

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

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IN THE MATTER OF THE APPLICATION OF	)	
CIMAREX ENERGY CO. OF COLORADO TO	)	
REINSTATE INJECTION AUTHORITY, EDDY	)	CASE # 14994
COUNTY, NEW MEXICO	)	

<b>GEORGE ROSS RANCH, LLC'S REQUESTED FINDINGS AND CONCLUSIONS</b>
--

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COMES NOW George Ross Ranch, LLC, (*hereinafter referred to as "GRR"*) by and through its attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and presents its closing statement in a form that is also that GRR submits should be contained in the written Decision/Order in this matter. GRR submits its *Requested Findings & Conclusions*.

### REQUESTED FINDINGS

#### Effect of OCD Case No. 14,888-Order No. R-13,699

1. GRR is the surface owner of land located in Section 27, Twp. 26S, Rge. 29E., N.M.P.M. in Eddy County, New Mexico. [See Oil Conservation Division (*hereinafter referred to as the "OCD"*) Case No. 14,888; Exhibits admitted into evidence in OCD Case No. 14,888; ¶(3)(c) in OCD Order No. R-13,699 in OCD Case No. 14,888; Undisputed evidence and agreement in the above styled and numbered administrative cause.]<sup>1</sup>
2. OCD Case No. 14,888 involved GRR's application to have OCD Order SWD-380 granting authority for disposal of produced water rescinded because of no service and notice to the surface owner, GRR's predecessor in title. The OCD entered Order No. R-13,699, which contained the following findings and orders:
  - a. "Accordingly, Order SWD-380 is void as to Applicant." [GRR was the Applicant.] (*See Finding ¶11*) [emphasis added]
  - b. "IT IS THEREFORE ORDERED THAT:
    - i. (1) Pursuant to the application of George Ross Ranch, LLC, Administrative Order SWD-380 is hereby rescinded.
    - ii. (2) Respondent (Cimarex) shall immediately cease injection operations into its Amoco Federal Well No. (API No. 30-015-24666).

<sup>1</sup> The equivalency of judicial notice, *i.e.* administrative notice, may be taken as to Oil Conservation Division Case No. 14,888. NMAC 19.15.417A

iii. (3) This order is without prejudice to the right of Respondent (Cimarex)  
to file an application to reinstate injection authority for the subject well as a  
new application, accompanied by a new Form C-108, with notice to all  
parties to whom notice of new injection application is required.” [emphasis  
added]

3. Order R-13,699 is binding on the parties to this case.<sup>2</sup> The Order provides that:

- a. Order SWD-380 is void. *void*
- b. Cimarex must file a new application for injection authority.
- c. No provision for injection authority to be reinstated retroactive to the date of the  
issuance of OCD Order SWD-380. The Order only allows Cimarex the benefit of  
filing a new application be allowed to use the well.

4. *provision* Order R-13,699 accorded Cimarex the benefit of the right to file a new application for  
reinstatement of the right to inject produced water into the well.

- a. Order R-13,699 did not give Cimarex the right to an order, if granted, that is  
retroactive to the date of issuance of OCD Order SWD-380.

Cimarex Application & Evidence

5. Following the OCD's entry of Order R-13,699, in 2013, Cimarex accepted the benefit of  
Order R-13,699 by filing the Application that is the subject of this Case No. 14,994.

- a. Cimarex exceeded the strictures of Order R-13,699 by filing an Application seeking  
injection authority effective as of October 27, 1989, the original date of the Order  
SWD-380, which the OCD has ruled is void.

<sup>2</sup> Though Cimarex may have filed an appeal of the Decision and Order, Order R-13,699 has not  
been reversed or set aside.

- i. The granting of Cimarex's Application would be the equivalency of Order SWD-380 continuing to be in effect since October 27, 1989. The granting of Cimarex's Application, effective October 27, 1989, would be absurd since it would totally ignore the legal effect and consequences of the OCD's ruling that Order SWD-380 has been void since its inception of October 27, 1989. Even a "new" Application, which Cimarex's is definitely not, cannot be predicated on a void Order and disposal practices emanating from a void Order.

6. In its Application, Cimarex did not present current data regarding the injection well.

- a. In its Application, Cimarex's data was, in most instances, approximately 24 years old. (*See the exhibits accompanying Cimarex's Application.*)

7. In its Application, Cimarex did not present complete data regarding the injection well.

- a. By way of example, the Bureau of Land Management (*hereinafter referred to as the "BLM"*)<sup>3</sup> filed a written response objecting to the Application because of the:
- i. Failure to provide verification of cement tops on wells within one-half mile radius of Amoco Federal 1, and
  - ii. Need for further research on fresh water wells in the area, and
  - iii. Failure to have an annulus monitoring system that is open to the atmosphere because the cement behind the proposed injection casing does not tie-back into the previous casing string, and
  - iv. Inconsistent formation information for the injection well. (*See BLM Letter dated May 21, 2013, that has been filed in this Case No. 14,994*)

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<sup>3</sup> The BLM is the mineral estate owner and owns the well. (*Agreed by the parties at the hearing.*)

- b. There are other instances of failure to present complete data. (*See Cimarex's Application and attached exhibits*)
- 8. In its Application, Cimarex did not present accurate data regarding the injection well.
  - a. Twenty-four year old data is not accurate because it is not current.
- 9. Cimarex's witnesses failed to provide proper evidence sufficient to support Cimarex's Application.
  - a. Cimarex presented Nash Dowdle (*hereinafter referred to as "Dowdle"*), a petroleum landman, as an expert witness. (*See Page 24 of the Transcript*) Dowdle's testimony that all the water that had gone into the well was from wells Cimarex was operating was insufficient because:
    - i. Dowdle had no personal knowledge the testimony was true, and
    - ii. Dowdle had not been at the well site and had not monitored it on a daily basis, and
    - iii. Dowdle did not know whether records existed that reflected all sources of water going into the well, and
    - iv. Dowdle admits his testimony is pure hearsay, and
    - v. Dowdle admits the issue of whether sources of water going into the well other than Cimarex would have a direct impact on the issue of granting Cimarex's Application, and
    - vi. Dowdle can't testify as to whether a water sample from a windmill was reflective of the condition of water in other water wells adjacent to the proposed disposal well. Dowdle relied upon hearsay for the testimony, and

- vii. Dowdle never personally asked GRR, the surface owner, permission to sample other wells. (*See Pages 33, 34, 35, 36, 37, 39, 40 and 46 of the Transcript*)
  - viii. Dowdle's testimony was based on rank hearsay, no first hand knowledge and was not credible or sufficient. Dowdle's testimony is unreliable.
- b. Cimarex presented David Percy (*hereinafter referred to as "Percy"*), a geologist, as an expert witness. (*See Page 49 of the Transcript*) Percy's testimony relating to geological zones and water levels was insufficient because:
- i. Percy did not testify as to the integrity of the well as to condition of casing and cement, and
  - ii. The testimony relating to flow of water into the Pecos River was based on studies from the 1960's and 1970's, all of which are more than 35 years old. There was no testimony showing any update or recent studies regarding water and its flow in relation to the injection well or adjacent water wells in the area. (*See Pages 58 through 64, 70, 72 and 74 of the Transcript*)
- c. Cimarex presented Scott Gengler (*hereinafter referred to as "Gengler"*), a petroleum engineer, as an expert witness. (*See Page 75 of the Transcript*) Gengler's testimony was insufficient because:
- i. Gengler's testimony regarding a sample of water was the result of a 3<sup>rd</sup> party taking the sample and sending it to a 3<sup>rd</sup> party lab. Gengler could not testify as to chain of custody as to the water sample, thereby rendering any test result suspect and insufficient (*See page 87, 88 and 89 of the Transcript*), and

- ii. Gengler's testimony of economic necessity that the Application be approved was: (i) solely his opinion as a geologist and not as an economist or accountant and (ii) was presented without any economic evidence of any nature to support his statements regarding economic issues or economic necessity. Gengler was not qualified as an expert economist or accountant. *(See Pages 101 and 102 of the Transcript)* Gengler's testimony on economics is an unsupported and unreliable lay opinion that is insufficient and inadmissible, and
- iii. Gengler's admission that the BLM had not changed its position opposing the granting of the Application shows his testimony was insufficient to counter the BLM objections. *(See Pages 106 and 107 of the Transcript)*, and
- iv. Gengler's testimony is insufficient to support any retroactive application of the proposed permit because he testified that what is critical to Cimarex from an economic viewpoint is getting the Application approved so Cimarex can start injecting and addressing an economic need. *(See Pages 108 and 109 of the Transcript)*, and
- v. Gengler admits to a Cimarex insufficiency because at the time he testified there was no annulus monitoring open to the atmosphere. *(See Page 124 of the Transcript)*

10. Even if there was authority to allow the retroactive granting of the authority back to 1989, which there is not, Cimarex presented no evidence showing why retroactive application of the proposed is necessary.

11. Cimarex has presented no evidence its proposed injection satisfied the Safe Drinking Water Act of 1974 or that the Act is inapplicable.

12. Cimarex admitted that it did not comply with New Mexico's Surface Owner's Protection

Act before it sought OCD approval of the Application. *New Mexico's Surface Owner's Protection Act §§70-12-1 through 70-12-10 N.M.S.A. 1978 Comp.*

- a. Cimarex cannot claim it was not allowed access to locations on GRR's surface estate when it made no attempt to comply with the Surface Owner's Protection Act and reach agreement with the surface owner, GRR.

13. Cimarex presented no evidence of compliance with the requirements of the "Gold Book."

**Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development- The Gold Book- Fourth Edition--Revised 2007, Page 38 (See GRR Exhibit #5)**

- a. No evidence was presented of compliance with Onshore Order No. 7, Disposal of Produced Water as required by the "Gold Book." (*Onshore Order No. 7, Disposal of Produced Water is GRR Exhibit #3*)

14. Cimarex presented no evidence it had satisfied the requirements of the BLM so as to have the BLM withdraw its objections.

- a. No evidence was presented that the BLM had authorized disposal of water in the proposed injection well.

### REQUESTED CONCLUSIONS

1. The equivalency of judicial notice, administrative notice, may be taken of a prior OCD case. **NMAC 19.15.417A**

2. OCD Case No. 14,888-Order No. R-13,699 rendered Order SWD-380 void.

rescind



3. A void court order is a complete nullity and of no force and effect. A void order is not susceptible of ratification or confirmation. A void order may not change the status of a case, and an order, which is a nullity and void, confers no rights. 60 C.J.S *Motions and Order* §76; *Plant Equipment, Inc. v. Nationwide Control Service, Inc.*, 2003 -Ohio- 5395, 155 Ohio App.3d 46, 798 N.E.2d 1202, 1206 (2003)
4. The reversal of a judgment [order] means to “overthrow, vacate, set aside, make void, annul, repeal, or revoke it.” *Black's Law Dictionary* 1319 (6th ed. 1990)
- a. A judgment reversed by a higher court is “without any validity, force or effect, and ought never to have existed.” *Butler v. Eaton*, 141 U.S. 240, 244, 11 S.Ct. 985, 987, 35 L.Ed. 713 (1891); *Leroy v. City of Houston*, 906 F.2d 1068, 1076 (5th Cir.1990); *Riha v. Int'l Tel. & Tel. Corp.*, 533 F.2d 1053, 1054 (8th Cir.1976)
- b. Reversal of a judgment and remand for a new trial places the parties in the same position, insofar as relief is concerned, as if the case had never been tried. *Gospel Army v. Los Angeles*, 331 U.S. 543, 546, 67 S.Ct. 1428, 1430, 91 L.Ed. 1162 (1947)
- c. The reversal of a judgment resulting in an appellate court’s mandate ordering a reversal of a judgment without other direction nullifies the judgment, findings of facts, and conclusions of law, and “leaves the case standing as if no judgment or decree had ever been entered.” *Janssen v. Tusha*, 67 S.D. 597, 601, 297 N.W. 119, 120 (1941)[emphasis added. See also 5 AmJur2d *Appellate Review* §861 (2002)<sup>4</sup>
- d. All the foregoing principles of law set forth in ¶’s 4a, 4b and 4c above are equally applicable to a reversal or rescission of an administrative order.

<sup>4</sup> The principles of law presented in this paragraph are more fully briefed in GRR’s *Motion to Require Cimarex’s Compliance with Current Requirements for Obtaining a SWD Permit*.

5. An administrative adjudicative determination may be given preclusive effect and the doctrine of *res judicata* applied. *Shovelin v. Central New Mexico Elec. Co-op*, 115 N.M. 293, 298, 850 P.2d 996, 1001, 8 IER Cases 654 (1993) [ *Also See, e.g., Utah Constr. Co.*, 384 U.S. at 422, 86 S.Ct. at 1560 ("When an administrative agency is acting in a judicial capacity and resolves disputed questions of fact properly before it which the parties have had an opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose."); **Restatement § 83** ("[A] valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of a court.")]

a. The benefits and strictures of Order R-13,699 are *res judicata* and binding upon Cimarex.

6. Because Cimarex has accepted the benefits awarded in Order R-13,699, as a matter of law, it cannot proceed with an appeal of Order R-13,699. [A party waives the right to appeal when it accepts the benefits of a judgment. *Board of Education, Rio Rancho Public School*

*District v. Johnson*, 1998-NMCA-048, 125 N.M. 91, 957 P.2d 76 (Ct. App. 1998)]

7. The OCD has no authority to issue an order granting authority to inject waste water into a disposal well retroactive to, or prior to, the date of the Order. (No statutory or regulatory authority exists that grants such authority. By the terms of OCD Case No. 14,888-Order No. R-13,699, the OCD has no such authority.)

a. Cimarex is not entitled to an order granting authority to inject waste water into a disposal well retroactive to, or prior to, the date of the Order R-13,699.

8. Because the BLM owned the mineral estate and the well, it had a right and standing to object to Cimarex's Application.

9. The “Gold Book” requires BLM approval before an injection well can be used for disposal of produced water. **Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development- The Gold Book- Fourth Edition--Revised 2007, Page 38 (See GRR Exhibit #5)**
10. While the rules of evidence applicable in a trial before a court without a jury do not control, such rules may be used as guidance. Evidence that is immaterial, repetitious or otherwise unreliable shall not be admitted. **NMAC 19.15.4.7**
  - a. Hearsay is a statement that the declarant does not make while testifying at a current hearing and which is offered into evidence to prove the truth of the matter asserted in the statement. **New Mexico Rules of Evidence 11-801C**
  - b. Hearsay is inherently unreliable and its use can deny fair trials and hearings. **John H. Wigmore, Evidence in Trials at Common Law §13649(I)(2); 20 Florida State University Law Review 787 (Spring 1993)** Hearsay is excludable because it is considered untrustworthy. The reasons it is considered untrustworthy are (i) the person making the statement is not testifying under oath or affirmation; (ii) the person making the statement is not in the presence of the trier of fact (hearing officer) so as to allow consideration of appearance and demeanor and (iii) the person making the statement is not subject to cross-examination. **Hearsay Handbook 4<sup>th</sup> §3:2 Rationale**
11. Because hearsay is inherently unreliable, it is not admissible in this proceeding. (*See the restriction in NMAC 19.15.5.7*) The OCD cannot base a decision in this case on hearsay evidence.

12. As set forth in ¶9 of the Findings, evidence presented by Nash Dowdle, David Percy and Scott Gengler was unreliable, immaterial and at times rank hearsay.

- a. Those portions of the Dowdle, Percy and Gengler testimony that is immaterial, hearsay and unreliable cannot be considered nor become a basis for a decision in this case.

13. Current and complete relevant and reliable data is necessary for the granting of an Application for authority to inject produced water into a well. Cimarex failed to provide current and complete relevant and reliable data.

14. Cimarex's Application should be denied.

**Martin, Dugan & Martin**



By \_\_\_\_\_

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## CERTIFICATE OF SERVICE

Martin, Dugan & Martin certifies that on the 7<sup>th</sup> day of November 2013 a copy of the foregoing *Requested Findings and Conclusions* was served on the following persons or entities:

James Bruce  
369 Montezuma #213  
Santa Fe, NM 87501  
Attorney for Applicant, Cimarex Energy of Colorado



---

W. T. Martin, Jr.

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:  
APPLICATION OF CIMAREX ENERGY COMPANY CASE NO. 14994  
OF COLORADO TO REINSTATE INJECTION  
AUTHORITY, EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING  
August 19, 2013  
Santa Fe, New Mexico

BEFORE: RICHARD EZEANYIM, CHIEF EXAMINER  
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the  
New Mexico Oil Conservation Division, Richard Ezeanyim,  
Chief Examiner, and David K. Brooks, Legal Examiner, on  
Monday, August 19, 2013, at the New Mexico Energy,  
Minerals and Natural Resources Department, 1220 South  
St. Francis Drive, Porter Hall, Room 102, Santa Fe,  
New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102

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## EXHIBITS OFFERED AND ADMITTED

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1 (9:03 a.m.)

2 EXAMINER EZEANYIM: Good morning,  
3 everybody. This hearing will come to order at this  
4 point, and we're going to go into the docket. This is a  
5 special docket hearing. We normally conduct our  
6 hearings on Thursdays, but because this case is  
7 contested, we moved it to, obviously, today, August  
8 19th.

9 So today is Monday, August 19th. It's 9:00  
10 a.m. in the morning, and we have one case on the docket,  
11 and the docket number is Docket Number 28-13 that we're  
12 going to hear today. We're going to start, and  
13 hopefully we are going to finish today. I will call for  
14 the docket and call for appearances and see what we have  
15 before we -- see what we can do to make sure we conclude  
16 this case today.

17 At this point, I call Case Number 14994.  
18 This is the application of Cimarex Energy Company of  
19 Colorado to reinstate injection authority, Eddy County,  
20 New Mexico.

21 Call for appearances.

22 MR. BRUCE: Mr. Examiner, Jim Bruce of  
23 Santa Fe representing the Applicant. I have three  
24 witnesses.

25 EXAMINER EZEANYIM: Any other appearances?

1 get your name appropriately. State your name carefully  
2 and be sworn, please.

3 MR. PEARCY: David Percy, geologist,  
4 Cimarex.

5 MR. DOWDLE: Nash Dowdle, landman for  
6 Cimarex.

7 MR. GENGLER: Scott Gengler, petroleum  
8 engineer for Cimarex.

9 MR. MEYER: David Meyer with Ross Ranch.

10 EXAMINER EZEANYIM: Swear them in.  
11 (Witnesses sworn.)

12 EXAMINER EZEANYIM: Okay. Start with your  
13 opening statement.

14 EXAMINER BROOKS: Did you call for  
15 appearances?

16 EXAMINER EZEANYIM: Yeah.

17 OPENING STATEMENT

18 MR. BRUCE: Mr. Examiner, I'm going to be  
19 pretty brief. I'm sure as the hearing proceeds, I'll  
20 have more comments or at the end of the hearing.

21 EXAMINER EZEANYIM: Before you proceed,  
22 Counselor -- I hope I'm not putting anybody on their  
23 pedestal [sic]. I wanted the Examiner to hear an  
24 opening statement. Do you have an opening statement, or  
25 you don't?

1 MR. MARTIN: W. T. Martin, Tom Martin,  
2 Martin, Doogan & Martin of Carlsbad, and I represent  
3 Ross Ranch. And I have one witness today.

4 EXAMINER EZEANYIM: Any other appearances?  
5 How do we want to proceed? I think the  
6 Examiners would like to listen to pre-comment, you know.  
7 What do you call that in legal terms?

8 EXAMINER BROOKS: Opening statements.

9 MR. BRUCE: Opening statements.

10 EXAMINER EZEANYIM: Opening statements, so  
11 that we know what's going on. The opening statement  
12 should address the nature of contention and see whether  
13 I'm going to continue it, because I think I would like  
14 to have this case concluded today, if you don't mind.

15 MR. BRUCE: We're -- opposing counsel and I  
16 are pretty darn sure that it'll be concluded, hopefully  
17 this morning, perhaps.

18 MR. MARTIN: I would think we could be  
19 through by noon.

20 EXAMINER EZEANYIM: Okay. Very good. That  
21 would be wonderful. Very good.

22 Now, the first thing we should do is, for  
23 all the people who are going to be witnesses today will  
24 stand, you know, state their name. And if you have your  
25 card, give your card to the court reporter so she can

1 MR. BRUCE: A very brief one. A very brief  
2 one.

3 EXAMINER EZEANYIM: Mr. Martin, do you have  
4 an opening statement?

5 MR. MARTIN: I do.

6 EXAMINER EZEANYIM: Oh, okay. So I'm not  
7 doing something that's out of the ordinary?

8 MR. MARTIN: No.

9 EXAMINER EZEANYIM: Okay. Go ahead.

10 MR. BRUCE: Mr. Examiner, Cimarex is the  
11 operator of the Amoco Federal Well #1 located 1,665 feet  
12 from the north line and 330 feet from the east line in  
13 Unit 1 of Section 27, Township 26 South, Range 29 East,  
14 Eddy County.

15 That well was a disposal well. In 1989,  
16 Mallon Oil Company obtained SWD-380 to convert the Amoco  
17 Federal #1 into a saltwater disposal well. There has  
18 been a hearing on this well, in Case 14888, where Ross  
19 Ranch sought to revoke Order SWD-380, and that was done  
20 in Order R-13699, the order was rescinded because Ross  
21 Ranch -- or, actually, Ross Ranch's predecessors in  
22 interest did not receive certified-mail notice of the  
23 SWD administrative SWD application per the  
24 requirements of a C-108.  
25 Cimarex is here today seeking to reinstate

1 the injection authority. We think we would show that  
2 through the C-108 and other data, Cimarex has satisfied  
3 all of the Division's injection well requirements.

4 We will further -- again, the file -- I was  
5 not provided a copy of it until not too long ago. There  
6 is a letter that the BLM sent raising certain  
7 objections. We will address those in the course of  
8 testimony. I'd rather not put words into the mouths of  
9 my witnesses, but we will address those.

10 We also think it's proper, since the well  
11 had injected for 23 years without problems, that the  
12 reinstated injection authority be made retroactive back  
13 to 1989, and we will again address in our testimony.

14 And that's all I have at this point,

15 Mr. Examiner.

16 EXAMINER EZEANYIM: Thank you, Counselor.

17 Mr. Martin?

18 MR. MARTIN: Thank you.

19 OPENING STATEMENT

20 MR. MARTIN: Ross Ranch is objecting to  
21 this application to reinstate this particular injection  
22 well and particularly objecting to it being reinstated  
23 retroactively.

24 If I may, I will refer you to the order  
25 that was entered in the prior case rescinding the

1 order -- "court order is a complete nullity and of no  
2 force, and effect. A void order is not acceptable on  
3 ratification or confirmation. A void order may not  
4 change the status of a case, and an order which is a  
5 nullity and void confers no rights. Proceedings based  
6 on a void order are themselves invalid."

7 Now, you-all have this in the record. I  
8 have cited other authority, including United States  
9 Supreme Court authority on this particular concept.

10 Very simply, when this particular SWD-380  
11 order was revoked, you had a situation where that thing  
12 became a nullity. It was as though nothing had ever  
13 transpired. I would submit to you and we will argue  
14 that as a matter of law, even if there is a decision  
15 made to allow injection into this well, which we oppose,  
16 it cannot as a matter of law be made retroactive back to  
17 1989.

18 Now, other issues involved in this matter:  
19 A great deal of the data that is being relied upon in  
20 this application is data back at the 1988, 1989 time  
21 period. Not all, certainly, because I've seen some  
22 things that they have submitted, but a great deal.

23 I would submit to you that it is wholly  
24 inappropriate to allow an authorization for an injection  
25 well based on data that is 23 years old, and there is

1 authority, or the order on SWD-380 and, in particular,  
2 in the order portion, subpart three. The Division said:  
3 This order is without prejudice to the rider [sic] of  
4 the Respondent who filed application to reinstate  
5 injection authority for the subject well as a new  
6 application, accompanied by new Form C-108, with no risk  
7 to the parties to whom notice of a new injection  
8 application was required.

9 It is our position that that particular  
10 order as entered orders and contemplates that this  
11 particular -- an application and a new application  
12 cannot be treated as a reinstatement and certainly  
13 cannot be treated on a retroactive basis.

14 I have also filed a motion, which you-all  
15 should have, relating to this particular issue, and I  
16 can either point these out now or at closing. But I  
17 think the most important part of this is, if you look at  
18 case law across the United States, when you have a  
19 situation where an order is reversed by an appellate  
20 court -- I'll use, in this instance, "withdrawn." But  
21 most of the time you deal with reversals by appellate  
22 courts. A reversal absolutely overthrows or vacates or  
23 annuls or renders that prior order or judgment void.  
24 And if I may quote from a treatise that I thought had  
25 particular good language, CJS, it says: "A void"

1 not current data.

2 Also, if you look in the record, the BLM  
3 has, in fact, sent you a letter objecting to the  
4 issuance of an authorization for this particular well.  
5 The BLM has given you some of the reasons why the BLM  
6 objects. To date, BLM has not changed its position, as  
7 far as we know, on that subject.

8 I submit that it is inappropriate for the  
9 OCD to go forward and issue an authorization when, in  
10 fact, the BLM is objecting and has set forth criteria as  
11 to why they are objecting.

12 Also, there is other data and information  
13 that clearly shows that this particular application  
14 should be denied. If Cimarex wants to proceed with a  
15 new application on the new form, then it needs to come  
16 forward with new, current and adequate data and not  
17 rely, in whole or in part, on 23-year-old data. I will  
18 stop -- oh, I'm sorry. I did leave one thing out.

19 There is another interesting aspect to  
20 this. Because this order was void and we have this new  
21 application, I submit to you that the Surface Owners  
22 Protection Act now comes into play, and there has been  
23 absolutely no effort on the part of Cimarex to comply  
24 with the Surface Owners Protection Act. Until there is  
25 some attempt that complies with the Surface Owners



1 Protection Act, that is another reason that this  
2 application should not go forward. My client has never  
3 been contacted with any proposal in relation to the  
4 Surface Owners Protection Act. I'm sure there will be  
5 argument that is inapplicable. We can argue that out.  
6 We can even brief it, if necessary, but if you look at  
7 the scope and breadth of the Surface Owners Protection  
8 Act, it is my position that it picks this situation up,  
9 and it has to be dealt with, which it has not been dealt  
10 with.

11 The other issue is, there are numerous  
12 water wells within the area of this particular injection  
13 well -- proposed injection well, and, again, there has  
14 not been data provided as to all of those wells. And I  
15 believe you will not hear any data today with reference  
16 to those wells, the condition of water in those wells,  
17 and, again, that would be a reason to not proceed  
18 further and deny this particular application.

19 I have also submitted to you in the  
20 exhibits some federal materials. One of them is the --  
21 what they call the Gold Book. If you go to page 38 of  
22 the Gold Book, you will see that it discusses disposal,  
23 and then it refers you to BLM Onshore Order Number 7,  
24 which I have likewise included. And I submit to you  
25 that there has been no attempt to comply with those

1 particular requirements. That has not, per se, been  
2 listed in the BLM letter, but there is no -- there has  
3 been no attempt to comply with that.

4 And with this particular well, we do have  
5 the BLM involved, and you cannot ignore and not take  
6 into account the position of the BLM in relation to this  
7 particular injection well.

8 EXAMINER BROOKS: Is this well on Federal  
9 Mineral Estate?

10 MR. MARTIN: Some of it. It's sitting on  
11 private land, but it affects Federal Mineral Estate.

12 EXAMINER BROOKS: But it is not in the  
13 Federal Mineral Estate?

14 MR. MARTIN: It is not. It's right on the  
15 edge.

16 MR. BRUCE: It is on Federal Mineral --

17 MR. MARTIN: It's on private. It's on  
18 federal minerals, but it's on private surface.

19 EXAMINER BROOKS: Oh, okay.

20 MR. MARTIN: I didn't say that very well.  
21 Yes, it's federal minerals, so we cannot ignore the BLM  
22 in this process.

23 EXAMINER BROOKS: Okay.

24 MR. MARTIN: That's my opening statement.  
25 Thank you.

1 EXAMINER EZEANYIM: Do you have any  
2 comment? I have some comments.

3 EXAMINER BROOKS: Well, I'm not sure I need  
4 to make comments at this point. I could remark that I  
5 don't think -- because I believe we probably do not have  
6 jurisdiction to determine the applicability of the  
7 Surface Owners Protection Act, I would think that as far  
8 as this tribunal is concerned, that's essentially a  
9 nonissue, not that it's not something that couldn't be  
10 raised in an appropriate tribunal. That's a preliminary  
11 opinion without having heard any arguments that counsel  
12 addressed to that issue.

13 MR. BRUCE: I would simply say,  
14 Mr. Examiner, that that is an agreement between -- a  
15 private agreement between a surface owner and an  
16 operator, oil and gas operator, but it does not -- so if  
17 there is any issue about that, that's between these  
18 parties, and if there is a squabble over it, it's in  
19 district court.

20 EXAMINER BROOKS: Well, that would be my  
21 thinking on the subject.

22 MR. BRUCE: And our position -- go ahead.

23 EXAMINER BROOKS: If the surface owner  
24 contends that something cannot be done, even though it's  
25 authorized by the OCD, because they haven't complied

1 with the Surface Owners Protection Act, I would think  
2 that the remedy would be to take that to district court.

3 MR. BRUCE: And it's Cimarex's position  
4 that there is -- there is an exclusion in the Surface  
5 Owners Protection Act for agreements in place, and since  
6 this well has been out there for somewhere around 30  
7 years now, we believe that the Surface Owners Protection  
8 Act does not apply. But, again, I don't want to really  
9 argue that because we just think it's a district court  
10 action.

11 EXAMINER BROOKS: That would be my thinking  
12 without having any briefing on the subject.

13 EXAMINER EZEANYIM: Anyway, thank you very  
14 much, gentlemen.

15 I'm the Examiner today, and I'm not here as  
16 an attorney, so I don't understand what you're saying.  
17 I'm here to collect the technical and engineering facts,  
18 to make decisions on those facts, and I have an  
19 honorable judge here to help me with the legal matters.

20 EXAMINER BROOKS: Formerly honorable.  
21 (Laughter.)

22 EXAMINER EZEANYIM: But I'm not -- I can  
23 reason, and this is why I tell you I can reason even  
24 though I'm not an attorney. First of all, I don't want  
25 something that would go to the district court to be

1 brought here, because I'm lacking the resources to be  
2 able to deal with this on an everyday basis. If I waste  
3 all this time and then hear all these cases, you go back  
4 to district court. You see the waste? I hate waste.

5 I know, Mr. Martin, you haven't appeared  
6 here before, but all these people, they know I don't  
7 like hearings to go a whole week, and then it goes back  
8 to district court. All that time is gone. I should  
9 have used that time more effectively doing something  
10 else.

11 Okay. Now, I heard what the two of you  
12 said, and I'm confused, but I can reason. One thing I  
13 wanted to say here is, when you are saying -- when  
14 Counsel was saying, We want this to be retroactive to  
15 1989, and you are saying, No, it can't be made  
16 retroactive to 1989, I'm not interested. My interest  
17 is, is this injection well viable? So whether it's  
18 retroactive to 1989 or not, is it something that will go  
19 to district court -- which I don't know why you guys are  
20 asking me not to do 1989 or do 1989. I mean, you said  
21 it cannot be made retroactive to 1989. Okay. Suppose  
22 I -- am I impairing the correlative rights of somebody  
23 if I make it retroactive to 1989, or if I do the  
24 opposite, am I impairing corrective rights?

25 Remember, my job here is to prevent waste

1 and protect correlative rights, your correlative rights.  
2 I'm not an attorney, but I think you understand where  
3 I'm going, because this will help us facilitate -- you  
4 can understand the legal ramifications. I can't. But  
5 from what you told me now, I want to find out why --  
6 suppose I say, Okay, it's not going to be retroactive to  
7 1989, or, I'm going to make it retroactive to 1989. So  
8 that's what I don't understand. And then it will be a  
9 burden of contention in this hearing.

10 Why we are here is, is there any  
11 negotiation? Let's try to see what is pertinent to an  
12 administrative hearing of this nature. This is not a  
13 district court. Okay? That's one thing.

14 Then you mentioned BLM. BLM will make an  
15 objection, but they never appear here to stand up on  
16 their objections. And it's very, very absent [sic] to  
17 me. If you are objecting to something, you need to  
18 appear and say why you are objecting. You don't just  
19 write -- anybody can write and go to New York and have  
20 fun; then I'll be struggling with it. We listen to  
21 whatever is said. Unfortunately, they don't appear to  
22 tell us why they are objecting. Remember what I said  
23 before. We want to collect the technical facts and make  
24 a decision that will affect [sic] everybody. And we are  
25 going to consider everybody's rights equally. I'm not

1 working for Smith or for Ross Ranch or for even Mobil.  
2 I work for the State of New Mexico, make sure that  
3 everything is done right, and that's why we are here. I  
4 don't want anything that will go to district court be  
5 brought here because I'm not a judge. That's one point.

6 So going back to BLM. BLM never shows up.  
7 We consider everything they tell us, but OCD has the  
8 authority to write the order. They have the  
9 authority -- they have the power to say, Oh, we can't  
10 even comply with that, because that's BLM. So if we  
11 write an order that is material to them, they have the  
12 right to say, Well, I didn't do whatever they wanted to  
13 do with the operator.

14 So because they don't come here to convince  
15 me what they are doing or do, I will look at this in the  
16 technical aspect, but I'm not here to bolster their  
17 outlook on why this should not happen. They sit back  
18 and then allow me -- I mean, that's not right. If I  
19 start doing that, I am not doing my job, just listening  
20 to whatever they say. Their modus operandi might be  
21 different from ours, because we are the State, and  
22 BLM -- and they have different operations -- operating  
23 standards.

24 So we don't want to lay too much on BLM,  
25 even though it has some pertinence to what we are

1 talking about.

2 So with this, I want to steer clear of  
3 anything that will go to district court to be said here.  
4 If I see it, I will cut you off from there, and we'll go  
5 to the real issue that is before us today, like you told  
6 me. And that's why I had required you guys to tell me  
7 about this case in opening statements, so I can make  
8 these comments.

9 What I want to do now is go back to the  
10 facts of why this should not be reinstated and why it  
11 should be reinstated. That's all the Examiners want to  
12 hear, unless the Legal Examiner has any other thing to  
13 say, but that's all I have. I don't want to argue  
14 district court arguments in an administrative hearing.

15 MR. BRUCE: And, Mr. Examiner, I don't plan  
16 to. That's why I'd like to get going with the evidence.

17 MR. MARTIN: May I make one response,  
18 please?

19 EXAMINER EZEANYIM: Sure.

20 MR. MARTIN: Thank you.

21 We have an obligation to properly make a  
22 record in a case, and it is our position that the issues  
23 I raised in the opening statement are relative to what  
24 can or cannot be put into an order relating to this  
25 particular application. It is true that some of that is

1 legal argument, but I submit to you that that legal  
2 argument and law cannot be ignored in relation to this  
3 particular issue.

4 It is also critically important that we  
5 make a record and we make a proper record because the  
6 process that is involved here, should we disagree with  
7 the ultimate decision, goes up on a record. If we have  
8 not made a proper record, then we have not preserved our  
9 position. Therefore, I respectfully disagree. We have  
10 to present our legal arguments, as well as factual  
11 arguments, at this hearing.

12 EXAMINER BROOKS: Well, of course, I would  
13 respectfully point out that people -- trial lawyers are  
14 very alert to making a record, but our setting is  
15 somewhat different in that regard from where we normally  
16 find ourselves in court or even before an administrative  
17 agency because we're in a hearing context where a  
18 de novo appeal is allowed. If either of you does not  
19 like the result of this hearing, your remedy is to  
20 request a de novo review by the full Commission, and at  
21 that time, you will have the opportunity to present  
22 anything that the Commission chooses to allow you to  
23 present.

24 And the record that will go to district  
25 court, if this case ever goes to district court, will be

1 I would add, the difference that we may make, because  
2 it's an Examiner Hearing rather than a judicial  
3 proceeding, is that if we exclude evidence, we may not  
4 be -- we may be inclined not to make a Bill of  
5 Exception, because I don't see the point that a Bill of  
6 Exception would serve when this proceeding -- a review  
7 of this proceeding is going to be done de novo and we'll  
8 will have the opportunity to present whatever evidence  
9 or reject to the Commission if you take this case to the  
10 Commission.

11 EXAMINER EZEANYIM: In legal terms, please  
12 what is Gold Book? Gold Book was mentioned. I'm not  
13 familiar with that.

14 EXAMINER BROOKS: Well, the Gold Book is a  
15 book that is prepared by the BLM that has to do with  
16 surface usage --

17 EXAMINER EZEANYIM: Oh, okay.

18 EXAMINER BROOKS -- by oil and gas  
19 operators. I think just about anybody can use this BLM  
20 service, although I'm not familiar with its provisions.

21 EXAMINER EZEANYIM: Okay. It was  
22 mentioned, but I'm not familiar with that.

23 Okay. Very good. Now I think I have heard  
24 everything, and we can proceed.  
25

1 the record of the Commission hearing, not the record of  
2 this hearing. Records of the examiner hearings are  
3 usually not even included in what is certified to the  
4 district court.

5 However, I don't think Mr. Ezeanyim or I  
6 want to preclude you from making any legal argument. If  
7 you offer evidence that's not relevant to what we see as  
8 the issues before us, we may sustain an objection, if  
9 there is one, to that evidence, but we're not going to  
10 decline to allow you to make any legal argument you wish  
11 to make.

12 EXAMINER EZEANYIM: Mr. Martin, that's not  
13 my intent. I'm sorry if you misunderstood me. You have  
14 the right to say -- that's why it's a hearing, you know.  
15 You have the right to say whatever you want to. I mean,  
16 I didn't say, Well, you can't -- no. You've got to  
17 protect -- you have to work for your client. You have  
18 to be ambitious to work for your client. I never want  
19 to exclude you from saying anything that might be  
20 beneficial to you, but I'm just trying to make sure we  
21 exclude anything that is not really necessary. Because  
22 even though I'm not an attorney, like I said, I can --  
23 you are going from what your rights are in this  
24 administrative hearing. That's all I'm saying.

25 EXAMINER BROOKS: Yeah. The difference --

1 NASH DOWDLE,  
2 after having been previously sworn under oath, was  
3 questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Please state your name and city of residence  
7 for the record.

8 A. Nash Dowdle, Midland, Texas.

9 Q. Who do you work for and in what capacity?

10 A. Cimarex Energy, as a landman.

11 Q. Have you previously testified before the  
12 Divison?

13 A. Yes, sir.

14 Q. And were your credentials as an expert  
15 petroleum landman accepted as a matter of record?

16 A. Yes, sir.

17 Q. And are you familiar with the land matters  
18 involved in this case?

19 A. Yes, sir.

20 MR. BRUCE: Mr. Examiner, I tender  
21 Mr. Dowdle as an expert petroleum landman.

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Mr. Dowdle is so  
24 qualified to be an expert. That's all I'm saying.

25 Q. (BY MR. BRUCE) Mr. Dowdle, could you identify

1 Exhibit 1 for the Examiner and briefly describe its  
2 contents?

3 A. This shows two things here. The red outline is  
4 the Ross Ranch surface area, and the other area that's  
5 green and hash marks shows the federal lease with our  
6 wells on it.

7 Q. Now, there are certain -- the green area is the  
8 federal lease. What does the yellow cross-hatching  
9 indicate?

10 A. That just shows the proration units that are  
11 allowable to those producing wells.

12 Q. And those are operated by Cimarex?

13 A. Correct.

14 Q. Now, let's take a -- well, let's move on to  
15 Exhibit -- oh, and this also -- in the lower, right  
16 portion of the designated Ross Ranch, it says federal --  
17 "Amoco Federal #1 SWD well." Is that the saltwater  
18 disposal well we're here about today?

19 A. Yes, sir, it is.

20 Q. And insofar as disposal into that well, is it  
21 only Cimarex wells from this lease that are contributing  
22 to disposal at that well?

23 A. That's correct.

24 Q. So it's only on lease water?

25 A. Correct.

1 Mallon Oil Company to Magnum Hunter.

2 Q. Now, the SWD order was originally obtained by  
3 Mallon Oil Company?

4 A. Correct.

5 Q. And they assigned their interest in this  
6 particular federal lease and other leases to Magnum  
7 Hunter by this assignment, correct?

8 A. Yes, sir.

9 Q. And what year was that assignment executed?

10 A. That was in 2005.

11 Q. Does Magnum Hunter Production, Inc. still own  
12 the leasehold?

13 A. Yes, they do, as far as --

14 Q. And Cimarex operates on their behalf?

15 A. That's correct.

16 Q. So Cimarex operates on behalf of Magnum Hunter?

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

18 Q. And, again, looking at page 4 of the  
19 assignment, when was this assignment effective?

20 A. It was effective the first day of July -- it  
21 was executed and effective the first day of July 2001.

22 Q. Now -- so Magnum Hunter -- Exhibit 2, the  
23 Serial Register Page from the federal government, in  
24 that federal lease, Magnum Hunter still owns the  
25 leasehold interest --

1 Q. What is Exhibit 2?

2 A. Exhibit 2 is the Serial Register Page that  
3 shows a history of the lease that's involved with the  
4 Amoco federal lease.

5 Q. Highlighted is some acreage. What does the  
6 highlighted acreage indicate?

7 A. It indicates the areas that we actually operate  
8 and have wells on.

9 Q. Now, when you say "we," Cimarex Energy Company  
10 of Colorado is the operator, correct?

11 A. Correct.

12 Q. Do they operate on behalf of another entity?

13 A. No.

14 Q. No, no. I mean, who owns -- who is the actual  
15 owner of the lease? Which company?

16 A. That would be -- well, if you look at the  
17 lessee, it's Occidental Permian.

18 Q. No, no, Mr. Dowdle.

19 A. Sorry.

20 Q. Who owns the -- let's move to Exhibit 3.

21 EXAMINER EZEANYIM: No, it would still be  
22 Number 2.

23 Q. (BY MR. BRUCE) Well, let's move to Exhibit 5  
24 briefly. What is Exhibit 3?

25 A. Exhibit 3 is an assignment of bill of sale from

1 A. Correct.

2 Q. -- that we're concerned about today?

3 A. That's correct.

4 Q. That's all I was getting at on that one.

5 Now, when did Cimarex Energy Company come  
6 into being?

7 A. 2002.

8 Q. Did Cimarex Energy Company later acquire Magnum  
9 Hunter Production, Inc.?

10 A. Yes, sir.

11 Q. In what year?

12 A. 2005.

13 Q. So Mallon Oil Company operated this lease for a  
14 period of time, and then it was purchased by Magnum  
15 Hunter Production?

16 A. Correct.

17 Q. And Magnum Hunter Production was separate from  
18 Cimarex for several years thereafter?

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

20 Q. So it's a sister company of Cimarex or a  
21 subsidiary?

22 A. It's a wholly owned subsidiary.

23 Q. And Magnum Hunter independently operated the  
24 wells now operated by Cimarex for several years?

25 A. Correct.

1 Q. Mr. Dowdle, there have been some comments here  
2 about water wells. What is Exhibit 4?

3 A. Exhibit 4 shows the wells on the Ross Ranch, as  
4 well as the water wells that I found in the State  
5 Engineer's Office records.

6 Q. Did you prepare this plat to show the location  
7 of all the freshwater wells in this immediate area?

8 A. I did, yes, sir.

9 Q. Off to the east of the SWD well, you have a BLM  
10 Sample Well identified. Was a water sample taken from  
11 that well?

12 A. Yes, sir.

13 Q. And will our engineer discuss that water  
14 sample?

15 A. Yes, sir.

16 Q. The wells on the Ross Ranch, did Cimarex  
17 request permission to take water samples from those  
18 wells?

19 A. Yes, we did.

20 Q. Were you able to take water samples from those  
21 wells?

22 A. We were not.

23 Q. Why is that?

24 A. I understand, from our recollection, that Ross  
25 Ranch denied us -- did not allow us to get those

1 A. Correct.

2 Q. And did Cimarex notify the BLM and request  
3 their permission to take a sample from that well?

4 A. Yes, we did.

5 Q. Were you personally involved in that?

6 A. Yes, I was.

7 Q. Next, what is Exhibit -- let's take a step  
8 back. When Cimarex buys properties, do they generally  
9 take possession of the well files from prior operators?

10 A. Yes, they do.

11 Q. And did you check those well files to see if  
12 there was any information regarding an agreement with  
13 the surface owner regarding use of the surface for this  
14 well?

15 A. I did.

16 Q. And what is Exhibit 6?

17 A. Exhibit 6 just notifies that Worth Petroleum,  
18 who was the initial -- that drilled the actual first  
19 well, the Amoco Fed well, that they -- it just states to  
20 the Bureau of Land Management that they did indeed  
21 contact Ross Ranch at that time.

22 Q. And did you check the records to determine what  
23 parties -- what interest owners should be notified of  
24 the C-108 in this application? What parties should be  
25 notified of this application? Did you check the records

1 samples.

2 Q. They requested that you not take any samples  
3 from those wells?

4 A. That's correct.

5 Q. Next, what is Exhibit 5?

6 A. Exhibit 5 is our actual picture of the SWD in  
7 question.

8 Q. And the well does have an assignment as  
9 required by OCD rules; does it not?

10 A. Yes, sir.

11 Q. It looks like there is a Cimarex Energy Company  
12 tag on that -- name tag on that, but it looks like it's  
13 over the name of Mallon Oil Company?

14 A. Correct.

15 Q. So that sign has been out there for quite some  
16 time?

17 A. Yes, it has.

18 Q. Now, looking at this, off to the left, there is  
19 a windmill. What is that?

20 A. That's the windmill that we have the sample  
21 from.

22 Q. That's the -- it's on federal land, and you  
23 took a sample from that --

24 A. Correct.

25 Q. -- or Cimarex did?

1 of the offset operators, et cetera?

2 A. At that time, in 1983?

3 Q. No, no, no, no. I'm talking --

4 A. Yes, I did. I'm sorry.

5 Q. I'm talking about this spring.

6 A. Correct, I did.

7 Q. And is Exhibit 7 a listing of all offset  
8 operators and surface owners in the area of review --

9 A. Yes, sir, it is.

10 Q. -- of the SWD well?

11 A. Correct.

12 MR. BRUCE: And, Mr. Examiner, Exhibit 8 is  
13 simply my Affidavit of Notice of the -- a previous  
14 notice was sent out, but since this was set for a  
15 special hearing, we sent out notice of the special  
16 hearing date, and that is Exhibit 8. And all of the  
17 offsets did receive actual notice.

18 Q. (BY MR. BRUCE) Mr. Dowdle, were Exhibits 1  
19 through 7 prepared by you or under your supervision?

20 A. Yes, sir, they were.

21 Q. Was Exhibit 6 obtained from the business files  
22 maintained by Cimarex?

23 A. Yes, sir, it was.

24 Q. And in your opinion, is the granting of this  
25 application in the interest of conservation and the

1 prevention of waste?

2 A. Yes.

3 MR. BRUCE: Mr. Examiner, I'd move the  
4 admission of Exhibits 1 through 8.

5 EXAMINER EZEANYIM: No objection? Any  
6 objection?

7 MR. MARTIN: No objection.

8 EXAMINER EZEANYIM: Exhibits 1 through 8  
9 will be admitted.

10 (Cimarex Energy Company of Colorado Exhibit  
11 Numbers 1 through 8 were offered and  
12 admitted into evidence.)

13 MR. BRUCE: Pass the witness.

14 EXAMINER EZEANYIM: Mr. Martin?

15 MR. MARTIN: Thank you.

16 CROSS-EXAMINATION

17 BY MR. MARTIN:

18 Q. Mr. Dowdle, you made a statement at the  
19 beginning of your testimony that all of the water that  
20 has gone into this particular disposal well has come  
21 from wells that Cimarex is operating. Do you recall  
22 that testimony?

23 A. Yes, sir.

24 Q. Are you saying that is a correct statement for  
25 the past 23 or 24 years?

1 A. I can't say that for sure, but I believe so  
2 from what I've found.

3 Q. You do not have personal, firsthand knowledge  
4 as to what has been put in that well and from what  
5 source, do you?

6 A. I just know from the last -- operated it's been  
7 water.

8 Q. Have you personally been out at that well site  
9 and monitored on a daily basis sources of the water  
10 coming into that well?

11 A. No, sir, I have not.

12 Q. You are relying, then, upon what someone else  
13 has told you; is that correct?

14 A. Yes, sir.

15 Q. There does not even exist records, does there,  
16 Mr. Dowdle, that would reflect all of the sources of  
17 water coming into that well, is there?

18 A. I'm not sure.

19 Q. So the testimony you gave is simply hearsay and  
20 your opinion, isn't it?

21 A. I do know that at one point we did shut down  
22 all the wells and try to figure out where the water was  
23 coming from, and no offset lease water was coming into  
24 the area [sic], from what I understand from our  
25 engineers.

1 Q. But my question, sir, was: You cannot sit here  
2 today and say -- the opinion you have given is purely  
3 your opinion without any -- without any -- without any  
4 direct basis, and it's hearsay, isn't it?

5 A. It's -- I guess so, yes, sir.

6 Q. Do you not think it would be important to know  
7 all of the sources of water that have gone into that  
8 well?

9 A. Yes, sir.

10 Q. Do you not think that would have some direct  
11 impact on whether or not this application should or  
12 should not be granted, if there are sources of water  
13 going into that well other than Cimarex?

14 A. I believe so, yes.

15 Q. Exhibit Number 5, which was the photograph --

16 A. Yes, sir.

17 Q. -- you referred to a windmill that would be  
18 over in the -- not quite upper, left-hand side, but  
19 center, left-hand side of the photograph. You indicated  
20 that was the well on BLM land from which a water sample  
21 was taken.

22 A. Yes, sir.

23 Q. Do you know the depth of that particular  
24 windmill well?

25 A. No, sir, I don't.

1 Q. Do you know the water-column level?

2 A. No, sir, I don't.

3 Q. Do you know how that particular water-column  
4 level or water level would correlate with the other  
5 wells that would be on the Ross Ranch property?

6 A. No, sir, I don't.

7 Q. Would you agree, then, sir, that simply because  
8 you ran one sample on a windmill well and you do not  
9 know the depth of the well and you do not know the level  
10 of water column, that that may or may not have any  
11 relevance to what's happening with the other wells on  
12 the Ross Ranch that are freshwater wells?

13 MR. BRUCE: I'd object to the fact that he  
14 never testified to that. He simply said this was a well  
15 that the water sample was taken from.

16 EXAMINER BROOKS: Yeah. The question  
17 was -- I don't think that would be, also, within this  
18 witness' area of expertise. He's a land person. I  
19 would advise the Examiner to sustain the objection.

20 EXAMINER EZEANYIM: Objection sustained.

21 Q. (BY MR. MARTIN) Let me ask it this way, if I  
22 may, then.

23 EXAMINER BROOKS: Oh, you may. You may  
24 rephrase.

25 Q. (BY MR. MARTIN) Mr. Dowdle, you really don't

1 have the information and the knowledge to tell us  
2 whether the water from this particular well and the  
3 sample that was taken would necessarily be reflective of  
4 the condition of the water in the other wells that are  
5 near or adjacent to the proposed disposal well?

6 A. I can't say that because I'm not an engineer.

7 Q. Turn, if you would, sir, to Exhibit 6.

8 A. Yes, sir.

9 Q. Now, if I understood your testimony correctly,  
10 you indicated -- if I've not phrased it correctly,  
11 please tell me. But you indicated this would reflect  
12 some kind of agreement between then George -- J. G.  
13 Ross surface owner and Worth Petroleum Company?

14 A. Yes, sir.

15 Q. I do not see anywhere on this document that  
16 J. G. Ross signed off on this approving it.

17 A. Correct.

18 Q. So we have no signed agreement from J. G. Ross,  
19 do we?

20 A. We do not.

21 Q. You don't know whether he agreed to this or did  
22 not agree to it, do you?

23 A. I do not. Correct.

24 Q. Further, this pertains to the original oil  
25 well, does it not, and does not pertain to this

1 particular disposal well?

2 A. Yes, sir. Correct.

3 Q. So this really has no relevance to the issue,  
4 does it?

5 A. No, sir.

6 MR. MARTIN: That's all. Pass the witness.

7 Thank you.

8 EXAMINER EZEANYIM: Thank you, Mr. Martin.

9 Redirect?

#### 10 REDIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Just one question regarding Exhibit 6,  
13 Mr. Dowdle. Have you found anywhere in the files  
14 where -- until just recently, where Mr. Ross or the  
15 prior owners ever filed any objection to the use of this  
16 water as a saltwater disposal?

17 A. I have not. Correct.

18 MR. BRUCE: That's all I have,  
19 Mr. Examiner.

20 MR. MARTIN: I have one question on  
21 recross, if I may.

22 EXAMINER EZEANYIM: Yeah, go ahead.

23 MR. MARTIN: Thank you.

#### 1 RECROSS EXAMINATION

2 BY MR. MARTIN:

3 Q. In relation to the question that was just asked  
4 you, you don't know whom had knowledge of the existence  
5 of this saltwater disposal well, do you?

6 A. No, I do not.

7 Can I say one thing?

8 MR. BRUCE: That's it.

9 EXAMINER EZEANYIM: Do you have any  
10 questions?

11 EXAMINER BROOKS: Yes.

#### 12 CROSS-EXAMINATION

13 BY EXAMINER BROOKS:

14 Q. When you said that all of the water injected  
15 into this well within the years that you've been  
16 familiar with it -- and how long is that?

17 A. Three years with Cimarex.

18 Q. When you said that all the water that was  
19 injected into it was from Cimarex, I assume that --  
20 would it be correct for me to assume that you could have  
21 reviewed some records that tend to indicate that? What  
22 is the basis of your knowledge?

23 A. No, sir. That's from what I've been told.  
24 It's basically hearsay from our engineers.

25 Q. Okay. So it is hearsay?

1 A. Yes, sir. That's what I understand.

2 Q. And when you're talking about being from  
3 Cimarex, Cimarex has a lot of wells in a lot of places.

4 A. Yes, sir.

5 Q. Is it all from -- does the information that you  
6 have indicate it's all from this particular lease?

7 A. Correct.

8 Q. Okay. Thank you. That's all I have.

9 EXAMINER EZEANYIM: I know we have a  
10 geologist who can answer some questions. I think the  
11 geologist would know about this well.

12 EXAMINER BROOKS: Well, as far as the water  
13 quality is concerned, I would not assume this witness  
14 knows anything about it.

#### 15 CROSS-EXAMINATION

16 BY EXAMINER EZEANYIM:

17 Q. One thing I want to qualify. Let's start with  
18 Exhibit Number 6. I mean, Mr. Martin asked you whether  
19 Ross Ranch signed off on this. But there is a time  
20 here. One of the things I saw is that, you know, Ross  
21 Ranch didn't own this surface until some time, and  
22 Cimarex didn't own this well until some time. For my  
23 consumption [sic], I would like to know the following  
24 facts. When did Cimarex become successor of this well  
25 from -- is it Mallon? Does Mallon Oil own Honda?

1 A. I'm sorry?  
 2 Q. Mallon Oil?  
 3 A. Yes.  
 4 Q. Is it the same as Honda?  
 5 A. No. It was -- it was a separate company.  
 6 Q. Okay. But I see you writing "Mallon  
 7 Oil/Honda," so I don't know whether they are the same  
 8 company.

9 MR. BRUCE: If I could, just to clarify,  
 10 Mr. Examiner.

# REDIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. The original operator of the SWD well was  
 14 Mallon Oil Company, correct?

15 A. (Indicating.)

16 EXAMINER BROOKS: Please answer audibly.

17 Q. (BY MR. BRUCE) And Mallon sold to Magnum  
 18 Hunter?

19 A. Yes. They sold to Magnum Hunter in 2001.

# CONTINUED CROSS-EXAMINATION

21 BY EXAMINER EZEANYIM:

22 Q. Okay. So you became the successor operator of  
 23 this Amoco #1 in 2001?

24 A. No, sir.

25 MR. BRUCE: Mr. Examiner, let me clarify

1 MR. BRUCE: And Mallon Oil.  
 2 Q. (BY EXAMINER EZEANYIM) Oh, okay. See why I'm  
 3 confused? Okay.

4 A. I'm sorry. I'm sorry.

5 Q. Magnum Hunter and Mallon Oil or whatever they  
 6 are. Okay. Keeping that in mind, go back to Exhibit  
 7 Number 6. You started operating this well in 2005.  
 8 Exhibit Number 6 was done March 31, 1983. Mr. Martin  
 9 asked you -- I can't ask Ross Ranch because they are not  
 10 on the stand, but I would like to know when Ross Ranch  
 11 became the surface owner of this surface, because I  
 12 don't think they were here in 1989 when this well was  
 13 approved to be notified. I know that during the opening  
 14 statement, the counselor said that Mallon failed to give  
 15 the previous surface owner -- who is the previous  
 16 surface owner? Does anybody know? And then when did  
 17 Ross Ranch become the surface owner of this, because  
 18 there are timelines I'm trying to mark out here that  
 19 will be very, very important, which I can --

20 EXAMINER BROOKS: Yeah. I think it would  
 21 be appropriate for counsel to respond. I do not expect  
 22 that this will be a disputed issue.

23 EXAMINER EZEANYIM: Yeah, it wouldn't.

24 MR. MARTIN: If I may, I will give you the  
 25 answer, but also I will refer you to the stipulated set

1 again.

2 EXAMINER EZEANYIM: Okay. I want to have  
 3 the information.

# REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Magnum Hunter was not associated with Cimarex  
 7 in 2001?

8 A. Correct.

9 Q. Cimarex didn't exist until when?

10 A. 2002.

11 Q. When did Cimarex buy Magnum Hunter?

12 A. 2005.

13 Q. So Cimarex didn't operate these wells until  
 14 2005; is that correct?

15 A. Yes, sir.

16 EXAMINER EZEANYIM: That's what I want to  
 17 hear.

# CONTINUED CROSS-EXAMINATION

19 BY EXAMINER EZEANYIM:

20 Q. So you started operating this well in 2005,  
 21 right?

22 A. Yes, sir.

23 Q. But the well up to that point was operated by  
 24 Mallon Oil?

25 A. No, Magnum Hunter.

1 of facts in Case 14888, which gives that history.

2 EXAMINER BROOKS: Yeah, I remember you went  
 3 into it briefly. I don't remember the --

4 MR. MARTIN: That's correct.

5 This land -- the surface of this land was  
 6 originally acquired by J. G. Ross.

7 EXAMINER EZEANYIM: In?

8 MR. MARTIN: 1961.

9 EXAMINER EZEANYIM: Oh, 1961.

10 MR. MARTIN: Yes. And Mr. Ross died, and  
 11 this has gone through a series of heirs and is now in  
 12 the name of the Ross Ranch, the LLC. That is a very  
 13 quick summary of that.

14 EXAMINER EZEANYIM: Okay. 1961. That  
 15 would indicate that Cimarex or Mallon gave notice to  
 16 George Ross in 1989 --

17 MR. MARTIN: Correct.

18 EXAMINER EZEANYIM: -- because there is  
 19 no -- there is no two surface owners. It's still George  
 20 Ross, who didn't get notice in 1989; is that correct?  
 21 Everybody knows that.

22 MR. MARTIN: That's correct.

23 EXAMINER EZEANYIM: That's what I want to  
 24 know?

25 MR. BRUCE: It was either Mr. Ross or his



1 heirs.

2 EXAMINER EZEANYIM: Okay. I was thinking  
3 that XYZ owned that before George Ross bought it after  
4 1989. So in 1989, George Ross failed to get notice of  
5 this application from whoever initiated the saltwater  
6 disposal application, right?

7 MR. MARTIN: That is correct.

8 EXAMINER EZEANYIM: Okay. I want to make  
9 sure this is undisputed.

10 MR. MARTIN: It is.

11 Again, without getting too redundant here,  
12 that whole history is a set of stipulated facts, and the  
13 case is 14888.

14 MR. BRUCE: Either Mr. Martin or I will  
15 provide a copy of that to you after the hearing.

16 MR. MARTIN: Yes, if you need a copy.

17 EXAMINER EZEANYIM: A copy of what?

18 MR. BRUCE: It was a stipulation of facts  
19 among the parties regarding surface ownership.

20 EXAMINER EZEANYIM: Okay. I'm not going to  
21 press it.

22 MR. BRUCE: It's all set forth in there.

23 EXAMINER EZEANYIM: That's all I need to  
24 know. I think I've got all the information. Let me go  
25 back to the land person. I'm sorry I had to go through

1 these are operators within a half mile of that injection  
2 well, right?

3 A. I'm sorry, I'm trying to find the exhibit.

4 Q. Exhibit Number 7.

5 You gave notice to this operators, right?

6 A. Yes, sir, we did.

7 Q. Now, what -- apart from BLM, who is objecting  
8 besides George Ross Ranch, the surface owner? How many  
9 of these operators are within a half mile to your  
10 injection into this well?

11 A. I believe they all are.

12 MR. BRUCE: No.

13 A. I'm sorry. I didn't understand the question.

14 MR. BRUCE: No. There has been no  
15 objections received from the offset operators.

16 THE WITNESS: I'm sorry.

17 Q. (BY EXAMINER EZEANYIM) You answered in the  
18 negative.

19 So -- one, two, three, four, five, all of  
20 them. There is no objection, right?

21 MR. BRUCE: No objection.

22 EXAMINER EZEANYIM: Except from the surface  
23 owner?

24 MR. BRUCE: That's correct.

25 EXAMINER EZEANYIM: We are here because --

1 that, because it's really important for me. I thought  
2 somebody else owned the surface before Ross Ranch.

3 EXAMINER BROOKS: It's another legal entity  
4 but the same family.

5 EXAMINER EZEANYIM: Yeah. Okay.

6 I need to ask Mr. Dowdle this question, but  
7 you do have a geologist.

8 Q. (BY EXAMINER EZEANYIM) When you testified that  
9 George Ross Ranch denied access to you of taking samples  
10 from their water wells, did you ask appropriately? What  
11 did you ask? Did you ever try to do that, or is the  
12 geologist going to answer that question?

13 A. No, sir. I did not personally ask. It was my  
14 supervisor, my boss asked.

15 Q. So maybe the geologist will talk about it,  
16 because if you're entitled to do that -- I don't know,  
17 legally, whether you are entitled to do that or not. If  
18 you are trying to do work and you're not allowed access  
19 to do that, I don't know how it affects you here.

20 But let's leave that. I don't want to go  
21 there now because I don't want to waste more time?

22 Let's go to Exhibit Number 7. Number 7  
23 here is -- the only surface owner is George Ross, who  
24 acquired that ranch in 1961. It's very important to me.  
25 Then the rest -- I mean a working interest, right? All

1 by Mallon Oil in 1989?

2 MR. BRUCE: (Indicating.)

3 EXAMINER EZEANYIM: Okay. Good. See, it's  
4 coming back to me now. So when you guys start arguing,  
5 then I know where I'm coming from.

6 So I'm not going to ask you other questions  
7 because I know you can't give me the depth of those  
8 water wells. You can't give me -- you know, the  
9 geologist can give me the depth of those wells and the  
10 interval and all kinds of things, because I don't  
11 think -- it would be something for me to be asking a  
12 geologist, since you have a geologist. That's his work.  
13 He has to earn his money.

14 So anyway, let me see if I have anything  
15 else here for you. Most of them are engineering.

16 You may be excused.

17 THE WITNESS: Thank you.

18 EXAMINER EZEANYIM: Call your next witness.

19 MR. BRUCE: Call Mr. Pearcy.

20 DAVID PEARCY,

21 after having been previously sworn under oath, was  
22 questioned and testified as follows:

23 EXAMINER EZEANYIM: Mr. Pearcy, you are  
24 still under oath.

25 THE WITNESS: Okay. I'm David Pearcy.

1 geologist.

2 DIRECT EXAMINATION

3 BY MR. BRUCE:

4 Q. Mr. Percy, where do you reside?

5 A. Midland, Texas.

6 Q. Who do you work for and in what capacity?

7 A. I work for Cimarex as a geologist.

8 Q. Have you previously testified before the  
9 Division?

10 A. Yes, I have.

11 Q. And have your credentials as an expert  
12 petroleum geologist been accepted as a matter of record?

13 A. Yes, they were.

14 Q. And does your area of responsibility at Cimarex  
15 include this portion of southeast New Mexico?

16 A. Yes, I'm involved in southeast New Mexico.

17 Q. Are you familiar with the geology involved in  
18 this case?

19 A. Yes, I am.

20 MR. BRUCE: I tender Mr. Percy as an  
21 expert petroleum geologist, Mr. Examiner.

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Mr. Percy, spell your  
24 last name.

25 THE WITNESS: Percy, P-E-A-R-C-Y.

1 A. As shown there on that second well, 4,022 is  
2 the top perforation, and approximately 4,208 is the  
3 bottom perforation in the Amoco Federal #1.

4 Q. And you said the -- Cimarex's producing wells  
5 are completed in the Delaware but at a different zone?

6 A. That's correct.

7 Q. And Exhibit 11 shows more or less similar  
8 information?

9 A. Excuse me, sir?

10 Q. Exhibit 11 --

11 A. That's another cross section of the same sand,  
12 the other four offset wells, and again showing the  
13 continuity of the Ross Sand. And those wells and other  
14 wells that are direct offsets to the Amoco Fed are  
15 producing or injecting into this Ross interval.

16 Q. Now, from a geological standpoint, is there  
17 sufficient closure in these zones -- from escaping --

18 A. I'm sorry. I do have a hearing disorder, and  
19 the rattling of paper is a bit distracting, sir.

20 Q. I understand.

21 Is the injection zone segregated, or does  
22 it have overlying strata that would prevent -- from a  
23 geologic standpoint, prevent the movement of injected  
24 fluids to other zones?

25 A. That's correct. There are numerous other

1 EXAMINER EZEANYIM: Mr. Percy is so  
2 qualified.

3 Q. (BY MR. BRUCE) Mr. Percy, let's run through  
4 your exhibits quickly. What is Exhibit 9?

5 A. Exhibit 9 is a structure map on the top of the  
6 Cherry Canyon. Cherry Canyon is a submember of the  
7 Delaware Formation, and that is the injection interval  
8 that we -- Cherry Canyon is the interval that we are  
9 injecting into.

10 Q. Is the Cherry Canyon also the zone from which  
11 Cimarex's wells produce -- is producing from?

12 A. From a different horizon within the Cherry  
13 Canyon, yes, sir. That's correct.

14 Q. Since you have two of them, Exhibits 10 and 11,  
15 if we can run through those exhibits, Mr. Percy.

16 A. Okay. The cross section in through here is  
17 including three offset wells showing the interval that  
18 we're calling the Ross Sand, an informal name for the  
19 injection interval. You can see in the Amoco Federal #1  
20 our SWD, the second well from the left-hand side, and  
21 tracing that well, it's gone into three offsets in the  
22 southwest and southeast and eastern direction and  
23 showing the continuity of that sand.

24 Q. What is the approximate depth of the injection  
25 interval in the SWD well?

1 zones, as shown on the logs there, which are anhydrites  
2 and shales, which will isolate the injection water into  
3 the Ross interval.

4 Q. And based on the geologic data that you have  
5 examined, is there any evidence of open faults in this  
6 area?

7 A. As we go back to Exhibit Number 9 and look at  
8 the relatively uniform monoclinical structure, there is no  
9 indication of any faults in the area.

10 Q. And is there any evidence of a hydrologic  
11 connection between the disposal zone and any source of  
12 fresh water?

13 A. There is no indication of any kind of  
14 connection of this interval in Cherry Canyon with the  
15 overlying Rustler, which is the source of the water.

16 Q. What is the approximate depth of the Rustler  
17 source of water?

18 A. Approximately 100 feet down is the top of the  
19 Rustler, and from what I have seen from a report that  
20 was done for Ross Ranch back in the '60s and the '70s,  
21 it looks like approximately 70 feet down was where the  
22 water would usually be found. So this is or at least  
23 was, in the '60s and '70s, an artesian water source that  
24 would bring the water up above the top of the Rustler  
25 Formation.

## CROSS-EXAMINATION

BY EXAMINER EZEANYIM:

Q. When you say 70 feet down, what do you mean? Seventy feet down, is that subsurface you're talking about?

A. Subsurface, not subsea. Yes, sir. Seventy feet down is where the static water level had been in the wells, which are cited in the Read reports.

Q. So the Rustler, can some of them outcrop to the surface, you know, 70 feet, 50 feet? You might start seeing some of those wells some time at the surface. Have you seen something like that?

A. Yes. Can't see any connection. Is that what you mean, sir?

Q. Yeah, no, whether you can see those wells outcrop to the surface. Some of the water is seeping to the surface. It's straight up. You said 70 or 100 feet down. They have outcropped to the surface, to surface water. Have you seen something like in that the artesian caused by the area?

A. It appears like any kind of surface water. It's still not in connection with the Rustler water, which is the main source of the stock tanks in the area.

Q. You are very ambitious, but I know I'm asking these questions.

occur from the river and then be transferred over to wells that will be completed on the Ross Ranch or nearby for this water. Am I answering the question?

Q. Yes. But, again, there is no hydrologic connection between the injection zone and the Rustler Formation?

A. There is no indication of any kind of connection of the injection zone with the Rustler.

EXAMINER EZEANYIM: Counselor, thank you very much. I understand what he's saying now.

## CONTINUED CROSS-EXAMINATION

BY EXAMINER EZEANYIM:

Q. Since we are here -- I hate to deal with all the maps. That's why I wanted to ask this question. What is the vertical extent of this Cherry Canyon? Does it include the Upper Abbey? Does it include the Ross Sand and the Upper Abbey? What is the vertical extent of this Cherry Canyon, do you know, so that I don't have to ask it at the end of the -- I can get that squared out [sic]. What is the vertical extent of the Cherry Canyon?

## CONTINUED DIRECT EXAMINATION

BY MR. BRUCE:

Q. What is the top of the Cherry Canyon, and what is the bottom?

Okay. Go ahead.

## CONTINUED DIRECT EXAMINATION

BY MR. BRUCE:

Q. I think what the Examiner is getting at, Mr. Percy, you said these -- at times, at least 50 years ago, there might have been artesian flow from the Rustler Formation to the surface. Is that what you said?

A. No, sir. By artesian, I mean there is a charge to the zone but not all the way to the surface.

EXAMINER EZEANYIM: Mr. Percy, since we're here, can you give me --

EXAMINER BROOKS: Excuse me. We need to go one at a time.

Had you finished your answer? Could you finish your answer to Mr. Bruce's question?

A. Yes.

Q. (BY MR. BRUCE) From the -- there was an artesian flow to the Rustler? Is what you're saying?

A. There is an artesian charge in the Rustler Formation. Again, just west -- on the west side of our section, the Pecos River flows, and there are places where this Rustler Formation outcrops there. And it is believed, from the information I have from the Read report, that the recharge to the Rustler Formation would

EXAMINER EZEANYIM: Exactly.

A. Yeah. The top of the Cherry Canyon is what I'm showing on the cross section, which is approximately 3,800 feet. That's the upper line.

## CONTINUED CROSS-EXAMINATION

BY EXAMINER EZEANYIM:

Q. And then the bottom is what?

A. And the bottom of the Cherry Canyon would be approximately 200 feet below the bottom of the cross section where the Brushy Canyon Formation would be.

Q. Does the Cherry Canyon include the Upper Abbey, according to your --

A. Yes, sir. It includes the Ross and these Abbey sands and the Cherry Canyon interval. Again, the Abbey is not productive in the immediate area. It's a deeper Williamson sand, which is the productive zone.

Q. So the bottom of this Cherry Canyon would be up to 4,360; is that correct? What would be the bottom of the Cherry Canyon before we have the Brushy Canyon.

A. I need to consult some additional information, but the approximate base of the Cherry Canyon would be around 45- to 4,800 feet.

Q. Okay. It's nothing against you, Mr. Percy. I just want to get the information, like I told you.

A. Okay. Please speak up, sir.

EXAMINER EZEANYIM: Okay. So I don't have to ask you questions again. Go ahead, Mr. Bruce.

MR. BRUCE: Mr. Examiner, I'm finished with this witness --

CONTINUED DIRECT EXAMINATION

BY MR. BRUCE:

Q. But were Exhibits 9, 10 and 11 prepared by you?

A. Yes, they were.

Q. In your opinion, is the granting of this application in the interest of conservation and the prevention of waste?

A. Yes, sir.

MR. BRUCE: Mr. Examiner, I move the admission of Exhibits 9, 10 and 11.

EXAMINER EZEANYIM: Any objection?

MR. MARTIN: No objection.

EXAMINER EZEANYIM: Exhibits 9, 10 and 11 will be admitted.

(Cimarex Energy Company of Colorado Exhibit Numbers 9, 10 and 11 were offered and admitted into evidence.)

EXAMINER EZEANYIM: Mr. Martin?

CROSS-EXAMINATION

BY MR. MARTIN:

Q. Mr. Percy, in your testimony, you testified

from the Pecos River is also significant.

Q. Isn't it true that -- you said this, but let me explore it a little more. Isn't it true that there are numerous locations where the groundwater flow out of Rustler Hills Formation actually feeds the Pecos River?

A. Yes, sir, that's correct.

Q. And that is -- that feeding of the Pecos River is a major source of the volume of flow at the state line to meet -- to help meet the compact requirements, isn't it?

A. That's what I have read, sir.

Q. Now, if I understood your testimony correctly, you're saying that the river volume itself would cause water to flow into the Rustler Hills Formation? Did I understand you correctly?

A. That's what the report that was done for Ross Ranch by Dr. Read says, sir.

Q. You're talking about the old Read & Stevens report in the '60s?

A. I'm talking about the Ed Read report in '66 and '73.

Q. Are you aware of any later studies by the State Engineer regarding the impact of wells on the river and the ratio of pumping to impact on the river done in the 1990s? Have you seen any of those?

about the zones and that the density or the closure of the zones -- to where it was your opinion that would not get flow from the injection well into other zones. I think that's a fair characterization of your testimony.

That opinion has nothing to do with what would be the integrity of the casing under cement in this well, SWD-380, does it?

A. That's correct.

Q. And so you're not giving any opinion as to the integrity of the well as far as its casing, the condition of the cement or anything else in relation to the well, are you?

A. No, sir, I've not commented on that.

Q. Now, let me ask you -- I'm a little confused by your testimony regarding Rustler Hills Formation, so help me out here, if you would. Rustler Hills is a formation that we refer to that water flows -- it's groundwater flowing underground from west to east, isn't it?

A. In this area, yes, sir.

Q. It comes out of the Capitan -- I'm sorry. It comes out of the Guadalupe Mountain region and flows underground toward the Pecos River, is that correct, sir?

A. In this area, I would say that the recharge

A. No, sir, I've not.

Q. Are you familiar with the models that the State Engineer uses to determine impact on the river and flow office? Have you ever seen any of those models, or did you refer to those?

A. I have not seen them, and I've not referred to them.

Q. So you're basing your opinion on the volume, and the river somehow feeds back into Rustler Hills based on the report? We all call it the Read-Stevens report, but that report in the 1960s. That's your basis?

A. I'm saying there's an effect on the river, that's correct.

Q. Do you know whether that is, in fact, true today because of lower volumes in the river?

A. I do not know if that's a fact today.

Q. So you can't tell us that what was an opinion in 1960 -- in the 1960s is a valid opinion today, can you?

A. I can tell you, sir, that the salinities that were found in the 1960s and that are found today in the report that you'll see are very similar, and I don't believe there's any argument for a strong change of the hydrologic situation.

1 Q. Are you familiar with Well C-2713, which is a  
2 brine well pumping -- that pumps water out of the  
3 Rustler Hills Formation? Are you familiar with that  
4 well?

5 A. I am not, sir.

6 Q. Are you aware of the -- you know what Red Bluff  
7 Power and Water [sic] is; do you not?

8 A. Red Bluff Water, yes, sir.

9 Q. Are you aware of Red Bluff Power and Water  
10 [sic] District's efforts to desalinize the river at the  
11 state line?

12 MR. BRUCE: Mr. Examiner, I object to this  
13 line of questioning. I don't know what it has to do  
14 with this application. He's asking the witness to  
15 speculate on studies he's never reviewed. If he wants  
16 to put on evidence of this matter, he's free to do so,  
17 but it's questioning a witness about matters he said he  
18 hasn't reviewed.

19 EXAMINER BROOKS: He just asked -- at this  
20 point, he just asked the witness if he was familiar with  
21 it. So I would over that -- advise the Examiner to  
22 overrule that objection.

23 EXAMINER EZEANYIM: Objection overruled.

24 Q. (BY MR. MARTIN) Do I need to rephrase the  
25 question? I'll restate the question, Mr. Percy.

1 Q. Thank you.

2 MR. MARTIN: No additional questions.

3 EXAMINER EZEANYIM: Anything further?

4 MR. BRUCE: Nothing further, Mr. Examiner.

5 EXAMINER EZEANYIM: Mr. Brooks?

6 EXAMINER BROOKS: I have no questions.

#### 7 RECROSS-EXAMINATION

8 BY EXAMINER EZEANYIM:

9 Q. How deep is the Rustler in this area? The  
10 Rustler Formation, how deep is it in this area?

11 A. I'm sorry, sir?

12 Q. How deep is the Rustler Formation in this area?

13 A. Where did I get the information?

14 MR. BRUCE: The depth of the Rustler.

15 A. The depth of the Rustler, 100 feet is what is  
16 cited in the report. The top of the Rustler is a very  
17 common geologic top, which can be mapped across the  
18 area. Understand, the dip on that formation is from the  
19 north to the south.

20 Q. (BY EXAMINER EZEANYIM) I understand the Rustler  
21 provides most of the underground drinking water. And  
22 your testimony is that there is no geologic connection  
23 between the Cherry Canyon and the Rustler? Is that what  
24 you said?

25 A. Exactly, sir, no connection.

1 A. I'm not familiar with any issues on that.

2 Q. So, again, the basis of your testimony and  
3 opinion that was elicited on direct is based upon the  
4 1960 Read -- I call it the Read-Stevens study?

5 A. Yes, sir, that report that you provided to us.

6 Q. And you have not done any independent studies  
7 for the current impact or status for purposes of  
8 preparation of this -- your testimony on this  
9 application?

10 A. I am very satisfied that there is no impact or  
11 injection zone into the Rustler.

12 Q. But you've not made those studies, have you, as  
13 of today? You have not made those studies of impact as  
14 of today, have you?

15 A. I have not made any studies as to the impact  
16 today.

17 Q. Thank you. That's all.

#### 18 REDIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Percy, the question to you is: Is there  
21 any geologic connection? You studied the geology in  
22 this area.

23 A. There is none whatsoever. There is no  
24 indication of any connection of the Rustler Formation  
25 with the Cherry Canyon.

1 Q. Is that from a geological study or from  
2 personal opinion? Is that from a study or from your  
3 opinion?

4 A. Based on the evidence, yes, sir.

5 Q. In this Cherry Canyon, is it a particular pool  
6 into which you are injecting this water into the Cherry  
7 Canyon Formation? Is there a particular pool?

8 A. The field in this area is, I believe, called  
9 the Brushy Canyon field.

10 Q. You know it's part of the Delaware group, and  
11 they have a bunch of pools, you know, and then the  
12 extent -- the vertical extent, I asked you, is from that  
13 800 to maybe 4,208 or 4,500. So I was wondering if  
14 there is an actual pool into which these waters have  
15 been injected in.

16 MR. BRUCE: Mr. Examiner, I believe it's  
17 the Brushy Draw-Delaware.

18 EXAMINER EZEANYIM: Brushy Draw?

19 THE WITNESS: Brushy Draw. Thank you.

20 EXAMINER EZEANYIM: That's what I was  
21 asking.

22 THE WITNESS: Okay. Appreciate that.

23 EXAMINER EZEANYIM: Because when you go to  
24 the Cherry Canyon, there are a lot of places you can put  
25 your water in the Cherry Canyon.

1 MR. BRUCE: And I believe that  
2 encompasses -- the Brushy Draw pool encompasses the  
3 entire Delaware.

4 EXAMINER EZEANYIM: Thank you very much.

5 Q. (BY EXAMINER EZEANYIM) And then I think the  
6 land person testified there is adequate -- overlying  
7 the -- underlying the injection interval.

8 A. Overlying?

9 Q. There is no way this injected water will  
10 migrate? Assuming we have all our wells appropriately  
11 constructed, there is no way this injected well will  
12 migrate upwards and contaminate the drinking water --  
13 Rustler?

14 A. No, sir. As shown from this stratigraphy here,  
15 everything is quite consistent that there are plenty of  
16 overlying and underlying zones above and below the Ross  
17 Sand to isolate that injection. Is that the answer?

18 Q. No. You described the geology as the overlying  
19 and underlying -- I mean underlying formation of this  
20 Cherry Canyon. You described the geology. What type of  
21 rock overlies or underlies --

22 A. Immediately overlying the injection interval?

23 Q. Yes. Yes.

24 A. Okay. As shown on the log here, the density  
25 neutron is a very convenient way to identify

1 the lithologies.

2 Q. So what do you have here?

3 A. And on our injection well, we have a density  
4 neutron, and on the cross section, at least the one I'm  
5 looking at here, which is Exhibit Number 11, all but one  
6 of the logs are density neutrons. And those are showing  
7 where the porosity is high, that those are sandstones,  
8 or other sandstones in the area that are water-bearing,  
9 but there is enough other hard limes and dolomites and  
10 anhydrites, primarily limestones, in this area which  
11 consistently isolate the Ross Sand from the overlying  
12 wet sands.

13 And I've shown about 100 feet or so of  
14 underlying interval, which is the -- called here the  
15 Upper Abbey zone. And at the top of the Abbey, you can  
16 see that there is a 10- to 15-foot shale or limestone  
17 which is isolating the injection interval from the  
18 underlying zones, and there are plenty of other  
19 low-porosity limestones within the Abbey and down below,  
20 again, to keep all the injection water in the Ross Sand.

21 Q. Okay. Very good.

22 While we're talking about it, what is the  
23 deepest water well in the area? Do you know that --  
24 that answer?

25 A. I know that the water wells in the area we've

1 been talking about are all from the Rustler.

2 Q. What is the deep -- depth of the deepest well?

3 A. Approximately 100 to 120 feet. I understand  
4 that there have been some other studies which perhaps  
5 the other party may want to share with you about that.

6 Q. Yeah. Okay. Let me finish up.

7 I don't know who is going to answer this  
8 question. This application was approved four years ago.  
9 You know, do you have -- are you going to answer this  
10 question, or maybe the engineer will answer this  
11 question? I want to see the water analysis then and now  
12 and see how they changed or if they're different. Do  
13 you have that information?

14 MR. BRUCE: Our engineer will testify to  
15 that.

16 EXAMINER EZEANYIM: Will testify to that.  
17 I wanted to know whether it was the geologist or the  
18 engineer. So that is a question for the engineer.  
19 Okay. Very good.

20 Nothing further. You may step down.

21 MR. MARTIN: May I ask one additional  
22 question?

23 EXAMINER EZEANYIM: Okay. You may.

24 MR. MARTIN: Thank you.  
25

# 1 RECROSS EXAMINATION

2 BY MR. MARTIN:

3 Q. Mr. Percy, I want to go back to this 1960s  
4 study that you have made reference to. As I understood  
5 your testimony, you said that it established this  
6 particular relationship, if I may use the term, of the  
7 river -- Pecos River feeding into the Rustler Hills  
8 Formation. Let me quote, if I may, a sentence out of  
9 that study.

10 "The test appears to have established that  
11 there is a hydraulic continuity from the surface water  
12 in the Pecos River to the Rustler Aquifer under the Ross  
13 Ranch." He uses the term "appears." Does that, in your  
14 mind, establish that it's a fact, that's that for that,  
15 or he was just simply stating that it appears that may  
16 be the case?

17 A. Your ranch had commissioned Dr. Read to do this  
18 study, and in Dr. Read's estimation, that was what was  
19 happening.

20 Q. He uses the term "appears." Does that, in your  
21 mind, establish that it was an absolute fact that is  
22 what's taking place?

23 A. I am simply citing the authorities, and I would  
24 say I have not investigated, sir.

25 Q. I'm not sure you've answered my question. Let

1 me ask it again, please. He uses the term "appears."

2 He doesn't say it establishes this as an absolute fact.

3 A. Would you like me to read from the study?

4 Q. I have the study. I'm looking at that  
5 particular language.

6 A. Okay.

7 THE WITNESS: Well, for the Examiners,  
8 would they like to hear?

9 EXAMINER EZEANYIM: I don't have the study.  
10 I don't know what you're talking about.

11 Q. (BY MR. MARTIN) He uses the term "appears,"  
12 doesn't he?

13 A. (No response.)

14 EXAMINER EZEANYIM: We may have to get a  
15 dictionary and see what "appears" means.

16 (Laughter.)

17 EXAMINER EZEANYIM: *It appears to me nobody*  
18 *knows what "appears" means. Can we answer the question*  
19 *and proceed.*

20 THE WITNESS: I would like to quote exactly  
21 from the study, if he's pinning me down to this. If  
22 you'll let me examine the study and perhaps give me ten  
23 minutes or so, I can find the wording in here, but --

24 MR. BRUCE: We can start with our next  
25 witness.

1 THE WITNESS: -- I think it's irrelevant,  
2 sir.

3 EXAMINER EZEANYIM: It's very relevant, but  
4 I want somebody to define "appears."

5 MR. BRUCE: Rather than have the witness  
6 study it on the stand, if we could temporarily dismiss  
7 the witness and move on with the case, Mr. Examiner?

8 Q. (BY MR. MARTIN) We are looking at a study -- I  
9 kept saying "in the 1960s," which is the old  
10 Read-Stevens, but this is actually -- our docket says  
11 "1975 study." Is that the one you're looking at?

12 A. I have two studies.

13 Q. You do? You have one in the '60s?

14 A. 1966.

15 Q. That's the old Read-Stevens study?

16 A. The other one is 1973.

17 Q. There is one in '75, done for Ross Ranch;  
18 Mr. Read. Do you have that one?

19 A. If it was done for Ross Ranch, that would not  
20 be public information, and Ross Ranch has it, and we  
21 don't.

22 Q. So I'm referring to something you've not seen;  
23 is that correct (laughter)?

24 A. You must be, sir.

25 Q. Okay. That's it. No more questions.

1 EXAMINER EZEANYIM: For the sake of  
2 argument, Mr. Percy -- I mean, don't clue me out now.  
3 What study are you talking about? I don't have the  
4 study, and I don't know what we're trying to get at  
5 here. "Appears" what? Can somebody answer that  
6 question?

7 THE WITNESS: (Indicating.)

8 EXAMINER EZEANYIM: Because I don't want to  
9 be blind to what's going on. I don't have the study  
10 that was done in 1973 or 1966. It might be a very  
11 important study that should be something I should  
12 consider, but I don't have it. Do we have it? Does  
13 somebody have it?

14 MR. MARTIN: You should have that. The one  
15 I'm referring to is in exhibits that I submitted. I  
16 have submitted it in exhibits.

17 *If I may help out here, there's been a*  
18 *number of studies on the Pecos River, its flow and its*  
19 *sources of water. And you can go back into the late*  
20 *'50s and early '60s; there are what we call the*  
21 *Read-Stevens reports. There's been a whole series of*  
22 *studies over the years relating to the Pecos River, its*  
23 *flow, the water quality at the state line, issues in*  
24 *relation to the compact. There have been studies as*  
25 *late as the 1990s, when the Carlsbad Basin was being*

1 adjudicated, as to the relationship between the wells  
2 pumping and the river. And as you get below the  
3 Delaware, below the gauging station, you get to a  
4 one-to-one ratio. So there are a whole series of  
5 studies out there.

6 And he was looking at the '60s report, and  
7 we've been looking at the '75 report. So I asked him a  
8 question on something he had not seen, to clarify this.

9 EXAMINER EZEANYIM: Mr. Martin, what I  
10 would like to do is, when you call your witness, maybe  
11 he will be able to explain that report to us, if it's  
12 very important for you. I would like to hear about the  
13 report. Your witness can tell me about the report. If  
14 Mr. Percy doesn't have it, then he can't answer the  
15 question on what he doesn't have.

16 MR. MARTIN: I understand.

17 EXAMINER EZEANYIM: But maybe it's  
18 confidential information, because such a report may be  
19 confidential to the Ross Ranch, and that's why the OCD  
20 don't [sic] have any such report. And that's why I have  
21 confusion. I don't know what else to do.

22 THE WITNESS: Yes, sir. Again, the  
23 hydrology of the Rustler Hills, or the Rustler  
24 Formation, is not the issue today. It's a matter of  
25 injection into the Cherry Canyon interval at

1 approximately 4,000 feet, which has no communication  
2 with any other kind of problem that's happening in the  
3 Rustler.

4 MR. MARTIN: For point of clarification, we  
5 sent in our exhibits sometime back, and the Ed Read  
6 report is in Exhibit Number 4.

7 EXAMINER BROOKS: Yes. I believe that Ross  
8 Ranch did file -- pre-file exhibits, which is required  
9 for Commission hearings. It isn't actually required for  
10 Division hearings, but that's the subtlety of  
11 distinction of the rules if someone doesn't practice  
12 here every day, as Mr. Bruce does, might not be aware  
13 of.

14 MR. MARTIN: In an abundance of caution, we  
15 sent them in.

16 EXAMINER EZEANYIM: You did a good job,  
17 Mr. Martin, but like I said, I don't look at everything  
18 before I come to hearing, because that's our -- that's  
19 just the nature, according to the Legal Examiner. I  
20 have your exhibits. I didn't look at it, you know,  
21 because I didn't understand the relevance. So since it  
22 is here, I'm going to read it. Maybe I'll begin to  
23 gather what you're talking about. So that is very  
24 important.

25 You know, does anyone have anything further

1 let's take a ten-minute break and come back at quarter  
2 to 11:00.

3 (Break taken, 10:33 a.m. to 10:54 a.m.)

4 EXAMINER EZEANYIM: Continue with Case  
5 Number 14994, and at this point, Counselor, you have to  
6 call your last witness.

7 MR. BRUCE: Yes, sir.

8 SCOTT GENGLER,

9 after having been previously sworn under oath, was  
10 questioned and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. Would you please state your full name and city  
14 of residency?

15 A. Scott Gengler, Midland, Texas.

16 Q. Who do you work for and in what capacity?

17 A. I work for Cimarex Energy, and I'm a petroleum  
18 engineer.

19 Q. Have you previously testified before the  
20 Division?

21 A. Yes, I have.

22 Q. And were your credentials as an expert  
23 petroleum engineer accepted as a matter of record?

24 A. Yes, they were.

25 Q. Are you familiar with this application?

1 for this witness?

2 MR. BRUCE: I would like -- since  
3 Mr. Martin asked that question, I just want to clarify.

4 REDIRECT EXAMINATION

5 BY MR. BRUCE:

6 Q. Mr. Percy, what you're saying is simply that  
7 there is no communication between the injection zone and  
8 the Rustler?

9 A. Yes, sir.

10 Q. What might happen in the Rustler due to  
11 excessive pumping or anything else is beyond the scope  
12 of your testimony?

13 A. Yes, sir.

14 Q. And it's really beyond the scope of this  
15 hearing, isn't it?

16 A. That's correct.

17 Q. We are not here to determine water flow in the  
18 Pecos or -- as long as we can show that there is no  
19 contamination from the injection zone into freshwater  
20 wells in this area?

21 A. Precisely.

22 Q. Thank you.

23 EXAMINER EZEANYIM: Mr. Martin?

24 MR. MARTIN: No additional questions.

25 EXAMINER EZEANYIM: Okay. At this point,

1 A. Yes, I am.

2 Q. And does your area of responsibility --  
3 engineering responsibility include this portion of  
4 southeast New Mexico?

5 A. Yes, it does.

6 MR. BRUCE: Mr. Examiner, I tender  
7 Mr. Gengler as an expert petroleum engineer.

8 EXAMINER EZEANYIM: So qualified.

9 MR. MARTIN: No objection.

10 EXAMINER EZEANYIM: Thanks.

11 Q. (BY MR. BRUCE) Mr. Gengler, let's start with --  
12 get a few things out of the way. During the course of  
13 the prior hearing and this hearing, have you reviewed  
14 the exhibits and statements submitted by Ross Ranch  
15 regarding Cimarex's SWD well?

16 A. Yes, I have.

17 Q. Now, one of them, if you'll recall, is  
18 regarding volumes injected into the well. Let's start  
19 with that. First of all, the Mallon permit, what was  
20 the allowed injection volumes under that permit; do you  
21 recall?

22 A. 1,600 barrels a day.

23 Q. Maximum?

24 A. Correct.

25 Q. So that would be, if I'm doing my math right,



1 about 48,000 barrels a month?

2 A. Sounds about right.

3 Q. Let's start with Exhibit 12. What is Exhibit  
4 12?

5 A. It is a printout from the OCD Web site of the  
6 volumes reported as injected into that well historically  
7 back to 1994.

8 Q. And except for the two items we're going to  
9 mention in a second, have the injection volumes been  
10 consistent with the original SWD permit, SWD-380?

11 A. That's correct.

12 Q. Does this Exhibit 12 show two anomalous  
13 figures?

14 A. Yes, it does.

15 Q. And what are they? And specify a date and year  
16 for the Examiner.

17 A. The first one shows 323,265 barrels in August  
18 of 1999.

19 MR. BRUCE: So August of 1999, which is on  
20 the top of the third page, Mr. Examiner.

21 A. I'd also like to note that at that point in  
22 time, Mallon was the operator.

23 Q. (BY MR. BRUCE) And what is the other anomaly?

24 A. The other anomaly is in March of 2002, for  
25 63,996 barrels, in March of 2002, and I'd also like to

1 it was currently out there, I had a third party check  
2 it. It was 60T-3M, with a 1.75-inch plunger diameter.

3 Q. And what is the maximum amount -- maximum  
4 volume of water that that pump can inject into a well?

5 A. The maximum rate --

6 Q. Maximum rate.

7 A. -- that that -- that that pump can put out at  
8 maximum RPMs, which is 500 RPMs, is 1,607 barrels a day.

9 Q. Which is seven barrels a day more than was  
10 allowed in the SWD-380?

11 A. If it's running at maximum RPMs.

12 Q. And so 1,607 barrels a day.

13 Would it be possible, just based on the  
14 capacity of the pump, to inject 323,000 -- let's take a  
15 step back. The August 1999 figure of 323,000, that  
16 would be roughly 11,000 barrels a day, 10,000 barrels a  
17 day?

18 A. It is not possible with that pump.

19 Q. This pump cannot inject 10- or 11,000 barrels a  
20 day?

21 A. No, it cannot.

22 Q. And then if you look at March of 2002, the  
23 reported volume was about 64,000, which is over -- well  
24 over 2,000 barrels a day of water injected. Is this  
25 pump capable of injecting that volume at that rate?

1 note that Magnum Hunter was the operator at that point  
2 in time.

3 Q. Now, if you can, how can you explain those  
4 large numbers -- those two larger numbers?

5 A. You know, we do not have records from those two  
6 companies on what was filed, but looking at what was  
7 injected right before and right after and also on both  
8 dates and then looking at what the capacity of the  
9 system was, in particular the injection pump that has  
10 been out there during that time and is still out there,  
11 those volumes would not be possible.

12 MR. MARTIN: Objection. Calls for  
13 speculation. He doesn't have any firsthand knowledge.

14 EXAMINER BROOKS: I'm not even sure what  
15 the question was. I missed the question, so perhaps --

16 Q. (BY MR. BRUCE) Well, let's move on to -- you  
17 mentioned the pump that is on the injection well.

18 A. Correct.

19 Q. The purpose that is out there now, was that --  
20 has that pump always been on the injection well?

21 A. Yes.

22 Q. What is Exhibit 13?

23 A. Exhibit 13 is a data sheet from the  
24 manufacturer of that pump. The actual pump -- which I  
25 got from the records of when it was installed, and when

1 A. No, it is not.

2 EXAMINER EZEANYIM: Mr. Counselor, excuse  
3 me, please. On Exhibit 12, on your line of questioning,  
4 I just looked at SWD-380. There was no limit on  
5 injection rate. Why are we examining this injection  
6 rate? I know you said it was supplied or there was a  
7 question from Ross Ranch about the amount of water  
8 injected. You are limited by the injection pressure,  
9 and I haven't seen where it increased. Even if I can  
10 see 1 million gallons a day with 804, which is  
11 impossible, I can do that, but you are limited by  
12 injection rate. So why would -- what is this line of  
13 questioning? Where is it going to?

14 MR. BRUCE: Mr. Examiner, Ross Ranch has  
15 indicated we're not complying with the injection permit.  
16 The original SWD application requested a maximum of  
17 1,600 barrels a day to be injected into the well, and  
18 Mr. Gengler is saying that the pump on that well cannot  
19 inject at a rate greater than 1,607 barrels a day.

20 EXAMINER BROOKS: You're saying the  
21 application, not the OCD's order?

22 THE WITNESS: That's correct.

23 MR. BRUCE: Not the OCD's order.

24 EXAMINER EZEANYIM: Here is the order. I don't  
25 see any order here that you have to limit it to

1 1,600. You are limited by the injection pressure.

2 MR. BRUCE: But, Mr. Examiner, what we're  
3 saying is that for 23 years, the pump on the well could  
4 not inject more than 1,600 barrels.

5 EXAMINER EZEANYIM: Right. It's only 500  
6 RPM.

7 Go ahead.

8 Q. (BY MR. BRUCE) Mr. Gengler, were there also  
9 some questions raised about pressures -- injection  
10 pressures?

11 A. Yes, there was.

12 Q. What is Exhibit 14?

13 A. Exhibit 14 is a graph of the production volumes  
14 and injection pressure as recorded by the pump.

15 Q. And what does that show?

16 A. It shows that we were below -- we being  
17 Cimarex, below 1,000 barrels per day of injection rate.  
18 On almost all occasions, with a couple of exceptions, we  
19 were below the pressure. Those couple of exceptions  
20 were a contract pumper who was out there. This field is  
21 remote for us. It's the only thing we have out there,  
22 and he is required to turn the pump on and turn it off.  
23 And so in his haste, he turned it on and sped the thing  
24 up to increase the rate, got a little bit higher  
25 pressure than what we had told him he was allowed to do.

1 to add to the C-108?

2 A. That is correct.

3 Q. Let us run through this just briefly, and there  
4 is some supplemental data that we will get to in Exhibit  
5 16. But first of all, are you proposing the same  
6 maximum injection pressure and maximum injection rates  
7 that Mallon Oil requested in 1989?

8 A. That is correct.

9 Q. And turning to page 5, I've marked the C-108,  
10 the pages in the lower, right-hand corner. Could you  
11 describe how the injection well -- the status of the  
12 injection well and how it's being completed?

13 A. Where are you referring to as the status?

14 Q. Page 5.

15 A. I got that.

16 Q. Okay. The injection well --

17 A. It's completed in the Cherry Canyon portion of  
18 the Delaware from 4,022 to 4,208. There is a packer  
19 that is set at 3,994. The surface casing is set at 450  
20 feet with cement circulated. The long string was set at  
21 5,820, 450 sacks of cement, with the top of the cement,  
22 by a cement bond log, at 2,720.

23 Q. Is this well properly completed so as to  
24 prevent the movement of the fluid between zones and to  
25 prevent the contamination of any freshwater sources?

1 When we saw that, we got that corrected. A different  
2 contract pumper, again, did it, and we shut that down  
3 again, too.

4 Q. So during 2012 and 2013, when this well was  
5 injecting, it was below the allowed injection pressure,  
6 correct?

7 A. That is correct. And those pressures were  
8 within -- less than ten percent above what our -- but he  
9 made a mistake.

10 Q. Now, let's move on to the C-108. Just very  
11 briefly, is Exhibit 15 the C-108 for the well prepared  
12 by you?

13 A. It was prepared by me and people that I direct.

14 Q. Now, did you hear Mr. Martin, in his opening  
15 statement, talk about this is based on old data?

16 A. Yes, I heard that.

17 Q. Now, as part of this, you have to look at wells  
18 within the one-half area mile of review; is that  
19 correct?

20 A. That is correct.

21 Q. Have any new wells been drilled within one-half  
22 mile of the SWD well since the SWD permit was approved  
23 in 1989?

24 A. No, there have not.

25 Q. So there is no new well information out there

1 A. Yes, it is.

2 Q. This well was in operation for 23 years,  
3 correct?

4 A. That is correct.

5 Q. And in your review of data on the well, was  
6 there any indication of any escape of fluids into a  
7 producing formation or into a freshwater zone?

8 A. No, there is no indication.

9 Q. So the well has been injecting for 23 years  
10 without any adverse effect on any offset or the surface  
11 owner?

12 A. To my knowledge, that is correct.

13 Q. Do pages 9 through 13 of the C-108 contain  
14 information on wells in the area of review?

15 A. It does.

16 Q. And do we have an exhibit that supplements this  
17 information somewhat?

18 A. Yes, we do.

19 Q. And will we get into that in a little while?

20 A. (Indicating.)

21 Q. Now, pursuant to OCD -- the Form C-108, have  
22 you contained information on PA'd wells on the area of  
23 review?

24 A. Yes, I have.

25 Q. And are those -- there is one misnumbered page,

1 but pages 14 and 15, does that contain wellbore sketches  
2 of those wells?

3 A. It does.

4 Q. And have those wells been properly plugged and  
5 abandoned in order to --

6 A. Yes. That was approved by the BLM.

7 Q. Let's move on to page 18, Mr. Gengler. Again,  
8 18 is the exhibit showing water wells in the area,  
9 correct?

10 A. Correct.

11 Q. And we'll get to that in a minute.

12 Page 19. Is this a recent water analysis  
13 of produced water that was being injected into the SWD  
14 well?

15 A. It is.

16 Q. And in your opinion, are there any  
17 compatibility problems between the injected water and  
18 the formation water in the Cherry Canyon?

19 A. No, there is not.

20 Q. Let's move on to page 20, which is something  
21 that Mr. Ezeanyim asked about. What is page 20?

22 A. 20 is the water analysis from that BLM Sample  
23 Well that Mallon submitted in their 1989 application.

24 Q. Actually, it shows several wells; does it not?

25 A. Yes.

1 that is the BLM well that Cimarex obtained a sample  
2 from?

3 A. That is correct.

4 Q. Please describe how that sample was -- first of  
5 all, did Cimarex itself take that sample?

6 A. No, we did not.

7 Q. What did you do to obtain a sample from the BLM  
8 well?

9 A. We obtained a third party that is experienced  
10 in sampling water wells and asked them to go out there  
11 and obtain a sample out of this well, with a company  
12 that pulls equipment, because the well wasn't running at  
13 the time.

14 Q. And is that sample attached as pages 21 through  
15 32 of the C-108?

16 A. Yes. They --

17 Q. Go ahead.

18 A. They took that sample and sent it to the lab.  
19 Their lab then forwarded it on, without touching it, to  
20 this Xenco Laboratories, which is an EPA water certified  
21 testing lab.

22 Q. And, again, Cimarex had nothing to do with the  
23 taking or measuring of this water?

24 A. We had a person on location to observe it but  
25 never took that sample in our possession.

1 Q. The first one is a Williamson freshwater well.  
2 And I believe that is the --

3 A. A BLM well.

4 Q. That is the BLM well?

5 A. Correct.

6 Q. And then there is injection water, is the  
7 middle column, correct?

8 A. That is correct.

9 Q. And then there's another well. I don't know  
10 which well that is, but that is a freshwater well,  
11 correct?

12 A. That is correct.

13 Q. What are the chloride levels in these three  
14 wells?

15 A. The chloride -- well, the middle well is the  
16 produced water from the lease. It's 189,000. The  
17 Williamson freshwater well on the BLM surface, in 1988,  
18 when this was sampled, was 4,000 chlorides, and the  
19 other well was 1,600.

20 Q. Now, just looking at the produced water, the  
21 Amoco production, 189,000, that's pretty similar to the  
22 chloride content on page 19 for the recent produced well  
23 sample, correct?

24 A. Correct.

25 Q. Then what is called the Williamson fresh water,

1 Q. And what chloride levels were in the sample  
2 level?

3 MR. MARTIN: May I interpose an objection  
4 at this point?

5 EXAMINER BROOKS: Yes, sir.

6 MR. MARTIN: I would object to any  
7 testimony about this sample or admission of this sample.  
8 This gentleman did not take the sample. He did not run  
9 the test. He did not maintain possession, custody or  
10 control. It was done by a third party, and we have no  
11 witness here to say exactly what they did, how they  
12 maintained quality -- I'm sorry -- how they maintained  
13 possession, control and integrity of the sample and how  
14 they took the test. He is not qualified to testify as  
15 to this, and an improper foundation has been laid for  
16 the admission of this particular report. And we'd ask  
17 that it be stricken.

18 MR. BRUCE: Mr. Examiner, I'd simply say,  
19 this is typical of what is done. The companies don't  
20 sample the water. The old samples were taken by  
21 Halliburton, another party. Furthermore, the Division  
22 does not strictly follow the rules of evidence, as you  
23 well know; it's in the regulations. And our opponents  
24 were complaining early on that there was no freshwater  
25 sample. They have not allowed us to take samples from

1 their wells. And this is simply -- Mr. Gengler is  
2 simply saying that to avoid any appearance of  
3 impropriety, they had a third party take the sample. I  
4 think this is admissible.

5 EXAMINER BROOKS: I think if we were to  
6 follow the rigorous requirements that are followed in  
7 court -- I really don't have in mind -- I know there is  
8 a very rigorous requirement that's followed in criminal  
9 cases and a somewhat less rigorous requirement that's  
10 followed in civil cases. I haven't dealt with those  
11 things in the last 15 years, so I'm a little unclear on  
12 it at this point. But I think if we were to follow  
13 either the criminal district court rule or even the  
14 civil district court rule, at this point it would  
15 operate as a surprise. It's not customarily applied in  
16 OCD proceedings. So I would advice the Examiner to  
17 overrule the objection and treat these matters going to  
18 the weight rather than to admissibility.

19 EXAMINER EZEANYIM: Objection overruled.

20 Rephrase your question.

21 Q. (BY MR. BRUCE) Mr. Gengler, what chloride level  
22 was shown in this test?

23 A. Chloride level was 1,780.

24 EXAMINER EZEANYIM: Which well are you  
25 talking about?

1 THE WITNESS: On the Halliburton report, it  
2 was referred to as the Williamson well.

3 EXAMINER EZEANYIM: The Williamson well on  
4 the old report or the new report?

5 THE WITNESS: On my report, I'm calling it  
6 the BLM freshwater well.

7 MR. BRUCE: Mr. Examiner, if you would turn  
8 to page 18, you see the green dot for the SWD well? Off  
9 to the east is the BLM Sample Well.

10 EXAMINER EZEANYIM: Okay. Oh, "BLM Sample  
11 Well." Is that where you got the sample?

12 MR. BRUCE: And if you turn to page 20.

13 EXAMINER EZEANYIM: Okay.

14 MR. BRUCE: Page 20, the "Williamson Fresh"  
15 sample is that BLM sample well.

16 EXAMINER EZEANYIM: Okay. The chlorides --  
17 that's the -- I mean, the Williamson, that is BLM,  
18 right?

19 MR. BRUCE: That is BLM. Williamson is  
20 BLM.

21 EXAMINER EZEANYIM: And then the "Amoco  
22 Production" is the current well?

23 MR. BRUCE: Produced water.

24 EXAMINER EZEANYIM: Produced water from  
25 the --

1 THE WITNESS: From one of the wells within  
2 the field.

3 Q. (BY MR. BRUCE) And the Williamson Fresh,  
4 Mr. Gengler, is the BLM sample well, correct?

5 A. That is correct.

6 Q. And 23 years ago, 24, 25 years ago, it showed  
7 what level of chlorides?

8 A. 4,000.

9 Q. And what does it currently show based on the  
10 Xenco Laboratories test?

11 A. 1,780.

12 Q. So the level of chlorides in the well is  
13 substantially lower than it was 25 years ago?

14 A. That is correct.

15 Q. And looking at page --

16 EXAMINER EZEANYIM: Where is that 1,780?  
17 I'm looking for it.

18 Q. (BY MR. BRUCE) What page is that 1,780 shown  
19 on, Mr. Gengler?

20 A. Page 25.

21 EXAMINER EZEANYIM: Oh, okay. You are  
22 trying to address some of the questions I have. Okay.  
23 Page 25 is the same well -- the other well was 4,000,  
24 you said. 1,780. Okay. That's the chloride. Okay.  
25 That will answer some of the questions I have.

1 Q. (BY MR. BRUCE) And it appears, Mr. Gengler,  
2 from page 18, the BLM well, the one that you got the  
3 fresh -- the new sample from, is the closest freshwater  
4 well to the injection well?

5 A. Based upon the data we got from the State  
6 Engineer's Web site, that is correct.

7 Q. So there has been -- based on this, there has  
8 been no adverse effects on fresh water from injection  
9 for 23 years?

10 A. That is correct.

11 Q. And based on this data, do you have any reason  
12 to suspect the mechanical integrity of the injection  
13 well?

14 A. No, I do not.

15 Q. Now, as part of your review, did you see a  
16 letter from the BLM raising certain objections to the --

17 A. Yes. Yes, I did.

18 Q. What is Exhibit 16?

19 A. Exhibit 16 is a map with the circle of the  
20 half-mile area of review. It also has, above the  
21 injection well, an SWD. Then above each well, there is  
22 a number corresponding to the numbers in the application  
23 of the offset wells. This was requested by the BLM.

24 Q. They asked if there were cement bond logs on  
25 the well, correct?

1 A. I visited with Wesley Ingram. He asked if  
2 there were cement bond logs or temperature surveys.  
3 Myself, or someone that I was directing, contacted both  
4 of the operators that operated the wells that did not  
5 have that information supplied, and they replied to us  
6 that that information was never run and was not  
7 available. I gave that information to the BLM, and they  
8 requested this map so that they could update the  
9 information to include DV tools, which are not normally  
10 put in there. But this is the information I supplied to  
11 the BLM.

12 Q. Were there bond logs on any of the wells within  
13 the area of review?

14 A. Yes.

15 Q. How many of these wells?

16 A. I didn't have that written down.

17 I show four.

18 Q. And how many DV tools used on them?

19 A. Of the ones that had cement bond logs or --

20 Q. Others.

21 A. Others? All but one.

22 Q. All but one.

23 And what good are the DV tools? What is  
24 that showing?

25 A. The DV tools showed where they pumped the

1 second stage of the cement. On every one of those, the  
2 first stage was pumped, and they circulated cement off  
3 of them. And the second stage is just from that point  
4 up as to where that cement is going. In fact, the wells  
5 all had cement circulated on the first stage. It shows  
6 that there wasn't any fall-back from anything pumped  
7 down below that DV tool.

8 Q. What is Exhibit 17?

9 A. Exhibit 17 is a summation of the calculated top  
10 of the cement on the wells that did have a cement bond  
11 log, and so there was comparison of the two methods to  
12 correlate how those compared.

13 Q. Are all of the measured tops of cement well in  
14 excess of the -- higher than the injection interval of  
15 this well?

16 A. Yes.

17 Q. And would they show that the offset wells are  
18 properly drilled and completed and properly cemented, so  
19 there wouldn't be any movement of fluids up those  
20 wellbores?

21 A. Yes.

22 Q. In preparing C-108s, is it common to use  
23 calculated tops of cement?

24 A. If there is no cement bond or temperature  
25 surveys, that has been a common practice in the

1 industry.

2 Q. As part of your job at Cimarex, do you review  
3 saltwater disposal applications filed by other operators  
4 when Cimarex is notified of an application?

5 A. Yes, I do.

6 Q. Do other operators use calculated tops of  
7 cement?

8 A. Yes, they do.

9 Q. And in your opinion, is that a proper way to  
10 determine the top of cement in wells offsetting an  
11 injection well?

12 A. If no other information is available, yes.

13 Q. Now, you reviewed the original file on Mallon's  
14 SWD application, didn't you?

15 A. Yes, I did.

16 Q. And did any offset operators object to the SWD  
17 well?

18 A. No, they did not.

19 Q. Have any offset operators objected to this  
20 application to reinstate injection authority?

21 A. No, they have not.

22 Q. If there was a problem, would -- suppose  
23 Cimarex was an offset to a proposed injection well like  
24 this. Would it object if there was a problem with the  
25 well construction of the wells in the area of review?

1 A. Yes, they would. When I review those  
2 applications, one of the things I do look at is, where  
3 is the top of the cement, where is the injection  
4 interval, and would it have any effect on our well,  
5 because we would see it before any contamination would  
6 happen.

7 Q. Couple of other things, and this is a question  
8 asked of the landman. But was this SWD well taking  
9 water only from Cimarex wells in this area?

10 A. Yes.

11 Q. And only from on this specific lease?

12 A. That is correct.

13 Q. Mr. Dowdle referred to this. Did Cimarex shut  
14 in the well at one point -- shut in its producing wells  
15 at one point to see if any other water was being  
16 injected into the SWD?

17 A. We shut in all wells, and there was no entry of  
18 fluid into our system, once we shut all the wells in.

19 Q. So no third party -- no third-party operator --  
20 no third-party operator's water was taken into this SWD  
21 well?

22 A. That is correct.

23 Q. And to the best of your knowledge, are there  
24 any agreements between Cimarex and a third-party  
25 operator to take their water?

1 A. I saw no agreements by Cimarex or any of the  
2 other operators in the files agreeing to take any other  
3 water from any other company.

4 Q. Just a couple more things, Mr. Gengler.  
5 Cimarex is not injecting into this water since the  
6 issuance of the prior order, correct?

7 A. That is correct.

8 Q. What is being done with Cimarex's produced  
9 water from its several wells in the area?

10 A. It's being hauled to commercial disposals.

11 Q. Is that more expensive than injecting it into  
12 Cimarex's facility?

13 A. Yes, it is.

14 Q. What will happen to Cimarex's producing wells  
15 if the injection authority is not granted?

16 A. It will cause the premature plug and  
17 abandonment of those wells based on economics and loss  
18 of reserves.

19 Q. Trucking it out to third-party disposal  
20 facilities is more expensive?

21 A. Significantly more.

22 Q. Significantly more.

23 And if you do not get injection authority  
24 at some point earlier than using your own injection  
25 well, will operating costs exceed production values?

1 Cimarex ever received a notice of violation indicating  
2 it has violated federal regulations?

3 A. No, we have not received any.

4 Q. Has Cimarex ever received a notice of violation  
5 indicating that it has not complied with Onshore Order  
6 Number 7?

7 A. I have not seen any in the files.

8 Q. In your opinion, is it proper to grant  
9 injection authority for this well?

10 A. Yes.

11 Q. Were Exhibits 12 through 18 either prepared by  
12 you or under your supervision or compiled from company  
13 business records?

14 A. They were.

15 Q. And in your opinion, is the granting of this  
16 application in the interest of conservation and the  
17 prevention of waste?

18 A. Yes, it is.

19 MR. BRUCE: Mr. Examiner, I'd move the  
20 admission of Exhibits 12 through 18.

21 EXAMINER EZEANYIM: Any objection?

22 MR. MARTIN: No objection.

23 EXAMINER EZEANYIM: Exhibits 12 through 18  
24 will be admitted.

25 (Cimarex Energy Company of Colorado Exhibit

1 A. Yes.

2 Q. Will that cause waste?

3 A. Yes.

4 Q. Will that impair Cimarex's correlative rights?

5 A. Yes.

6 Q. Going back to one thing, you said Cimarex's  
7 wells in this area were shut in and injection ceased  
8 into the saltwater disposal well. You also indicated  
9 that this was an isolated area for Cimarex?

10 A. Yes.

11 Q. So you don't have any -- does Cimarex have any  
12 nearby offsetting producing wells?

13 A. No.

14 Q. Just the wells on this particular lease?

15 A. Correct.

16 Q. What is Exhibit 18, Mr. Gengler?

17 A. 18 is an approval from the BLM of our sundry  
18 notice -- not ours. Excuse me. Mallon Oil's sundry  
19 notice on their recompletion of this well into a  
20 saltwater disposal well.

21 Q. In your review of the well files, have you ever  
22 seen where this sundry notice has been revoked by the  
23 BLM?

24 A. I have not seen anything.

25 Q. In its operation of the Amoco SWD #1, has

1 Numbers 12 through 18 were offered and  
2 admitted into evidence.)

3 MR. BRUCE: And I have no further questions  
4 of the witness.

5 EXAMINER EZEANYIM: Thank you,  
6 Mr. Counselor.

7 Mr. Martin?

8 MR. MARTIN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q. Mr. Gengler, I'll try not to jump around too  
12 much, but there are a number of topics I'd like to  
13 explore with you.

14 You just rendered an opinion that if  
15 Cimarex is not allowed to start injecting into this  
16 particular well, that the cost of disposal of this water  
17 at commercial locations would cause -- would have such  
18 an impact on production proceeds that you would have  
19 premature shutting of the wells. Did I understand that  
20 correctly?

21 A. That is correct.

22 Q. Did you personally sit down and look at costs  
23 and revenue streams to arrive at that conclusion?

24 A. Yes; I have.

25 Q. You did not bring any of that data with you

1 today, did you?

2 A. No, I did not bring it with me today.

3 Q. So all we have is your opinion, without any  
4 supporting documents, as to your statement that that  
5 would be the effect?

6 A. Yes.

7 Q. And that would, of course, be very dependent  
8 upon what the oil price is -- the conclusion would be  
9 very dependent on what the oil price is?

10 A. That is correct, but I will say that we've got  
11 at least a couple of wells that right now are either  
12 breaking even or just barely below. So they are really  
13 severely impacted, and we'd probably be prematurely  
14 plugging [sic] into the very near future if this isn't  
15 reinstated.

16 Q. But, again, you haven't presented any actual  
17 data to reflect that opinion, have you?

18 A. No, I have not.

19 Q. You also testified that only water from Cimarex  
20 wells was being injected into this well. You have not  
21 personally stayed out on that site and observed sources  
22 of injection into that well, have you?

23 A. No, I have not.

24 Q. So your opinion is just relied upon by you  
25 looking at records in a file? Did I understand that

1 injection well?

2 A. It shows in the records that that is the pump  
3 that Mallon Oil put out there.

4 Q. So from what you've looked at, this is the  
5 original pump?

6 A. That's correct.

7 Q. In your years of experience, is it somewhat  
8 unusual to have a pump last that length of time, 23, 24  
9 years?

10 A. If properly maintained, yes [sic].

11 Q. That leads me -- you testified that this pump  
12 had the capacity of putting certain volumes into the  
13 well, as I understand it.

14 A. That's correct.

15 Q. Let me go to your Exhibit 12 for a minute.  
16 This creates a great deal of puzzlement for me, and I  
17 want to go through this, if I may. Recognize -- I'm  
18 talking places -- periods of time that Cimarex did not  
19 own this particular -- wasn't operating out there, would  
20 be a better way to say it. But let's look at 1994, for  
21 instance.

22 A. Okay.

23 Q. I am seeing amounts of 16,145, 16,980 in that  
24 particular year. That exceeds the 1,600 BPW [sic] that  
25 was in the original application, doesn't it?

1 correctly?

2 A. My opinion is based upon looking at the volumes  
3 that were measured off of the wells that are currently  
4 Cimarex operated and comparing that data to the actual  
5 volumes that were actually injected into the well. And  
6 absent any discrepancies of measurement, they appear to  
7 be fairly close.

8 Q. So that is your source of opinion?

9 A. That is correct.

10 Q. But you can't sit in this room today and  
11 testify under oath that you're sure there hasn't been  
12 injection of water into that well from third parties,  
13 can you?

14 A. Like you said, I have not sat on location.

15 Q. Let me ask you, if I may, about volumes. Let  
16 me find one of the exhibits here. One of my bad habits,  
17 Mr. Gengler, is that I make the biggest mess in the  
18 world when I'm moving paperwork around.

19 Exhibit 13.

20 A. 13, okay.

21 Q. As I understand this, this is data on the pump  
22 that is currently on the injection well; is that  
23 correct, sir?

24 A. That is correct.

25 Q. Do you know how long that pump's been on that

1 A. No.

2 Q. Why does it not?

3 A. That's a monthly volume; 30 days in a month.

4 Q. You're saying that 1,600 -- what is the 1,600  
5 figure in the original application?

6 A. That's the barrels per day.

7 Q. Per day. Okay.

8 So you don't see anything on page 1 that  
9 would exceed the per day?

10 A. That is correct.

11 Q. On page 2, do you see anything that would  
12 exceed that?

13 A. No, I do not.

14 Q. And then we finally get to page 3. Do you see  
15 anything on that page that would exceed that?

16 A. Yes, the August 1999 that I previously talked  
17 about.

18 Q. And your testimony is that that is physically  
19 impossible?

20 A. With that pump, yes.

21 Q. Do you have any explanation of why the OCD  
22 records would reflect that level of injection?

23 A. I could only speculate.

24 Q. So you don't know?

25 A. No.

1 Q. And then we go to page 4 -- we go to page 4,  
2 and I think you've got at least -- or you've got March,  
3 I believe. You talked about it, did you not?

4 A. That's correct.

5 Q. And, again, I assume your testimony is the  
6 same. That's physically impossible?

7 A. That's correct.

8 Q. But you have no explanation as to why the OCD  
9 records would reflect that level of injection?

10 A. All I can do is speculate it was a  
11 typographical error.

12 Q. And would that be your testimony all the way  
13 through these particular OCD records that are your  
14 Exhibit 12?

15 A. With the exception of the time that Cimarex was  
16 the operator, I have no records.

17 Q. And you gave some explanation for that issue,  
18 if I understood you correctly?

19 A. Which issue are you speaking about?

20 Q. Well, I thought we were talking about -- that  
21 was pressure. I'm sorry. You gave an explanation on  
22 pressure.

23 Let's go on through here just a moment, if  
24 we may. By the time Cimarex became operator, do we have  
25 any months where we have the production exceeding the

1 application, has it?

2 A. To my knowledge, no.

3 Q. And the BLM also -- let me get to the BLM  
4 letter here. The BLM has objected to the use of  
5 calculated cement -- let me find that letter. I'm not  
6 saying it exactly correctly. Let me find the letter.  
7 Just a moment, please.

8 The BLM has not withdrawn its objection to  
9 the use of the calculated number for the cement tops,  
10 has it?

11 A. Not that I'm aware of.

12 Q. And since this is federal mineral right and  
13 federal lease, while you testified about what was  
14 customary in practice on this issue, isn't, in fact,  
15 what is critical here is what the BLM is requiring since  
16 this is federal minerals and they've got control?

17 A. Yes. I spoke to Wesley Ingram last week. I  
18 updated him on all the information I received from the  
19 offset operators, informed him that that information was  
20 not available. I gave him the DV tool depths, and he  
21 asked me to send all that to him so he could document it  
22 in his file.

23 Q. To this date, the BLM has not changed its  
24 position on the calculated issue, has it?

25 A. As far as I know, no.

1 1,600 figure?

2 A. No, we do not.

3 Q. Just a moment, please.

4 As I understand the pressure issue, we have  
5 had instances where there has been -- pressure has  
6 been -- 640 psi has been -- there have been times when  
7 the pressure on that well has exceeded the 640 psi; is  
8 that correct?

9 A. Where are you coming up with the 640 psi?

10 Q. Isn't that part of what's in the original  
11 application? Am I not correct on that?

12 A. I don't have that in front of me, but the order  
13 granted 8 -- I don't have the order in front of me.

14 EXAMINER EZEANYIM: 804.

15 A. 804.

16 Q. (BY MR. MARTIN) Have there been periods when  
17 the 804 has been exceeded?

18 A. Just a very few. Again, I addressed those.

19 Q. And your explanation that I heard covers all of  
20 those instances; is that correct?

21 A. That is correct.

22 Q. Let's jump to another topic. You gave  
23 explanation about the BLM letter. I want to make sure  
24 that we all understand. The BLM, to your knowledge, has  
25 not withdrawn its objection to the granting of this

1 MR. MARTIN: May I have just one minute?

2 Q. (BY MR. MARTIN) The BLM has also objected to  
3 the permit for this injection well on the basis that  
4 Cimarex needs to do further research on freshwater wells  
5 in the area. Are you aware of that objection?

6 A. Yes. I discussed that with Wesley.

7 Q. And the only one that there's been any sampling  
8 on is this windmill well on the BLM property?

9 A. That is correct. I asked our land department  
10 to get permission to sample. That is the only well that  
11 we received permission to sample.

12 Q. Are you aware that the reason there was an  
13 objection to Cimarex coming on Ross Ranch property and  
14 sampling any of the others is because there has not been  
15 any type of surface owners -- any agreement under the  
16 Surface Owners Protection Act worked out?

17 A. No. That's beyond my expertise.

18 Q. You don't have any of that knowledge?

19 A. That's beyond my expertise. I rely on our land  
20 department for that.

21 Q. So the key thing, from your testimony, that  
22 Cimarex needs is, they need to have this application  
23 approved so they can start in again -- or start in using  
24 this injection well? That's the critical need, from  
25 your testimony; is that right?



1 A. Correct.

2 Q. So retroactive is immaterial to you, isn't it?  
3 It's getting the authority to go forward from this day  
4 forward? Isn't that what you're really seeking here?

5 A. I can't answer that question. I can only  
6 answer the part that affects my job, which is production  
7 and expenses on oil and gas wells. The other part, I  
8 can't answer.

9 Q. You also testified about this well, and if I  
10 understood -- I'm talking about the injection well. You  
11 talked about how to complete it. Have you -- to your  
12 knowledge, has there been any studies or tests done to  
13 check the current integrity of the well, its casing and  
14 its cement? It's been there for a long time.

15 A. The OCD is in charge of doing that. They  
16 regularly schedule mechanical integrity tests, and this  
17 well has passed every mechanical integrity test that was  
18 done.

19 Q. To your knowledge, when was the last time that  
20 was done?

21 A. I don't have that information with me.

22 Q. So Cimarex has not on its own attempted to do  
23 any type of integrity test in support of this  
24 application, have you?

25 A. We monitor the pressures on the casing and on

1 the annulus for our own information, and that  
2 information is looked at on a regular basis. And any  
3 changes within the pressure would indicate a leak, would  
4 throw up a red flag, and we would investigate further.

5 Q. But other than that, Cimarex has done no  
6 independent tests or analysis regarding integrity for  
7 purposes of supporting this application. That is  
8 correct; isn't it?

9 A. I would say monitoring the annulus and the  
10 casings are exactly that.

11 Q. That's all. Thank you.

12 EXAMINER EZEANYIM: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. BRUCE:

15 Q. Just one question. Mr. Gengler, you said the  
16 OCD periodically requires mechanical integrity tests.  
17 The OCD doesn't do those tests itself, correct?

18 A. No. They witness the test.

19 Q. They witness the test. The test is arranged by  
20 the operator, who hires a contractor to do that test?

21 A. That is correct.

22 MR. BRUCE: That's all I have,

23 Mr. Examiner.

24 EXAMINER EZEANYIM: Any cross?

25 MR. MARTIN: No.

1 EXAMINER BROOKS: No questions.

2 CROSS-EXAMINATION

3 BY EXAMINER EZEANYIM:

4 Q. Mr. Gengler, how often do you maintain this --  
5 since you acquired the property from Mallon Oil, how  
6 often do you maintain this --

7 A. We do yearly maintenance, and we do checks on  
8 it every month, and we have people that maintain that  
9 pump. And that's part of what they do; they're a third  
10 party.

11 Q. Let's go back to that information sheet,  
12 Exhibit 14. That is the pump-out, you know -- the  
13 pump-out is close to what? You know, as -- as an  
14 engineer, I like to level the access. I don't know.  
15 This access is not level.

16 A. Yes, it is.

17 Q. Can you tell me what is going on? What is  
18 your --

19 A. On the right-hand side of the graph is the  
20 accesses for the tubing pressure.

21 Q. On the right hand?

22 A. Yeah. You can see tubing pressure -- on the  
23 right-hand is the water injection. It says "MCF." That  
24 was a mistake. It should be barrels per day.

25 Q. I was confused with MCF. Are you talking about

1 gas or --

2 A. No. It's barrels. That was a typo.

3 Q. Are you talking about 1,000 barrels per day?

4 A. 1,000?

5 Q. Do I consider MCFs?

6 A. Yeah, that should be barrels, not MCFs.

7 Q. Okay. So that would be barrels per day, not --  
8 not 1,000 barrels per day, right?

9 A. That's correct, barrels per day.

10 Q. That's a thousand difference from --

11 A. No. It's barrels per day.

12 Q. On the left-hand side is the quantity of water  
13 injected?

14 A. Correct.

15 Q. And then on the right-hand side is your tubing  
16 pressure, which I'm interested in. Okay.

17 Does this indicate (indicating) the amount  
18 of red [sic] that is injected?

19 A. Correct.

20 Q. And this is your tubing pressure?

21 A. No. The black is the tubing pressure.

22 Q. Okay. Oh, okay. I was looking at -- okay.

23 A. And the blue is the right.

24 Q. Is the what?

25 A. Blue is the right barrels per day.

1 Q. That's why you should have some symbols, to  
2 tell me which one is which, so I can --

3 A. I apologize.

4 Q. I like to level the access, so I know what I'm  
5 doing.

6 You said it's consistently below 1,000  
7 pounds -- 1,000 pounds. Okay.

8 And then the injection rate -- the  
9 injection rate doesn't really have a meaning because  
10 it's not in the order. It might be in the application,  
11 but it's not in the order.

12 Okay. Let's go back to work. Normally I  
13 start with the construction of the injection well,  
14 because that's what's most important to me. Let me see  
15 if I can find it. Let me look at Form C-108. Okay.  
16 Let's get the -- okay. Do you have that, on page 5?

17 A. Yes.

18 Q. Okay. Now, that's -- this well is currently  
19 shut in, right?

20 A. That's correct.

21 Q. Currently shut in, but this is the way it has  
22 been injecting all the time?

23 A. That's correct. There's been no work done to  
24 this well.

25 Q. As your testimony indicates, this well has

1 Q. 14 wells?

2 A. 13.

3 Q. I thought I saw ten.

4 How many are plugged and abandoned?

5 A. Two.

6 Q. What?

7 A. Two.

8 Q. Okay. Two PA'd.

9 How many are producing?

10 A. 11.

11 Q. So that makes 13. Okay.

12 Let's go back to Exhibit Number 17. Of the  
13 four wells -- what is the status of those four wells,  
14 Amoco Federal #3, 4; 1Y Pecos Federal; EP-USA #6? What  
15 is the status?

16 A. Producing.

17 Q. They are producing?

18 A. Correct.

19 Q. Okay. Now, the way top of cement is  
20 calculated. Measure top of cement by CBL?

21 A. CBL.

22 Q. And these are producing wells?

23 A. That's correct.

24 Q. Why did you choose those four out of 11  
25 producing wells?

1 passed mechanical integrity every five years as required  
2 by the regulations?

3 A. That's correct.

4 Q. Now, the top of cement, 720, is that the  
5 calculated maximum bond log?

6 A. Maximum bond log.

7 Q. Do you have logs here that demonstrate that  
8 information?

9 A. No, I did not bring them with me. They were  
10 filed with the OCD.

11 Q. They were filed with the OCD?

12 A. (Indicating.)

13 Q. This well -- cement bond logs?

14 A. Yes.

15 Q. And it is 720?

16 A. 2,720.

17 Q. 2,720 is the top of the -- there is a cement  
18 bond log, not calculated?

19 A. That's correct.

20 Q. Now, let's examine -- based on the calculated  
21 and measured, let's go back to your area of review. One  
22 of the questions I wanted to ask of you on the area of  
23 review. How many wells are in the area of review? How  
24 many wells do you have in the area of review?

25 A. 13.

1 A. Those are the only four that had cement bond  
2 logs for me to compare to -- to measure to the  
3 calculated.

4 Q. Okay. Good.

5 Now, the rest, seven, are calculated,  
6 right?

7 A. That is correct.

8 Q. So out of 11 producing wells, 4 have cement  
9 bond logs?

10 A. (Indicating.)

11 Q. And you can see the difference between the  
12 calculated and the cement bond log. Okay. Good. So  
13 let me write that four have cement bond logs, and seven  
14 calculated, right?

15 A. Yes.

16 Q. But they are all producing wells?

17 A. Correct.

18 Q. So your testimony today is that since 1989, no  
19 well has come into focus in the area of review?

20 A. That's correct.

21 Q. Between these wells, no new wells have been  
22 drilled?

23 A. There is a slight difference between the  
24 original application and the current application.

25 Q. What is the slight difference?

1 A. They had 12 wells. They considered one well  
2 outside of the area of review, and we considered it in.

3 Q. I'm sorry. Can you repeat that? They have  
4 what?

5 A. They had one well that they considered just  
6 barely outside of the half-mile radius area of review.

7 Q. "They considered." Who is that "they"?

8 A. Mallon.

9 Q. Oh, okay.

10 A. And we considered it just in. It's right on  
11 the line, so that's where the extra well came from, 13  
12 instead of the 12 that were in the original application.

13 Q. So in 1989, Mallon may have submitted 12, but  
14 now you have submitted 13, and there has been no change?

15 A. Correct. All those wells were drilled before  
16 Mallon's application.

17 Q. And all this area of review has penetrated the  
18 injection interval?

19 A. Yes.

20 Q. All of them?

21 A. Yes.

22 Q. Including the producing and the plugged and  
23 abandoned. And here are we going to see the two plugged  
24 and abandoned wells to see if they are properly plugged  
25 and abandoned, on the C-108?

1 A. I misunderstood what you said.

2 Q. I said your plugged and abandoned wells --

3 A. Okay.

4 Q. -- and the applications --

5 A. Yeah. 14 and 15.

6 Q. So you chose to demonstrate your calculation on  
7 the cement bond log and measure cement bond log -- I  
8 mean, measure the top of cement bond log and just  
9 forward that available [sic]?

10 A. (Indicating.)

11 Q. Okay. That's what you said, right?

12 A. Yes.

13 Q. The data is not available?

14 A. Correct.

15 Q. Because they are producing wells?

16 A. Correct, and they weren't running --

17 Q. Do you know the majority of the operators on  
18 those producing wells?

19 A. There are two operators.

20 Q. How many? Two operators?

21 A. Two.

22 Q. Okay. You being one?

23 A. No. Two other operators in addition to  
24 Cimarex.

25 Q. So there are about three operators. Okay.

1 A. Six of those wells that I calculated came from  
2 one operator and one from another.

3 Q. Sometime during the testimony, your counselor  
4 asked you what are the pressures requested of the  
5 original operator. I didn't want to cut in. What are  
6 the pressures requested by the original operator? Do  
7 you know what pressure they requested, apart from .2  
8 psi --

9 A. From best of my memory, I don't think I have  
10 the original application.

11 Q. Yeah. But what would you be requiring? What  
12 would you be requesting?

13 A. We are requesting .2 psi.

14 Q. You're not requesting an increase in pressure?

15 A. We're not asking for an increase in pressure.

16 Q. So the -- will do the work?

17 A. That's correct. We've taken steps to make sure  
18 that the pressure doesn't -- that they speed the pump up  
19 so that won't be exceeded anymore.

20 Q. Now, when we talked about the injection water  
21 and the formation water, what is the concentration of  
22 the formation water?

23 A. The concentration?

24 Q. I mean, what is the chloride content. Let's  
25 start there.

1 A. That is Exhibit 19.

2 MR. BRUCE: Page 19.

3 A. Page 19 of that exhibit. It's 175,000 for that  
4 well.

5 Q. (BY EXAMINER EZEANYIM) For injecting water from  
6 the chloride content into the 175?

7 A. Maybe I misunderstood the original question.

8 Q. Okay. The original question -- okay. Let me  
9 go -- I think you're on page 19, right?

10 A. Page 19 of the C-108.

11 Q. Like Mr. Martin, I can be confused.

12 A. The C-108 application, Exhibit Number 15, page  
13 19.

14 Q. Okay. Yeah. Okay. Page 19. Okay. The  
15 chloride content in this well is 175,000. Is that the  
16 chloride content in the Cherry Canyon Formation?

17 A. In that particular zone that they are producing  
18 from, yes.

19 Q. Okay. Now, this well was done in 2013. And  
20 then in 1988, prior to the issuance of this order, it  
21 was 189.

22 A. That was -- my best guess is, that was from a  
23 different well that has slightly different chloride  
24 concentrations.

25 Q. Now, you just said that you wanted to determine