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:	)	CASE NO. 11,434
APPLICATION OF MERIDIAN OIL, INC., FOR COMPULSORY POOLING AND AN UNORTHODOX GAS WELL LOCATION, SAN JUAN COUNTY, NEW MEXICO	)	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

January 11th, 1996

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, January 11th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, 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

January 11th, 1996
Examiner Hearing
CASE NO. 11,434

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E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	-	-
Exhibit 2	-	-
Exhibit 3	48	54
Exhibit 4	40	54
Exhibit 5	43	-
Exhibit 6	42	54
Exhibit 7 (first page)	38	54
Exhibit 7 (complete)	67	71

* * *

Hartman	Identified	Admitted
Exhibit 11	65	66

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A P P E A R A N C E S

FOR THE DIVISION:

RAND L. CARROLL
Attorney at Law
Legal Counsel to the Division
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

KELLAHIN & KELLAHIN
117 N. Guadalupe
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
By: W. THOMAS KELLAHIN

FOR FOUR STAR OIL AND GAS COMPANY:

CAMPBELL, CARR & BERGE, P.A.
Suite 1 - 110 N. Guadalupe
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

FOR DOYLE AND MARGARET HARTMAN, d/b/a DOYLE HARTMAN OIL OPERATOR:

GALLEGOS LAW FIRM
141 East Palace Avenue
Santa Fe, New Mexico 87501
By: MICHAEL J. CONDON

* * *

WHEREUPON, the following proceedings were had at 10:36 a.m.:

EXAMINER STOGNER: At this time I believe we are ready to call Case Number 11,434.

MR. CARROLL: Application of Meridian Oil, Inc., for compulsory pooling and an unorthodox gas well location, San Juan County, New Mexico.

EXAMINER STOGNER: Call for appearances in this matter.

MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of the Santa Fe law firm of Kellahin and Kellahin, appearing on behalf of Meridian Oil, Inc., and I have three witnesses to be sworn.

EXAMINER STOGNER: Other appearances?

MR. CARR: May it please the Examiner, my name is William F. Carr with the Santa Fe law firm Campbell, Carr and Berge.

We represent in this matter Four Star Oil and Gas Company. I do not intend to call a witness.

MR. CONDON: Mr. Examiner, I'm Michael Condon with the Gallegos law firm here in Santa Fe.

We represent Doyle and Margaret Hartman, doing business as Doyle Hartman, Oil Operator, opposing the Application.

I have one witness to be sworn in.

EXAMINER STOGNER: Any other appearances besides these three parties?

Before I swear any witnesses in, I believe there were some motions at this time. Shall we get some legal arguments settled at this point?

MR. CONDON: Yes, Mr. Examiner, we filed an intervention and Motion to Dismiss the Application -- I believe Four Star has also filed a Motion to Dismiss -- on the grounds that the Application shouldn't even be considered, because it seeks to force-pool interests which are already voluntarily pooled by agreement of all interest owners in the proration unit at issue, and in the formation which Meridian seeks to affect by its Application to drill the Seymour Number 7A well.

I am aware that the Examiner has sent out a letter dated January 8th, 1996, indicating that notwithstanding our Motion to Dismiss, you intend to consider the Application today at the hearing.

I would -- If you would like to hear a summary of the legal argument on the Motion to Dismiss, I would be happy to do that now.

EXAMINER STOGNER: Okay. for the record, I believe that my letter of two days ago referred to your original case to dismiss, filed back in November.

MR. CONDON: Correct.

EXAMINER STOGNER: And then Mr. Kellahin's letter, I believe, of January 8th.

MR. KELLAHIN: It was --

EXAMINER STOGNER: No, I'm sorry, January 5th.

MR. KELLAHIN: It was filed late on Friday with the prehearing statement.

EXAMINER STOGNER: January 5th, and it was on my desk on Monday.

My letter of January 8th essentially was the reply to both of your letters at that time.

And since that time, with Mr. Carr's request to dismiss for Four Star and your reply to my letter of January 8th, those have not been issued or acted upon at this time.

Notwithstanding, Mr. Carr, do you have anything to say at this point about your motion?

MR. CARR: I'd like to make a brief statement. It was filed this week.

You should be advised that Four Star Oil and Gas Company has for a month and a half been trying to determine whether or not they should go forward with this Motion, and we deferred our action until this week, waiting for material that was supplied by Meridian, and I'm talking about specific cases that were referenced in Mr. Kellahin's memorandum in response to the Hartman memo.

We've reviewed that, and I was directed to go forward with a Motion to Dismiss.

As you know, our Motion to Dismiss really rests on two arguments.

The first is that because there are both the communitization agreement and an operating agreement executed by all parties or their predecessors in the east half of Section 23, because those documents exist, because they combine and validly pool the acreage, because they govern how Mesaverde operations are to be conducted, it is our position that, in fact, this tract is not available to be force-pooled by the Division.

As we all know, the pooling statute is very specific, and it provides that owners may validly pool their interests and develop their lands as unit.

And it goes on to say, where, however, such owner or owners have not agreed to pool their interests, the Division, after a proper application is made, shall pool the land.

Our position is very simply that the statute controls, that your orders and rules do not, that are issued pursuant to the statute. And the statute says that where owners have agreed, you cannot pool. Where owners have not agreed, you may. It's that simple.

And here we have a communitization agreement that

combines the acreage, the east half of the section. We have an operating agreement, an operating agreement pursuant to which Meridian is operating the property. They're both valid, and they govern how the property is to be operated. And consequently it isn't available for pooling.

Now, Mr. Kellahin cited a number of cases to you in support of the position that you should come in and enter an order and take a position that's inconsistent with the statute, and it overrides the prior agreements.

But the fundamental fallacy in Mr. Kellahin's cases is that none of them involve a situation where the parties voluntarily combine or validly combine their lands.

You have cases where the Division force-pooled the tract, and then they came back and force-pooled again because there was a subsequent well. But you see the parties there had not validly combined their interests.

You have situations involving Hartman, and I believe it was Chevron, where was a new a pooling order, but it governed different acreage. There again, there was not an agreement between the parties to combine those lands for development.

And it is our position that the east half is not available to be force-pooled.

And this isn't new. There have been recent cases

where the Division has decided they can't pool acreage.

There was a fight last year between Santa Fe and Phillips. Santa Fe wanted to pool the east half of the section, and while they were negotiating, Phillips put together a voluntary south-half unit. And the Division concluded the southwest quarter was not available for pooling because it was already committed voluntarily to another tract.

And the position taken by Phillips in that case is, when the parties agree, the Division doesn't have authority. We think that position taken by Phillips is correct. And so we believe that the acreage is unavailable for pooling.

We also believe that the case has to be dismissed on a second ground, and that is that Meridian simply jumped the gun, that Meridian did not provide a reasonable opportunity for Texaco or Four Star to voluntarily commit their interest.

And I think the record here today will show that although there were negotiations about terms and possible amendments to these agreements, and those negotiations took place in 1993, this well was proposed by a letter dated October 31, received November 6th, and that is the date a pooling application was filed.

That's not reasonable time. That's not coming to

you as an avenue of last resort. That's coming to you first, and it's taking a sword and holding it over our head and saying, sign up or get pooled. And that's not the intent of the statute. They didn't act in good faith.

And this is not a new situation either. A year and a half ago I came before this Commission, or Division, with a case where Maralo, two days after contacting Bass, filed a pooling application. Bass complained, they had not had a reasonable time, a reasonable opportunity to join.

Maralo continued the case for four weeks. Four weeks passed.

At the end of the four weeks, after the continuance, the motion to dismiss was renewed. And Bass's motion was then granted on the grounds that we had jumped the gun in bringing the application. It wasn't cured by the continuance, but it was that we hadn't given, in that case, Bass a reasonable opportunity to reach a voluntary agreement.

Here, we submit that filing a pooling application the day you receive a letter proposing the well simply is not a reasonable time, it is not good-faith negotiations to reach a voluntary agreement.

And on both of these grounds, this and the fact that the lands are not available for pooling, on both of these grounds, the Application should be dismissed. That's

our position.

EXAMINER STOGNER: Thank you, Mr. Carr.

Mr. Condon, do you want to restate your request for dismissal?

MR. CONDON: Yes, Mr. Examiner. I think Hartman's primary basis is the same as the first basis articulated by Four Star, and that is that there is a valid pooling agreement in effect that covers this proration unit and the lands and the formation at issue and that the Division does not have the authority to essentially step into a private contract matter between the interest owners in this tract and order some interest owners to accept the terms and conditions which are attempting to be imposed by Meridian in this case.

This is a private matter because the parties have entered into a voluntary agreement by which they have pooled their interest in these lands, and it should be left to whatever negotiations the parties want to make as to whether any additional wells on this acreage will or will not be drilled and that the Commission and the Division should not allow itself to be used by Meridian to try to force an agreement in a private contractual matter down on other interest owners.

And I believe that that is, in essence, our position. And we concur in Four Star's argument regarding

the timing and the lack of good-faith bargaining and attempts to get agreement by the various interest owners in Meridian's proposal.

I would also -- I want to just address one point that Meridian raised in its response to our Motion to Dismiss, which was served on us on Monday.

Meridian argues that somehow the fact that the Commission revised the proration unit spacing rules for this formation back in 1974 to allow for the drilling of a second infill well on 320-acre proration units somehow compels the drilling of a second unit on this well. I believe they cite to Order R-1670 as support for this argument.

A review of that order, which we have attached as an exhibit to our reply, I think, points out that what that order did was, it allowed for the drilling of an optional second well on 320-acre proration units, if the parties desire to do that.

And the fact of the matter is, the parties have not desired to do that here. There's nothing in that order that compels the drilling of a second well, and nothing in that order that grants the Division or the Commission the authority again to step into a private contractual agreement between parties who have already voluntarily pooled their interests and compel some parties to that

agreement to accept the position and wishes of another party to that agreement.

And I would also just urge and incorporate by reference all these arguments that are in the pleadings that we have filed. In the event the Examiner does not grant the Motion to Dismiss, all of these arguments are equally valid in opposition to the Application, regardless of any particular ruling on the Motion to Dismiss, and we would urge, even if the Examiner denies the Motion to Dismiss, that all the arguments be considered in opposition to the Application.

EXAMINER STOGNER: Do you concur, Mr. Carr?

MR. CARR: Yes, sir.

EXAMINER STOGNER: Mr. Kellahin?

MR. KELLAHIN: Mr. Condon has finally put his finger on the dilemma, Mr. Examiner, and that is, we are talking about the Mesaverde infill well, where the 1953 agreement does not allow for the infill well. And the dilemma is that Meridian would like that well drilled.

We believe you have sufficient statutory authority, and there is case law that supports a resolution of this issue.

There is an abundance of material been submitted to you by all sides. We would like you to look at our statement of facts on our summary where I have provided you

with the document that you read on Monday. It is simply this, that in 1953, when the original parties, who are none of these parties here, reached an agreement about development of the Mesaverde, it was predicated on the existing spacing in existence at that time, which was 320-acre gas spacing.

Attached to that operating agreement is a communitization agreement. And as we all know, those operating agreements, then, as now, are conditioned upon communitization agreements, particularly in this case when you're consolidating two federal oil and gas leases. The northeast quarter is one federal lease, the southeast quarter is the second federal lease.

The operating agreement is contingent upon the communitization agreement, which has language on the first page of that communitization agreement in the preamble that says that this is in conformance with the well spacing pattern, and that's why the leases were being consolidated.

The time reference is important. This is 1953. The parties did not know that the well spacing density pattern was going to be changed. In fact, it was changed by the Commission in 1974. You are well aware of the infill orders of the Mesaverde.

The problem is that Hartman and Four Star are arguing that this old private contract, now, is an absolute

preclusion of what Meridian would like to desire to do in terms of drilling the infill well. The infill well has been authorized by the Division, and yet they're utilizing the 1953 agreement as an excuse to preclude and to override the application of the Division rules to the pool. And that, I think, is the threshold issue.

You've got authority. You find when you look at the infill orders, there is specific and clear findings by the Commission that these infill wells will substantially increase recoverable gas reserves, and it goes on at length talking about the necessity and the appropriateness of those infill wells in order to prevent waste.

Back in 1963, the New Mexico Supreme Court addressed compulsory pooling, in the Sims-Mechem case, and I think it's important to look at that case. They were construing the force-pooling statute, which has different reference now, but it's substantially the same as we have it now. What they were talking about in that case is an appeal of a Commission order. The fatal flaw in that case is, the Commission failed to make a finding as to waste, and that's why the decision was overturned.

But in addressing the components of the problem, the New Mexico Supreme Court said, unquestionably, the Commission is authorized to require the pooling of property where pooling has not been agreed upon by the parties.

And it is also clear from Subsection E of the same section we're talking about that any agreement between owners and leaseholders may be modified by the Commission. In doing so, however, your authority is such that it must be predicated on the prevention of waste.

This 1953 agreement did not provide for the infill well. There is no agreement on that. We're saying that we ought to be able to implement and use the Rules of the Division. And if you can't do it, then private contracts are going to be allowed to prevail over OCD Rules.

If you believe Mr. Condon and Mr. Carr, then that argument is equally applicable, should the parties agree to solutions as to other items, in addition to well density. How about well locations? How about producing allowables? How about gas-oil ratios? How about anything private parties could do that would materially affect the pool rules and what you can do under those pool rules?

The process comes to a screeching halt if private parties can reach agreements that are inconsistent with or contrary to the development of the rules adopted by the Commission.

The solution is to apply the construction that Sims-Mechem gives you and to look at your statutory authority.

Mr. Carr says we have done this before and lost on my argument. That's not true.

The argument that Mr. Carr and I had a few years ago, or last year, with the Santa Fe and the Phillips deal is a different issue. That dealt with a nonprorated Morrow gas well in southeastern New Mexico on statewide rules where you and I both know you can only drill a single well under those rules.

The dispute in that section was, there had yet to be drilled a Morrow gas well. Santa Fe wanted an orientation of the west half of the section. Phillips on a voluntary basis could form a south-half spacing unit, for which there need to be no compulsory pooling, and they accomplished that. And the Division says, No, you have formed a voluntary agreement consistent with our spacing rules on 320, the south-half spacing unit for Phillips stands, the Santa Fe application to force pool, then, has now been pre-empted by an agreement that's consistent with our rules.

The problem here in this case we're looking at now is, the agreement is inconsistent with the rules you now have before you with regards to infill drilling.

The issue of an optional well, I think, is a red herring. The original well is always an optional well. Nobody compels these people to drill these wells. They're

all optional. What we would like to do is exercise our option.

And the only method available to us is force-pooling, because back in January of 1993 we first proposed to these parties an infill well in the west half of this section.

Mr. Carr says we've sprung it on them at the last minute, and they need some more time, we didn't play fair. That's just nonsense.

We've negotiated with his client for months. We've made revisions to the operating agreement, the new joint operating agreement, because they are suggesting them, and we made some compromises. The end result of it is that they advised us that their economics didn't justify them participating in the infill well and they wouldn't do it.

Mr. Alexander will testify, if you will allow him, that after the January, 1993, letter he had subsequent conversations and proposals to both Hartman and Texaco, now Four Star, for the drilling of an infill well.

The process is a continuing, evolving one. Because of the time involved the costs, fortunately, are now less than originally proposed. We intend to show you that. This quarter section has a difficult topographic problem. The BLM has asked us to move the well. We have

finally found the place that accommodates their request, and we're moving the well.

There's been no issue with any of these people as to the well location. They simply want to hide behind the old 1953 agreement to preclude it from happening. We think that's not fair, it's inappropriate, and you have the authority to give us a solution. We're not asking you to interpret contracts or anything else. There's no dispute about this contract. It simply provided for the original well in 1953.

We're asking you to give us the right under your authority to drill the infill well, under the standard provisions that you utilize in compulsory pooling and that you have the authority to modify these agreements that prior to parties enter into when they're inconsistent with your rules and regulations, and this one is.

Explain to me how else we can ever get this well drilled. A small, teeny percentage of a working interest owner will frustrate the process, and in doing so they will cause waste, and they are going to impair our correlative rights because we're about to show you an infill well that has every right to be drilled and produced.

Thank you.

MR. CONDON: May we --

EXAMINER STOGNER: Mr. Carr?

MR. CARR: Mr. Stogner, the question was, how will we ever drill unless you come in and abrogate our contract? And the answer is, you live under the contract and renegotiate.

To suggest that because in 1993 you were talking about an infill well that would require amendments to the JOA is not the same as coming forward with a specific proposal.

And that's what happened here. There were negotiations a couple of years ago, a long break in the pattern, and then, boom, a proposed well. It was received the same day the pooling application was filed. We submit that that is not good-faith negotiation for the drilling of this specific well at this location, and it is absolutely inconsistent with prior rulings of the Division when parties did not at least negotiate concerning a specific well before they came rushing in with an application for force pooling.

Mr. Kellahin says the case between Phillips and Santa Fe was different. I would submit to you that it was exactly the issue that's before you here today. I don't think there is a question in that case, or here, or there's a distinction between one well and two wells. That's not the issue.

The issue is, there's a statute, and the Oil and

Gas Act defines and it limits what this Division may do. And when you read the pooling provisions it says, where the parties agree to develop their lands you don't have the right to invoke the police power of the state and combine these tracts. The tracts have been combined.

And to suggest that there is a conflict between the rules, the infill drilling order, and the contract between the parties is ludicrous, because your infill order doesn't say ye shall drill an infill well; it says you may. And before you do, you've got to try and live with your agreements with the people in these spacing units that you are working with under contracts, you've got to attempt to honor those contracts.

The contracts provide for -- have provisions in it, the operating agreement, to terminate it by mutual agreement of the parties. If not, it has a life that goes on -- the same life as the com agreement.

But the bottom line is that you're not asked to get into these and you're not asked to start interpreting the contract, though what you're told is that you don't come in and rewrite the contract for the parties. That's very simply what you're being asked to do here today.

They're asking you to come in, they're asking you to change the deal, add to the deal, and do so in a situation where we find ourselves being here today, and

being called here today on the very day the well was proposed to us.

We think that is inconsistent with the statute, one, because there is a voluntary agreement for the development of these lands, it doesn't say for the drilling of a well. And there also has been a failure on the part of Meridian to come forward with a specific well proposal and negotiate that out with us in good-faith fashion. That's our argument.

EXAMINER STOGNER: Thank you, Mr. Carr.

Mr. Condon?

MR. CONDON: Yeah, Mr. Examiner, I just want to respond to a couple of points.

First, it is an absolute red-herring issue to argue to the Division and the Examiner that by acceding to the parties' private contract you're somehow going to allow parties to circumvent and override the OCD's rules and regulations. That is not true. There is nothing inconsistent with the OCD rules and regulations in having this 320-acre proration unit operate with one well. There's nothing inconsistent about that.

So we're not coming in and asking you to authorize private parties to circumvent the rules and regulations of the OCD; we're simply saying where there is a private agreement that is consistent with OCD rules and

regs and the statutes, which is the case here, that the Division should not step in and attempt to rewrite the contract.

Second, Mr. Kellahin has said that if you don't authorize their request for the Division to rewrite the parties' contract, where the parties have already agreed to pool their interests, then the well can never be drilled.

Well, that's simply not true. And in fact, I don't think that Meridian or Mr. Kellahin is going to put on a shred of evidence today to indicate to you that any party has said for all time, under all circumstances, no matter what you show us in terms of the economics of a proposed infill well or no matter what terms you propose in terms of a potential modification of the existing agreement or a proposed new joint operating agreement, we are never going to agree to the drilling of an infill well on this unit. There's no evidence of that.

What's happened here is that Meridian simply has not sat down with everybody and said, what do want? What is it going to take? Maybe you're not ready now; we are. But what would it take to get you to agree with us on the drilling of an infill well? Under what conditions would you authorize that? Under what sort of new joint operating agreement would you agree to the drilling of a second well on this tract?

They've simply said, Here are our terms and conditions, sign this new joint operating agreement, or else we're going to force-pool. And that's -- at least as -- from Hartman's position, exactly what has happened vis-a-vis relationships with Meridian.

Meridian has two choices under which they can drill the well.

Number one, they can negotiate and they can bring the parties in and they can make a good-faith effort to say what will it take to get this well? That does not require the Division to act or to step in and rewrite a private contract.

Second, Meridian could always simply go out and drill the well. What they would have to do under those circumstances, they would, you know, possibly subject themselves to legal action if what they were doing was inconsistent with the present operating agreement.

Or they could simply drill the well and carry the interests of all of the interest owners who do not agree to drill that well. And if it's such a great well, they shouldn't have any concern about doing that.

The fact of the matter is, what they want is, they want an order authorizing them to do that, with penalty provisions, so that they can effectively extinguish the interests of nonconsent working interest owners in this

tract.

And that's just not advisable. Mr. Hartman has even indicated to Meridian that if they wish to go out and drill the well with him as a nonconsent working interest owner, without penalty provisions, because there are no penalty provisions in the present joint operating agreement under which Meridian is operating this property, they can do that, they carry his interest, and as soon as the reasonable cost of drilling is reimbursed, then everybody shares in revenue.

And that would certainly be a much better result in a case like this than to come in and ask the Division to rewrite the parties' contract.

EXAMINER STOGNER: Thank you, Mr. Condon.

Mr. Carroll?

MR. CARROLL: Yeah, I have a few questions.

Mr. Carr and Mr. Condon, I take it it's your position that the 1953 agreements constitute the plan of development or plan of operation for this property and that the OCD should not fool around with that plan?

MR. CARR: It is my position that the 1953 communitization agreement is a voluntary agreement, enforceable, valid and binding these parties, combining the interests in the east half of that section, that the operating agreement sets forth a plan of development and

that those agreements are enforceable, they are the agreements upon which and based on which Meridian operates those properties today, they are valid and they stand, and as such, the lands are not available for pooling. That's the position.

And if they are to be amended, if they are to be modified, the very minimum we're entitled to is an opportunity to sit down and talk without a pooling case hanging over our head, and that did not occur.

MR. CARROLL: Mr. Carr, I've looked at the force-pooling statute, particularly Subsection E, and we're expressly given the authority to modify any such plan.

MR. CARR: To modify --

MR. CARROLL: -- a plan of development. And I would take that to mean an operating agreement or a communitization agreement.

MR. CARR: And if you do that before there has been a good-faith effort to negotiate for the drilling of a well, I submit that the Division is acting outside the authority granted to it by Subsection E, and that's what's happening here.

MR. CARROLL: You don't disagree with our authority to modify any such plan under Subsection E, do you?

MR. CARR: I think you can modify a plan, but it

needs to be consistent with your statutory authority, and that's the problem here.

MR. CARROLL: Yeah, as long as it prevents waste we can modify the plan, and it's apparent to me that Meridian is saying a second well is necessary in order to recover reserves that would be left without this second well.

MR. CARR: You are taking a private contract and modifying it in the context of a pooling hearing that must be dismissed because it was not properly brought in the first instance.

I can tell you here and now that if we had an opportunity to sit down and negotiate without having a sword over our head, it is entirely possible that you wouldn't have to become involved at all.

But when you act and go forward under the pooling statute, under this section of the Oil and Gas Act, I think it is absolutely essential that before the police power of the state is invoked, before you start rewriting private contract, that procedurally those who ask you to do it are required to give us in good faith an opportunity to negotiate.

That didn't happen here, and it's inconsistent with what was done between Maralo and Bass about 15 months ago.

MR. CARROLL: And that brings in my second question. Mr. Kellahin --

MR. KELLAHIN: Yes, sir.

MR. CARROLL: -- the Examiner and I are very concerned about this apparent 2-1/2-year gap --

MR. KELLAHIN: Yes, sir.

MR. CARROLL: -- between negotiations with Four Star and Hartman.

Are you going to present evidence as to negotiations that have occurred between the letter of April 12th, 1993, and the application filed on October 31st, 1995?

MR. KELLAHIN: The exhibit book will contain correspondence between Meridian and Texaco with regards to the 1993 proposal. The final response from Texaco, as with regards to that infill, was September 30th of 1993, in which they said the project didn't meet their minimum economics.

Mr. Hartman never responded to any of our proposals of 1993. The first proposal letter was one where he got an AFE, enclosed a new joint operating agreement, it invited him to consider it, it asked him to call if he had any questions, it was a polite introduction to commence negotiations, and he elected not to do so.

MR. CARROLL: That was over two years ago?

MR. KELLAHIN: Yes, sir. On October 31st of 1995, the well was -- proposal was reinitiated. The modification involves an AFE that over time and Meridian's efforts is now less than the first one, and a moving of the location to a better position in the southeast quarter.

The pooling Application was filed on November 8th, requesting a hearing on December 7th. It has been continued on two different occasions, once to accommodate Mr. Condon's schedule and once to allow at Texaco's request additional time to examine their position.

We think that if you dismiss it on the grounds of not sufficient time to negotiate it, it's not very meaningful, because as I understand it today, additional time is not going to resolve this problem.

If you desire us to have further negotiations, we would be more than happy to do that. If that's what you would like us to do, we will do that.

We think at this point there was no purpose in going forward with negotiations because both Hartman and Texaco were standing behind the fact that they didn't think they had to talk to us. The 1953 agreement gave them an absolute veto over the project.

And if your decision is that you have authority and that this well proposal is consistent with the current well plan, and if that's your decision, it certainly may

break the logjam that currently exists between these parties, and we certainly would be willing to talk about negotiations if there's any expectation that that might come to some solution. But that's where we are.

MR. CARROLL: Well, that gets back to my question about -- you referenced the September 30, 1993, letter --

MR. KELLAHIN: Yes, sir.

MR. CARROLL: -- and what's the record of communications between the parties between September 30, 1993, and October 31st, 1995?

MR. KELLAHIN: I'm sorry, I don't mean to misspeak. Let me make sure.

(Off the record)

MR. KELLAHIN: Mr. Alexander tells me -- I'm sorry.

(Off the record)

EXAMINER STOGNER: Mr. Kellahin?

MR. KELLAHIN: Thank you, Mr. Examiner. It will be Mr. Alexander's testimony that after the September, 1993, letter, his next written communication to the parties was the October, 1995, letter, that during that transition period he had some conversations on the phone with the various parties, he was able to successfully get Williams Operating to commit their share to a new joint operating agreement. There's another party that's agreed with our

position.

But in terms of formal letters, there is a gap in the correspondence, and he'll admit that there's no written communication between those two periods.

MR. CARROLL: Is there a dispute as to oral communications between the parties in this gap?

MR. CARR: I have no knowledge of them. And I'm not saying they didn't occur; I'm saying I have no knowledge.

MR. CONDON: I have no knowledge. I mean, I don't think there was any communication between Hartman and Meridian after the first letter went out, early 1993, until receipt of the October 31, 1995, letter and the revised proposal.

And I would also just raise -- On the question of timing and why it is that we have to rush in to do something right now on this infill well, where Meridian claims that the basis of authority for that is a 1974 regulation that permitted the drilling of an optional second well, no action was taken for 19 years after 1974, a letter is sent out, negotiations, perhaps, occurred between Meridian and Texaco for some period of time, and then two years elapsed, and a second proposal is sent out in an area where the 1974 order authorizing the drilling of a second infill well, as I understand it, is based upon a finding

that one well on a 320-acre proration unit probably in a lot of cases can't effectively drain the entire 320 acres.

It's not like there are correlative rights that need to be protected, because this gas is going somewhere, it's just there, and it's just a question of when it's going to be developed.

MR. CARR: Mr. Stogner, if I could just make one more statement?

EXAMINER STOGNER: Okay.

MR. CARR: In September of 1993, Four Star advised Meridian that the proposal for an infill well on this tract didn't meet its economic requirements. A well was then proposed 25 months later with a lower AFE at a new location. I submit that's a new proposal.

And when you do that, there must be negotiation before they try and ask you to invoke the police power of the state.

And when they come in that posture, you should follow what this Division did in the Maralo-Bass case, and you should say, Your application must be dismissed, you must negotiate, if you can't reach voluntary agreement then you must refile.

And if that happens and we come before you and there are questions about whether the agreement needs to be amended pursuant to Subsection E of this section, at least

it comes before you in the proper posture, and that is in harmony with the provisions of Section C, in the context of a properly brought before you pooling application.

That's our position.

(Off the record)

EXAMINER STOGNER: Mr. Kellahin --

MR. KELLAHIN: Yes, sir.

EXAMINER STOGNER: -- when you refer to Mr. Alexander's testimony, is he going to testify as to the land matters and the negotiations between the parties and the force-pooling provisions --

MR. KELLAHIN: Yes, sir.

EXAMINER STOGNER: -- the voluntary agreements prior to that point?

MR. KELLAHIN: Yes, sir, it's to be part of his testimony to go through the land history of this property as an expert to talk -- He was involved in all the negotiations from 1993 forward, and he will testify on that issue.

But he's going to admit to you what we've already discussed, that the current proposal, if it's of importance to you, is at a different location in the southeast quarter of the section, and the AFE was modified from the -- originally submitted, and is some, I think, $20,000 less. And if those are critically important, that's what he'll

tell you.

EXAMINER STOGNER: Mr. Condon, your witness is going to --

MR. CONDON: Dana Delventhal, she's just going to discuss the AFE and the area and the fact that it's really not much of a risk and perhaps with not sufficient potential reserve recovery to justify a penalty provision and to perhaps question to some extent the AFE.

MR. CARROLL: Is she the person that Mr. Alexander was negotiating with or talking --

MR. CONDON: No, I have nobody here to testify on negotiations, although I think that we can get that through Mr. Alexander.

I've got one letter that Mr. Hartman wrote, dated November 15, 1995, upon receipt of the October 31, 1995, letter from Meridian, and a new AFE and the new proposed joint operating agreement for the Seymour 7A well.

And I believe that's the only -- the two letters from Meridian and the response letter from Hartman, to my understanding, are the only communications between Meridian and Hartman to date on the issue.

EXAMINER STOGNER: At this point, I'm going to elect to delay any motion -- I mean, any decision upon the motion, and at this time allow Mr. Kellahin to bring Mr. Alexander up on the witness stand so we can question him.

So at this time let's swear Mr. Alexander in as an expert witness.

(Thereupon, the witness was sworn.)

MR. KELLAHIN: Clarification, Mr. Examiner. Mr. Alexander was to have a rather involved presentation with regards to the history of the property.

If you want him to address the negotiations from January of 1993 forward, we'll focus on that. If you want the background -- If you're interested in the background of the history of the property, I'll need to start before that.

So I need some direction on what it is that you would like to hear.

EXAMINER STOGNER: Let's hear about the negotiations around November, onwards, of 1993.

MR. KELLAHIN: All right, sir, let me see if I can set the stage to do that.

EXAMINER STOGNER: Do you need some time?

MR. KELLAHIN: No, sir.

ALAN ALEXANDER,

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

DIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Alexander, for the record would you please

state your name and occupation?

A. Yes, my name is Alan Alexander. I currently work for Meridian Oil, Inc., in the Farmington, New Mexico, office as a senior land advisor.

Q. On prior occasions, Mr. Alexander, have you qualified as an expert in the field of petroleum land matters before the Oil Conservation Division?

A. Yes, sir, I have.

Q. And your current employment with your company has you residing in Farmington, New Mexico?

A. That's correct.

Q. As part of your responsibilities, have you informed yourself and are you knowledgeable about the ownership with regards to the interest in this spacing unit?

A. Yes, I am.

Q. In addition, have you examined with your expertise all the documents available to you with regards to the history of the development that occurred under this old operating agreement and any other related document?

A. Yes, I have.

Q. And were you the landman primarily responsible for your company to initiate negotiations with the working interest owners, when your technical people decided that they would like to have an infill well drilled in this

spacing unit?

A. That's correct.

Q. And have you continued through the present day from the initial negotiations to address the negotiation issue?

A. Yes, I have.

MR. KELLAHIN: We tender Mr. Alexander as an expert witness.

EXAMINER STOGNER: Any objection?

MR. CARR: No objection.

MR. CONDON: No.

MR. KELLAHIN: Mr. Alexander, let's set the stage, if you will, sir. Let's --

EXAMINER STOGNER: Do you want to pass those out?

MR. KELLAHIN: Yes, sir, let me make sure I've got the right exhibit books, Mr. Examiner.

EXAMINER STOGNER: I don't mean to rush you.

MR. KELLAHIN: You've got your set?

THE WITNESS: Yes, I do.

Q. (By Mr. Kellahin) Let me ask you to turn to the first display after Exhibit Tab Number 7, Mr. Alexander, and let's locate and orient the Examiner to the property. Let's take a moment and have you identify and describe the color codes and the information shown on this exhibit.

A. This exhibit consists of a township plat, land

plat, that depicts the acreage in this Township of 31 North, 9 West, that was subject to the original contracts among the parties back in the 1952-53 time frame.

It shows the drilling blocks that were subject to the older contracts, and it shows the parent wells and the infill wells that were eventually drilled on all of this acreage.

The red haching denotes infill wells that were drilled under joint operating agreements that were entered into by the parties after they, in my opinion, became aware that the old 1953 joint operating agreement that was actually attached to a farmout agreement was inappropriate and could not be used to handle the infill situations.

Q. Let me summarize it for you. If we look at the display, the subject spacing unit we're debating now is shaded with the green hached line in the east half of 23?

A. That's correct.

Q. The other areas that have the diagonal red hach marks going in the opposite direction, how do they relate to the east half of 23?

A. They're simply a part of the original contract lands, and that they all -- the contrast here is that all of those spacing units have been fully developed, and the green hached -- the Seymour 7A spacing unit has not been fully developed.

Q. Under this farmout area development plan, the green area was part of the area that's shaded in, with the red hached line?

A. Yes.

Q. And in all other instances, there was an infill well drilled except for the east half of 23?

A. That's correct.

Q. All right. Now, let's go back now and talk about specific proposals for the infill well in the east half of 23. And if you'll start, Mr. Alexander, by turning to Exhibit Tab 4, let's look at the first proposal.

Is this the letter that you sent to the interest owners, working interest owners in the spacing unit?

A. Yes, sir, that's correct.

Q. How did you determine that these were the appropriate interest owners in the east half of 23?

A. By a title review.

Q. All right. Give us a quick summary of how these parties came to be working interest owners, as you know them, from those that were the original parties to the 1953 agreement.

A. I went back into the records to determine how this contract initially came about and the subsequent parties that operated under these contracts.

Q. When you look at that, what types of leases were

you dealing with in the east half of 23?

A. These are federal leaseholds.

Q. And how many federal leases were you worried about in the east half?

A. There's two federal leaseholds that make up this drill block.

Q. And how were they divided in the east half?

A. One federal leasehold consists of the northeast quarter, and the other federal leasehold consists of the southeast quarter.

Q. Who originally drilled the well?

A. The original well was drilled by Southern Union Gas Company, I believe.

Q. And that was drilled in the northeast quarter of the section?

A. Yes, sir, that's correct.

Q. All right. At that time, who were the interest owners in the southeast?

A. When that initial parent well was drilled?

Q. Yes, sir.

A. That would have been -- It would have been Arco or its predecessor in interest, Western Natural Gas. I don't recall exactly which one of those parties at that point in time.

Q. When we look at the current ownership, then, how

is the ownership divided between Texaco, now Four Star, Hartman and Williams?

A. The northeast quarter is owned by -- currently owned by Meridian and Hartman, and the southeast quarter is currently owned by Phillips and Williams.

Q. What are the percentages for Williams, Hartman and Texaco? Do you recall?

A. Yes, sir, I have a note here that I can tell you that. Percentages on the drill block would consist of Meridian owning 37.5 percent gross working interest; Doyle Hartman, Oil Operator, 12.5 percent interest; Williams Production Company, 9 percent; and Texaco Inc., back at the time -- now that it's Four Star -- is 41 percent.

Q. That information is tabulated behind Exhibit Tab Number 6, is it not, Mr. Alexander?

A. Yes, sir, that's correct.

Q. All right. Describe the circumstances as you know them to have existed when you started the January 27th, 1993, proposal for the well. What were you provided? Were you given an AFE?

A. Yes, sir, we evaluated this drill block, because it has undeveloped, and I was given the AFE to contact our partners to propose the infill well, which I did do that in the 1993 letter.

Q. All right. Within the context of the 1993 letter

proposal, what were you providing them?

A. I was providing them with our location that we had at the time, with the AFE covering the drilling of the well, a nine-section plat so that they could evaluate the well and the offsetting properties.

And I also informed them at that time that the Seymour Number 7 well was the only well subject to the old operating agreement of 1953, in my opinion, and that it did not cover the drilling of an infill well and that a new operating agreement would be needed in order to accomplish the drilling of the infill well.

I also --

Q. Go ahead.

A. I'm sorry.

Q. With that letter, did you include the documents that are in the exhibit book behind that cover letter?

A. Yes, sir, that is correct.

Q. Identify and authenticate those for us, if you will, please.

A. The documents behind the letter would include our authority for expenditure. And behind the authority for expenditure would be cost estimate breakdowns for tangible and intangible facilities cost, the nine-section land plat appears after the cost estimates, and then back in Exhibit Number -- behind Exhibit Number 5 would be the operating

agreement that was furnished to the parties at that point in time.

Q. Okay. And then there's a plat in the book if we've got them collated correctly -- I think my -- after the AFEs --

A. Yes, sir.

Q. -- then there's a plat?

A. Yes, sir.

Q. And then after that plat is a letter dated March 19th of 1993?

A. That's correct.

Q. Do you find that in your book?

A. Yes, sir.

Q. All right, sir. What happened, if anything, after you sent the letter and before you received the March 19th, 1993, letter from Texaco? Were there any telephone calls, conversations or responses between you and these others during that period of time?

A. Not that I recall. I think this is the first communication.

Q. All right. Describe your understanding of what Mr. Snure with Texaco was asking you to do in the March 19th, 1993, letter.

A. He was asking us to review our proposed operating agreement that we intended to use on this well, and he

suggested certain changes to that operating agreement, that were numbered 1 through 5.

And then he also indicated to us that he may have some further changes that he would want to suggest in point number 6 of his letter.

Q. Other than amendments and modifications to the operating agreement, did Mr. Snure raise any objections with regards to the AFE or the well location or any other aspect, other than the language of the operating agreement?

A. No, sir, not at that time.

Q. All right, sir, continue. What happened after the 19th -- March 19th, 1993, letter?

A. We waited on the responses from the parties, and having received none, then I did follow-up communication with some more letters, asking for their responses to our proposal letter. And those letters are attached in the exhibit book, being an April 12th, 1993, letter to the partners.

Q. By September 2nd of 1993, had you received any responses from Mr. Hartman?

A. No, sir, I had not.

Q. You had the one comment from Texaco. Did you have anything from Williams?

A. Nothing in writing from Williams at this point in time.

Q. All right. What occurs after the September 2nd, 1993, letter? You have a September 2nd, 1993, letter to an Allen Smith. Why was a letter sent to Mr. Smith?

A. I called Mr. Hartman's office, and I was instructed to direct my future communications to Mr. Smith, who was representing Mr. Hartman, and so I did that.

Q. And what if anything did you and Mr. Smith discuss?

A. At this time, very little, other than furnishing him with the prior information that I had already furnished Mr. Hartman.

Subsequent to the September of 1993 letter, I did have several conversations with Mr. Smith, mostly from me following up to see if we could get a response from Mr. Hartman. And in one or two of those conversations he asked for some information which I did provide to him, and I don't recall what that information was at this point in time.

Q. All right, sir. What's the next correspondence either you sent or you received with regards to this topic?

A. The next letter that we have in the booklet is dated September the 30th, and it's received from Texaco. And that was the point in time when Texaco notified us that this well did not meet their economic requirements. And I assume from this letter that Texaco was not interested in

joining in the well.

Q. All right, sir, after that what then did you do?

A. From this point in time on, we continued to work with Williams and did get their joinder in the well.

We were also working with the Bureau of Land Management on the location of the well. There are some topographical issues that needed to be addressed, and we can talk about those later.

Like I said, I did have some subsequent conversations with Mr. Smith in an attempt to try to get them to join in the well, and I anticipated that I would have to probably force-pool Texaco or try to get them to join into the well, into a nonconsent position under the initial operating agreement.

Q. Well, the original 1953 agreement didn't provide for any subsequent well, did it?

A. No, when I said the operating agreement, I'm referring to the operating agreement that I proposed to them, that I would modify that operating agreement and allow them to go nonconsent under that operating agreement.

Q. All right. Then what then happened?

A. We continued working with the Bureau of Land Management on the location, and we continued working the geology in the area.

And we have, I believe, reached a compromise with

the Bureau of Land Management. They approved -- initially approved our location in the southeast-southeast quarter, but they later asked us to re-evaluate that and to move that location, and --

Q. Let's look at that map and touch on that issue briefly. If you'll look at Tab 3 and the little colored map behind the exhibit tab --

A. Yes, sir.

Q. -- what is the significance on that display of the black circle with the black dot in the middle of it, in the southeast of 23?

A. That's our current proposed location for the Seymour Number 7A well.

Q. And the original location was one that the BLM had asked you to move?

A. Yes, sir.

Q. And this location, then, was in response to their desire to have it moved?

A. That's correct.

Q. And it's one that's been approved by your technical people in terms of its geologic position?

A. That's correct.

Q. All right. When did you then contact any of these parties again with regards to the drilling of an infill well in the spacing unit?

A. The next contact with the parties was the October letter that I sent to them, with our updated joint operating agreement, and it was updated because I thought that Texaco, since they didn't want to join in the project, might want to -- instead of being force-pooled, they would like to join in this proposal of nonconsent, and I have language in that operating agreement that allowed them to do that.

And we did also furnish our must current AFE for the well at that point in time and again solicited responses on whether they would care to join in the well or not.

And I asked -- Since Williams did sign the prior operating agreement that I sent them, I asked them -- since there were some changes to the operating agreement, on the language of allowing Texaco or anybody else to go nonconsent under the initial well, I asked them to again sign the signature pages under this version of the operating agreement.

Q. The amendments you made in the operating agreement from the original proposal in 1993 to the revisions in 1995, did you concede to all the revisions that Mr. Snure had asked you on behalf of Texaco to make in his March 19th, 1993, letter?

A. No, and the reason for that is, and I advised

Texaco, was that we had -- Williams and Meridian had already agreed to execute the operating agreement as it stood, and I was again asking them to execute the operating agreement without any modifications, but I did modify to the extent that I would allow them to go nonconsent under this well, under the operating agreement.

Q. All right. As part of the modifications to your first proposal contained within the October, 1993, letter, what did you provide the interest owners?

A. I again provided them with a -- our revised cost estimate, updated cost estimate, and the updated joint operating agreement.

Q. In response to that letter, did you receive any communication from Mr. Hartman?

A. The only -- I did receive a communication from Mr. Hartman. Mr. Hartman did send me a letter that I believe we do have in the book, in the exhibit book.

Q. Well, I'm not sure it's in my copy, but it's certainly in the record of the case, and --

A. Yes, I don't have it enclosed in the exhibit book --

Q. All right.

A. -- but I did receive written communication from Mr. Hartman.

Q. All right, we can find the letter and introduce

it.

But in substance, what's your understanding and recollection of his position as he communicated it to you?

A. It was that he was taking the position that the 1953 operating agreement covering the Seymour Number 7 well controlled in this instance, and that -- he indicated that if we did go ahead and drill a well on this property, that he would be carried free of cost and be entitled to his revenue share from the well.

Q. What if any response did you receive from Texaco to your October 31st, 1995, letter?

A. I did receive a response from Texaco.

Q. Yes, sir, and what's your understanding of the position they're taking in the letter?

A. Their position was substantially the same as Mr. Hartman's, that they now felt that the 1953 agreement controlled the operations and that they felt that they did not have sufficient time to reach a decision on our proposal.

Q. All right. Did you respond to Mr. Snure's letter of November?

A. Yes, I did.

Q. And how do we find your response?

A. My response is contained in the exhibit book, and it's dated December the 1st, 1995. It's following the

Texaco letter.

Q. In that letter, did you invite Mr. Snure to consider the operating agreement, to engage in negotiations with you and try to come to some voluntary agreement with you about the infill well?

A. Yes, I did.

Q. And did he elect the opportunity to discuss with you negotiations on a voluntary basis for the drilling of the infill well?

A. No, sir, I have not heard anything further from Four Star.

Q. Have you heard anything further in writing from Mr. Hartman subsequent to his November letter to you, 1995 letter?

A. No, sir, I have not.

Q. Have you heard anything from Williams Production Company?

A. Yes.

Q. Is that the final letter in the exhibit book?

A. Yes, sir, it is.

Q. All right.

A. Williams did again execute the signature pages to the operating agreement, and I asked them to offer their -- render their opinion concerning the 1953 agreement.

And the letter that's dated January the 11th of

1996 states that Williams does agree with our position that the 1953 operating agreement does not cover subsequent drilling and does not cover the infill drilling and that they recognize that if we can't get the parties to join voluntarily in the well, then we would have to go ahead and pool their interest.

Q. All right, let's talk about that, Mr. Alexander. You've been doing this a lot of years, and you've been working this particular problem for a long time.

In the absence of a Division decision with regards to a modification of the well spacing plan, do you have an opinion as to whether there's any reasonable opportunity to reach a voluntary agreement with the parties that are still not committed to drilling the infill well?

A. Yes, I --

Q. What is that opinion?

A. My opinion is that we're not going to be able to reach agreement for the voluntary drilling of this well. We were not able to reach an agreement since 1993 on the drilling of this well, and I don't see any movement in that area, and I think this is the only alternative left to us.

MR. KELLAHIN: That concludes my examination of Mr. Alexander.

For purposes of the record at this point, we will ask the admission of his exhibits as he's identified them.

They are currently Exhibit 3, Exhibit 4, Exhibit 6 and the first page of Exhibit 7.

EXAMINER STOGNER: Exhibit -- I'm sorry, are there any objections?

MR. CARR: No objection.

MR. CONDON: No.

EXAMINER STOGNER: Exhibits 3, 4 and the first page of Exhibit Number 7 --

MR. KELLAHIN: -- plus Exhibit 6.

EXAMINER STOGNER: -- plus Exhibit Number 6 will be admitted into evidence at this time.

(Off the record)

EXAMINER STOGNER: I'm going to open up cross-examination, Mr. Carr, Mr. Condon. I'll let you decide who wants to ask questions first.

CROSS-EXAMINATION

BY MR. CARR:

Q. Mr. Alexander, just to be sure I understand the exhibits, I'd like to go to the documents behind Tab 4.

If I understand your testimony, Meridian first proposed the Seymour 7A well to Hartman and Texaco and Williams by its letter dated January 27, 1993; is that correct?

A. Yes, sir.

Q. And then attached to that letter was an AFE?

A. Correct.

Q. There were no other AFEs prepared by Meridian during 1993, were there?

A. That were furnished to the parties?

Q. Yes.

A. None that we furnished to the parties.

Q. And if I look at the AFE, the total AFE submitted in January, 1993, showed a total completed cost of $569,600; is that right?

A. Yes, sir, that's correct.

Q. And then during the year there were negotiations with Texaco, and by letter dated September 30, 1993, Texaco wrote Meridian and advised Meridian that the well proposal didn't meet its economic -- "it" being Texaco's -- economic requirements; is that right?

A. That's correct.

Q. From that date, September 30, 1993, until October 31, 1995, there were no other negotiations with Texaco or Four Star; isn't that right?

A. Would you repeat the dates again, please?

Q. The letter from Texaco, 9-30-93, when they said the proposal didn't meet their economic requirements, until October 31, 1995, you were not negotiating with Texaco or Four Star concerning this well, were you?

A. No, sir.

Q. Following the October 31, 1995, letter, and prior to the filing of the pooling Application on November 8th of 1995, did you engage in any negotiations with Texaco?

A. No, sir, I did not.

Q. If I look at the October 31, 1995, letter, there is a new AFE attached to that, is there not?

A. Yes, sir, that's correct.

Q. This shows a total AFE cost of $524,853; is that right?

A. That's correct.

Q. Or approximately $44,000 or $45,000 less than the prior approval -- or proposal?

A. Approximately, yes, sir.

Q. And so what we're proposing on October 31, is a less expensive well; isn't that fair to say?

A. Yes, sir, on an estimated basis, that's correct.

Q. To a party who had expressed concern about the economics of the well not meeting its economic criteria, right?

A. Yes, sir.

Q. And you're proposing a well at a somewhat different location; is that not correct?

A. Yes, sir.

Q. And yet there have been no negotiations concerning this matter prior to the pooling Application for

25 months; isn't that right?

A. That's correct.

MR. CARR: That's all I have.

EXAMINER STOGNER: Thank you, Mr. Carr.

Mr. Condon?

CROSS-EXAMINATION

BY MR. CONDON:

Q. Yes, Mr. Alexander, when did Meridian first become the operator of the Seymour 7 well?

A. I don't know that I brought notes on the date that we officially took over. We purchased the interest from Unicon Production Company, and all of those documents have been filed in order to take over on the operations and under the com agreement. But I don't believe I brought those documents with me to tell you those dates.

Q. Okay. You can't give us any kind of an estimate of how long it took Meridian to propose this Seymour 7A well after it became operator?

A. Not without knowing exactly the date that we took over as operator.

Q. Okay. Can you give us an estimate of how long a period that was?

A. I'd prefer not to speculate about it. I can certainly find that date for you, and then we would know, but --

Q. But it was sometime prior to January of 1993?

A. Correct.

Q. Now, you offered some testimony about new joint operating agreements that had been negotiated in the area and the old -- I assume when you're referring to the old joint operating agreements you're referring to operating agreements similar in form and substance to the 1953 operating agreement that authorizes Meridian to operate the Seymour 7 well; is that right?

A. I don't believe I understood -- Would you repeat the question --

Q. Sure --

A. -- restate it?

Q. Well, yeah, you were -- You gave some testimony about the negotiation of new joint operating agreements, and I think in fact that on one of the exhibits that we discussed, Exhibit 7, your -- down at the bottom you have the little rectangular box with the red stripes that is designed to indicate infill wells that are subject in the area to new joint operating agreements, correct?

A. Correct.

Q. Okay. And you are distinguishing new joint operating agreements from old joint operating agreements similar to the 1953 operating agreement that applies to authorize Meridian to operate the Seymour 7 well; is that

right?

A. Yes, I'm distinguishing between the operating agreements that were entered into, as opposed to the operating agreement that was attached to the original farmout agreement, that the parties had originally intended to use.

Q. Okay. And you agree, do you not, that the 1953 operating agreement pools all interests for the east half of Section 23, for that 320-acre proration unit, does it not?

A. The operating agreement?

Q. The 1953 operating agreement reflects a pooling of interest of all interest owners, for the east half of Section 23 for that 320-acre proration unit, doesn't it?

A. Only insofar as it concerned the Seymour Number 7 well.

Q. Okay. And you offered some testimony earlier, I thought, that indicated that you might have some kind of an opinion as to why the parties on agreements like the 1953 operating agreement here agreed to the drilling of only one well on these tracts and made no provision for additional operations?

Did I misunderstand your testimony? Do you have some kind of information regarding the background for the negotiation of the 1953 operating agreement that applies

here?

A. Yes, I have some background for the 1953 agreement that applies to the Seymour Number 7 well.

Q. Okay, and what is your background understanding of that agreement?

A. That the successors in interest to Southern Union Gas Company and/or Southern Union Gas Company drilled the Seymour Number 7 well under the original farmout agreement.

Q. Uh-huh.

A. After they had -- Some years later, after they had drilled that well, Western Natural Gas or its successor in interest, Arco, elected to convert its overriding royalty interest that it had in the Seymour Number 7 to a working interest.

And then when they elected to convert that interest, then obviously they needed an operating agreement to control the operations of the Seymour Number 7 well. And from what I find in the records, that's the point in time that these parties entered into that operating agreement.

Q. Okay, and that's the 1953 operating agreement between Southern Union and Skelly Oil Company; is that correct?

A. I believe that's correct.

MR. CONDON: Okay. Mr. Examiner, I just want to

make sure that we have in the record -- I know that both Mr. Carr and I have attached to the pleadings that we filed copies of the operating agreement.

If we have Mr. Kellahin's concurrence and your permission to assure that those documents do become part of the record in this case, so that we make our record and so that the Hearing Examiner has before him a copy of that 1953 operating agreement that everybody agrees is the operating agreement, then I won't need to have Mr. Alexander identify this one that I have here.

But if we don't have that agreement, I'd like to ask him to identify this so we have it as part of the record.

MR. KELLAHIN: To assist Mr. Condon, Mr. Examiner, I think we can accomplish this by looking at the documents behind Exhibit Tab Number 7. We started there and looked at the plat and stopped.

But if we could quickly have Mr. Alexander authenticate the rest of these documents you will find not only the farmout agreement but the communitization agreement and then the operating agreement which Mr. Condon has just referred to. It's all in this exhibit book, and maybe this is a convenient place to introduce this matter in the record.

EXAMINER STOGNER: Do you have any problem with

that, Mr. Condon?

MR. CONDON: Well, the only question I have -- and I'm about halfway through my copy of Exhibit 7, and I think it's Schedule B, isn't it, that is the copy of the operating agreement? -- and that's -- it's a little bit different from mine. I've got a recorded copy here.

MR. KELLAHIN: What's confusing you with is, the operating agreement had a sample form --

MR. CONDON: Uh-huh.

MR. KELLAHIN: -- unexecuted, Schedule D. Continue past that in the exhibit book. You're going to come to an executed communitization agreement --

MR. CONDON: Right.

MR. KELLAHIN: -- which unfortunately should have a tab and doesn't.

MR. CONDON: Okay.

MR. KELLAHIN: And at the very end, then, before you go into Exhibit 8 --

MR. CONDON: Okay.

MR. KELLAHIN: -- you're going to find the executed operating agreement.

MR. CONDON: All right.

Q. (By Mr. Condon) Now, Mr. Alexander, do you have -- I guess my last question was a little vague. Do you have any specific knowledge about why the parties to

the 1953 agreement limited drilling operations to just the one well and did not provide for additional wells? Do you have any personal knowledge about that?

A. No, I did not see in the records that we acquired -- from Unicon, I did not see specific reasons why they delayed in proposing that well.

They did propose that well in 1986 to the partners that held an interest in the well at that time, and they did propose a new operating agreement in order to accomplish the drilling of the Seymour Number 7A well. The records indicate that they were unable to reach the entire consensus on the terms of that operating agreement and were never able to put that operating agreement together.

Q. Now, as I understand it, Meridian has -- presently has agreement of 46.5 percent of the working interest in this proration unit, to develop, which indicates that a majority of the working interest in this proration unit objects to the proposed well; is that correct? Or at least has not agreed to it?

A. I do not have a joinder from either Four Star nor Doyle Hartman, and they do have the 41-percent interest and 12.5-percent interest.

Q. Now, when you circulated your initial letter of January 27, 1993, to the other working interest owners, you included a proposed joint operating agreement with that

package, did you not?

A. Yes, sir, I did.

Q. Okay. And in that very first communication, what you were seeking to do, as I understand from your letter with the joint operating agreement, would be to include the operations of both the Seymour Number 7 well and the proposed Seymour 7A well, under a revised joint operating agreement; is that accurate?

A. That is correct.

Q. Okay, the proposed joint operating agreement that you circulated in 1993, did that have a nonconsent penalty provision in it?

A. Yes, sir, it did.

Q. Okay, what type of a penalty were you asking for back in 1993 when you first circulated the JOA?

A. I believe that was a 300-percent -- a 100- and a 300-percent penalty situation. I'll look back and confirm that here.

Q. I believe that's --

A. That's correct.

Q. I believe that's correct.

A. On page 6 of the operating agreement it sets forth our penalty provisions.

Q. All right. And then when you -- When you circulated your October 31, 1995, letter, AFE, and a new

proposed joint operating agreement, did the 1995 proposed joint operating agreement also contain nonconsent penalty provisions in it?

A. Yes, it did.

Q. And what were those provisions?

A. They were -- And let me double-check it, but they were the same -- I believe they were the same penalty provisions.

Q. 100 and 300?

A. Yes, sir.

Q. Okay. And then when you filed your Application with the OCD, as I understand, the Application has a 200-percent penalty for nonconsent; is that correct?

A. That's over and above the 100 percent. The two are synonymous, they equate. The 200-percent penalty and the 300-percent penalty in the joint operating agreement are, in fact, the same penalty provisions.

MR. CONDON: All right. And you indicated that you received a letter from Mr. Hartman -- and what I would like to do is, if I could approach the witness, I've got a copy of it, if we could just mark it and have it made an exhibit to the proceeding. Mr. Kellahin?

What I will do is, I will go ahead and have it marked as Exhibit 11, if I could.

If I could -- Let me replace my copy with yours,

because I went ahead and marked that as 11, and just ask you if you can identify that.

EXAMINER STOGNER: And your reference is Doyle Hartman Exhibit Number 11?

MR. CONDON: Correct.

Q. (By Mr. Condon) Let me just ask you, is that the letter you received from Mr. Hartman in response to your October 31, 1995, letter, proposed AFE and the newly proposed joint operating agreement?

A. It is the letter. However, it's not a newly proposed joint operating agreement; it's a modification of the original 1993 agreement.

Q. All right. What did you do in response to Mr. Hartman's letter? Did you make any effort to contact Mr. Hartman after receipt of this letter?

A. No, I have not contacted anybody with Mr. Hartman since this letter.

MR. CONDON: Okay, I think that's all the questions I have. I would like to move the admission of Exhibit 11.

EXAMINER STOGNER: Are there any objections?

MR. KELLAHIN: No objection.

EXAMINER STOGNER: Exhibit Number 11 will be admitted into evidence.

Mr. Kellahin, I --

MR. KELLAHIN: I've got some quick redirect for housekeeping.

EXAMINER STOGNER: That and also perhaps at this point to cover the remainder of Exhibit Number 7 --

MR. KELLAHIN: Yes, sir, that was my intent.

EXAMINER STOGNER: Okay, all right.

REDIRECT EXAMINATION

BY MR. KELLAHIN:

Q. Let's look at the documents behind Exhibit Tab Number 7, Mr. Alexander. We have touched on them. They haven't been admitted. Let me have you authenticate them for me.

A. Yes, sir.

Q. Let's go through that. We've talked informally about them. What's the first document?

A. The first document is entitled "Farmout Agreement", and that was the original agreement between Western Natural Gas Company and Southern Union Gas Company that covered these properties, this particular property, the Seymour Number 7 well property, and other properties.

Q. When you're referring to other properties, is this the farmout agreement that relates back to the plat, just ahead of it?

A. Yes, sir. The plat, though, as I mentioned, is only the Township 31 North, 9 West portion of the contract

area.

Q. All right. The contract area of the farmout would have included other properties, but insofar as we see it within this township, you have identified them?

A. That is correct.

Q. Under that farmout agreement there is a simple joint operating agreement, is there not?

A. Yes, sir, there is, attached as an exhibit to this farmout agreement.

Q. And when we get to the specific topic of the east half of the section, under the old agreements, the last document in here is a copy of the executed operating agreement, the April 10th, 1993, agreement that we've been discussing?

A. That is correct.

Q. And to the best of your knowledge, this is an accurate reproduction of that operating agreement?

A. Yes, sir, it is.

MR. CONDON: I'm sorry, you said 1993?

MR. KELLAHIN: 1953.

THE WITNESS: 1953.

MR. CONDON: Okay.

MR. KELLAHIN: I misspoke, the 1953 agreement.

Q. (By Mr. Kellahin) Just ahead of the operating agreement there is a copy of a communitization agreement

dated March 30th of 1953?

A. Yes, sir.

Q. Do you see that?

A. Yes, sir.

Q. Is that the communitization agreement that applies to this east half of this section?

A. It is.

Q. How do they fit together?

A. Well, the operating agreement and the communitization agreement -- That's a standard part of putting a drill block together, is that you enter into an operating agreement to get a verbal agreement between the working interest owners, and you enter into a communitization agreement that pools the interest of the parties, and more particularly, the royalty interests of the parties, and the provisions of the leases in order to develop the drill block.

Q. When you look at the first page of the communitization agreement, what does this language mean to you as an expert? When you look in the "whereas" clause and continuing in that sentence it says, operated in conformity with an established well-spacing program, what is happening here?

MR. CONDON: I understand that the Division's rules are a little different. If I could just have an

objection to the extent that he's asking the witness to give an interpretation of a document which I think speaks for itself.

EXAMINER STOGNER: Mr. Kellahin?

MR. KELLAHIN: I'm asking Mr. Alexander with his expertise to explain to us how this joint operating agreement from 1953 is affected and consolidated into the communitization agreement, so that he can tell us his understanding of how this communitization agreement functions.

EXAMINER STOGNER: I think that's an appropriate question. I'm going to allow it.

THE WITNESS: Both the operating agreement and the communitization agreement, and it's customary and normal practice, remain subject to various laws and regulations. More particularly in our instance what we're concerned about is that it is subject to any well-spacing program established by the Division, or any other jurisdictional agency, for that matter.

Q. (By Mr. Kellahin) Is what is occurring in the 1953 agreements still the practice when you deal with federal communitization of leases now?

A. It's under a different form, but it's still the same practice, that you have to communitize leases before you can develop the properties.

MR. KELLAHIN: That concludes my examination of Mr. Alexander, Mr. Stogner.

We would move now formally for the introduction of all the documents behind Exhibit Tab Number 7.

EXAMINER STOGNER: Any objection?

MR. CARR: No objection.

MR. CONDON: No.

EXAMINER STOGNER: The remainder of Exhibit Number 7 is hereby admitted into evidence at this time.

Mr. Carroll, I believe you have a question at this time?

MR. CARROLL: Yeah, I have a couple questions.

EXAMINATION

BY MR. CARROLL:

Q. Mr. Alexander, this 1953 operating agreement, it's not on a printed form. Is this a standard form operating agreement?

A. No, sir, it was -- Back in those days we didn't really have standard form agreements. It was an agreement that was drafted by the parties, it was a drafted agreement.

Q. And the same with communitization agreements?

A. I believe this communitization agreement goes back a long time, but I believe it was an official form adopted by the Bureau -- by the USGS in those days. So I

believe it conforms to their regulations.

Q. So the -- Okay, communitization agreement is an official form. This operating agreement is negotiated between the parties and it's not really a standard form?

A. No, sir, it's not.

Q. If you could refer to your letter of October 31st, 1995 -- and I'm looking at the last sentence of the second paragraph -- you say, If we do not receive an election to participate or nonconsent, we will begin force pooling proceedings in December, 1995.

Do you see that sentence?

A. Yes, sir.

Q. And when was the Application for this force-pooling case filed?

A. I believe it was filed on November the 8th.

Q. So why did you file it November 8th when you seem to commit in this letter to begin proceedings in December?

A. I think that was a result, probably, of a miscommunication between myself and Mr. Kellahin on the timing of actually filing the force-pooling notice.

MR. CARROLL: That's all I have.

EXAMINER STOGNER: Mr. Carr, Mr. Condon, any questions?

Mr. Kellahin, anything further?

MR. KELLAHIN: No, sir.

EXAMINER STOGNER: At this point, let's take a lunch break and reconvene here at 1:15.

(Thereupon, a recess was taken at 12:07 p.m.)

(The following proceedings had at 1:15 p.m.)

EXAMINER STOGNER: This hearing will come to order.

At this point in Case 11,434, a motion has been made to dismiss, subsequent to our lunch break.

I feel under Paragraph E of 70-2-17, the Division does have the authority to consider this matter. However, a lot can happen in two years from 1993, to the time which this well was proposed. And because there was really about only eight days for people to reach voluntary agreement, I don't feel that there was sufficient time for good-faith efforts and negotiation in this matter to be considered.

Therefore I am going to dismiss Case Number 11,434 and will not even attempt to see this matter or even consider it, should negotiations fail and this matter need to come back for force pooling, until March 11th. So that's essentially a 60-day consideration in this.

So with that, Case 11,434 is hereby dismissed.

MR. KELLAHIN: Mr. Examiner, may we have you issue an order on that with regards to the two parts of your decision so that we will be able to negotiate the other parties, including Williams, should they decide now

to change their mind about where they stand, under the recognition that the Division, in fact, does assert authority that in the absence of a voluntary agreement we may come back and force pool for the infill well?

EXAMINER STOGNER: A dismissal order will be issued subsequent to today's decision.

MR. KELLAHIN: All right, sir. Thank you.

MR. CARR: Thank you.

(Thereupon, these proceedings were concluded at 1:18 p.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 11434, heard by me on January 14, 1996.

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 January 15th, 1996.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998