

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 OCCIDENTAL PERMIAN, LTD,)	CASE NOS. 13,945
FOR CANCELLATION OF A DRILLING PERMIT,)	
FOR DETERMINATION OF THE RIGHT TO DRILL,)	
AND APPROVAL OF A DRILLING PERMIT,)	
LEA COUNTY, NEW MEXICO)	
)	
APPLICATION OF EOG RESOURCES, INC.,)	and 13,912
FOR COMPULSORY POOLING, LEA COUNTY,)	
NEW MEXICO)	
)	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

ORIGINAL

BEFORE: RICHARD EZEANYIM, Technical Examiner
DAVID K. BROOKS, Jr., Legal Examiner

September 6th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Technical Examiner, DAVID K. BROOKS, Jr., Legal Examiner, on Thursday, September 6th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

September 6th, 2007
 Examiner Hearing
 CASE NOS. 13,945 and 13,912 (Consolidated)

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Additional submission by Occidental Permian, Ltd., not offered or admitted:

Identified

Hearing Memorandum

10

* * *

Additional submission by EOG, not offered or admitted:

Identified

Magnolia Petroleum Company
vs. Railroad Commission

17

* * *

Additional submission by Cimarron, not offered or admitted:

Identified

Order Numbers R-11,700 and R-11,700-B

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* * *

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* * *

1 WHEREUPON, the following proceedings were had at
2 8:27 a.m.:

3 EXAMINER EZEANYIM: At this time I would like to
4 call Case Number 13,912 and 13,948 [sic] and consolidate
5 them for purposes of testimony.

6 Any objection to that?

7 I need to call the two cases at the same time.

8 MR. BRUCE: Yeah, Mr. Examiner, I think we agreed
9 that both cases should be called at the same time, and I'm
10 Jim Bruce of Santa Fe, representing EOG Resources.

11 EXAMINER EZEANYIM: Oh, yeah. Before you go
12 there, let me say something. I'm going to call the cases
13 for the record. First of all I'll start with Case Number
14 13,910 [sic], since it's -- you might have got it -- than
15 the other.

16 Case Number 13,912 is the Application of EOG
17 Resources, Inc., for compulsory pooling, Lea County, New
18 Mexico.

19 Case Number 13,948 [sic] is the Application of
20 Occidental Permian, Limited, for cancellation of a drilling
21 permit, for determination of the right to drill, and
22 approval of a drilling permit, Lea County, New Mexico.

23 Before I call for appearances, I'd like to make
24 some statements here.

25 As most of you know, neither the OCD or the

1 Commission has the right to determine the validity of any
2 title or the validity of any lease or the validity of any
3 joint operating agreement. I think we all agree to that.

4 So in proceeding with this case, I don't want you
5 to make me, you know, consider those matters, because I
6 think they are outside our jurisdiction to determine
7 ownership or title. I believe the district courts have the
8 right to do so. They have the right to determine who has
9 the right to drill in a particular location, and they have
10 the right to determine ownership of title or leases, as the
11 case may be.

12 However, the OCD can stay a permit to drill, we
13 have the power to do that. As you all know, all we --
14 before we issue that APD we don't look at whether the
15 operator or the applicant has the right to drill before we
16 issue those APD. All we are looking for is to see, have
17 you -- a plugging bond, if the well should be plugged?
18 Have you attached Form C-102 to show us a plat where you
19 are going to drill the well? Is that in conformance with
20 the Rules and Regulations, the spacing requirements, the
21 location requirements? What are the casing designs? Is
22 that going to protect the fresh waters?

23 We look at those. That's all we do, and issue
24 APD, regardless of whether the operator has the right to
25 drill there or not, because we don't have any jurisdiction

1 to do that.

2 So the only thing I'm saying here is that it --
3 have been appropriate if the parties can -- can talk among
4 themselves or go to district court and determine ownership.
5 We could stay the APD that has been issued in these cases,
6 pending the outcome of those cases. If that's what you are
7 asking, we could do that, we could stay -- if it's in
8 question, we could stay the APD.

9 But I would not like to entertain any
10 presentation here telling me I have title here, because I
11 have no jurisdiction to do that. It would be a waste of
12 time for everybody here if you are going to tell me, oh, I
13 have -- I don't have title here, I have title here, or I
14 don't have title here, and whatever, X, Y, Z, if you have
15 no rights to drill any well. Because even if I make a
16 determination -- even if I know I make a determination,
17 it's null and void, because you still going to go to
18 district court to determine that. Because -- the reason is
19 that I don't have jurisdiction.

20 So when you stand up here before I call for
21 appearances I don't want you to tell me, I have 20 percent
22 here, X, Y, Z doesn't have any percent here, because it's
23 not my job to do that. It's not the duty of OCD or even
24 the OCC to determine that.

25 My purview here is, if that happens, tell me

1 ahead of time, District Courts. You know, maybe a ruling.
2 No, we can issue APDs to whoever is awarded that type of...

3 But in this case -- that's why I want to set -- I
4 mean state here, that I would like to, you know, listen to
5 anybody telling me -- somebody doesn't have title or not.
6 All you are going to tell me is that -- to the APD, that it
7 shouldn't be issued. If that is the case, yeah, I'll be
8 willing to listen to that.

9 But if you are asking me to do something that is
10 beyond my jurisdiction or the -- even though the OCC -- I
11 don't think it's appropriate.

12 So based on this, I would now like to call for
13 appearances on these two cases, unless anyone has a
14 comment.

15 MR. HALL: Mr. Examiner, first of all for the
16 record, I think we need to correct the case numbers for one
17 of the cases you referenced. The case for Occidental
18 Permian, Limited, is case 13,945.

19 EXAMINER EZEANYIM: Is that not what I said?

20 MR. HALL: No, sir.

21 EXAMINER EZEANYIM: What did I say?

22 MR. HALL: 13,910.

23 EXAMINER EZEANYIM: Oh, I thought I said 13,945.
24 If that's a mistake, please, could you correct that. I'm
25 sorry if I did that.

1 MR. HALL: I believe it might have been 13,948.

2 EXAMINER EZEANYIM: I thought I said 13,945,
3 because that has been ringing in my head since last night.

4 MR. HALL: Oh, good.

5 Mr. Examiner, for the record my name is Scott
6 Hall with the Miller Stratvert law firm, appearing on
7 behalf of Occidental Permian, Limited, in both of the cases
8 with EOG, and I believe everybody is in agreement those
9 cases ought to be consolidated for hearing.

10 And with respect to your comments, I anticipated
11 that this issue may come up so I have taken the liberty,
12 Mr. Examiner, of preparing for you a hearing memorandum
13 that addresses the agency's jurisdiction. I think it's
14 appropriate for you to look at the memorandum in the
15 context of this case.

16 EXAMINER EZEANYIM: Okay, could you wait until we
17 finish? I want to know who all is involved with this case
18 before we start. Can we do that?

19 MR. HALL: Okay, I thought you asked for
20 comments. That's fine.

21 EXAMINER EZEANYIM: Oh, yeah. Okay, oh, this --
22 yeah, comments before we even proceed, right? Is that what
23 I said, Mr. Hall?

24 MR. HALL: I'm sorry?

25 EXAMINER EZEANYIM: You are just answering to my

1 comments, or you are --

2 MR. HALL: Yes, sir.

3 EXAMINER EZEANYIM: -- are you starting -- Okay.

4 MR. HALL: Yes, sir.

5 EXAMINER EZEANYIM: Okay, if you've got just a
6 comment, go ahead before -- I haven't called for
7 appearances yet. I'll see how to call that, if the case is
8 going to go forward.

9 MR. HALL: Mr. Examiner, if you will closely
10 scrutinize Occidental's Application, you will see in there
11 that there is no request for the agency to determine title.
12 I agree with your comments. I do not believe that the
13 agency can try title. It cannot quiet title.

14 All it can do is determine the extent of
15 someone's claim to title, to determine whether it supports
16 the issuance by the agency of a drilling permit. And I
17 think that procedure, that authority, has been previously
18 addressed in a number of cases that both the Division and
19 the Commission have issued in the last two or three years.

20 And in view of those, I've collected those and
21 tried to put them in a hearing memorandum, which again
22 discusses the extent of the agency's jurisdiction in view
23 of New Mexico law addresses what is the nature of title
24 that the agency ought to be looking at, short of quieting
25 title.

1 So if I may present this --

2 EXAMINER EZEANYIM: Okay.

3 MR. HALL: -- to you, I think it would be
4 helpful.

5 That's all I have on the comments.

6 EXAMINER EZEANYIM: Yeah, continue with that
7 comment, because we have to -- What are you saying in this
8 thing that you handed out? What is your point you want to
9 make?

10 MR. HALL: The point, Mr. Examiner, is, I think
11 jurisdiction of the agency is an issue. Again, I agree
12 with what you have said. The agency does not have the
13 jurisdiction or authority to establish title.

14 What the agency does is -- in the context of
15 previous precedent orders on this topic, is to examine the
16 strength of an applicant's request for a drilling permit.
17 In the agency's drilling permits it requires an operator to
18 make a sworn certification that the Applicant owns a lease
19 interest, mineral interest or the right to drill on the
20 drill site before the APD will issue. If there is some
21 question about that, if there is some question about
22 ownership or the right to drill, that is the basis for the
23 agency's inquiry.

24 In this case you have a compulsory pooling
25 application, which also precipitates that same issue. In

1 order to invoke the agency's compulsory pooling powers, an
2 applicant must establish that it has the right to drill.
3 If that right is contested, that is something that is
4 within the agency's jurisdiction to inquire into.

5 EXAMINER EZEANYIM: Okay, Mr. Hall, correct me if
6 I'm wrong. I might ask some -- I might ask my counsel, if
7 you are here to ask the Division to stay the APD, I think
8 we could do that. If that's what you are asking, then we
9 can proceed, because we could stay the APD, pending the
10 jurisdiction -- I mean, pending the determination of who
11 owns what in that section that we're talking about. If
12 that's what you're asking us to do, yeah, we could proceed.

13 But I repeat what I just said. Correct me if I'm
14 wrong. If we are going to talk about -- When I call for
15 appearance and people tell me how much interest they have
16 for me to determine whether that APD is valid, you
17 recognize that I can't do that, because we don't
18 jurisdiction. The Legislature or the statute doesn't give
19 us that jurisdiction. It's there with the district courts,
20 it's there for you to -- among the parties to negotiate
21 whatever joint operating agreement they have and then come
22 back. And once you resolve that, then we can issue APD.
23 Or we can even revise the APD. We can stay the APD that's
24 already been issued.

25 And I assure you, the APD is not issued in error

1 because I've looked at it, we looked at all the things --
2 we looked at the -- you know, the plat, Form C-102, I look
3 at the casing design, I looked at spacing and location
4 requirements. They all met all the requirements.

5 But if you are now coming here to say, Well, that
6 APD is issued in error, or we want to stay that APD because
7 of ownership issues, we can understand that.

8 But I don't want to waste everybody's time here
9 arguing to the point -- I made this point clear on Friday
10 when we met, that it's really -- for you guys to come here
11 and tell me that XYZ owns -- therefore, you know, deny
12 application or issue a -- you know, an APD. So that will
13 not work.

14 I don't know what you have to say in this case.

15 EXAMINER BROOKS: Well, I don't if Mr. Kellahin
16 wants to make any response before I say anything.

17 Would you like to address the issue, Mr.
18 Kellahin?

19 MR. KELLAHIN: Yes, Mr. Brooks, thank you.

20 Mr. Examiner, I'm Tom Kellahin of the Santa Fe
21 law firm of Kellahin and Kellahin, appearing on behalf of
22 Cimarron Exploration Company. Cimarron has a stake in the
23 permit, they claim an interest in the property and have
24 farmed out their interest to EOG.

25 It's our position that we're here today to

1 support the continuing approval of the APD. We believe
2 that Mr. Brooks got this issue correct in the TMBR/Sharp
3 case when I represented TMBR/Sharp, came before the
4 Division and tried to get Arrington's APD stayed, and Mr.
5 Brooks told me my problem was in district court, like I
6 think he should tell Mr. Hall, that he needs to go to
7 district court with this issue.

8 Mr. Brooks's order in the TMBR/Sharp case said
9 that all the Division needs to do for the approval of the
10 APD is to satisfy those conditions that Mr. Ezeanyim just
11 described. In addition, however, the Applicant must have sa
12 good faith, legal, colorable title.

13 And when you look at the filings and you look
14 back on May 15th of this year when the APD was issued, the
15 information I have, and the legal testimony of EOG will be
16 that they had colorable title then. It was not until OPL
17 recorded a document called termination of agreement -- that
18 was not recorded until 45 days later, after the APD was
19 approved and put of record in Lea County. That was on
20 April 30th.

21 EXAMINER BROOKS: Well, if you'll excuse me, Mr.
22 Kellahin, what I think we're discussing right now is what
23 is the nature of this proceeding, rather than the details
24 of the title claims, and want to give advice to the
25 Examiner in terms of whether we should go forward and what

1 issues we should invite counsel to address at the time we
2 do go forward.

3 MR. KELLAHIN: Well, I apparently failed, but my
4 attempt was to tell you that I agree that we should be
5 concentrating on the validity of the APD. And we're not
6 here to ask that it be stayed.

7 EXAMINER BROOKS: Yeah.

8 MR. KELLAHIN: We believe that was properly
9 issued and ought to go forward. And if any party does not
10 like that, they can do what TMBR/Sharp had to do: Go to
11 district court and get a district court order staying the
12 Arrington APD.

13 EXAMINER BROOKS: But your position is that --
14 Well, let's see, I want to get the positions of the parties
15 clear.

16 Mr. Hall, who do you represent?

17 MR. HALL: Occidental Permian, Limited.

18 EXAMINER BROOKS: And your position is that EOG
19 -- who was the applicant for the APD, right?

20 MR. HALL: Yes, that's correct?

21 EXAMINER BROOKS: -- that they have -- they don't
22 even have a good faith claim of title?

23 MR. HALL: That's correct.

24 EXAMINER BROOKS: And you are -- Cimarron
25 supports EOG?

1 MR. KELLAHIN: Yes, Cimarron is aligned with Mr.
2 Bruce.

3 EXAMINER BROOKS: Mr. Bruce, you represent EOG?

4 MR. BRUCE: That's correct, Mr. Examiner.

5 EXAMINER BROOKS: And what do you believe are the
6 issues that the Commission is to address today?

7 MR. BRUCE: Mr. -- I'll address this to both
8 Examiners. And Examiner Brooks, this is a case which you
9 drew to our attention in the Bold Energy vs. OXY case a few
10 months ago.

11 EXAMINER BROOKS: Exactly --

12 MR. BRUCE: The --

13 EXAMINER BROOKS: -- I remember asking Ms. Munds-
14 Dry to -- that case for me, so I remember reading -- I
15 remember the citation.

16 MR. BRUCE: That of Magnolia Petroleum Company
17 versus Railroad Commission. And if you'd turn to page 3,
18 right at the upper left-hand corner where it says, The
19 Railroad Commission should not grant a permit to drill an
20 oil well to one who does not claim property in good faith,
21 but if applicant makes reasonably satisfactory showing of
22 good faith claim of ownership, the fact that the title is
23 in dispute will not defeat his right to a permit.

24 It's EOG's position that they have valid title,
25 and at the very, very least, they have a good faith claim

1 to title. Therefore when it obtained the APD it was valid.
2 We will present evidence of that. So the APD should not be
3 stayed, it should be retained in effect, number one.

4 And number two, since it does have a good faith
5 claim to title under the cases that Mr. Kellahin stated, we
6 are permitted to move forward with the force pooling
7 Application.

8 EXAMINER BROOKS: Okay. Well, Mr. Examiner, I --
9 when I discussed this case with you yesterday, I was not
10 aware, really, because I hadn't looked at it carefully
11 enough, that we actually did have a compulsory pooling case
12 before us.

13 I think everybody in the room agrees that the OCD
14 does not have the jurisdiction to determine title.
15 However, the force pooling statute which OCD is entitled to
16 -- is authorized to apply requires that there be an owner
17 who is proposing to drill. And it seems to me that it's a
18 necessary implication from that statement that we have to
19 make some kind of determination as to whether the applicant
20 for force pooling is, in fact, an owner.

21 And of course our determination on that issue
22 doesn't bind the district court in anything further, but we
23 have to at least make a sufficient determination of whether
24 they're an owner to be able to proceed to either grant or
25 dismiss the compulsory pooling application.

1 So under the circumstances I think we probably
2 need to listen to the proceeding, although the
3 determination we make will be a very limited one as to
4 whether the APD should be suspended and whether the
5 compulsory pooling issue should be -- whether the
6 compulsory pooling Application should be entertained.

7 So I recommend we go forward with the proceeding
8 and then make a determination afterwards as to what is the
9 appropriate action for the OCD.

10 EXAMINER EZEANYIM: Okay, at this point both of
11 my counsel -- you know, counsel's advice, I'm going to call
12 for appearances in these two cases.

13 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
14 representing EOG Resources, Inc. I have one witness.

15 MR. HALL: Mr. Examiner, Scott Hall, of the
16 Miller Stratvert law firm, Santa Fe, appearing on behalf of
17 Occidental Permian, Limited, and I have one witness this
18 morning.

19 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
20 the Santa Fe law firm of Kellahin and Kellahin, appearing
21 this morning on behalf of Cimarron Exploration Company. I
22 have no witnesses to present.

23 EXAMINER EZEANYIM: Any other appearances?

24 Okay, the witnesses have to stand now to be
25 sworn.

1 (Thereupon, the witnesses were sworn.)

2 EXAMINER EZEANYIM: As I said, this case is
3 consolidated. Who wants to go first?

4 MR. BRUCE: I'll go first. I think it would -- I
5 will be very -- quite brief in my presentation, Mr.
6 Examiner.

7 EXAMINER EZEANYIM: Okay.

8 DOUGLAS W. HURLBUT,
9 the witness herein, after having been first duly sworn upon
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. Will you please state your name for the record?

14 A. Douglas W. Hurlbut.

15 EXAMINER EZEANYIM: Can you spell that last name?

16 THE WITNESS: It's spelled H-u-r-l-b-u-t.

17 Q. (By Mr. Bruce) And where do you reside?

18 A. I reside in Midland, Texas.

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

20 A. I work for EOG Resources, Inc., and I'm a land
21 specialist with them.

22 Q. Have you previously testified before the
23 Division?

24 A. Yes, I have.

25 Q. And were your credentials as an expert petroleum

1 landman accepted as a matter of record?

2 A. Yes, they were.

3 Q. And are you familiar with the land matters
4 involved in this case?

5 A. Yes, I am.

6 MR. BRUCE: Mr. Examiner, I'd tender Mr. Hurlbut
7 as an expert petroleum landman.

8 EXAMINER EZEANYIM: Mr. Hurlbut, are you a
9 certified petroleum landman? Are you a CPL?

10 THE WITNESS: Yes, I am.

11 EXAMINER EZEANYIM: Mr. Hurlbut is so qualified.

12 Q. (By Mr. Bruce) Mr. Hurlbut, could you identify
13 Exhibit 1 and describe the well involved in this, please?

14 A. Exhibit 1 is a plat of the land, Township 18
15 South, Range 34 East. It shows this location of the
16 Cimarron 17 State Number 1 well. It's over in Section 17,
17 and the exact location is like 1650 from the north and 330
18 from the west line of Section 17.

19 Q. What is the test formation of this well?

20 A. Bone Spring.

21 Q. And what zones do you seek to force pool?

22 A. The Bone Spring.

23 Q. The Bone Spring. Do you seek to pool from the
24 base of the Queen to the base of the Bone Spring?

25 A. Correct.

1 Q. And the Bone Spring is oil in this oil in this
2 area; is that --

3 A. That's correct.

4 Q. And this is an orthodox location?

5 A. Yes, it is.

6 Q. Who do you seek to force pool?

7 A. Occidental Petroleum Limited Partnership, OPL.

8 Q. And what is Exhibit 2?

9 A. Exhibit 2 is a proposal letter that I mailed out
10 on March 21st, 2007, to Occidental Permian, and it is a
11 well proposal stating the location of the well, the
12 footage, the section, the township and range, Lea County,
13 New Mexico. Also attached is an authorization for
14 expenditure, the cost to drill and complete the well, a
15 copy of the drilling title opinion prepared by the
16 Stubbeman law firm.

17 A joint operating agreement that was enclosed was
18 one that we had previously used with OPL on three other
19 wells, the Cimarron 18 State Number 1, Number 2 and Number
20 3 wells was the same -- we used the same joint operating
21 agreement --

22 Q. Okay.

23 A. -- and also a copy of the approved drilling
24 permit with the plat.

25 Q. Okay. The APD had already been obtained by EOG

1 at this time, correct?

2 A. Correct, or it was in the process of working. I
3 don't know the exact date. I think it probably had been
4 obtained by then.

5 Q. But the APD which is included in this package is
6 dated in --

7 A. Correct.

8 Q. -- mid-March?

9 A. That's true.

10 Q. Now we'll get into some of these ownership issues
11 later, but had you -- besides this letter, had you been in
12 contact with OXY over the months regarding the drilling of
13 this well?

14 A. Yes, I have.

15 Q. Could you just describe that a little bit and
16 describe what OXY did in preparation for drilling this
17 well?

18 A. Well, we had had a good working relationship with
19 OXY and OPL, and they had participated with us on three
20 previous wells, which is under the same title as this one.

21 Q. Over in Section 18?

22 A. Correct, our Cimarron 18 State Number 1, Number 2
23 and Number 3 wells, which is the same title as the 17
24 proposal. And so we saw no difficulties there in, you
25 know, going forward with approaching them and asking them

1 if they were, you know, interested in participating in this
2 well like they had done on the previous three.

3 And I had called and talked to David Evans, who's
4 the landman over there, and told him that we were going to
5 be sending a proposal. The indication was that they would
6 probably be interested in participating.

7 And we had also worked out a farmout agreement
8 prior to that with Cimarron and got that all signed up and
9 ready to go, and we moved forward on this procedure. We
10 even went out there and built a location, because we're
11 having a rig move in pretty quick. Because of the way
12 we've got the rig schedule set up and we're drilling wells,
13 it's kind of hard to know for sure when one's coming or
14 leaving, and there's difficulties.

15 But anyhow, we had a rig come in, and so we
16 notified -- I sent this proposal letter out to OXY, and I
17 talked to David several times. And their indication was --
18 when they first got it was, yeah, they'd -- oh, yeah,
19 they'd be in the well, no problem, they'd participate just
20 like they have in the previous wells.

21 And about a week went by and I called again and
22 said, Well, I haven't gotten the signed AFE and/or the
23 operating agreement and was wondering where that was.
24 We're fixing on moving in, and usually we try to get those
25 papers lined up and signed by the parties who are going to

1 be participating prior to moving in.

2 And so that's when I came to find out that there
3 was a little bit of -- degree of resistance there, that
4 they decided that they didn't want to participate. And
5 from then on it went downhill.

6 Q. You mentioned that you built location and did
7 some other matters in preparation for drilling of this
8 well.

9 A. Correct.

10 Q. Approximately how much had EOG spent on the
11 location, et cetera?

12 A. I think it's around \$50,000 is what we've already
13 paid for a location. Now that's just -- I'm not a hundred
14 percent positive of that number, but I think that's what
15 somebody had told me.

16 Q. So just a ballpark figure?

17 A. A ballpark figure.

18 Q. And then when the title issues arose, did EOG
19 cease activity on the well site?

20 A. No.

21 Q. When the title issues arose, did EOG cease
22 activity at the well site?

23 A. Yeah, we ceased activity because, you know, it
24 kind of like threw up a big red flag as to, well, maybe
25 they're claiming an interest. We don't know why. It's the

1 same title we've already drilled three successful wells
2 under, so we couldn't understand what the situation was.

3 Now I had also talked to them about, you know,
4 maybe farming out or doing something, but that's when --
5 Oh, no, we're not going to do anything, and we think we
6 probably own this, or whatever. And --

7 Q. Okay.

8 A. -- you know, just -- things just went downhill.

9 Q. The second page of Exhibit 2 is an AFE. What is
10 the approximate depth of this well?

11 A. I think it's 9500 feet.

12 A. And what are the dryhole and completed well
13 costs?

14 A. The dryhole cost is 1.1 million bucks, and the
15 completed well is close to \$2 million, \$1.957.

16 Q. And are these costs in line with the costs of
17 other wells drilled to this depth in this area of Lea
18 County?

19 A. They were at the time that we did the proposal,
20 but that's been like six months ago, so I'm not sure what
21 those costs are now. But I'm saying either that or maybe a
22 little bit cheaper than that.

23 Q. Okay.

24 A. But I'd say they're pretty close.

25 Q. And you have drilled several other Bone Springs

1 wells in this immediate area?

2 A. Oh, yes, sir, we have.

3 Q. So EOG has a good handle on the costs?

4 A. Right.

5 Q. Do you request that EOG be named operator of the
6 well?

7 A. Yes.

8 Q. And do you request the maximum cost-plus-200-
9 percent risk charge against nonconsenting owners?

10 A. Correct.

11 Q. What overhead rates do you propose?

12 A. \$5000 for drilling and \$500 for producing.

13 Q. And are these rates equivalent to those charged
14 by EOG and other operators in this area for wells of this
15 depth?

16 A. Yes, they are. I think that they're the same
17 identical ones we charged under the previous wells we
18 drilled with OXY, OPL.

19 Q. And do you request that these rates be adjusted
20 under the COPAS accounting procedure?

21 A. Yes.

22 Q. And was OXY notified of this hearing?

23 A. Yes.

24 Q. And is that reflected in Exhibit 3? ✓

25 A. Yes.

1 Q. Now let's get into the title matters. And Mr.
2 Examiner, perhaps it would help to keep Exhibit 1 in front
3 of you at the same time as we go through this.

4 What is Exhibit 4, Mr. Hurlbut?

5 A. Well, it's an assignment of operating rights as
6 recorded in Book 455, page 664 of the records in Lea
7 County, New Mexico.

8 Q. And who was this by and between?

9 A. Amoco and Santa Fe Exploration Company?

10 Q. And Union Texas?

11 A. Right, and Union Texas, you're right.

12 Q. Now what was the total assigned by this --
13 operating rights assigned by this --

14 A. I believe it was 75 percent.

15 Q. Now to the best of your knowledge, is OPL the
16 successor to Amoco Production Company?

17 A. They are.

18 Q. And who is EOG the successor to?

19 A. We're the successor to Union Texas Petroleum
20 Corporation.

21 Q. And who is Cimarron the successor to?

22 A. Santa Fe Exploration Company through a
23 bankruptcy.

24 Q. Okay. Now does this assignment cover the well
25 unit that we're here for today?

1 A. Yes, it does.

2 Q. And does it also cover acreage over in the
3 northeast quarter of Section 18, which we'll get to in a
4 minute?

5 A. Yes, it does.

6 Q. Is it EOG's opinion that this assignment is still
7 valid and in effect?

8 A. Yes, it is.

9 Q. What is Exhibit 5?

10 A. Exhibit 5 is the farmout agreement that is
11 between EOG Resources and Cimarron Exploration, Hunt
12 Cimarron Limited Partnership, doing business as Cimarron
13 Exploration Company.

14 Q. And this pertains to the specific well unit we're
15 here for today?

16 A. Correct.

17 Q. And obviously EOG -- it's also EOG's opinion that
18 Cimarron's title to this well unit is valid?

19 A. Correct.

20 Q. So based on the assignment and the successive
21 changes in title, what would be EOG's working interest in
22 the well unit?

23 A. It would be a 75-percent working interest.

24 Q. Okay. Now Mr. Hurlbut, I'd ask you to refer to
25 Exhibit 6, which actually contains several instruments, and

1 Exhibit 1. First of all, what does Exhibit 6 contain?

2 A. Well, Exhibit 6 is a division order, title
3 opinion --

4 Q. Or no, division order, correct?

5 A. What?

6 Q. Exhibit 6?

7 A. Oh, I'm sorry, division -- it's a division order.

8 Q. Yeah.

9 A. Sorry, I didn't mean to say opinion. Yeah, it's
10 a division order, and this instrument or document was sent
11 to OPL at the time that we completed this well --

12 EXAMINER EZEANYIM: Excuse me, division order,
13 what is that? An order issued by the Division?

14 MR. BRUCE: Mr. Examiner, once a well is drilled,
15 a company sends out what's called the division order,
16 specifying what percentage of production a company or an
17 individual will get, and that's what --

18 THE WITNESS: It's kind of just a verification --

19 EXAMINER EZEANYIM: Oh, yeah.

20 THE WITNESS: -- it's a verification of ownership
21 in a way.

22 EXAMINER EZEANYIM: Okay, yeah.

23 THE WITNESS: They're signing off that we own
24 this and we agree with the net revenue number, so we know
25 how much we're going to get paid, is basically what it is.

1 EXAMINER EZEANYIM: I thought division is -- you
2 know --

3 MR. BRUCE: No, not Oil Conservation Division,
4 Mr. Examiner.

5 EXAMINER EZEANYIM: Okay, go ahead.

6 Q. (By Mr. Bruce) And actually in Exhibit 6 there
7 are three division orders, are there not, Mr. Hurlbut?

8 A. Correct. There's a division order on the
9 Cimarron 18 State Number 1 well, the Cimarron 18 State
10 Number 2 well, and the Cimarron 18 State Number 3 well.

11 Q. And these division orders are all dated fairly
12 recently in 2006 and early 2007?

13 A. Correct.

14 Q. And if you'll look at Exhibit 1, where are these
15 three wells located?

16 A. Well, they're located in the northeast quarter of
17 Section 18.

18 Q. Okay. And if you -- were these wells -- and
19 these wells were drilled just in the past year or so?

20 A. Yes, sir.

21 Q. And is EOG's and OXY's interest under -- and
22 Cimarron's interest, under these wells covered by the
23 Exhibit 4 assignment?

24 A. Yes, they are.

25 Q. And so if you look at Exhibit 4, besides covering

1 this particular well unit we're here for today, which is
2 the southwest quarter, northwest quarter, Exhibit 4 also
3 covers the north half, northeast quarter and southwest
4 quarter, northeast quarter of Section 18, where the
5 Cimarron 18 State Well Numbers 1, 2 and 3 are located?

6 A. Correct.

7 Q. And OXY participated in those wells?

8 A. Yes, they did.

9 Q. And after production was obtained, they signed
10 division orders?

11 A. Yes, they did.

12 Q. And their division of interest is stated to be
13 what in these wells?

14 A. I believe they've got a -- they have a 25-percent
15 working interest, but in these division orders it reflects
16 just their net revenue, which is 21.875 percent.

17 Q. So that would be 25 percent of the 7/8 working
18 interest?

19 A. Correct.

20 Q. And these are the wells you mentioned previously
21 that you had drilled with OXY under this same assignment,
22 Exhibit 4?

23 A. Correct.

24 Q. And therefore again, EOG believes that its title
25 is valid?

1 A. Correct.

2 Q. And with respect to the Cimarron 18 State Well
3 Numbers 1, 2 and 3, did OXY sign joint operating
4 agreements?

5 A. Yes, they did.

6 Q. And what are Exhibits 7 and 8?

7 A. Well, they're model form recording supplement to
8 an operating agreement and financial statements, kind of
9 what they call a short form operating agreement. And this
10 is the recordable document that we put of record. And they
11 signed this at the time they signed the operating
12 agreement, and this is what's been put of record
13 reflecting, you know, what their ownership is under the
14 operating agreement, under the well.

15 Q. Okay, so both of these instruments were recorded
16 in Lea County?

17 A. Yes, sir, they have been.

18 Q. And Exhibit 7 would cover what? I believe the
19 Cimarron 18 State Well Numbers 1 and 2?

20 A. This is correct.

21 Q. And Exhibit 8 would cover the Well Number 3 in
22 Section 18?

23 A. That's right.

24 Q. And there were additional interest owners in the
25 Number 3 well?

1 A. About 15 or 20 additional working interest
2 owners.

3 Q. Which is why there are different JOAs?

4 A. Correct.

5 Q. Just a couple of final questions, Mr. Hurlbut.
6 let me hand you -- first let me show it to -- I
7 unfortunately only have one copy, and I'll make more copies
8 later.

9 Mr. Hurlbut, with respect to the interests --
10 just so you've got one --

11 EXAMINER EZEANYIM: Uh-huh.

12 Q. (By Mr. Bruce) -- what type of lease is involved
13 in this case and with respect to the Cimarron 18 State Well
14 Numbers 1, 2 and 3?

15 A. It's a State of New Mexico lease.

16 Q. And that lease is at this point probably over 25
17 years old?

18 A. Yeah, I think it was dated in '73, I believe.

19 Q. Okay. Now in state leases you have to pay
20 rentals, do you not?

21 A. Correct, mandatory annual rentals on state
22 leases.

23 Q. Even after the end of the primary term?

24 A. That's correct.

25 Q. And even after production is obtained from a

1 lease?

2 A. That's correct.

3 Q. And what was the obligation of EOG with respect
4 to OXY on the payment of rentals? In other words, who
5 originally paid the rentals?

6 A. Well, the rentals are usually paid by the record
7 title owner. In this case, the record title owner was OXY
8 or OPL. And so OPL then would set it up in their records
9 if we have an interest, which we claim we have an interest
10 in this lease, and they would send us a bill for our share
11 of the annual rentals. And that's what that is right there
12 that you've got, is evidence that we've been paying the
13 annual rentals from their billing every year.

14 Q. And the rentals on this lease were --

15 A. -- two dollars an acre.

16 Q. -- two dollars an acre, on how many acres?

17 A. 520 acres, for a total of \$1040.

18 Q. And EOG would be responsible for its 37.5-percent
19 share?

20 A. About 37 1/2 percent, right.

21 Q. Which would lead to that \$400 payment --

22 A. Right --

23 Q. -- that it was --

24 A. -- correct.

25 Q. -- invoiced for?

1 A. Correct.

2 Q. And so that has continued year after year after
3 year, and that's the latest statement --

4 A. Correct, yeah --

5 Q. -- that we got from OXY?

6 A. -- they -- in fact, I had them check, and they
7 showed where they've been paying the thing every year we've
8 been paying that invoice that we've been getting from OPL
9 as far as the rental.

10 Q. And again, EOG -- it's EOG's opinion that it does
11 have valid title to a working interest in this particular
12 well unit, the southwest quarter, northwest quarter of
13 Section 17?

14 A. Correct.

15 Q. In your opinion is the granting of EOG's
16 Application for force pooling and the retention of EOG's
17 APD in effect in the interests of conservation and the
18 prevention of waste?

19 A. Yes, it is.

20 Q. And were Exhibits 1 through 9 either prepared by
21 you or under your supervision, or compiled from company
22 business records?

23 A. Correct.

24 MR. BRUCE: Mr. Examiner, I'd move the admission
25 of EOG Exhibits 1 through 9.

1 EXAMINER EZEANYIM: Any objections?

2 MR. HALL: No objection.

3 EXAMINER EZEANYIM: Exhibits 1 through 9 will be
4 admitted.

5 Mr. Hall?

6 CROSS-EXAMINATION

7 BY MR. HALL:

8 Q. Mr. Hurlbut, if you would, please, sir, would you
9 take before you your EOG Exhibit Number 4? This is the
10 assignment of operating rights from 1985 from Amoco?

11 A. Correct.

12 Q. How was this instrument first brought to your
13 attention?

14 A. I can't really remember how it was first brought
15 to my attention. I think we had a copy of it in our file,
16 and I think there might have been -- it might have come up
17 in our title opinion, title opinions we had done out there.
18 And I can't honestly remember how -- I mean, I really don't
19 remember where it came -- I mean, how I got a copy of it or
20 anything.

21 Q. What is the purpose for EOG's use of this exhibit
22 in this hearing?

23 A. To show we have title.

24 Q. Okay. Let's look back to your Exhibit Number 2.
25 This is your March 21, 2007, well proposal for the Cimarron

1 17 State Number 1 --

2 A. Uh-huh.

3 Q. -- sent to OXY; is that right?

4 A. Correct.

5 Q. And it enumerates a number of items that are
6 included with the transmittal letter, including the
7 drilling title opinion prepared by the Stubbeman law firm.
8 Your Exhibit 2 doesn't contain that title opinion, does it?

9 A. I guess it doesn't. I thought it was in there.
10 Okay, I don't see it in there.

11 Q. Let's do this. Let me refer to you what we've
12 marked as OXY Exhibit A, and would you agree this is
13 another copy of your March 27, 2007, well proposal letter?

14 A. Correct.

15 Q. Including the March 19, 2007, original drilling
16 title opinion?

17 A. Correct.

18 EXAMINER EZEANYIM: Is that March 27 or March 21?
19 Am I having a different document? I see that March 21.

20 MR. HALL: Say again, Mr. Examiner?

21 EXAMINER EZEANYIM: March 21 is what I'm seeing.
22 Do you have March 27?

23 MR. HALL: March 21, 2007.

24 EXAMINER EZEANYIM: Okay, you said March 27th, so
25 I thought I had the wrong document.

1 MR. HALL: Mr. Examiner, within that exhibit
2 there is a March 19, 2007, original drilling title
3 opinion --

4 EXAMINER EZEANYIM: Uh-huh.

5 MR. HALL: -- that was omitted from EOG's Exhibit
6 2.

7 EXAMINER EZEANYIM: Okay.

8 MR. HALL: So our Exhibit A and EOG's Exhibit 2
9 are virtually identical except for the omission of the
10 drilling title opinion in EOG's version.

11 EXAMINER EZEANYIM: Okay, okay.

12 MR. HALL: We've included that here, and I think
13 Mr. Hurlbut agrees that our Exhibit A does not include the
14 copies of the JOAs. Different documents.

15 EXAMINER EZEANYIM: Continue.

16 Q. (By Mr. Hall) Mr. Hurlbut, if you will take the
17 March 19, 2007, drilling title opinion and turn to page
18 number 2 of that opinion, at the bottom it references
19 assignments. And is assignment 1 the 1985 Amoco assignment
20 of operating rights, which is your Exhibit 4?

21 A. Let's see here. I believe that's correct.

22 Q. And in the comment on that assignment, which is
23 your Exhibit Number 4 --

24 A. Exhibit Number 4. Oh, yeah. Okay.

25 Q. -- back again at comment number 1 on the

1 assignment it says that, The interest assigned to Santa Fe
2 and Union Texas in the lease is made subject to that
3 certain farmout contract and joint operating agreement
4 dated March 1, 1983, between Amoco and Santa Fe Exploration
5 Company, and that certain joint operating agreement dated
6 September 30, 1983, between Union Texas Petroleum
7 Corporation and Amoco, et al. Amoco reserved in this
8 assignment a right of reassignment requiring the assignee
9 to reassign their interest in the leased premises within 60
10 days from the date assignees elect to surrender or abandon
11 the interest assigned therein or at such times as the lands
12 are no longer producing.

13 MR. KELLAHIN: Objection, Mr. Examiner. Mr. Hall
14 is going beyond the scope of the hearing this morning. He
15 wants you to interpret contract documents and decide his
16 title problem, and he needs to go to district court.

17 MR. HALL: Well, I'm not quite finished with my
18 question, Mr. Examiner.

19 MR. KELLAHIN: The document speaks for itself.
20 He doesn't need to read it to him.

21 MR. HALL: The purpose of the question is to
22 probe into whether or not EOG has the right to drill for
23 purposes of their compulsory pooling application.

24 EXAMINER BROOKS: Well, I think everything that's
25 been said here bears on that, but in the end the decision

1 that this -- Well, as a legal matter, I agree that this is
2 relevant to the determination we make. As a practical
3 matter, I tend to agree with many of the comments that the
4 Examiner made at the beginning, that it's probably
5 something of a waste of time because -- Well, I'll stick
6 with what I said at the beginning, and I will advise the
7 Examiner to overrule the objection and let the record be
8 completed, and then we'll make a decision. I don't think
9 either party is going to like it very much.

10 MR. HALL: Let me ask it this way, Mr. Examiner.

11 EXAMINER EZEANYIM: Okay, well, first let me --
12 based on the advice of my counsel here, the objection is
13 overruled.

14 MR. HALL: I'll ask it this way, Mr. Examiner.

15 Q. (By Mr. Hall) Mr. Hurlbut, when you had the
16 drilling title opinion in hand as of March 19, 2007, can
17 you explain to the Hearing Examiner what due diligence you
18 did to investigate the nature of the assignments referenced
19 in the opinion and any comments or curative requirements
20 that bore on this assignment?

21 MR. KELLAHIN: Mr. Examiner, objection. The
22 standard is not due diligence. The standard is good faith
23 effort. There's a difference.

24 EXAMINER BROOKS: Well, I agree with that, that
25 that's the standard. At the same time, I guess diligence

1 is arguably relevant to good faith, so I would again advise
2 the Examiner to overrule the objection.

3 EXAMINER EZEANYIM: Objection overruled. And I
4 go back to what I said before. It doesn't really matter
5 what was presented to me. I'm not going to overstep my
6 bounds. You know, if you want waste our time and you guys
7 argue about ownership title here, well -- but the point --
8 we have to, you know, call the line. So objection
9 overruled. Let's hear it.

10 Continue.

11 MR. HALL: Could you read back the question,
12 please?

13 (Thereupon the question beginning at page 41,
14 line 15, was read.)

15 THE WITNESS: Well, I got the opinion, I looked
16 at the opinion. The opinion was somewhat the same as the
17 opinions we drilled already under in Section 18, and we had
18 no problems there in Section 18 with drilling those wells
19 and OPL agreeing with us to participate, and -- but also
20 took it a little further. I examined again -- because I've
21 looked at this numerous times, but that assignment of
22 operating rights, and I can't figure for the life of me
23 which well they're talking about in that particular
24 assignment of operating rights which would cause that
25 assignment to lapse.

1 So I waived that requirement, because to me --
2 the attorney didn't know that at the time. The attorney
3 who did the title examination only points the facts out.
4 We have to dig for those facts and research those facts to
5 figure out exactly what the answers are, and I could not
6 determine from that -- on this particular assignment, the
7 acreage that's being assigned here, there's not a well that
8 was drilled on that assigned acreage, between those depths.
9 There had never been a well drilled.

10 And so I couldn't figure out why -- Sixty days
11 doesn't come into play, because they haven't drilled the
12 well yet. We earned the interest and we're waiting to
13 drill a well. Now we have drilled a well, and the wells
14 are continuously producing.

15 EXAMINER EZEANYIM: All right. Well, I overruled
16 that objection, but I want to understand, you know, the
17 relevance of the question, Mr. Hall. What is the relevance
18 of the question? What do you want me to understand here?

19 MR. HALL: Ultimately, Mr. Examiner, we're asking
20 you to enter a finding in your order that says simply, EOG
21 does not have the right to drill.

22 EXAMINER EZEANYIM: And it's all stated in this
23 fine print below this -- what is this document? Page 2 of
24 that document? Is that what you're saying?

25 MR. HALL: This is relevant to that requested

1 finding.

2 We will also ask you to enter a finding that
3 because EOG is without the right to drill, it has no
4 authority to invoke the Division's compulsory pooling
5 powers.

6 That's the relevance of this line of inquiry.

7 EXAMINER EZEANYIM: I still don't understand it,
8 and I need to understand it to proceed. I mean, where do I
9 find that information?

10 MR. HALL: We will lay it out to you through the
11 course of the examination of witnesses and review of the
12 exhibits. We will establish for you that EOG did not have
13 the right to drill, did not have the right to file its
14 compulsory pooling Application.

15 EXAMINER EZEANYIM: Okay.

16 EXAMINER BROOKS: Mr. Hall, just as a comment
17 here, it would seem somewhat unlikely that the Division
18 would make that kind of finding, given the limitations on
19 its jurisdiction. That being the case it's going to be, I
20 think, a documentary finding if we did make it. Either way
21 it would be on the documents, so perhaps the most
22 expeditious way to present this case would be to put all
23 the documents in the record and then have counsel make
24 their arguments on the documents, unless the witnesses can
25 really add something.

1 But that's just an admonition. I won't tell
2 counsel how to try their case.

3 MR. HALL: Well, I appreciate that, Mr. Brooks,
4 although I would point out that EOG as the Applicant in its
5 pooling case had filed an APD. It's directly at issue.
6 There were certifications made on the Division's forms
7 about ownership of the lease interest or possession of the
8 right to drill.

9 It might be helpful to the Examiner to inquire
10 into that, what went into that.

11 EXAMINER BROOKS: Well, you may proceed as you
12 think appropriate, subject to what the Examiner says.

13 MR. HALL: I'll do my best to expedite as well.

14 Q. (By Mr. Hall) Back on our Exhibit A, the title
15 opinion again, Mr. Hurlbut, if you look again at the bottom
16 of page 2, did you attempt to examine the farmout contract
17 and the two joint operating agreements that are referenced
18 in that numbered paragraph 1?

19 A. Well, I looked at the -- I don't have my glasses
20 on, but -- Which ones are referenced in there? The March
21 1st?

22 Q. March 1st, 1983 --

23 A. Okay.

24 Q. -- and September 30, 1983.

25 A. The problem that came up with the March 1st of

1 '83 agreement, we could not locate it. And we've made
2 numerous phone calls to see if we could find it. We didn't
3 have it in our records. And our records came from Union
4 Texas to Burlington to EOG, and so we should have had that
5 in our file but we didn't.

6 I contacted Cimarron Exploration. Their interest
7 came from Santa Fe through the bankruptcy. They did not
8 have the document.

9 I even contacted Seely Oil Company, who is an
10 interest owner right there, talked to them. They searched,
11 they could not find it.

12 It's an unrecorded document, was never filed of
13 record. And so we couldn't find that particular document.

14 But we did have the September 30th agreement, and
15 I looked at that agreement and spent a bunch of time
16 looking at that one, pulling information off of the rights,
17 checking wells that were drilled, to what depths and
18 formations when they were plugged. And I came to the
19 conclusion that that agreement was null and void, it had
20 expired.

21 And therefore I -- I was thinking probably that
22 agreement, the September 30th agreement, came out of the
23 March 1st agreement, is what my thinking was.

24 So I concluded that since nobody had a copy of
25 the March 1st agreement anywhere in their files --

1 including OXY, because I called and talked to David and
2 they researched, they couldn't find it -- at the time, they
3 couldn't find it -- I concluded that it was an agreement
4 that at the time the papers were put together somebody had
5 it or referenced to it, but later it became a situation
6 where the agreement had expired or was canceled or null and
7 void, didn't pertain to these lands, it was trashed or, you
8 know, thrown away. So nobody had a copy of it, and so we
9 didn't have a copy of it.

10 And I just -- I had to go with what I had to go
11 with, and that was the September, which I thought -- which
12 I felt was probably an amendment to that one, or one that
13 had been an exchange agreement for that somehow. And so
14 that's what we went with.

15 Q. And how did you make the determination that the
16 September 30th agreement expired, as you say?

17 A. How did I make the determination?

18 Q. Yes, sir.

19 A. Well, again, I went -- pulled up, you know, maps
20 of the area, a plat, depicted all the wells, where wells
21 had been drilled, went into *Dwight's*, looked at production,
22 looked at when wells were drilled, you know, and
23 information like that.

24 Q. Were you able to identify the initial well or
25 earning well under that September 30th agreement?

1 A. I'm trying to remember now. I guess it was that
2 Amoco State 18, yeah.

3 Q. Well, let me see if this is correct --

4 A. It was Amoco State --

5 Q. It was Amoco State Number 1

6 A. Amoco State Number 1, in Section 18.

7 Q. In Section 18.

8 A. Right, they had -- that was the only well that
9 was drilled out in that -- under that whole thing. And I
10 think it was drilled as a Morrow well, and then they came
11 back in the later and tried to make a Bone Springs well,
12 but they plugged the well --

13 Q. All right.

14 A. -- in '97.

15 Q. So are we in agreement, then, that that well
16 would have not held rights under that September 30 joint
17 operating agreement, if it were plugged and abandoned?

18 A. Correct.

19 Q. Let's look back at the title opinion again, our
20 Exhibit A. If you will turn to page 5 of that, under title
21 requirements, comment 3, at the very top of that page
22 addresses rights under the 1985 Amoco assignment of
23 operating rights, your Exhibit 4 --

24 A. Uh-huh.

25 Q. -- and there are four requirements, A, B, C and D

1 listed under comment number 3. And just above those it
2 references the automatic termination provision of the 1985
3 assignment of operating rights.

4 A. Correct.

5 Q. What did you do to satisfy yourself that the
6 rights under the 1985 assignment of operating rights had
7 not automatically terminated?

8 A. Well, there was actually two assignments, and one
9 assignment pertains to the well that was drilled, the 18 --
10 the Amoco State Number 1 in the southeast quarter of the
11 northwest -- southeast quarter of the northeast quarter.
12 That assignment covers a 40-acre tract only. Okay. And
13 that was the initial well. Under the farmout agreement,
14 what the deal was supposed to be there was, we were
15 supposed to earn 100 percent with a back-in after payout on
16 the initial well and then earn the remaining lands at 75
17 percent.

18 So there was two assignments done. One
19 assignment covered the 40 acres. The other assignment,
20 which is the one we're talking about here, Exhibit Number
21 4, covered the remaining lands.

22 Now the first assignment, clearly the well that's
23 there is the 18 State Number 1. And we looked at that.
24 And when OXY threw up a big red flag about us drilling a
25 well over there on that particular well we backed off,

1 thinking, Well, maybe they're talking about the 18 State
2 Number 1 well, and -- but the assignment that covers the
3 remaining lands does not -- there was never a well drilled
4 on any of that. So how does it set up a termination of the
5 assignment? So --

6 Q. Are we --

7 A. -- rest my case on that one --

8 Q. Are you finished, I'm sorry?

9 A. -- I mean, that's it.

10 Q. Look back at your Exhibit 4, the 1985 Amoco
11 assignment.

12 A. Exhibit 4, okay.

13 Q. Are we in agreement that where it describes the
14 south half, north half of Section 17 among other lands,
15 that includes the 40 acres that are the subject of EOG's
16 compulsory pooling Application?

17 A. Correct.

18 Q. Okay. Did you satisfy requirements A and B
19 pursuant to the direction under the drilling title opinion?

20 A. I did not -- I don't think I satisfied
21 requirement A.

22 Q. And what did requirement A require?

23 A. It is a preferential right reserved by Amoco
24 Resources, assignment 1 with regard to assignment number 5
25 and 10.

1 Q. And again, where --

2 A. The problem with those pref. deals is that, you
3 know, those are usually by letters. And so one company
4 goes to another, and if he has a pref right in there, then
5 all that correspondence from one company to the next gets
6 lost in the files, so nobody knows where any of that stuff
7 is.

8 Q. Okay. And what did requirement B require you to
9 do?

10 A. It says here, Satisfy yourself assignment number
11 1 has been maintained in full force and effect. And I
12 believe it has.

13 Q. And requirement C, what did requirement C require
14 you to do?

15 A. Talks about securing an affidavit of drilling
16 history, which I didn't need because I had that in my
17 files.

18 EXAMINER EZEANYIM: Mr. Hall, at this point I
19 think I might have to jump in, and I don't know whether you
20 have any more line of questions you want to -- because I've
21 got some sense of what you guys are trying to do here, I've
22 already -- I mean, further deliberation on this would be,
23 you know, tantamount to nothing because I've already made
24 up my mind on this.

25 What I want you to do is to maybe diverge from

1 this line of questioning to some line of questioning if you
2 have -- I already know what you are trying to do here. And
3 you know, at the beginning I said I didn't want to go into
4 this. I can read this and understand what it is to make a
5 judgment.

6 So if you don't mind, could you go to another
7 line of questioning for the witness? You've established
8 your -- I mean, you've pursued the ownership here very
9 much.

10 And of course you know, you do it because this is
11 a compulsory pooling case. If it's not a compulsory
12 pooling case, I wouldn't be listening. Because it's a
13 compulsory pooling case we have to write an order either
14 approving the compulsory pooling case or denying it, and
15 that's why I've been listening.

16 So I think I have heard enough on this line of
17 questioning so that we can proceed with this case. So if
18 you have any more line of questioning for this witness, I
19 appreciate it if you can go there. I understand what --
20 you ask your questions, you answer them, and I understand
21 what you are trying to do, and I think I can make a
22 judgment right there from what you are asking.

23 So is there anything you want to ask this
24 question, then, apart from establishing the ownership, you
25 know, interest in this unit?

1 MR. HALL: Let me ask one more question, Mr.
2 Examiner.

3 Q. (By Mr. Hall) Mr. Hurlbut, can you tell us what
4 you believe held the rights under the 1985 assignment of
5 operating rights, Exhibit 4?

6 A. I believe that what held those rights were
7 numerous wells that were drilled. I think they were
8 drilled by Seely Oil Company, and they cover the shallow
9 rights above the base of the Queen formation. There are
10 Queen wells, and I think it's what they call the EK Queen
11 Unit.

12 MR. HALL: No further questions.

13 Move the admission of our Exhibit A.

14 MR. BRUCE: No objection.

15 EXAMINER EZEANYIM: Okay, it will be admitted.

16 Any further questions, Mr. Bruce?

17 MR. BRUCE: Just one.

18 REDIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Under your Exhibit 4, Mr. Hurlbut -- maybe two
21 questions here -- this isn't a term assignment in that it
22 doesn't give you one or two or three years to drill and
23 then keep on drilling?

24 A. Correct.

25 Q. And of the wells drilled by EOG, they have not

1 ceased producing?

2 A. No, they have not.

3 MR. BRUCE: Thank you.

4 EXAMINER EZEANYIM: Mr. Hall, any further
5 questions?

6 MR. HALL: No, Mr. Examiner.

7 EXAMINER EZEANYIM: Okay. Mr. Kellahin, do you
8 have --

9 MR. KELLAHIN: No, sir.

10 EXAMINER EZEANYIM: Do you have any questions?

11 EXAMINATION

12 BY EXAMINER BROOKS:

13 Q. Yeah, I guess the only -- What is the land that
14 you're asking for compulsory -- what is the subject of the
15 compulsory pooling, what unit?

16 A. We're asking to pool the southwest quarter of the
17 northwest quarter of Section 17.

18 Q. So only the 40-acre unit?

19 A. Just that 40, right.

20 Q. And the only source of title for EOG to the 40-
21 acre unit is this Exhibit 4, the term assignment?

22 A. Correct. And also a farmout agreement, to earn
23 an interest.

24 Q. Well now, is that farmout agreement -- who's
25 the --

1 MR. BRUCE: That's Exhibit 5, Mr. Examiner.

2 Q. (By Examiner Brooks) Okay, the term assignment
3 is from Amoco to Santa Fe, right?

4 A. There's no term assignment.

5 EXAMINER EZEANYIM: Farmout assignment, what you
6 have.

7 Q. (By Examiner Brooks) Okay, Exhibit 4, what is
8 Exhibit 4?

9 A. It's an assignment of operating rights --

10 Q. It's been characterized --

11 A. -- not a term assignment.

12 Q. -- as a term assignment in some of the testimony.

13 A. It has? Well, it shouldn't be because it's
14 strictly an assignment, it's not for a term.

15 Q. Okay. The assignment, then, from Amoco to
16 Santa Fe, and EOG's interest is derived from Santa Fe,
17 correct?

18 A. And from Union Texas.

19 Q. Okay, they also have a -- What I'm trying to
20 figure out is, does EOG -- since I'm not -- since I haven't
21 studied these documents, does EOG's interest come
22 through --

23 A. Well, it comes through this assignment.

24 Q. Yeah, correct. It comes through this assignment.
25 And then the interest that was assigned from Amoco to

1 Santa Fe, did that then go to Cimarron and then
2 subsequently farmed out to EOG? Is that the way it went,
3 or --

4 A. Now run by that again. The interest of Amoco is
5 now owned by Occidental Permian Limited Partnership.

6 Q. No, I'm talking about the interest of Santa Fe.

7 A. Okay, Santa Fe went through a bankruptcy, and now
8 it's Cimarron that owns that.

9 Q. Okay, and then Cimarron farmed out that interest
10 to --

11 A. Correct.

12 Q. -- EOG. So EOG holds under the assignment, and
13 then subsequent to the assignment under the farmout. They
14 don't hold two separate interests under separate titles?

15 A. Correct, that's right.

16 Q. Okay, that's what I wanted to understand.

17 A. Okay.

18 Q. I believe that's all my questions. Oh, and this
19 is not a situation where you're asking to pool, where --
20 two different tracts, where you have title under one tract
21 and not under another, right?

22 A. No.

23 EXAMINER BROOKS: That's what I thought. Thank
24 you.

25 That's all my questions, Mr. Examiner.

1 EXAMINER EZEANYIM: Based on those questions, do
2 you have any?

3 MR. HALL: (Shakes head)

4 EXAMINATION

5 BY EXAMINER EZEANYIM:

6 Q. You say that the assignment has not expired,
7 right?

8 A. Do what?

9 Q. The assignment -- you say the assignment to --
10 you mentioned in your testimony that the assignment has not
11 expired -- assignment, I think --

12 A. Right, has not expired.

13 Q. And it's included in this exhibit that you
14 submitted, that I can find that the assignment has not
15 expired, because that's all I need to know.

16 A. Yeah, it has not expired.

17 Q. So where can I find that? I mean, where can I
18 find a statement saying that assignment -- like you have a
19 working interest, a 75-percent working interest, and the
20 assignment has not expired? I just wrote it down where you
21 testified, so where can I find it in all your exhibits?

22 MR. BRUCE: Mr. Examiner, I mean, that's -- it's
23 OXY's contention it has expired, and it's EOG's that it
24 hasn't. And I suppose OXY can speak for themselves. I
25 kind of understand where they're coming from.

1 But as Mr. Hurlbut testified, this assignment of
2 operating rights doesn't have a specific term on it. If
3 you'd look at page 4 of Exhibit 4 --

4 EXAMINER EZEANYIM: Okay. It doesn't have an
5 expiration date. Is that what you're saying?

6 MR. BRUCE: The only expiration, if you look at
7 the very top of Exhibit 4 -- page 4 of Exhibit 4, okay?

8 EXAMINER EZEANYIM: Uh-huh.

9 MR. BRUCE: -- where it says, When and if
10 production from the lease acreage has been established, it
11 shall be conclusively presumed that assignee has abandoned
12 all rights hereunder unless operations, as hereinafter
13 defined, are conducted with no cessation of more than 60
14 consecutive days.

15 EXAMINER EZEANYIM: Has that been established?
16 Has it been established?

17 MR. BRUCE: Well, there's two things, Mr.
18 Examiner. Number one, Mr. Hurlbut said there's other
19 production from these leases --

20 EXAMINER EZEANYIM: Uh-huh.

21 MR. BRUCE: -- from the EK Queen Unit.

22 The other thing is, production has been
23 established by the wells, the 18 State Number 1, 2 and 3
24 wells, and production hasn't ceased on those for more than
25 60 days.

1 And then as Mr. Hurlbut testified, if you go
2 through, especially Exhibits 6, 7 and 8, those pertain to
3 lease acreage covered by Exhibit 4. And OXY has joined in
4 those wells, recognizing EOG's working interest, has signed
5 Division orders and has signed JOAs. And it's the same
6 lease, it's the same acreage contained within Exhibit 4.

7 That's our position in a nutshell.

8 EXAMINER EZEANYIM: What is --

9 MR. HALL: May I respond, Mr. Examiner?

10 EXAMINER EZEANYIM: Okay, go ahead.

11 MR. HALL: I believe we're going to give you the
12 evidence you're inquiring about in our case, but what you
13 need to scrutinize in the Amoco assignment, the 1985
14 assignment of operating rights, is what rights were to be
15 held.

16 If you look at that assignment, if you look at
17 Exhibit A1 to that, those rights were only below the base
18 of the Queen formation. That's all we're talking about
19 here. So you need to be looking for evidence of production
20 or operations that would have perpetuated rights under the
21 assignment from those formations below the base of the
22 Queen.

23 EXAMINER EZEANYIM: Okay.

24 MR. BRUCE: Yeah.

25 EXAMINER EZEANYIM: What -- I'll take cognizance

1 of that.

2 Q. (By Examiner Ezeanyim) What is the division
3 order? I know you were talking about it. What is the
4 essence, what did it mean, division orders?

5 A. What does it mean?

6 Q. Yeah, what's a division order? Number 5, number
7 6. You were talking about them, but I really need to
8 understand what it means.

9 A. Well, basically in order to get to a division
10 order, we need to have a division order title opinion done.
11 Usually after a well has been drilled and you've made a
12 well, you have production, then we get that division order
13 title opinion, and it's sent to our marketing group or
14 whatever. And they put together what they call a division
15 order, and they send that out to all the working interest
16 owners and all the royalty interest owners. Everybody
17 who's got an interest in the well gets a division order.

18 And it's just a verification from them that --
19 you know, that they agree with what we're saying the
20 interest is. Before we pay them, before we set them up for
21 pay or make any payments to them on the revenue that's
22 derived from the well, we want to make sure that they are
23 in agreement with what we say they -- what we think they
24 own.

25 And so that's what the division order -- it kind

1 of goes out, the people sign off on it saying, yeah, yeah,
2 we -- that's our interest, we own that interest. And then
3 they send that division order back to our division order
4 people. And it's a pretty much standard practice in the
5 oil industry that division orders go out, they get signed,
6 they get sent back in.

7 And when they're received, that's when your
8 division order department put them in pay. If they don't
9 sign the division order they don't put them in pay because
10 they think, well, maybe there's a problem, maybe they
11 disagree with the interest. But in most cases everybody
12 agrees with the interest, they sign the division order and
13 they send it in.

14 That's how we keep track -- that's how they keep
15 track of who the interest owner is, because later down the
16 road if that interest owner sells his interest to somebody
17 else, then we would have to be notified of that sale. And
18 then we'd send out a division order to the new interest
19 owner for them to sign and send back.

20 So we try to keep -- You know, before we just
21 send out checks to people, we'd like to make sure everybody
22 agrees with what we're sending them. And that's what that
23 division order is.

24 Q. Thank you very much. I appreciate the answer to
25 that, you know. I think now my job is to drill a well,

1 that's the -- and I'm not -- I don't know these legal
2 matters. But you know, thanks for explaining that to me.

3 Now on a different line of questioning here, when
4 you wanted to do this compulsory pooling application did
5 you send out notices to all the working interest owners?
6 Did you send out a -- Okay.

7 A. Yes.

8 Q. And we have them here. And OPL is one of them.

9 A. The Occidental Permian Limited Partnership is one
10 of the working interest owners.

11 Q. Okay. Now apart from OPL, who again are you
12 pooling? Is it in here?

13 A. We're just pooling them.

14 Q. Just them, the rest have signed to the drilling
15 of that well?

16 A. Everybody else has agreed to it. We agreed we
17 want to participate and drill a well, Cimarron agreed that
18 they would farm out to us, we earn their interest by
19 drilling a well. The only party we didn't have tied up, so
20 to speak, was OPL, so we sent them a well proposal --

21 Q. Yeah.

22 A. -- waiting to get some sort of response.

23 Q. What happened to that well proposal? Did they
24 respond to it or not? What happened when you sent them the
25 well proposal? What did OPL do?

1 A. Well, they -- I had told them that we were
2 sending a well proposal out to drill the 17 State Number 1
3 well. They had already participated in the 18 -- Cimarron
4 18 State Number 1, 2 and 3 wells under the same identical
5 title, so I contacted OXY and told -- or OPL, and told them
6 we were going to -- we wanted to drill the 17 State Number
7 1, and -- Cimarron 17 State Number 1.

8 And so then I sent the proposal out, and they
9 signed the green card indicating that they had received the
10 proposal.

11 And I waited because I presumed that they were
12 going to be participating, just like they had already
13 participated. They had -- they told me that they probably
14 would be in the well, that they would participate in the
15 drilling of the well.

16 So I waited about a few days, called, and they
17 had not yet signed the papers, or they were waiting for
18 somebody to come back from -- you know, one of the managers
19 to come in to review it or something or another. And I
20 called numerous times, got numerous excuses, and then they
21 said they weren't going to participate and they weren't
22 going to do anything.

23 Q. Okay. And then you decided to pool them?

24 A. Correct, we thought we'd go forward with the
25 pooling and try to pool them.

1 Q. Okay.

2 A. And that's when this other issue came up that
3 they bring up.

4 Q. At that point -- your APD?

5 A. What now?

6 Q. Have you got your APD?

7 A. I believe so.

8 Q. And you said, according to your testimony,
9 that --

10 A. Well, I'm not going to -- Let me go back. We do
11 have our APD. It's not, I believe we do. We *do* have our
12 APD because we don't ever go out there and start location
13 work without the APD.

14 Q. Yeah, that's one of my questions. You have
15 already started the location work. What have you done with
16 -- \$50,000?

17 A. Well, we were getting -- See, all indications
18 were, when talking to OXY, that they were going to
19 participate. And I already had the farmout agreement, had
20 everything ready to go, lined up to go. We have four or
21 five, six rigs running, and you know, they're going
22 different places every 15, 30, 45 -- whatever it takes to
23 drill a well to those particular depths.

24 And so we had a rig lined up ready to go, and at
25 the last minute -- and so we were, you know, getting a

1 location built and everything was on go. I just didn't
2 have anything signed yet from OPL. But all indications
3 were, they were going to join. And at the last minute they
4 decided they didn't want to, and then they came up with
5 this other situation about they didn't think we had title
6 or something.

7 So we kind of decided, well, we'll take the rig
8 and move it someplace else and try to get this thing
9 resolved.

10 Q. Is that the -- what have you done with that well?
11 I mean, you know, you say you had a rig. Have you started
12 the well or what? Is that -- What's happening with that
13 well, 17 State Number 1?

14 A. What happened to it?

15 Q. What is happening with it now, what is --

16 A. Nothing.

17 Q. Nothing?

18 A. Nothing. We're not drilling, we never drilled,
19 we never moved a rig in to drill a well.

20 Q. Do you have a location for that well, a physical
21 location of the well?

22 A. Correct, it's in that proposal letter.

23 MR. BRUCE: Mr. Examiner, if you'd turn to
24 Exhibit 2, page 4 --

25 EXAMINER EZEANYIM: Okay.

1 MR. BRUCE: -- that's a copy of the APD approved
2 by the Division --

3 EXAMINER EZEANYIM: Okay --

4 MR. BRUCE: -- on March 15, 2007, and it sets
5 forth the footage location.

6 EXAMINER EZEANYIM: Okay, anybody have any
7 questions for this witness?

8 Okay, you may be excused.

9 Mr. Hall?

10 MR. BRUCE: I --

11 MR. HALL: It's your case.

12 MR. BRUCE: I have nothing further.

13 EXAMINER EZEANYIM: Let's take a 10-minute and be
14 back here around 10 o'clock.

15 (Thereupon, a recess was taken at 9:45 a.m.)

16 (The following proceedings had at 10:03 a.m.)

17 EXAMINER EZEANYIM: Let's go back into the record
18 and continue with Cases Number 13,912 and 13,945.

19 I believe that Mr. Hall is supposed to present
20 his own case.

21 The witness has been sworn. I remind you, you
22 have been sworn, so --

23 MR. EVANS: Yes, sir.

24 EXAMINER EZEANYIM: Mr. Hall, you can continue.

25 MR. HALL: Thank you, Mr. Examiner.

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DAVID R. EVANS,

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

DIRECT EXAMINATION

BY MR. HALL:

Q. For the record, please state your name.

A. David Ray Evans.

Q. Mr. Evans, where do you live and by whom are you employed?

A. Midland, Texas. Occidental Permian Limited Partnership.

Q. In what capacity are you employed by Occidental?

A. A land negotiator.

Q. Okay. And have you previously testified before the Division --

A. Yes, sir.

Q. -- and before the Commission and had your credentials as a landman accepted as a matter of record?

A. Yes, I have.

Q. Are you familiar with the Applications that are filed in these two cases?

A. Yes, I am.

Q. Are you familiar with the lands that are the subject of the Applications?

A. Yes, I am.

1 MR. HALL: At this point, Mr. Examiner, we offer
2 Mr. Evans as a qualified expert petroleum landman.

3 EXAMINER EZEANYIM: Mr. Evans, you are -- I
4 believe you are a certified petroleum landman?

5 THE WITNESS: (Nods)

6 EXAMINER EZEANYIM: Okay, you are so qualified.
7 Mr. Hall?

8 Q. (By Mr. Hall) Mr. Evans, would you briefly
9 explain to the Hearing Examiner what Occidental -- OXY, I
10 may refer to them as -- is seeking by its Application in
11 these matters?

12 A. We're seeking approval of our permit that was
13 filed in -- back in May of '07, for the Bighorn 17 Number
14 1, denial of EOG's permit and denial of the force pooling.

15 Q. Let's turn to the exhibit notebook, if you would.
16 Is Exhibit 1 a copy of the APD that was filed by Occidental
17 for its Bighorn State 17 Number 1?

18 A. Yes, it is.

19 Q. And that well is located at the very same
20 location as EOG's proposed well; is that correct?

21 A. That's correct.

22 Q. Both in Section 17?

23 A. Correct.

24 Q. And both in the southwest of the northwest of
25 that section?

1 A. Correct.

2 Q. Was your drilling permit approved?

3 A. No, it was not.

4 Q. And if you'll turn to Exhibit 2, is that a copy
5 of EOG's drilling permit?

6 A. Yes, it is.

7 Q. And was the reason your -- What was the reason
8 your APD was not approved?

9 A. Because EOG had the standing APD.

10 Q. All right. Let's make clear for the Examiner in
11 terms of what's filed with our Application, Mr. Evans, is
12 OXY limiting its request for the Division to determine its
13 right to drill to only the southwest quarter, northwest
14 quarter of Section 17?

15 A. Yes, it is.

16 Q. We're not talking about any of the other
17 acreage --

18 A. No, sir.

19 Q. -- referencing the Application?

20 All right.

21 EXAMINER EZEANYIM: You're just talking about
22 that 40-acre --

23 MR. HALL: Yes, sir.

24 EXAMINER EZEANYIM: -- southwest, northwest.

25 MR. HALL: Yes, sir.

1 Q. (By Mr. Hall) Look back at Exhibit Number 2.
2 Page 2 of that is the C-102 acreage dedication plat. Do
3 you have that in front of you?

4 A. Yes, I do.

5 Q. Do you see there, Operator Certification?

6 A. I do.

7 Q. Your understanding of the operation of this form,
8 does it require the operator or an applicant for an APD to
9 certify to the Division that it has a leasehold ownership
10 right or the right to drill?

11 A. Yes.

12 Q. And do you believe in this case that EOG's
13 certification was correctly made?

14 A. It was not.

15 Q. Okay, and how did you determine that?

16 A. Well, if you go to Exhibit 3, it's a title
17 opinion that we had rendered in January 18th of 2007 on
18 that location. It also covers this base lease that we're
19 talking about, based upon the requirements and the -- of
20 this opinion.

21 Once we fulfilled all the requirements we came to
22 understand that the term assignment -- that the assignment
23 granted by Amoco back in '85 had expired by lack of
24 production in April of '94. It ceased producing, the Amoco
25 State Number 1 ceased production. It was a Morrow test,

1 completed in the Bone Springs, ceased production in April
2 of '94.

3 Based on fulfilling the requirements and
4 understanding the true title of the property, it's at that
5 time we totally understood what was happening to the
6 property, and that's when we stopped supporting drilling
7 wells.

8 Q. Now Exhibit 3 is your January 18, 2007, original
9 drilling title opinion from Turner and Fuller on lands in
10 Section 18. Could you explain to the Hearing Examiner why
11 title opinion on Section 18 lands are relevant to the lands
12 we're talking about here today?

13 A. This is a tract of land that EOG agreed to return
14 to OPL and -- under assertion that production had ceased
15 under the Amoco State and which we were going to re-enter
16 the well and try to establish production. So we had an
17 opinion rendered to determine title for the lease.

18 Q. The lease you refer to, is it the same lease as
19 covers Section 17?

20 A. Yes.

21 Q. It's a State of New Mexico lease, correct?

22 A. Yes, it is.

23 Q. And is the ownership otherwise consistent with
24 Section 17 ownership?

25 A. Yes, it is.

1 Q. All right. Let's turn to page --

2 EXAMINER EZEANYIM: Before you go, explain why
3 this land is relevant to what we're talking about. You
4 said, but I think you were --

5 THE WITNESS: This is the same state lease that
6 we've -- that Mr. Hurlbut has previously talked about.
7 It's just a 40-acre portion of it. It's 520 acres, this is
8 40 acres of the 520.

9 EXAMINER EZEANYIM: Uh-huh.

10 THE WITNESS: And that well that was holding all
11 the assignment lands was plugged in '94, so --

12 EXAMINER EZEANYIM: Who plugged it?

13 THE WITNESS: Seely, Seely Oil.

14 EXAMINER EZEANYIM: Okay, they were owned by
15 Seely Oil before?

16 THE WITNESS: The well was originally owned by
17 Santa Fe --

18 EXAMINER EZEANYIM: Okay.

19 THE WITNESS: -- and it ended up in Seely's hands
20 by various assignments.

21 EXAMINER EZEANYIM: Okay.

22 THE WITNESS: And Seely plugged it in '97.

23 EXAMINER EZEANYIM: Okay. Now how does it relate
24 to what we are talking about?

25 THE WITNESS: Well, if you'll bear with me, this

1 is the same tract of land that was -- that was the well
2 that was holding all these lands --

3 EXAMINER EZEANYIM: Okay.

4 THE WITNESS: -- by EOG and Cimarron.

5 EXAMINER EZEANYIM: Okay. Okay, I see what you
6 mean. Okay, go ahead.

7 Q. (By Mr. Hall) And so we're clear, ownership,
8 Section 18 and Section 17 are the same?

9 A. It's the same, exact same.

10 Q. Same chains of title for ownership in both
11 sections, correct?

12 A. (Nods)

13 Q. Turn to page 2 of the title opinion. There's a
14 subheading there reflecting ownership of operating rights.
15 Who owns the operating rights?

16 A. Occidental Permian.

17 Q. And how much of the operating rights?

18 A. One hundred percent.

19 Q. One hundred percent. There are some additional
20 interest owners reflected under Occidental's 100-percent
21 ownership.

22 A. Uh-huh.

23 Q. What's that all about?

24 A. Those are the interests acquired through a
25 contractual relationship or an operating agreement that we

1 determined that had expired, so these interests were no
2 longer applicable. They no longer had an interest.

3 Q. And so were they provisionally reflected on the
4 title opinion?

5 A. Yes, as a curative matter.

6 Q. Let's turn to page 4 of the title opinion, and it
7 references at Assignment number 1, the assignment of
8 operating rights dated January 21, 1985, it's what we've
9 called the Amoco operating rights assignment, correct?

10 A. Correct.

11 Q. And that was Exhibit 4 in EOG's exhibit packet,
12 correct?

13 A. Correct.

14 Q. And it also references farmout contract and joint
15 operating agreement dated March 1, 1983, and then a joint
16 operating agreement dated September 30, 1983, between Union
17 Texas and Amoco, et al. Do you see those there?

18 A. Yes.

19 Q. What are the relevance of those contracts to the
20 opinion and to the Hearing Examiner's inquiry?

21 A. These contracts were referenced of record.
22 Although the actual contracts themselves are not of record,
23 they were referenced in the various assignments granted by
24 Amoco to Santa Fe and Union of Texas.

25 Upon examination of the title, and after a long

1 search of trying to find the documents themselves, we
2 determined that -- once we found the documents, that all
3 the documents had expired, including the assignment.

4 Q. Let's turn to -- Well, let me ask you, did you
5 undertake that investigation, did you try to look for
6 those --

7 A. A lengthy review and multiple trips to places in
8 Fort Worth and phone calls to EOG, same thing Doug did,
9 Seely, Cimarron, trying to find these documents that were
10 not in OPL's possession at the time that I could find. It
11 got to the point where I could not cure the title and I
12 could not take the business risk of drilling a well,
13 because I couldn't find all the documents to satisfy the
14 requirements for the well.

15 At that time, we were offered to swap or trade
16 this property to EOG for some other lands they had in Eddy
17 County. EOG wanted to do the trade, but they wanted more
18 lands, which we declined. And at that time I made another
19 effort -- this would be in February and March and April --
20 to try to find the curative documents for this opinion.

21 Early in April I found the remainder of the
22 documents that nobody could find. I provided those to EOG
23 and to their title attorney. But basically finding those
24 documents provided us the true picture that actually the
25 assignments had expired and all the operating agreements

1 that were referenced in the original assignments back in
2 1985 had also terminated.

3 Q. Let's explain to the Hearing Examiner what the
4 process is for a landman when he receives a title opinion.
5 What is necessary for him to clear title? Must you satisfy
6 the title requirements that are set forth in the opinion?

7 A. This is basically a story that is placed of
8 record. In other words, these are the documents that are
9 of record in Lea County. The title examiner, he reviews
10 these documents and then he makes requirements, which
11 you'll see in the back of this opinion.

12 Q. Is it about page 13?

13 A. Page 13. In order to make the title good, you
14 must satisfy or waive the various requirements. Depending
15 upon what you can satisfy or what you can waive, when you
16 waive requirements you're taking a business risk that
17 indeed that is not a problem, that that requirement is not
18 going to be a problem in the future.

19 Q. Now on page 13 there is requirement number 3 at
20 the very bottom of that page?

21 A. Yes.

22 Q. And that requirement is addressed to the 1985
23 Amoco assignment; is that correct?

24 A. That's correct.

25 Q. If you turn the page, what is -- if you would

1 summarize for the Examiner, what is the thrust of the
2 requirement, what is the title-examining attorney directing
3 you to do?

4 A. To validate that it must satisfy us that the
5 assignment or the lands under the assignment have reverted
6 to Occidental -- OPL.

7 Q. Why would there have been a question about that,
8 and why was that set forth in the opinion?

9 A. Because during the earlier days of -- the three
10 previous wells that were drilled, we could not find the
11 documents that would satisfy that requirement. We could
12 not determine whether or not the assignment was still held,
13 because we didn't have all the documents.

14 Upon finding the documents we were able to
15 satisfy requirement 1 that indeed all the lands had
16 reverted back to OPL.

17 Q. And so that requirement for number 3 is set forth
18 in the middle of page 14; is that correct?

19 A. That's correct.

20 Q. So that's what you set out to do?

21 A. Correct.

22 Q. Let's turn to Exhibit Number 4 --

23 EXAMINER EZEANYIM: Mr. Hall, please, I need to
24 follow this.

25 Go back to page 4 --

1 THE WITNESS: Okay.

2 EXAMINER EZEANYIM: -- on that assignment,
3 assignment number 1. Mr. Evans, you mentioned in your
4 testimony that that assignment number 1, you know, is
5 tantamount to the fact that something expired and it
6 reverts back to OPL, as you mentioned in page 13.

7 Could you explain in detail -- I'm not a
8 certified public landman, so I don't know most of these
9 issues, but I need to understand it to make a decision
10 here. Could you explain that assignment number 1? You
11 made some comments on that. And then the information
12 contained on page 13 that you talked about.

13 THE WITNESS: Let me -- I would like to go to
14 Number 4, because I think this would explain it clearly.

15 EXAMINER EZEANYIM: Page 4 or --

16 THE WITNESS: No, the --

17 MR. HALL: -- Exhibit 4.

18 THE WITNESS: -- Exhibit 4.

19 EXAMINER EZEANYIM: Oh, okay.

20 MR. HALL: Does that --

21 EXAMINER EZEANYIM: Will you answer my question?

22 THE WITNESS: Yes, sir.

23 EXAMINER EZEANYIM: Okay.

24 THE WITNESS: Yes, sir, I think I can explain it
25 a little bit better than what I have.

1 Here before you is a farmout contract and joint
2 operating agreement. It's Exhibit 4. This document was
3 not in the possession of EOG at the time they drilled their
4 wells. This is the original agreement from which Amoco
5 farmed out its interest to Santa Fe. In that, Santa Fe --
6 Union Texas/Santa Fe drilled the Amoco State Number 1 as an
7 earning well. It was drilled down to the Morrow,
8 recompleted to the Bone Springs. It was the only well
9 drilled under this contract. This contract covers rights
10 below the base of the Queen.

11 Now back in the '80s they did their trades a
12 certain way. Usually they would say -- Amoco didn't want
13 to take the risk of drilling the first well, so they didn't
14 want to have any money in it. So they'd say, Okay, this is
15 a lot of land, and we don't want to be out of all the lands
16 so we'll farm out -- we're going to give you an assignment
17 on the first well, 100 percent, with a back-in for 25
18 percent, and Amoco has -- bears no cost.

19 So when the well is drilled, Amoco gives an
20 assignment for the 40 acres, and they get that first
21 assignment.

22 In addition, they get a second assignment on the
23 lands, 75-25. You'll see that. Those exhibits are
24 attached as Exhibits A-2 and A-3 on this document.

25 So the earning well is the Amoco State for both

1 assignments, for the 40 acres and for the remaining 480.

2 And then for the second assignment, which is the
3 75-25, which would have been Santa Fe, Union Texas and
4 Amoco, they have a joint operating agreement which anybody
5 can propose a well. During the period of 1985 to 1994, no
6 additional wells were proposed.

7 At the time that Seely plugged the well in 1997,
8 all the rights under both assignments, under the terms of
9 this farmout agreement and the assignments, had expired.

10 We did not have this information until March or
11 April. I have to go back to my notes to find out exactly
12 when, but this came late into the game.

13 EOG waived the requirements because they didn't
14 think the documents were important. I think Mr. Hurlbut
15 said that earlier.

16 OXY could not waive those requirements because
17 they were a concern to us, of having somebody after the
18 fact proving the title was bad. That's when I offered
19 actually to trade this acreage to EOG, so we wouldn't be in
20 any of the wells. But they declined the trade.

21 At that time we had to stop drilling of the OG 17
22 Number 1, and we felt certain our title was good, so we
23 filed for a permit to drill the -- our Bighorn -- Big- --

24 Q. (By Mr. Hall) Bighorn State 17 Number 1.

25 A. Bighorn State 17 Number 1. That's what occurred.

1 Q. Mr. -- I'm sorry, Mr. Examiner, did you have
2 questions?

3 EXAMINER EZEANYIM: No, no, that's okay. Go
4 ahead.

5 Q. (By Mr. Hall) Would you explain to the Examiner
6 the significance of the terms you've used, initial well and
7 earning well? What does that mean?

8 A. Initial well is the well drilled under a contract
9 that is -- hopefully the intent is to earn the acreage.
10 The only way to earn the acreage is that the initial well
11 is a successful producer. It can be an initial well and it
12 could be a dry hole, and it would not earn the acreage.
13 Therefore, the contract will allow you to drill another
14 well, and if it was productive you would earn the acreage
15 under the terms of the agreement, and that would be for so
16 long as production was maintained from rights below the
17 base of the Queen.

18 We have a separate agreement for rights below the
19 base of the Queen -- surface to the base of the Queen with
20 Santa Fe. That agreement is still in force and effect, and
21 Seely still operates that unit. But they are not related.

22 Q. Mr. Evans, let's make clear for the record, when
23 did you first become alerted to the fact that there was a
24 problem with title?

25 A. That's a difficult question. Early on, EOG

1 referenced that they were having trouble curing their
2 title. And in the end they said they took a business risk
3 to drill it.

4 I wasn't concerned about EOG's title, because
5 when I looked into our system it reflected that Amoco had
6 25 percent. So I really didn't care what their problems
7 were, that's for them to fix and for them to satisfy. And
8 it really didn't occur to me that it would affect us also
9 if they did not cure their title. And --

10 Q. Did you know the exact nature of the problem
11 before you received your drilling title opinion in January?

12 A. I really was not aware of the problem until we
13 got our title opinion for the 40 acres we wanted to drill.
14 And the same problems are reflected in their title opinion
15 that we got for the Cimarron 17 Number 1. It's the same
16 exact requirements.

17 Q. And so is it true that rather than waive the
18 requirements --

19 A. Right.

20 Q. -- in the opinions, you undertook the due
21 diligence?

22 A. Yes.

23 Q. You investigated the existence of the other
24 operating agreements --

25 A. Yes.

1 Q. -- to determine what specifically?

2 A. I made two efforts. The first one was during the
3 period of time that we were trying to figure out how to
4 drill this well. I finally said I can't fix it either.
5 Just like Doug couldn't find them, I couldn't find them.
6 And so we offered to trade the property to EOG. And again
7 that failed, which caused me to go back and redouble my
8 efforts to find the documents, which about two weeks later,
9 three weeks later, I found them.

10 Q. Where did you find them?

11 A. Actually, they're stored in an unauthorized
12 filing system that Amoco had. It's called an exploration
13 area filing system. It's not an official filing system of
14 OXY's. And by chance I happened to ask the right question
15 to the right person.

16 Q. And so that search led you to the farmout
17 agreement which is Exhibit 4; is that correct?

18 A. That's correct.

19 Q. Let's look at that briefly. Attached to that is
20 -- as an exhibit is a standard form joint operating
21 agreement?

22 A. Correct.

23 Q. And if we turn to that -- I'm sorry I didn't tab
24 that for you, Mr. Examiner, it's about halfway into the
25 document. It's the standard form JOA, looks like this.

1 And if you look at that, that tells you the lands covered
2 by the agreement, correct?

3 A. Correct.

4 Q. And in this instance the south half, north half
5 of Section 17 is included; is that correct?

6 A. That's correct.

7 Q. And that includes the 40 acres we're talking
8 about here today. And it also indicates the depths. What
9 are the depths that apply to this agreement?

10 A. Rights below the Queen to 100 feet below the
11 total depth drilled.

12 Q. Okay. And if you'd turn to Article VI.A under
13 the joint operating agreement, it describes the initial
14 well?

15 A. Yes.

16 Q. But that's blank; is that correct?

17 A. That's correct.

18 Q. What does that mean to you?

19 A. I means that if you had a provision back then --
20 well, two things here in this case. Generally it's in the
21 other provisions, which it's not. But it's also under the
22 letter agreement that the well had already started
23 drilling.

24 Q. All right. And also attached to the farmout
25 contract -- this is the March 1, 1983, contract, Exhibit 4

1 -- there are forms of assignments --

2 A. Yes.

3 Q. -- of operating rights to be used by parties?

4 A. Correct, there are two.

5 Q. Okay. And one of those is consistent with the
6 Amoco assignment of operating rights that was ultimately
7 executed and filed of record, correct?

8 A. Correct.

9 Q. Now let's turn to Exhibit 5. What is that?

10 A. This is an amendment to the farmout contract and
11 joint operating agreement.

12 Q. What was the effect of this amendment?

13 A. During the period of time that they were drafting
14 the contracts, Amoco apparently realized that they had
15 overlapped contracts. They had two operating agreements,
16 which is referenced and discussed earlier by Doug. They
17 had one dated March 1st, and they had another one dated
18 September the 30th, I think. Let's see, March 1st,
19 September 30th.

20 When they realized they had that problem, Amoco
21 and Santa Fe drafted this agreement to amend and modify the
22 farmout contract to eliminate Sections 17 and the east half
23 of 18 from the March 1st contract and put it under the
24 September 30th contract.

25 Q. All right, let's turn to Exhibit 6. What is

1 that?

2 A. That is the September 30th contract.

3 Now the remainder of the lands -- the March 1st
4 -- remainder of the March 1st agreement, that would be
5 Sections 7, 8 and 21.

6 MR. HALL: Mr. Examiner, I would note for you
7 Exhibit 6, the September 30th, 1983, contract. We have not
8 provided you with all the exhibits. They are standard form
9 COPAS exhibits, gas balancing agreements, which we didn't
10 think relevant. We can certainly make those available to
11 you if you wish, but we didn't want to burden the record
12 with too much paper.

13 EXAMINER EZEANYIM: That's okay, this is more
14 than enough.

15 Q. (By Mr. Hall) If you turn in the September 30,
16 1983, operating agreement to Article VI, does that describe
17 the initial well?

18 A. Yes, it does.

19 Q. And which well was that?

20 A. The Amoco State Number 1.

21 Q. And from your review of the amendments to the
22 text in Article VI.A, does it appear that the well was
23 drilling at the time that they executed this?

24 A. Yes, it was.

25 Q. Okay. And so who was designated operator under

1 the agreement?

2 A. The original operator was Union of Texas.

3 Q. Okay.

4 A. One of the things I found in my curative matters
5 was that this agreement too had expired.

6 Q. Okay. But so we're clear, the 1983 -- the
7 September agreement, covered the 40 acres in Section 17
8 we're dealing with today, correct?

9 A. Correct.

10 Q. All right. Would the September 30, 1983,
11 operating agreement have covered any subsequent wells that
12 were drilled?

13 A. Yes, it would.

14 Q. Let's look at Exhibit Number 7. What is that?

15 A. That is the assignment of operating rights on the
16 -- what they call Exhibit A-3 of the original farmout
17 contract.

18 Q. And does this assignment support the interests
19 under the September operating agreement?

20 A. Correct.

21 Q. Any explanation why this would have been executed
22 in December of that year?

23 A. Just they were behind on their documents.

24 Q. Okay. If you turn to the very last page of that
25 exhibit, numbered Exhibit A-1 to the assignment itself --

1 A. Uh-huh.

2 Q. -- what depths are covered?

3 A. Rights below the base of the Queen formation to
4 100 feet below the total depth drilled in the initial
5 well --

6 Q. All right.

7 A. -- provided in Article III.

8 Q. And --

9 EXAMINER EZEANYIM: What is the total depth
10 drilled?

11 THE WITNESS: It was 13,500, I believe. Or -400,
12 and then they got 100 feet plus. Let's see.

13 Q. (By Mr. Hall) Now let's discuss some of the
14 terms of the 1985 Amoco assignment that are at issue here
15 today. Let's look at Article IV --

16 A. Right.

17 Q. -- the reassignment provision. Would you just
18 summarize how that provision operates for the Hearing
19 Examiner?

20 A. Basically it gives the right to any party subject
21 to this agreement to drill a well, as long as production is
22 maintained during the term of this assignment. And once
23 production ceases, they have 60 days to re-establish
24 production or the assignment expires.

25 So while it does not say term assignment on the

1 actual document, it physically is for a term, and that term
2 is for when production ceases. Since there was only one
3 well drilled under it, and it was plugged in 1997, this
4 expired in 19- -- actually in 1994, but the well was
5 plugged in 1997.

6 Q. And so do you agree with the reference in the
7 title opinion that EOG had that the termination provision
8 was, quote, automatic?

9 A. Yes.

10 Q. All right. Now once you had this document, did
11 you undertake a review of all of the acreage to determine
12 whether any well would have held rights under this?

13 A. That's correct. This is seven or eight months
14 after the fact that the three wells were already drilled.
15 We now have our opinion, we're now examining the title. We
16 went back and researched historically the production before
17 and after this agreement was entered into and determined
18 that no production maintained this assignment.

19 Q. And what acreage did you search?

20 A. The lands on the map on the front of your book,
21 which includes the Amoco state lease.

22 Q. Let's turn to Exhibit 8. Would you identify
23 that, please?

24 A. To the assignment?

25 Q. No, Exhibit 8.

1 A. Oh, 8. I'm sorry. This is the plugging report
2 for the Amoco State Number 1, I believe.

3 Q. Is it correct, this is the plugging report for
4 the -- what you earlier called the initial well or earning
5 well?

6 A. That's correct.

7 Q. And is it correct to say that this is a
8 subsequent report of plugging and abandonment?

9 A. That's correct.

10 Q. And it's dated November 19th, 1997?

11 A. Correct.

12 Q. So presumably plugging and abandonment occurred
13 sometime before then?

14 A. Correct.

15 Q. And did this help you reach the conclusion that
16 rights under the Amoco assignment were no longer held?

17 A. Correct, which is why we did not support the
18 tests of EOG in the 17 Number 1.

19 Q. Let's turn to Exhibit 9. What is that?

20 A. This is our letter to EOG Resources, advising
21 them of -- or requesting a reassignment of all the
22 operating rights under the original assignments that was
23 written by a landman named Jim Spradlin at my direction.

24 Q. Now is this request, the April 11, 2007, request
25 to EOG for the reassignment, made in conformance with the

1 provisions of Article IV --

2 A. That's correct.

3 Q. -- in the Amoco assignment?

4 A. Yes, sir, it is.

5 Q. And what does that provision generally -- how
6 does that operate?

7 A. It says that we can request a reassignment of the
8 lands, or if they fail to make a reassignment of the lands
9 we can file a termination of record, notifying all parties
10 that EOG, Santa Fe and Cimarron no longer have an interest.

11 Q. And is that what --

12 A. That's what --

13 Q. -- Occidental did?

14 A. Yes.

15 Q. Let's turn to Exhibit 10. Identify that for the
16 Hearing Examiner.

17 A. That is our termination of assignment of
18 operating rights. This was drafted and filed after EOG
19 refused to reassign.

20 Q. All right. And does Exhibit 10 reflect the
21 automatic reassignment provisions under the Amoco
22 assignment?

23 A. Yes, they do.

24 Q. Is Exhibit 10 a good place for the Hearing
25 Examiner to go to get an initial capsule summary of title

1 to the lands that are the subject of these Applications?

2 A. Yes, it is.

3 Q. When was this instrument filed of record in Lea
4 County? Can you tell us?

5 A. April 26th of 2007.

6 Q. Okay, that looks like the execution date.

7 A. April 30th, I'm sorry.

8 Q. Okay. Mr. Evans, in your opinion does Occidental
9 Permian, Limited, currently have the exclusive right to
10 drill below the base of the Queen formation in the
11 southwest northwest of Section 17?

12 A. Yes, they do.

13 Q. And does OPL have plans to immediately begin
14 drilling the Desert Bighorn well as soon as its APD is
15 approved?

16 A. Yes, it does. They've --

17 Q. Is --

18 A. -- delayed their because of the threat of
19 lawsuit.

20 Q. All right. Is Occidental apprehensive that its
21 reserves underlying the 40 acres are being drained by
22 offset development?

23 A. Yes, it is.

24 Q. Were Exhibits 1 through 10 prepared by you,
25 compiled by you or assembled under your direction and

1 control?

2 A. Yes, they were.

3 MR. HALL: We'd move the admission of Exhibits 1
4 through 10, Mr. Examiner, and I'll also provide you with
5 our notice affidavit which I've marked as Exhibit 11 and
6 move its admission as well.

7 EXAMINER EZEANYIM: Any objection to the
8 exhibits?

9 MR. BRUCE: No, sir.

10 EXAMINER EZEANYIM: At this point Exhibits Number
11 1 through 11 will be admitted.

12 MR. HALL: That concludes my direct of this
13 witness, Mr. Examiner.

14 EXAMINER EZEANYIM: Mr. Bruce?

15 MR. BRUCE: Mr. Examiner, I defer to Mr. Kellahin
16 for the moment while I --

17 EXAMINER EZEANYIM: Okay, Mr. Kellahin?

18 MR. BRUCE: -- review some documents.

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

20 EXAMINATION

21 BY MR. KELLAHIN:

22 Q. Mr. Evans, would you turn to the front of your
23 exhibit book, the one that's got the map on it, on the
24 cover sheet?

25 A. Yes, sir. Right here?

1 Q. Yes, sir. The color code on the front of that, I
2 think it was yellow --

3 A. Amoco is yellow, yes, sir.

4 Q. The yellow-coded properties on that page, do they
5 correspond to the description of the properties you set
6 forth in your Exhibit Number 9?

7 A. I believe they do --

8 Q. Please --

9 A. -- yes, sir --

10 Q. -- take a look for me.

11 A. -- except for 40 acres.

12 Q. Yeah.

13 A. Yes, sir. That's a separate termination
14 agreement.

15 Q. When we look at the map and this letter, are we
16 linking ourselves back to the '85 assignment of operating
17 rights agreement?

18 A. We're linking ourselves back to the farmout and
19 the assignments, yes, sir.

20 Q. This letter of April 11th of this year to EOG
21 from OXY describing this request for reassignment, is this
22 your first written communication --

23 A. No, sir.

24 Q. -- to EOG about this?

25 A. No, sir.

1 Q. Do you have the prior correspondence?

2 A. Not with me.

3 Q. What's the earliest date that you communicated to
4 them about --

5 A. I would say it was sometime in January or
6 February.

7 Q. When you turn to Exhibit 10 -- this is the
8 termination document, I'll call it the termination document
9 -- this was recorded -- if you turn to the second page, it
10 was recorded on April 30th of this year?

11 A. Yes, sir.

12 Q. This attempts to terminate the assignment as to
13 all the acreage associated with the plat on the front of
14 your exhibit book that's shaded in yellow?

15 A. Except for the 40, which was previously
16 terminated in January.

17 Q. And the 40 would be the southeast of the
18 northeast of 18?

19 A. Yes, sir.

20 Q. So what are you going to do about the other three
21 wells that are producing in the northeast quarter of
22 Section 18?

23 A. Management is just considering options.

24 Q. Are you considering that you now have that 100-
25 percent interest in those three wells?

1 A. It is my belief we do, yes.

2 Q. And have you taken that position in terms of that
3 statement with EOG?

4 A. We have not addressed that yet.

5 Q. If this is correct, Mr. Evans, explain to me why
6 OXY signed the division orders in February 23rd of this
7 year for the well in the southeast of the northeast of 18.
8 Why was that signed?

9 A. You've got to understand that the original
10 assumption of title was that EOG had rendered title
11 opinions and it cured the requirements. Under that belief,
12 we joined in the drilling of those wells. We did not have
13 privy, nor did we attempt to cure, their requirements and
14 title opinion.

15 It wasn't until seven or eight months later that
16 OXY itself got a title opinion that revealed to us those
17 requirements. In the meantime, during that period of time,
18 to accommodate EOG, because they had a rig constantly
19 coming, because we had no problem drilling wells, we relied
20 on the fact as operator they had cured the title, we joined
21 in the wells. It was only after the fact that I realized
22 the title was bad.

23 Q. Help me understand how that statement fits in
24 with your January 18th title opinion of this year.

25 A. That is the title opinion that when we got the 40

1 back, the terminating, that we got the title opinion that
2 identified the problems. Which one is that?

3 Q. That's in your exhibit book.

4 A. Exhibit -- which --

5 Q. I don't know.

6 MR. HALL: Exhibit 3.

7 Q. (By Mr. Kellahin) So January 18th you have
8 indications from Mr. Turner's office, the title examiner,
9 that there's problems that flow back to this '85 agreement?

10 A. Correct. We could not cure these requirements at
11 the time, from January to almost March or April, at which
12 time we offered to swap.

13 Q. And so a month later, you still signed the
14 division order on --

15 A. That is a different group in OXY. They're not
16 aware of what's occurring in our office in Midland.

17 Q. You don't talk to each other?

18 A. Not like that, no.

19 Q. So in March of this year, was your understanding
20 and position any different than Mr. Holcomb's understanding
21 of this area?

22 A. Doug Hurlbut's?

23 Q. Yeah.

24 A. Our positions have changed quite a bit of his
25 understanding, yes. It changed dramatically based upon

1 this opinion.

2 Q. And by April 10th or 11th you now are convinced
3 that the interests are as you've described them to us?

4 A. Has expired.

5 Q. Did you prepare this letter that Mr. Spalding
6 [sic] signed for OXY?

7 A. No, sir.

8 Q. Were you involved in it?

9 A. Yes, sir.

10 Q. When did you first notify Mr. Spalding of this
11 issue?

12 A. Actually Jim was aware of the issue in November
13 or December of 2006. We were waiting on our title opinion.

14 Q. Has there been discovery between the companies on
15 exchanging documents in this case?

16 A. We've been trying to negotiate, non-adversarial.

17 Q. Well, I guess my question is, were there a
18 subpoena issued, were there subpoenas issued?

19 A. No, sir, no subpoenas. We've provided the
20 curative documents to EOG when we found them.

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

22 EXAMINER EZEANYIM: Mr. Bruce?

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. Your Exhibits 4 and 5, Mr. Evans, do I take it

1 from your presentation of these exhibits, the March
2 agreement no longer -- March, '83, agreement is no longer
3 applicable to the acreage we are here for today?

4 A. Correct.

5 Q. And that although your Exhibit 3, the title
6 opinion, concerns the southeast northeast of adjoining
7 Section 18, that acreage is not covered by the assignment
8 marked as your Exhibit 7?

9 A. Correct.

10 Q. There is a separate assignment for that?

11 A. Correct, sir. This is the -- Under the farmout
12 agreement on Exhibit 4, it's Exhibit A-2. It would be 100
13 percent assigned for the producing well.

14 Q. And again looking at your Exhibit 7, which is the
15 same as EOG Exhibit 4, there is no specific term set in
16 this assignment; is that correct?

17 A. There is not a date specific, except that in
18 Article IV, Reassignment, if you'll look at -- pay
19 attention to when it expires, it's determined by when
20 production ceases.

21 Q. Okay. Well, let's look at that then. It says
22 when production ceases from the lease acreage. If you
23 would go back to page 2 -- Exhibit 1 describes certain
24 acreage, and then at the first cut-off paragraph, the very
25 top paragraph of page 2, it describes those as, quote,

1 unquote, the assigned premises, correct?

2 A. Correct.

3 Q. And then in the following paragraph it discovers
4 the oil and gas leases, insofar as they cover the assigned
5 premises, are referred to as the lease acreage, quote,
6 unquote, correct?

7 A. Correct.

8 Q. So when we're talking lease acreage with respect
9 to Article IV, we're not discussing the southeast quarter,
10 northeast quarter of 18?

11 A. Correct.

12 Q. We're only discussing the acreage described on
13 page 1 of your Exhibit 7?

14 A. Correct.

15 Q. And when was production first established from
16 the, quote, unquote, lease acreage?

17 A. Amoco State Number 1, under the terms of the
18 farmout agreement.

19 Q. That's not -- You just admitted that the lease
20 acreage doesn't cover the southeast quarter, northeast
21 quarter of 18.

22 A. Yes, it does, I'm sorry. Exhibit A-2 -- Exhibit
23 A-2 to the farmout contract covers that acreage, Exhibit
24 A-3 covers the remaining acreage.

25 Q. But let's look at the specific description on

1 pages 1 and 2 of the assignment. Page 1 of the assignment
2 does not cover the southeast northeast of 18.

3 A. That's right.

4 Q. Okay. And then page 2 says that the assigned
5 premises, insofar as the pertinent leases are involved, is
6 the, quote, unquote, lease acreage. So the southeast
7 quarter, northeast quarter of 18 is not covered by the term
8 "leased premises"?

9 A. That's correct.

10 Q. And so again, what is the first production
11 established from the, quote, unquote, lease acreage --
12 leased acreage, by the terms, specific terms, of your
13 Exhibit 7?

14 A. The specific terms of this assignment are based
15 upon the farmout agreement previously referenced. The
16 earning well was the Amoco State Number 1, in which they
17 earned both the 40 acres in 18 that you speak of and the
18 remainder of the acreage --

19 Q. But that --

20 A. -- on different terms.

21 Q. But that's not what the assignment says, is it?

22 A. The assignment is subject to the farmout
23 agreement.

24 Q. If you look at the specific leased acreage -- and
25 let's ignore the Amoco State Number 1 --

1 A. Okay.

2 Q. If you look at the specific described acreage,
3 what was the first production below the base of the Queen
4 formation?

5 A. I don't have the date, but it's sometime in '84,
6 '85, Amoco State Number 1.

7 Q. No, no, no.

8 A. That's my answer.

9 Q. I'm saying, ignore the Amoco State Number 1.
10 Look at the acreage described on your Exhibit 7.

11 A. Right.

12 Q. What was the first production --

13 A. There's no produc- --

14 Q. -- from that acreage?

15 A. No production on that acreage ever.

16 Q. There's no production from that acreage?

17 A. From the base of the Queen? No.

18 Q. There's no production --

19 A. We have a separate --

20 Q. There's no production from the --

21 A. I have other documents I can provide that clearly
22 state the one -- that the production in the Queen are not
23 -- do not maintain --

24 Q. No, no, I'm not talking Queen, I'm saying below
25 the base of the Queen.

1 A. There's -- no.

2 Q. There's no production from the Cimarron 18 State
3 Numbers 1, 2 and 3?

4 A. There is production, 100-percent OXY.

5 Q. Then --

6 A. They're in error.

7 Q. I'm not talking about title, I'm talking about
8 what was the first production from the least acreage
9 specifically described in your Exhibit 7, from the Queen to
10 the Bone Spring?

11 A. That would be the three wells that were drilled
12 by EOG.

13 Q. And has production ceased from those wells?

14 A. No, they have not.

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

16 EXAMINER EZEANYIM: Mr. Hall, anything further?

17 MR. HALL: Yes, I do.

18 REDIRECT EXAMINATION

19 BY MR. HALL:

20 Q. Mr. Evans, do you agree that production from the
21 Queen formation preserved rights under the 1985 assignment
22 of operating rights?

23 A. Production from the Queen has no bearing on these
24 assignments.

25 Q. And why not?

1 A. Because that was not the terms of the agreement.
2 It's a separate agreement that has been assigned to now
3 Seely.

4 Q. All right. When you heard Mr. Hurlbut testify,
5 did you hear him identify any wells that would have
6 preserved rights?

7 A. He did not.

8 MR. HALL: Okay, nothing further, Mr. Examiner.

9 EXAMINER EZEANYIM: Mr. Bruce?

10 MR. BRUCE: No further questions, Mr. Examiner.

11 EXAMINER EZEANYIM: Mr. Kellahin?

12 MR. KELLAHIN: Nothing further.

13 EXAMINER EZEANYIM: Do you have any questions?

14 EXAMINER BROOKS: No, I really don't think I do.

15 EXAMINER EZEANYIM: Well, I think I've been very
16 patient with you guys and allowed you to tell me all this,
17 which initially I didn't want to hear, but it's good that I
18 heard all of that.

19 (Laughter)

20 EXAMINER EZEANYIM: But that's okay. If I tell
21 you that I have made up my mind, you wouldn't believe it,
22 but I won't tell you what it is.

23 But my question to everybody here is that, why is
24 it that the parties don't talk among themselves? I think
25 both -- all the three parties here are prudent operators.

1 I expected you to talk. And from what you have presented
2 to me -- I mean, something that you people could sit down,
3 you know, talk out, and if an agreement is fair or whatever
4 is fair, you guys talk it out. Why is it that difficult --

5 MR. BRUCE: Mr. Examiner --

6 EXAMINER EZEANYIM: -- for you people to do this?

7 MR. BRUCE: -- from EOG's standpoint, we would
8 have just as soon not gone to hearing today and we would
9 have loved to continue talking with OXY regarding this
10 matter. I didn't have Mr. Hurlbut go into it, but EOG has
11 tried numerous times to contact OXY, and --

12 EXAMINER EZEANYIM: So there is not really any
13 talk between both parties -- all the parties?

14 MR. BRUCE: And we would love to continue
15 discussions.

16 EXAMINER EZEANYIM: Because that's where it's
17 going to go. Because whatever I, you know, decide in this
18 case -- I mean, I know -- either you guys talk and then
19 resolve it among yourselves or go to district court.

20 Of course now that you have decided to, you know,
21 get a ruling on this, we're going to come out with some
22 form of ruling. But whether that is the appropriate thing
23 that should have happened in this case, I don't know. But
24 it's our job to do that, and I want to do it.

25 But the point I'm trying to make here is that,

1 you know, this case could have not come to hearing if you
2 guys are talking. And I don't -- prudent operator like the
3 three of you couldn't talk, it's not really very...

4 You know, we have a lot of things we want to do.
5 I mentioned earlier to you that we are losing a lot of
6 Examiners here now. We are looking for Examiners, and our
7 resources are very, very limited. And if all this comes to
8 nought, I won't be happy about it. I like to utilize my
9 resources as best as I could, and that's how we'll be able
10 to serve you, to be able to do all we are going to do.

11 If we have to bog ourselves down to something
12 that we are going to issue a ruling, and all the time we go
13 from eight o'clock to -- four hours, is for nought -- I
14 mean, I don't cherish that. And in the morning I was
15 telling you, you guys have to deal with us because until we
16 fill that position we're going to try our best to meet your
17 expectations.

18 So anyway, I've heard the case and -- David,
19 anything else you have?

20 EXAMINER BROOKS: I can't think of anything. I
21 guess I would -- Well, I don't think I could add anything
22 worthwhile.

23 EXAMINER EZEANYIM: Okay, good.

24 MR. KELLAHIN: Mr. Examiner, before you take it
25 under advisement I would like to refresh Mr. Brooks' memory

1 and hand him two orders to look at in association with this
2 case. They have to do with the decisions in the TMBR/Sharp
3 vs. Arrington matter that we heard back in '01.

4 EXAMINER EZEANYIM: Are you talking about the
5 Order Number 11,700-B?

6 MR. KELLAHIN: There's 11,700-B and 11,700. Both
7 those two link together, when you read them in full and you
8 see what you've done with that.

9 EXAMINER EZEANYIM: Do you have any objection
10 to --

11 MR. HALL: No, sir.

12 EXAMINER BROOKS: Now 11,700, I guess, would have
13 been the one that -- the Examiner order, right?

14 MR. KELLAHIN: It's the Examiner order. And when
15 you get to the Commission order, they simply reaffirm what
16 the Examiner had done in terms of this issue.

17 EXAMINER BROOKS: Yeah. I thought that there was
18 a district court decision between the time the Examiner
19 order was issued and the time the Commission order was
20 issued in that case. Am I misremembering it?

21 MR. KELLAHIN: Just slightly. After you issued
22 the Examiner order, you gave TMBR/Sharp 10 days to go to
23 district court to determine -- get a stay or some other
24 activity to make sure that Arrington didn't go forward with
25 his permit, which was -- at the time it was issued,

1 presumed to be effective.

2 EXAMINER BROOKS: Yeah.

3 MR. KELLAHIN: And during the 10-day period,
4 window, TMBR/Sharp went to district court, did get a stay
5 of action. It later got decided in district court about
6 title and then it came back to the Commission on the
7 strength of the title that had been established in
8 TMBR/Sharp, and then went forward with the pooling cases.

9 EXAMINER BROOKS: Okay.

10 MR. KELLAHIN: So that was the sequence.

11 EXAMINER BROOKS: Very good.

12 EXAMINER EZEANYIM: Anything further?

13 MR. HALL: No, sir.

14 MR. BRUCE: No, sir.

15 EXAMINER EZEANYIM: Okay, at this point Case
16 Number 13,912 and 13,945 will be taken under advisement.

17 (Thereupon, these proceedings were concluded at
18 10:56 a.m.)

19 * * *

20
21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
23 the Examiner hearing of Case No. 13945 & 13912
24 heard by me on 9/16/07
25 [Signature] Examiner
Oil Conservation Division

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 September 8th, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010