

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: )

CASE NO. 13,357

APPLICATION OF MATRIX NEW MEXICO )  
HOLDINGS, L.L.C., FOR COMPULSORY )  
POOLING, LEA COUNTY, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

November 18th, 2004

Santa Fe, New Mexico

2004 DEC 2 AM 11 43

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, November 18th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, 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

November 18th, 2004  
 Examiner Hearing  
 CASE NO. 13,357

	PAGE
APPEARANCES	3
APPLICANT'S WITNESS:	
<u>FRED C. BRYLA</u> (Engineer)	
Direct Examination by Mr. Carr	6
Cross-Examination by Mr. Bruce	17
Examination by Examiner Catanach	23
CLOSING STATEMENTS:	
By Mr. Bruce	24
By Mr. Carr	25
REPORTER'S CERTIFICATE	30

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## E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	8	17
Exhibit 2	8	17
Exhibit 3	9	17
Exhibit 4	13	17
Exhibit 5	13	17
Exhibit 6	16	17

\* \* \*

## A P P E A R A N C E S

## FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

FOR LAND SERVICES, INC.; COGENT EXPLORATION, LTD.;  
and SUNLIGHT EXPLORATION, INC.:

JAMES G. BRUCE  
Attorney at Law  
P.O. Box 1056  
Santa Fe, New Mexico 87504

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 1:58 p.m.:

3  
4 EXAMINER CATANACH: Okay, let's call the hearing  
5 back to order, and at this time I will call Case Number  
6 13,357, which is the Application of Matrix New Mexico  
7 Holdings, L.L.C., for compulsory pooling, Lea County, New  
8 Mexico.

9 Call for appearances.

10 MR. CARR: May it please the Examiner, my name is  
11 William F. Carr with the Santa Fe office of Holland and  
12 Hart, L.L.P.

13 We represent Matrix New Mexico Holdings, L.L.C.,  
14 and I have one witness.

15 EXAMINER CATANACH: Additional appearances?

16 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe.  
17 I'm here representing Land Services, Incorporated; Cogent  
18 Exploration, Limited --

19 EXAMINER CATANACH: How do you spell that, Mr.  
20 Bruce?

21 MR. BRUCE: C-o-g-e-n-t, and Sunlight  
22 Exploration, Incorporated.

23 I have no witness.

24 EXAMINER CATANACH: Okay, are all these  
25 appearances cited on your prehearing statement?

1 MR. BRUCE: Yes, sir.

2 EXAMINER CATANACH: Thank you.

3 MR. BRUCE: Which were duly filed, for a change.

4 EXAMINER CATANACH: Will the witness please stand  
5 to be sworn in?

6 (Thereupon, the witness was sworn.)

7 MR. CARR: May it please the Examiner, initially  
8 I would like to request that all portions of the  
9 Application be dismissed with the exception of the portion  
10 that requests an order pooling the 40-acre tract comprised  
11 of the northeast of the northeast of Section 10.

12 EXAMINER CATANACH: So all you're seeking to pool  
13 at this time is the northeast northeast?

14 MR. CARR: Northeast of Section 10, the one 40-  
15 acre tract.

16 There were prehearing statements and motions  
17 filed earlier in the case on behalf of Chesapeake, and we  
18 have reached agreement with Chesapeake, and they are  
19 joining in the well.

20 EXAMINER CATANACH: Okay, and you had a 320 and  
21 160 request --

22 MR. CARR: Right.

23 EXAMINER CATANACH: -- okay.

24 MR. CARR: And those are no longer before us.

25 EXAMINER CATANACH: All right.

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FRED C. BRYLA,

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

DIRECT EXAMINATION

BY MR. CARR:

Q. Would you state your full name for the record,  
please?

A. Fred Charles Bryla.

Q. Would you spell your last name?

A. B-r-y-l-a.

Q. Where do you reside?

A. Sugarland, Texas.

Q. By whom are you employed?

A. Matrix Corporation and its affiliates.

Q. And what is your current position with Matrix New  
Mexico Holdings, L.L.C.?

A. Vice president.

Q. Have you previously testified before the New  
Mexico Oil Conservation Division?

A. No.

Q. Would you summarize for Mr. Catanach your  
educational background?

A. I have a bachelor's degree in petroleum  
engineering from the University of Wyoming. I've been  
actively engaged in the technical side of the business for

1 the past 22 years or so, in various staff engineering and  
2 managerial positions with a whole host of companies,  
3 including Petro Lewis Corporation, Lear Corporation,  
4 British Petroleum.

5 In 1992, along with some colleagues, we formed  
6 the Matrix Enterprises, which are oil and gas. It's an oil  
7 and gas exploration and production concern. I'm a  
8 principal owner and also an officer of that company.

9 Q. Are you familiar with the Application filed in  
10 this case on behalf of Matrix?

11 A. Yes, I am.

12 Q. And are you familiar with the status of the lands  
13 in the spacing unit that is the subject of this hearing?

14 A. Yes, I am.

15 MR. CARR: We tender Mr. Bryla as an expert in  
16 petroleum engineering.

17 EXAMINER CATANACH: Any objection?

18 MR. BRUCE: Absolutely not.

19 EXAMINER CATANACH: Mr. Bryla is so qualified.

20 Q. (By Mr. Carr) Would you briefly state what  
21 Matrix seeks with this Application?

22 A. Matrix seeks an order pooling all minerals from  
23 the surface to the base of the Wolfcamp formation under the  
24 northeast northeast, Section 10, Township 13 South, 38  
25 East, Lea County, New Mexico, for all formations and/or

1 pools developed on 40-acre spacing, which includes but is  
2 not limited to the Bronco-Wolfcamp Pool. This pooled unit  
3 will be dedicated to Matrix's proposed Townsend Well Number  
4 1 A. This well will be drilled at a standard oil well  
5 location 530 feet from the north line, 330 feet from the  
6 east line of said section, or Unit A.

7 Q. Mr. Bryla, let's go to what's been marked as  
8 Matrix Exhibit 1. Would you just identify what this is?

9 A. Exhibit 1 is a land map indicating the section to  
10 be pooled.

11 Q. And the well will be 530 from the north and 330  
12 from the east line in Unit A?

13 A. That is correct.

14 Q. What is the primary objective in this well?

15 A. The Wolfcamp.

16 Q. Let's go to Exhibit Number 2, and I would ask you  
17 to review the ownership breakdown in this spacing unit.

18 A. As set forth on Exhibit 2, Matrix New Mexico  
19 Holdings owns approximately 10-percent working interest,  
20 Chesapeake Permian approximately 7 percent. The majority  
21 of the working interest is held by Sunlight Exploration,  
22 Inc. We have one small unleased mineral owner in Mr. Leroy  
23 Townsend and one small estate that could not be leased.

24 Q. You have been able to reach an agreement with  
25 Chesapeake Permian, and they are now participating in the



1 well?

2 A. Yes, we have.

3 Q. And we have agreed to request that they be  
4 dismissed from this Application; is that correct?

5 A. That is correct.

6 Q. Let's go to Exhibit Number 3, and I would ask you  
7 to refer to these documents and review for the Examiner  
8 your efforts to obtain voluntary participation in this  
9 well.

10 A. Our efforts to obtain voluntary participation in  
11 this well date back to, I would say, the middle of 2003.  
12 As a relatively small working interest owner, we became  
13 interested in developing our mineral interests and  
14 understood that Land Services, Inc., had acquired a  
15 substantial mineral interest. We later came to learn that  
16 that interest had been assigned to a company called  
17 Sunlight Exploration, run by a gentleman named Chris  
18 Bright.

19 I contacted Mr. Bright in the summer of 2003,  
20 expressed our interest to develop a well. He assured me  
21 that he shared that interest, and being the largest owner  
22 assured me that he would produce an AFE and make a well  
23 proposal. No well proposal was made by Mr. Bright or  
24 Sunlight Exploration, and we subsequently contacted him  
25 again in October.

1           Sensing that he did not have the financial  
2 resources to drill the well in question, we made some  
3 inquiries as to possibly buying an interest or swapping  
4 some interests so that he could better afford his risk  
5 share. That didn't lead to anything, and then eventually  
6 in August we made a formal AFE proposal. We discussed it  
7 in advance with Mr. Bright, and that's where we are at.

8           Q. Did you receive a response to the AFE?

9           A. No, we have not received a response from him.

10          Q. And the first written proposal for a well on the  
11 acreage from you was dated August 17th, 2004?

12          A. That is correct.

13          Q. And the letter -- the formal proposal is included  
14 in Matrix Exhibit 3; is that right?

15          A. That is correct.

16          Q. You were discussing the development of these  
17 properties with Mr. Bright of Sunlight; is that correct?

18          A. That is correct.

19          Q. Were you also talking directly with Land  
20 Services?

21          A. Yes, we were.

22          Q. Did you inquire as to the nature of the  
23 relationship between Land Services and Sunlight?

24          A. Yes, we did.

25          Q. And were you provided with copies of an

1 assignment and an agreement between those parties, by which  
2 Sunlight acquired interest in the properties, including the  
3 properties that are the subject of this hearing?

4 A. Yes, we did.

5 Q. In your negotiations with Mr. Bright, was a  
6 farmout agreement proposed?

7 A. Yes, there was a proposal.

8 Q. And who made the proposal?

9 A. Well, there was some discussion back and forth.  
10 We had, in the fall, I believe, of 2003, made a proposal  
11 about some sort of a proposal or an acreage swap, and then  
12 we received a farmout proposal from Mr. Bright, which is in  
13 the package here -- and I'll just have to refer to the date  
14 -- dated September 3rd, 2003.

15 Q. Was that farmout proposal acceptable to Matrix?

16 A. No, it was not.

17 Q. Now, have you reviewed the agreement between Land  
18 Services and Sunlight concerning this property?

19 A. Yes, we have.

20 Q. And they're included in the material in Exhibit  
21 3, toward the back of that material?

22 A. That is correct.

23 Q. These agreements provide for an assignment of  
24 Land Services' interest to Sunlight and also provide for a  
25 back-in at payout; is that correct?

1 A. That is correct.

2 Q. These agreements are between Land Services and  
3 Sunlight only; is that right?

4 A. That is correct.

5 Q. Are you a party to either of these agreements?

6 A. We are not a party.

7 Q. The agreements also provide that the seller,  
8 being Land Services, would agree to assist the purchaser,  
9 being Sunlight, with any compulsory pooling applications  
10 that they file; is that not also correct?

11 A. That is correct.

12 Q. And that's contained at the bottom of the first  
13 page of the agreement that they provided to you?

14 A. Correct.

15 Q. When we look at these agreements, what acreage do  
16 they cover?

17 A. Well, they cover substantially more acreage than  
18 is at issue in this case. In fact, they cover a total of  
19 880 acres and involve a fairly complex structure whereby  
20 Land Services, Cogent Exploration and Nelson Engineering  
21 Corp., three individuals, have earned or proposed to earn a  
22 back-in interest against Sunlight on a project basis, which  
23 is to say against the totality of what Sunlight might do on  
24 these 880 acres.

25 Q. Basically, these back-in and payout provisions

1 are contractual provisions that go between Sunlight and  
2 Land Service and not Matrix?

3 A. That is correct.

4 Q. Have you made a good-faith offer or good-faith  
5 effort to try and reach voluntary agreement with the other  
6 interest owners in this spacing unit for the development of  
7 the property?

8 A. Yes, we have.

9 Q. Would you identify what's been marked as Matrix  
10 Exhibit 4?

11 A. Matrix 4, let's see.

12 Q. The AFE.

13 A. That would be the AFE.

14 Q. Would you review the totals as set forth on this  
15 exhibit?

16 A. The AFE as set forth in this exhibit carries a  
17 projected completed well cost of \$994,710, with a dryhole  
18 cost of six hundred and -- I'm sorry, I'm looking at the  
19 wrong place -- dryhole cost of \$616,250.

20 Q. Are these costs in line with what's charged by  
21 other operators in the area for similar wells?

22 A. Yes, that is.

23 Q. Let's go to Matrix Exhibit Number 5. Would you  
24 identify that, please?

25 A. I would if I could find the stamp for it. Ah.

1 This would be the COPAS attachment to our form operating  
2 agreement covering the subject 40-acre unit.

3 Q. Do these COPAS provisions provide for periodic  
4 adjustments in the overhead and administrative costs set by  
5 this pooling -- by -- in the overhead and administrative  
6 costs for the well?

7 A. Yes, they do.

8 Q. And does Matrix request that the overhead and  
9 administrative costs set by this order be adjusted in  
10 accordance with these COPAS procedures?

11 A. Yes, we do.

12 Q. Have you made an estimate of the overhead and  
13 administrative costs while drilling the well and also while  
14 producing it, if it is successful?

15 A. Yes, we have.

16 Q. And what are those numbers?

17 A. The drilling well rate is \$7454, prorated on a  
18 monthly basis, and the producing well rate is \$745.40.

19 Q. And are these costs in line with what other  
20 operators are charging for similar wells in this area?

21 A. Yes, they are.

22 Q. Do you recommend these figures be incorporated  
23 into the order that results from today's hearing?

24 A. Yes, we do.

25 Q. Does Matrix request that the 200-percent charge

1 for risk authorized by statute be imposed on each cost-  
2 bearing interest not voluntarily committed to the well and  
3 that this charge follow that interest regardless of who are  
4 the subsequent owners?

5 A. Yes, we do.

6 Q. If the interests are pooled but not subject to  
7 this full 200-percent risk charge, could Matrix as a 10-  
8 percent interest owner still go forward with its plans to  
9 drill this well?

10 A. Absolutely not.

11 Q. And why not?

12 A. It would be financial madness for us to do so.

13 Q. If you are unable to drill the well, is it your  
14 testimony that you'll be denied the opportunity to produce  
15 your share of the reserves under this property?

16 A. That is correct.

17 Q. Does Matrix New Mexico Holdings, L.L.C., seek to  
18 be designated operator of the well?

19 A. We would propose that our operating affiliate,  
20 Matrix New Mexico Operating Company, L.L.C., be designated  
21 the operator.

22 Q. But that's just an affiliate, another one of the  
23 Matrix --

24 A. It's a Matrix company.

25 Q. That's your drilling company?

1 A. Right.

2 Q. Okay, you hold the properties in Matrix Holdings?

3 A. Right.

4 Q. And then your drilling company would be operating  
5 the well?

6 A. That is correct.

7 Q. Would you identify what has been marked Matrix  
8 Exhibit Number 6? Is that an affidavit from my law firm?

9 A. This would be an affidavit from your law firm.

10 Q. And does it confirm that notice of this  
11 Application has been provided to those individuals and  
12 companies identified on Exhibit A?

13 A. Yes, it does.

14 Q. And the back of the exhibit, does it also include  
15 copies of the legal advertisements that were run in the  
16 Lovington paper by the Montgomery and Andrews law firm?

17 A. Yes, it does.

18 Q. Were Exhibits 1 through 6 either prepared by you  
19 or compiled under your direction and supervision?

20 A. Yes, they were.

21 MR. CARR: May it please the Examiner, at this  
22 time we'd move the admission of Matrix Exhibits 1 through  
23 6.

24 EXAMINER CATANACH: Any objection?

25 MR. BRUCE: No objection.



1 EXAMINER CATANACH: Exhibits 1 through 6 will be  
2 admitted.

3 MR. CARR: That concludes my direct examination  
4 of Mr. Bryla.

5 EXAMINER CATANACH: Mr. Bruce?

6 MR. BRUCE: Two questions.

7 EXAMINER CATANACH: Well --

8 MR. BRUCE: It depends.

9 CROSS-EXAMINATION

10 BY MR. BRUCE:

11 Q. Mr. Bryla, this is a new well, it's not a re-  
12 entry; is that correct?

13 A. That is correct.

14 Q. And the primary zone of interest is the Wolfcamp?

15 A. Correct.

16 Q. Are there any secondary zones?

17 A. None that I'm aware of.

18 Q. In your Exhibit 3, the correspondence, you have a  
19 -- Well, I can't find it in here right now, Mr. Bryla.  
20 There's a proposal from Sunlight Exploration; is that  
21 correct?

22 A. That is correct.

23 Q. Basically, a letter dated September 3, 2003?

24 A. Yes, sir.

25 Q. In that letter, isn't Sunlight basically offering

1 to give you everything it has?

2 A. Not exactly.

3 Q. In the Wolfcamp?

4 A. That would not be correct, and I'll explain.

5 Q. Go ahead.

6 A. Sure. This could not be characterized as a  
7 costless farmout. What Sunlight is proposing is that they  
8 earn 25 percent back-in after payout, which is a very  
9 substantial cost in a well of this magnitude.

10 We have evaluated this proposal, and for what  
11 it's worth, the Division statutory pooling provisions are  
12 actually superior in economics to this proposal, and I  
13 venture a guess that the Division sets its statutory  
14 pooling provision as not to be seen as a good deal but to  
15 be seen as a marginally acceptable deal, in order to  
16 prevent waste and to preserve correlative rights.

17 So as a prudent businessman, it would not be  
18 desirable to accept a farmout proposal that was  
19 economically inferior to a pooling.

20 Q. Well, I mean, isn't the 25-percent back-in after  
21 payout, that is simply the back-in that Cogent Exploration,  
22 et al., have under their assignment that you've included as  
23 part of Exhibit 3; is that correct?

24 A. Well, that's not true either. The issue with the  
25 Cogent-Land Services-Nelson agreement is that it extends

1 well beyond this 40 acres, and it encompasses things that  
2 are beyond our control to know about or to monitor. It's  
3 not our agreement, it's a third-party agreement between  
4 those two parties.

5 I have no idea what their arrangement might be  
6 with respect to this well because there's a basket that is  
7 at issue and 880 acres of different acreage that might be  
8 developed, and we're also aware that a substantial sum of  
9 money has already been expended. It would be a practical  
10 impossibility for us to manage this agreement on behalf of  
11 Sunlight. It's not our agreement, it's not our obligation  
12 to do so.

13 Q. So what you're saying is, you would rather have a  
14 cost-plus-200-percent penalty against Sunlight, even though  
15 at cost plus 200 percent it backs in for everything, its  
16 full 82-percent interest?

17 A. It's superior economically.

18 Q. Do you have any data to show that?

19 A. Well, there's actually an e-mail in here that I  
20 sent to Mr. Bright, suggesting that to him.

21 Q. Do you have any backup data for this?

22 A. Well, not beyond the -- not beyond what is filed  
23 in this case. But you know, the economics are -- that we  
24 run are internal. You know, everyone has their own unique  
25 way of running economics. This is the way we ran our

1 economics.

2 Q. Well, what type of production do you expect from  
3 this well if it's a good well?

4 A. Well, in the e-mail to Mr. Bright of August 24th,  
5 2004, it's actually spelled out in fairly gruesome detail.  
6 We've presented risked reserves, initial potential, price  
7 case, expenses, and calculated net present values.

8 Q. I'm looking here, I don't see the initial  
9 potentials. This is your October 8th, 2003?

10 A. No, it's an e-mail dated August 24th. You'll  
11 find it after the Sunlight letter of September 3rd, at  
12 least in my package.

13 Q. And is part of your assumption, Mr. Bryla, that  
14 the 25-percent back-in that Cogent, et al., have under the  
15 assignment of oil and gas lease included as part of your  
16 packet will be subject to a cost-plus-200-percent penalty?

17 A. I cannot -- Well, let's see, subject to. Let me  
18 just put it in plain English. It would seem impractical,  
19 and in fact absurd, that a third-party contract would, in  
20 fact, pre-empt the statute of this Division concerning cost  
21 recovery and penalty. We didn't enter into that agreement.  
22 It is an agreement that is between those three parties and  
23 Sunlight. It burdens their working interest.

24 So what we seek is to have a straight pooling  
25 order that recognizes that the working interest pooled

1 shall be subject to a 200-percent penalty and cost  
2 recovery, that this agreement is subject to that  
3 constraint.

4 Q. Are you saying that in other words, what you are  
5 getting is not only Sunlight's working interest but Cogent,  
6 et al.'s overriding royalty interest?

7 A. Absolutely not. Their overriding royalty is of  
8 record. The only interests that are at issue here are the  
9 working interests, the working interest of Sunlight  
10 Exploration and the working interest burdens, which are to  
11 say back-in interests, which are beyond our control, we  
12 have no way to monitor or manage in any way, shape or form.

13 Q. But that's of record too, it's in the same  
14 assignment that reserves the override?

15 A. It makes reference to a letter agreement, but  
16 that particular agreement is not of record.

17 Q. But it has been provided to you?

18 A. That is correct.

19 Q. And generally, if a document is referred to in an  
20 instrument of record, you have notice of that?

21 A. I'm aware that that agreement exists, but I state  
22 for the record it has nothing to do with us. That's an  
23 agreement between those individuals and Sunlight, and we  
24 would anticipate that they will be able to resolve how that  
25 will work as a matter of mechanics between themselves.

1 Q. Okay. But the reservation of the override isn't  
2 an agreement; that's a third-party agreement that you have  
3 nothing to deal with either?

4 A. As I understand the procedure of the Division,  
5 the force pooling statutes deal with working interests,  
6 they do not seek to pool overriding royalty interests  
7 unless those interests were created for the sole and  
8 express purpose of frustrating force pooling, and  
9 apparently there have been a number of cases in that  
10 regard.

11 We are not claiming that in this case. Those  
12 overriding royalties were created, and we recognize those  
13 overriding royalties, so your clients will benefit from  
14 this pooling in that they will enjoy the benefits of their  
15 overriding royalty interests.

16 Q. Now, these are undivided interests in this 40  
17 acres, are they not?

18 A. Correct.

19 Q. And you're not seeking to force pool any  
20 overriding royalties?

21 A. That is correct.

22 Q. Who are you seeking to force pool?

23 A. The working interests of Sunlight Exploration and  
24 the unleased mineral interests of the two Mr. Townsends.

25 Q. Is there any agreement with Chesapeake to share

1 or spread the nonconsent interest with them?

2 A. No.

3 Q. So Matrix is going to take the whole -- well,  
4 having this up, 92 percent of the well, or 92-percent-plus  
5 of the well?

6 A. For the purposes of here and now, that is the  
7 answer, though there is some probability that we would lay  
8 off some of that risk.

9 MR. BRUCE: Okay, yeah, and I don't -- it was  
10 more just for my own curiosity than anything.

11 That's all I have, Mr. Examiner.

12 EXAMINER CATANACH: Okay. Anything else, Mr.  
13 Carr?

14 MR. CARR: No.

15 EXAMINATION

16 BY EXAMINER CATANACH:

17 Q. Just a couple, Mr. Bryla. Were you not able to  
18 locate the Townsend interest, the estate of Calvin  
19 Townsend?

20 A. No, we were not. We did our usual superhuman  
21 effort, and basically he died without a will and left no  
22 heirs that we could find, and it was a dead end.

23 Q. Okay. You were able to locate the Leroy Townsend  
24 interest?

25 A. That is correct, he was provided with a letter

1 which is in the exhibits, and his return receipt is  
2 enclosed.

3 Q. But he has not agreed to join in the well?

4 A. No, he has agreed to neither lease nor join.

5 EXAMINER CATANACH: That's all I have.

6 MR. BRUCE: I just have a 30-second statement,  
7 Mr. Examiner.

8 EXAMINER CATANACH: Okay.

9 MR. BRUCE: I understand that Sunlight is being  
10 pooled. It's the position of Cogent and Land Services that  
11 their overriding royalty, which is an undivided interest,  
12 is not being pooled. It's also their position that any  
13 reversionary -- or their 25-percent working interest at  
14 payout is a contractual provision which should be  
15 interpreted by the courts and not the Division. And  
16 therefore they believe that their back-in is not subject to  
17 any cost-plus-200-percent penalty, that that is a  
18 contractual determination which should be left to the  
19 courts.

20 Thank you.

21 MR. CARR: May it please the Examiner, I'd first  
22 like to thank Mr. Bruce on confining his cross to two  
23 questions.

24 MR. BRUCE: That was closer than the last time,  
25 Mr. Carr.



1 MR. CARR: I think the most important to remember  
2 that what you do as the Oil Conservation Division is, you  
3 grant or deny what's before you. And Mr. Bruce may think  
4 that his client has proposed a good deal. If it is so  
5 good, it makes you wonder why they're making it. It's so  
6 much better for us than the 200-percent penalty. It  
7 frankly doesn't make any sense.

8 We've looked at it and concluded that based on  
9 our economics, a pooling order is superior, and we stand  
10 before you, very simple point: We are not in agreement.  
11 We believe we're entitled to an order pooling the 40 acres  
12 because we have complied with statute, and the statute says  
13 once we have met these preconditions, the Division shall  
14 enter an order pooling the lands, and we believe that's the  
15 point where we now stand.

16 We also would point out that if the interests are  
17 not pooled, or if they are pooled and the 200-percent  
18 penalty is not awarded, the economics are such that the  
19 well will not be drilled, and we will be denied an  
20 opportunity to produce our share of the reserves, these  
21 reserves will be wasted.

22 Sunlight says, Well, we have an agreement with  
23 Land Services. We've agreed, the two of us -- and this is  
24 going to have to be resolved in court, and you know, that  
25 might be. It may require an interpretation of their

1 contract, it may require an interpretation of what has  
2 transpired between Land Services and Sunlight, but we  
3 submit it is not a contract that impacts Matrix. It isn't  
4 a contract we believe that binds or affects what the OCD  
5 must do. They're both here, they may have a dispute over  
6 what their agreement means, but it is between them, not us.

7 We're not here saying that you should enter an  
8 order pooling the royalty interests. We're asking you to  
9 pool the working interest, and then the penalty will follow  
10 that interest. And if it reverts back when they reach  
11 payout, then they will have to deal with that, but we  
12 intend to impose that on that interest, an order we believe  
13 should be ordered that says the lands are pooled, and that  
14 the interests are pooled, and that whatever that working  
15 interest is, and who ever holds it, will be encumbered by  
16 the penalty.

17 We're not -- and I don't think you should allow  
18 yourselves to be held hostage by a contract of this nature.  
19 If you look at the documents, the assignment and the  
20 contracts are all dated back in March of 2003. And then  
21 you look at when we, after we've been talking with them,  
22 propose a well, you'll see in our letters that we sent a  
23 written well proposal August the 17th, 2004. Go back and  
24 look at the agreements. The agreements happen to have been  
25 signed by Mr. Bryla on August the 17th, 2004, the same day

1 as our proposal.

2 We submit that what we have here is a game that's  
3 being played, and we're not interested in playing it.  
4 We're interested in a pooling order, and then they can  
5 figure out when they get to payout under this agreement to  
6 develop 880 acres. They've already drilled five or six  
7 wells, they are, as you can see from the evidence, a  
8 million dollars in a negative posture right now. And  
9 whenever they get to pay out and whenever they develop the  
10 other 840 acres, well, we submit that is something between  
11 them.

12 But you shouldn't be afraid of this just because  
13 it may impact a non-cost-bearing interest. I would direct  
14 your attention to the case -- the Bettis, Boyle and Stovall  
15 case of a couple of years ago, Order R-11,573-B. This is a  
16 Commission order. This involved a situation where the  
17 facts are not exactly the same we have here. It was an  
18 increase in an override that was when properties were  
19 passed between related companies to defeat pooling.

20 But if you go back two pages from the back, the  
21 Commission has reached the conclusion of law, and we think  
22 it is basically applicable here. And it says, The  
23 Commission concludes that the authority expressly conferred  
24 on the Division and Commission by the Oil and Gas Act is  
25 cumulative and not exclusive and that the Commission and

1 the Division have authority pursuant to the statutes that  
2 are cited there to permit recovery of cost and risk charges  
3 out of production attributable to a non-expense-bearing  
4 interest where necessary to effect pooling upon terms that  
5 are fair and reasonable and to protect correlative rights  
6 and prevent waste.

7 Here, if you don't enter a standard pooling  
8 order, correlative rights will be impaired and waste will  
9 be caused. In that case, the transaction occurred after  
10 the application was filed. Here, the agreement that  
11 they're citing was signed the day the well proposal was  
12 made. So there is that difference.

13 But the fact of the matter is, we believe we  
14 stand before you entitled to a pooling order and we ask you  
15 to grant the Application. We ask you to impose the 200-  
16 percent risk charge. And if there's a contractual dispute,  
17 that will not be here, that will be played out between the  
18 parties to that contract and the district court.

19 EXAMINER CATANACH: Thank you, Mr. Carr.

20 Mr. Bruce, again, could you submit in writing  
21 your position on this matter?

22 MR. BRUCE: I'm afraid so, Mr. Examiner.

23 EXAMINER CATANACH: And just one question, one  
24 more question of the witness. I didn't get the full name  
25 of your operating company. Is it Matrix New Mexico

1 Operating --

2 THE WITNESS: -- Company, LLC.

3 EXAMINER CATANACH: -- Company, LLC.

4 Anything further, gentlemen?

5 MR. CARR: Nothing.

6 EXAMINER CATANACH: There being nothing further,  
7 Case Number 13,357 will be taken under advisement.

8 (Thereupon, these proceedings were concluded at  
9 2:33 p.m.)

10 \* \* \*

11  
12  
13  
14  
15 I do hereby certify that the foregoing is  
16 a complete record of the proceedings in  
the Examiner hearing of Case No. 13357  
heard by me on November 18, 2001.  
17 Daniel R. Catnach, Examiner  
18 Oil Conservation Division  
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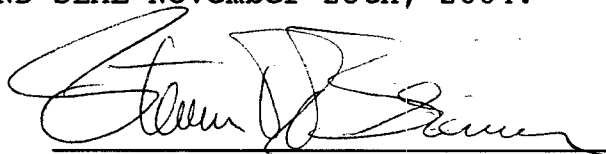
## CERTIFICATE OF REPORTER

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 November 28th, 2004.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006