

STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION  
STATE LAND OFFICE BLDG.  
SANTA FE, NEW MEXICO

25 May 1983

EXAMINER HEARING

IN THE MATTER OF:

Application of Basin Minerals, Inc.  
for compulsory pooling, San Juan County,  
New Mexico.

CASE  
7883  
7884  
7885

BEFORE: Richard L. Stamets, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation  
Division:

W. Perry Pearce, Esq.  
Legal Counsel to the Division  
State Land Office Bldg.  
Santa Fe, New Mexico 87501

For the Applicant:

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P. O. Box 2523  
Santa Fe, New Mexico 87501

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

For Barbara Witten,  
Judy Zweiback, and  
Myra Raffkind:

Andrew M. Ives, Jr., Esq.  
RODEY, DICKASON, SLOAN, AKIN,  
& ROBB  
Post Office Box 1357  
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## I N D E X

## WILLIAM J. MOUNTS

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E X H I B I T S

Applicant Exhibit One, Letter

Applicant Exhibit Two, Lease & Assignment

Applicant Exhibit Three, Assignment

Applicant Exhibit Four, Assignment

Applicant Exhibit Five, Assignment

Applicant Exhibit Six, Instrument

1  
2 MR. STAMETS: We'll call next Case  
3 7883.

4 MR. PEARCE: That case is on the appli-  
5 cation of Basin Minerals, Inc., for compulsory pooling, San  
6 Juan County, New Mexico.

7 MR. PADILLA: Mr. Examiner, Ernest L.  
8 Padilla on behalf of the applicant in this case.

9 We'd request that this case be consoli-  
10 dated for purposes of testimony with 7884 and 7885.

11 MR. STAMETS: The call in those two  
12 cases is identical. If there is no objection, they will be  
13 consolidated.

14 MR. PADILLA: Mr. Examiner, I have one  
15 witness to be sworn.

16 MR. PEARCE: Are there other appearances  
17 in this matter?

18 MR. IVES: Yes, Mr. Examiner. Andrew  
19 Ives of the Rodey Firm for Barbara Ann Witten, Judy Zweiback,  
20 and Myra Raffkind.

21 MR. PEARCE: Mr. Ives, your appearance  
22 is being entered in each of the three consolidated cases, is  
23 that correct?

24 MR. IVES: That's correct.

25 MR. PEARCE: Thank you.

MR. PADILLA: Has the witness be sworn?

MR. PEARCE: No, he has not. Would you  
rise, please, sir?

(Witness sworn.)

WILLIAM J. MOUNTS,

being called as a witness and being duly sworn upon his oath,  
testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. PADILLA:

Q. Mr. Mounts, for the record would you please  
state your name?

A. I'm William J. Mounts.

Q. And where do you reside?

A. I live in El Paso, Texas.

Q. What is your connection with Basin Minerals,  
Inc.?

A. I'm an officer, director, and principal  
stockholder.

Q. Mr. Mounts, have you previously testified  
before the Oil Conservation Division and had your credentials  
accepted as a matter of record?

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2

A No, I have not.

3

4

Q Would you please give us your educational background?

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A I graduated from high school from McLean, Texas, in 1947, I believe. I went to New Mexico State University from 1948 to 1952 and graduated with a Bachelor of Science degree. Then I went to the University of Texas law school in 1954 through 1957. I graduated in 1957 from the University of Texas law school.

11

12

13

14

I became licensed to practice law in the State of Texas, actually in 1956 before I graduated from law school, and I was admitted to practice law in the State of New Mexico in October of 1957.

15

16

Q And you've been practicing law since that time?

17

18

19

A Yes, I have.

MR. PADILLA: Mr. Examiner, are the witness' qualifications acceptable for testimony as a --

20

21

22

23

MR. STAMETS: Certainly. We always permit those people who are owners to testify in their own behalf in any case, as long as they don't start testifying about things they don't know anything about.

24

25

Q Mr. Mounts, are you familiar with the title to the west half of Section 27, Township 31 North, Range 11

1  
2 West, San Juan County?

3 A Yes, I am.

4 Q Can you tell us what the purpose of the  
5 hearing is today?

6 A Basically we want to drill some wells there  
7 in the Pictured Cliffs formation, on 160-acre spacing, and a  
8 Mesaverde well on 320-acre spacing.

9 That three -- well, the 160 acres, the  
10 southwest quarter is made up of 120 acres of a Federal lease,  
11 40 acres of a fee lease.

12 In the northwest quarter the 160-acre Pic-  
13 tured Cliffs Unit is made up of 80 acres of a Federal lease  
14 and 80 acres of a fee lease.

15 The 320-acre spacing unit for Mesaverde is  
16 made up of 200 acres of a Federal lease and 120 acres of a  
17 fee lease.

18 Q Mr. Mounts, let me show you what has been  
19 marked as Exhibit Number One and ask you to identify that and  
20 tell us what it contains.

21 A This is a letter dated May 11th, 1983, to  
22 the royalty owners under the fee lease in the west half of  
23 Section 27, advising them of the hearing to be held today.

24 Q And those royalty owners who have not con-  
25 sented, are they listed in that letter?

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A Yes, they are.

Q And there are some pages attached to that.  
What are those?

A These are return receipts on certified mail and it appears that the royalty owners have received this notification on or about May 11, 1983. There's one dated May 13th; most of them were received on May 11th.

Q There is one in particular on the last page, Mr. Mounts. We don't have a return receipt on that, for that particular interest owner. What has your experience been in connection with attempting to notify this person?

A Well, I contacted, or attempted to contact all of these people, all the royalty owners back in the later part of January and the early part of February of this year, and I tried to get hold of Mr. Mizel. In El Paso I'm a private attorney but I represent El Paso Natural Gas Company and who buys a lot of production up in the San Juan Basin and they have several wells that involve these people.

So I got them to give me the names and addresses of where they were mailing the checks to the people and so I notified all of them by mail, including Mr. Mizel, but I haven't heard from him.

Q Mr. Mounts, let me show you what we have marked as Exhibit Number Two. Can you tell us what that is



and what it contains?

A. Yes. Exhibit Number Two is composed of two instruments. One is an oil and gas lease from Saul Yeager and wife, Miriam Yeager, dated September 1, 1948, recorded in Book 135, page 86 of the Deed Records, San Juan County, New Mexico, which covers 160 acres, 120 acres of which is in the west half of Section 27 and 40 acres of which is in the east half of Section 27.

The next instrument is an assignment from the lessee of that oil and gas lease to a Mr. Pettigrew, dated September 24, 1948.

Q Does that oil and gas lease on this exhibit overlap into the southwest quarter and the northwest --

A. Yes.

Q -- quarter of Section 27?

A. The lease covers, among other lands, the south half of the northwest quarter of Section 27 and the northeast quarter of the southwest quarter of Section 27, plus the northwest quarter of the southeast quarter of Section 27.

Q Mr. Mounts, I'm going to hand you now what has been marked as Exhibits Number Three, Four, and Five, and have you tell us what they are.

A. Exhibit Number Three is an assignment from

1  
2 Mr. Pettigrew and his wife of this oil and gas lease, the  
3 Yeager lease, to Delhi Oil Corporation, dated August 8th,  
4 1953.

5 The next exhibit, Number Four, I guess, is  
6 an assignment of that oil and gas lease from Delhi Oil Corpor-  
7 ation to El Paso Natural Gas Company, dated March 1, 1952,  
8 and the last exhibit is an assignment of that particular lease  
9 insofar as it covers the 120 acres in Section 27, or in the  
10 west half of Section 27, to Basin Minerals, Inc., from El  
11 Paso Natural Gas Company, dated May 23, 1983.

12 Q Let me hand you now what we have marked as  
13 Exhibit Number Six and have you identify that for the Examiner.

14 A Exhibit Number Six is an instrument that I  
15 drew and it is an amendment to this base lease. The base  
16 lease did not have a pooling provision and so I prepared an  
17 amendment to the base lease to include a pooling provision  
18 so that I could combine the northeast quarter of the south-  
19 west quarter with the rest of the southwest quarter for a  
20 Pictured Cliffs Unit; the south half of the northwest quarter  
21 with the rest of the northwest quarter for another Pictured  
22 Cliffs, and the entire 120 acres for a Mesaverde well in the  
23 west half of Section 27.

24 Q Did you submit this proposed amendment to  
25 the royalty owners that you have mentioned --

1  
2 A Yes, I did, each one of them at the addresses  
3 furnished to me by El Paso Natural Gas Company, which are the  
4 addresses that El Paso used to mail their checks.

5 Q Did -- when did you submit or propose this  
6 agreement to the royalty owners?

7 A The best of my recollection it was in the  
8 latter part of January somewhere to the middle part of Feb-  
9 ruary of this year. I know that it was one of the things I  
10 had to do before I went on a trip and I went on the trip in  
11 about the middle of February, so I know I sent that before  
12 I went on the trip.

13 Q You've alluded to other attempts and other  
14 communications with the royalty owners, but can you amplify  
15 on that as to what other attempts you've made to --

16 A All right.

17 Q -- reach an agreement with the royalty  
18 owners?

19 A All right, I got back from my trip and I  
20 hadn't had any response from any of the royalty owners, so  
21 I decided I'd try to reach them by phone and I had my secre-  
22 tary in my office try to get the phone number for each one  
23 of these people, and without fail, except for one person,  
24 they were all unlisted, and it happened I was able to get  
25 the phone number of the lady in Amarillo, Mrs. Raffkind, and

1  
2 I called there and she was no longer living there but I got  
3 hold of her husband and he wouldn't tell me where she was but  
4 he did tell me where I could locate her attorney, who is a  
5 Mr. David Fest (sic) out of Tulsa, and that's how I got to  
6 amplify on my communications with these royalty owners. I  
7 got hold of Mr. Fest, talked to him, he represented Mrs.  
8 Zweiback and Mrs. Raffkind and then he gave me the phone num-  
9 ber for Mr. Witten in New York. Mr. Witten is also an attor-  
10 ney in New York.

11 And so I've had some communication with  
12 those people in that fashion. And I tried to persuade them  
13 to sign this amendment to the pooling agreement so I can pool  
14 that royalty and drill a well.

15 Q When was your last communication with these  
16 royalty owners?

17 A Well, as late as Friday, May 20, I had a  
18 rather lengthy telephone conversation with Mr. Witten and he  
19 called me from New York to discuss this matter; approximately  
20 an hour.

21 Q Have you proposed any changes to the royalty  
22 under the oil and gas lease to the base royalty?

23 A Have I proposed?

24 Q Yes.

25 A Yes, I've talked to them and I told them if

1  
2 they would -- if they would sign that amendment and let me  
3 avoid the compulsory pooling thing, that I would be willing  
4 to increase that royalty from 1/8th to 1/4th.

5 Q What is your timetable for drilling each of  
6 the proration units under consideration today?

7 A Well, I want to drill the -- or Basin Miner-  
8 al, why I say "I", I mean Basin Mineral, Incorporated, Basin  
9 would like to drill a Pictured Cliffs well in the southwest  
10 quarter within the next two weeks, if possible, and then de-  
11 pending upon the results of that well, or or about -- between  
12 now and the first of the year we'd like to drill the other  
13 Pictured Cliffs well.

14 Within 120 days, or so, I'd like to be able  
15 to drill the Mesaverde well.

16 Q So you would like an order for -- of the  
17 Commission to allow you sufficient time to -- to commence the  
18 respective wells so that --

19 A I would like to have a look and only have  
20 one well goind at a time.

21 Q But the southwest quarter well would be  
22 first and then the --

23 A That would be the first one. We've got --  
24 already got all of the environmental clearance and I believe  
25 everything we need as a condition preceding to commencing

1  
2 drilling operations for the Pictured Cliffs well in the  
3 southwest quarter. We've got archeological clearance. We've  
4 got the clearance from the Environmental Protective Agency.  
5 We've filed, I assume, all of the data. Mr. Red Walsh of  
6 Farmington is handling that for me and he tells me that when  
7 I sent him the designation of operator from Tenneco and Conoco  
8 that was the last thing I needed to furnish.

9 Q Even though you're not pooling any of the  
10 working interest in the west half or under any of the pro-  
11 posed proration units, can you tell us approximately what the  
12 cost is going to be for drilling each of the wells?

13 A Well, I anticipate the Pictured Cliffs well  
14 will run approximately \$100,000 and a Mesaverde well will run  
15 approximately \$350,000, but these are pretty rough guesses.

16 Q Basin Minerals desires to be the operator  
17 of the wells?

18 A Yes.

19 Q And named operator under this --

20 A Yes.

21 Q -- order? Mr. Mounts, would approval of  
22 this application be in the best interest of conservation, the  
23 protection of correlative rights, and --

24 A In my opinion it would be. There's no need  
25 for drilling any additional wells up there. The two Pictured

1  
2 Cliffs wells and one or two Mesaverde wells will be adequate.  
3 There's no reason for additional wells that I can see.

4 MR. PADILLA: Mr. Examiner, we offer  
5 Exhibits One through Six and we pass the witness at this  
6 point.

7 MR. STAMETS: Exhibits One through Six  
8 will be admitted.

9  
10 CROSS EXAMINATION

11 BY MR. STAMETS:

12 Q I'd like to clarify a couple of things be-  
13 fore we let Mr. Ives have a turn.

14 I would assume, now, that you are only  
15 pooling these royalties. The mineral interests are not --  
16 the working interests are not being pooled.

17 A That's true.

18 Q And when you talked to those parties you're  
19 attempting to pool here today, I think you talked to two of  
20 them, were you able to ascertain that the addresses that El  
21 Paso had given you were correct?

22 A Theirs were correct, yes.

23 I've not been able to communicate at all  
24 with the Mizel. As far as I know, I'm sending them to the  
25 correct address.

1  
2 Q Okay.

3 A And I did ask the other people that I con-  
4 tacted but they advised me that they were not in communication  
5 with Mizel.

6 Q And you in fact do have a lease on this  
7 acreage that's being pooled but it just not have a pooling  
8 clause --

9 A Does not have a pooling clause.

10 Q All right.

11 MR. STAMETS: Mr. Ives, do you have any  
12 questions?

13 MR. IVES: Yes.

14  
15 CROSS EXAMINATION

16 BY MR. IVES:

17 Q Mr. Mounts, do I understand that Basin has  
18 holds the Federal lease?

19 A Yes, on the 200 acres, the remaining 200  
20 acres in the west half of Section 27.

21 Q Okay. Was that presented as an exhibit or  
22 no?

23 A It wasn't.

24 Q Okay, I just wondered if I'd missed some-  
25 thing, because I hadn't seen that interest. Mr. Mounts, at



1  
2 the time this case was advertised for hearing Basin did not  
3 own this oil and gas lease for the private lands.

4 A Well, really --

5 Q Is that correct?

6 A No, that's not precisely correct. We did  
7 own it. It's a -- if you want to get into the title, it's a  
8 very lengthy, cumbersome, as you know. The record title was  
9 in El Paso Natural Gas Company and the other title's in Kenneth  
10 Murchison and his heirs. Basin had assignments from the Mur -  
11 chison heirs. They own the -- they actually own the operating  
12 rights for, well, for a year, not quite a year, and we did  
13 get the -- the record title is in El Paso Natural Gas Company  
14 but El Paso has always agreed that they'd assign the lease to  
15 me whenever I wanted them to.

16 Q Right, but, in fact, Basin didn't hold title  
17 by virtue of an assignment till day before yesterday.

18 A Well, we have assignment from the Murchison  
19 people that actually own it, yes, we did. I've got quit  
20 claims from El Paso to indicate that they weren't claiming  
21 any interest in it, although if you just look at the abstract  
22 it would appear that El Paso owned the -- the lease; however,  
23 El Paso didn't claim the lease is why they were willing to  
24 assign it to me.

25 Q Well, as you know, Mr. Mounts, from our

1  
2 discussions prior to this hearing today, that the folks I  
3 represent are concerned about this state of the title and we--  
4 while I understand that the Hearing Examiner is not interested  
5 in exploring the state of the title, you didn't offer to  
6 deliver to me a copy of the lease until it was provided as an  
7 exhibit here during the course of the hearing, and in fact,  
8 the copy of the lease which I had obtained from the records  
9 of San Juan County indicated that there was a dispute as to  
10 which section was involved, is that accurate?

11 A. That's accurate, although I did tell you I  
12 had the original lease and I had the precise, exact footage  
13 description.

14 Q Right, but you declined to furnish me a  
15 copy of it when I asked.

16 A I don't remember. I gave you lots of -- I  
17 gave you Division orders. I thought I'd given you that. If  
18 I didn't, I'm sorry. It's of record.

19 Q Mr. Mounts, I don't mean to argue with you,  
20 but I asked you, did I not, if I could have copies of the  
21 Division orders and you declined to give me those?

22 A Well, I -- I showed them to you. I didn't  
23 give them to you but I did show them to you.

24 Q And, Mr. Mounts, I also stated on behalf of  
25 Myrna Raffkind and Judy Zweiback to you, did I not, that they

1  
2 were willing to accept an offer with respect to the royalty  
3 interest as you represented to the Hearing Examiner?

4 A Well, I don't remember them saying that --  
5 I don't remember you telling me they were accepted and I know  
6 their attorney never told me. He told me what he wanted but  
7 that he wouldn't accept it unless the Wittens also accepted  
8 it, and didn't ever get the Wittens to tell me what they  
9 wanted, except they wanted more than what I was offering.

10 Q I understand, but was it not your stated  
11 position that you only wanted to deal with all and not part  
12 of the royalty owners?

13 A Well, it was the position they made to me,  
14 your client, the Raffkinds and Zweiback, that they weren't  
15 going to do anything, or make any type of agreement that was  
16 not acceptable to the Wittens. That's why I went to the  
17 Wittens.

18 MR. IVES: No further questions.

19 MR. STAMETS: Any other questions of  
20 the witness?

21 MR. PADILLA: Yes, sir. I have one  
22 other question.

23 MR. STAMETS: Mr. Padilla.  
24  
25

## REDIRECT EXAMINATION

BY MR. PADILLA:

Q Mr. Mounts, you did have the operating rights, although not record title to the fee lease for quite some time already, haven't you?

A Yes, for not quite a year, but I've had the assignments from the Murchison heirs, the Mudge people, and the Group.

Q By virtue of those assignments you could have drilled that well during -- since the time of those assignments.

A Yes. As soon as I got the designation of operator from Tenneco and Conoco, that's the only thing. It wasn't because they wouldn't give it to me, just they didn't get around to it.

MR. PADILLA: I have nothing further, Mr. Examiner.

MR. STAMETS: If there is nothing further, any statements?

MR. IVES: Yes, Mr. Examiner. In light of the fact that the title, record title was not transferred until day before yesterday and the matter was not -- this property was not in the ownership of Basin Minerals at the time it was advertised, I would ask that the -- and for the

1  
2 other reasons that were apparent from the testimony of Mr.  
3 Mounts, that the case be dismissed without prejudice by  
4 reason of the fact that negotiations did not (inaudible).

5 MR. STAMETS: Mr. Mounts, let me ask  
6 you a couple of questions.

7 Who has the lease on the north half of  
8 the northwest quarter?

9 A Well, that is a Federal lease and that's  
10 Basin Minerals has the operating rights. The lessee of --  
11 lessees of record are Tenneco and Conoco, but the operating  
12 rights are owned by Basin Minerals, Inc.

13 MR. STAMETS: When did you get those?  
14 When did Basin get those?

15 A I don't know. Hasn't been too long; hasn't  
16 been too long. It was not, you know --

17 MR. STAMETS: In the last two days or  
18 when --

19 A No, yeah, it's -- the designation of oper-  
20 ator is what I really needed. The leasehold -- the operating  
21 rights I got when I got the fees from the Murchison heirs,  
22 the Mimms, so I've had the operating rights for a year. I got  
23 the designation of operator from Tenneco and Conoco, oh, --

24 MR. STAMETS: How did you acquire the  
25 operating rights?

1  
2           A           Well, this particular lease, and some others,  
3 were subject to a farm out agreement back in 1951 between E.  
4 W. Mudge and Delhi Oil Company.

5                   The Delhi-Mudge agreement provided that  
6 there were six half sections of maybe 50,000 acres involved in  
7 the deal, but that Mudge could have the -- retain the oper-  
8 ating rights to these six half sections and that he could go  
9 in and earn these sections by drilling Mesaverde wells on  
10 them.

11                   He went in and he drilled on five of them  
12 but he didn't drill on this one and he kept getting extensions  
13 and extensions and finally they just said, well, you go up  
14 there and one of these days you drill a Pictured Cliffs well  
15 up there and you'll earn the operating rights, or the oper-  
16 ating rights are yours.

17                   And so about two years ago I started getting  
18 these interests. In the meantime Murchison died; I went to  
19 his heirs. He had peddled part of this to a fellow by the  
20 name of Mimms, and an E. W. Mudge had a piece of the interest,  
21 and I went to all of those people and I -- I've got assign-  
22 ments of their operating rights back in, well, the earliest  
23 one was May of 1957 and the latest one was probably January  
24 of this year -- not '57, I'm sorry, of -- May of '82 -- and  
25 the last one was probably in January of '83, but since January,

1  
2 of 1983 I have had the operating rights, or Basin Mineral has  
3 had the operating rights, has the right to drill.

4 MR. STAMETS: What about the south --  
5 remainder of the southwest quarter?

6 A. Well, we got the whole thing at the same  
7 time, you see, Murchison was entitled to the entire west half,  
8 which was composed of 200 acres in a Federal lease and 120  
9 acres in a fee lease.

10 Well, the assignments included both of them.  
11 And I've had them --

12 MR. STAMETS: Mr. Ives, I believe that  
13 the applicant had -- had what was necessary to file this ap-  
14 plication with the Division at the time of filing, and so I  
15 will overrule your motion.

16 Now, did you have a statement or was  
17 that it?

18 MR. IVES: Well, that point aside, I --  
19 I think in terms of the issue of negotiating in good faith,  
20 the question then is whether the reluctance to deliver docu-  
21 ments until the time of hearing to show the basis upon which  
22 negotiations are to occur raises a good faith issue, and it's  
23 my understanding that good faith means that the individual  
24 negotiating the royalty with the holder of the private lease  
25 here is under some duty to demonstrate his good faith and I

1  
2 Think in the absence of the delivery of these documents until  
3 just now, that we've not had an opportunity to negotiate on  
4 an arms length basis, and I think we could arrive at some  
5 resolution, but having not had the benefit of the underlying  
6 documents until just now, we've been at somewhat of a loss  
7 insofar as our negotiating position is concerned.

8 MR. STAMETS: Well, let me suggest that  
9 the parties negotiate subsequent to today's hearing, knowing  
10 full well that if they can reach some sort of a voluntary  
11 agreement, things will move along much more speedily than if  
12 the Examiner has to decide these cases as a part of an exten-  
13 sive docket such as we've had here today, and provide that  
14 impetus for both parties to negotiate in good faith this  
15 afternoon and see if they can't get something signed and tell  
16 me that you'd like three dismissals in this case, these cases.

17 If there is nothing further, these  
18 cases will be taken under advisement.

19  
20 (Hearing concluded.)  
21  
22  
23  
24  
25



## C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. \_\_\_\_\_, heard by me on \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_, Examiner  
Oil Conservation Division

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