 knows about their interest, only if they know about their
11 interest. I will stipulate right here on the record that
12 if it had never come to Mitchell's attention and Mitchell
13 had used some -- if they had gone through the phone
14 directory in Artesia, to use Mr. Carroll's example, and
15 couldn't find the interests, then all of my clients are out
16 of luck, because they're not recorded.

17 CHAIRMAN LEMAY: My question still is, what
18 constitutes the interest? Strata saying they have interest
19 or -- Normally interest becomes a definable interest when
20 there's some document there to say they have an interest,
21 because we can characterize a lot of things different ways,
22 but without some kind of documentation -- I guess they
23 should have taken the word of Strata on that, that they had
24 interest, because Strata told them they had interest?

25 MR. STRATTON: They wouldn't be here today if

1 they had done that. They could have served them, and they
2 would have found they had interests, and everything would
3 have been litigated.

4 So the answer in that particular case -- I
5 wouldn't say they should have taken their word. They
6 should have taken the letter, and somebody should have
7 called up Branko, or somebody should have called up Duane
8 Brown, or somebody should have called up Chuck Wellborn and
9 said, Now, we're informed you have an interest in this
10 particular lease; is that true? They have a duty to use
11 due diligence to ascertain this.

12 Strikes me, if they didn't believe Strata, which
13 actually turned out to be true -- it would have been
14 somebody they could have believed -- but if they didn't
15 believe them, pick up the telephone and call them. And if
16 that individual, if Mr. Brown, had said, No, I don't have
17 an interest in that...

18 But if he says, I do have an interest in that,
19 then they've used their due diligence to ascertain what
20 interests there were.

21 But none of that was done. There was no attempt
22 to do that.

23 CHAIRMAN LEMAY: All right, that helps clarify.
24 Did you have any questions, Lyn, concerning some of the
25 legalities?

1 MS. HEBERT: Well, I did have a question, Mr.
2 Kellahin. You indicated that you thought the date should
3 be the date the party is served. But with more than one
4 party -- So that would be a different date for every party
5 prior to cutoff date, as opposed to having the date of the
6 known interest owners be the date the application is filed
7 with the Commission?

8 MR. KELLAHIN: I under -- Yes.

9 MS. HEBERT: You've got a sort of moving target,
10 it seems.

11 MR. KELLAHIN: Yeah, it is a moving target, and
12 it's bothered me, and I've thought about how convenient it
13 would be for the agency and for the applicant to say the
14 target is fixed when we file the application.

15 But if the application is filed and each of the
16 parties to be pooled does not yet know that's happened,
17 maybe it's fair that the target floats, so that by the time
18 you come to the hearing you can fix that individual's
19 involvement in the process with the date they sign the
20 green card. And you're going to have different dates based
21 upon service, but I think that's fair.

22 I don't think it would be fair to file a pooling
23 application, serve Santa Fe Energy, get around to serving
24 Burlington a few days later, and find that Burlington says,
25 Hey, wait a minute, my interest has already been assigned

1 of record. And I think maybe we need to deal with the
2 floating concept of actual service until we have a better
3 sense of how cumbersome that might be.

4 MS. HEBERT: Well, to some extent it seems like
5 the reason that the Division keeps all the voluminous
6 records it keeps is because it becomes something of -- not
7 like the county records, of course, but it becomes a source
8 of notice for where things -- or for when things occurred
9 that affect the property interests.

10 So it just occurred to me that the filing of the
11 application would be of notice to people in the oil and gas
12 industry. If they knew that that was the case, they would
13 check the dockets. And they do check the dockets. I mean,
14 I believe they do.

15 MR. KELLAHIN: And that's a decision for you to
16 make. I'm not debating one or the other. And I think
17 there's a range of choice in there that's reasonable in any
18 extent.

19 But it's troublesome to have investors for an
20 opponent and not receive documentation as to their property
21 interest. And to equate the fact they may have sent a
22 check to Strata with having that property interest vested
23 at that point in time, I think, fixes the property interest
24 too soon.

25 MS. HEBERT: Well, I also had a question for Mr.

1 Stratton.

2 You said that their working interest, their
3 ownership interests, those weren't in writing until 1995?

4 MR. STRATTON: I didn't say that. That's what
5 Mr. Kellahin said. I think --

6 MS. HEBERT: Well, I think Mr. LeMay did ask if
7 they had any written documentation.

8 MR. STRATTON: Oh, okay, of record in this
9 particular case. The only thing that I know of -- Are the
10 assignments in the record?

11 MR. KELLAHIN: Yes.

12 MR. STRATTON: Okay. -- are the assignments that
13 did take place in -- whenever the date was. If it was
14 1995, it was 1995.

15 MS. HEBERT: Are you aware of any of your 16
16 clients had any kind of limited partnership or other
17 partnership agreement with Strata prior to that?

18 MR. STRATTON: I'm aware that they don't.

19 MS. HEBERT: They don't?

20 MR. STRATTON: No.

21 MS. HEBERT: There was nothing in --

22 MR. STRATTON: There's no evidence in the record
23 that they do, and I'm telling you as an officer of the
24 Commission, or whatever you call people here, that they
25 don't have any such relationship, certainly not in regard

1 to this, but no other relationship like that.

2 CHAIRMAN LEMAY: Mr. Carroll?

3 MR. CARROLL: Let me bring up another issue that
4 hasn't been touched on, and that is actual notice and
5 whether actual notice can cure any absence of
6 Constitutional or statutory notice.

7 At the hearing in 1993, a George Scott testified
8 as the consulting geologist for Strata. There's a number
9 of Scott interests, but Mr. Scott testified at that hearing
10 that he was the owner of Scott Exploration, and Scott
11 Exploration is one of these undisclosed partners.

12 Now, the owner of one of these partners was at
13 the hearing and did not enter an appearance as a partner.
14 He was a consulting geologist. So for sure, at least Scott
15 Exploration had notice of the hearing. And I notice one of
16 the affidavits is signed by a geologist with Scott
17 Exploration, and they said they had notice back in 1993.

18 I was wondering if Mr. Stratton could address
19 whether actual notice could substitute for lack of
20 statutory notice, because I found a couple cases in
21 Oklahoma where an Oklahoma court said in a compulsory
22 pooling case -- in two cases -- that parties cannot, you
23 know, even if they haven't received statutory notice, can't
24 stand by and wait to see whether the well is good and then
25 elect to join in after the fact.

1 MR. STRATTON: Mr. Chairman, I'd be pleased to
2 address that --

3 CHAIRMAN LEMAY: Okay.

4 MR. STRATTON: -- if you would like me to.

5 First of all, I regret I can't -- Being from
6 Oklahoma, I'd like to agree that that is what they did, but
7 it's not. The United States Supreme Court, however, did
8 address the issue in 1915, cited in our brief, *Coe vs.*
9 *Armor Fertilizer Works*, a 1915 case.

10 And the United States Supreme Court held that
11 extra-official or casual notice for a hearing granted as a
12 favor of discretion in proceedings for taking one's
13 property -- that means, if you messed up and you just
14 granted them a new hearing -- is not a substantial
15 substitute for the due process of law, which the 14th
16 Amendment of the US Constitution requires. The notice must
17 be formal and provided within the context of the
18 proceedings.

19 So what we're saying is, if I'm in the barber
20 shop and my barber says, You know, Mr. Carroll was in here
21 the other day and he says that there's a hearing going on
22 over there at the Commission and it's going to affect a
23 whole gunny sack full of your oil and gas interests, that's
24 not good enough, because you have to have personal service
25 under *Udden*. The US Supreme Court says casual or extra-

1 official notice is not good enough. So...

2 CHAIRMAN LEMAY: But that's just a -- I'm not
3 sure we're talking about the same thing. I understood it
4 to say that it wasn't casual, but actually one of the
5 witnesses at the hearing was also one of the partners?

6 MR. CARROLL: That's correct.

7 CHAIRMAN LEMAY: So it's --

8 MR. STRATTON: I think that's not correct.

9 CHAIRMAN LEMAY: -- casual notice of the --

10 MR. STRATTON: I don't think Mr. Scott actually
11 is one of the interest owners.

12 MR. CARROLL: He testified he owned Scott
13 Exploration. Scott Exploration is one of the partners.

14 MR. STRATTON: I'd have to check that, but I'm
15 not sure that that is correct.

16 CHAIRMAN LEMAY: Okay, but the fact that if
17 they're there and it's obvious or would appear obvious to
18 us that they knew about it there, then -- and they were a
19 partner, that wouldn't be constructive notice? Or --

20 MR. STRATTON: Constructive notice --

21 CHAIRMAN LEMAY: -- we would assume that he
22 didn't know, even though he knew?

23 MR. STRATTON: Constructive notice doesn't work.

24 CHAIRMAN LEMAY: I don't know what I'm talking
25 about, saying "constructive notice". I mean, I pulled

1 "constructive" out of the air. I mean, if he knows, he
2 knows, doesn't he? Or not?

3 MR. STRATTON: I'm going to say, I don't have a
4 case on that, and I don't think there is a case on that,
5 because I don't think that happens very often. But I'm not
6 going to concede it, because I haven't looked -- That's one
7 out of 16 people, so --

8 CHAIRMAN LEMAY: Well, what's the relationship of
9 these people? Are they interrelated, are they brother-in-
10 laws or --

11 MR. STRATTON: Well, I don't know.

12 CHAIRMAN LEMAY: -- or neighbors, or do they all
13 live in one town, or are they scattered throughout the
14 country, or --

15 MR. STRATTON: They're scattered. We have
16 somebody in Salt Lake City, we've got somebody in Canada,
17 we've got some people in Roswell. Some of them know each
18 other, some of them are related.

19 But I'll tell you what you have. I mean, if
20 that's a serious concern, if you don't believe the US
21 Supreme Court and you don't want to look at *Udden*, go look
22 at their affidavits. They have filed, under the --

23 CHAIRMAN LEMAY: We'll look at those, because I
24 think --

25 MR. STRATTON: -- they have filed, under the

1 penalty of perjury, affidavits saying they didn't know
2 about the hearing. Now, if Mr. Carroll can come prove that
3 they did, then he can go over and see the US Attorney or
4 the district attorney and talk to him about it.

5 But once again, I want -- When you're doing this
6 and when Mr. Carroll says, I don't know what is
7 Constitutional notice, that really concerns me as a
8 litigant here.

9 But please, when you do this, make sure -- And
10 when you decide what a cutoff date is -- this question
11 wasn't asked for me -- please try to make sure you do it in
12 accordance with what the courts say and not just what is
13 convenient for an applicant. Because that, when it gets to
14 court, like in *Uhden* -- I mean, that's what they're going
15 to look at. They're not going to look at what's convenient
16 for Mr. Kellahin's clients. They're going to look at what
17 they think the Constitution requires, even if it's a little
18 bit burdensome, like personal service.

19 MR. KELLAHIN: One footnote to that, if I might.

20 CHAIRMAN LEMAY: Well, I was going to say
21 first --

22 MR. KELLAHIN: Yeah.

23 CHAIRMAN LEMAY: -- because he was -- and then
24 you.

25 Go ahead, Rand.

1 MR. CARROLL: Yeah, there was some recollections
2 that some of the partners showed up at the hearing, besides
3 just being a witness there. In fact, some of the partners
4 may be in the audience here -- it appears so --

5 CHAIRMAN LEMAY: Uh-huh.

6 CHAIRMAN LEMAY: -- and maybe they can be put on
7 the stand.

8 MR. STRATTON: Well, I'm not calling them to the
9 stand, Mr. Chairman.

10 CHAIRMAN LEMAY: Mr. Kellahin?

11 MR. KELLAHIN: Thank you, Mr. Chairman.

12 I would refer Ms. Hebert to page 18 of my brief.
13 There are some Oklahoma cases that we have found. I think
14 this one is interesting. It helped me work my way through
15 it.

16 And it simply says, The Supreme Court of Oklahoma
17 held in *Chancellor* -- talking about a 1982 case -- that the
18 notice requirements were not intended to compel the unit
19 operator to check county records from the date of the
20 Application until the Commission order to assure that all
21 interest owners had been notified. Such a ruling, the
22 court noted, would permit an adverse party to defeat an
23 application by simply transferring ownership after the
24 hearing.

25 What we're contending here is that we had notice

1 of these people only after the application was filed.
2 Their interest is not even of record.

3 The point in time to fix is the date we filed the
4 application and served Mr. Murphy. And if you adopt that
5 date, I think that fixes the problem, because their
6 property interest does not occur and is not known to us
7 until after that date.

8 MR. STRATTON: Mr. Chairman, can I go back to
9 your other point, because you -- I mean, it's an
10 interesting point, and I'm thinking about it.

11 You know, if I was in a lawsuit and there were
12 four or five people that should have been served and I
13 didn't get served, for instance, and I show up and watch
14 the trial, I'm not bound by what they do there. Nobody
15 ever got personal service.

16 If somebody calls me to the witness stand and I
17 testify, I'm not bound by what occurred at the proceeding,
18 because the court doesn't have jurisdiction over me.

19 And it works the same way here, that unless you
20 obtain jurisdiction -- and that's probably a better way to
21 think about it and look at it -- over the individual, they
22 can come frolic around all they want, listen to the
23 hearing, do whatever they want; but you don't have
24 jurisdiction over them to affect their rights.

25 So in thinking -- I mean, it's an easy answer in

1 a judicial context. I know we tend to think about
2 administrative proceedings as being more informal and
3 having different rules. But when it boils down to
4 Constitutional considerations, technically we don't here.

5 So I guess in thinking about that, I'd answer
6 that it didn't matter who was here if they hadn't been
7 served appropriately under the *Uhden* standard.

8 MR. CARROLL: Mr. Chairman, one more note.

9 It's my recollection that you don't represent all
10 the undisclosed partners? There's a couple that did not
11 join in this action?

12 MR. STRATTON: I don't subscribe to the
13 undisclosed partner theory, so I don't know who you mean,
14 Mr. Carroll, when you say that.

15 MR. KELLAHIN: It's Warren and Arrowhead.

16 MR. CARROLL: Do you represent all the partners
17 or the working interest owners besides Strata in this?

18 MR. STRATTON: No, I don't.

19 MR. CARROLL: Who don't you represent?

20 MR. STRATTON: Well, maybe I should tell you who
21 I do represent, and then you can determine for yourself --

22 MR. CARROLL: Is it Warren and Arrowhead?

23 MR. STRATTON: -- because I don't know who all
24 the working interest --

25 MR. CARROLL: Warren and Arrowhead that --

1 MR. STRATTON: I don't know who all the working
2 interest owners are. I don't represent Warren and I don't
3 represent Arrowhead. They're not parties to this
4 proceeding.

5 MR. CARROLL: Do you know why?

6 MR. STRATTON: I don't. And I would say once
7 again, Mr. Carroll, I can't think of anything more
8 irrelevant as to why they're not here. Just because
9 they're not here doesn't mean that the Commission can
10 violate the Constitutional rights of the people that are
11 here.

12 CHAIRMAN LEMAY: So Branko is who? Is that -- Is
13 one of the investors, is that who Branko is?

14 MR. STRATTON: Yes, Branko, Inc.

15 CHAIRMAN LEMAY: Is it a corporation?

16 MR. STRATTON: Branko, Inc.

17 CHAIRMAN LEMAY: Is it a corporation?

18 MR. STRATTON: Uh-huh.

19 CHAIRMAN LEMAY: And you're representing them?

20 MR. STRATTON: Correct, yes.

21 CHAIRMAN LEMAY: Okay.

22 MR. STRATTON: Do you want a rundown who I'm
23 representing?

24 CHAIRMAN LEMAY: That would help, probably.

25 MR. STRATTON: It's listed -- Well, it's listed

1 in the motion --

2 CHAIRMAN LEMAY: Okay.

3 MR. STRATTON: -- but I can run down it.

4 Branko, Inc.; Duane Brown; S.H. Cavin -- that's
5 not my law partner -- Robert Eaton; Terry Kramer; Landwest,
6 which is a general partnership out of Utah; Candace
7 McClelland; Permian Hunter Corporation; Scott Exploration,
8 Inc. -- and I believe that the actual owner of that is
9 Charles Warren Scott and not the Mr. Scott that Mr. Carroll
10 is talking about -- Chuck Wellborn; Winn Investment, Inc.;
11 Lori Worrall; Xion Investments; George Scott, III -- who is
12 also not the Mr. Scott that Mr. Carroll was talking about
13 -- Stephen Mitchell; and Scott Exploration, Inc.

14 CHAIRMAN LEMAY: Okay, probably helps. A lot of
15 this information, I'm sure, is in there, but --

16 MR. STRATTON: And you haven't seen it and it's
17 unusual. And we appreciate your patience. We hope the
18 Commission doesn't mind us. We could have taken two days
19 to do this. We hope this is better; I don't know.

20 CHAIRMAN LEMAY: Okay, any more questions? Do
21 you have anything?

22 Are you going to make a motion to incorporate the
23 record of the previous hearing into our record and we work
24 with that, plus what you've supplied us today?

25 MR. KELLAHIN: If we have not already

1 accomplished that, Mr. Chairman, we, I think, jointly so
2 move.

3 CHAIRMAN LEMAY: Any objection?

4 If no objection, then the record of the previous
5 hearing will be introduced into this record, and --

6 MR. KELLAHIN: There's two hearings, Mr.
7 Chairman.

8 CHAIRMAN LEMAY: Or both hearings. And you want
9 to introduce the record of both those previous hearings?
10 We're talking about the force-pooling hearing initially --

11 MR. KELLAHIN: Right.

12 CHAIRMAN LEMAY: -- back in 1993 or --

13 MR. KELLAHIN: Yes, sir.

14 CHAIRMAN LEMAY: -- 1992 --

15 MR. KELLAHIN: Yes, sir.

16 CHAIRMAN LEMAY: -- plus the one we just heard.

17 Okay, without objection, the record of those
18 hearings will be entered into this record.

19 Anyone else?

20 MR. KELLAHIN: I'd like to take a moment and
21 introduce my guest. Bobby Hickman is a petroleum engineer.
22 Mr. Hickman is responsible for this project for Mitchell
23 Energy, and he's come from Houston today to be the
24 representative of my client, and he's come a long way in
25 bad weather, and I'd like to introduce him.

1 MR. HICKMAN: Thank you. How you doing?

2 CHAIRMAN LEMAY: Welcome, Mr. Hickman. Sorry you
3 didn't have more to say.

4 MR. HICKMAN: Don't be.

5 CHAIRMAN LEMAY: Usually people like you are
6 sworn in, and we ask you questions.

7 Does anybody else want to make a statement or...

8 MR. CARROLL: I'd just ask the Commission again
9 whether they want to ask any questions of any partners that
10 are in the audience.

11 MS. HEBERT: I just kind of think -- I'll
12 interrupt. I think the understanding was, there wasn't
13 going to be any testimony in this hearing. I mean, that
14 was the --

15 MR. STRATTON: That was our stipulation, Mr.
16 Chairman.

17 CHAIRMAN LEMAY: Sure. I mean, this is
18 voluntary. I wasn't -- you know, anyone wants to -- We can
19 always ask for statements and things. If there's anyone
20 that wants to say anything, they can do so and -- if that's
21 the case.

22 Do you all have anything you want to add to what
23 you've told us already?

24 MR. STRATTON: Us, Mr. Chairman?

25 CHAIRMAN LEMAY: Yes.

1 MR. STRATTON: Oh.

2 CHAIRMAN LEMAY: I mean, I'm ready to sum it up
3 and take the case under advisement unless you have anything
4 else to --

5 MR. KELLAHIN: Mr. Chairman, I've written 28
6 pages. It's probably ten too many. I don't know what else
7 to tell you.

8 CHAIRMAN LEMAY: I don't know what's in those 28
9 pages, Counselor. It can't be that --

10 MR. KELLAHIN: Oh, it's good stuff, Mr. Chairman.

11 MR. STRATTON: I've got some briefs myself that
12 I've made copies of, Mr. Chairman.

13 CHAIRMAN LEMAY: Okay. Sounds like a very -- a
14 case laden with very heavy legal issues. And recognizing
15 that I'm a geologist, that Commissioner Bailey is a
16 geologist, Commissioner Weiss is an engineer, that we --
17 Fortunately, we have Lyn Hebert here as our Commission
18 counsel.

19 We'll certainly look at the legal issues. We
20 have to, as I understand this case, the way it's
21 formulated.

22 And I understand what you're trying to say to us.
23 If I'm -- Besides the case you're making for your clients,
24 you also would like to have some direction from this
25 Commission as to what we consider a good policy for

1 notification would be, that conforms with the *Uhden*
2 decision, as interpreted for us, I guess. I know these
3 decisions can have more than one interpretation, so...

4 You're making a face there, Mr. Stratton, like
5 there's no -- there's only one interpretation of *Uhden*?

6 MR. STRATTON: Well, on that issue, you know,
7 reading the rules, you have a provision for actual notice
8 in your rules, and it just doesn't -- it just doesn't
9 comply with *Uhden*, and it's going to be in the future
10 unless that gets taken care of.

11 I know I'm risking upsetting the Commission. I'm
12 not meaning to; I'm trying to be helpful. Unless that gets
13 taken care of, then anybody who didn't receive personal
14 notice is going to be able to come in and do what we're
15 doing here today.

16 So I would suggest to the Commission that that be
17 looked at and Ms. Hebert look at it -- she's as capable as
18 anyone that I know of to do that -- and try to get that --

19 CHAIRMAN LEMAY: You understand she used to work
20 for you back in the old days.

21 MR. STRATTON: I have no comment for the record,
22 Mr. Chairman.

23 CHAIRMAN LEMAY: Sorry, I just know your previous
24 position --

25 MR. STRATTON: Thank you.

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL January 22nd, 1997.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

CASE NOS. 11,510, 11,721, 10,994

AWAITING FINAL COMMISSION ACTION

NO EVIDENCE OR TESTIMONY TAKEN

CASE NO. 11,515 (DISMISSED CASE)

REPORTER'S TRANSCRIPT OF PROCEEDINGSCOMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN
WILLIAM WEISS, COMMISSIONER
JAMI BAILEY, COMMISSIONER

March 19th, 1997

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission on Wednesday, March 19th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

March 19th, 1997
Commission Hearing
CASE NOS. 11,510, 11,721, 10,994

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A P P E A R A N C E S

FOR THE COMMISSION:

LYN S. HEBERT
Deputy General Counsel
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 9:04 a.m.:

3 CHAIRMAN LEMAY: Good morning, this is the Oil
4 Conservation Commission. My name is Bill LeMay, Chairman
5 of the Commission. To my left, Commissioner Bill Weiss.
6 To my right, Commissioner Jami Bailey representing the
7 Commissioner of Public Lands, State of New Mexico. Also
8 our secretary Florene Davidson, and our attorney Lyn
9 Hebert. Welcome.

10 We shall start with a little business.

11 I'll entertain a motion to okay the minutes of
12 the previous meeting.

13 COMMISSIONER BAILEY: I move acceptance of the
14 minutes.

15 COMMISSIONER WEISS: Second.

16 CHAIRMAN LEMAY: Thank you. It's been moved and
17 seconded. The minutes of the previous meeting are approved
18 and accepted.

19 * * *

20 CHAIRMAN LEMAY: We'll also take some final
21 action on Case Number 11,510, which was the Application of
22 Branko, Inc., to reopen Case Number 10,656. That was the
23 Application of Mitchell Energy for compulsory pooling and
24 unorthodox well location in Lea County, New Mexico.

25 Is it your intention to sign the Order and take

1 final action on it, Commissioner Weiss?

2 COMMISSIONER WEISS: Yes.

3 CHAIRMAN LEMAY: Any comments on the case or --

4 COMMISSIONER WEISS: No.

5 CHAIRMAN LEMAY: Commissioner Bailey?

6 COMMISSIONER BAILEY: I intend to sign.

7 CHAIRMAN LEMAY: Thank you. And it is also my
8 intention to sign that Order.

9 * * *

10 CHAIRMAN LEMAY: Also awaiting final action by
11 the Commission is Case Number 11,721, which was the
12 September, 1997, gas allowables, or allowables covering the
13 period April to September.

14 And is it your intention, Commissioner Weiss, to
15 sign the Order?

16 COMMISSIONER WEISS: Yes, it is.

17 CHAIRMAN LEMAY: Commissioner Bailey?

18 COMMISSIONER BAILEY: Yes, it is.

19 CHAIRMAN LEMAY: It's also my intention to sign
20 that one for final action.

21 * * *

22 CHAIRMAN LEMAY: Case Number 10,994, which is the
23 Application of Phillips Petroleum Company to reopen *de novo*
24 Case Number 10,994, final action on that case was
25 withdrawn, so that final action constitutes a dismissal of

1 that case.

2 And is it your intention to sign that,
3 Commissioner Weiss?

4 COMMISSIONER WEISS: Yes.

5 CHAIRMAN LEMAY: Commissioner Bailey?

6 COMMISSIONER BAILEY: Yes.

7 CHAIRMAN LEMAY: It's also my intention to.

8 So let the record show that final action has been
9 taken on Cases 11,510, 11,721 and 10,994, which brings us
10 to our current docket.

11 (Off the record)

12 * * *

13 CHAIRMAN LEMAY: Before we break, the unfinished
14 business, we'll call Case Number 11,515, which is the
15 Application by the Oil Conservation Division on its own
16 motion to permit the operator, Woosley Oil Company, and
17 American Employers' Insurance Company and all interested
18 parties to show cause why a well should not be plugged.

19 This case has been dismissed, so let the record
20 show 11,515 has been dismissed.

21 (Thereupon, a recess was taken at 9:21 a.m.)

22 (The following proceedings had at 9:55 a.m.)

23 CHAIRMAN LEMAY: Before we continue, just some
24 additional business for the record.

25 We were talking about having our outreach

1 program, taking the Commission hearing to Roswell. We've
2 talked about April and May. April, the chambers were not
3 available; they were in May.

4 So we will hold our May 22nd Oil Conservation
5 Commission hearing at City Hall, in the chambers there, on
6 the 22nd of May, Roswell.

7 The other dates, we have some changes.

8 The June Commission hearing will be changed to
9 June 5th, because one of the Commissioners cannot make the
10 19th, so we'll have June 5th.

11 And then these are some tentative dates for the
12 remainder of the year. Commission hearings will be held on
13 July 17th, August 14th, September 25th, October 16th,
14 November 13th and December 11th.

15 So those are tentative dates. All those except
16 for the May hearing are scheduled to be held right here in
17 Santa Fe. We may take one of those out in the field, we'll
18 see, see how the Roswell hearing goes.

19 Okay, that business taken care of, I guess we're
20 ready to continue.

21 (Thereupon, these proceedings were concluded at
22 9:57 a.m.)

23 * * *

24

25

