

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 SOJOURNER DRILLING CASE NO. 15922
CORPORATION FOR COMPULSORY POOLING,
CURRY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

January 11, 2018

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
 WILLIAM V. JONES, TECHNICAL EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

 This matter came on for hearing before the
New Mexico Oil Conservation Division, Michael McMillan,
Chief Examiner, William V. Jones, Technical Examiner,
and David K. Brooks, Legal Examiner, on Thursday,
January 11, 2018, at the New Mexico Energy, Minerals and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

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LINDA POWELL:

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1 (8:45 a.m.)

2 EXAMINER McMILLAN: Okay. We're now going
3 to go back to the docket. The first case I would like
4 to call is Case Number 15922, application of Sojourner
5 Drilling Corporation for compulsory pooling, Eddy [sic]
6 County, New Mexico.

7 MS. AUBREY: Karen Aubrey, Santa Fe,
8 representing the Applicant. And I think the county is
9 Curry County.

10 EXAMINER McMILLAN: Curry County.
11 Application of Sojourner Drilling
12 Corporation for compulsory pooling, Curry County, New
13 Mexico.

14 Thank you.

15 MR. BRUCE: Mr. Examiner, Jim Bruce
16 representing The Northern Trust Company, and Travis
17 Walne, trustee of the Director of Trusts, and also for
18 Linda Powell. I have one potential witness.

19 EXAMINER McMILLAN: Please proceed.

20 If the witnesses would please stand up and
21 be sworn in at this time.

22 (Mr. Key and Mr. Gilbert sworn.)

23 MS. AUBREY: Call Robert Key.

24 EXAMINER McMILLAN: Please be seated.

25 THE WITNESS: I assume you want me here

1 (indicating)?

2 EXAMINER McMILLAN: Yes.

3 ROBERT KEY,

4 after having been first duly sworn under oath, was

5 questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. AUBREY:

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

10 A. My name is Robert key.

11 Q. And by whom are you employed?

12 A. GM Exploration, and I am a consulting landman
13 for Sojourner Drilling Company.

14 Q. Have you testified previously before the
15 New Mexico Oil Conservation Division and had your
16 qualifications made a matter of record?

17 A. No, ma'am.

18 Q. Can you tell the Examiner what your educational
19 background is?

20 A. University of Texas at Austin, BBA in 1977.

21 Q. And what is your work experience?

22 A. I have been doing land management since 1979.
23 I have experience in many states. I worked for Mobil
24 Oil Corporation, a limited partnership drilling fund
25 company, in partnership with other landmen. I currently

1 am president of my own corporation. I have reviewed and
2 run title in New Mexico, Texas, Oklahoma, California,
3 Colorado, Louisiana, Arkansas, Illinois and Ohio. I am
4 familiar with leases from those states as well, as most
5 of the operational and the contractual obligation placed
6 upon lessees. I'm also an investor in drilling ventures
7 and a party to participation agreements and joint
8 operating agreements.

9 I've been qualified as an expert petroleum
10 landman by the Texas Railroad Commission, and I have
11 testified as an expert witness in other court cases.

12 **Q. What are your professional relationships?**

13 A. I am a member of the AAPL and the North Texas
14 Association of Petroleum Landmen.

15 **Q. In what areas in Texas and New Mexico is your**
16 **experience?**

17 A. The Permian Basin, west central Texas, east
18 Texas, southeastern New Mexico and northwestern New
19 Mexico.

20 **Q. What are your work responsibilities in GM**
21 **Exploration?**

22 A. My responsibilities with GM is to do the
23 typical land management functions, everything from
24 securing and negotiating leases to preparing contractual
25 arrangements between partners and lease title

1 examinations, curative matters with -- after title has
2 been examined by appropriate attorneys.

3 Q. Are you familiar with the application that's
4 been filed by Sojourner in this case?

5 A. Yes, ma'am.

6 Q. How long have you been working on this project?

7 A. Since about 2013.

8 Q. And in general, what work have you performed in
9 connection with this project?

10 A. The title examination, lease negotiations,
11 curative matters, probate discoveries. I have drafted
12 and prepared participation agreements with partners and
13 joint operating agreements.

14 MS. AUBREY: Mr. Examiner, I tender Mr. Key
15 as an expert in petroleum land titles.

16 MR. BRUCE: No objection.

17 EXAMINER McMILLAN: So admitted.

18 Q. (BY MS. AUBREY) Mr. Key, I'd like to direct
19 your attention to Exhibit 1 in the notebook in front of
20 you. Can you tell the Examiner what this is?

21 A. These are notices sent by certified mail to the
22 mineral interest owners in the matter of notice for all
23 of these issues of leasing and/or -- the case -- in the
24 case history.

25 Q. Mr. Key, the first page of Exhibit 1 is an

1 **affidavit of the mailing; is that correct?**

2 A. Yes. I'm so sorry. Yes, ma'am. That's
3 exactly what that is.

4 **Q. And the next page are copies of the green**
5 **cards --**

6 A. Yes, ma'am.

7 **Q. -- showing mailing to Ms. Richter and Northern**
8 **Trust?**

9 A. Yes, that's correct.

10 **Q. And with regard to Ms. Powell -- Mr. Bruce**
11 **entered an appearance for Ms. Powell -- have you come to**
12 **agreement for voluntary joinder with Ms. Powell?**

13 A. We have -- we've obviously, until yesterday,
14 Mr. Bruce and yourself and us entered -- will be
15 entering into a signed lease very shortly. So yes,
16 there is an agreement.

17 **Q. So assuming the only party you're seeking to**
18 **pool today is Ms. Richter and Northern Trust, as**
19 **trustees of the Evelyn Richter Trust?**

20 A. Yes, that's correct.

21 **Q. And as part of Exhibit 1, is that a copy of the**
22 **notice letter sent on December 13th to --**

23 A. To the representatives of the trust.

24 **Q. Ms. Richter and --**

25 A. Yes.

1 Q. -- and also Ms. Powell?

2 A. Yes, that's correct. I believe the green cards
3 are there as well.

4 Q. And is there another application that was filed
5 in October, a previous application filed by Sojourner,
6 in the next exhibit?

7 A. Yes, that's correct.

8 Q. Let me have you look at the letter dated
9 November 10th, 2017 sent by you to Northern Trust. Does
10 that letter show --

11 A. Yes.

12 Q. -- that you sent an AFE and corroborating
13 agreement to Northern Trust?

14 A. That's correct.

15 Q. How long have you been negotiating with
16 Northern Trust to drill the proposed well?

17 A. I think the very first opportunity we had was
18 in 2014, late 2014 -- I'm sorry -- late 2013, with the
19 formal letter to the then trust officer, David Bishop,
20 in Houston, in 2014.

21 Q. Okay. And what additional contacts did you
22 have with Northern Trust in 2014 or 2015?

23 A. Well, I have been assigned at least three
24 different trust officers over that period of time, each
25 of which has received phone calls and correspondence,

1 email, all of which having either been responded to
2 negatively or not at all. And so we continue to try to
3 make inroads with them relative to what we desire, none
4 of which was very successful.

5 **Q. What is Sojourner's interest in the northeast**
6 **quarter of Section 34, Township 6, Range 34 East?**

7 A. They will be the operator of record. I know
8 that they are authorized to do that here in the state of
9 New Mexico. They also own a working interest in this
10 particular project, so they have an equity interest in
11 seeing this well getting drilled.

12 **Q. What percentage is their interest?**

13 A. 12-and-a-half percent.

14 **Q. Okay. So in your opinion, Sojourner has the**
15 **right to drill and develop the acreage?**

16 A. Yes.

17 **Q. Can you explain what interest you're seeking to**
18 **pool and how they relate to the interest that you**
19 **already have under lease?**

20 A. The application is for a 160-acre unit. Out of
21 that, the Northern Trust -- excuse me -- the trusts, the
22 mineral interest is a quarter interest, 1/4, so they own
23 a net 40-mineral-acres under this 160 tract. The trust
24 is -- the trust began many years ago. It's an
25 antiquated circumstance that we discovered through

1 Algernon W. Brown, also known as A. W. Brown, and there
2 were some significant and serious gaps in the chain of
3 title. I think we'll get to an exhibit wherein we made
4 an extraordinary effort to help the interest owner
5 acknowledge its -- its actual interest because it was
6 suspect. And I'll address that maybe on Exhibit 6 when
7 we get there.

8 **Q. Are the interests uniform throughout the Canyon**
9 **Formation?**

10 A. They are. There are no severances of the --
11 there are no depth severances of the mineral. Excuse
12 me.

13 **Q. So in connection with this application, did**
14 **Sojourner or GM file a probate proceeding in Curry**
15 **County to try to cure title?**

16 A. Yes, ma'am. We engaged R. Max Brown --

17 **Q. Mr. Best?**

18 A. I'm sorry.

19 -- R. Max Best to institute a probate
20 proceeding in Clovis to help us get to the -- get the
21 gap in the chain cured. Rather extraordinary, if you
22 ask me. We took that notion. But we had already
23 secured a lease from the other half of Mr. Brown's
24 original trust in the form of the lease with JABCO,
25 which was the other half of one of the trusts. And,

1 therefore, our lease, we didn't know if it was effective
2 or not, so we had Mr. Best institute this probate
3 proceeding.

4 We did discover probates in Florida and in
5 New York, but, of course, there was no ancillary
6 proceeding here in New Mexico that we could discover.
7 So we entered into our own, and the probate order was
8 issued on a limited basis, to have a personal
9 representative in the form of GM Exploration and
10 Mr. Gilbert, who will testify later, was appointed as a
11 personal representative so we could file appropriate
12 mineral deeds to cure the title of The Northern Trust
13 and the JABCO interests.

14 **Q. In your opinion, did the recording of those**
15 **distribution deeds cure the title defect you discovered?**

16 A. Yes.

17 **Q. Let me direct your attention to Exhibit 2.**

18 A. Yes, ma'am.

19 **Q. What is that?**

20 A. This is the application to drill signed by
21 Mr. Avery Potts, who is the on-staff geologist for
22 Sojourner, along with the well location plat and the
23 acceptance by this Commission of our permit.

24 **Q. Does that show the well will be drilled at a**
25 **standard location?**

1 A. Yes, it does. That location is 1,929 feet from
2 the north line and 1,962 feet from the east line of the
3 northeast quarter of Section 34, Township 6 North, 34
4 East.

5 **Q. Let me direct your attention to Exhibit 3.**

6 A. Yes, ma'am.

7 **Q. Can you explain what that is?**

8 A. That is a typical oil map that Midland Map
9 Service provides. It shows the quarter section we are
10 interested in.

11 **Q. And does that show the Brown interest on the**
12 **map?**

13 A. Yes. I'm sorry. It indicates that the Brown
14 interest is located in that section.

15 **Q. And who is J. A. Brown, as shown on the map?**

16 A. That would be the other part of the Algernon W.
17 Brown, or A. W. Brown, heirs that is now known as JABCO.
18 They're represented by Bank of America.

19 **Q. And you obtained a lease in this interest; is**
20 **that correct?**

21 A. Yes, we have. Yes.

22 **Q. Let me have you look at Exhibit 4. What is**
23 **that?**

24 A. This is an AFE for this particular well. The
25 dry-hole costs are -- it's a 7,500-foot test, as noticed

1 in the application. The dry-hole costs here are
2 \$470,805.50. Your total --

3 **Q. This is a vertical well?**

4 A. This is a vertical well. Yes. This is a
5 vertical test.

6 The total cost to drill and complete is
7 approximately 817,463.50.

8 **Q. And was this AFE provided to Ms. Powell and to**
9 **The Northern Trust?**

10 A. Northern Trust? Yes.

11 **Q. And Ms. Richter?**

12 A. Yes.

13 **Q. Are these costs in line with the cost of other**
14 **vertical wells drilled in this area?**

15 A. Well, there have been very few vertical wells
16 drilled in Curry County, but this is standard and
17 consistent with our operations in Hockley County, Texas,
18 which is just west of Lubbock. So the drilling rates
19 and the expenses are in line with a well of that -- of
20 that depth.

21 **Q. Are there any producing wells in Curry County**
22 **at the moment?**

23 A. None.

24 **Q. Let me direct your attention to Exhibit 5.**

25 A. Yes, ma'am.

1 **Q. What is this?**

2 A. This is a mineral takeoff that sets forth the
3 mineral interest owners in this -- in the northeast
4 quarter of Section 34, 6 North, 34 East in Curry County.

5 **Q. And does it show the status of all the**
6 **working -- of all the mineral owners in that quarter**
7 **section?**

8 A. Yes. If you read the status line or the status
9 bar there, we have leased and unleased interests.
10 Obviously, the latest one, we have made an agreement
11 with Mrs. Powell, so we have amended that to read
12 "leased."

13 **Q. So it's only the interests that are owned by**
14 **the trustees of the Evelyn B. Wallace Richter Trust --**

15 A. Yes.

16 **Q. -- that are unleased; is that correct?**

17 A. That's correct.

18 The confusion -- part of the confusion
19 here, Ms. Aubrey, of the A. W. Brown interests, his
20 wife's name was Evelyn, and his daughter's name was
21 Evelyn, so you can imagine the confusion the public
22 record portrays in that regard. So that was part of the
23 reason we needed to take the extraordinary effort to
24 cure this title.

25 **Q. Let me direct your attention now to Exhibit 6.**

1 A. Yes, ma'am.

2 **Q. Can you tell the Examiner what that is?**

3 A. These are the distribution deeds that resulted
4 from the case that Max Best did for us as a result of
5 the antiquated gap in title. The distribution deeds
6 were ordered by the Court there in Clovis. And as you
7 can see, the interests were set forth, and GM
8 Exploration executed those deeds and were subsequently
9 filed of record on the 8th [sic], a large number of
10 acres that Mr. A. W. Brown had acquired very early --
11 very early in the 1900s.

12 **Q. And do you know approximately how many acres**
13 **that was?**

14 A. There was in excess of 6,680 acres, which was
15 one of the original efforts on our part to secure a
16 lease from the entirety, which has not been successful.

17 **Q. So these mineral deeds convey to the trustees**
18 **of the Evelyn B. Wallace Richter Trust and also to**
19 **JABCO, LLP?**

20 A. Yes, that's correct.

21 **Q. And is it your understanding that JABCO -- the**
22 **JABCO interest originated with James A. Brown?**

23 A. Yes, that's correct. James A. Brown was one of
24 the beneficiaries of the A. W. Brown interests.
25 Subsequently, they had a name change. Bank of America

1 was helpful in that regard, to provide us with that
2 information. It wasn't filed for record necessarily
3 until much later in the chain.

4 MS. AUBREY: I would offer Exhibits 1
5 through 6.

6 MR. BRUCE: No objection.

7 EXAMINER McMILLAN: Exhibits 1 through 6
8 may now be accepted as part of the record.

9 (Sojourner Drilling Corp. Exhibit Numbers 1
10 through 6 are offered and admitted into
11 evidence.)

12 EXAMINER McMILLAN: Cross-examination?

13 MS. AUBREY: Actually I have a couple more
14 questions.

15 EXAMINER McMILLAN: Okay.

16 **Q. (BY MS. AUBREY) Who are you asking to be**
17 **appointed as the operator of the well?**

18 A. Sojourner Drilling.

19 **Q. And you have a recommendation for the amount**
20 **Sojourner should be paid for supervision and**
21 **administrative expenses?**

22 A. Yes. The drilling rate will be \$10,000 during
23 the drilling period and a \$1,600 monthly producing rate.
24 Those are similar to the rates that we have in other
25 places, including Hockley County, which is the nearest

1 county that we have that has producing assets to this
2 particular venture, but it is also consistent with the
3 depth of this particular well.

4 Q. And are there rates for drilling and producing
5 found in the COPAS accounting attached to the joint
6 operating --

7 A. Yes. I'm sorry. Yes. They will be part of
8 the COPAS accounting.

9 Q. And do you ask that these rates be periodically
10 adjusted according to the COPAS accounting procedure?

11 A. Absolutely.

12 Q. Does Sojourner request a maximum cost plus 200
13 percent risk charge of any pooled mineral -- any pooled
14 mineral interest owner?

15 A. Yes, we do.

16 Q. Will the granting of Sojourner's application
17 protect correlative rights, promote conservation and
18 prevent waste?

19 A. Yes, it will.

20 MS. AUBREY: That is all I have.

21 EXAMINER McMILLAN: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. BRUCE:

24 Q. Mr. Key, I just want to make clear, only the
25 Canyon Formation is being pooled in this case; is that

1 correct?

2 A. That's correct. That's the objective depth,
3 Mr. Bruce.

4 Q. What is the -- do you have a time frame for the
5 commencement of the well?

6 A. Well, I would suggest to you that it would be
7 as rapid as we can conclude our business here. Probably
8 not the next day, but as soon as the contracts can be --
9 the drilling rig and subsequent services.

10 Q. As you've indicated, this is quite a ways out
11 there, this well.

12 A. It's 60 miles from the nearest production.

13 Q. Because of that, will -- will the infra- --
14 infrastructure and gathering and processing costs, will
15 they be pretty high?

16 A. I would suggest to you that that would be
17 exactly correct. There is no infrastructure yet, but
18 that's the reason you go and try to discover, so you can
19 create those opportunities.

20 Q. The overhead rates, do you know of an order
21 that's been issued by the OCD anywhere in the state
22 giving those rates?

23 A. No, sir. I'm not familiar with that.

24 Q. Finally, looking at your Exhibit 6 --

25 A. Yes, sir.

1 Q. -- the mineral deeds from GM Exploration, which
2 is noted who was appointed personal representative in
3 probate in Curry County, correct?

4 A. Yes, sir.

5 Q. GM is only a lessee in some of this acreage,
6 correct?

7 A. That's correct.

8 Q. It's not a beneficiary of the estates?

9 A. No, sir. It is not. And I think -- Mr. Bruce,
10 I think in the order from the Court, it had a limitation
11 to just being able to perform this particular function.

12 Q. And I know you are aware that Northern Trust
13 has filed a motion in the probates disputing GM's
14 ability to be personal representative in these
15 New Mexico probates.

16 A. Yes, sir.

17 Q. Has there been a decision on that motion yet?

18 A. No, sir.

19 Q. Going back to your -- just very quickly to your
20 Exhibit 1, go to the last couple of pages of Exhibit 1,
21 which is an oil and gas lease or a form oil and gas
22 lease. By this lease, you are only seeking to lease the
23 trust interest in this well unit, correct?

24 A. Yes, sir. Let me be clear about that. Our
25 desire was to lease the entirety of the mineral estate

1 in our project area.

2 Q. The 6,600-plus acres?

3 A. 6,600-plus acres.

4 But as we progressed over time, from 2014
5 until the current date, and on advice of counsel, it was
6 promoted that we would only be able to compulsory pool
7 that which we applied for. So in an effort to -- in an
8 effort to reach some agreement, we offered up just the
9 well unit area. We would still desire to do the
10 entirety, but here we are.

11 Q. Is there any interest in GM leasing simply the
12 well unit from the trusts?

13 A. On favorable terms and conditions, as counsel
14 advises, yes.

15 MR. BRUCE: That's all I have,
16 Mr. Examiner.

17 CROSS-EXAMINATION

18 BY EXAMINER McMILLAN:

19 Q. Okay. My first question is: Where exactly is
20 the letter that you sent to -- to the trust in here? I
21 could not clearly see that.

22 A. I thought it was in the exhibit.

23 Q. I didn't see it.

24 MS. AUBREY: Mr. Examiner, there are two
25 letters that I think are relevant. One is the November

1 10th, 2017 letter, sending the AFE and the operating
2 agreement to the trusts. That's right behind the
3 application in Case Number 15922. It's eight pages in.

4 Q. (BY EXAMINER McMILLAN) "Dear Mr. Walne"?

5 A. Yes. He was the latest appointee for the
6 trust -- or the latest officer.

7 MS. AUBREY: He's the trust officer who is
8 handling the mineral interests.

9 Q. (BY EXAMINER McMILLAN) I mean, I guess my
10 question is: I don't see where -- I see the letter from
11 him, but I don't see where you have the drilling costs
12 and your overhead costs here in this letter.

13 A. They were made as attachments.

14 MS. AUBREY: They were attachments, which
15 is Exhibit 4.

16 Q. (BY EXAMINER McMILLAN) Okay. I'm looking at
17 Exhibit 4. I obviously see the AFE. I just want to
18 make sure. I'm trying to look for the \$10,000 charge in
19 here.

20 A. That's in the operating agreement.

21 Q. Where is the operating agreement?

22 A. The operating agreement --

23 Q. That's what I asked.

24 A. I'm sorry. The operating agreement was
25 submitted to each of the parties as an exhibit to the

1 letter.

2 Q. Did you supply us a copy?

3 A. I'm so sorry. I guess we did not.

4 MS. AUBREY: We did not include that as an
5 exhibit.

6 THE WITNESS: We can certainly resurrect
7 that.

8 Q. (BY EXAMINER McMILLAN) I just want you to know,
9 for the cost, that's -- your costs are higher than a
10 12,000-foot two-mile Wolfcamp and Bone Spring well.

11 A. All right. I would suggest to you, sir, that
12 because there are little or no support services there,
13 the cost is escalated as a result of having to mobilize
14 equipment and do other things that you wouldn't
15 necessarily encounter.

16 Q. So you're saying it's going -- even though
17 you're drilling a 12,000-foot two-mile well, you think
18 your costs are still in line from an overpressured
19 Wolfcamp zone?

20 A. I'm saying to you that the basis of this AFE is
21 in line with the location of where this well is about to
22 be drilled.

23 Q. And you're saying because of the lack of
24 infrastructure?

25 A. Yes, sir, everything from having to haul water

1 to hauling in gravel to, you know, having support
2 services be in other parts of the state or even from
3 Texas or somewhere else to get this to location.

4 Q. And there were no unlocatable interests,
5 correct?

6 A. No, sir.

7 EXAMINER McMILLAN: David?

8 EXAMINER BROOKS: Thank you.

9 CROSS-EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. Well, first of all, I see there are letters to
12 a number of people in here, some of which have certified
13 mail receipts attached to them, some -- well, there is
14 at least one that has a green card -- two that have
15 green cards. And then there is another one that has a
16 number -- certified mail receipts but no green cards.
17 But my question is: Who are the --

18 A. Extra respondents?

19 Q. -- owners that you're asking to be pooled? And
20 if I understand Exhibit 5 correctly, that is the
21 Northern Trust Company's trustee of Evelyn G. Brown
22 Trust only; is that correct?

23 A. Yes, sir. Those -- those folks that were
24 listed on that particular letter that I think you were
25 looking at there were the owners -- well, they were the

1 beneficiaries of that old trust, at least they were to
2 the best of our ability to discover them. So that's why
3 we included them in the notices originally.

4 Subsequently, we went through this probate proceeding to
5 cure the gap in the title with those same interest
6 owners so that now the title resides solely in the
7 co-trustees of Ms. Richter and The Northern Trust.

8 **Q. Okay. The Northern Trust Company trustee --**
9 **I'm looking at Exhibit 5. The Northern Trust Company**
10 **trustee under the will of Algernon W. Brown for the**
11 **benefit of Evelyn B. Wallace Richter and The Northern**
12 **Trust Company trustee under the will of Evelyn G. Brown**
13 **for the benefit of Evelyn B. Wallace Richter are the**
14 **only interests listed as open in the -- with the status**
15 **open on Exhibit 5, correct?**

16 **A. Yes, sir. This particular mineral takeoff was**
17 back in 2014 before we knew of the co-trustee
18 circumstance. So as best we could tell, this was the
19 only people that were engaged in that effort. So you
20 have The Northern Trust as co-trustee, who, by the way,
21 have told me that they helped Ms. Richter immensely, and
22 we should deal with them directly. Ms. Richter is
23 apparently -- she's in Florida and has no direct
24 representative, so she relies on the trust -- The
25 Northern Trust bank for her advisory group.

1 Q. Well, you're satisfied The Northern Trust
2 Company is the entity that has -- as trustee, is the
3 entity that has the authority to lease or operate this
4 interest?

5 A. I'm satisfied that they represent the trust.
6 I'm satisfied that they are the co-trustee and that they
7 do advise Mrs. Richter on this matter and that they take
8 the lead as the representative. Yes.

9 Q. Well, I am assuming that they have the legal
10 title to the property. That's normal with trustees who
11 hold management trusts, but I don't -- you know, I
12 haven't examined the trust instrument.

13 A. Nor have we.

14 Q. Nor have you?

15 A. No.

16 Q. Well, at some point --

17 A. We have not been provided that information.

18 Q. At some point you're going to need to. I would
19 think, request it. But that's -- that's really up to
20 you. You're proceeding -- you have notified them as the
21 person -- you have notified the trust as the person you
22 believe owns this interest?

23 A. Yes.

24 Q. Now, the interest you have listed as leased on
25 Exhibit 5 --

1 A. Yes.

2 Q. -- these interests are leased to whom?

3 A. GM Exploration is the lessee. GM is the --
4 they're the geologists.

5 Q. And GM is the lessee, and they -- they own the
6 working interests in this deal?

7 A. They -- they will taking a working interest
8 position in this as well. Yes.

9 Q. Okay. So everybody that owns these leased
10 interests as lessees or successors to the lessees are
11 committed to this well; is that correct?

12 A. They are leased. Yes, sir.

13 Q. And they're all -- I'm a little confused by
14 your answers because, you know, GM was the lessee.

15 A. Yes. They will make assignment to Sojourner as
16 operator.

17 Q. Okay. And all of those interests will be
18 committed to the well?

19 A. Yes.

20 Q. So you're not asking that any of those
21 interests be pooled?

22 A. (Indicating.)

23 Q. The only interests you're asking us to pool are
24 the interests that you attribute to the Northern Trust
25 Company trustee?

1 A. And those trusts, yes.

2 Q. Yeah. Well, I understand. They're trustees of
3 two different trusts according to this list. And you
4 said this was prepared in 2014. Is this, in your
5 opinion, an accurate summary of the current ownership --

6 A. It is now.

7 Q. -- of mineral interests in this unit?

8 A. Yes, sir. It is now.

9 Q. Okay. Now, let me get to the letters. Iris
10 Bradley was the representative of Northern Trust, right?

11 A. At one point, yes, sir.

12 Q. Okay. And then we have -- and then
13 Mr. Travis -- I can't -- I'm not sure --

14 MS. AUBREY: Walne.

15 Q. (BY EXAMINER BROOKS) -- Travis Walne, he was a
16 trust officer?

17 MS. AUBREY: Yes.

18 THE WITNESS: Yes. He's the most recent
19 one that's been assigned that account, I believe, sir.

20 Q. (BY EXAMINER BROOKS) And which of these notices
21 contains the time and place of this hearing? Where were
22 they notified of the hearing?

23 MS. AUBREY: Mr. Brooks, it's at the
24 beginning of Exhibit 1. It's a letter dated December
25 13th from my office.

1 Q. (BY EXAMINER BROOKS) Okay. And you notified
2 the -- let's see. Okay. I'm satisfied on that.

3 And you have your return receipt. Good.

4 Now, there was some discussion about this
5 \$10,000. Is that what you are requesting the Division
6 to allow as an administrative overhead?

7 A. No. That's the drilling rate overhead, sir.
8 So while we are drilling, the fee will be assessed at
9 10,000.

10 Q. Well, I understand this drilling rate. It
11 would be extremely high for a producing rate. But
12 you're asking for a producing rate also?

13 A. Yes. 1,600.

14 Q. But you're asking \$10,000 while drilling --
15 \$10,000 per month while drilling --

16 A. Yes, sir.

17 Q. -- and \$1,600 per month while producing?

18 A. Yes, sir.

19 Q. And there was discussion in response to
20 Mr. McMillan's questions about the fact that those rates
21 are much larger than -- much higher than what the
22 Division normally allows as administrative overhead.
23 And my understanding is your response regarding the
24 infrastructure in this area addressed that issue; is
25 that correct?

1 A. Yes, sir. The ability of the operator to drill
2 this well is going to require some significant
3 bivouacking of men, materials, you know, services.

4 Q. And these are, of course --

5 A. Sir?

6 Q. The operator will incur substantial costs, in
7 your opinion, that will not be charged through to the
8 working interest owners? Is that under the operating --
9 under the --

10 A. I'm sorry. I'm not sure I understand your
11 question.

12 Q. Well, the administrative overhead allowances is
13 to compensate the operator for expenses the operator
14 incurs that cannot be charged through to the working
15 interest owners specifically.

16 A. Uh-huh.

17 Q. And can you tell us exactly why -- or not --
18 well, not exactly. But just tell us what costs will be
19 incurred as a result of this lack of infrastructure that
20 will not be charged specifically to the working interest
21 owners? These would be overhead costs?

22 A. Well, first of all, the company's headquarters
23 are in Abilene, Texas. So they will have people that
24 will need to be engaged here -- or there in Clovis, that
25 would be their employees as part of their overhead that

1 would not necessarily be in a day-to-day circumstance.
2 They would have to acquire themselves everything from
3 housing to, you know, making sure things happen on the
4 ground in the event that we establish production. And
5 the drilling rate supervision will require the same sort
6 of thing, for men and materials to be administered and
7 supervised.

8 Q. Okay. Very good.

9 Now, are you requesting the 200 percent
10 risk charge if this -- if The Northern Trust elects to
11 nonconsent status on this operation?

12 A. Yes, sir.

13 Q. And this is a, more or less, rank wildcat well?

14 A. It's very rank.

15 Q. So you would just -- I suppose that that would
16 indicate the risk charge should be the maximum
17 permitted, which is 200 percent?

18 A. Yes, sir.

19 Q. Thank you.

20 A. Yes, sir.

21 Q. That's all I have.

22 A. Thank you.

23 CROSS-EXAMINATION

24 BY EXAMINER JONES:

25 Q. I know we've grilled you a lot here.

1 A. That's quite all right.

2 **Q. The surface access, you've got an agreement to**
3 **get to the surface?**

4 A. Yes.

5 **Q. Who will be the surface owner?**

6 A. The surface owner there will be Wesley Grau,
7 G-R-A-U.

8 **Q. Are there farmers in the area?**

9 A. He's a rancher, sir.

10 **Q. So it's out on ranch land?**

11 A. Yes, sir.

12 **Q. Are these Browns related to Wesley Brown and**
13 **Delbert Brown, the big farmers in that area?**

14 A. I don't believe so. No.

15 **Q. Are the Richters and the Browns, how are**
16 **they -- did Ms. Richter marry into the Browns? Is that**
17 **what happened?**

18 A. Yes. I believe that's exactly right. Evelyn
19 Richter married to A. W. Brown. They had a child named
20 Evelyn --

21 **Q. Evelyn.**

22 A. -- who had a child named James.

23 **Q. Okay.**

24 A. So, anyway, it's rather confusing when you're
25 trying to discern which two.

1 Q. How many separately owned tracts do you have in
2 that 160 -- 160 acres?

3 A. I'm sorry. I don't understand your question.

4 Q. Well, identically, on pieces of land, how many
5 could you separate out in that 160?

6 A. It's owned by one person.

7 Q. Okay.

8 A. Mr. Grau owns the surface and a portion of the
9 minerals.

10 Q. Okay. So the minerals -- so he owns a portion
11 of the minerals?

12 A. Yes.

13 Q. Sojourner owns a portion of the minerals,
14 12-and-a-half percent; is that right?

15 A. No. Sojourner will be a working interest
16 owner.

17 Q. Lessee --

18 A. Yes.

19 Q. -- from the Graus?

20 A. Yes.

21 Q. Okay. And so there is just a lot -- how many
22 other interests owners are in the minerals and the 160?

23 A. There are several.

24 Q. Several.

25 A. The Grau family, the Browns, JABCO. There are

1 some nonparticipating royalty interests. So --

2 Q. Okay. Some that you're not going to get
3 leased?

4 A. No. They are nonparticipating, and there is an
5 executive authority through the Graus that takes care of
6 their interest.

7 RECROSS EXAMINATION

8 BY EXAMINER BROOKS:

9 Q. As I understood your answers to the previous
10 question, all of the interests are leased except for
11 The Northern Trust?

12 A. That's correct.

13 Q. And your client owns all of those leasehold
14 interests or has agreements with the people who do?

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

16 Q. Okay. Thank you.

17 CONTINUED CROSS-EXAMINATION

18 BY EXAMINER JONES:

19 Q. I didn't see a date on that AFE. How old is
20 that?

21 A. It's about 30 days old.

22 Q. Okay. Did you guys come up with it or --

23 A. Yes. Sojourner and his group, Mr. Potts, Avery
24 Potts, who is the geologist that made the application.

25 Q. And so you're going to have a casing-point

1 election? Is that part of your -- you don't put that in
2 the operating agreement, do you, or do you?

3 EXAMINER BROOKS: You do.

4 THE WITNESS: Yes.

5 EXAMINER BROOKS: I bet. I would be very
6 surprised if you didn't have that.

7 EXAMINER JONES: Okay. These two guys know
8 (laughter).

9 EXAMINER BROOKS: However, we do not
10 provide a casing-point election in a compulsory pooling
11 order. I've never seen an OCD compulsory order that
12 did. Likewise, I've never seen an operating agreement
13 that didn't unless it was just for horizontal wells, and
14 there have been a few recently.

15 Q. (BY EXAMINER JONES) So the well-site
16 supervision even after the well is drilled, if it -- if
17 it, perchance, starts to produce, you'll have some
18 people out there, and you're going to charge that as the
19 1,600 a month?

20 A. Yes, that's correct.

21 Q. So the 6,600 acres, does that correspond to
22 your geological -- I know you've got a geologist who
23 will talk about it.

24 A. Yes. He'll -- he'll be prospective about that.

25 Q. Okay.

1 A. But yes, that 6,600 acres is in our area of
2 interest, which is about 11,000 acres.

3 Q. Okay. So the AFE is just the AFE for drilling
4 and equipping the well itself; is that correct?

5 A. That's right.

6 Q. So you don't have the extra costs to refine the
7 gas or get it hooked up, is --

8 A. No.

9 Q. --- going to be an extra deal after that?

10 A. Yes, sir. That will be.

11 Q. And as far as the plugging -- I guess I could
12 ask the geologist this. But you put 20,000 in for
13 plugging on your AFE costs?

14 A. Uh-huh.

15 Q. That's the dry-hole election, and that would be
16 the cost of plugging at that point?

17 A. If there are no obvious circumstances that
18 requires us to set pipe, then obviously we would plug
19 the well.

20 Q. Okay. And if you do set pipe and perchance it
21 never gets hooked up, someday you'll have to plug it,
22 and that'll be --

23 A. Yeah.

24 Q. -- that'll be expensive.

25 A. Well, of course it will. But the notion of not

1 getting return on our investment would be equally silly.

2 Q. Yeah. That's driving you.

3 Okay. That's all I have. Thanks very
4 much.

5 A. Thank you.

6 RECROSS EXAMINATION

7 BY EXAMINER BROOKS:

8 Q. I guess I should raise this issue. I looked at
9 your application in the file, and I did not see any
10 point where you asked in your application for an
11 administrative overhead allowance, which if it's in the
12 application, I would like to know it. And if it's not,
13 I would ask the question: Where did you bring that to
14 the attention of the trustee that you notified, that you
15 were going to be asking the Division to make that
16 allowance?

17 A. Mr. Brooks, I assume that that was part of the
18 notice as a result of sending them the joint operating
19 agreement. And on the COPAS part of that operating
20 agreement, there is a provision for overhead charges.
21 So --

22 Q. Well, that would alert them if they were to
23 make a deal with you, they would be incurring that
24 obligation, but it -- oh, I see. I'm sorry. I
25 overlooked it. Paragraph four of the application says:

1 "Approving actual operating charges and other charges
2 for supervision together with revision adjusting the
3 party's percent to the COPAS accounting procedure."

4 Well, that doesn't -- "operating charges and costs
5 charged for supervision." Well, that could be -- yeah.
6 That could bring it in. We'll take that up later.

7 Thank you.

8 A. Thank you.

9 MS. AUBREY: That's all I have of this
10 witness.

11 EXAMINER McMILLAN: Okay. We're going to
12 come back at ten until 10:00.

13 EXAMINER BROOKS: You have additional --

14 MS. AUBREY: I have one additional witness.

15 EXAMINER BROOKS: We'll take a break.

16 (Recess, 9:36 a.m. to 9:50 a.m.)

17 EXAMINER McMILLAN: I'd like to call Case
18 Number 15922 back to order. Thank you.

19 MS. AUBREY: Thank you.

20 I'd call James B. Gilbert.

21 EXAMINER McMILLAN: Please proceed.

22 JAMES B. GILBERT,

23 after having been previously sworn under oath, was
24 questioned and testified as follows:

25

1 DIRECT EXAMINATION

2 BY MS. AUBREY:

3 Q. State your name for the record, please.

4 A. My name is James Gilbert.

5 Q. And, Mr. Gilbert, by whom are you employed?

6 A. I'm employed as a consultant geologist
7 representing Sojourner Drilling Corporation. I'm also
8 the owner of GM Exploration, LLC.

9 Q. Have you testified previously before the New
10 Mexico Oil Conservation Division and had your
11 qualifications made a matter of record?

12 A. I have not.

13 Q. Would you review your educational and work
14 experience for the Examiners?

15 A. I graduated from Western State University with
16 a Bachelor of Science degree in 1974 in geology and
17 biology. And also I have work experience in petroleum
18 geology. In 1976, I was employed as a petroleum
19 geologist by -- Oil Company, out of Abilene, Texas, and
20 then I was employed by Galaxy Oil Company, Mattersol
21 [sic; phonetic] Company, and Sauder Management in
22 Wichita Falls, Texas as a petroleum geologist.

23 I then became an independent petroleum
24 geologist and continue to do so today. In 2007, my
25 partner and I formed GM Exploration, LLC for the purpose

1 of oil and gas exploration in west central Texas, West
2 Texas, New Mexico, north Texas.

3 Q. Are you familiar with the application that's
4 been filed by Sojourner in this case?

5 A. Yes.

6 Q. And are you -- can you tell the Examiner the
7 status of the lands are that the subject of the
8 application?

9 A. Yes.

10 Q. Could you do that, please?

11 A. The status of the lands?

12 Q. Uh-huh.

13 A. Well, we'll be taking some leases out there, if
14 that's what you're talking about, the leases we've
15 taken.

16 Q. (Indicating.)

17 A. We've taken a lot leases, several thousand
18 acres. But on this particular project, we're trying to
19 lease additional acreage, which is the 160 acres which
20 we're about here.

21 EXAMINER McMILLAN: Remember, we want your
22 geologic expertise. We're not interested in land. So
23 let's get the show on the road.

24 Q. (BY MS. AUBREY) Are you familiar with the
25 drilling plan for the well?

1 A. Yes.

2 **Q. What are your responsibilities as a geologist**
3 **for GM Exploration?**

4 A. I correlate, interpret information from well
5 logs, mud logs and cores and simulate that information
6 to subsurface maps and assess the risk potential in the
7 target interval. I also take care of the business part
8 of GM Exploration.

9 **Q. What professional memberships do you have?**

10 A. I'm a member of the American Association of
11 Petroleum Geologists since 1977. I'm a certified
12 petroleum geologist for the last 15 years. I'm a member
13 of the North Texas Geologic Society and the West Texas
14 Geologic Society.

15 **Q. Have you performed a geologic study of the area**
16 **of the proposed spacing units?**

17 A. Yes.

18 MS. AUBREY: I tender Mr. Gilbert as an
19 expert in petroleum geology.

20 MR. BRUCE: No objection.

21 EXAMINER McMILLAN: So qualified.

22 **Q. (BY MS. AUBREY) Can you identify the target**
23 **interval for this well?**

24 A. Yes.

25 **Q. What is it?**

1 A. It is the Canyon Formation.

2 Q. Let me direct your attention to Exhibit 7 in
3 the book in front of you, Mr. Gilbert.

4 Mr. Gilbert --

5 A. Yes.

6 Q. -- Exhibit 7 in the book.

7 A. Oh, okay.

8 Q. What is this?

9 A. This is a structure map on top of the Canyon
10 Formation in Curry County, New Mexico in Township 6
11 North, 34 East.

12 Q. And what does it show?

13 A. It shows -- it's a map that I created showing
14 subsurface well control, although there wasn't a whole
15 lot out here, for the potential of a hydrocarbon trap.

16 Q. And, Mr. Gilbert, what's the green line on the
17 exhibit?

18 A. That represents a cross section.

19 Q. Anything else you have to say about that map?

20 A. Well, the cross section is a -- it shows the
21 different -- well, we've got a cross section coming up,
22 but it shows a different stratigraphic horizon for the
23 purpose to show a potential, again, a trap for
24 hydrocarbons in this prospect.

25 Q. Let me have you look at Exhibit 8. And what is

1 **that?**

2 A. Exhibit A?

3 **Q. 8.**

4 A. Oh, 8. Okay. I'm sorry.

5 That's the cross section I just told you
6 about.

7 **Q. What is it?**

8 A. Okay. It is a cross section. It's basically a
9 map showing the different wellbores drilled in the area.
10 It's logs of these particular wellbores, and they show
11 different stratigraphic correlation across the area.
12 And it also shows a potential loc- -- a location for the
13 Sojourner Frio Lands #1. It has the potential of a
14 structural event there that might trap hydrocarbons.

15 **Q. Can you tell the Examiner what work you've**
16 **performed in connection with this project?**

17 A. I've done a lot of geological studies, some
18 subsurface mapping and cross sections, pulled a lot of
19 logs in the area. I also have done -- well, accessed as
20 much information as possible from the Bureau of
21 New Mexico Geology, looked at their maps and read a lot
22 of their reports, which they have a lot of detailed
23 information in this area that really helped me along the
24 way. And I've been working on this for about three or
25 four years, I guess.

1 **Q. What conclusions have you drawn from your**
2 **geologic study?**

3 A. I really -- it's very reasonable to drill this
4 well based on our 3D seismic, our subsurface geology and
5 the economic potential. It's a very good place, in my
6 opinion, to look for an oilfield.

7 **Q. Do you have an opinion as to the reasonableness**
8 **of drilling the proposed well?**

9 A. Yes. I think it's very reasonable to drill
10 this.

11 **Q. In your opinion, would the granting of**
12 **Sojourner's application be in the best interest of**
13 **conservation, the prevention of waste and the protection**
14 **of correlative rights?**

15 A. I think so.

16 MS. AUBREY: I offer Exhibits 7 and 8.

17 MR. BRUCE: No objection.

18 EXAMINER McMILLAN: Exhibits 7 and 8 may
19 now be accepted as part of the record.

20 (Sojourner Drilling Corp. Exhibit Numbers 7
21 and 8 are offered and admitted into
22 evidence.)

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 **Q. Mr. Gilbert, looking at your Exhibit 7, I take**

1 it you're aiming to drill the well at the highest
2 reservoir point?

3 A. Yes.

4 Q. Your map shows the highest point is to the
5 south of your proposed well location. How come you're
6 not drilling there?

7 A. That's a good question. Yes, it shows that.
8 But we have 3D seismic that we've run out here on this
9 large area, and it narrows the location down to a very
10 specific spot. And that specific spot geologically and
11 stratigraphically looks better right there instead of
12 the crest of the structure, in my opinion.

13 Q. So this map does not incorporate the seismic?

14 A. Well, it does to some degree. Yeah. It -- we
15 kind of used both. We kind of -- when you make these
16 maps -- it's kind of hard to talk about this. But
17 you've got a subsurface map, which as you can see, there
18 is very little control out here. It's wild. It's
19 crazy. So the 3D -- it's kind of hard to answer that
20 question, but we just liked it. We just liked it there,
21 you know, that spot -- that closer there.

22 Q. And GM has working interest partners in the
23 well?

24 A. Yes.

25 Q. Have they been shown the 3D seismic?

1 A. Yes.

2 Q. Have any of those working interest partners
3 nonconsented to the initial well?

4 A. No.

5 Q. Is there any chance of finding helium here?

6 A. I don't think so. I don't think so.

7 MR. BRUCE: I think that's all I have,
8 Mr. Examiner.

9 EXAMINER McMILLAN: Okay.

10 CROSS-EXAMINATION

11 BY EXAMINER McMILLAN:

12 Q. If I'm understanding, your structure map is
13 essentially subsurface data, right?

14 A. Yeah. But we did kind of in our mind think
15 about the 3D also, you know, the seismic.

16 Q. And what interval is it contoured on?

17 A. This is contoured on the top of the Canyon
18 Formation.

19 Q. I guess the only question I'm seeing is if you
20 look at your structure map, you're showing your proposed
21 location as updip of the Exxon well?

22 A. Correct.

23 Q. But then when you look at your cross section,
24 you essentially -- you don't show that. You're saying
25 the Canyon --

1 A. Well, it's updip slightly, if you look at it
2 closely on the cross section.

3 Oh, I see what you're saying. I gotcha. I
4 was looking at the shallow bench. You're correct. It's
5 showing --

6 **Q. Showing downdip. That's the only --**

7 A. Yeah. Right. I think that -- well, yeah. We
8 do kind of -- probably made a mistake there. I'm just
9 being honest with you. I didn't see it.

10 CROSS-EXAMINATION

11 BY EXAMINER BROOKS:

12 **Q. I asked the land witness a question I should**
13 **have reserved for you --**

14 A. Okay.

15 **Q. -- about the 200 percent risk penalty. Based**
16 **on your assessment of the geologic risk, do you believe**
17 **that the maximum risk penalty authorized by the Oil and**
18 **Gas Act, 200 percent, should be allowed for this well?**

19 A. Yes.

20 EXAMINER McMILLAN: What Basin is this?

21 THE WITNESS: This is in the -- actually,
22 where Palo Duro Basin runs into the Tucumcari Basin to
23 the point of the Frio Up- -- there's a little updip
24 there called the Frio Uplift, kind of small, that's on
25 the eastern edge of that. In that area, some people

1 call it the Palo -- western edge of the Palo Duro Basin,
2 Tucumcari Basin. You know, it's pretty wild out here,
3 so, you know, it's pretty speculative.

4 Q. (BY EXAMINER BROOKS) Substantial risk --

5 A. Oh, yeah.

6 Q. -- geologic risk?

7 A. Yeah. That's the reason I like it.

8 EXAMINER JONES: (Laughter.)

9 THE WITNESS: I'm serious. I mean, the
10 potential is just great here. Yeah.

11 CROSS-EXAMINATION

12 BY EXAMINER JONES:

13 Q. So is it true you're hedging your bets on the
14 location so that you might be able to go up in the
15 Wolfcamp or Lower Hueco or the Cisco if your Canyon
16 doesn't quite -- doesn't work?

17 A. Yeah. There's -- you're asking if there are
18 possibilities up the hole?

19 Q. Yeah.

20 A. Oh, yes. Absolutely. The Hueco's productive.
21 It's a long ways away, but there are very good
22 reservoirs in the San Andres. It's a good reservoir.
23 It's just a long way away from the nearest production.

24 Q. Your primary product you're expecting is gas;
25 is that correct?

1 A. Well, not necessarily. I mean, yeah, but we
2 don't really know. I mean, we're 60 miles from
3 production. I don't know how you determine whether it's
4 oil or gas.

5 **Q. Well, what was the results of those -- looks**
6 **like there are some drill-stem tests in the --**

7 A. Yes. There are -- there were --

8 **Q. What were those results?**

9 A. In the Hueco and also -- in the Hueco and down
10 in the Canyon, actually, we had a little show of oil and
11 gas in the samples, so to speak. Actually, the Hueco
12 got a little oil on it on the drill-stem test, and it
13 got a little, if I'm not mistaken -- my memory's kind of
14 fading on the Canyon -- we got a little show of oil,
15 maybe some drilling mud, if I'm not mistaken.

16 **Q. Any specs about the oil gravity or the gas --**

17 A. No. I tried to look at that fine stuff, but
18 there wasn't enough of that. Just don't have any.

19 **Q. Okay. Where is your nearest pipeline?**

20 A. The best of my knowledge, it's down by Clovis,
21 and I'm not even sure if those are the ones that
22 actually go up and take our gas and oil. But that's
23 best of my knowledge.

24 **Q. But is this around Broadview or --**

25 A. Do what?

1 Q. -- Broadview, the community of Broadview, north
2 of Clovis, or is it south of the highway going to --
3 passed Grady or north?

4 A. You know where Grady is, right?

5 Q. Yeah.

6 A. It's approximately, if I remember, about three,
7 four, five miles southeast of there.

8 Q. Southeast of Grady?

9 A. Yeah, roughly. I haven't looked at that map in
10 a while, but yeah.

11 Q. Okay. As far as your -- your dry-hole
12 determination, what -- you're going to have mudloggers
13 on location?

14 A. Yes.

15 Q. Is that what you're going to primarily look at?
16 Are you going to do any drill-stem tests?

17 A. Yeah. We'll probably have -- yeah. We'll
18 probably have a geologist and a mudlogger on location.
19 I think we'll have a drilling engineer. I'm not sure
20 about that. But we'll look at the samples very closely
21 to determine whether or not to core or run a drill-stem
22 test. We'll make that call right there on location.
23 Hopefully we'll get to do that. You know, that's the
24 whole point of this. But we will do several -- several
25 drill-stem tests that show that -- we're going to test

1 all of them. Because it's a wildcat, we plan on
2 drilling. And with any encouragement at all, we'll
3 drill more wells out here, too.

4 **Q. Do you have an idea about the risk factor that**
5 **you -- is it like a one-in-six chance?**

6 A. That's a really good question. I would -- I
7 would guess it's 10 to 20 percent chance of making it --
8 I mean, that's a really -- it's pretty speculative to
9 call that, but --

10 **Q. But if you do hit, you'll hit a big --**

11 A. Well, according to our data, that's what we
12 like about it. We don't like just a little.

13 **Q. Okay. You might hit something big.**

14 A. That's the reason we're out here.

15 **Q. Okay. Thanks a lot.**

16 A. If that makes sense.

17 **RE CROSS EXAMINATION**

18 **BY EXAMINER BROOKS:**

19 **Q. That 10 to 20 percent chance, is that the**
20 **chance -- your estimation of the chance of getting a**
21 **commercial well?**

22 A. Well, some kind of well, you know, that we can
23 produce starting off and -- yeah, some kind of well.
24 It's not necessarily a commercial well, but, you know,
25 just to see if it is once we set pipe on it or

1 drill-stem test, so forth.

2 **Q. Okay. Thank you.**

3 EXAMINER McMILLAN: Let me ask one real
4 quick question.

5 RE CROSS EXAMINATION

6 BY EXAMINER McMILLAN:

7 **Q. Okay. Going back to the cross section, you**
8 **have the Canyon Granite Wash. Are you calling the**
9 **Granite Wash the Cambrian or not?**

10 A. Yeah. It's -- it's either one or the other.
11 Yeah. Yeah.

12 **Q. Everyone has their own definition.**

13 A. That's exactly right.

14 **Q. The Granite Wash is what you feel like at the**
15 **time.**

16 **(Laughter.)**

17 **Q. It's true.**

18 A. That's true. Some things aren't exact, you
19 know, in a perfect world, especially out here where
20 we're drilling.

21 RE CROSS EXAMINATION

22 BY EXAMINER JONES:

23 **Q. But they drilled way on into it in these other**
24 **wells.**

25 A. Yes, they did.

1 **Q. And why did they do that?**

2 A. That's a great question. I've asked that about
3 500 times, and I've dug as much information as I could
4 find out. I'm sure Exxon -- I did find out that Exxon
5 had some seismic out here. I talked to the other --
6 another dry hole down there and talked to one of the
7 operators that's still around, and they had some
8 seismic. They don't have it, but they basically drilled
9 off the seismic for sure. Maybe they had something
10 else. I'm not aware of it.

11 **Q. The thermal maturity out here, is it conducive**
12 **to have methane, you think, or is it in the gas**
13 **generation window, or do you have any idea about that?**

14 A. I've read -- really, to answer that question,
15 I've read Ron Broadhead's information on this area of
16 all those maps. He did a great job out there and,
17 really, it helped me. And he thinks it's -- based on
18 some maps, yeah, it's possible. Yeah. That's another
19 reason we took -- we're out here. I wouldn't be out
20 here probably if we didn't like that, to be honest with
21 you. Maybe. I don't know. We might have drilled it
22 anyway. We kind of like the wildcat. So --

23 EXAMINER BROOKS: No further questions.

24 MS. AUBREY: I have no questions.

25 EXAMINER McMILLAN: Do you want a closing

1 statement?

2 MS. AUBREY: Yes, if you'd like a closing
3 statement.

4 EXAMINER McMILLAN: It's your option.

5 CLOSING STATEMENT

6 MS. AUBREY: We ask that you grant
7 Sojourner's application to pool the interest of the
8 Evelyn and A. W. Brown Trusts in this area and in the
9 northeast quarter of Section 34, that you grant our
10 request for reasonable costs while drilling and
11 supervising, and that you impose a 200 percent penalty
12 on nonconsent working interest owners.

13 EXAMINER McMILLAN: Jim?

14 EXAMINER BROOKS: I missed who you
15 represent.

16 MR. BRUCE: Northern Trust.

17 EXAMINER BROOKS: Oh. I assumed that was
18 the case.

19 CLOSING STATEMENT

20 MR. BRUCE: Mr. Examiner, Northern Trust
21 and Linda Powell recognizes this has been ongoing for
22 several years. We're cutting this short. They're not
23 exactly happy with the negotiations such as they were on
24 this well, but since it's been ongoing for several
25 years, we'll kind of hold off on that. But I do want to

1 make a couple of specific requests.

2 First of all, as was mentioned, there is a
3 motion in the probate courts to replace GM. We don't
4 think they were appropriately named as personal
5 representative in the New Mexico probates. There is a
6 hearing upcoming on that in Curry County in February,
7 I've been told, and we would ask that you hold issuing
8 any order pending the order from the probate court
9 regarding who is the appropriate personal representative
10 of the estate.

11 Second, Northern Trust thinks the proposed
12 overhead rates, which are also in the JOA -- if you
13 would like a copy of that. We think those are way too
14 high. You know, sometimes my clients will come in for
15 deep wells and will ask for 8,500 bucks, and they've
16 been told, No, that's too high, and they've been
17 reduced. I don't care where you are in the state, these
18 are way too high.

19 The third thing -- what I've just given you
20 is -- under the pooling order, of course, the trusts
21 will receive -- as an unleased mineral owner, will
22 receive a 1/8 royalty. And if you look at page 2 of
23 Section 70-2-17, the last section of Subpart C of the
24 statute, it says, as to an unleased mineral owner, "1/8
25 shall be considered" -- "1/8 of his or her interest

1 shall be considered a royalty interest and shall" --
2 "and the mineral owner shall in all events be paid 1/8
3 of all production from the unit."

4 Mr. Key said that the infrastructure
5 transportation-gathering costs are going to be high on
6 this. We don't think those should be applied to the
7 force-pooled royalty interest.

8 And the second thing I gave you is Order
9 Number R-14199. If you look at the last page of that
10 order, it's a similar case in Roosevelt County, quite a
11 ways away from production, and you will notice that in
12 paragraph 12, the Division held that there would not be
13 any post-production costs withheld from the royalty
14 interest.

15 So we ask that the Division order provide
16 in effect that it's a clean 1/8 royalty, no deductions,
17 for gathering, transportation, et cetera. We think
18 that's only fair.

19 MS. AUBREY: May I respond?

20 MR. BRUCE: And just one more point. I
21 would point out that the overhead rates in this case --
22 again, in Roosevelt County, they are 7,500 per month and
23 681 per month. And so, again, we think those rates are
24 too high.

25 And then I hand it back to Ms. Aubrey.

1 REBUTTAL CLOSING STATEMENT

2 MS. AUBREY: On the probate court issue, I
3 think we need to be clear about what has happened here
4 and what your authority is.

5 GM discovers the break in the chain of
6 title. There was never an ancillary probate filed in
7 New Mexico over the Brown interest. There were probates
8 filed in New York and Florida, and their title examiner
9 gave the opinion that there was a break in the chain of
10 title, and that break in the chain of title negatively
11 affected the lease that GM had taken from JABCO. JABCO
12 is James A. Brown, the brother of Evelyn, who -- who
13 actually leased his 50 percent interest in these
14 minerals to GM. Once they got the title opinion that
15 there was a break in the chain of title, that put their
16 lease in question in that interest.

17 So since they had a leasehold interest --
18 and we believe they had an interest in the estates --
19 Mr. Best filed a probate in Curry County. Notice was
20 given to all parties. Notice was given to the trust.
21 They did not appear. And the Court ordered -- since it
22 was more than three years since these people had died --
23 I believe Mr. Brown died in the '50s, and Ms. Brown --
24 Ms. Evelyn Brown, I think, died in '85. So this wasn't
25 a typical probate in the sense that it was an informal

1 probate or formal probate. It was actually a petition
2 determination of heirship.

3 And the Court determined that the heirs of
4 the Brown interest, of A. W. And Evelyn, were stated as
5 the -- on the distribution. The only thing that GM did
6 with regard to the probates was that they conveyed them
7 to -- the interest to the trust, which is now objecting
8 to that.

9 But in any event, they didn't -- in the
10 probate proceeding that they filed their motion in, they
11 did not ask to set aside the deeds. They simply asked
12 to get rid of the personal representative, which makes
13 no sense. But I don't think that that's an issue. The
14 title issues aren't an issue for you on compulsory
15 pooling. You don't sit in judgment of the title.
16 That's the risk the Applicant takes, right, if he's done
17 something he shouldn't have done or if the title is not
18 as he thinks it is. Then he has -- he has a problem,
19 but that's not one you can solve for him.

20 On the royalty, I think you would have to
21 have some statutory authority for it, which you don't
22 seem to have, to find that the post-production costs
23 should not be charged against this royalty interest. We
24 don't have the marketable condition rule here yet. I'm
25 not sure that we ever will have it. But the Supreme

1 Court, in the Ideal [sic; phonetic] case, in the Devon
2 case, have held that they have not opined on that
3 subject. We do have the Tenth Circuit case, the Elliott
4 case, which holds that post-production costs are
5 appropriately charged against the royalty interest. So
6 without some statutory or case law authority, I don't
7 think that you can order the royalty interest required
8 by the statute on cost of production. I just don't
9 think there is any authority for that.

10 EXAMINER BROOKS: Ms. Aubrey, do you have
11 the citation for the Elliott case handy?

12 MS. AUBREY: You know, I don't, but I can
13 certainly get it to you.

14 EXAMINER BROOKS: I haven't read that one.
15 I have read the other two, but that one has not come to
16 my attention.

17 MS. AUBREY: It's a Tenth Circuit case.

18 EXAMINER BROOKS: Yeah. That's what you
19 said. Correct. Tenth Circuit opinions and New Mexico
20 law are precedent, but they're not binding.

21 MS. AUBREY: Binding precedent, right. But
22 we do have the other two cases, you know, that you have
23 declined to impose the markup.

24 EXAMINER BROOKS: Yeah. Those two, I have
25 read, and I'm familiar with them. But I know that we

1 would regard that legal issue as unsettled in
2 New Mexico, at least I would.

3 MS. AUBREY: Best you can say about it.

4 EXAMINER BROOKS: Surprisingly, it's
5 remained unsettled this long, after so many other states
6 have fought about it, but that's the case as far as I
7 know.

8 Mr. Bruce, do you have anything further?

9 MR. BRUCE: I would just say I think there
10 is statutory authority. It says the royalty interest
11 shall be 1/8 of all production. And I think the
12 Division, as the administrative agency administering the
13 statute, has flexibility in determining that issue.

14 EXAMINER BROOKS: Thank you.

15 EXAMINER McMILLAN: The only thing I'm
16 asking is be sure -- whatever you send to Mr. Brooks, be
17 sure and include Mr. Bruce.

18 MS. AUBREY: I will. I will do that. And
19 should I send it to Mr. Jones and Mr. McMillan or
20 just --

21 EXAMINER JONES: Not to me.

22 (Laughter.)

23 EXAMINER BROOKS: When communicating with
24 the Examiners, people usually copy all of us. On the
25 other hand, if Mr. Jones doesn't want it, I can

1 understand that, because as chief examiner, he gets
2 copies of almost everything (laughter) about every case.

3 EXAMINER JONES: And I understand nothing.

4 EXAMINER BROOKS: And so if they're not
5 pertinent, if he doesn't have to deal with them, he
6 probably doesn't want to have to delete them.

7 So thank you.

8 MS. AUBREY: Thank you.

9 EXAMINER JONES: The overhead rate, did you
10 address that?

11 MS. AUBREY: Well, the request for overhead
12 is based on the fact that this is, as Mr. Key testified,
13 a rank wildcat. There is no infrastructure to support
14 the production of this well, and the rate is justified
15 by the rates that Sojourner has been awarded in adjacent
16 counties in Texas. So I think since there is no
17 production in Curry County, it's kind of hard to find a
18 comparison in the county.

19 EXAMINER BROOKS: Thank you.

20 EXAMINER McMILLAN: Do you have a rebuttal?

21 MR. BRUCE: I'm done.

22 EXAMINER McMILLAN: Okay. So Case Number
23 15922 shall be taken under advisement.

24 (Case Number 15922 concludes, 10:21 a.m.)

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO
3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 26th day of January 2018.

21
22 MARY C. HANKINS, CCR, RPR
23 Certified Court Reporter
24 New Mexico CCR No. 20
25 Date of CCR Expiration: 12/31/2018
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