

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

IN THE MATTER OF THE HEARING CALLED BY)	
THE OIL CONSERVATION DIVISION FOR THE)	
PURPOSE OF CONSIDERING:)	
)	
APPLICATION OF DEVON ENERGY CORPORATION)	CASE NOS. 13,603
FOR COMPULSORY POOLING, EDDY COUNTY,)	
NEW MEXICO)	
)	
APPLICATION OF LCX ENERGY, LLC, FOR)	and 13,628
COMPULSORY POOLING EDDY COUNTY,)	
NEW MEXICO)	
)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

RECEIVED

March 2nd, 2006

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Santa Fe, New Mexico

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

These matters came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, March 2nd, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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March 2nd, 2006
 Examiner Hearing
 CASE NOS. 13,603 and 13,628 (Consolidated)

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:05 a.m.:

3 EXAMINER EZEANYIM: At this point I will call
4 these two cases. These two cases are consolidated for the
5 purpose of testimony, and Case Number 136,03, Application
6 of Devon Energy Corporation for compulsory pooling, Eddy
7 County, New Mexico, and Case Number 13,628, Application of
8 LCX Energy, LLC, for compulsory pooling Eddy County, New
9 Mexico.

10 Call for appearances, please.

11 MR. CARR: May it please the Examiner, my name is
12 William F. Carr with the Santa Fe office of Holland and
13 Hart, L.L.P. We represent Devon Energy Corporation, and I
14 have two witnesses.

15 EXAMINER EZEANYIM: Any other appearances?

16 MR. HALL: Mr. Examiner, Scott Hall, Miller
17 Stratvert, P.A., Santa Fe, appearing on behalf of LCX
18 Energy, LLC. I have two witnesses this morning.

19 EXAMINER EZEANYIM: Any other appearances?

20 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe.
21 I'm entering an appearance on behalf of Parallel Petroleum
22 Corporation and Capstone Oil and Gas Company, L.P.

23 And I did want to note that there's a gentleman
24 here named Mark Wheeler who has interests in the well, and
25 I think he might want to make a statement at the end, and I

1 just wanted to make a note.

2 EXAMINER EZEANYIM: Any other appearances?

3 May all the witnesses stand to be sworn, please?

4 (Thereupon, the witnesses were sworn.)

5 EXAMINER EZEANYIM: Mr. Carr, do you want to go
6 first?

7 MR. CARR: Yes, sir, and I have a very brief
8 opening statement.

9 EXAMINER EZEANYIM: Okay, go ahead.

10 MR. CARR: Mr. Examiner, as you're aware, what
11 we're dealing with here today are two competing
12 Applications for compulsory pooling. The evidence is going
13 to review the history of how the well that is the subject
14 of both of these cases was proposed and drilled, and there
15 are only a couple of remaining issues for the Division to
16 decide. One is who should operate the well, and the other
17 question is, what risk penalty, if any, should be imposed
18 on those interests who are not voluntarily brought into the
19 process and have had an opportunity to join in the effort
20 drilling the well?

21 The evidence is going to show that LCX knew or
22 should have known that Devon had an interest in these
23 properties, that it drilled the subject well before any
24 contacts were made with Devon, before any effort to reach
25 voluntary agreement was made.

1 We agree, as the statute clearly states, that an
2 operator can pool either before or after drilling. But
3 Devon believes that this doesn't mean that the regulatory
4 scheme doesn't apply if you drill first.

5 If what has happened here is approved by the
6 Division, we believe you will be writing out part of the
7 compulsory pooling process. We believe you will be writing
8 out the requirement that there are good-faith negotiations
9 between the parties before the well is drilled. And we're
10 talking here not about unknown interest owners, but about
11 known parties.

12 If you agree with LCX, you're going to be
13 authorizing LCX and, I would submit, other operators, to
14 drill before they contact other known interest owners, and
15 they can still come here and seek a penalty. I don't think
16 that's the Division's intent or the intent of the Oil and
17 Gas Act. We don't believe that there are no consequences
18 for an operator who simply goes out and drills. We believe
19 that before you drill you have to contact other known
20 operators, and if you fail to do that and drill the well,
21 you have assumed the risk, and no risk penalty should be
22 imposed on those interest owners who were excluded from the
23 process.

24 We'll review the history of this matter, and at
25 the conclusion of the case we'll ask you to grant the

1 Application of Devon, designate Devon operator.

2 If you should decide to grant the Application of
3 LCX and designate LCX operator, we ask that you impose no
4 risk penalty on the interest of devon.

5 EXAMINER EZEANYIM: Any opening statement?

6 MR. HALL: Just briefly, Mr. Examiner. On behalf
7 of LCX, it's our view that the two cases presented to you
8 today should be nothing more than generic compulsory
9 pooling cases. And in the context of such, we will present
10 evidence to you that establishes that my client, LCX, did
11 act in good faith in seeking voluntary participation in the
12 well, that it also acted prudently in drilling the well
13 before making a proposal to Devon to obtain Devon's
14 participation.

15 And we will explain to you, to your satisfaction,
16 why there was an omission to propose the well to Devon
17 before the well was spudded, and we think you will be
18 satisfied with those explanations.

19 Now, as I say, these ought to be two generic
20 competing compulsory pooling cases in the circumstance the
21 well has been drilled. It is ready for completion, it is
22 ready to be placed on sales, but we've met with substantial
23 delay. And I think that delay poses a substantial
24 likelihood of potential reservoir damage.

25 At the end of our cases we're going to make a

1 request to you that an expedited order be issued to allow
2 the well to be put onto sales just as soon as possible, to
3 avoid or at least mitigate any further reservoir damage.
4 We cannot afford any further delay in this.

5 Finally, as I said, again, ought to be generic
6 compulsory pooling issues. Devon has attempted to
7 interject an additional issue into this that I think is
8 unprecedented. Devon, with knowledge that there were pre-
9 existing contractual relationships between LCX as operator
10 and the other nonoperating working interest owners, sought
11 to undo -- interfere with those relationships. Devon is
12 asking you to do the same thing here by its Application.
13 Devon is asking you, the Hearing Examiner, to issue an
14 order that would effectively rescind private contractual
15 agreements that led to the drilling of a successful well,
16 and I would urge that that is extraordinary relief, and
17 that you ought to reject Devon's Application in that
18 regard.

19 Thank you, Mr. Examiner.

20 EXAMINER EZEANYIM: Thank you, Mr. Hall.

21 Who wants to go first? Mr. Carr?

22 MR. CARR: May it please the Examiner, our first
23 witness is Meg Muhlinghouse.

24 EXAMINER EZEANYIM: May I remind the witness that
25 you have been sworn.

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MEG MUHLINGHAUSE,

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

DIRECT EXAMINATION

BY MR. CARR:

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

A. Meg Muhlinghouse.

Q. Where do you reside?

A. Edmond, Oklahoma.

Q. Ms. Muhlinghouse, by whom are you employed?

A. Devon Energy Corporation.

Q. And what is your position with Devon Energy
Corporation?

A. I'm a petroleum landman with Devon.

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

A. Yes, I have.

Q. At the time of that testimony, were your
credentials as an expert in petroleum land matters accepted
and made a matter of record?

A. Yes.

Q. Are you familiar with the Applications filed in
each of these cases?

A. Yes, sir, I am.

Q. And are you familiar with the status of the lands

1 in the subject spacing unit?

2 A. Yes, I am.

3 MR. CARR: We tender Ms. Muhlinghouse as an
4 expert witness in petroleum land matters.

5 EXAMINER EZEANYIM: Ms. Muhlinghouse is so
6 qualified.

7 Q. (By Mr. Carr) Would you briefly summarize for
8 Mr. Ezeanyim what Devon Energy Corporation seeks with this
9 Application?

10 A. We seek an order pooling all mineral interests
11 from the surface through the base of the Wolfcamp formation
12 in the following described spacing units and proration
13 units located in the west half of Section 6, Township 17
14 South, Range 25 East, Eddy County, New Mexico: the west
15 half to form a standard 320-acre proration unit for all
16 formations developed on 320-acre spacing within that
17 vertical extent which includes but is not necessarily
18 limited to the Undesignated West Cottonwood Creek-Wolfcamp
19 Gas Pool, and the northwest quarter to form a standard
20 spacing and proration unit for all formations developed on
21 a 160-spacing unit within that vertical extent.

22 Q. Ms. Muhlinghouse, a well has already been drilled
23 horizontally in the west half of the section; is that
24 right?

25 A. That is correct.

1 Q. And if that wellbore were ever used for the
2 purpose of recompleting a vertical well, then you, Devon,
3 would have interest in the northwest quarter; is that
4 correct? On a 160-acre-spaced unit?

5 A. That is correct.

6 Q. If smaller units, 80 or 40, were completed in
7 that well then, Devon would have no interest in the well;
8 is that right?

9 A. If it was a 40, no. If it was a laydown 80, we
10 would have a 50 percent interest. If it was a standup 80
11 we would have no interest.

12 Q. Could you identify the well that is drilled on
13 this acreage?

14 A. The 1725 Fed Com Number 1 well, which is API
15 Number 30-015-34340. It has been drilled vertically from
16 the surface location 660 feet from the north line and 760
17 feet from the west line of Section 6, to an appropriate
18 depth to then be horizontally drilled in a southerly
19 direction in the Wolfcamp formation for a sufficient
20 distance to enable the well to effectively drain the west
21 half of Section 6 and test all formations from the surface
22 to the base of the Wolfcamp.

23 Q. Could you identify for me what has been marked as
24 Devon Exhibit Number 1?

25 A. Devon Exhibit Number 1 is a Midland Map Company

1 map dated December 22nd, 2005. It shows the proposed well
2 location, and it shows the ownership within the proration
3 unit and in the area.

4 Q. What is your understanding of the current status
5 of the subject well?

6 A. That it has been drilled.

7 Q. And does Devon support putting that well
8 immediately on production?

9 A. Yes, we do.

10 Q. What is Exhibit Number 2?

11 A. Exhibit Number 2 is another Midland Map Company
12 map dated May 19th, 2004. And if you'll notice on -- and
13 it shows the proration unit involved as well. And if you
14 will notice on both of these maps, Devon is clearly listed,
15 just even on the Midland Map Company map, that they have an
16 interest in the southwest quarter, in the east half of the
17 southwest quarter, and in the northeast of the northwest
18 quarter.

19 Q. Let's go to what has been marked as Devon Exhibit
20 Number 3. Would you identify and review that, please?

21 A. This is an ownership breakdown. This is an
22 Exhibit A to LCX's JOA, and it shows the ownership
23 breakdown in this well.

24 Q. Can you, using this exhibit, identify for me the
25 interest that, if you are successful, will be subject to

1 pooling? What interests do you represent here today?

2 A. Devon owns 37.51, and some change, percent.

3 Q. Will all other interest owners be subject to
4 pooling if your Application is granted?

5 A. Yes.

6 Q. Now, Devon outright owns 37.5 percent of the
7 working interest in the west half; is that right?

8 A. That is correct.

9 Q. Does that make Devon the largest single owner of
10 working interest in the spacing unit?

11 A. Yes.

12 Q. LCX is second with 35 percent; is that right?

13 A. That is correct.

14 Q. And they have reached an agreement with other
15 interest owners who are supporting their application
16 contractually?

17 A. I believe so.

18 Q. Okay. Do you understand how the other interests
19 have been committed to the LCX well?

20 A. When I talked to the other working interest
21 owners, they indicated to me that they were committed to
22 LCX under a larger exploration agreement that had a JOA
23 attached.

24 Q. In fact, that agreement is referenced at the
25 bottom of page 1 of this exhibit, is it not?

1 A. I believe so.

2 Q. Does it indicate the date of that agreement?

3 A. It does, January 15th, 2004.

4 Q. Have you seen a title opinion for the well?

5 A. I have not seen a title opinion. I did find out
6 that there was a title opinion that had been prepared for
7 LCX dated August 9th, 2005.

8 Q. Ms. Muhlinghause, Devon is here because of its
9 concern about how this well has been proposed and drilled;
10 is that correct?

11 A. That is correct.

12 Q. Would you refer to what has been marked Devon
13 Exhibit Number 4 and identify this for the Examiner?

14 A. This -- Devon Exhibit 4 are basically just a
15 compilation of discussions that I made regarding the
16 drilling of this well.

17 Q. Are these drawn from the notes you kept at the
18 time the calls were made?

19 A. Yes.

20 Q. Let's go to the first entry which is indicated at
21 the top, October 28th, 2005. Would you explain why you
22 included this?

23 A. This was the first time that I heard from LCX.
24 Frank Nix with LCX called me on the phone and wanted to
25 know if he could make a deal on our interest in the west

1 half of Section 6, 17 South, 25 East, Eddy County, New
2 Mexico. He said they had a rig moving in at the end of the
3 week and needed us to do something quick.

4 I told him at that time that we would need a
5 proposal and an AFE from them, and the team would evaluate
6 and make a recommendation to management. I also told him
7 that if it was me, I wouldn't let a rig move onto the
8 location.

9 As the conversation progressed he admitted that
10 the rig had already moved in earlier that week and the well
11 had spud.

12 I told him that we have a sizeable interest, 120
13 acres, in the proration unit, being a 37.5-percent
14 interest, and that the team wouldn't do anything without a
15 well proposal and an AFE detailing the cost to be
16 considered. I also told him that this probably wasn't
17 going to go over well with the people at Devon.

18 Anyway, I wished him luck and I asked him to let
19 me know what happened and -- when he talked to his company
20 and how they were going to proceed.

21 Q. The next entry in this exhibit is dated November
22 the 1st. Is that the next time you dealt with this
23 subject?

24 A. Yes, I -- that was on a -- our first conversation
25 was on a Thursday, and then we had the weekend, and the

1 following Monday I did not hear anything from LCX. And I
2 was getting curious and went out to the OCD website and saw
3 that they had an APD that was approved September 14th,
4 2005.

5 I also discovered after reading the file that the
6 well had actually spud on October 7th, 2005, not earlier
7 that week. And when I was looking through, it was clear
8 that the well had been planned and that there were plats
9 dating back to July of that year. And Devon's field
10 personnel additionally went by and confirmed that LCX was
11 continuing to drill this well.

12 Q. What happened on November the 3rd?

13 A. Further -- later on in the week, I still didn't
14 hear anything from LCX, which concerned me. And so I sent
15 an e-mail to Bill -- to you, Bill Carr, describing the
16 events that had happened and requested his advice and that
17 he represent Devon in this matter.

18 Q. What happened November the 11th? The 7th, I'm
19 sorry?

20 A. We had another weekend pass, and then he got my
21 e-mail. And I talked to Mr. Carr, and he advised that
22 Devon go ahead and send a letter to LCX requesting that we
23 work a way to combine our acreage and to transfer
24 operations to Devon because of the manner in which they
25 were handling this situation.

1 We requested a response by November 14th, which
2 was another week, and if no response was received that he
3 would go ahead and file for compulsory pooling, in order to
4 protect Devon's rights, and also in an effort to make them
5 talk to us. And so I sent a letter to LCX, and --

6 Q. And that letter is dated the 7th of November?

7 A. Yes, it is.

8 Q. And is that attached --

9 A. It is attached.

10 Q. -- to this exhibit?

11 What happened on the 15th?

12 A. On the 15th, we had basically had 17 days without
13 any response from LCX, and because we had no response Bill
14 Carr filed for compulsory pooling for Devon.

15 Q. Two days later, November the 17th, what happened
16 on that date?

17 A. I finally got a phone message from Frank Nix, I'm
18 assuming, because he got our compulsory pooling notice. I
19 returned his call and got his voice mail, and I left a
20 message with him stating that I did want to talk to him.
21 This was on a Thursday, and I said that I would be out of
22 the office on that Friday but that I would be in the office
23 the following Monday through Wednesday.

24 Q. And then when did you finally visit with Mr. Nix?

25 A. By Wednesday, which at that point in time was

1 November 23rd, and it was the day before Thanksgiving. I
2 still hadn't heard from Frank, so I called again and I said
3 that I would still like to talk and that I'd been there all
4 week.

5 And after messages back and forth that day, we
6 finally spoke. And I told him the following, that -- I
7 told him that after our conversation back on October 28th,
8 that I discovered that the well had been drilling for three
9 weeks when we had talked, and that our field personnel had
10 confirmed that they were continuing to drill. And I
11 advised -- I advised -- I told him that I had advised him
12 that Devon was not going to be happy about this and
13 expected to hear right back from him after he talked to his
14 folks that a mistake had been made. And I also said that
15 we would need to see an AFE and well proposal.

16 And instead, I heard nothing for three weeks.
17 And at that point in time it was just short -- by the time
18 we were speaking, it had been almost four weeks. And I
19 told him that I'd sent a letter by fax and by certified
20 mail and had never heard anything, and that we basically
21 had no choice but to file for compulsory pooling.

22 I continued on to tell him that at the very least
23 I'd like to discuss the combination of the 320-acre unit.
24 I also indicated that Devon would like to have operations
25 because of the manner that this was handled. And I also

1 asked him if we could get a copy of the title opinion and
2 well information.

3 I did confirm with him -- I said I knew that the
4 well would continue to drill, and I asked him where they
5 were on that. And he told me that they were finished
6 drilling the well and that they were off the well.

7 Q. At that time, had Devon received either an AFE or
8 a well proposal?

9 A. No.

10 Q. All right, and then what happened?

11 A. So I talked to him -- I continued to talk to him
12 and told him that their lack of response forced Devon to
13 respond in this manner. Frank Nix stated that he wanted to
14 work with Devon but guessed that we were going to have to
15 go to force pooling on this.

16 I responded that we did respond to their actions
17 by letter, which was requesting a response from them, and
18 we got no response. The fact that after the first phone
19 call we didn't get so much as a call for three weeks and
20 then never actually talked until a month after we first
21 learned that they were drilling a well had Devon very
22 concerned with LCX as an operator.

23 And I told them again that we had had no feedback
24 from LCX at all, no proposal, no AFE, nothing. I expressed
25 that this was not how a company should conduct business,

1 and I again asked for proposals, AFE, title, well
2 information, anything that they could give us. And I
3 expressed again that their lack of response elicited our
4 reaction and stated that they were not handling their
5 business in an industry-acceptable manner.

6 Q. Now, Ms. Muhlinghouse, that occurred on November
7 23rd, correct?

8 A. Correct.

9 Q. Did you actually receive something from LCX on
10 that date?

11 A. Later that afternoon, I received a faxed well
12 proposal, an AFE. And the well-proposal letter was rather
13 confusing. It referenced the well in question, but the
14 body of the letter -- it described another well in another
15 section. It also requested a term assignment or farmout
16 should we not elect to participate, and I didn't receive
17 any title or well information at that time.

18 Q. Okay, what happened on the 30th of November?

19 A. On the 30th of November, on advice of counsel, I
20 sent a letter to the other working interest owners, since
21 this was rather unusual, what was going on. I sent a
22 letter to the other working interest owners, describing
23 what LCX had done, and requested their support of Devon in
24 its quest for operator.

25 I also called the company saying that this letter

1 was coming in and around this time period. And at that
2 time I was informed by the landmen for these companies that
3 their hands were tied because they were contractually tied
4 to LCX by virtue of an exploration agreement.

5 Q. Now at that time, there was an application that
6 had been filed to pool the interest of, I believe, LCX and
7 Capstone; is that right?

8 A. Yes.

9 Q. And you were preparing to amend the Application
10 because of other interest owners you had discovered who
11 include a number of other parties; is that right?

12 A. I believe so.

13 Q. Could you call these people and deliver to them a
14 well proposal?

15 A. No, I couldn't. The well had already been
16 drilled.

17 Q. But they were going to be named in a compulsory
18 pooling application?

19 A. Yes, we --

20 Q. And so you contacted them to advise them what you
21 were doing?

22 A. Right, this was a very unusual situation, and I
23 have a working relationship with a majority of the people
24 in this, with these other companies, and so I was just
25 telling them what was going on.

1 Q. If you hadn't called them, you'd be trying to
2 pool somebody without ever talking to them; isn't that
3 right?

4 A. Correct.

5 Q. When you were advised that there was an existing
6 exploration agreement, did you suggest that anyone do
7 anything to breach their agreement?

8 A. Absolutely not.

9 Q. Since that time, have you done anything to
10 suggest that there was anything wrong or improper with the
11 agreement or that it should in any way be breached?

12 A. No.

13 Q. What happened on December the 6th?

14 A. On December 6th, I sent another letter to LCX,
15 and there's a copy attached to this --

16 EXAMINER EZEANYIM: What number is it?

17 THE WITNESS: It is in --

18 MR. CARR: The same exhibit, it's stapled --

19 THE WITNESS: It's in the same exhibit, it's the
20 one by -- dated December 6th.

21 EXAMINER EZEANYIM: Okay.

22 THE WITNESS: I sent a letter basically
23 requesting LCX -- to LCX, requesting clarification of their
24 faxed proposal letter that they sent me on November 23rd,
25 and I also requested title and well information. I also

1 requested to meet by phone or in person to discuss putting
2 the unit together, and I also requested that operations be
3 transferred to Devon.

4 Q. (By Mr. Carr) And on that date we filed our
5 amended compulsory pooling application; is that correct?

6 A. Yes, sir.

7 Q. Okay, what happened on the 16th of December?

8 A. On the 16th of December I received an application
9 for compulsory pooling notice from LCX's attorney.

10 Q. Now let's go to January the 6th. What happened
11 on that day?

12 A. On January the 6th I received a response from my
13 letter dated December 6th. I received a response from LCX,
14 being a clarification of their proposal letter of November
15 23rd. I also received an itemization of drilling costs,
16 drilling reports, and a JOA. They requested that we
17 discontinue discussions with other working interest owners
18 also in their letter.

19 Q. Did you do that?

20 A. Yes.

21 Q. What happened then on the 11th of January?

22 A. I sent a letter to LCX thanking them for the
23 above information and again requested well logs and title
24 information. I also expressed Devon's continued concern
25 with LCX's lack of communication with Devon throughout this

1 entire time.

2 On that same day, Bill Carr filed a subpoena to
3 obtain the well and title information.

4 Q. Now, after that what happened?

5 A. Then we had -- LCX filed a motion to quash, Devon
6 filed a response to LCX's motion to quash. LCX had some
7 joinder and settlement proposal on the 27th through the
8 1st. And then the OCD ordered LCX to -- on February 20th,
9 the OCD ordered LCX to produce certain documents.

10 Q. And were well documents produced?

11 A. The well documents were delivered to Devon's
12 attorney on Friday, and Bill Carr Fed-Ex'd those to Devon,
13 and we received those on Monday of this week.

14 Q. Ms. Muhlinghause, you received an AFE and a JOA
15 from LCX?

16 A. Yes.

17 Q. And attached to the joint operating agreement was
18 a COPAS accounting procedure; is that correct?

19 A. Correct.

20 Q. Do the COPAS accounting provisions attached to
21 the proposed JOA provide for periodic adjustment and
22 overhead and administrative charges?

23 A. Yes.

24 Q. Whoever prevails in this case, does Devon request
25 that overhead and administrative costs set by the pooling

1 order provide for adjustment in accordance with the COPAS
2 procedures?

3 A. Yes.

4 Q. Did that accounting agreement also set overhead
5 and administrative costs for the subject well while it was
6 being drilled and also while producing?

7 A. Yes.

8 Q. And what were those?

9 A. \$5500 for drilling and \$5500 [sic] for a
10 producing well cost.

11 Q. Regardless of who prevails in this matter, does
12 Devon agree that those are appropriate overhead and
13 administrative charges?

14 A. Yes, we do.

15 Q. What are you recommending to the Commission [sic]
16 concerning the risk charges that should be imposed on
17 anyone who is subject to pooling?

18 A. Anyone, or in this --

19 Q. Anyone in this case who is pooled?

20 A. I believe that no risk penalty should be imposed
21 on anyone.

22 Q. If you win, there's no risk penalty, obviously
23 they drilled the well?

24 A. Correct.

25 Q. If they win, you believe no risk penalty should

1 be assessed?

2 A. Correct.

3 Q. And why is that?

4 A. Because the well has been drilled, there is no
5 risk.

6 Q. Devon is seeking to be designated operator of the
7 well?

8 A. Yes.

9 Q. Could you summarize the reasons Devon would like
10 to be named operator of the well?

11 A. We're qualified and one of the largest operators
12 in New Mexico. We are the largest working interest owner
13 in the proration unit for this well. And basically the way
14 that LCX has dealt with us shows that they're not someone
15 that we want to have operating the well for us.

16 Q. Have you been willing to negotiate with them at
17 all times since you discovered they were drilling the well?

18 A. I have been available at all times, yes.

19 Q. Do you believe that in view of your relationship
20 to date they are someone who you would like to have
21 operating your 37-percent interest in this spacing unit?

22 A. No.

23 Q. Now, as a landman, you've been involved in
24 compulsory pooling cases before?

25 A. Yes, uh-huh.

1 Q. How many?

2 A. A number of compulsory pooling --

3 Q. In all that time, have you ever experienced a
4 situation similar to this?

5 A. In my experience in ten years of working in New
6 Mexico, I've never experienced a case such as this, or in
7 20 years of being a landman have I experienced a case like
8 this.

9 Q. In your opinion, will granting Devon's
10 Application, pooling the lands and designating Devon
11 operator of this well and spacing unit be in the best
12 interests of conservation, the prevention of waste and the
13 protection of correlative rights?

14 A. Yes, I do.

15 Q. Is Exhibit Number 5 an affidavit confirming that
16 notice of the amended Application has been provided to all
17 affected interest owners in accordance with the Rules of
18 the Oil Conservation Division?

19 A. Yes.

20 Q. And there's also in there a copy of the notice
21 letter, the Application, and the legal advertisement that
22 was published; is that correct?

23 A. Yes, that's correct.

24 Q. Were Exhibits 1 through 5 either prepared by you
25 or compiled under your direction?

1 A. Yes.

2 MR. CARR: At this time, Mr. Ezeanyim, we move
3 the admission into evidence of Devon Exhibits 1 through 5.

4 EXAMINER EZEANYIM: Is there objection?

5 MR. HALL: No object.

6 EXAMINER EZEANYIM: Exhibits 1 through 5 will be
7 admitted into evidence at this time.

8 MR. CARR: That concludes my direct examination
9 of Ms. Muhlinghouse.

10 EXAMINER EZEANYIM: Mr. Hall?

11 CROSS-EXAMINATION

12 BY MR. HALL:

13 Q. Good morning, Ms. Muhlinghouse.

14 A. Good morning.

15 Q. Ms. Muhlinghouse, do you think the Hearing
16 Examiner should know about Devon's interest in the east
17 half of Section 6?

18 A. It is no secret.

19 Q. What is that interest?

20 A. Devon has a working interest in -- Devon has an
21 interest in the east half, being a 100-percent working
22 interest.

23 Q. And should the Hearing Examiner know that Devon
24 has staked the Canadian 6 Number 1 State well, a Wolfcamp
25 well, in the east half of Section 6?

1 A. Uh-huh, that's -- that's fine, we have.

2 Q. So you acknowledge that?

3 A. Yes, I acknowledge that.

4 Q. And when did that occur?

5 A. I'm not sure of the exact date. I know that was
6 in our plan to drill a well in the east half of Section 6
7 this year when we put together our budget last year for
8 this year. It was on our -- one of our planned budget
9 wells.

10 Q. And would you agree that the Cottonwood-Wolfcamp
11 play is a highly competitive play now?

12 A. It is.

13 Q. Okay. And so would you also agree that Devon and
14 LCX are competitors in that play?

15 A. I mean, if we were trying for the same lease I
16 would say that we could be. But in here we're actually --
17 in the proration unit in question, we're not competing,
18 we're -- both have the same working interest.

19 Q. Earlier, Ms. Muhlinghouse, Devon represented to
20 the Division that it was necessary for Devon to have well
21 data and geologic information and title information in
22 order to prepare for this case.

23 A. Uh-huh.

24 Q. Are you presenting any geologic testimony today?

25 A. No, I am not. I am not a geologist.

1 Q. Okay. Are you presenting any evidence today that
2 touches on the well information that was provided to you?

3 A. No, I'm not qualified to do that.

4 Q. Did you utilize any of that geologic or well
5 information to make the determination to stake a Wolfcamp
6 well in the east half of Section 6?

7 A. No, that was already in our plan.

8 Q. Okay. So it turns out you did not need to
9 utilize the geologic information and well data for purposes
10 of your case here today; isn't that true?

11 A. For this case --

12 Q. Yes.

13 A. -- or for another well that we propose?

14 Q. For this case.

15 A. For this case?

16 Q. For this case.

17 A. We -- I believe that we asked for all the well
18 information and the title information in this case, on this
19 well.

20 Q. Yes, we've established that.

21 A. Uh-huh.

22 Q. My question is, it was not necessary for you to
23 have that case to prepare -- it was not necessary for you
24 to have that information to prepare for this case today,
25 was it?

1 A. I couldn't have -- I didn't get the well
2 information until Monday of this week.

3 Q. Could you answer my question, please?

4 A. No, I could not have the well information to
5 prepare for the --

6 MR. CARR: If the question is, did we use the
7 well information or intend to present anything drawn from
8 that, we do not. We used it to rule out possibilities that
9 would have changed the presentation of this case, but the
10 well appears to be good.

11 Q. (By Mr. Hall) Ms. Muhlinghause, is Devon
12 challenging LCX's operation of this well on any technical
13 grounds?

14 A. No, I have not had any experience with LCX as an
15 operator --

16 Q. Okay.

17 A. -- up until this point in time.

18 Q. So the only reason you're challenging operations
19 and asking for LCX's removal as operator is because of --
20 how would you characterize? -- less than satisfactory
21 communications?

22 A. I have never had anyone drill and complete a well
23 without being notified --

24 Q. All right.

25 A. -- without having any communication. It's -- I

1 haven't had that happen when somebody is not -- is clearly
2 a large working interest owner in this case.

3 Q. Also in this case, Devon represented to the
4 Division that LCX was either ignorant of the Division's
5 rules and policy or ignored them. Would you identify for
6 the Hearing Examiner which rules you're speaking of?

7 A. I don't know the names of the exact -- where are
8 you -- where are you pulling that from?

9 Q. This is a filing that was made on Devon's behalf
10 to the Division, and it was contained in a response to our
11 motion to quash.

12 A. Uh-huh.

13 Q. And I'll read it again. It said, LCX was either
14 ignorant of the Division's Rules and policy or ignored
15 them. I'm simply asking you, are you aware of any Division
16 Rule that was violated here?

17 MR. CARR: Mr. Hall is asking a land person who
18 is not an attorney about legal statements that were made by
19 me in a brief. I don't believe she's qualified to respond
20 to these questions.

21 MR. HALL: Mr. Examiner --

22 EXAMINER EZEANYIM: Go ahead.

23 MR. HALL: May I? Mr. Examiner, the witness has
24 qualified as an expert petroleum landman, and she has
25 testified to you she's had substantial experience in

1 compulsory pooling cases before the Division, at least 10
2 years in New Mexico.

3 EXAMINER EZEANYIM: I will overrule that
4 objection and get some information out of it, you know, so
5 go ahead.

6 Q. (By Mr. Hall) Could you answer the question,
7 please?

8 A. Would you please...

9 Q. Can you identify any Rule, any Division Rule,
10 that was violated in this case?

11 A. I don't know the exact number of the rule number,
12 but I do know that -- I believe that you have to, at the
13 very least, try to come up with some type -- at least
14 propose the well to parties and seek voluntary joinder in a
15 well unit.

16 Q. Before drilling?

17 A. Before drilling, yeah.

18 Q. Would it help you if I provided you with a set of
19 the rules? Would you like to look to that and see if you
20 could identify such a rule for us today?

21 A. I have always been under the impression that the
22 compulsory pooling is for people that you cannot contact
23 and that you cannot get voluntary joinder in a well, and
24 Devon was never contacted in this manner. And Devon was
25 not hiding. I mean, this is just -- I mean, you don't even

1 have to have a title opinion to look and see on a Midland
2 Map Company map that Devon has an interest. And I further
3 found out that LCX did have a title opinion, clearly
4 stating that Devon did have a 37.5-percent working interest
5 in the proration unit, prior to drilling the well.

6 Q. Do you agree with the statement made by your
7 counsel that it is permissible to initiate compulsory
8 pooling proceedings after a well has been drilled?

9 A. Yes.

10 Q. Would you identify for the Hearing Examiner all
11 of the various types of information that has been provided
12 to Devon by LCX?

13 A. I believe we have gotten the drilling reports, an
14 operating agreement, and AFE, which was after the well had
15 been drilled, and as of Monday we had to go through the
16 Commission to subpoena well information.

17 Q. What other information did you receive
18 voluntarily?

19 A. I can't recall at this moment if there's
20 something else I can confirm or deny, if there's something
21 else.

22 Q. Well, do you remember receiving daily drilling
23 reports?

24 A. Yes, I said that we got the drilling reports.

25 Q. Okay, and do you remember receiving a daily cost

1 itemization?

2 A. Yes, that was in -- I previously stated that.

3 Q. All right. And do you remember receiving the
4 casing and cementing program details?

5 A. Yes.

6 Q. Do you remember receiving daily rig reports?

7 A. That was all in one package. That was the
8 package that I believe -- Let me check and see the time
9 that I got those. And I can tell you specifically when I
10 got those. I stated earlier when I got those. That was on
11 January 6th, which was the first -- I finally received a
12 response from LCX, being a clarification of their proposal
13 letter, because their proposal letter was a bit confusing,
14 you know, being that it referenced the well in question,
15 and then the proposal letter was discussing a different
16 well in a different section.

17 I -- So as of January 6th, I got the drilling
18 costs, the drilling reports and the JOA, yes.

19 MR. HALL: Mr. Examiner, I won't seek to make
20 this into an exhibit in the hearing, but if I may approach
21 the witness.

22 EXAMINER EZEANYIM: Okay, you may.

23 Q. (By Mr. Hall) Ms. Muhlinghouse, I'm going to
24 show you a compilation of the materials we've been
25 discussing, the casing and cementing detail, the daily cost

1 itemizations, daily rig reports, daily reports. Does this
2 look like the materials that were provided to you
3 voluntarily?

4 A. Yes, it looks like that.

5 Q. And it's about -- what would you say, an inch and
6 a half thick, the documents?

7 A. (Nods)

8 Q. Is your answer yes?

9 A. Yes.

10 Q. Let's see what else you got. You had requested
11 title opinion?

12 A. Yes.

13 Q. And you didn't receive that?

14 A. No, I did not.

15 Q. Let's turn to your Exhibit -- this will be your
16 Exhibit 3, and you've identified this as Exhibit A to the
17 joint operating agreement that was provided to you?

18 A. Yes.

19 Q. And if you turn to -- look at the first page, and
20 then turn to the second and remaining pages --

21 A. Uh-huh.

22 Q. -- isn't that a complete overview of all
23 ownership and lease information that would otherwise be
24 derived from a title opinion?

25 A. I don't know what was in the title opinion

1 because I did not look at it.

2 And basically the reason why I had asked for the
3 title opinion is because I wanted to show that LCX had
4 clear knowledge that Devon owned a 37-1/2-percent working
5 interest in this proration unit for this well, in August,
6 and that Devon was not served with it -- you know, just
7 like any other well proposal, Devon has not -- the well was
8 not proposed and it was not AFE'd, and -- until after the
9 well was completely drilled. And that is just no common
10 industry practice, to receive the title opinion and to not
11 read it and to not propose a well to the other working
12 interest owners, especially one that owns a 37-1/2-percent
13 interest.

14 Q. Let's talk about Devon's practice. Does Devon
15 make a practice of providing title opinions to other
16 interest owners when they haven't agreed to participate in
17 the well?

18 A. I don't usually -- If they've requested a title
19 opinion or if they've requested information that is in a
20 title opinion that I have had prepared in order to
21 determine what their ownership is, I have provided title-
22 opinion information to them --

23 Q. And so is the answer --

24 A. -- to other working interest owners. I can't say
25 what I do or don't do in every single well, but I have

1 provided title information to other working interest
2 owners, yes, prior to them participating or signing an AFE.

3 Q. And so is the answer to my question no? Is the
4 answer to my question no?

5 A. Would you state your question again?

6 Q. Be glad to. Does Devon make a practice of
7 providing title opinions to interest owners who have not
8 agreed to participate in a well?

9 A. Who have -- We have in the past.

10 Q. All right.

11 A. We have provided title opinions to people who
12 have not committed to a well, yes.

13 Q. All right. Is it your ordinary practice, though?

14 A. If somebody asks and there's not a reason why I
15 shouldn't give it to them, you know, I don't have a problem
16 giving it to them.

17 Q. What is Devon's practice with respect to geologic
18 data and analysis? Do you provide that to interest owners
19 who have not agreed to participate in a well?

20 A. We have at times, when we're discussing an area
21 before or discussing a joint venture, we have had
22 conversations with the professionals, the geoprofessionals,
23 to discuss what is going on in a particular area, yes, we
24 have done that. We don't do it in every case, but we have
25 done that.

1 Q. It's the exception rather than the rule, wouldn't
2 you say?

3 A. I don't know. I mean, if there is something in
4 question and somebody wants to discuss, we have our
5 geoprofessionals available to talk to other working
6 interest owners. I many times say, you know, so-and-so
7 needs to talk to, you know, my geologist. I'll give the
8 other company's geologist the name of our geologist if they
9 want to discuss something that's pertinent to them --

10 Q. I see, but --

11 A. -- uh-huh.

12 Q. -- based on your experience --

13 A. Uh-huh.

14 Q. -- your substantial experience --

15 A. Uh-huh.

16 Q. -- as a professional landman --

17 A. Uh-huh.

18 Q. -- isn't it the custom and practice of the
19 industry that confidential well data, geologic data and
20 interpretation, title opinions, will not be provided to
21 another interest owner in a well unit until that interest
22 owner has agreed to participate? Isn't that true?

23 A. Not necessarily. We discuss well information,
24 title information. Many times I -- many times with other
25 working interest owners without having signed an AFE. I do

1 that all the time.

2 Q. Let's go through some of the other information
3 that --

4 A. Okay.

5 Q. -- was provided to Devon in this case. February
6 24th, your counsel was provided with a neutron density log,
7 gamma-ray log, on-site hydrocarbon analysis log, survey
8 report, directional survey, wellbore schematic, BLM sundry
9 notice, daily drilling reports and well-testing reports.
10 You acknowledge receiving all of that information?

11 A. We got that on Monday of this week, yes, it was
12 delivered to Mr. Carr in Santa Fe on Friday, and he
13 immediately Fed-Ex'd that to us, and we received it on
14 Monday of this week.

15 Q. And you acknowledge that the presentation of
16 these two cases encountered some delay because of the
17 disputes over providing this information to Devon?

18 A. Yes, we had to ask in our subpoena for this
19 information. But as I clearly stated before we asked for
20 this information prior --

21 Q. Right.

22 A. -- earlier.

23 Q. And again, you're not utilizing any of this
24 information in connection with your case today, correct?

25 A. No, I'm not using that right now.

1 Q. Okay. Devon is designated operator. You are
2 requesting the 200-percent risk penalty?

3 A. No, we are not.

4 Q. What are you asking for?

5 A. We are not requesting any risk penalty.

6 Q. Is that because --

7 A. Mr. Carr asked that of me earlier, and I said
8 that either way, we are not -- we are requesting that no
9 risk penalty be assessed, because they're -- the well is
10 already drilled.

11 Q. All right, and is that because Devon has incurred
12 no risk in this case?

13 A. Devon does not believe that a risk penalty should
14 be provided in this case because LCX went out and drilled a
15 well and did not contact Devon prior to that.

16 Q. Okay.

17 A. And this is not common industry practice, to go
18 out and drill a well on somebody else's acreage, which -- I
19 mean, we clearly have a large working interest, and LCX was
20 clearly -- knew that Devon had a 37-1/2-percent interest
21 and apparently chose to have that conversation with other
22 working interest owners and not with Devon.

23 Q. You would agree with me, wouldn't you, that Devon
24 has no risk in this case at this point?

25 A. There should not be -- I agree that there should

1 not be a risk penalty assessed on either side.

2 Q. Do you agree that Devon has incurred no risk in
3 this case?

4 A. Okay.

5 Q. In fact, doesn't Devon have a substantial
6 advantage in the context of this case by having access to
7 all of this well data, geologic data, pressure data,
8 production data, before having to make an election whether
9 to participate in the well? Doesn't that put Devon at an
10 advantage?

11 A. LCX is the one that chose to drill this well
12 without -- without contacting Devon until after the well
13 was drilled.

14 Q. So the answer to my question is yes?

15 A. Repeat your question one more time.

16 Q. Isn't Devon at a substantial advantage in the
17 context of this case by virtue of having all of the well
18 information before having to make an election?

19 A. I think Devon has been given the information that
20 LCX has provided, as we've stated before. I don't know
21 that it actually puts us at an advantage. We didn't choose
22 to do this.

23 Q. So you didn't need the information after all? Is
24 that what you're telling me?

25 A. No, we feel like -- I mean, that there should be

1 a penalty on somebody who actually goes out and drills a
2 well without contacting somebody, that they should provide
3 that information.

4 Q. All right, and that is the sole basis of your
5 request for a penalty, correct?

6 A. That they should provide the information on what
7 they did without asking, yes.

8 Q. Okay. Let's talk about Devon's experience
9 drilling these horizontal Wolfcamp wells. Can you tell us
10 about that?

11 MR. CARR: I'd object to this line of
12 questioning. They're not going to drill a horizontal
13 Wolfcamp well, it's been drilled. The question is, can
14 they operate?

15 EXAMINER EZEANYIM: At this point I'm going to
16 overrule that. I need to get all the information that I
17 need --

18 THE WITNESS: Okay.

19 EXAMINER EZEANYIM: -- to make a decision here.

20 THE WITNESS: Devon is a large working interest,
21 is one of the largest operators in New Mexico. Devon
22 drills horizontal wells in New Mexico and -- as well as
23 Texas, and has a staff that knows how to drill horizontal
24 wells.

25 Q. (By Mr. Hall) All right. Can you point to any

1 specific examples of horizontal Wolfcamp wells that Devon
2 may have drilled and operated?

3 A. Not right in this general area, no.

4 Q. Anywhere at all?

5 A. I know that Devon has horizontal wells that
6 they've drilled in New Mexico and Texas in the Barnett
7 shale area.

8 Q. All right. Do you know whether the --
9 specifically the Wolfcamp wells require any particular
10 drilling or completion techniques?

11 A. I'm not qualified to answer that. I do know that
12 Devon is a very experienced operator in New Mexico and
13 Texas. Actually worldwide.

14 Q. If you would turn to your Exhibit 4, Ms.
15 Muhlinghouse, attached to that is your December 6th, 2005,
16 letter to Mr. Nix.

17 A. You want me to go to December 6th?

18 Q. Yes, please.

19 A. Okay.

20 Q. Do you have that letter in front of you?

21 A. I do.

22 Q. If you'll look at the second paragraph there --

23 A. Okay.

24 Q. -- the last sentence, it says, "Devon has
25 recently sent a letter to the other working interest owners

1 in the proration unit requesting their support of Devon, as
2 Operator." Can you tell us what that letter said?

3 A. Sure.

4 Q. Do you have a copy?

5 A. Yes, I do --

6 Q. Can you provide that to us?

7 A. -- and if you'll look at November 30th, I can
8 tell you exactly what it said, just right before that. And
9 basically, it was just a simple letter. And I believe --
10 Did I send a copy attached?

11 Q. I haven't seen it, is why I ask, so if you have
12 it, would you provide us --

13 A. Sure, I can read it. And basically, I was just
14 telling the other working interest owners -- I had talked
15 to them and I was just stating what had transpired and what
16 Devon was planning on doing. Do you want me to read the
17 letter? I can read the letter.

18 Q. If you would provide us a copy.

19 MR. CARR: Is this the November 30 letter?

20 THE WITNESS: Yes.

21 MR. CARR: And it is attached as the letter right
22 ahead of the one you're looking at in Exhibit 4.

23 THE WITNESS: Yes.

24 MR. HALL: Oh, I beg your pardon.

25 THE WITNESS: Yes.

1 MR. CARR: It's dated November 30th, and it's
2 enclosed.

3 THE WITNESS: I was communicating with the other
4 working interest owners, just telling them what Devon was
5 doing. If they were going to be named in a compulsory
6 pooling, I needed to at least have a conversation and a
7 letter in front of them, which is what I was doing.

8 EXAMINER EZEANYIM: Mr. Hall, let me understand
9 what you're trying to get at on this November 30th letter,
10 because I'm trying to get what your question is.

11 MR. HALL: Let me explain. I was trying to get
12 the November 30th letter, and I didn't realize it was part
13 of the exhibit package until --

14 EXAMINER EZEANYIM: Yeah --

15 MR. HALL: -- Mr. Carr --

16 EXAMINER EZEANYIM: Yeah.

17 MR. HALL: -- pointed it out to us.

18 THE WITNESS: And if you had ever communicated
19 with me and asked me for it, I would have been happy to
20 provide that to you. I never kept that as a secret that I
21 was -- and as I stated in December 6th, in my January -- in
22 my December 6th letter, I said that I was having a
23 communication with the other working interest owners.

24 Q. (By Mr. Hall) Let me ask you something about the
25 November 30th letter.

1 A. Sure.

2 Q. In the body of the paragraph you say,
3 Additionally, Devon proposed that the operations of said
4 unit be transferred to Devon. Devon did not hear a word
5 from LCX for three weeks after the initial phone call on
6 April [sic] 28th, 2005, and then a message was left stating
7 that LCX had been trying to contact legal counsel regarding
8 this matter. So --

9 A. Three weeks after, not right after, correct. And
10 then --

11 Q. It's just three weeks after the initial phone
12 call --

13 A. Right.

14 Q. -- on October 28th, 2005, and then a message was
15 left stating that LCX had been trying to contact legal
16 counsel regarding this matter. Was that a message from Mr.
17 Nix to you?

18 A. Yes.

19 Q. So there was some effort to communicate with you
20 by Mr. Nix --

21 A. Three weeks after my first conversation with him,
22 yes, and I had in between that time sent a letter that had
23 gotten -- elicited no response from LCX.

24 Q. Well, according to your letter, is it accurate to
25 say that it's your belief that the reason LCX had been

1 attempting to obtain legal counsel is because of Devon's
2 demand for removal of operator? Is that reasonable?

3 A. I have no idea why LCX did not contact Devon.

4 Q. My question is, what's your belief why they were
5 attempting to obtain legal counsel regarding this matter?

6 A. I cannot testify as to what LCX was or wasn't
7 doing. I was just stating a fact that -- of what had
8 happened up to that point in Devon's eyes.

9 Q. Okay. But you'll agree it's accurate to say that
10 after Devon demanded LCX's removal as operator, LCX tried
11 to contact counsel? Is that accurate?

12 A. I would think that they would.

13 Q. Okay. Did you also have telephone conversations
14 with the other working interest owners in the west half of
15 the section?

16 A. I did.

17 Q. Could you describe those for us, please?

18 A. I basically told them what had happened in this
19 situation, that it was -- I mean, this is the first time I
20 ever had something like this happen. I've worked New
21 Mexico for a very long time, I've been a landman for a very
22 long time. I've never had this type of situation occur,
23 and it had us concerned.

24 And I just asked if they could support us, and I
25 was told that they were -- by the differently -- I mean, I

1 have a working relationship with the majority of the
2 landmen from the companies here, and they said that they
3 were bound by a larger exploration agreement. And I said,
4 okay, I understand that.

5 Q. So at the time you had these conversations with
6 the other interest owners, you are aware that there was a
7 pre-existing contractual relationship with LCX?

8 A. No, I -- I mean, I found that out when I talked
9 to them.

10 Q. Okay, did these conversations precede your
11 November 30th letter?

12 A. They were in and around. I can't tell you the
13 exact day. I don't remember the exact days of, but I was
14 talking to them right around that area. I don't know the
15 exact dates, I don't have those written down.

16 Q. Were you asking those other interest owners to
17 rescind or disavow their contractual relationship with LCX?

18 A. I asked if they could support Devon as an
19 operator.

20 Q. And would that require the disavowal or
21 rescission of their contractual relationship with LCX?

22 A. I was told by them that they had a contractual
23 relationship with the other -- with LCX.

24 Q. So you got no support for your proposal?

25 A. No, they were previously committed by the larger

1 exploration agreement, which I stated before.

2 Q. Ms. Muhlinghause, did you assist Mr. Carr in
3 preparing the notice to parties and your Exhibit Number 5?

4 A. He did that. I gave him the names --

5 Q. Did you --

6 A. -- and addresses. I gave him the names and
7 addresses of the parties involved.

8 Q. All right. Did you undertake an investigation to
9 determine whether there were any unleased mineral interests
10 in the west-half section?

11 A. No, I knew there was a title opinion, and we had
12 requested that information, and I thought it was -- because
13 we were a joint party in there, I did not deem it necessary
14 to spend more money to go through and do an entire title
15 examination.

16 And that was one of the reasons I wanted the
17 title opinion, was to see if there was anything else out
18 there that had been omitted. I just believed it was
19 wasteful to do it again.

20 Q. Ms. Muhlinghause, isn't it accurate to say that
21 LCX continued to try to negotiate for Devon's voluntary
22 participation in the well, all the way through February?

23 A. LCX, we had our initial conversation; a month
24 later we finally spoke and finally got a well proposal
25 after the well was drilled. I responded to that within a

1 week, and did not get a response from LCX for another
2 month, just even clarifying what their well proposal letter
3 was stating. So it wasn't until January that we actually
4 -- and we have had no conversations with them since the
5 November 23rd.

6 Normally when I'm trying to work with somebody, I
7 call them and discuss it and talk to them about it and let
8 them know where we stand, or I send them a letter, or I
9 have communication. And I did not get that from LCX. And
10 we were not the offending party, and that is something that
11 we expected, to hear from them.

12 Q. All right, my question was, wasn't LCX making
13 efforts all the way into February to obtain Devon's
14 participation in the well?

15 A. Yes, after we -- yes, after we had requested
16 information.

17 Q. All right. And you'll acknowledge that
18 settlement proposals went out under my signature as counsel
19 for LCX to Mr. Carr, and those were communicated to you in
20 February? Do you acknowledge that?

21 A. Yes.

22 Q. How come you didn't respond?

23 A. We were waiting on seeing the outcome.

24 Q. The outcome of what?

25 A. The outcome of what was happening. We did not

1 find what was being proposed acceptable. We thought we
2 were entitled to the well information. When you go out and
3 drill a well without notifying anybody, we believe that you
4 are entitled to the well information, and we were trying to
5 obtain that.

6 Q. Well, well logs and well information were offered
7 to you, were they not, in February?

8 A. Yes. Not in a -- in a very restrictive manner.
9 I have to look at it. It was -- I don't have that in front
10 of me. I'd have to look at it.

11 MR. HALL: Nothing further, Mr. Examiner.

12 EXAMINER EZEANYIM: Mr. Carr?

13 MR. CARR: Yes.

14 REDIRECT EXAMINATION

15 BY MR. CARR:

16 Q. Ms. Muhlinghouse, Devon and LCX are competing
17 operators in this mineral area; is that correct?

18 A. Yes.

19 Q. In this individual well, Devon will share in the
20 production from the well because it owns 37 percent of the
21 well; isn't that right?

22 A. That is correct.

23 Q. In this particular spacing unit are you
24 competitors?

25 A. No, we're not.

1 Q. Are you partners in this well?

2 A. Yes, we should be.

3 Q. You tried to obtain data on this well from when
4 you were first contacted back in October.

5 A. Yes.

6 Q. When did you receive the data on the well?

7 A. I received the data on the well which -- the
8 well-log data, Monday of this week.

9 Q. And when you reviewed that data was that the
10 first time you understood the success or failure or
11 potential success or failure of LCX's effort on the
12 property?

13 A. Correct.

14 Q. Did you need that information to know how you
15 were going to present your case here today?

16 A. Yes.

17 Q. If you'd had a dry hole instead of a well that
18 has a fairly good show, would that have impacted your --

19 A. Yes, that --

20 Q. -- presentation today?

21 So the data that was received wasn't important in
22 preparing your case?

23 A. Yes, it wasn't.

24 Q. Now, you found out about the well October the
25 28th?

1 A. I did.

2 Q. On the 6th of January you got some drilling
3 reports?

4 A. Yes.

5 Q. You didn't get well logs and well data until the
6 24th of February, correct?

7 A. Correct. And actually to where we could view
8 them Monday of this week.

9 Q. And so in fact, trying to get information from
10 the well took you four months?

11 A. That's pretty much it.

12 Q. You've been offered a chance to get the data and
13 logs if you pay your way; isn't that right?

14 A. Yes.

15 Q. You're going to pay your way no matter what;
16 isn't that true?

17 A. If we elect to participate in the well, we will
18 pay our way.

19 Q. And if you don't elect to participate, your share
20 is -- you're going to pay out of your share of the
21 production; isn't that right?

22 A. Correct.

23 Q. So the data you were seeking is something you
24 were going to pay for?

25 A. Yes.

1 Q. As a partner in the well?

2 A. Yes.

3 Q. Not a competitor --

4 A. Correct.

5 Q. -- of LCX in this well?

6 A. Correct.

7 Q. And it took four months?

8 A. It did take that long.

9 MR. CARR: I have no further questions.

10 EXAMINER EZEANYIM: Mr. Hall?

11 MR. HALL: Briefly, Mr. Examiner, thank you.

12 RECROSS-EXAMINATION

13 BY MR. HALL:

14 Q. Ms. Muhlinghause, is it Devon's practice to treat
15 well data as confidential?

16 A. Yes, if it's not -- I mean, there's a lot of well
17 data that is sent out to public record, yes.

18 Q. It was of some importance to Devon to have the
19 well log information and the mud log information for this
20 well; do you agree?

21 A. Yes.

22 Q. Okay. And you were provided on a voluntary basis
23 with the daily drilling reports, as you've previously
24 acknowledged, right?

25 A. The drilling reports, yes.

1 Q. Yes. And isn't it true that on those daily
2 drilling reports it has gas record information?

3 A. I don't know, I did not examine those. I'm not
4 qualified to examine -- go through the entire stack.

5 Q. The purpose of having mud logs is, you're looking
6 for gas shows, correct?

7 A. I would assume so, yes.

8 Q. And isn't that information contained on the daily
9 drilling reports?

10 A. I have not gone totally through there. But if
11 you're telling me that it's in there, I believe you.

12 Q. Did your geologist or engineers utilize that --
13 the gas record information from the daily drilling reports
14 at all? Do you know?

15 A. If it said that there was a gas show, then I'm
16 sure they saw that there was a gas show. A gas show
17 doesn't necessarily mean that it's a good well, on a
18 drilling report doesn't necessarily -- I mean -- I'm
19 getting out of my area, so I'm -- But go ahead.

20 MR. HALL: Thank you.

21 MR. CARR: No further questions.

22 EXAMINER EZEANYIM: Do you have any questions for
23 this witness?

24 MS. O'CONNOR: No, I don't.

25 EXAMINER EZEANYIM: What bothers me is that as we

1 continue, you know, fighting about this, this well has been
2 drilled and shut in. When was this well shut in? Do you
3 know?

4 This well came in at 1.3 million a day, and we're
5 here arguing who's going to operate it. I see -- I mean, I
6 thought both of you could have worked this out and then go
7 ahead with the operation on this well. Can I ask you a
8 question? When was this well shut in?

9 MR. HALL: It's not been connected to sales
10 lines.

11 EXAMINER EZEANYIM: But it's shut in. Since how
12 long has it been shut in?

13 MR. GILLETTE: About two weeks.

14 EXAMINER EZEANYIM: Two weeks?

15 MR. HALL: Approximately.

16 EXAMINER EZEANYIM: So we should have been
17 producing this well, but here we're inducing some waste.
18 However, I have to do my job, you know, deciding the case
19 between two of you, since you can't afford to settle it
20 among yourselves.

21 EXAMINATION

22 BY EXAMINER EZEANYIM:

23 Q. I have a lot of questions here. I don't know
24 whether it's appropriate to ask you or ask whoever -- First
25 of all, is there any disagreement on the orientation of

1 that west half? Could it be oriented a different way? Is
2 there any disagreement among the parties in having the west
3 half if you wanted to, you know, lay down north half, or
4 what? Is there any disagreement on that? No disagreement?

5 MR. HALL: I think --

6 THE WITNESS: Well, I can --

7 MR. HALL: Go ahead.

8 THE WITNESS: I mean, we weren't given that
9 opportunity. The well was -- we were not given that
10 opportunity, to oppose or to -- you know, the well was
11 drilled -- By the time we even found out that they were
12 drilling the well, the well had been drilling for three
13 weeks.

14 Q. (By Examiner Ezeanyim) Okay. So would you then
15 -- answer the question, if the well had not been drilled,
16 would you re-orient the entire unit different from what it
17 is right now?

18 A. I don't know. It could have been, but I mean, it
19 is what it is now. I mean --

20 Q. Uh-huh.

21 A. -- that choice was taken away from us.

22 Q. Yeah, okay, I understand. Maybe during the --

23 A. Right.

24 Q. -- at this hearing I might be able to get that
25 answer from somebody else, because it's important to me

1 that I know whether your orientation is -- you know, are
2 you in disagreement with the orientation of that unit? Do
3 you want west half or, you know, south half or whatever?

4 A. We're not -- we're not challenging that here.

5 Q. Okay.

6 A. We're just -- It is what it is. I mean, it's
7 there.

8 Q. Uh-huh, okay. And again, maybe -- I don't know,
9 a lot of questions I have, is -- The well has been drilled.

10 A. Uh-huh.

11 Q. Do you think that Devon will drill the well at
12 the same spot, at the same place, or do you think you could
13 drill it somewhere else? The place the well is drilled,
14 are you comfortable with that location of the well?

15 A. I have to be, it's been drilled. I mean -- I
16 mean, we were not -- we were not -- I mean, we were not
17 consulted as somebody in that west-half proration unit.
18 Devon clearly, as you can see on my Exhibit 1 and 2 --

19 Q. Uh-huh.

20 A. -- it is -- you don't even have to have a title
21 opinion to see that Devon had an interest there, and we
22 were never, ever consulted, talked to at all --

23 Q. Yeah.

24 A. -- prior to that.

25 Q. Yeah, I understand that, but --

1 A. Right.

2 Q. -- my question is that, you know, I mean, you
3 have no disagreement with the location of that well?

4 A. I --

5 Q. I mean Devon?

6 A. Well, no, because what -- I mean, that has been
7 taken away from us. If we were to have wanted it oriented
8 any differently, by them going out and drilling the well,
9 that -- that right was taken away from us.

10 Q. Yeah, I'm not trying to be --

11 A. Right.

12 Q. -- harsh on you.

13 A. Right.

14 Q. I'm not trying to be harsh on you, I'm trying
15 to --

16 A. Oh, no, that's fine --

17 Q. -- get some information so --

18 A. -- that's fine, yeah, yeah.

19 Q. -- I can, you know --

20 A. No, I'm --

21 Q. When the compulsory pooling application was made
22 -- Who do you want to pool? Because now I -- from your
23 testimony, you say that all other working interests are
24 committed with LCX --

25 A. Uh-huh.

1 Q. -- when you talked to them? Then when you put
2 your application, who do you want to pool?

3 A. We want to --

4 Q. LCX or LCX --

5 A. Well, it would have to be everybody, because
6 they're bound by exploration -- a larger exploration
7 agreement.

8 Q. Uh-huh.

9 A. I don't know that the contract -- I have not seen
10 their contract that they have with their other working
11 interest owners.

12 Q. Yeah, but you know the LCX contract --

13 A. I know that there was one that exists, yes.

14 Q. So in your pooling Application today, are you --
15 I'm looking at the interests, working interests, and I see
16 LCX, Parallel Petroleum Corporation, Capstone --

17 A. Uh-huh.

18 Q. -- CMW --

19 A. Uh-huh.

20 Q. -- Elger Exploration, EOG Resources --

21 A. Uh-huh.

22 Q. -- and then apart from you is Devon, Dorchester
23 Minerals.

24 A. Uh-huh.

25 A. So would you have pooled them individually, or

1 are you going to pool them as -- *en bloc*, because they have
2 committed with LCX? I need --

3 A. Yes --

4 Q. Okay.

5 A. -- yes.

6 Q. What is "yes"?

7 A. Yes, I would be pooling them as well.

8 Q. Individually or together?

9 A. Individually.

10 Q. Individually?

11 A. Uh-huh.

12 Q. Okay.

13 A. And that was why I contacted them.

14 Q. Okay, I understand. And let's -- I don't know
15 whether you're going to answer that because you -- so I'm
16 going to ask you a question. This is the --

17 A. Uh-huh.

18 Q. -- penalty issue. I want you to tell me now why
19 you think the penalty will not be 200 percent. What I
20 understand from your testimony is that because there is no
21 good faith, therefore they didn't tell you about drilling
22 the well, therefore -- and the well has been drilled.
23 Therefore, there will be no 200-percent penalty; is that
24 what your testimony is?

25 A. Is that there should not be a penalty, correct.

1 Q. Yeah. Do you have anything like any geological
2 information or technical information to substantiate that
3 this -- you know, this 200-percent penalty that you are
4 asking me to waive?

5 A. No, I don't.

6 Q. You don't have any? I'm just going -- you know,
7 what in the Rules --

8 A. Uh-huh.

9 Q. -- that part says about 200 percent, because it's
10 a hot issue in this case, and that's why --

11 A. Right.

12 EXAMINER EZEANYIM: Okay. At this time I just
13 want to stop my questioning --

14 THE WITNESS: Okay, sure.

15 EXAMINER EZEANYIM: -- because I know that -- so
16 we can discuss other issues.

17 You may be excused if there is nothing else.

18 Do you have anything else?

19 MR. HALL: Nothing further.

20 EXAMINER EZEANYIM: Okay, you may be excused.

21 MR. CARR: May it please the Examiner, at this
22 time I'd call Raye Miller.

23 EXAMINER EZEANYIM: Okay, Raye, you've been sworn
24 and are still under oath.

25 Mr. Carr, you may proceed.

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RAYE P. MILLER,

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

DIRECT EXAMINATION

BY MR. CARR:

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

A. Raye Miller.

Q. Mr. Miller, where do you reside?

A. Artesia, New Mexico.

Q. By whom are you employed?

A. Employed by Marbob Energy Corporation.

Q. And what is your position with Marbob?

A. I guess we'll use secretary-treasurer today,
might be good.

Q. You have a number of functions with Marbob?

A. We're a small company, do quite a bit of
different work.

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

A. Yes, I have.

Q. At the time of that testimony, were you qualified
as a practical landman?

A. No, I was qualified as a practical oilman.

Q. Are you familiar with LCX?

A. I'm familiar with the well that they proposed to

1 us.

2 EXAMINER EZEANYIM: Excuse me here. Raye Miller
3 is with Marbob Energy. I'm just wondering --

4 MR. CARR: We're going to --

5 EXAMINER EZEANYIM: I'm just wondering what the
6 intention is to --

7 MR. CARR: We're calling Mr. Miller to testify
8 about experiences that Marbob have had with LCX where they
9 have had a difficult time getting information. It's
10 relevant under the rules of evidence, because it's evidence
11 of a practice, a routine practice, of a party, and it's
12 permissible under Evidence Rule 406.

13 MR. HALL: Mr. Examiner, may I inquire, is Mr.
14 Miller going to be asked to express an opinion?

15 MR. CARR: Yes, he is.

16 MR. HALL: We would object. I don't think he's
17 been qualified. And I certainly don't mean any disrespect
18 or discourtesy to Mr. Miller. His contributions to the
19 agency, I think, are well known and appreciated.

20 But I don't think the sponsor has adequately
21 proffered him as an expert that would entitle him to
22 express an opinion. I don't think practicality is an
23 established expertise in any court that I'm aware of.

24 I'm trying to think of the last time I ever
25 objected to anyone's qualifications over here, but in this

1 case I don't think what we've heard so far even comes close
2 to meeting any of the Daubert standards for sponsoring an
3 expert witness.

4 EXAMINER EZEANYIM: Yeah, very good --

5 MR. CARR: Mr. -- Let me respond, please. He's
6 not being tendered as an expert. He's tendered as a fact
7 witness. He has dealt with LCX, he has an opinion, it is
8 permitted and it is relevant under Article 4 of the Rules
9 of Evidence, and in particular it is authorized opinion at
10 testimony, is expressly authorized by Rule 406.B.

11 EXAMINER EZEANYIM: I want to address both cases
12 here. As you know, this is not a civil or, you know,
13 criminal court. This is a hearing process, which doesn't
14 take rigid formality in -- because I'm not a lawyer, and
15 that's why I have an attorney here with me. So you might
16 forgive me if I make mistakes, and I'm going to make them,
17 because I'm not a lawyer.

18 If you listened to me previously, you find that I
19 don't want to sustain any objection, because I want to get
20 all the facts to help me make a decision here, you know.
21 So that's why we, you know, overrule that objection and
22 have the testimony, and -- Okay, go ahead.

23 MR. HALL: Maybe I can shortcut this, Mr.
24 Examiner. We think the witness may offer relevant fact
25 testimony. I think that's proper, provided it's relevant.

1 We don't think he can express an opinion.

2 (Off the record)

3 EXAMINER EZEANYIM: Well, my attorney has advised
4 me, and we're going to allow Mr. Miller to testify, but he
5 can only testify to the facts and not express opinions --

6 MR. HALL: I understand.

7 EXAMINER EZEANYIM: -- whatever that means.

8 Q. (By Mr. Carr) Mr. Miller, are you familiar with
9 LCX?

10 MR. HALL: There's nothing he doesn't have an
11 opinion on, virtually.

12 (Laughter)

13 THE WITNESS: Well, when I -- and I probably
14 shouldn't ask this, but if I start expressing an opinion
15 just holler.

16 EXAMINER EZEANYIM: We appreciate that because,
17 you know, you don't express opinion, but you can testify to
18 the facts. And I'm looking to the facts, because I need
19 the facts, not the opinions. Leave the opinion to me, but
20 just let me have the facts.

21 MR. HALL: Appreciate it. I have an obligation
22 to represent my client --

23 EXAMINER EZEANYIM: Of course --

24 MR. HALL: -- that's the reason for the
25 objection.

1 THE WITNESS: Mr. Fesmire also knows I have
2 opinions. Would you like to know some of my qualifications
3 before we go forward?

4 MR. HALL: That's fine.

5 THE WITNESS: I mean, I'd be happy to explain my
6 25 years of history and what I do.

7 EXAMINER EZEANYIM: You may proceed --

8 THE WITNESS: Would you like to have more
9 qualifications as to what I do?

10 MS. O'CONNOR: What I understood from your --
11 from the attorney is that you are not going to be qualified
12 as an expert; is that correct?

13 MR. CARR: That is correct.

14 EXAMINER EZEANYIM: Yeah.

15 MS. O'CONNOR: So I don't know whether you would
16 still like to hear any of his qualifications or not, but
17 it's not going to be relevant to tendering him as an
18 expert.

19 EXAMINER EZEANYIM: I've heard his qualifications
20 in previous cases, but that's okay since he's just
21 testifying to the facts, you know, we can go forward.

22 Q. (By Mr. Carr) As a matter of fact, do you know
23 LCX?

24 A. A company that is associated with this Pitch
25 Energy Corporation received a well proposal from LCX in an

1 area close to the Devon case.

2 Q. Were you or Pitch contacted about the well?

3 A. Yes, if I can give just a few facts, the well
4 that is -- that we were contacted on was the 1724 Ross
5 Number 121. It was the east half of Section 12 of 17-24,
6 660 from the south, 1880 from the east, Eddy County, New
7 Mexico. Pitch owned a 6-1/4-percent interest in the
8 minerals in the southeast quarter. As such, we had a 3.125
9 interest in the east-half proration unit. We received a
10 proposal from LCX on September 16th, 2005. That proposal
11 was dated by them September 14th, 2005.

12 We responded back to LCX that we would consider
13 participating and we would like to have a JOA to review.

14 We received a JOA that was incomplete and
15 unacceptable on September 28th.

16 In our conversations with the LCX landman, there
17 was no request or indication -- I said contract landman,
18 there was no request or indication of a need for a quick
19 decision.

20 In October we determined that LCX was already
21 drilling the well. We contacted the contract landman and
22 asked him if they had spudded the well. He said he did not
23 think so. We asked him to check.

24 Now, the reason we thought they'd spudded the
25 well is because our office is in Artesia, and the well was

1 two miles west of Artesia, and one of our guys says, Looks
2 like there's a rig standing up out there on that location.
3 And so I sent out landman out to actually look, get the
4 well sign, where the rig was, and we knew they were
5 drilling before we contacted him. Those are facts.

6 He said he did not think so.

7 We asked him to check.

8 He called back and said they had spudded the well
9 on October 5th. We asked for title and information on the
10 well. I should say, they did provide us with title
11 information on the well. I didn't have that in my notes,
12 but it's been asked multiple times on other case.

13 We determined that one of the Yates companies had
14 an interest similar to ours in this well. We contacted
15 them to see what they had done. They did not have an
16 agreement with LCX and were amazed that LCX was drilling
17 without an agreement with either one of us. Their interest
18 was virtually identical to ours. They had a 6-1/4 interest
19 in the minerals in the southeast quarter where the well was
20 located, 3.125 working interest in the proration unit.

21 Our analysis led us to decide to lease to LCX
22 rather than participate because of concerns that if this is
23 the way they conducted their business, then we did not want
24 to be a partner with them.

25 We have participated in every well proposal in

1 Eddy County that we've received in the last 10 years except
2 twice, before this deal. We have significant tax problems,
3 thankfully, and as a result are trying to spend our capital
4 in our business.

5 LCX had not indicated to us that there was any
6 rush, they had not filed a compulsory pooling against us at
7 the time. We concluded by giving them a lease on October
8 31st that was effective October 1st, so that we were out.
9 Our decision to lease is probably a loss of value to our
10 company, but we felt that it was the most prudent decision,
11 given the strange performance of LCX at the time.

12 Q. How does your company deal with outside parties?

13 A. I can understand LCX's dilemma. We have four
14 drilling rigs running currently. Last year, we had five
15 rigs running the entire year. It is very difficult to stay
16 ahead of rig schedules, leasing expirations. But I work to
17 have everyone in some type of agreement prior to spudding
18 wells. I cannot remember a case in the last several years
19 where I did not have everyone under some type of agreement
20 prior to actually spudding.

21 Q. Have you had other situations come to Marbob and
22 Pitch where a well is drilled without your being -- known
23 of it, in a property in which you have an interest?

24 A. I had never had one in the 25 years I'd been
25 there until this one.

1 MR. CARR: That's all I have.

2 EXAMINER EZEANYIM: Mr. Hall?

3 MR. HALL: May I approach the witness?

4 EXAMINER EZEANYIM: You may.

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Miller, I'm going to hand you what I've
8 marked as Exhibit A. Let me ask you if the documents that
9 comprise Exhibit A look familiar to you. Can you identify
10 that?

11 A. I do not actually remember the first document.
12 The second document is actually the one I did reference, so
13 I'm not aware of whether we received the first document or
14 not.

15 Q. All right, you --

16 A. I can tell you that the second document was
17 received. It was received on September 16th. And yes, we
18 did receive that.

19 Q. You indicated your first contact was, I believe,
20 September 14th?

21 A. No, I said --

22 Q. September 16th?

23 A. -- the letter was dated September 14th, we
24 received it on September 16th. That's the second letter
25 that you have in your packet there.

1 Q. All right. So the first letter, the September
2 8th, lease proposal, simply didn't make it to your desk?

3 A. I don't know that we ever received that lease
4 proposal. It may have been lost in the mail, it may not
5 have been sent out by your folks. I do know that the
6 September 14th letter was received, yes, sir.

7 Q. Okay. You'll agree that the September 8th letter
8 was a lease proposal submitted on behalf of LCX Energy?

9 A. Could have been. I don't remember seeing it.

10 Q. Okay. If you look at your September 14th letter
11 -- that's the second letter in Exhibit A --

12 A. Yes.

13 Q. -- first entry there, "Pursuant to our
14 conversation", do you know what date that conversation was?

15 A. It would have been a few days before that, I
16 suspect.

17 Q. Okay. Would you happen to know when LCX acquired
18 its acreage in Section 12?

19 A. No, sir, I would not.

20 Q. Okay. And how long had Pitch Energy owned its
21 mineral interest in Section 12?

22 A. It had owned it for several years, I believe, it
23 was part of an acquisition that we did from Nix Oil and Gas
24 properties, Ralph Nix [sic].

25 Q. All right. Because it's a mineral interest, you

1 had no lease-expiration problem with that acreage?

2 A. No. No, it's a fee mineral interest, and we own
3 100 percent.

4 Q. Any reason why Pitch didn't seek to develop its
5 interest in Section 12?

6 A. We had a small interest, we have small interest
7 in fee, state and federal minerals scattered throughout
8 Eddy, Lea and Chaves County. We -- I -- you know, I mean,
9 our lease position is large, and yet it doesn't rival some
10 of the folks down the street, but we have a lot of leases.
11 And we are looking for areas -- this is not an area where
12 we are active in, we're not involved in the play, we've
13 watched it from afar, but we have a -- you know, very
14 scattered, small interest in the play area, and as a result
15 it's not been an area of our focus.

16 Q. Okay. The next letter is the September 27, 2005,
17 letter to Mr. Duncan. To your understanding, this is the
18 transmittal letter for the operating agreement?

19 A. Yes, sir. And we did receive -- I did say that
20 we received the operating agreement. You can also see how
21 quickly we responded back to LCX in the fact that there are
22 only a few days from the fact of the September 16th letter
23 until we indicated we would be participating back to you.

24 Q. And you indicated that LCX had provided title
25 information to you.

1 A. It was not done at this time. It was after we
2 had discovered that the well had been drilling. I raised a
3 hissy -- Oop, is that an opinion?

4 Q. Could you demonstrate? No.

5 (Laughter)

6 THE WITNESS: Mr. Fesmire has seen it, he knows
7 what I'm talking about.

8 Q. (By Mr. Hall) But you acknowledge you did
9 receive the title information?

10 A. We -- After we had LCX admit that they had been
11 drilling the well and confirmed it to us, we asked for well
12 information, and we asked for a title opinion. I believe
13 when we received the title opinion is when we identified
14 that the other Yates company was involved, and we contacted
15 them to see if they were going to participate, because I
16 mean, they have a large staff of geologists, engineers, to
17 see what they were doing, because -- I mean, we were upset
18 at that point, and so I contacted Yates.

19 Q. And that title information revealed to you, did
20 it not, that there was a lease with an expiration date of
21 October 23, 2005, in that unit?

22 A. It may have been in the title information. I was
23 primarily focused on our interest to see if there were any
24 title requirements related to our interest, and also to see
25 -- you know, I was curious to see who the other partners

1 were in the deal.

2 Q. And by spudding the well on October 5th, LCX
3 acted to preserve the expiring lease, didn't it?

4 A. Your people can testify to that, I don't know.

5 Q. Okay.

6 A. I mean, I wasn't -- there was no indication to
7 us, in the September 16th or the conversations by phone,
8 that LCX was in a problem and needed us to make a quick
9 decision. We responded quickly, because it's our practice
10 as a small company. We have a habit -- and maybe I'm
11 giving opinions now, but we have a habit of believing if
12 we're not going to do something, we ought to make deals
13 with folks. I hate companies that just sit on their
14 acreage and won't act, you know. And so as result we
15 responded.

16 But they never conveyed to us that they had a
17 lease problem. The title opinion was not received until
18 after the well was spudded, so I didn't know that they had
19 a lease expiration at the time they spudded or at the time
20 of these correspondence.

21 Q. How long do you believe LCX was sitting on its
22 acreage, as you say?

23 A. I have no idea.

24 Q. Well, isn't it true that LCX didn't acquire the
25 acreage till about April 21st?

1 A. I can't answer the question because I don't have
2 an opinion. Your folks will have to testify to that.

3 MR. HALL: Nothing further, Mr. Examiner.

4 EXAMINER EZEANYIM: Do you have any questions?

5 MS. O'CONNOR: No.

6 EXAMINATION

7 BY EXAMINER EZEANYIM:

8 Q. Well, I'll ask this question. Don't give me an
9 opinion, but just give me facts. Okay, you said your own
10 case -- I don't know whether it is for Pitch or for Marbob
11 or something -- you --

12 A. It's for Pitch Energy.

13 Q. Pitch, okay.

14 A. Pitch Energy Corporation.

15 Q. Okay, Pitch Energy. You got an incomplete JOA?

16 A. The JOA did not have -- The Exhibit A was not
17 filled out. There were problems with the JOA that we
18 received.

19 Q. And therefore you couldn't participate because
20 you --

21 A. We communicated the problems with the JOA back to
22 LCX, but by the time we had the next conversation with
23 them, we already were aware that they had spudded the well.

24 Q. So you decided to leave instead of participate?

25 A. That's correct. We had a small interest.

1 I talked it over with Mr. Gray -- who is the
2 owner -- or he and his sister own the two trusts, who own
3 Pitch Energy. Mr. Gray is the acting manager, he's
4 president of both Pitch and Marbob. I explained to him
5 that, you know, I was upset, that we should probably fight
6 the deal.

7 And Mr. Gray asked me how much we had in it.

8 I explained.

9 He asked me what we had done with LCX.

10 I told him we had no experience with them.

11 He asked me what we thought we would be doing in
12 the future.

13 I says, I don't know of any, you know, reason
14 that we would be dealing with them in the future.

15 He said at this point what were our options?

16 I outlined the options to him.

17 And he explained to me that he thought it would
18 just be better if we went ahead and leased to them, if we
19 could make a reasonable lease, because of the fact that,
20 you know, we were very concerned about their operations.

21 Q. And you -- for the record, you also said that
22 other companies like Yates and the people operating in that
23 area do the same thing, they just list to LCX instead of
24 participate. And do you know whether they do that?

25 A. I -- You know, after we made our decision to

1 lease to LCX, we conveyed that decision to the Yates folks,
2 and it is -- you know, a lot of folks group the Yates folks
3 -- it's either the Myco or Sharbro folks that are actually
4 involved, it's not Yates Petroleum. And once we
5 communicated what our decision was, I never followed up to
6 see what they decided to do.

7 Q. So you don't know whether they participated or
8 leased to LCX?

9 A. No.

10 Q. Okay.

11 A. No.

12 EXAMINER EZEANYIM: Okay, that's all I have.

13 MR. HALL: Mr. Examiner, to follow up on
14 something you elicited through a question, might I ask a
15 couple of more questions.

16 EXAMINER EZEANYIM: Okay, go ahead.

17 FURTHER EXAMINATION

18 BY MR. HALL:

19 Q. Mr. Miller, isn't it true that the negotiations
20 between LCX and Pitch were made with Mr. Gary Duncan?

21 A. No. You mean Mr. Ross Duncan?

22 Q. Sorry, Mr. Ross Duncan, beg your pardon.

23 A. Some of the conversations were with Mr. Ross
24 Duncan, and then some of the conversations were with
25 myself, and particularly when the hissy occurred, that -- I

1 threw the hissy myself, he didn't throw it.

2 Q. So there may have been additional conversations
3 between Mr. Duncan and Mr. Stoltz and LCX that you weren't
4 aware of?

5 A. No, I actually asked -- when I heard about the
6 Devon case and the problems they were having, I asked Mr.
7 Duncan to outline all of the facts of our discussions,
8 because my mother has Alzheimer's -- that's a fact -- I
9 have dementia -- that's an opinion --

10 (Laughter)

11 THE WITNESS: -- and as a result, tried to
12 identify clearly what our deal had been with LCX so that I
13 would be able to represent fairly the transaction that
14 occurred.

15 Q. Okay, you've not made Mr. Duncan available for
16 cross-examination today?

17 A. If you want him, I can get him flown up. The
18 plane is here, I'd have to go back and get him.

19 EXAMINER EZEANYIM: What are you trying to get at
20 by your questions? What are you trying to get at? I want
21 to understand what you're trying to do.

22 MR. HALL: We are simply attempting to test the
23 credibility of the testimony.

24 THE WITNESS: Mr. Duncan explained to me that --
25 he gave me --

1 MR. HALL: That's hearsay --

2 THE WITNESS: -- all the facts.

3 MR. HALL: -- and we would object, Mr. Ezeanyim.

4 THE WITNESS: Okay. Yeah, that's an opinion.

5 EXAMINER EZEANYIM: Well, that will be sustained.

6 Let's take about 10 minutes' break, and then we
7 can turn to the other witnesses --

8 THE WITNESS: May I ask one question? This is
9 not an opinion, this is a fact.

10 EXAMINER EZEANYIM: Okay.

11 THE WITNESS: Do you need me -- Do you need me
12 anymore today, or -- because I will stay if you want me,
13 but then --

14 MR. CARR: No, we won't need him and would
15 request that he be excused.

16 EXAMINER EZEANYIM: Okay, yeah, it's okay with
17 me.

18 THE WITNESS: I just -- I didn't want to -- if
19 you wanted to grill me longer, I'm certainly available.

20 EXAMINER EZEANYIM: Do you need any --

21 MR. HALL: Have you had enough?

22 THE WITNESS: I kind of like it that I'm an
23 outsider to this fight, so...

24 MR. HALL: Okay.

25 EXAMINER EZEANYIM: Okay, we'll take about 10

1 minutes break and come in by 12:00. Let's get this thing
2 done before we go to lunch. So twelve o'clock we'll be
3 back here.

4 (Thereupon, a recess was taken at 11:50 a.m.)

5 (The following proceedings had at 12:02 p.m.)

6 EXAMINER EZEANYIM: All right, let's resume by
7 calling the other witnesses by LCX.

8 MR. HALL: Mr. Examiner, before we took our break
9 I intended to move admission of Exhibit A, and I so move at
10 this time.

11 MR. CARR: No objection.

12 EXAMINER EZEANYIM: Okay, Exhibit A will be
13 admitted into evidence. You are talking about this --

14 MR. HALL: The exhibits we used with Mr. Miller.

15 EXAMINER EZEANYIM: Okay, yeah. This one?

16 MR. HALL: Yes, sir.

17 EXAMINER EZEANYIM: Are you going to use it
18 again?

19 MR. HALL: No, sir.

20 EXAMINER EZEANYIM: Okay.

21 MR. HALL: At this time, Mr. Examiner, we would
22 call Frank Nix to the stand.

23 EXAMINER EZEANYIM: Frank, you have been sworn,
24 so you are still under oath.

25 Mr. Hall, proceed.

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

4 DIRECT EXAMINATION

5 BY MR. HALL:

6 Q. For the record, please state your name, sir.

7 A. Frank Nix.

8 Q. And by whom are you employed?

9 A. LCX Energy.

10 Q. In what capacity?

11 A. Landman.

12 Q. And where do you live?

13 A. Midland, Texas.

14 Q. Have you previously testified before the Division
15 Examiners in New Mexico?

16 A. No.

17 Q. If you would, please, give a brief summary of
18 your educational background and work experience.

19 A. Okay, I graduated from Texas Tech University in
20 1975, May, 1975, with a BBA in accounting. I went to work
21 for Gulf Mineral Resources in Denver, Colorado, and was in
22 the coal industry for five years, some accounting, some
23 land work.

24 Then went to work in Midland, Texas, in 1980 with
25 Texaco and was a landman, and I've been a landman there

1 with -- well, the layoffs in 1986 and the downturn in the
2 industry, from that point on I was an independent doing
3 contract land work and field land work and special projects
4 and in-house jobs for various companies since that time.

5 I was doing some in-house for CMS Oil and Gas,
6 and they were bought out by Parenco. Parenco put me on
7 full time because I was doing Texas land work in the
8 Sprayberry Plain, Midland County, for them, had done that
9 job for them. And then when LCX bought Parenco they wanted
10 me to stay on, and I've stayed on with them till this time.

11 Q. For clarification, was Parenco the prior owner of
12 the property that's the subject of the Application before
13 the Examiner today?

14 A. Yes, it was.

15 MR. HALL: At this time, Mr. Examiner, we would
16 offer Mr. Nix as a qualified expert petroleum landman.

17 EXAMINER EZEANYIM: Mr. Nix is so qualified.

18 Q. (By Mr. Hall) Mr. Nix, you are familiar with the
19 Application that's been filed on behalf of LCX in this
20 case?

21 A. Yes.

22 Q. As well as the subject lands?

23 A. Yes.

24 Q. Would you briefly explain to the Hearing
25 Examiner, what is LCX seeking by its Application?

1 A. We're trying to force pool the Abo and Wolfcamp
2 formations from the surface to the base of the Wolfcamp on
3 the -- do we need the description?

4 Q. Yes, sir.

5 A. -- the west half of Section 6, Township 17 South,
6 Range 25 East, Eddy County, New Mexico.

7 Q. All right. Have you prepared or assisted in the
8 preparation of certain exhibits in conjunction with your
9 testimony today?

10 A. Yes.

11 Q. All right, let's refer to Exhibit 1. Would you
12 identify that in the notebook, please, and explain that to
13 the Hearing Examiner?

14 A. Yes, this is a land map of the area that we've
15 used in drilling our wells. And I guess you can see
16 Section 6 there in the shaded area, is leasehold that LCX
17 owns.

18 And the -- as it turns out, the two -- the two
19 white tracts -- of course, that doesn't show the west half.
20 There's a -- the northeast of the northwest and the east
21 half of the southwest is owned by Devon, and that's the --
22 that's the problem we're having today.

23 Q. Right. And by the way, does Devon also control
24 100 percent of the east half of Section 6?

25 A. Yes.

1 Q. Is the west-half proration unit a full 320-acre
2 unit?

3 A. Yes.

4 Q. Isn't it a 319.94-acre unit?

5 A. Well, yes, it's 319 because of the lots, uh-huh.

6 Q. Okay. And your primary objective for the well is
7 Wolfcamp?

8 A. Right.

9 Q. And the well has been drilled, correct?

10 A. Right.

11 Q. And the surface and bottomhole locations for the
12 well are reflected on Exhibit 1?

13 A. Right.

14 Q. Because Devon is interest owner in the east half
15 of Section 6, do you view Devon as a competitor with LCX in
16 this area?

17 A. Yes.

18 Q. Let's talk about the ownership in the west-half
19 unit. Would you identify all the interest owners and their
20 working interest percentage, please, sir?

21 A. Okay. LCX Energy has a 35.2-percent interest;
22 Capstone has a 5.7; CMW Interests has -- they have an
23 interest, but they farmed out in a back-in at payout --
24 Elger Exploration has a .5-percent interest; EOG Resources
25 has a 15.3-percent interest; Dorchester Minerals has a 1.5;

1 and Devon has a 37.5-percent.

2 Q. And all of those interests and the breakout are
3 reflected on the face of Exhibit 1?

4 A. Right.

5 Q. And are all of those interests except for the
6 Devon interest currently committed to the well?

7 A. Yes.

8 Q. Let's look at Exhibit 2 briefly. Is that a copy
9 of the APD for the well?

10 A. Yes.

11 Q. And does it identify the surface and bottomhole
12 locations?

13 A. Yes.

14 Q. Could you indicate those for the Hearing
15 Examiner?

16 A. Uh-huh.

17 Q. What are those locations?

18 A. Let's see, the surface location is 660 feet from
19 the north line, 760 feet from the west line, and the
20 bottomhole location is 660 feet from the south line and 760
21 feet from the west line of Section 6, Township 17 South,
22 Range 25 East --

23 Q. All right.

24 A. -- Eddy County, New Mexico.

25 Q. Now if you would, please, would you explain to

1 the Hearing Examiner the historic ownership of the LCX
2 acreage in the west half of Section 6?

3 A. Okay, CMS Oil and Gas purchased this exploration
4 project from Capstone Oil and Gas. And Capstone leased it
5 -- and that was a few years ago -- and they've been leasing
6 an area.

7 And then CMS was ultimately sold to Parenco Oil
8 and Gas, and Parenco came in and took over and drilled a
9 few wells in the area with, oh, questionable success. They
10 weren't -- There were various wells, about six of them.

11 And then Parenco announced itself for sale in
12 about October of 2004. And then they sold to LCX Energy,
13 and that was effective April 1st of 2005. So that was just
14 before we started this drilling campaign that we got on.

15 Parenco had kind of had questionable success out
16 there, and when they sold that to LCX, LCX bought it
17 without a large interest in this play. But there was about
18 70,000 acres associated with this acquisition.

19 And when LCX got in there and they started
20 looking at it geologically, they thought -- they had some
21 other ideas they wanted to try and saw leases starting to
22 expire and coming up and got busy and said, Let's go drill
23 some wells and see if we can't prove this thing up.

24 They got with their other partners, EOG and
25 Parallel and Capstone, and got some good information and

1 tried some different things and had a great deal of success
2 since that time. They wanted to explore all of the acreage
3 they had, they didn't want any of it to expire, and -- But
4 they came into it kind of blind, because when Parenco left,
5 about September of 2004, they had started to wind down, or
6 else they saw the sale coming and had lost interest and
7 were just kind of coasting through there waiting for the
8 new owner to come in.

9 Primarily LCX bought Parenco for the things I was
10 working on in Midland County, the Sprayberry wells. We had
11 drilled, over a period of four years, about 320 wells and
12 since then have continued to drill with two rigs going
13 nonstop back to back in Midland County. And that's what I
14 was actually doing for Parenco.

15 The land people we had handling New Mexico, one
16 left in July, and then we had another person in there
17 working for us, and they left in January, and Parenco
18 didn't replace the New Mexico landmen because -- I don't --
19 well, because they were selling.

20 When LCX took it over, they were new to the area
21 and asked me if I would watch that for them, and that's
22 when we got started.

23 Q. All right. And prior to that time, Parenco had
24 made no effort to develop the Wolfcamp in this particular
25 section anyway; is that correct?

1 A. I'm sorry?

2 Q. Parenco had made no attempt to develop the
3 Wolfcamp formation in this particular section?

4 A. Oh, no, not in this section, no.

5 Q. Okay. And you say the Parenco acquisition was
6 about April 1, 2005; is that correct?

7 A. Right.

8 Q. And how many acres were involved overall in that
9 acquisition?

10 A. Approximately 70,000 acres --

11 Q. All right.

12 A. -- in the Eddy County -- this Eddy County play.

13 Q. Was that acquisition specifically for the
14 Wolfcamp play?

15 A. Uh-huh.

16 Q. You need to indicate "yes" to the --

17 A. Yes.

18 Q. And how many wells were involved with the LCX
19 Wolfcamp drilling program?

20 A. The LCX drilling program or the Parenco?

21 Q. LCX?

22 A. Well, 12 to 14 wells.

23 Q. All right.

24 A. I'm not sure what we're at today, but about 12
25 wells last time I checked.

1 Q. And you began that drilling program when?

2 A. In July --

3 Q. Okay.

4 A. -- 2005.

5 Q. 2005?

6 A. Uh-huh.

7 Q. All right. Let's look back again with respect to
8 this well, your Exhibit 2. When was the APD filed for this
9 well?

10 A. July 21st, '05.

11 Q. Okay, and when was that approved?

12 A. Let's see. September 14th, '05.

13 Q. Let's turn to Exhibit 3 in the notebook. Would
14 you identify that, please, sir?

15 A. Uh-huh. That's a proposal to participate in the
16 well, specifically the 1725 Fed Com 61, with EOG Resources.

17 Q. All right. And is Exhibit 3 a compilation of all
18 the well proposals that went out to the various working
19 interest owners on September the 2nd?

20 A. Yes, Elger Exploration and Capstone Oil and Gas,
21 EOG Resources, Parallel Petroleum. Yes.

22 Q. Now, and as we understand, everyone except Devon
23 was included in this first mailing; is that right?

24 A. Actually Dorchester was not included in this one.

25 Q. Okay, we'll address that in a minute. But you're

1 only seeking to pool the interests of -- the working
2 interest of Devon here today by your Application?

3 A. Correct.

4 Q. Now, let me ask you in connection with providing
5 notice of this hearing, we notified the Cecil and Courtney
6 Booker Brown Trust. Can you explain a little bit about
7 that interest?

8 A. That was -- under the title opinion -- Well, one
9 of the requirements, we've taken a lease from the CBF Trust
10 under the Wells Fargo Bank. And we had that lease, and our
11 title examiner had come up and said that he needed the
12 Cecil Booker Feldman individually. Well, that was supposed
13 to be covered under that CBF Trust. And one of his
14 requirements was to get the bank to get a copy of the trust
15 agreement so that he could waive that requirement as an
16 unleased person. We're trying to get that from the bank
17 and we've got somebody working on curative, and they're out
18 getting that documentation.

19 Q. Do you believe that to be a leased interest; is
20 that correct?

21 A. Yes.

22 Q. And in the event it is not a leased mineral
23 interest, are you asking the Division to pool that as an
24 unleased mineral interest at the statutory 1/8 royalty
25 rate?

1 A. Yes.

2 MR. HALL: And Mr. Examiner, by way of
3 explanation, if as a result of the title curative
4 requirement it turns out that we can verify the interest as
5 leased, we will notify you of that and ask that that
6 portion of the Application pooling what we thought was an
7 unleased mineral interest be dismissed.

8 EXAMINER EZEANYIM: Okay, I'll take
9 administrative notice of that.

10 You may continue.

11 Q. (By Mr. Hall) If you would generally, Mr. Nix,
12 would you describe your efforts, starting on September 2,
13 2005, to obtain the voluntary participation of all the
14 other working interest owners in the well?

15 A. Under the 61 well?

16 Q. Yes, sir.

17 A. Well, I need to go back just a little bit and
18 explain just a little bit of something here.

19 Q. Do so.

20 A. I primarily was a landman in Texas for Parenco,
21 and then when they left I assumed these duties in New
22 Mexico, but I don't have a great deal of New Mexico
23 experience, although I've got -- I've got 26 years in land
24 work in Texas in the Midland/Permian Basin area, I've run
25 records out in New Mexico.

1 And what I was doing for Parenco and CMS the
2 whole time was, all of their land work on the Midland
3 County play, which was a lot of wells that we drilled, a
4 lot of title opinions, but I negotiated the damages with
5 the surface owners, letters, I did everything myself. And
6 that seemed to be what they wanted me to do when they hired
7 me on as a contract landman. And I handled that for CMS,
8 and Parenco wanted me as an employee and hired me on and
9 kept me doing the same thing.

10 And when we took over with LCX, they asked for me
11 to -- when they decided to pick up -- and they decided
12 right away to pick up the New Mexico play, it was rather
13 new to me. But I tried to do it the same way, I tried to
14 do the whole thing.

15 So I discovered after a couple of months of this
16 that it was just overwhelming, that there's a whole lot to
17 do with -- when you deal with the OCD and the BLM and the
18 State of New Mexico and things. And I started hiring some
19 really good people to help me. And I'm not sure if we're
20 back to this, but I started hiring some really good people
21 to help me.

22 And in this pooling of these interests, or in
23 this -- we sent out our AFEs to the partners and people
24 that we believed owned an interest in this well. I had
25 this -- I was trying to lease the open interest, and I had

1 another landman come in and help me and start leasing open
2 interest, and I asked him to check the title opinions and
3 get me everything required, that we needed, to have it
4 ready to drill. And he started off on that.

5 It was right about this time that he did that.
6 He said there were three open interests and that he had --
7 that the one was the Booker Feldman that the bank had, the
8 other was Dorchester, he was in negotiations with them, and
9 -- and there was one other lease interest. Maybe the one
10 in -- there's Booker Feldman, Dorchester -- but there
11 wasn't any -- it wasn't Devon. And he came back and he had
12 no knowledge of Devon, and he said he had picked up
13 everybody that was open and he had that leased. I glanced
14 at the title opinion. It appeared leased to me because it
15 said everything was leased except the open interest, and
16 there were mineral interest owners.

17 And so we went ahead and moved on down because we
18 had two -- we went from one rig to two rigs, and we had a
19 lot of work that was going on, and our goal was to try and
20 get ahead of the drilling landwise, but we were getting
21 such a late start that we were behind the gun on
22 everything.

23 We thought we -- This was one of the ones that
24 looked like it was the cleanest. We thought we had it all
25 under lease, our drilling engineer thought we had it all

1 under lease because I thought -- I told him I thought it
2 was all leased. And he went out one day and started
3 drilling.

4 And once he started drilling he came in and he
5 said, I've commenced this well.

6 And I said, Oh, really, when?

7 And he said, A couple weeks ago.

8 So I started going back to prepare the
9 communitization agreement, and that's when I discovered
10 Devon owned one of the leases. When he said it was all
11 under lease, I thought we had all the leases, but it was
12 just a mistake on my part. And I felt really bad and
13 embarrassed and didn't know what else to do about it.

14 And that's when I picked up the phone -- Should I
15 go on, on this?

16 Q. Well, let me back you up --

17 A. Okay.

18 Q. -- just a minute here. When you acquired the
19 Parenco properties only last April, in conducting your
20 review of title did it appear that you had a number of
21 expiring leases?

22 A. Oh yeah, yeah, we had a lot of expiring leases.

23 Q. And was there an expiring lease involved in this
24 acreage?

25 A. Uh-huh, there was an expiring lease.

1 Q. And what was the date of that lease expiration?

2 A. I believe it was October --

3 EXAMINER EZEANYIM: October 29th?

4 THE WITNESS: October 29th.

5 Q. (By Mr. Hall) All right, and is that the reason
6 LCX commenced the well, to hold that lease?

7 A. Right, right, we had a bunch of expiring leases.
8 We had to put our rig schedules -- We had two rigs going,
9 but we had to get over to drill, to maintain our acreage,
10 as quick as we could. They take about 30 days, 35 days, to
11 drill. And this was a particularly tough period in the
12 fourth quarter, getting from one location to the next that
13 our engineers were under, trying to get these locations.

14 Q. All right. So back to Exhibit 3, your initial
15 well proposals to everyone who you thought at the time
16 should have them, those included AFEs to all those parties
17 as well?

18 A. Right.

19 Q. And they're included as Exhibit 3?

20 A. Right.

21 Q. Now let's turn to -- Let me back you up for a
22 minute. Do those AFEs comprising Exhibit 3 indicate
23 acceptance by those interest owners?

24 A. Yes, they're all signed --

25 Q. All right.

1 A. -- signed AFES.

2 Q. Let's turn to Exhibit 4. If you would identify
3 that and explain the significance of that.

4 A. Dorchester was an unleased mineral interest
5 owner, and we contacted them to see if they would like to
6 participate. And they thought about it for some time and
7 negotiated with this landman that I had hired and came up
8 and asked if they could participate with a portion of their
9 minerals and lease the balance of their minerals, and we
10 said that would be fine.

11 And so we entered into a -- This is their letter
12 to us, saying they elect to participate with 25 percent of
13 their unleased mineral interest. And then they sent us a
14 lease for the balance of their mineral interest.

15 Q. All right. And what was the date of their
16 transmittal letter, their AFE?

17 A. October 31st.

18 Q. And this was after the well had been commenced;
19 is that right?

20 A. Yes.

21 Q. All right. Now, let's talk about what happened
22 with the Devon interest. Why don't you explain that?

23 A. Well, again, it appeared to us that we had
24 everything under lease. My communication with my field
25 landman was, it was all under lease. This one appeared to

1 be one of the easier problems we were working on at that
2 time. We had several locations coming up with a lot of
3 unleased mineral interest owners, professionals that
4 usually wait till you get ready to spud a well to contact
5 them.

6 We wanted to contact everybody in advance, that's
7 what we want to do. We don't want to go out there and
8 drill on somebody un-notified. That's not a policy or a
9 practice or anything, we do not want to do that.

10 And so -- Where were we?

11 Q. Please explain your first contact with Devon's
12 landman.

13 A. Okay. So anyway, we thought we had that
14 location, we thought it was all leased and it was taken
15 care of. And I started to prepare the com agreement after
16 Larry had told us we had already spud the well a couple of
17 weeks ago. And I looked down there, and as I'm filling out
18 the com agreement, I get to the last lease and I go to the
19 back pages, and this one little line, it says Devon Energy.
20 And I went, Ooh, this is bad. And I felt real bad about
21 that, because again we thought we had it all under lease.

22 But we -- you know, it was my mistake, or -- my
23 landman, in our miscommunication -- something happened
24 there where I thought it was there, he thought it was all
25 leased.

1 So I thought, Well, who do I know at Devon? And
2 I've known Devon over the -- Meg over the years.

3 So I picked up the phone and called her, and I
4 was in a bit of a shock because I've never been in this
5 position before. And I called her and I said, Meg, I've
6 got a problem.

7 And we talked about it a while, and I didn't know
8 how to approach her, and I didn't know she handled this
9 area. I thought she just worked for Devon and was going to
10 give me to someone to handle this area. And then as I
11 found out, she handled this area. And I said, Well, Meg,
12 we've actually --

13 She said, Well, what's the problem?

14 I said, Well --

15 She said, Don't move the rig.

16 And I said, Well, we can't, we've already spud
17 the well a couple of weeks ago.

18 And she said, Well, tell them to stop drilling.

19 EXAMINER EZEANYIM: Do you remember the day you
20 made that call? Do you remember the day you made that
21 call, that first call to Devon?

22 THE WITNESS: Yes, October 28th.

23 EXAMINER EZEANYIM: Okay, go ahead.

24 THE WITNESS: And -- And after talking to Meg I
25 felt really bad, because she said her people were not going

1 to be understanding of this at all. And she suggested I
2 talk to management and go forth from there.

3 So then I went and talked to -- I called our
4 title attorney, just to see what the situation was, and he
5 said that we were on our lease, we were on our leasehold,
6 we hadn't broken any laws, that -- but we needed to go
7 ahead and keep working on this situation, but that -- I was
8 afraid maybe we'd trespassed or something bad.

9 And then I went and talked with our in-house
10 counsel who suggested I call a regulatory attorney here in
11 New Mexico -- Are we still going?

12 Q. (By Mr. Hall) Go ahead.

13 A. -- regulatory attorney here in New Mexico and
14 find out what -- how we should respond to this.

15 And I contacted -- I tried to contact him for a
16 week. And then I got back to Mike and told Mike. And Mike
17 said, Well, I know him, let me call him. And so Mike
18 called him for a week, and then I called him for another
19 week. That same week, we both tried to call him. We never
20 received an answer. And then the following Monday we got a
21 force pooling order from Devon, and he was representing
22 Devon.

23 So inadvertently we were trying to communicate
24 with Devon, but we weren't getting an answer.

25 Q. Let's turn to Exhibit 5. If you would identify

1 that, please, sir.

2 A. Well, that's a fax that I sent to Meg.

3 Q. What date?

4 A. November 23rd, 2005.

5 Q. And did you explain your efforts to try to obtain
6 New Mexico counsel?

7 A. Yes.

8 Q. And is that a fax -- a transmission cover sheet
9 for a letter dated November 23rd?

10 A. Yes. And I had mentioned to Meg when we
11 communicated on the 28th that I was sorry about this, that
12 it was an oversight, that we did not mean to push them
13 around or any way make them feel pushed around. We wanted
14 them to participate or lease or come to some acceptable
15 terms.

16 And she just said her people were going to be
17 very unhappy about it.

18 Q. Let me ask you about what she said. In Devon's
19 Exhibit Number 4, it's a compilation of Ms. Muhlinghouse's
20 notes about these contacts. The entry for October 28th,
21 2005, indicates that you admitted the well had been
22 started. Is that an accurate characterization of the
23 conversation?

24 A. Oh, yeah, I told her the well had been started a
25 couple weeks earlier.

1 Q. Were you trying to hide anything from Ms.
2 Muhlinghouse?

3 A. No, huh-uh. No, I wanted -- I was trying to be
4 terribly open and tell them exactly that I had made a
5 mistake, and I hoped we could work this out.

6 Q. At that time did Ms. Muhlinghouse demand that LCX
7 surrender operations of the well?

8 A. On the 28th?

9 Q. Yes, sir.

10 A. No, but shortly after that she did.

11 Q. All right. Was --

12 A. She said her people were going to be terribly
13 upset, she didn't know what they were going to come up
14 with. She didn't specifically say hand over operations on
15 that day.

16 Q. All right. But was it the tone of Devon's
17 conversation that prompted you to obtain counsel?

18 A. Oh, yeah, yeah.

19 Q. Now, going back to Exhibit 5, the main letter in
20 that, the November 23, 2005, is that the first formal well
21 proposal to Devon to obtain their participation in the
22 well?

23 A. That's the first formal letter, yes.

24 Q. All right. And by the way, let's address
25 something. If you'll see the caption on the November 23rd

1 letter, it refers to the 1725 Fed Com 61 well --

2 A. Uh-huh.

3 Q. -- and then if you look in the first paragraph,
4 there's a reference to the 1625 State Com Well 201 in
5 Section 20. What happened there?

6 A. Well, again, I'd been -- I type my own letters,
7 and sometimes it's hard to see your own mistakes. And
8 probably I didn't check that well enough, but that's a
9 typographical error. We'd only talked, in all our
10 conversations, about the 1725 Fed Com Number 61. She knew
11 where that was and was well aware of the location.

12 EXAMINER EZEANYIM: So that was a mistake too --

13 THE WITNESS: Yeah.

14 EXAMINER EZEANYIM: -- it's not 1625? I was
15 wondering if that's another well or something.

16 THE WITNESS: Is that another well?

17 EXAMINER EZEANYIM: Yeah, is your 1725 here --

18 THE WITNESS: 201, yes, we do, we did have. We
19 drilled 12 wells over that period of time --

20 EXAMINER EZEANYIM: Okay.

21 THE WITNESS: -- and I was -- this wasn't the
22 only thing I was working on, and it -- you know, and it
23 just got mixed in.

24 EXAMINER EZEANYIM: Okay.

25 Q. (By Mr. Hall) So just like Ms. Muhlinghause's

1 November 30th letter to the other interest owners
2 identifying the Fed Com Number 1 well, it was a typo?

3 A. Right.

4 Q. And along with your well proposal you transmitted
5 an AFE, and that's attached as part of Exhibit 5, correct?

6 A. That's correct.

7 Q. Now, were your efforts to communicate with your
8 New Mexico counsel successful?

9 A. No, they weren't, they weren't.

10 Q. What response did you, in fact, receive from your
11 counsel?

12 A. We received a force pooling order on behalf of
13 Devon, was our first response.

14 Q. All right. When did you -- when was that filed,
15 do you know?

16 A. It was filed November 15th.

17 Q. All right, and when did you receive that?

18 A. November 21st.

19 Q. All right. Tell us more about the communications
20 back and forth between you and Ms. Muhlinghouse.

21 A. Well, you know, I tried -- I -- all these other
22 people we'd been able to talk with and have a communication
23 with, and with Ms. Muhlinghouse the first one was kind of
24 curt. She was sympathetic, but she was not -- Well, she
25 was sympathetic to me being in my position, having made a

1 mistake, but she wasn't sympathetic to LCX drilling without
2 calling them, and she was real plain about that.

3 And then -- so she said, You need to talk to
4 management and see what they want to do. So that's when we
5 went and visited with our counsel and tried to get hold of
6 our regulatory counsel, to see how we should start
7 responding to this, because again we're relatively new in
8 New Mexico and we want to follow the rules, and we want to
9 get off on the right foot and do things correctly, and it
10 was -- So that's where we were.

11 Q. All right.

12 A. I had called Ms. Muhlinghouse several times, and
13 the last conversation she said I hadn't been communicating
14 with her.

15 And I said, Well, Meg, the phone works both ways.

16 And she's never called me. She called one time
17 and left a message, but she's never called me and talked to
18 me, ever.

19 Q. Let's talk about some of those conversations.
20 Again, with your Exhibit 5, your November 23rd well
21 proposal to Devon, if you'll turn to Exhibit 6, do you see
22 that? It's a letter dated December 6th, 2005, from Ms.
23 Muhlinghouse to you. And it references a telephone
24 conversation, very first sentence, on Wednesday, November
25 23rd --

1 A. Uh-huh.

2 Q. -- 2005. And did a conversation take place at
3 that time?

4 A. Yes, uh-huh.

5 Q. And how did that conversation go?

6 A. That's the one where I called to tell her we had
7 this ready to send to her.

8 Q. All right.

9 A. And that's the one where she said she was
10 disappointed we hadn't been communicating with her in kind
11 of a curt fashion. And I was just saying, you know, if you
12 need to talk to me, call me. You know, you don't -- it
13 became apparent that everything we had to do with them was
14 going to have to be in writing, because it looked like they
15 were documenting the case here with written letters, and I
16 was trying to phone-call. So...

17 Q. Ms. Muhlinghouse did not document that November
18 23rd conversation in her Exhibit 4, did she?

19 A. I guess not. I don't have that. I thought she
20 mentioned it in her testimony.

21 Q. She may have, I beg your pardon.

22 Turning back to Exhibit 6, in that letter was Ms.
23 Muhlinghouse demanding title opinion?

24 A. Yes.

25 Q. And was she also demanding well information?

1 A. Yes.

2 Q. And was she also demanding LCX's removal as
3 operator?

4 A. Yes.

5 Q. All right. After December 6th, what happened
6 next?

7 A. Well, let's see. Devon filed an amended
8 compulsory pooling, amended their Application for
9 compulsory pooling.

10 Q. Was that on December 6th?

11 A. Uh-huh. And LCX files their Application for
12 compulsory pooling on December 8th.

13 Q. All right. Now let's turn to Exhibit 7, if you
14 would identify that, please, sir.

15 A. That's a letter from me to Ms. Muhlinghouse.

16 Q. All right. And summarize that letter, please.

17 A. Well, I told her that I did make a typographical
18 error in my letter dated -- or as she referred in her
19 letter dated December 6th, I did make a typographical error
20 on the well name -- and that we reiterated we wanted to
21 request their voluntary participation in the Fed Com 61,
22 and towards that end we were going to provide them with
23 actual -- itemized actual drilling cost incurred to date
24 and daily drilling reports, and that the well reached TD,
25 and that LCX had temporarily delayed completion of the well

1 to allow Devon the opportunity to indicate whether it would
2 join in the well, and that there was an enclosed operating
3 agreement, and upon Devon's -- upon receipt of Devon's
4 share of estimated drilling and completion cost, we would
5 provide them with copies of title opinion for the spacing
6 unit and well logs.

7 Q. Okay. And so the January 6th letter transmitted,
8 among other things, the joint operating agreement. And is
9 that provided in brief form as part of Exhibit 7? Is that
10 the next page?

11 A. Yes.

12 Q. And if you'll look at the Exhibit A that's part
13 of the operating agreement, does that also provide all the
14 title information for the west-half unit?

15 A. Yes.

16 Q. Now let's turn to Exhibit 8. What comprises
17 Exhibit 8?

18 A. The daily drilling cost and the daily drilling
19 report. These are -- it's -- this is one day reflected out
20 of materials that were sent, but they had all the days for
21 the daily cost during the drilling of the well, daily
22 drilling reports, the casing and cementing detail, the
23 drilling report itself, for each day up to that time.

24 Q. And so this is simply a sample of what you
25 provided to Ms. Muhlinghause on January 6th for one day,

1 correct?

2 A. Right, right.

3 Q. But you gave her all of these sheets for each day
4 during drilling; is that correct?

5 A. Right.

6 Q. All right, what happened next? What was Devon's
7 response to your reiterated request that they participate
8 in the well?

9 A. They had not yet elected to participate, and they
10 still requested logs and title opinions by letter.

11 Q. And if you'll look at Exhibit 9, was that the
12 first response you had to your January 6th letter?

13 A. Right.

14 Q. And again, they were demanding well logs and
15 title opinion, as you say?

16 A. Right.

17 Q. Mr. Nix, did you continue to work with Devon to
18 obtain their voluntary participation in the well throughout
19 this dispute?

20 A. I think I did, I think we made a lot of efforts.
21 You know, it was my mistake not to con- -- I wanted to
22 contact them. If I hadn't -- if I'd have seen it, I would
23 have contacted them prior to drilling the well, we would
24 have made every effort to get their joinder or some
25 participation in there. It was an oversight, and -- But

1 since that time, in telling them that, we've continually
2 tried to provide them with more information so that they
3 would be more comfortable in making an election and either
4 participating or leasing or farming out to us, some other
5 opportunity. And short of turning over operators, I think
6 we've given them everything they've asked for except for
7 operations.

8 Q. Based on your experience as an expert petroleum
9 landman in the area, is it the custom and practice in the
10 industry that a well operator would provide title
11 information and well information, geologic information and
12 interpretation, to nonparticipating interest owners for
13 free?

14 A. No, huh-uh. Besides, we're under contract with
15 our partners --

16 Q. All right.

17 A. -- they've paid for that information.

18 Q. Is Exhibit 9, the January 11th letter, is that
19 the last communication you had from Devon?

20 A. Yes.

21 Q. Subsequent to that time, let's look at Exhibit
22 10. What is Exhibit 10?

23 A. Well -- Oh, that's our offer to allow them to see
24 the logs to help -- if they would -- if they would agree to
25 making a decision so that we didn't have to come to

1 hearing, we would allow them to see the logs.

2 Q. All right. And is Exhibit 10 a compilation of
3 letters beginning on January 27th, 2006, from your counsel
4 to Devon's counsel proposing just that, that they would
5 provide logs, provided there was an election made to
6 participate?

7 A. Right.

8 Q. And was that offer, in fact, extended?

9 A. Yes, it was.

10 Q. Was it extended to February 7th?

11 A. Yes.

12 Q. And did you ever receive any sort of response to
13 this at all?

14 A. No, huh-uh.

15 Q. Mr. Nix, you're aware that Devon asked the
16 Division to issue a subpoena for well information in order
17 for it to prepare for Devon's case today?

18 A. Yes.

19 Q. And you're aware that that well information was
20 delivered to Devon; is that correct?

21 A. Yes.

22 Q. Even after providing that well information, was
23 there any further communication or any indication from
24 Devon that they would or would not participate in the well?

25 A. Not with me, no.

1 Q. Okay. In your opinion, Mr. Nix, have you and LCX
2 made a good faith effort to obtain the voluntary
3 participation of Devon in this well?

4 A. I think so, uh-huh.

5 MR. HALL: That concludes my direct of this
6 witness, Mr. Examiner.

7 EXAMINER EZEANYIM: Mr. Carr?

8 MR. CARR: Do you want to move the admission of
9 the exhibits?

10 MR. HALL: Yes, I do, thank you very much.

11 Move the admission of Exhibits 1 through 11.
12 Also, Mr. Examiner -- 1 through 10. Exhibit 11 is our
13 notice affidavit in support of the LCX pooling Application.

14 EXAMINER EZEANYIM: Mr. Carr, do you have
15 objection?

16 MR. CARR: No objection.

17 EXAMINER EZEANYIM: Okay, Exhibits 1 through 11
18 will be admitted into evidence at this point.

19 Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. CARR:

22 Q. Mr. Nix, if we go to your Exhibit Number 1, the
23 plat, and if we look at the spacing unit in the west half
24 of Section 6, part of that is shaded. Is that the acreage
25 that is covered by the area of mutual interest agreement?

1 A. Well now, the shaded in 6, or at the bottom, that
2 line going across the bottom?

3 Q. I'm talking -- Well, where is the area of mutual
4 interest? That might be a better question.

5 A. It's -- Well, you can see part of it on this
6 plat.

7 Q. Uh-huh.

8 A. That dark line that goes across through Artesia
9 Airport and goes east-west and down along the east side of
10 11 and across the south side of 11, that's the area of
11 mutual interest north.

12 Q. Okay. And what is the shaded acreage north of
13 that line? What does that indicate?

14 A. That's LCX's leasehold interest.

15 Q. And so LCX is the -- owns the working interest to
16 the west of the proposed location?

17 A. Yes.

18 Q. You testified, I believe, that Devon was a
19 competitor of LCX in this area?

20 A. Uh-huh.

21 Q. As to the spacing unit, the west half of the
22 section, do you consider Devon your competitor in the west-
23 half spacing unit?

24 A. Well, I kind of do because they haven't
25 voluntarily worked with us.

1 Q. Aren't they going to share in the production from
2 the well one way or the other?

3 A. One way or the other, they're going to share.

4 Q. And as such, they will have a 37-percent interest
5 in that well --

6 A. Yes.

7 Q. -- isn't that right?

8 A. Uh-huh.

9 Q. And as such, when you deal with them, do you deal
10 with them as a competitor or as a partner in that well?

11 A. Well, I guess until they start making their
12 payments they're a competitor.

13 Q. In terms of paying, they could agree today and
14 sign an AFE and pay their share, correct?

15 A. Correct.

16 Q. If they don't and they're force-pooled, you would
17 withhold their share out of production, would you not?

18 A. Yes.

19 Q. So either way, eventually they're going to be
20 paying a proportionate share of the costs associated with
21 the development of this acreage?

22 A. Well, yeah, but we'd rather have it right now
23 instead of later on.

24 Q. But you'll -- if you get it later on, you may get
25 it with more than just 100 percent; isn't that right? If a

1 penalty is imposed?

2 A. If the penalty is assessed.

3 Q. If I look at your Exhibit 2, this is the APD for
4 the well.

5 A. Uh-huh.

6 Q. At the top it indicates that you're the contact
7 person for LCX; is that correct?

8 A. Correct.

9 Q. Joe Janica has signed this with you. Is he one
10 of those people that you employed, who has experience in
11 New Mexico, to assist?

12 A. Absolutely.

13 Q. And he has regulatory experience in New Mexico?

14 A. Yes, yes. Excellent, excellent person.

15 Q. Did you confer with him about how you would go
16 about compulsory pooling?

17 A. No.

18 Q. You at that time didn't even think compulsory
19 pooling was going to be needed; is that correct?

20 A. Right, right.

21 Q. Now, you are the person who was responsible for
22 combining the interests in the west half of this section
23 for this well; is that not right? Are you the land person?
24 Was it your job to combine the interests for the drilling
25 of this well?

1 A. For the communitization agreement --

2 Q. Yes.

3 A. -- or just overseeing or --

4 Q. Well, who at LCX was in charge of getting all the
5 various interest owners committed to a west-half unit?

6 A. I was directing our field broker to do that.

7 Q. And at this point in time, if I understand your
8 testimony, all other interest owners except Devon have
9 committed their interest to a west-half unit?

10 A. They were in communication. The Dorchester group
11 -- he was dealing with the Dorchester group, and they were
12 going to do something with us --

13 Q. But as of today, have they all joined?

14 A. Yes.

15 Q. Okay. Now, I look at the documents behind your
16 Tab 3. There are letters to EOG and other with AFEs behind
17 those, and they have been executed. Are all of the
18 interest owners -- EOG and all of the interest owners
19 behind this tab also governed by the area of mutual
20 interest agreement?

21 A. Yes.

22 Q. And so when you write EOG, the first letter
23 behind Tab 3, and you say, This well is being proposed as a
24 horizontal Abo/Wolfcamp test on jointly owned acreage under
25 the Joint Operating Agreement attached to our Leasehold

1 Exchange and Area of Mutual Interest Agreement dated
2 January 5th [sic], 2004, they're actually committed by that
3 other agreement to sign this, aren't they?

4 A. They could -- they could go nonconsent. And that
5 operating agreement was an exhibit to the exploration
6 agreement --

7 Q. If they went -- if they went nonconsent under
8 that agreement, though, the interests would be combined,
9 they would just be in a nonconsent posture?

10 A. Yes.

11 Q. And so the only interest that wasn't covered by
12 this area of mutual interest agreement was actually Devon's
13 in the spacing unit?

14 A. Well, and Dorchester.

15 Q. Okay.

16 A. And that Booker Feldman interest.

17 Q. It's just a mistake that you missed Devon? Is
18 that what it was?

19 A. Uh-huh. You don't miss something that big on
20 purpose.

21 Q. When you look at the map that is Exhibit 1, there
22 are obviously tracts that aren't shaded; is that right?

23 A. Uh-huh.

24 Q. Who ordered the title opinion?

25 A. I did.

1 Q. And when you got the title opinion, did you not
2 notice the entry on the title opinion that Devon had an
3 interest?

4 A. I did not notice the entry where Devon had a
5 title opinion. I had been used to using a different
6 attorney in Texas, and his style of delivering title
7 opinions was different. And this is a very good title
8 attorney and he's very thorough and he lists things several
9 times. And the first page just showed working interest
10 owners and their part, and then he showed a blank for
11 unleased. And in that unleased portion is where my field
12 landman went out and said, I've acquired all the unleased
13 interest.

14 Q. You did have information both the area of mutual
15 interest agreement and a title opinion, all of those were
16 in your possession that showed Devon had an interest when
17 you actually went -- LCX actually commenced drilling; isn't
18 that true?

19 A. Well, the area of mutual interest didn't show
20 Devon having an interest out there.

21 Q. But it did show that this acreage wasn't -- did
22 it -- I mean, would it reflect that the acreage was not
23 committed? Do you define the area that's defined by this
24 area of mutual interest agreement other than being north of
25 this line?

1 A. I'm not quite sure what you're asking.

2 Q. Does this mutual interest agreement identify
3 properties individually, or does it just define a general
4 area?

5 A. It's a general area.

6 Q. Okay. But you did, when the well was actually
7 commenced, have a title opinion --

8 A. Yes.

9 Q. -- in your possession?

10 And if we look at the information that you have
11 on the well, admittedly these other interests are committed
12 because of the mutual interest agreement, but each of their
13 individual working interest ownership is set out? And if
14 -- am I not correct that Devon is actually the largest
15 individual working interest owner --

16 A. Yes --

17 Q. -- in the spacing unit?

18 A. -- they are.

19 Q. Okay. You explained that you were involved with
20 Parengo and in a sense sort of followed the problem --

21 A. Right.

22 Q. -- is that fair to say?

23 A. Uh-huh.

24 Q. The lease was obtained in early April, and the
25 APD was prepared in July and then approved in September,

1 correct?

2 A. Correct.

3 Q. You filed an acreage dedication plat that showed
4 the entire west half, and again it was just that you had
5 missed the Devon interest?

6 A. Right.

7 Q. When you get a title opinion like this -- and I
8 believe it was received on or about August 9th; is that
9 correct?

10 A. I'm not sure of the date, it's August --

11 Q. But it was received before you drilled the well?

12 A. Right.

13 Q. Okay. Who pays for that title opinion?

14 A. Well, the partners pay. We bill the partners out
15 for their proportionate --

16 Q. Under this area-of-mutual-interest agreement?

17 A. Not, not -- actually, it would be when they sign
18 their exhibit showing that they -- the operating agreement
19 goes into effect for the west half. It's not under the
20 exploration agreement; they're parties to the exploration
21 agreement.

22 Q. If Devon were to join in the well, would it be
23 paying a share of the costs of the title opinion?

24 A. Yeah.

25 Q. Are the shown in the AFE anywhere? I couldn't

1 find it.

2 A. Probably under land cost, but I don't think it's
3 set out particularly -- It may not be shown under the AFE
4 unless it's just under land cost. I don't think it's shown
5 there.

6 Q. Okay.

7 A. I haven't looked for it.

8 Q. I did, I couldn't find it.

9 Are costs for the geological study and the
10 engineering work, are those also billed to the partners?

11 A. No, huh-uh, everybody handles their own
12 geological work.

13 Q. So on this well, would LCX --

14 A. Except for logs, you know, for logs.

15 Q. -- would LCX alone be paying for all geological
16 services in terms of developing the prospect?

17 A. Well, I'm not sure what you're asking there
18 either.

19 Q. I'm really asking, if Devon joins are they going
20 to be paying you for part of the costs incurred in
21 developing the prospect in terms of geology or engineering
22 data?

23 A. No, huh-uh.

24 Q. Okay, that's --

25 A. Now logs, they will for logs.

1 Q. But they would bear the -- other costs are being
2 borne by LCX alone?

3 A. We've got employees, geologists, landmen, and
4 those are employees in their pay. But under the AFE it's
5 the drilling cost of the well and the equipment and logging
6 the well and completion of the well. So they would be
7 paying their part of that.

8 Q. When you commenced drilling October the 7th, you
9 had a lease expire.

10 A. Uh-huh.

11 Q. When did you first find out about Devon's
12 interest in the property?

13 A. October 28th.

14 Q. And what happened on that date that brought it to
15 your attention?

16 A. I was preparing the communitization agreement.

17 Q. And did you consult the title opinion?

18 A. Yes, that's when I was going through the detail
19 of the title opinion.

20 Q. And at that time the well was already drilled?

21 A. It was in the process of drilling.

22 Q. You proposed -- You faxed a well proposal and an
23 AFE to Devon on November 23rd.

24 A. Uh-huh.

25 Q. This was a month after it had been requested; is

1 that right?

2 A. Yes, yes.

3 Q. And that was on a day that you --

4 A. Well, how long -- I don't know if it's exactly a
5 month, it may be 26 days or something --

6 Q. It was the 23rd --

7 A. -- pretty close.

8 Q. All right, we'll say it was close to a month.

9 Ms. Muhlinghouse's Exhibit Number 4 did indicate that there
10 were communications between the two of you on that date.

11 Is that --

12 A. Which --

13 Q. On the 23rd.

14 A. Yes.

15 Q. All right. Is that consistent with your
16 recollection?

17 A. Yes. And I just remember one call to her, I
18 don't remember back and forth.

19 Q. I mean, Ms. Muhlinghouse testified that she had
20 called and not gotten a response and that there was
21 dialogue or attempts back and forth to reach one another.
22 Do you know whether or not that actually happened?

23 A. I don't remember that.

24 Q. Okay. Could it have happened and you not
25 remember it?

1 A. I don't think so in this case.

2 Q. On that day you also faxed the well proposal and
3 an AFE?

4 A. Yes.

5 Q. That was the well proposal in which there was an
6 error?

7 A. Right.

8 Q. If we go through the relationship between you and
9 Devon, isn't it fair to say that there was generally about
10 a month turnaround, letter to letter, response to response?

11 A. Well, yeah, you could probably say something
12 three to four weeks in there, four weeks.

13 Q. I mean, we received a well proposal that had a
14 typographical error in it and asked for clarification, and
15 it took 30 days to get clarification. Is that a typical
16 kind of --

17 A. Well, the typo --

18 Q. -- cycle that we're dealing with?

19 A. -- the typo probably didn't need a lot of
20 clarification. I don't think it did. That particular
21 month was December --

22 Q. Uh-huh.

23 A. -- and I had five rigs running, and I was getting
24 to a lot of other things too that were urgent.

25 And then Christmas holidays came along, January

1 1st came along, that holiday, and I was gone on vacation
2 for a week. So that month may not be quite as long as it
3 seems. But anyway, we would like to get back quicker if we
4 could.

5 Q. I'm the title attorney you tried -- the
6 regulatory attorney you tried to reach; isn't that right?

7 A. That's right.

8 Q. Do you know when you first tried to call me?

9 A. November 1st.

10 Q. Okay. I checked my records, and I had a call on
11 the 8th and the 11th. You placed a call before that time?
12 You received --

13 A. Eleventh -- just a minute, let me look at --
14 Yeah, that would be the second week that we were trying to
15 call you, and Mike Short and I both called you during that
16 week.

17 Q. The inability to reach me could have caused,
18 then, a delay of a couple -- two and a half weeks or so --

19 A. Right, right, yes.

20 Q. Beyond that period of time, your inability to
21 reach me didn't have any bearing on when you drilled the
22 well?

23 A. Right.

24 Q. It didn't have any bearing on the delays after
25 Mr. Hall started representing you and producing data; is

1 that right?

2 A. Correct.

3 Q. On the 23rd of November, the call between Ms.
4 Muhlinghouse and you, that's the day she requested an AFE
5 and you submitted it to us.

6 A. Uh-huh.

7 Q. It was still three months before we got any of
8 the well logs or well data.

9 My question is, back in -- When did you complete
10 the well?

11 A. We may have to ask our engineer. I don't know
12 the date we completed it.

13 Q. Had it been completed by the 23rd of November?

14 A. The drilling of the well?

15 Q. Yes.

16 A. Not the frac'ing and completion date.

17 Q. You had drilled it by then? When did you log the
18 well?

19 A. I don't know when we logged it.

20 Q. Do you know if it had been logged before the 23rd
21 of November?

22 A. I don't know.

23 Q. Were you involved in decisions as to whether or
24 not you would provide that data to Devon?

25 A. Yeah, I was in the discussions.

1 Q. Was it -- Did you decide not to produce the
2 information?

3 A. The logs --

4 Q. Yes.

5 A. -- and the title opinion? Yes.

6 Q. And they were only produced after, in fact, the
7 Oil Conservation Division ordered you to do that?

8 A. Uh-huh.

9 Q. We received last week a new AFE for the well.

10 A. Okay.

11 Q. Have you seen the AFEs that have been submitted?
12 Do you know why the numbers might be different?

13 A. No.

14 Q. At this point in time with the well actually
15 drilled, you have actual well costs, do you not, by now?

16 A. Uh-huh.

17 Q. And before anybody would be required to join,
18 don't you think you should submit the actual well cost to
19 them?

20 A. We can do that.

21 Q. Do you know how the actual costs compare -- I'm
22 just asking -- to the AFE cost?

23 A. No.

24 MR. CARR: That's all I have, thank you.

25 EXAMINER EZEANYIM: Re-examine, Mr. Hall?

REDIRECT EXAMINATION

BY MR. HALL:

Q. Mr. Nix, would you have felt compelled to obtain the assistance of New Mexico regulatory counsel in the ordinary course of efforts to obtain somebody's participation in the well?

A. No.

Q. And why was that necessary in this case?

A. Well, because Ms. Muhlinghouse made it clear that her people were very upset with this situation, and it didn't look like it was going to come to a conclusion easily.

Q. Was it your impression you were in an adversarial relationship with Devon by that time?

A. Yes.

MR. HALL: I have nothing further, Mr. Examiner.

MR. CARR: I have a follow-up on that.

RECROSS-EXAMINATION

BY MR. CARR:

Q. I mean -- I think you testified, Mr. Nix, it isn't normal to have to get regulatory counsel to get someone to join in a well; is that your testimony?

A. Uh-huh.

Q. Would you agree with me that it isn't normal to have already drilled a well before you call somebody and

1 ask them to join in the well?

2 A. Well, I would think it would be better to call
3 them then.

4 Q. Do you know when a mud log -- I mean, I know this
5 may not be something a landman knows, but do you know if
6 the well log was actually taken while the well was being
7 drilled?

8 A. No, I don't.

9 MR. CARR: You don't know those -- Thank you,
10 that's all.

11 EXAMINER EZEANYIM: Do you have any questions?

12 MS. O'CONNOR: No.

13 EXAMINATION

14 BY EXAMINER EZEANYIM:

15 Q. Mr. Nix, you testified that you made a mistake in
16 not getting Devon's interests taken care of. I think maybe
17 that's why we are here today, I don't know. But it seems
18 to me that that's the crux of the matter. But let's review
19 what you have here.

20 If you go to Exhibit Number 3 where you have
21 contacted most of the other interest owners, you started
22 from September 2nd. At that time you haven't got your APD
23 from BLM. You've got your APD from the OCD. Your APD from
24 BLM is September 14th, right?

25 A. Uh-huh.

1 Q. Okay. But at this point you are making effort to
2 get the voluntary joinder of all the interest -- working
3 interest owners, right?

4 A. Right.

5 Q. Okay.

6 A. And that would have been the time I would have
7 contacted --

8 Q. Yes --

9 A. -- Devon.

10 Q. Yes, that's why -- and then -- but a mistake was
11 made. How could such a mistake be made for such a --
12 somebody who is -- you think is your competitor, because
13 you used that word --

14 A. Uh-huh.

15 Q. -- that he is your competitor, and you know they
16 are interested in that west half? How could that mistake
17 be made?

18 A. Well, again, it was a different style of title
19 opinion than I've been used to dealing with. The Hinkle
20 firm, Bill Burford, prepared it for us. He did a very nice
21 job, it's very thorough, and it -- I had a field landman
22 picking up open interest, and in his title opinion he set
23 out all the working interest in their proportionate
24 parts --

25 Q. Uh-huh.

1 A. -- and it's those people that have all gotten
2 this. And then it showed unleased interest of a percentage
3 -- not a percentage, a fraction. And when we looked it up,
4 it was Dorchester had a quarter interest, and this other
5 outfit had a one-ninety-second --

6 Q. Uh-huh.

7 A. -- and it appeared to be that was the unleased
8 interest he was talking about. So when my field man said,
9 I've got all the unleased interest accounted for,
10 everybody's committed or we're in communication with them,
11 we went on to other projects that we're working on. I
12 perhaps didn't go deep enough or glance -- you know, it was
13 a thick title opinion. And I looked at the first part that
14 appeared to list all the working interest owners and gave
15 it a quick look, and then he told me he had everybody
16 accounted for, so I just kept going.

17 And we had other wells that were drilling that
18 were very complicated, very messy, that we were trying to
19 communicate with people. This one looked to be clean.

20 The problem was, it wasn't that Devon was
21 unleased. They owned the lease. So when it said unleased,
22 and everybody else appears to be leased, we picked up the
23 unleased, and their lease -- we went back in to where the
24 leases are set out and who owns them, and there it is on
25 that one federal lease, and it says Devon, and you know, we

1 just didn't get to that spot. It's one place in the entire
2 opinion where it says Devon.

3 Q. Yeah, I think that's really a very big mistake,
4 because since you are not even contemplating on going for
5 compulsory pooling order, because you think everybody is
6 going to participate in the well, which, you know, you
7 could do without coming here to get a compulsory pooling
8 order -- I thought it would be wise for you to have checked
9 for such a large -- somebody you think is your competitor
10 in the area, to make sure that they are committed to the
11 well, either by leasing their interest or participating in
12 the well.

13 A. Yeah, I just didn't have any idea that they were
14 in the well, you know, just because they have acreage to
15 the east of the well -- I wasn't worried about the acreage
16 to the east of the well, I -- that's not ours, we weren't
17 going to drill a well over there. I didn't even look to
18 see who owned it. This map that we show is an internal map
19 that Parenco used to generate, and it doesn't have anybody
20 else's interest on it, and -- that Exhibit 1.

21 Q. Yes. What was the first time you knew a mistake
22 had been made here?

23 A. On October 28th?

24 Q. And how did you find that out?

25 A. When I started preparing the communitization

1 agreement and I was listing all the leases and the
2 ownership under each lease.

3 Q. And you found that -- Devon has not --

4 A. And Devon owned a lease, and that's the first
5 time I saw that. And then I called Meg to say I've made a
6 mistake, who do I talk to over there? Because she was all
7 I knew that worked at Devon.

8 Q. Okay. So that's when all this dialogue started
9 and -- Okay.

10 A. Uh-huh.

11 EXAMINER EZEANYIM: One of the -- The well has
12 been drilled, you have your AFE. Is there anybody who can
13 tell me today what is the actual well cost and then what
14 the AFE said?

15 MR. HALL: Mr. Examiner, we'll present an
16 additional witness to address that with you.

17 EXAMINER EZEANYIM: Okay, you have -- Okay, maybe
18 that's why I -- maybe I have to have some more -- other
19 couple of questions I may have to ask here, so -- maybe if
20 there is anything the landman has done, so -- maybe you'll
21 be here asking the questions. But you may be excused for
22 now, unless anybody has any other questions?

23 MR. HALL: No, sir.

24 EXAMINER EZEANYIM: Okay. Call your next
25 witness.

1 MR. HALL: Mr. Examiner, at this time we would
2 call Larry Gillette.

3 EXAMINER EZEANYIM: Mr. Gillette, you have been
4 sworn, so you are under oath.

5 MR. GILLETTE: Yes.

6 EXAMINER EZEANYIM: Go ahead.

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

10 DIRECT EXAMINATION

11 BY MR. HALL:

12 Q. Mr. Gillette, if you would, please, for the
13 record state your name.

14 A. Larry Gillette.

15 Q. And where do you live and by whom are you
16 employed?

17 A. Midland, Texas. I'm employed by LCX.

18 Q. And what do you do for LCX?

19 A. I'm manager of operations.

20 Q. And are you a petroleum engineer?

21 A. Yes, sir.

22 Q. Have you previously testified before the Division
23 or one of its Examiners and had your credentials accepted
24 as a matter of record?

25 A. No.

1 Q. If you would, please, provide the Hearing
2 Examiner with a brief summary of your educational
3 background and work experience.

4 A. Okay, I graduated from the Colorado School of
5 Mines, BS in petroleum engineering in 1976, went to work
6 for Diamond Shamrock in Amarillo, Texas. Worked for them
7 in Amarillo and Denver until around 1982.

8 Worked for a small independent in Denver for a
9 short time and then moved to Midland, Texas, in 1983 for
10 Murphy H. Baxter, small independent out of Houston. Worked
11 for them until 1996 and then went out on my own consulting,
12 contract engineering. I've worked for several companies
13 over the years, David Arrington, Collins and Ware. And
14 finally got on with Autrey Stevens in 2000, November, 2000,
15 and been with them for five years in capacity with Endeavor
16 Energy and LCX Energy.

17 Q. So have you been responsible for the drilling of
18 a number of wells in the Permian Basin, including --

19 A. Yes.

20 Q. -- eastern New Mexico?

21 A. Right --

22 Q. And --

23 A. -- experience in Texas and New Mexico.

24 Q. -- you're familiar with the well that's the
25 subject matter of this case?

1 A. Yes.

2 Q. And were you in charge of drilling operations for
3 this well?

4 A. I looked after -- looked over the engineer that
5 was looking after the operations, yes.

6 MR. HALL: All right. At this point, Mr.
7 Examiner, we would offer Mr. Gillette as a qualified expert
8 petroleum engineer.

9 MR. CARR: No objection.

10 EXAMINER EZEANYIM: Mr. Gillette is so qualified.

11 Q. (By Mr. Hall) Let's talk about the cost for the
12 well, Mr. Gillette, and if you would turn in the exhibit
13 notebook to Exhibit 5 --

14 EXAMINER EZEANYIM: Five?

15 MR. HALL: Yes, sir.

16 Q. (By Mr. Hall) -- and if you would refer to the
17 last page of Exhibit 5, is that the AFE for the 1725 Fed
18 Com 61 well?

19 A. Yes, sir.

20 Q. Let's review the totals shown on that AFE.
21 What's the total for a completed well?

22 A. Around \$1.750 million.

23 Q. All right, what are dryhole totals?

24 A. \$750,000.

25 Q. All right. And are those costs in line with

1 what's being charged by other operators in the area for
2 similar Wolfcamp wells?

3 A. Yes, sir, they are.

4 Q. And this is a horizontal drill, is it not?

5 A. Horizontal drill.

6 Q. Has LCX participated in horizontal Wolfcamp wells
7 drilled by other operators?

8 A. Drilled by other operators?

9 Q. Yes, sir.

10 A. No.

11 Q. Participated in any EOG wells?

12 A. Well, I'm not aware -- You know, maybe Parenco
13 did. I think we just recently got an AFE from EOG on one
14 well.

15 Q. All right. And the costs for your well are in
16 line with what EOG is reporting?

17 A. Yes, as I remember, yeah.

18 Q. All right. And have you made an estimate of the
19 overhead and administrative costs while drilling and
20 producing the well?

21 A. Have I what?

22 Q. Have you made an estimate of the overhead and
23 administrative costs while drilling and producing this
24 well?

25 A. Drilling I think customarily is \$5500 per month,

1 and then on the operations end of it, lease operation would
2 be \$550.

3 Q. And is it your understanding that these overhead
4 rates are in line with the current COPAS bulletin rates --

5 A. Yes.

6 Q. -- for the area?

7 A. Yes.

8 Q. And are you asking that these drilling and
9 producing overhead rates be incorporated in the compulsory
10 pooling order that results from this hearing?

11 A. Yes.

12 Q. Mr. Gillette, would you tell the Hearing Examiner
13 about the experience LCX has had in developing these
14 Wolfcamp prospects in Eddy County?

15 A. Okay, when LCX bought this property, our four
16 main partners -- mainly Parallel, Capstone and EOG -- they
17 were all calling. They didn't know us either at the time,
18 but we had several -- two meetings with them concerning the
19 drilling and completion operations on these wells. And of
20 course they were pointing out a lot of EOG's experience out
21 there. They've been doing the most work out there, and LCX
22 had interest in their wells, in that area of mutual
23 interest.

24 So we got together with our partners and made
25 them -- had them satisfied after our two meetings that we

1 were going to continue doing what they've experienced and
2 what they thought was, you know, the right way of drilling
3 and completing these wells. And we started working towards
4 getting our drilling rigs lined up and moved them in.

5 And so to date we've drilled 11 wells. We've
6 completed seven of them, and the seven wells, there are six
7 that are either testing or going down the line, and they're
8 making approximately 9 million cubic foot a day or more.

9 Q. All right. Let's turn to Exhibit 14 in the
10 hearing notebook. Would you identify that and explain that
11 to the Hearing Examiner?

12 A. Okay, this is just a data sheet showing the wells
13 that we've got planned or have drilled. The first 11, we
14 have drilled them to date. And it also shows locations,
15 when we've frac'd or the proposed frac date, and some
16 test/sales rates that the wells have been tested at or are
17 going down the line at.

18 And that -- I've updated that one more time.
19 We've just recently completed a Fed Com -- 1625 Fed Com
20 322, and it was showing a rate of 2.3 million cubic foot a
21 day yesterday.

22 Q. Now to be clear, are all the wells referenced on
23 Exhibit 14, as well as the Fed Com 322 well you just
24 mentioned -- all of those are Wolfcamp wells?

25 A. Yes, sir.

1 Q. Okay. Do these Wolfcamp wells require any
2 particular expertise to drill and complete?

3 A. Yes, I think what's real critical on them is --
4 one thing we're doing is, we drill a vertical hole, we log
5 the pay zone, the Wolfcamp zone, look for the porosity zone
6 there. And that's what we target with our bit on our --
7 when we build our curve, we try to build it where it ends
8 up 90 degrees into the center of this porosity.

9 And then from there we just follow that porosity,
10 and we have to use the mud -- we depend on the mud logs
11 quite a bit for this, showing us the gas shows. And we
12 keep the bit in that area as we drill the horizontal
13 section.

14 And then another critical thing that we gain
15 informationwise is, you have to cement the liner for the
16 casing through the horizontal. And then the frac job is, I
17 think, particular -- you have to use around 20,000 barrels
18 slick water, certain kind of sand rates.

19 And then just -- the next thing is get the well
20 flowing back and cleaning up as soon as possible.

21 Q. Now, are you aware whether other operators have
22 been less successful in drilling and completing these
23 Wolfcamp wells?

24 A. I'm -- the only ones I've been aware is around
25 EOG, and they've been real successful there.

1 Q. Okay.

2 A. There's a lot of new activity out there, so...

3 Q. In your opinion, does LCX have superior expertise
4 and experience, compared to Devon, drilling these Wolfcamp
5 horizontal --

6 A. I believe so. We've drilled 11 wells right
7 there, within three or four miles of this well right here,
8 61.

9 Q. Okay, let's turn to Exhibit 12 in the exhibit
10 notebook, if you would identify that, please?

11 A. This is a map I pulled off Drilling Info, which
12 is on the Internet. I imagine Devon uses it. This shows
13 where Devon has their current drilling permits in Eddy
14 County. And of course, they do have one well staked up
15 there, east of our 61.

16 Q. All right. And this Cottonwood area, can you
17 locate that on the map, Exhibit 12?

18 A. It's just west of Artesia there, which is west of
19 the airport, which is the little block to the west of
20 Artesia there.

21 Q. Okay, and according to Exhibit 12 Devon has no
22 current permits for that area?

23 A. That showed on the Drilling Info.

24 Q. Right.

25 A. Right.

1 Q. And the only other one we know about, as you say,
2 is for the east half of Section 6?

3 A. Yes, sir.

4 Q. Let's turn to Exhibit 13. What is that?

5 A. This shows current wells that Devon operates and
6 has production from in Eddy County. And please note that
7 these dots can have multiple wells attached to them.

8 Q. Does Exhibit 13 indicate that Devon currently
9 operates any production in the Cottonwood area?

10 A. No, sir.

11 Q. Now, you mentioned a moment ago that in the
12 experience you gained in drilling these horizontal Wolfcamp
13 wells, the mudlog information is of some importance. And
14 why is that again?

15 A. It's real critical because that's what we use to
16 target the bit in the formation as you're drilling the
17 horizontal. You watch that gas indication, and you want to
18 keep the bit aligned where you get the higher gas readings,
19 which you're in the best porosity then.

20 Q. And is that the sort of information that would be
21 of interest to a competitor in the area?

22 A. Right.

23 Q. Let me show you what's been marked as Exhibit 15.

24 MR. HALL: And I apologize, Mr. Examiner, I only
25 have one copy now.

1 EXAMINER EZEANYIM: Okay.

2 MR. HALL: I'll supplement the record with
3 extras.

4 Q. (By Mr. Hall) Can you identify Exhibit 15,
5 please?

6 A. This is dated November 7th. It's one of our
7 daily drilling reports that we get from the field, from our
8 consultant out there. And this lists the past 24 hours,
9 the activity.

10 And on this it shows all the deviation surveys
11 taken during that period, and it also shows a gas record
12 taken from the mud logger information, and that's listed on
13 each day's drilling report.

14 Q. And what day is that particular report for?

15 A. November 7th.

16 Q. And what depth were you at there?

17 A. They were at 8030 feet --

18 Q. Now, let me ask you --

19 A. -- close to TD.

20 Q. I'm sorry?

21 A. They were close to TD at that point.

22 Q. All right. Let me ask you, was this information
23 shown on Exhibit 15 also included with the daily drilling
24 reports that were provided voluntarily to Devon earlier?

25 A. Yes.

1 Q. Mr. Gillette, in your opinion is there some risk
2 involved in drilling and completing wells of this type?

3 A. Based on, you know, our meetings with our working
4 interest owners, people that have worked in the area
5 extensively like EOG, they do express a need to get the
6 wells on as soon as possible after frac'ing, testing,
7 getting the blowback, cleaning up.

8 And as soon as we frac these -- there is some CO₂
9 used, and when the CO₂ gets to less than 10 percent we can
10 go down the line with it. And at that time we want to have
11 our gas line there, ready to go, our metering system, and
12 we can shove it down the line then. But it's critical that
13 we get the -- you know, have that done.

14 Q. Now in this case, if the compulsory pooling order
15 is granted to LCX, is LCX requesting the 200-percent risk
16 penalty against the unjoined interests?

17 A. Yes, they are.

18 Q. And for this particular well, is there a gas
19 sales line available?

20 A. Yes, sir. It's been installed for about -- well,
21 it was installed while we were testing the well, right
22 after frac there.

23 Q. All right. Is there any risk posed to the well
24 or the reservoir by prolonging the completion and
25 production of the well?

1 A. Yes, there is some risk.

2 Q. Is there some likelihood of damage to the
3 reservoir and waste of hydrocarbon reserves?

4 A. Yes.

5 Q. And for this reason, are you requesting the
6 issuance of an expedited order in this case?

7 A. Yes, sir.

8 Q. You'd like to get the well on sales just as soon
9 as possible, wouldn't you?

10 A. Yes.

11 Q. In your opinion, Mr. Gillette, would granting
12 LCX's Application for compulsory pooling be in the best
13 interests of conservation, the prevention of waste, the
14 protection of correlative rights?

15 A. Yes.

16 Q. And were Exhibits 12, 13, 14 and 15 prepared by
17 you or at your direction?

18 A. Prepared by me.

19 MR. HALL: All right, move the admission of
20 Exhibits 12, 13, 14 and 15.

21 MR. CARR: No objection.

22 MR. HALL: That concludes my direct of the
23 witness.

24 EXAMINER EZEANYIM: Any objection?

25 MR. CARR: No objection.

1 EXAMINER EZEANYIM: Exhibits 12 through 15 will
2 be admitted into evidence at this point.

3 Mr. Carr?

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Mr. Gillette, you're the operations manager in
7 this area for LCX?

8 A. Uh-huh.

9 Q. And accordingly, am I safe in assuming you were
10 involved in the decision in the drilling of the well that's
11 the subject of today's hearing?

12 A. Yes, sir.

13 Q. You're a petroleum engineer?

14 A. Yes, sir.

15 Q. Isn't it true that you run the mud log on the
16 well while you're drilling it?

17 A. Depends on the well. Our Sprayberry wells, we
18 usually don't. But this one, it's needed.

19 Q. And so this one you did?

20 A. Yes.

21 Q. And I think you testified that when you drill the
22 vertical portion of the well you log that before you go on
23 into the horizontal portion?

24 A. Right, we put the mud loggers on at 3500, and
25 then when we reach TD, which is around 5000 feet, we run

1 open hole logs.

2 Q. So those logs would have been available soon
3 after, or at the time the well was actually -- drilling was
4 completed?

5 A. Yes.

6 Q. What do we know about Devon's operations? Do you
7 know how many horizontal wells they've drilled and operate
8 in the country?

9 A. No.

10 Q. Do you know what their success ratio is?

11 A. (Shakes head)

12 Q. You're basing your conclusion that you're a
13 better operator on the fact that you have more wells in
14 this particular area. Is that what you were basing that
15 on?

16 A. Based on this particular area, yes, sir.

17 Q. And do you know that they also have interest
18 positions in horizontal wells in the area that are operated
19 by EOG?

20 A. No, I didn't know that.

21 Q. You're not disputing that they're one of the
22 larger independent operators in the state? Are you
23 challenging that they can operate a well, that they're
24 not --

25 A. No, I'm --

1 Q. -- a prudent operator?

2 A. -- not challenging that.

3 Q. Now, in this case we're talking not about
4 drilling a well but about operating it; isn't that right?

5 A. Just operating a gas well?

6 Q. It's already been drilled and completed, has it
7 not?

8 A. Uh-huh.

9 Q. So we're now to the operations phase?

10 A. But operations include drilling and completion
11 and --

12 Q. But at this point in time, it's been drilled and
13 completed?

14 A. Yes, sir.

15 Q. Now, you are -- Is the well currently connected
16 to a sales line?

17 A. That line is there, and I believe our meter is
18 hooked up to it. Yeah, we've --

19 Q. You're not waiting on Devon to connect this well,
20 are you?

21 A. We're waiting on this hearing to turn the well
22 back on, turn it on.

23 Q. Do you know of any reason you can't go turn that
24 well on today?

25 A. Yeah, this hearing.

1 Q. You have flowed the well back, have you not?
2 You've already flowed it back?

3 A. We've tested and gotten part of our load water
4 back, yes, sir.

5 Q. And it's your understanding that this hearing
6 prevents you from putting a well on that needs to be
7 produced?

8 A. Yes, sir, I was told not to turn that well on two
9 weeks ago.

10 Q. You understand that we do not oppose that and
11 think it should be turned on?

12 A. Do I what?

13 Q. Did you know that Devon thinks you should turn
14 that well on?

15 A. No, I didn't know that.

16 Q. Now, you have an AFE that you've presented that
17 was the AFE that I believe was submitted to various
18 interest owners. It's signed, I believe, by you.

19 A. Yes, sir.

20 Q. Do you prepare the AFEs?

21 A. Yes, sir.

22 Q. Are you aware -- The AFE that was included in the
23 Exhibit is dated October the 3rd?

24 A. Uh-huh.

25 Q. Are you aware of an AFE that has been prepared,

1 and I believe by you, signed by you, dated February the
2 23rd, '06?

3 A. Yeah, that was probably an updated AFE --

4 Q. Okay --

5 A. -- that we sent in.

6 Q. -- the updated AFE dated 2-23 -- and I'll be glad
7 to show it to you -- shows an AFE cost approximately
8 \$130,000 more than what was submitted in the earlier --

9 A. Yes, sir.

10 Q. -- AFE; is that right?

11 What's the source of that difference? Is this
12 one correct?

13 A. Yeah, this would be closer.

14 Q. Yeah.

15 A. But day work, drilling day work costs went up
16 \$1000 a day, field costs are up, the stimulation has gone
17 up.

18 A lot of these have gone up in the last couple
19 months, so I just tried to update it a little bit to show
20 the current costs.

21 Q. But the well in its current position, having been
22 drilled and completed, are these actual costs, or are these
23 just AFE figures?

24 A. These are AFE figures.

25 Q. Do you know how they compare to the actual costs

1 for drilling?

2 A. Not really. They're going to be close.

3 Q. If Devon were to decide to participate, which AFE
4 do they use?

5 A. I would use this one here, this second one.

6 Q. And that's \$130,000 higher --

7 A. Yes, sir.

8 Q. -- than the one other interest owners --

9 A. But if you -- if you sign this, I would think
10 that we would come to an accounting.

11 Q. Are the numbers correct? And I'm not
12 challenging. I had heard that there might be an error in
13 one of the AFEs, and I just wanted to be sure --

14 A. There was -- there was --

15 Q. I'd like to know what that is.

16 A. There was an error on one, and that was a
17 spreadsheet error. I think that was \$133,000.

18 Q. Was that the earlier of the AFEs or the --

19 A. One of the first ones we sent out.

20 Q. Okay, so the later one, those numbers have been
21 corrected?

22 A. That's correct, yes, sir.

23 MR. CARR: That's all I have, thank you.

24 THE WITNESS: Yeah.

25 EXAMINER EZEANYIM: Anything further?

1 MR. HALL: Yes, Mr. Examiner, briefly.

2 REDIRECT EXAMINATION

3 BY MR. HALL:

4 Q. Mr. Gillette, have a little bit more explanation
5 about the procedures when you actually put the well on the
6 sales line.

7 Do you attempt to flow back the well or elicit
8 any sort of additional engineering information from the
9 connection itself?

10 A. Well, after we put it down the line, that's when
11 I get my flow test for the state completion reports, so...
12 But we try to go down the line as soon as the CO₂ gets
13 below 10 percent, to conserve gas instead of flaring 2
14 million a day to the air.

15 Q. Now Mr. Gillette, were you aware of Division Rule
16 1104.C, which would prevent LCX from obtaining an allowable
17 and having sales for the well until all the interests were
18 consolidated? Were you aware of that rule?

19 A. No.

20 Q. And by the way, isn't the AFE an estimate?

21 A. It's an estimate, yes.

22 MR. HALL: Nothing further, Mr. Examiner.

23 EXAMINER EZEANYIM: Thank you.

24 Do you have anything?

25 MS. O'CONNOR: I don't.

1 EXAMINER EZEANYIM: I don't believe I have that
2 second -- I don't think I have that -- Where did you get
3 that? It's not --

4 MR. CARR: I've marked the second AFE as our
5 Exhibit A, because I don't know what number I was at, and
6 -- Do you have an objection?

7 MR. HALL: No.

8 MR. CARR: I'll admit the recent -- most recent
9 AFE.

10 EXAMINATION

11 BY EXAMINER EZEANYIM:

12 Q. And this was done in February of this year?

13 A. Yes, sir.

14 Q. Was it after the well had already been drilled?

15 A. Yeah, the well had already been drilled and
16 frac'd, end of January.

17 Q. Before you did this?

18 A. Right.

19 Q. Okay. Well, I don't know what I should request
20 from you. If it's not proprietary, actual well costs,
21 completing that well.

22 A. Pardon?

23 Q. Can you give us the actual costs of drilling and
24 completing?

25 A. I'd really be guessing right now, because we're

1 still getting invoices and stuff in.

2 Q. Yeah but, you know, I'm asking if you could
3 provide it to me if you -- when you have the --

4 A. I'd have to get with my accounting and see what
5 we have totaled it so far.

6 MR. HALL: Mr. Examiner, we would provide those
7 in the ordinary course of a compulsory pooling order
8 anyway. We'll get those to you just as soon as we can.

9 EXAMINER EZEANYIM: Yeah, because I would like to
10 have those actual costs. Because of the way you drilled,
11 I'd like to know so I can compare with the AFE.

12 MR. HALL: Yes.

13 THE WITNESS: Okay, we'll get that.

14 Q. (By Examiner Ezeanyim) Okay. Anyway, this
15 question is one of them I wanted to, you know, ask, you
16 know, as I'm taking this through my mind. But I think
17 because -- I'll can just ask the question. You say that
18 LCX is very experienced in drilling in the Wolfcamp. I
19 wanted to ask -- maybe I'll ask it again to -- you know, so
20 does -- you mean that Devon Energy cannot drill another
21 well? Are you implying that?

22 A. No, I'm not implying that at all. They just
23 haven't drilled a well right there in this area in recent
24 times.

25 Q. But that doesn't --

1 A. And I think -- why I answer that way is because I
2 think our experience level is questioned.

3 Q. Okay. Have you done any calculation on this
4 well, any calculation? Do you know what you think will be
5 your ultimate recovery in this well? Do you know?

6 A. The reservoir engineer tells me around a BCF-
7 plus, is what they've calculated. That varies from well to
8 well, depending on its potential --

9 Q. Do you know --

10 A. -- as to how it comes on.

11 Q. Do you know what method he used to come out with
12 the 1 BCF?

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

14 EXAMINER EZEANYIM: And this question really goes
15 to both parties. I ask this question because there is
16 something -- I may have to use this question, you know --
17 There is no disagreement where this well is staked from
18 both parties? Is there anybody who's objecting to the
19 location where this well is staked, anybody? From both
20 parties?

21 THE WITNESS: No.

22 EXAMINER EZEANYIM: So we know that the well
23 should be staked where it is staked right now?

24 MR. NIX: (Nods)

25 THE WITNESS: (Nods)

1 Q. (By Examiner Ezeanyim) Okay. And now here you
2 are asking for 200 percent. That's what the rule says.
3 Okay, is that what you think the actual --

4 A. (Nods)

5 Q. Okay. And this well has been shut in for about
6 three weeks; is that correct?

7 A. Approximately three weeks.

8 Q. Because -- you haven't applied to your 104
9 because of this hearing, right?

10 A. Yes, sir.

11 EXAMINER EZEANYIM: I have nothing further.
12 There's somebody who wants to make a comment
13 here?

14 MR. WHEELER: Yes, sir, Mr. Examiner, I'm Mark
15 Wheeler. I'm president and the owner of CMW Interests,
16 Inc., a working interest owner in this well. I also have
17 an overriding royalty interest in this well and in other
18 wells that LCX operates.

19 EXAMINER EZEANYIM: Yeah, please, what -- How do
20 you spell your name, please?

21 MR. WHEELER: Wheeler, W-h-e-e-l-e-r. My first
22 name is Mark.

23 EXAMINER EZEANYIM: Okay, go ahead.

24 MR. WHEELER: And I just wanted to state that for
25 my working interest, as well as the working interests of

1 Capstone Oil and Gas, Parallel Petroleum Corporation, and
2 Elger Exploration, all of whom I've had contact with this
3 morning on the phone, we are in support, all of us, as we
4 stated in our AFE signings, we are in support of LCX as
5 operator.

6 And for my interest I would also state an
7 opinion, if permitted, that the mistake notwithstanding,
8 I've been very pleased overall with LCX's operations and
9 feel like they've done an outstanding job in trying to
10 protect our leasehold explorations in this area.

11 EXAMINER EZEANYIM: Okay, thank you very much for
12 appearing.

13 I have one more question for LCX. Let's go back
14 to that -- Is that Exhibit 1? Let's look at Exhibit 1
15 here. It just occurred to me because of -- Let me look at
16 all the working interests in this west half. What is the
17 actual interest ownership by LCX? Anybody?

18 MR. HALL: Their individually owned interest?

19 EXAMINER EZEANYIM: Well, what would you consider
20 to be your interest in this unit?

21 MR. HALL: As a group, it's approximately 65
22 percent.

23 MR. NIX: Sixty-two.

24 MR. HALL: Sixty-two-plus percent.

25 EXAMINER EZEANYIM: Okay, so it appears to me you

1 are adding that of Parallel, Capstone, CMW Interests and
2 EOG and the rest. Is that what you are adding to come out
3 with 62.5?

4 MR. HALL: Correct, it's everything but for the
5 Devon interest.

6 EXAMINER EZEANYIM: Okay, now, yeah, that's --
7 Some of those -- this interest, did they lease it out, or
8 are just willing to participate? I mean, did anybody lease
9 their interest to you?

10 MR. HALL: I believe Dorchester.

11 MR. NIX: Yes, Dorchester participated with part
12 of their minerals and leased part of their minerals. They
13 participated with a quarter of their minerals --

14 EXAMINER EZEANYIM: Uh-huh.

15 MR. NIX: -- and leased three-quarters of their
16 minerals.

17 EXAMINER EZEANYIM: And what about EOG?

18 MR. NIX: EOG contributed acreage to the AMI and
19 has interest in the AMI lands.

20 EXAMINER EZEANYIM: Yeah, but from what -- if you
21 are telling me now, the --

22 MR. NIX: Oh, they owned some leases -- there
23 were a lot of leases in this west half --

24 EXAMINER EZEANYIM: Yeah.

25 MR. NIX: -- and they own some of the leases and

1 contributed their leasehold interest, their working
2 interest, to come up with this percentage.

3 EXAMINER EZEANYIM: So LCX has about 62.5-percent
4 interest in this unit; is that what you are telling me?

5 MR. NIX: LCX, et al., all the -- the whole group
6 is 62.5. Is that --

7 EXAMINER EZEANYIM: Yeah, is that what you're
8 saying?

9 MR. NIX: Yes.

10 EXAMINER EZEANYIM: Okay. Okay, I guess that you
11 need to make a copy of this for other -- or is this -- can
12 I take this?

13 MR. HALL: Yes, if you like, I'll take it and
14 bring back a bunch of copies, whatever you like.

15 EXAMINER EZEANYIM: Okay, yeah, yeah, if you need
16 to -- Do you need this copy? Because I --

17 MR. CARR: No, I have another copy.

18 EXAMINER EZEANYIM: You have another copy, okay.
19 If you don't mind --

20 MS. O'CONNOR: I'll go do that.

21 EXAMINER EZEANYIM: Okay. And any other comments
22 in this case?

23 MR. HALL: That concludes our case, Mr. Examiner.

24 EXAMINER EZEANYIM: Okay, thank you, gentlemen, I
25 really appreciate your cooperation.

1 I'll make a statement again, if you people have
2 worked this one out -- as I sit here listening to you --
3 yesterday we spent two hours talking about this --

4 MR. CARR: Mr. Ezeanyim --

5 EXAMINER EZEANYIM: Yes?

6 MR. CARR: -- before you instruct us, I mean,
7 could I give a very brief closing?

8 EXAMINER EZEANYIM: Oh, I thought I was asking
9 whether anybody has anything. Okay, go ahead.

10 MR. CARR: Mr. Ezeanyim, there's -- as you heard
11 today, there's no disagreement as to the location of the
12 well. I mean, we might have had an opinion on where it was
13 going to be drilled, but now that's a fact, the well has
14 been drilled, and there's no dispute as to the overhead and
15 administrative costs that are involved in this case.

16 As I told you at the beginning, the only issues
17 are as to who should operate and whether or not a risk
18 penalty should be imposed.

19 As you've heard the evidence today, there's been
20 a lot of talk about a mistake, and there may have been some
21 mistakes at the front end when LCX was thinking that the
22 Devon interest, the largest single-owned interest in the
23 unit of 37 1/2 percent, they have -- they didn't look for
24 that, and they pursued the 1.5-percent interest of
25 Dorchester and went out and drilled the well before they

1 talked to us.

2 But the mistake that was made then doesn't
3 justify what happened thereafter.

4 On the 23rd of November we asked for well data,
5 and we didn't receive anything in terms of well data until
6 January the 6th. We asked for -- we received daily
7 drilling reports, but we didn't get any well data for three
8 months. And it is that delay that, in fact, has caused any
9 delays that they are now complaining about here today.

10 I want you to know that when we look at the
11 statute on risk penalty, it talks about geology and
12 engineering data. If you'll also look generally at
13 compulsory pooling, the door sort of closes the day you
14 file your Application. That's when you fix ownership
15 interest. The recent Samson order said that.

16 Well, if we look at the geology and we look at
17 what the engineering data is, basically the Statute and
18 Rule provide that if there is less geological risk, you
19 ought to be able to get a lower risk penalty. If there's
20 less engineering risk, you should get a lower risk penalty.

21 Well here, when that door closed, when the
22 Applications were filed, that well had been drilled. From
23 that point forward there was no geologic risk, the well was
24 here. It's no longer an opinion, it's a fact, just like
25 the well location. There was no engineering risk, it was

1 drilled, it is a fact, not an opinion anymore. There were
2 no geologic -- There is no geological risk, there is no
3 engineering risk, and it is our position that there must be
4 no penalty. We think that's -- and if you even look at the
5 orders that adopted the recent rule changes and talk about
6 justifying penalties with geology and engineering risk,
7 they recognize that it's the custom and practice of the
8 agency to have lower risk penalties.

9 I think it's important, just to -- not drag this
10 thing out, but to point out that if there is any delay it
11 is because we couldn't get information on the well. And
12 the offers that we would get to give information were make
13 your election first and join later. You can see that from
14 the letters that are in evidence. And so we believe that
15 first no risk penalty is appropriate.

16 And secondly, we think that it is very clear that
17 LCX in this spacing unit does not view Devon as their
18 partner, but they view us as a competitor. And as long as
19 they take that attitude with us and won't share data and
20 have these delays, for that reason we do not want them
21 operating a property where we, in fact, are the largest
22 single owner. And that's why we ask you to declare us
23 operator of the well, and no one's challenging Devon's
24 ability to operate.

25 EXAMINER EZEANYIM: Thank you. Mr. Hall?

1 MR. HALL: Mr. Examiner, for the life of me, I do
2 not know what we're doing here before you with these two
3 cases. I frankly do not. I think we've elicited testimony
4 before you today that establishes none of the Devon
5 witnesses can identify a single rule or policy that has
6 been violated here, not one, and they admit that.

7 So it appears to me that on the basis of a
8 perceived slight, a perceived delay in responding to
9 requests for information on the basis of an honest mistake,
10 Devon is asking you, the Hearing Examiner, to enter an
11 order removing LCX as operator. And by doing that, they're
12 also asking you to effectively rescind, interrupt and set
13 aside contractual agreements between consenting parties to
14 this well. There's a question whether you can do that.
15 But in the end, Devon has identified no violation of any
16 policy or any Division Rule. Now -- So I think we have
17 proven to your satisfaction that LCX did act in good faith.

18 There was an honest mistake in identifying an
19 interest. They tried to recover from that, they did make a
20 good faith effort to try to get information to Devon.

21 Devon reacted quite harshly to the extent that it
22 was felt that legal counsel was needed. And so, being the
23 prudent thing, LCX sought counsel.

24 And bear in mind as well that throughout this, it
25 is undisputed that LCX acted prudently in drilling the well

1 at all. There was an expiring lease here. Had we delayed
2 while Devon horsed around on making a decision whether to
3 elect to participate in the well, a lease would have been
4 lost. And where would that have put the parties? That
5 would put the parties at a substantial economic
6 disadvantage, that would have been totally unnecessary.

7 Now, I think that the likelihood that operations,
8 in my view, are going to be turned over to Devon are simply
9 remote. I don't think there's much Division precedent for
10 doing something like that, particularly in a case like
11 this. I'm aware of no precedent for anything like this in
12 this context, compulsory pooling fight.

13 So we're getting down to, I think, the ultimate
14 issue, really, for you to decide is the risk penalty. And
15 Mr. Carr, in support of his arguments that risk penalty
16 ought to be eliminated, has cited to you antiquated,
17 obviated, overruled law.

18 The applicable law in this case is set forth in
19 Rule 35. Prior to that, Mr. Carr cited to you a BHP case
20 from, I think, 1980. Rule 35 was adopted by the Commission
21 in 2003 pursuant to a hearing, and in Order Number R-11,992
22 the Commission made specific findings why a blanket 200-
23 percent risk penalty should be adopted in all cases. And
24 it specifically addressed the case where a well is drilled
25 before an application for compulsory pooling is made.

1 And finding 42 of that order, it says, In such
2 cases, it is not the applicant but the pooled party whose
3 risk is reduced due to the opportunity afforded to the
4 pooled party by statute to participate on a heads-up basis
5 without any risk charge, by electing to advance its costs
6 of drilling after the pooling order is entered, based on
7 information developed by the drilling and not known to the
8 Applicant at the time the decision to drill is made.
9 Accordingly, the maximum 200-percent risk charge should be
10 ordinarily applied in such cases.

11 That's right here.

12 For Devon to suggest to you now that you ought to
13 go around that specific finding and circumvent the purpose
14 and intent of Rule 35, I think, is inappropriate. I think
15 it's a collateral attack on Order 11,992, and you ought to
16 reject the attempt.

17 Again, look what's happened in this case. In my
18 view, I think Devon has gained the system to its advantage.
19 I think it has abused the Division's administrative
20 processes to obtain free well information, far beyond what
21 would be provided in the ordinary course of negotiations to
22 obtain somebody's voluntary participation in the well.
23 They have had every advantage in this case, far in excess
24 of industry custom and practice, and they're trying to take
25 advantage of it.

1 And it's pretty clear when they have made a
2 representation to the Division that confidential well data,
3 title-opinion information, is necessary for them to present
4 their case, and then they don't present it, I think that
5 says a lot to you. And I think that's an example of bad
6 faith. For that reason alone, I think Devon's Application
7 for compulsory pooling ought to be dismissed and LCX's
8 granted.

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

10 MR. CARR: Mr. Examiner --

11 EXAMINER EZEANYIM: Thank you, Mr. Hall.

12 MR. CARR: Mr. Examiner, I was the original
13 Applicant. I opened first, and in fact I'm supposed to be
14 allowed to close last. And I don't want to sit here and
15 argue with Mr. Hall, but there are two points I have to
16 correct.

17 One, Devon couldn't have been horsing around
18 causing them to delay the drilling of the well, because we
19 did not even know what they were doing. It was drilled
20 before we were ever contacted. And I am not citing
21 antiquated law to the Examiner, I was referencing Rule 35,
22 and I would suggest you look at the Rule and the order that
23 adopted it. And to suggest it's bad faith to have to come
24 to you and get you to order them to produce data before we
25 know where we are in this case is just really taking an

1 unreasonable amount of leeway with the facts.

2 EXAMINER EZEANYIM: Thank you.

3 Do you have anything?

4 MS. O'CONNOR: I would suggest that you might
5 want the parties to give you the relevant law that they've
6 cited in the orders that they have cited. That might aid
7 you in --

8 EXAMINER EZEANYIM: All right --

9 MS. O'CONNOR: -- making a decision.

10 EXAMINER EZEANYIM: -- could you do that?

11 MR. CARR: Yes.

12 MR. HALL: Right here.

13 EXAMINER EZEANYIM: Yeah, well --

14 MR. CARR: I'll submit them with a memo.

15 EXAMINER EZEANYIM: Okay.

16 MS. O'CONNOR: Are you going to want to do a memo
17 as well?

18 MR. HALL: Well, again, Mr. Examiner, we --

19 MS. O'CONNOR: Do you want --

20 MR. HALL: -- asked for an expedited --

21 EXAMINER EZEANYIM: Well, what I really want is
22 a --

23 MS. O'CONNOR: I think you need to instruct him
24 that --

25 EXAMINER EZEANYIM: Okay, yeah, if you could give

1 me the order, it really -- no more is not necessary.

2 MR. CARR: Okay, I'll just submit the orders
3 after the -- That may be the order, Mr. Ezeanyim, I'll
4 check.

5 EXAMINER EZEANYIM: Well, yeah, is that what you
6 want? I mean, I have these orders --

7 MS. O'CONNOR: And the case law as well, if you
8 could.

9 EXAMINER EZEANYIM: If there is any case law that
10 I'm not aware of, I would like to have them too.

11 MR. CARR: I can do that.

12 EXAMINER EZEANYIM: Okay. And as you all know,
13 this case may be -- I have to start working on it, so we
14 need it as quickly as possible, because I don't want this
15 well to sit down there for long. So we'll see what we can
16 do.

17 One thing I --

18 MR. HALL: Mr. Examiner, I agree with what you're
19 saying. We think it's imperative that the well be put on
20 to production just as soon as possible. There is some
21 likelihood of reservoir damage if we don't. I didn't see a
22 way around Rule 1104 that would allow that.

23 EXAMINER EZEANYIM: Okay, well --

24 MR. CARR: We -- And we agree. And even if it
25 was an emergency or whether it just simply stated, no

1 matter what the outcome is, this well should be produced
2 and this will be the dedicated acreage, and the proceeds
3 will be escrowed, we still think something ought to be done
4 to allow that well to produce.

5 EXAMINER EZEANYIM: Yeah. Thank you for that.

6 MR. HALL: We would agree to that, and we would
7 agree to escrow Devon's proportionate share pending the
8 outcome.

9 EXAMINER EZEANYIM: Well, anyway, I don't want to
10 go into that escrow or something, I just want to issue an
11 order. My mind is pretty much made, it's a question of
12 putting it together. I've heard from all of you. I mean,
13 we had two hours of discussion yesterday, and today we've
14 had almost four hours. So that's okay, I think we might
15 issue this order before you know it, so that we can
16 proceed.

17 I don't want to issue an emergency order.
18 Cheryl, do you know of any reason why we should do it? The
19 well can -- it can wait for another two weeks, it's not
20 going to die. So maybe in two weeks we can get this one
21 out. And then if we get it in two weeks, you can get your
22 104.A and then, you know, and whoever wins can start
23 immediately.

24 (Off the record)

25 MS. O'CONNOR: We've lost our --

1 MR. GILLETTE: I think we need --

2 MS. O'CONNOR: -- counsel.

3 MR. GILLETTE: -- to get this well on --

4 MS. O'CONNOR: Gentlemen --

5 EXAMINER EZEANYIM: What?

6 MS. O'CONNOR: -- I would ask you, is there any
7 reason that you believe that this well is going to be
8 harmed if it's two weeks --

9 MR. CARR: Yes.

10 MS. O'CONNOR: -- before it --

11 MR. GILLETTE: Yes.

12 MS. O'CONNOR: And why would that be?

13 MR. HALL: Well, we've had the engineer testify
14 that -- Do you want to elaborate, Mr. Gillette?

15 MR. GILLETTE: Well, it --

16 EXAMINER EZEANYIM: Mr. Gillette, do you think
17 that two weeks will be so harmful to the well that we can't
18 wait two weeks?

19 MR. GILLETTE: Well, it --

20 EXAMINER EZEANYIM: I will be glad to issue an
21 order --

22 MS. O'CONNOR: Is it an economic issue, or is it
23 harmful to the well?

24 MR. CARR: It's a damage issue.

25 MR. GILLETTE: Damage issue.

1 EXAMINER EZEANYIM: What?

2 MR. GILLETTE: Damage issue.

3 EXAMINER EZEANYIM: Damage issue?

4 FROM THE FLOOR: Damaging the reservoir. We may
5 not be able to get that BCF out.

6 MR. GILLETTE: You may move some of the
7 fracturing fluids in there that can't be recovered, and --
8 when we need to keep it moving.

9 (Off the record)

10 MR. GILLETTE: Well, you're 2 million a day,
11 going up in the air. That's a lot of money.

12 (Off the record)

13 EXAMINER EZEANYIM: Before I give you my closing
14 statement here, this is what I think we might do, because
15 it will be my intention to get this out as soon as
16 possible. But I don't think I can get it out in less than
17 two weeks.

18 So I was looking to see if we can get an
19 emergency authorization.

20 MR. HALL: What I would suggest, Mr. Examiner, is
21 that Mr. Carr and I will get together and craft some sort
22 of agreement that will allow for the issuance of an interim
23 order pending the final order in the case.

24 EXAMINER EZEANYIM: Yeah, if you can craft it
25 and --

1 MS. O'CONNOR: And you would need to do an
2 Application, I would assume, for the emergency order, and
3 you can -- and you will --

4 MR. CARR: Well, it will be --

5 MR. HALL: We can stipulate --

6 MR. CARR: -- very, very simple, it will just
7 take a few paragraphs and -- We'll get that.

8 MS. O'CONNOR: Yeah, and then you'll craft the
9 order?

10 MR. CARR: Uh-huh, we will.

11 EXAMINER EZEANYIM: Yeah, if you craft it and
12 then you contact my Director that issues the emergency
13 order -- I don't issue emergency order, I issue the
14 Division order in the case. So if you get it and it goes
15 through Mark, my boss, who has been sitting here, and then
16 we'll see what we can do.

17 He might even say, Well, I don't want the
18 emergency order to be issued. I don't know, but we'll
19 suggest it to him and see what he says.

20 MS. O'CONNOR: And we might just let you know,
21 just as far as the time line here, I'm in the office for
22 only two hours tomorrow, first thing in the morning, and I
23 don't know what Mr. Fesmire's -- what his time line is --

24 EXAMINER EZEANYIM: Uh-huh.

25 MS. O'CONNOR: -- but it may be that as early as

1 it could get done, if it's going to even be issued, would
2 be on Monday --

3 EXAMINER EZEANYIM: Yeah.

4 MS. O'CONNOR: -- if that helps you --

5 MR. HALL: Sure --

6 MS. O'CONNOR: -- frame your time line.

7 MR. HALL: -- we may go up right after this and
8 see if he's here.

9 EXAMINER EZEANYIM: Yeah, what I'm saying is that
10 we can maybe -- from what Cheryl said, we can get the
11 emergency order to you on Monday, to start out with the --
12 you know, with that well.

13 MS. O'CONNOR: If you can get it done, just to
14 let you know, I'll be here first thing in the morning --

15 EXAMINER EZEANYIM: Tomorrow.

16 MS. O'CONNOR: -- for two hours, and Mark
17 generally comes in first thing in the morning as well. I
18 think he's generally here around 7:30 or eight o'clock.

19 EXAMINER EZEANYIM: I don't know, maybe tomorrow
20 he's -- because I don't know, he might be -- I don't know
21 whether he's going to be here tomorrow, but I hope he will.

22 So if he's here tomorrow, that will be good.
23 Then we might even -- If you get that to him today, get it
24 tomorrow, it might be signed tomorrow, you know, tomorrow.
25 You know, because that's why it's emergency order, so that

1 this weekend you can put that well on production.

2 I mean it's true, of course, the other conditions
3 would be there. You determine the conditions on that well,
4 so that we get that well going. I mean --

5 MR. HALL: We'll work together to --

6 EXAMINER EZEANYIM: Yeah, work together and give
7 us some information, because -- And then that will give me
8 time to think about this, assimilate all the information
9 you've given me to make a -- and really know who's going to
10 be the operator of this well.

11 But you know, I still want to mention here that I
12 don't want people using the word "competition". I don't
13 think you are in competition. You should be working
14 together.

15 MS. MUHLINGHAUSE: We are.

16 EXAMINER EZEANYIM: I mean -- Well, I mean you
17 should be working together. I mean, there's no need to
18 compete. I mean, why would you compete? I mean, there's
19 no room for competition. I think you should -- all of you
20 should be working together.

21 And then, like I said, most of these cases that
22 come before us here, we have to make a decision. A
23 decision will be made, and one party will not be happy.
24 But if you guys work together without competing among
25 yourselves, could have been better, you know? And as this

1 choice -- you know, in this west half, this is the only
2 well there, the only well in that west half right now.
3 That's the only well right now, right?

4 MR. HALL: It's only staked --

5 EXAMINER EZEANYIM: Yeah --

6 MR. HALL: -- as far as I'm aware.

7 EXAMINER EZEANYIM: -- only the well is -- You
8 guys, you are taking advantage of a rule I just revised
9 about a year or two years ago, Rule 104, that multiple
10 operators are allowed -- any spacing unit.

11 So maybe you reach an agreement, X, Y, Z operate
12 this well. If I -- it's going to be drilled and be
13 operated, and then you don't even have to come in here and
14 we waste all day and everything, and then -- and only one
15 person. Because according to statutes, I'm going to name
16 only one operator.

17 And if I weigh all the evidence and all the
18 information that you gave me, and I'm not satisfied with
19 any of them, I'll flip a coin, because -- and come up
20 with -- yeah, I'll flip a coin. I'm joking, but at least,
21 you know, you know that I might do that.

22 So I still -- we should not encourage
23 competition, we should encourage working together. I think
24 that's how we -- all of us, we benefit. We will benefit,
25 you all will benefit. So we don't have to fight among

1 ourselves. You are all prudent operators. I continue
2 preaching this, and I'll continue to preach until you guys
3 resolve to at least reach an agreement, bend down and reach
4 an agreement.

5 I don't see why you can't reach an agreement in
6 this case. I don't see any reason, from all the
7 information I've got here.

8 But anyway, the burden is on my shoulder. Now
9 I'm going to make a decision. But let's work with the
10 emergency order, because I want the well to be open, to
11 be -- you know, put on line as soon as possible. So I'll
12 work with the Director and Cheryl and everybody and see
13 what we can do for you.

14 Thank you very much.

15 MR. HALL: Thank you, Mr. Examiner.

16 And this concludes this hearing.

17 (Thereupon, these proceedings were concluded at
18 2:02 p.m.)

19 * * *

20 I hereby certify that the foregoing is
21 a complete record of the proceedings in
22 the Examiner hearing of Case 13603-13625
23 heard by me on 3/27/85
24
25

Off. Conservator

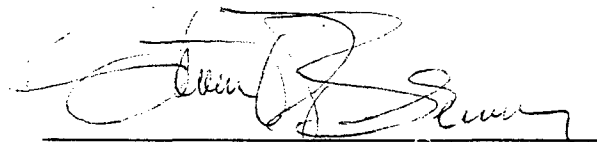
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL March 4th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006