

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: ) CASE NO. 11,856  
)  
APPLICATION OF BURLINGTON RESOURCES OIL )  
AND GAS COMPANY TO AMEND NEW MEXICO OIL )  
CONSERVATION DIVISION RULE 1105.C TO )  
EXPAND AND EXTEND THE CONFIDENTIALITY )  
PROVISION OF SAID RULE ) ORIGINAL  
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
WILLIAM WEISS, COMMISSIONER  
JAMI BAILEY, COMMISSIONER

1997

September 25th, 1997

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Thursday, September 25th, 1997, 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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September 25th, 1997  
 Commission Hearing  
 CASE NO. 11,856

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\* \* \*

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\* \* \*

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

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and  
JASON E. DOUGHTY

\* \* \*

## ALSO PRESENT:

FRANK CHAVEZ  
District Supervisor (District 3)  
Aztec District Office, NMOCD

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   10:06 a.m.:

3           CHAIRMAN LEMAY: Okay, we shall continue by  
4   calling Case 11,856, which is the Application of Burlington  
5   Resources to amend the New Mexico Oil Conservation Division  
6   Rule 1105-C to expand and extend the confidentiality  
7   provision of said rule.

8           I'd like to call at this time for appearances in  
9   Case 11,856.

10          MR. KELLAHIN: Mr. Chairman, members of the  
11   Commission, I'm Tom Kellahin of the Santa Fe law firm of  
12   Kellahin and Kellahin, appearing on behalf of Burlington  
13   Resources Oil and Gas Company.

14          CHAIRMAN LEMAY: How many witnesses do we have?

15          MR. KELLAHIN: I have one witness to be sworn.

16          MR. GALLEGOS: Mr. Chairman, my name is Gene  
17   Gallegos, and with me is Jason Doughty. We're appearing in  
18   behalf of Cinco General Partnership and in behalf of what  
19   we generally refer to as the GLA-66 Group. It's 61  
20   interest owners in a 2480-acre lease offsetting current  
21   exploration activities of Burlington, and our prehearing  
22   statement in behalf of Johnson, et al., lists all of those  
23   parties.

24          We will not call a witness. I intend to just  
25   offer a statement and comments.

1 CHAIRMAN LEMAY: Thank you, Mr. Gallegos.

2 Any other witnesses who will give testimony in  
3 the case?

4 If not, will the one Burlington witness stand and  
5 raise your right hand?

6 (Thereupon, the witness was sworn.)

7 CHAIRMAN LEMAY: Thank you.

8 Mr. Kellahin?

9 MR. KELLAHIN: Thank you, Mr. Chairman.

10 Mr. Chairman, members of the Commission, I've  
11 handed out the Burlington exhibit package. It's to be  
12 marked as Burlington Exhibit 1. It is a green binder that  
13 contains the various displays and information that Mr. Alan  
14 Alexander and I will discuss with you.

15 I've also circulated a one-page handout that  
16 represents the current rule, and below that is duplicated  
17 the suggested proposed rule.

18 By way of background and information, Burlington  
19 has filed this request as an opportunity for the Commission  
20 to consider, discuss and determine what, if any, policy  
21 decisions or rules and guidance that you want to give the  
22 industry concerning what I'll generally characterize as  
23 trade secrets.

24 In the last few years there has been substantial  
25 debate, some of it coming before your Examiners, dealing

1 with the proprietary nature of geophysical data. Thus far,  
2 those disputes and that debate has been resolved on a case-  
3 by-case basis.

4 In addition, there continues to be a discussion  
5 and debate in the industry as to what amount of trade  
6 secrets an operator has that he needs to disclose to the  
7 regulators in order for you to perform your functions.

8 In addition, you need to recognize, as I know you  
9 do, that historically the acquisition of log data by an  
10 operator, particularly in the exercise of exploration  
11 activity, is a highly valuable asset. That asset has been  
12 protected by the regulators for a certain limited period of  
13 time under various confidentiality rules.

14 Mr. Alexander and I will review with you the  
15 confidentiality rules of the BLM and all of the other oil  
16 and gas operating states in the southwest. You will find  
17 that the Division confidentiality rule that you have is the  
18 most conservative confidentiality rule in the Southwest.

19 The purpose of our Application is to ask you to  
20 consider whether or not you want to adopt any rules,  
21 regulations or guidelines with regards to geophysical data.  
22 You may choose not to do so. You need to know, as we know,  
23 that the next two cases on your Commission docket, the  
24 Fasken and Mewbourne case and the Gillespie-Crow, all  
25 involve significant issues with seismic data.

1           You may find that the time has come that you need  
2 to guide us all in how that information is to be handled  
3 through the regulators. You may decide it's better handled  
4 on a case-by-case basis. But this case is an opportunity  
5 to make that examination.

6           Separate and apart from that issue is the issue  
7 of whether or not the information reported to you on the  
8 completion report, the Division Form C-105, and the  
9 requirement to file accompanying log information, which the  
10 current rule allows to be held confidential if requested --  
11 it's not automatic -- if requested, should be extended  
12 beyond the current 90-day period.

13           And so that you have the existing rule in front  
14 of you, I have reproduced the only confidentiality rule we  
15 have, contained in Rule 1105, and it's found in the third  
16 subsection; it's 1105.C. That is the full extent of your  
17 current rule.

18           The proposed rule that we are suggesting for  
19 consideration is simply paraphrased out of the BLM  
20 confidentiality rule. You may find that it is useful, you  
21 may find that it is not. But it was simply an opportunity  
22 for us to provide you with some language and a chance to  
23 have this discussion and exchange, and for you to determine  
24 to what extent you want to modify it, or whether you'll  
25 keep your current rule and retain the 90-day

1 confidentiality, or grant our Application, which we  
2 consider to be appropriate to add additional extensions  
3 onto that 90-day period.

4 And with your permission, I'll have Mr.  
5 Alexander, with my assistance, go through the exhibit book  
6 with you so that you can see the extent of what we've  
7 discovered, and you can ask him and me and anyone else, if  
8 you desire, questions so that you can be informed on this  
9 topic.

10 So that's our purpose and objective, Mr.  
11 Chairman.

12 CHAIRMAN LEMAY: Thank you, Mr. Kellahin. You  
13 may proceed.

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

17 DIRECT EXAMINATION

18 BY MR. KELLAHIN:

19 Q. Mr. Alexander, for the record would you please  
20 state your name and occupation?

21 A. Yes, my name is Alan Alexander. I'm currently  
22 employed with Burlington Resources Oil and Gas Company in  
23 Farmington, New Mexico, as a senior land advisor.

24 Q. On prior occasions have you testified before the  
25 Commission as an expert in petroleum land matters?

1 A. Yes, sir, I have.

2 Q. As part of your duties and responsibilities, do  
3 you have occasion to become familiar with the various  
4 reporting and filing requirements of the Oil Conservation  
5 Division?

6 A. Yes, sir.

7 Q. In addition, within the capacities of your  
8 employment, are you familiar with the filing and reporting  
9 requirements of the Bureau of Land Management within the  
10 State of New Mexico?

11 A. I'm generally familiar with them, yes, sir.

12 Q. As part of your preparation for today's hearing,  
13 have you also made a search of the confidentiality rules of  
14 the various other states that have confidentiality rules  
15 concerning the proprietary nature of log data filed with  
16 the various regulators?

17 A. Yes, sir, I have.

18 Q. As part of your preparation, have you prepared a  
19 hypothetical example to demonstrate to the Commission the  
20 kinds of issues you're concerned about in terms of the  
21 proprietary nature of the data we're about to discuss?

22 A. I have.

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

25 CHAIRMAN LEMAY: His qualifications are

1 acceptable.

2 Q. (By Mr. Kellahin) So that we're -- both  
3 understand how you define the term, Mr. Alexander, does the  
4 oil and gas industry rely upon trade secrets for  
5 exploration of oil and gas in New Mexico?

6 A. Yes, we do.

7 Q. When we talk about trade secrets, what categories  
8 of data and information are we describing by that term?

9 A. Well, among others we're describing a  
10 geophysical/geological, land contracts, electric logs, mud  
11 logs, drill-stem tests, all kinds of other wireline logs.  
12 Those are to name a few of the information that we depend  
13 upon heavily to conduct our business.

14 Q. Based upon your research and experience, do the  
15 governmental regulators currently recognize the need for  
16 maintaining the confidentiality of this type of trade  
17 secret?

18 A. Yes, they do.

19 Q. As part of your research, can you identify for us  
20 generally the range of type of information that's held  
21 confidential?

22 A. They would be the range and types of the  
23 information that I just spoke about. They range all the  
24 way from proprietary information that a company normally  
25 collects for itself, that the Commission does not require

1 be distributed to them nor the other regulatory agencies,  
2 such as geological and geophysical types of work. They  
3 range all the way from in-house proprietary data to  
4 proprietary data that the Division does request, and other  
5 regulators request, which generally includes electric logs,  
6 wireline logs and drill stem tests.

7 Q. Let's assume an operator in the State of New  
8 Mexico is exploring -- it's not a development prospect --  
9 he's exploring, develops geophysical data, 3-D seismic  
10 information, drills an exploration well and develops the  
11 suite of logs from that well, and, in fact, it's discovered  
12 to produce gas.

13 Having all that data and all that information,  
14 what types of filings are you required, if you're that  
15 operator in New Mexico, concerning that information?

16 A. Currently the rule, as I understand it, requires  
17 us to file electric logs, drill stem tests and wireline  
18 logs in general, and other special tests that are not  
19 defined in the rule *per se*, but it does say other special  
20 tests, and we're required to file that along with the C-105  
21 completion report.

22 Q. All right, let's start with the hypothetical of  
23 the exploring operator filing an application for a permit  
24 to drill on federal lands in the State of New Mexico. With  
25 that filing, what proprietary information must he disclose,

1 or what information having been filed can he keep secret or  
2 confidential under the BLM rules?

3 A. The data that is disclosed to the BLM, all of  
4 that data, including any data that an operator might wish  
5 to share with that regulatory agency, other than the  
6 required data, such as possibly geophysical or geological  
7 data, is all -- can all -- and upon request of the operator  
8 all of that can be kept confidential for a one-year period  
9 with the opportunity to ask for and receive an additional  
10 one-year period.

11 Q. Under the current Division Rules, is the  
12 confidentiality of the application for permit to drill and  
13 accompanying data held confidential?

14 A. Would you repeat that for me, please?

15 Q. Yes, sir. If you're not on federal lands and you  
16 file an APD under the Division Rules on either state or fee  
17 lands -- and it's the C-101, the Application for Permit to  
18 Drill -- can any of that data, once applied to those  
19 regulators, be held confidential?

20 A. Certain of the data can under the 90-day  
21 provision can be held confidential for a 90-day -- very  
22 limited 90-day period.

23 Q. As to the APD?

24 A. As to -- You're asking me if we file an APD -- I  
25 think I might be still really confused about your question.

1 You're asking if we drill a well on --

2 Q. I'm not on the completion reports --

3 A. Okay.

4 Q. -- at this point.

5 If you have an application for a permit to drill  
6 at the BLM and you file it at the BLM, is that information  
7 held confidential by the BLM?

8 A. Yes, it is.

9 Q. Is that same information held confidential by the  
10 OCD under their current rules?

11 A. No, no, it's not.

12 Q. Okay. When you complete the well and file your  
13 completion report, the C-105, can you hold that information  
14 confidential if you file it with the BLM?

15 A. Yes, we can.

16 Q. Can you keep that information confidential if  
17 filed with the OCD?

18 A. Let me back up to one of the questions you just  
19 asked me, can we keep it confidential with the BLM? If we  
20 request confidentiality from the BLM and the information  
21 comes from the state, we can keep that confidential.

22 Q. All right.

23 A. Your next question --

24 Q. -- was that if that information is filed with the  
25 Division using the Form C-105, plus the accompanying logs,

1 what part of that information, if any, can be held  
2 confidential, and for how long?

3 A. The part that can be held confidential, according  
4 to the rule, it says -- The Rule C-105.C [sic] says, "Form  
5 C-105 and accompanying attachments will not be kept  
6 confidential by the Division unless so requested in writing  
7 by the..." operator "...of the well. Upon such request,  
8 the Division will keep these data confidential for 90 days  
9 from the date of completion of the well, provided, however,  
10 that the report, log(s), and other attached data may, when  
11 pertinent, be introduced in..." the public record for  
12 hearing by "...the Division or its examiners or in any  
13 court of law, regardless of the request that they be kept  
14 confidential."

15 And the types of data referred to in C are spoken  
16 to in 1105.A., immediately above that.

17 Q. All right. What do you propose concerning a  
18 change of that rule?

19 A. What we propose, we have given you in the printed  
20 format here, and generally -- You can read it specifically,  
21 but generally what we are requesting are two areas.

22 We do invite the Commission to consider the area  
23 that Mr. Kellahin introduced to you, the areas of  
24 geological and geophysical data that are not specifically  
25 mentioned in the Commission Rules. However, I believe the

1 Commission will have to deal with this issue, if not today,  
2 at a future date. It will have to be dealt with, in my  
3 opinion.

4 We are also asking for a modification of the  
5 current rule. The Division already allows an operator to  
6 request confidentiality for a 90-day period, so those  
7 procedures and that fact are already in place. We're not  
8 asking for the Division to consider confidentiality rule as  
9 a new rule. That procedure is already out there.

10 What we're asking for is an extension of the  
11 period of time that the Commission would keep the data  
12 confidential.

13 Q. When you look at the end of the second paragraph,  
14 what are you proposing in terms of the period of  
15 confidentiality, and how would this work?

16 A. What we're proposing to the Division is to simply  
17 build upon what they already have in place. We considered  
18 what we would like to request, and we did not propose to  
19 you that we have an automatic confidentiality period, nor  
20 that you adopt a confidentiality period for a fixed or a  
21 given length of -- period of time, like most of the other  
22 states have done, which all of those range from six months  
23 up to four years, which you can request confidentiality.

24 Instead, we would like to build upon what you  
25 already have in place and start with the base 90-day

1 confidentiality period. And then, upon request of the  
2 operator, then he can come forward and request in any  
3 combination three additional 90-day periods. He could come  
4 forward and simply request one additional 90-day period of  
5 confidentiality, which would give you basically six months.  
6 He could request the second 90-day period or the third 90-  
7 day period, which would, in effect, give you a one-year  
8 confidentiality period.

9 We think this is a very flexible approach. It  
10 does not set in place any fixed length of period of time,  
11 and it gives the Division discretion upon the additional  
12 90-day extension periods.

13 Q. Let me have you turn to the exhibit book, Mr.  
14 Alexander, and if you'll turn behind Exhibit Tab 1, let's  
15 go to the fourth page, which is page 2 of the Application,  
16 and if you'll look at paragraph 5, let's take what you've  
17 just said about the Division's confidentiality rule and  
18 compare it to what the BLM provides for us in 43 CFR  
19 (3162.8).

20 I don't suggest that you read this, but describe  
21 orally what you're allowed to do under the BLM rules.

22 A. Under the Bureau of Land Management's rules, an  
23 operator can request and get a confidentiality period of 12  
24 months, with a possible additional 12-month extension  
25 period for that confidentiality. And it also does

1 specifically include such materials as geological and  
2 geophysical data, as well as well logs, like electric  
3 wireline logs of all types of natures, drill-stem tests and  
4 other special tests that are performed on the well.

5 Q. Let's turn to Exhibit Tab Number 2. Have you  
6 attempted to contact the operators in the San Juan Basin to  
7 determine what, if any, position they took with regards to  
8 your proposal?

9 A. Yes, sir, I did. Back on May 15th of this year I  
10 sent out a letter to a list of 51 operators that we pulled  
11 from the Blanco-Mesaverde Pool list, which is the largest  
12 pool in the Basin.

13 Q. Why did you pull it from the Mesaverde Pool  
14 operator list?

15 A. Well, those are a list of operators that we deal  
16 with and the rest of the operators in the Basin deal with  
17 too. They're very knowledgeable in these areas, and I  
18 would expect if I would have any pertinent and meaningful  
19 comments that I could derive them from this group of  
20 people.

21 I couldn't notify, you know, everybody in the  
22 world, but I think this is a very valid list, and I think  
23 if I were to get back any feedback, then these people  
24 certainly would give that feedback back to me.

25 Q. In response to your request for information and

1 comment on the proposal for extending the periods of  
2 confidentiality, what if any comments did you receive?

3 A. I received two written comments back, and I had  
4 telephone conversations with other parties. Marathon Oil  
5 and Gas Company did write us in writing, and they did have  
6 objections to the way that I had proposed the rule.

7 Initially I had considered not letting the rule  
8 address the operators down in southeast New Mexico because  
9 I don't deal down there, quite frankly, and they may have  
10 other concerns that I'm not aware of. I deal mostly up  
11 into the northern part of New Mexico.

12 Marathon thought that if we had a change in the  
13 rules it ought to be statewide, and we agreed with them. I  
14 said, that does not bother me at all to just -- to address  
15 the rule statewide. And so in our Application we did  
16 change from our thinking previously that I have outlined in  
17 this letter, and we have asked for the Application to  
18 include the rule, as a modification, statewide.

19 I also did receive one other written comment from  
20 Mr. Tom Dugan, and he simply stated that he would be  
21 agreeable to one additional 90-day extension, which would  
22 put you up to six months of confidentiality.

23 And those are the only written comments or verbal  
24 comments that I received that had any significant  
25 difference in the way that I proposed the modification of

1 the rule to these 51 operators.

2 Q. Let's turn to Exhibit Tab Number 3 now, Mr.  
3 Alexander, and have you go through the summary you have  
4 tabulated based upon your research of what other states and  
5 regulators provide in terms of periods of confidentiality.

6 A. We were, of course, very curious about the other  
7 states surrounding New Mexico that produce oil and gas, and  
8 so I visited with the conservation agencies or our  
9 attorneys that work in these various states and requested  
10 from them the confidentiality periods that the other states  
11 do employ, so that you would have a record of those you  
12 could actually -- I actually reproduced the pertinent part  
13 of the rules that they had so that you can see those rules  
14 also.

15 The listing here is simply alphabetically sorted  
16 by the state or the regulatory agency, and we have looked  
17 at, I think, all the surrounding states in the southwest  
18 part of the country and how they approach confidentiality  
19 rules.

20 And if you browse this, you will see that all of  
21 the other states -- and I'm not talking about New Mexico  
22 here, but I'm talking about the other states -- their  
23 minimum confidentiality rules is six months. And in some  
24 cases, if you're drilling an offshore well in Texas you can  
25 get up to four years -- pardon me, five years of

1 confidentiality for a well that's drilled in the coastal  
2 waters.

3 Most of the states are in the six-months-to-one-  
4 year, plus perhaps a one-year extension range.

5 Q. Subsequent to having the case docketed, have you  
6 received written communications from any other operators  
7 that have commented on your proposal?

8 A. No, sir, I have not.

9 MR. KELLAHIN: Okay. Mr. Chairman, I have --  
10 I've received a communication from Conoco that I will  
11 supply to you.

12 Q. (By Mr. Kellahin) Before we go into the next  
13 section, exhibit tab, Mr. Alexander, can you begin to set  
14 the stage and the context over why operators such as your  
15 company need and want to maintain a period of  
16 confidentiality for this data?

17 A. Yes, sir. In the past we have been operating  
18 under the rules for the 90-day confidentiality period.  
19 However, we're facing a very new era in this Basin, and I  
20 have received agreement on that concept from people that  
21 operate down in southeast New Mexico.

22 Our basins have been producing for a number of  
23 years now, and they're all in their secondary, you know,  
24 phase -- not secondary operations, but they're in their  
25 last life of many of these basins. And for the operators,

1 as well as the State of New Mexico, as well as the mineral  
2 owners in the state, we need to start developing other  
3 approaches to production in the State of New Mexico, one of  
4 those being exploratory projects that have not been  
5 undertaken in the past.

6 In view of this and in light of that, the  
7 technology that's to be employed in the future is going to  
8 be very technical. It's going to be very time-consuming,  
9 it's going to be very expensive in terms of capital  
10 dollars. And we've become very well aware of that in our  
11 exploration of the deeper gas up here in the San Juan  
12 Basin.

13 And that is the thing, probably more than  
14 anything else, that has triggered us to revisit these  
15 rules, because we do have a changing condition in the  
16 operations for the state, going from this point forward.

17 Q. Will the extension of the confidentiality period  
18 adversely affect, in your opinion, the ability of the  
19 Division to regulate the industry?

20 A. No, sir, not at all.

21 Q. That information is still filed and is useful to  
22 the regulators for the execution of their obligations and  
23 duties under the Oil and Gas Act?

24 A. Yes, we're not requesting a change -- That is the  
25 current way that things are done, and we are not requesting

1 a change in that. The regulatory agencies will still have  
2 access to all of the information they need to conduct their  
3 businesses.

4 Q. Is there a need, in your opinion, for an offset  
5 operator, who is not the exploring operator -- the offset  
6 operator that's looking at this operation -- is there a  
7 need for him to have the exploring operator's log data in  
8 order for the offset operator to protect his correlative  
9 rights in that particular pool?

10 A. No, he can still protect any rights that he has,  
11 particularly his correlative rights, without our  
12 proprietary data.

13 Q. Describe for us how that might be accomplished  
14 without disclosing to that offset operator your log data on  
15 your well.

16 A. Well, I did prepare an exhibit that contains my  
17 thoughts on that very point.

18 Q. All right, let's turn to that. Let's get to  
19 Exhibit 6 and let's go through your analysis.

20 A. This is the same thing that we would do if we  
21 were in the position of an offset operator, and have done  
22 over the years, and every company out there has done these  
23 very same things too.

24 Q. All right, let's set up the example then. Let's  
25 assume Amoco is the exploring operator, and in the

1 adjoining section they have drilled a well, and you're in  
2 the adjoining section, and you're watching to see what they  
3 do.

4 Under the current confidentiality rules where  
5 Amoco can protect their log for 90 days, what can you do  
6 without that log that still lets you protect your  
7 correlative rights?

8 A. Well, in fact, I have listed those things that I  
9 believe are important that any operator can do, and which  
10 we do. Some of these things are fairly obvious, but you  
11 may not have thought about them before.

12 Anybody knows the location of the well, and that  
13 comes from several sources, either through a visual  
14 inspection of the properties -- and we're all out there  
15 operating on these properties; we know what goes on out in  
16 the field -- or through the filing of the APDs that are  
17 filed. They give you the location of the well that's to be  
18 drilled. So that's not a problem figuring out that you're  
19 being offset by a wellbore.

20 My number two listing there is "Location and  
21 geographic extent of the approximate prospect area." Since  
22 you know the physical location of the wellbore you can  
23 assume, and many do, that you're within the prospect area,  
24 and probably within the better part of the prospect area,  
25 or else the operator wouldn't be drilling it to begin with.

1           You can also go to the public records and check  
2 for the activity that that operator has been conducting.  
3 We do that all the time to see what kind of plays are going  
4 on, because all of the leases have to be filed in the  
5 public records, and it's pretty easy to determine where the  
6 play is taking place around the well that is being drilled.  
7 So that is not hard to determine also.

8           You know the target formation for the well from  
9 the filing of the APD. Or if there's a change in scope by  
10 the operator, that will also be filed in a sundry notice,  
11 so that the regulatory agencies and the public record would  
12 be documented about that change in scope and an alternate  
13 target for the well.

14           An offset operator can also determine whether the  
15 well is being completed or not completed. If the well has  
16 been completed, the record will show that a completion  
17 report has been filed, even though it is marked as  
18 confidential and will be kept confidential for the  
19 confidentiality period.

20           Or if the well is eventually plugged and  
21 abandoned, that will also show up on the public record. We  
22 file those currently by the C-103 for plugging and  
23 abandonment. So he knows the ultimate outcome of the well.

24           And there are also other ways which he can  
25 determine that. He can visually watch the progress of the

1 well to know what the well has been doing over the drilling  
2 period, and a lot of people do that.

3 He will also know whether the well is capable of  
4 producing gas, because if any gas is produced the monthly  
5 gas production has to be filed with the regulatory  
6 agencies, and he has that information available. Just like  
7 we were talking in the previous hearing that you folks just  
8 heard, that information is out there and available through  
9 many sources.

10 Q. In the absence of having Amoco's actual log data,  
11 would you as Burlington be able to know which pool Amoco is  
12 producing from in order to meet that competition?

13 A. Yes, we would.

14 Q. You wouldn't need the log to figure that out?

15 A. No, we would not.

16 Q. All right, let's turn the page and find out what  
17 you could do with Amoco's log data, other than what you've  
18 just described. What else can you do with the log data  
19 that they paid money to acquire and that you would have  
20 access to, once the confidentiality period expired?

21 A. This exhibit shows what happens when you move  
22 away from simply being able to protect your correlative  
23 rights and moving into the realm of receiving the  
24 information that is, indeed, very valuable. And if we were  
25 to share our logs and other information that we have with

1 other parties on these exploratory high-risk ventures,  
2 these are the things that we derive from them and that he  
3 would be able to derive from them at no expense or risk  
4 whatsoever.

5 The things you can and do determine from electric  
6 logs are listed here.

7 Volumetric analysis from thickness that are shown  
8 on the logs.

9 Improved seismic data evaluation through sonic  
10 logs that are run in the wellbore.

11 You can determine your casing, mud programs and  
12 cementing designs from information that are in the  
13 wellbore. And that may seem superficial at first glance,  
14 but there is a real art, there's a lot of time and a lot of  
15 money put into designing completions and casing and  
16 cementing programs. That is not a given, especially for  
17 high-risk exploratory wells.

18 You can determine the depositional environment  
19 that you're in, in the immediate area, from those electric  
20 logs.

21 You can determine well completion and stimulation  
22 designs, which again are art, and they are developed at  
23 extremely -- at extreme measures of time and expense to the  
24 company.

25 You can determine structural and stratigraphic

1 interpretations once you have that log data.

2 You can project the areal extents of projects  
3 from the volumetric analysis, thickness, porosities,  
4 depositional environments.

5 And you can also determine the hydrocarbon and  
6 nonhydrocarbon fluid composition of the project. And  
7 again, that is very valuable information, so that a party  
8 knows exactly what he's dealing with. If he's dealing with  
9 nonhydrocarbon discovery, that is important to know. If  
10 he's dealing with a hybrid carbon [sic] discovery but he  
11 may have fluids, he can determine whether he has a water  
12 drive, gas cap, the areal extent of the reservoir. He can  
13 also determine if he's going to be faced with contaminants  
14 in the methane, such as H<sub>2</sub>S, and what that's going to mean  
15 to the operator economically to continue to develop the  
16 properties.

17 So there is a lot of information that is derived  
18 from electric logs that are run on wells.

19 Q. Let me have you go back, and let's discuss the  
20 hypothetical in the San Juan Basin concerning the ability  
21 to consolidate acreage and how that plays a part in the  
22 need to maintain the confidentiality, particularly of the  
23 log data.

24 If you'll turn to Exhibit Tab Number 4, describe  
25 for us what you're intending to depict by this

1 illustration, Mr. Alexander.

2 A. This is simply an illustration of an area in the  
3 Basin. It's an actual record check of an area in the Basin  
4 -- it's in the 31 North, 11 West area -- and it is a  
5 problem that we're dealing with currently today.

6 I wanted to show you that nobody in the Basin --  
7 and I believe this is true in the southeast part of the  
8 Basin from talking with those folks down there, but you do  
9 not have the luxury of having a consolidated acreage block  
10 that you can go do all of the work by yourself on your own  
11 acreage and develop sufficient reserves to economically  
12 justify these high-risk, high-capital-intensive projects.

13 As you can see from this -- I think this is a  
14 17-section area here -- we have simply shown you the  
15 breakdown of the acreage that's in this area and what you  
16 would have to do to put this acreage together to have an  
17 economically viable project.

18 And when I'm talking about project, I'm talking  
19 about more than one exploratory well. I'm talking about  
20 the exploratory well and the economic -- the potentially  
21 economic offsets to that, that you have to determine up  
22 front, because nobody drills an exploratory well of this  
23 nature, based upon one single well. You have to go into it  
24 knowing what you're going to have to recovery in the area  
25 to justify these large capital investments up front.

1           And so that means that you have to put an acreage  
2 block together. You don't have any other alternative but  
3 to do that.

4           Q.    Can you use this illustration to give us an  
5 example of why, in your opinion, the current 90-day period  
6 of confidentiality is too short?

7           A.    Yes, I can. I did want to mention that the next  
8 two pages behind this are simply a breakdown to more detail  
9 of this area. One of them is a one-section breakdown that  
10 shows you what you're facing, what you have to put together  
11 on a well-by-well basis for each well that you may want to  
12 drill. And then the following page shows you the breakdown  
13 of the ownership in the 17-section project area.

14                   Getting back to your question, Mr. Kellahin,  
15 would you rephrase that for me, please?

16           Q.    Yes, sir. Can you use this -- Let me give you a  
17 hypothetical. Let's look at Section 28. If I've read the  
18 codes correctly, Section 28 is hached in such a way that  
19 Conoco and Amoco control that section in terms of the  
20 working interest.

21           A.    That is correct.

22           Q.    Let's assume that Conoco and Amoco, the two of  
23 them agree to put an exploratory well in the southeast  
24 quarter of 28, and they do that.

25                   The offset operators to that would be what used

1 to be Tenneco, I guess, in the northwest of 34. You've got  
2 operators in the west half of 23 that would be different.

3           Setting that up as an example of difference,  
4 then, for competition --

5           A.    Uh-huh.

6           Q.    -- Amoco drills the exploratory discovery well  
7 and has the log data. What is the risk to Amoco, then, for  
8 subsequent exploratory wells, if they have to give the log  
9 data to you, if you're operating the west half of 23?

10          A.    Well, the risk to them is bad. They may not be  
11 able to consolidate a sufficient acreage position in the  
12 immediate area of their exploration well to continue with  
13 that project. You have to put together sufficient acreage  
14 in one of these things to get the reserves, to pay for this  
15 type of exploration project. And that simply means putting  
16 acreage together, working deals with people, to get the  
17 needed reserves to support this kind of a project  
18 economically.

19          Q.    Now, you're talking about a unique category of  
20 reserves. These are unproven, untested exploratory  
21 reserves?

22          A.    That's correct.

23          Q.    They're hypothetical at this point?

24          A.    And so when you're faced with that position,  
25 you're faced also with a time frame. And that time frame,

1 we have been working on -- Our deep gas wells in the Basin  
2 we have been working for more than a year, to try to  
3 consolidate acreage positions sufficient for us to justify  
4 our going forward with our projects out there.

5 So you're talking about long lead times, either  
6 before you initiate the project, and you're also talking  
7 about lead times even after you initiate the project,  
8 because simply drilling one of these wells -- I mean,  
9 there's two positions to be reached.

10 One is, you have to feel that you have a viable  
11 economic analysis before you start drilling the well, and  
12 you have to have some feel of what you hope to get from the  
13 well in terms of reserves in the surrounding properties to  
14 convince your management that it's a viable project. Well,  
15 after you've drilled the well, you have additional very  
16 valuable data that's going to quantify and qualify that  
17 analysis, and you will go forward from that point on what  
18 you need to do to continue your project.

19 And so you have lead times before you get into  
20 drilling one of these types of wells, and you have long  
21 lead times after you drill a well to continue consolidating  
22 the necessary acreage blocks.

23 Q. Have you constructed an economic analysis of this  
24 competition hypothetical where we have the risks associated  
25 with Amoco as the exploring operator and what happens in

1 this risk analysis in relation to Amoco and the offsetting  
2 competitor, Burlington in our hypothetical, that can sit  
3 back and watch Amoco take the risk? Have you tried to  
4 dollar-analyze that in an economic way?

5 A. Yes, we have. I mean, this is the very same  
6 economic analysis that we run through when we do these  
7 projects. I've developed a generic one for your benefit,  
8 so that you can see the type analysis that operators go  
9 through to reach these kind of decisions.

10 Q. Let's turn behind Exhibit Tab Number 7. The  
11 cover sheet says "Exploration Economic Analysis". Let's  
12 turn beyond that and look at the exploration case and have  
13 you show us the assumptions in the analysis.

14 A. Yes, sir, let me set up for the benefit of  
15 everybody here this morning what the parameters to this  
16 type of analysis are. And these are generic, but they are  
17 representative of the true play. They're not outside the  
18 realm of reasonableness by any matter; they're very close.

19 Now, what we're dealing with here would be a  
20 million-dollar seismic up-front cost that would be  
21 conducted to establish the prospect area or project area.

22 A million-dollar completed well cost.

23 \$500,000 dryhole cost.

24 Initial rate of production, assuming discovery,  
25 of 5 million per day.

1           The EUR of this well, assuming production, of 7  
2 BCF.

3           A 10-percent probability of discovery for the  
4 initial exploratory well.

5           And 10 development wells at 80-percent  
6 probability of success after you have a discovery well.

7           Now, those are the parameters that people would  
8 normally feed into their economic analysis, as we have  
9 ourselves.

10           The next page there simply is stating factual  
11 situations there, that the type setting, the environment  
12 that we're looking at at this point in time would be that  
13 the exploring company pays for the seismic cost with  
14 development wells.

15           And then the offset operators have no seismic  
16 costs to recover, they have no -- any seismic in this  
17 analysis. It was the operator that did all of that up-  
18 front work.

19           And offset owners do not have the exploratory  
20 risk of discovery of the first well. We set that risk in  
21 this example at 10 percent, which is very reasonable. They  
22 do not have that. By the time they become active partners  
23 in the area, they're up at an 80-percent probability of  
24 success, because you already have a discovery well.

25           Now, given this setting and this situation, you

1 would normally have a decision tree that you would run when  
2 you develop your project, and I have given you in this next  
3 page here the typical decision tree that people would run  
4 through on whether to proceed or not to proceed.

5 As you can see, the decision tree shows that you  
6 have some up-front costs of a million dollars there. And  
7 then from that point what you're faced with is a 10-percent  
8 probability of success. You'll see that on the top  
9 decision tree there. And below that is your corresponding  
10 90-percent probability of a dry hole.

11 Now, once you've established production that  
12 decision tree branches off, and you're now faced with an  
13 80-percent probability of success on your development wells  
14 with the corresponding 20-percent dryhole probability.

15 Now, that's for the exploring company, the one  
16 that initiates the project in given areas.

17 Now let's look at the decision tree immediately  
18 below that for any offset owner that's out here. His  
19 decision tree is very simple. He's only faced with the  
20 fact that he's drilling a development well, and he's got an  
21 80-percent probability on his very first well, with only a  
22 20-percent chance of a dry hole. A severe contrast in the  
23 equities involved in high-risk exploratory wells.

24 Q. Let's turn to the last display and have you  
25 illustrate for us how the exploring company is positioned

1 in terms of recovering these up-front seismic and other  
2 costs of exploration, versus the offset development  
3 operator who sits back and sees that happen.

4 A. This is the economic analysis that you would run,  
5 the actual figures, and it's based upon the parameters that  
6 we just visited on the preceding pages. And let me set  
7 this up for you a little bit here.

8 On the right-hand side of the graph, what would  
9 be the Y axis, you're seeing net present value in terms of  
10 thousands of dollars there.

11 And then on the bottom part of the graph, what  
12 would be the X axis, you're seeing ownership. And that  
13 ownership is translated directly into reserves. The more  
14 acreage you own, the more reserves that you own.

15 And what you see happen here is in the first bar  
16 chart there. You're seeing this project set out at these  
17 parameters and where the operator only owns a 20-percent  
18 working interest in the project area. You can see that  
19 what he's faced with is a net negative \$602,000 net present  
20 worth. That project will never be undertaken.

21 The next bar there, we're moving up. We're  
22 assuming a 40-percent working interest in the total project  
23 area. Now, this is not just the exploratory well. This is  
24 in the subsequent development offset wells too, if they're  
25 successful. You will see that he's still a loss of

1 \$240,000 net present value.

2 It's not until you get up somewhere above a 50-  
3 percent ownership range in the project area that you're  
4 going to see any positive net present value. And you can  
5 see at 60 percent you have \$115,000, at 80-percent working  
6 interest you have a \$473,000 net present value.

7 We have included on here another bar to the  
8 right-hand side, to contrast the difference between the  
9 originator of the project, the operator, and those parties  
10 that would have advantage of the information, or of the  
11 project conducted by the operator.

12 You'll see that the offset owners, on their very  
13 first well, would realize a positive net cash flow of --  
14 present value, of \$722,000. Very first well, very first  
15 attempt.

16 Now, this is the contrast that we're faced with  
17 and that other operators are faced with these days because  
18 of the heavy up-front costs that we have to undertake to  
19 explore these kind of projects. And that, in my mind, is  
20 simply not equitable.

21 And we're asking some relief in the rules, to  
22 give us the opportunity to put together a project  
23 sufficiently to make it worthwhile to us. And you can't do  
24 that in 90 days on these kind of exploratory projects.

25 And we're not asking for a perpetual

1 confidentiality; that is not our intent. We're only asking  
2 for sufficient time so that we can justify the large  
3 expenditures that we have to undertake.

4 Q. Mr. Alexander, during the confidential period do  
5 you see any reason why the Division shouldn't hold each  
6 operator, the offset operator included, responsibility for  
7 going out and getting his own data?

8 A. No, they have that ability, and I believe they  
9 have that responsibility. They can do the same things that  
10 we did and risk the same amount of capital and take the  
11 same long lead times in getting to that position.

12 Q. And if they choose not to do so, in your opinion,  
13 can they still protect their correlative rights by drilling  
14 a protection well without having the log data from the  
15 exploring company?

16 A. Yes, they can.

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

19 We move the introduction of his Exhibits 1  
20 through 7.

21 CHAIRMAN LEMAY: Without objection, Exhibits 1  
22 through 7 will be admitted into the record.

23 Before we start cross-examination we'll take just  
24 about a five-minute break.

25 (Thereupon, a recess was taken at 10:55 a.m.)

1 (The following proceedings had at 11:00 a.m.)

2 CHAIRMAN LEMAY: Okay, we shall resume with  
3 cross-examination.

4 Mr. Gallegos?

5 MR. GALLEGOS: Okay. And Mr. Chavez has some  
6 questions too. I'll be happy to -- whatever order --

7 CHAIRMAN LEMAY: Well, you can be first if you'd  
8 care to --

9 MR. GALLEGOS: All right.

10 CHAIRMAN LEMAY: -- and then after that if Mr.  
11 Chavez has any questions he can --

12 MR. GALLEGOS: Thank you.

13 CROSS-EXAMINATION

14 BY MR. GALLEGOS:

15 Q. Mr. Alexander, you mentioned about Burlington  
16 having to put an acreage block together to justify drilling  
17 these deep tests. What do you mean by that?

18 A. Well, we own X amount of acres in a given project  
19 area. You may not own any acreage in a project area; you  
20 can go in with zero acreage and you can contact the other  
21 owners of drilling rights and acquire from them sufficient  
22 acreage to begin your project. That's not a requirement.

23 Most of the time we do own some acreage in a  
24 given prospect area. However, it is not sufficient to  
25 justify economically the project, so we go in and we

1 attempt to put together the acreage block. We go in and  
2 take leases if leases are available, or we would enter into  
3 farmout agreements with other operators or buy mineral  
4 rights or acreage from those people.

5 Q. And this is after you've done the geological and  
6 geophysical work, seismic and so forth?

7 A. It's after we have done at least initial work to  
8 lead us in the direction of a prospect.

9 Q. How much acreage do you have to put together to  
10 justify the project?

11 A. Depends upon the project entirely. It's project-  
12 driven, depending on how much reserves that you hope to  
13 encounter and the cost, the up-front cost of the project  
14 and the cost to develop the reserves.

15 Q. So it depends on the formation that would be your  
16 target; is that right?

17 A. The formation is one of the factors that would  
18 determine that, yes.

19 Q. Okay, it might be a Mesaverde project?

20 A. It could be. However, in our area we wouldn't  
21 view that as that type of a project because there's so much  
22 information available in the Mesaverde in our area.

23 I'm generally talking about exploratory projects  
24 in this example.

25 Q. Wildcat, basically. Untested formations?

1           A.    Correct.

2           Q.    Okay.  And you can't tell us how much acreage  
3 Burlington considers it needs to control before it can make  
4 such a test?

5           A.    Depends upon the project again.  It's entirely  
6 project driven.

7           Q.    Okay.  But the project, we understand, is the  
8 deep test.  What you're doing now are the deep  
9 Pennsylvanian tests, right?

10          A.    That's one of the projects that we're currently  
11 undertaking, that's correct.

12          Q.    Well, how much acreage does Burlington believe it  
13 needs to control for the economics to work, to do the deep  
14 Pennsylvanian test?

15          A.    Well, again, that's one of the issues that we  
16 believe to be confidential.  That's our competitive  
17 advantage that we need to maintain in order to put that  
18 project together.  We wouldn't publish that information.

19          Q.    Okay.  Well, what percent of ownership do you  
20 need in whatever that -- X amount of acreage that's needed  
21 for a deep Pennsylvanian test?

22          A.    I'm not sure I understand your question.

23          Q.    Well, if X is the quantity of acreage that you  
24 think is essential for the economics of a deep  
25 Pennsylvanian test, what percent of ownership in that

1 acreage does Burlington think it's necessary to control?

2 A. Well, you run your economics off of your net  
3 revenue interest, or your net working interest. It doesn't  
4 really matter how many surfaces you control or how many  
5 gross working interests that you control. All your  
6 reserves and economics are driven from a net interest  
7 perspective. So that would be the thing you would be  
8 looking at.

9 And whatever it took, whatever combination of  
10 acreage that it takes to get you in that position, that's  
11 what you need to look at.

12 Q. To get you to a certain NRI?

13 A. Correct.

14 Q. Net revenue interest.

15 A. Correct.

16 Q. And what is that? What does Burlington need to  
17 do that?

18 A. In all projects or our particular project?

19 Q. No, the deep Pennsylvanian projects.

20 A. I'm not at liberty to disclose what we believe  
21 that is.

22 Q. So basically what you're saying is, you want to  
23 be able to go out and acquire acreage from owners by  
24 purchase, lease or farmout, but you don't want them to know  
25 what Burlington knows about the value of their acreage?

1 Isn't that the substance of the --

2 A. That is correct, in that we do not want to  
3 disclose what we've developed, about the value of that  
4 project area.

5 Q. So you want them -- You want to have the  
6 knowledge when you go out and try and put together a  
7 transaction, but you want them to be in the dark about  
8 that?

9 A. That is our competitive advantage that we're  
10 willing to pay for.

11 Q. Okay. By the way, and that seems to be the  
12 principal point behind this Application, that it's  
13 expensive to do one of these wells now with seismic and  
14 forth, maybe a \$2.5 million investment to do one of these  
15 deep Pennsylvanian wells, correct?

16 A. The costs and the reserves are the key  
17 components, correct.

18 Q. That may be what you're getting into; isn't that  
19 true? \$2.5 million, give or take a few hundred thousand,  
20 to do one of these deep Pennsylvanian tests?

21 A. Somewhere in that range. I don't know the exact  
22 figures. I don't work the Pennsylvanian tests, so I'm not  
23 the right person to ask that information from.

24 Q. Okay, but that is a driving argument or reason  
25 that you're giving for the rule change, is it not? It's

1 quite expensive to do the geological, geophysical work and  
2 to do these tests?

3 A. What you see from my example is the impact that  
4 the up-front costs have on exploratory projects; that is  
5 correct.

6 Q. Mr. Alexander, have you compared -- made an  
7 economic comparison of a well cost that's \$2.5 million  
8 today to taking a 1950 well that cost \$250,000 to drill in  
9 the San Juan Basin, and putting that \$250,000 into 1997  
10 dollars?

11 A. No, sir, I have not.

12 Q. Wouldn't you say that the expense is at least  
13 comparable, if probably not more expensive to have drilled  
14 a \$250,000 well in the 1950s?

15 A. I wouldn't care to guess about that. I haven't  
16 analyzed that situation.

17 Q. All right. Your testimony and the exhibits all  
18 seem to focus on this exploratory type of project that  
19 you've mentioned, but Burlington's proposed Rule 1105.C is  
20 not limited to information regarding that kind of project,  
21 is it?

22 A. No, sir, this is just my example. The rule  
23 should be available and operable to any party that had a  
24 project that would fall within these same parameters. It  
25 doesn't necessarily have to be an exploratory well. It

1 could be another type of project that would require heavy  
2 investments on the part of the operator to proceed.

3 Q. Well, the way the rule is written, it could apply  
4 to an infill Mesaverde well or infill Dakota well or  
5 Pictured Cliffs well; isn't that true?

6 A. That is correct.

7 Q. So somebody could be drilling into known  
8 horizons, low risk, and invoke this rule to keep the  
9 information confidential?

10 A. They could. I mean, that's -- The current rule  
11 today provides for that very same thing. We're not  
12 changing that basis; we're only asking for some additional  
13 consideration on the extension period of the  
14 confidentiality. That has always been out there.

15 Q. All you're asking for is an extension of the time  
16 period; is that what you say your Application does?

17 A. That's not the entire extent of our Application.  
18 We have addressed the other issues in my testimony that  
19 cover geophysical and geoscience work that the Division may  
20 at this time want to consider also.

21 Q. Well, let me address your -- Let me direct your  
22 attention to an issue I don't think you did address, Mr.  
23 Alexander.

24 Present Rule 1105.C contains a proviso -- it's at  
25 the last portion of that paragraph -- and it says that this

1 kind of information which would otherwise be held  
2 confidential for the specified period "...may, when  
3 pertinent, be introduced in any public hearing before the  
4 Division or its examiners or in any court of law,  
5 regardless of the request that they be kept confidential."

6 What explanation do you have for Burlington  
7 deleting that provision from the present rule?

8 A. We don't -- Burlington does not believe that that  
9 information should be brought forward in those types of  
10 hearings without extreme justification. We certainly don't  
11 believe that that should be a common occurrence. I mean,  
12 if that were to be a common occurrence, you totally  
13 circumvent the need for confidentiality.

14 The Division has that information, they can  
15 conduct their business, the regulatory agencies can conduct  
16 their business. And in my opinion, the only purpose for  
17 bringing that forward is to put it in the public  
18 information, that a party outside wants the information at  
19 no cost, and that's the danger that I think you get into.

20 I don't think it's a problem with the  
21 jurisdictional agencies being able to conduct their  
22 business at all, and I am not in favor of jurisdictional  
23 agencies for the express purpose of somebody asking that it  
24 be brought forward and put in the public record. I do  
25 believe they need they need it to conduct their business,

1 but I do not like to see it out in the public record for  
2 any request whatsoever.

3 Q. Well, now, let's assume that we have an  
4 adversarial hearing before the Division, before an  
5 Examiner, which by law is to be public, witnesses subject  
6 to testifying under oath and cross-examination, and  
7 Burlington insists that certain information be kept  
8 confidential. How is the adjudicatory process going to  
9 work, Mr. Alexander?

10 A. We haven't found that to be a problem. You don't  
11 need the actual data brought in to answer or to resolve  
12 those kinds of questions. There are other ways that you  
13 can get at and resolve questions in an adjudicatory  
14 process, absent bringing in the physical data that has been  
15 requested to be kept confidential.

16 Q. What do you mean, "We haven't found it to be a  
17 problem"?

18 A. We've been through several of these hearings, and  
19 we have been asked for confidential information, and we  
20 have not provided it, and it has not been necessary for the  
21 Division to reach a determination.

22 Q. So you don't need a rule, then, because just  
23 Burlington claims something is confidential and withholds  
24 it?

25 MR. KELLAHIN: That's argumentative, Mr.

1 Chairman.

2 Q. (By Mr. Gallegos) Is that what you're saying,  
3 Mr. Alexander?

4 A. No, sir, we do need a rule for confidentiality.

5 Q. But I think you've told us you've been in  
6 hearings, and if Burlington believed information was  
7 confidential -- and I'm not talking about information  
8 required to be filed by 1105.A but just information you  
9 thought was confidential and you've withheld it. Hasn't  
10 that been --

11 A. You asked me if it would impair the adjudicatory  
12 process by not having that information available, and my  
13 response to that is, I do not believe so. I think the  
14 process has gone on and it has been conducted, and it does  
15 not impair that process.

16 I'm not saying that we don't need to hold  
17 information confidential outside of those kinds of hearing  
18 processes. We do need to. That's a competitive advantage  
19 that we have bought and paid for, and we would like to hold  
20 that information confidential.

21 Q. You went further after that answer, though, Mr.  
22 Alexander, and said you've already had experiences where  
23 you withheld what you consider to be confidential  
24 information. Is that a fact?

25 A. Yes, that's a fact.

1 Q. So you didn't need a rule to do that? You just -  
2 - Burlington just did it?

3 A. We didn't need a rule to bring that into the  
4 hearing.

5 Q. You didn't need a rule to refuse to produce  
6 evidence on the basis that it was a trade secret or  
7 proprietary to Burlington; isn't that true?

8 A. In the hearing process?

9 Q. Yes, sir.

10 A. That's already covered by the practices and  
11 procedures of the Division anyway. Are you saying that we  
12 need an additional rule to cover those kind of situations?

13 Q. No, I'm -- To the contrary, you're saying it's  
14 already covered, you say it's already covered by the  
15 practices and procedures of the Commission. What do you  
16 mean by that?

17 A. From our experience, the Commission does not  
18 need, nor have they requested, that we bring proprietary  
19 data forward in order to conclude the particular hearing or  
20 advent. That's our practice.

21 Q. So there's no need to change Rule 1105?

22 A. Yes, there is a need to change it.

23 Q. Well, let me direct your attention to  
24 Burlington's proposed rule, certain language here. All  
25 right? The first paragraph refers to any operator or party

1 before the Division submitting data or information can mark  
2 it confidential.

3 Give us some examples of what Burlington  
4 conceives will be covered by that paragraph.

5 A. It could include -- Among other things it would  
6 include wireline logs, mud logs, drill stem tests, sonic  
7 logs. I probably haven't named all of them, but that would  
8 be the typical range of information that an operator would  
9 want to be kept confidential.

10 Q. Well, it could include a newspaper story, would  
11 it not?

12 A. I don't see the application, but --

13 Q. Well, there is no limitation, is there, on what  
14 can be marked confidential information under the first  
15 paragraph of the proposed rule; don't you agree, Mr.  
16 Alexander?

17 A. I believe it's -- Under our proposal it would be  
18 up to the operator to signify to the Division what we  
19 thought should be kept confidential, that's correct.

20 Q. He could mark his application for an unorthodox  
21 location as confidential information, for example?

22 A. No, I don't believe so. I think those are  
23 covered by nonstandard -- You said a nonstandard location?

24 Q. I said an application to the Division for a  
25 nonstandard location, the operator could mark it

1 "confidential information", and it would be covered by the  
2 proposed rule; isn't that true?

3 A. A nonstandard location application?

4 Q. Well, any kind of application?

5 A. No, sir, I think there's rules out there that  
6 covers those circumstances. I don't foresee this rule as  
7 being that broad.

8 Q. Well, there's no language to narrow that, the  
9 coverage of it in the first paragraph, is there?

10 A. But the intent is -- I believe is clear. And the  
11 Division may want to more clearly specify what that may be,  
12 but I believe everybody understand what I've been talking  
13 about, what I think we should discuss as being held  
14 confidential.

15 Q. So you think it should be much narrower than just  
16 anything that an operator or any party appearing before the  
17 Division decides they want to mark as confidential?

18 A. I think it should be up to the operator to  
19 initially make that determination, because I can't sit here  
20 before you today and tell you what information may evolve  
21 over the years and what -- We may come up with new  
22 processes or new techniques, and I don't think we ought to  
23 have a rule that would exclude those things from happening.

24 So I think it would be up to the operator to  
25 indicate to the Division what it thinks the types of

1 information that ought to be held confidential.

2 Q. Okay. So if the operators come in to a hearing  
3 for a nonstandard proration unit or any number of things,  
4 you would say he could mark his isopach maps and his land  
5 maps, ownership maps, all that, "confidential", and then it  
6 would be covered by this rule and might be held secret for  
7 one year?

8 A. Some of the information that you suggested might  
9 go along with a nonstandard proration unit is not provided  
10 anyway. And for nonstandard proration units, they're  
11 covered under the rules of the Division anyway on what is  
12 to be submitted there.

13 So I'm -- no, I'm not -- I don't know where you  
14 want me to try to draw the line on this. I don't think  
15 there is a clear line to be drawn. I think it's at the  
16 discretion of the operator and the Division to make those  
17 determinations.

18 Q. Well, I'm trying to find out where Burlington  
19 thinks the line should be drawn since it has proposed the  
20 rule change. And you're saying it basically should just be  
21 a matter of discretion of the discretion of the operator?

22 A. I can't draw you a clear line today about what  
23 you're asking me for.

24 Q. Okay. Well, what is the standard to be applied  
25 by the Division if a party has submitted information marked

1 "confidential" and after 90 days it requests that the time  
2 period be extended?

3 A. Well, number one, we're not suggesting that we go  
4 for a 90-day period and then request an extension. The  
5 confidentiality determination should be made up front. You  
6 have a base 90-day, and then I think the operator should  
7 have the availability to ask for any combination of the  
8 additional 90 days when it files the confidential  
9 information up front.

10 And what was the other part of your question?

11 Q. Well, okay, so what you're saying is,  
12 Burlington's practice would not be to wait till near the  
13 end of 90 days, see what the circumstances were and then  
14 determine whether it wants additional 90-day periods --

15 A. Normally --

16 Q. -- your plan would be to just ask for a year  
17 right up front?

18 A. Normally an operator should know what information  
19 he thinks should be held confidential when he asks for the  
20 confidential determination up front.

21 Q. Okay. They my question is, what should be the  
22 guide for the Director as to whether he or she wants to  
23 permit the one-year period or 180-day period, instead of  
24 the 90-day period?

25 A. They should -- It should be a reasonable and a

1 standard. The Division and its employees are very familiar  
2 with this information. They're knowledgeable people, and I  
3 think that they can make those decisions without any  
4 problem.

5 Q. You agree it wouldn't just be automatic, if the  
6 operator asks for it, it wouldn't just be automatic that  
7 you could go beyond 90 days?

8 A. No -- Yes, we agree that what we're asking the  
9 Division to do is just simply give us flexibility to ask  
10 for additional 90-day extension periods.

11 Q. All right. Now, we've got that understood. So  
12 you'd ask for it.

13 I'm asking you, what's the Director supposed to  
14 be guided by? What is the guide that he's to follow so  
15 that he's, you know, exercising judgment that would stand  
16 up under judicial review in deciding whether it should be  
17 limited to 90 days or be for a longer period of time?

18 A. Simply from their vast amount of knowledge and  
19 experience they've had over many, many years. They can  
20 make those determinations.

21 Q. Burlington doesn't venture a particular standard  
22 to be applied?

23 A. No, I think it should be flexible enough to fit  
24 the changing state of the industry, and it will change as  
25 time goes on.

1 Q. Okay. The Application of Burlington asks that  
2 this extension be without notice or hearing, and that's  
3 your position?

4 A. That is.

5 Q. The publication by the Commission added a  
6 provision at the tail end of that sentence saying that it  
7 could be based upon a public hearing. Are you aware of  
8 that?

9 A. No. Would you repeat what you just said? I  
10 don't think I understood what you said.

11 Q. Okay, let me find the exact language.

12 The publication of your application says --  
13 really does a little bit of improving on the sentence  
14 structure. Instead of this long sentence, the publication  
15 breaks the last sentence down into two sentences and then  
16 finishes with a sentence reading, "Upon written request,  
17 the Director, without notice or hearing, may approve up to  
18 three additional 90-day periods of confidentiality or may  
19 set the matter for hearing."

20 You weren't aware that the Application was  
21 published --

22 A. I didn't see that advertisement.

23 Q. Okay. Burlington opposes that, though, that  
24 provision?

25 A. Not necessarily. I think if the Division

1 determines that that's an appropriate way to address the  
2 confidentiality provisions of this rule, that may be  
3 something that they would want to employ.

4 Q. Okay. And that would permit interested parties  
5 to be heard on whether the confidentiality status should be  
6 extended?

7 A. If they believe that it's of such importance that  
8 they need to conduct a hearing on that, then that's  
9 probably what they should do.

10 Q. Okay. But the proviso that now is in Rule 1105.C  
11 and says that the data in question could be introduced at  
12 the public hearing, that would be deleted --

13 A. We're recommending --

14 Q. -- particular information couldn't be addressed  
15 in the hearing?

16 A. We're recommending that that be deleted, that's  
17 correct.

18 Q. Isn't it true, Mr. Alexander, that the  
19 information that the BLM -- to which the BLM extends a one-  
20 year confidentiality period is information required to be  
21 filed under the BLM regulations?

22 A. No, sir, it can also -- As I understand it, it  
23 can also include information that the operator is willing  
24 to give to the BLM to enable them to further their  
25 processes of their work environment. I think that could be

1 such thing as geophysical or geological information that  
2 the operator may wish to give to them.

3 But that information -- My understanding of the  
4 way the BLM handles it pursuant to that rule is, that would  
5 also be kept confidential by the BLM.

6 Q. How many occasions can you tell us, in the case  
7 of drilling projects in the San Juan Basin, has Burlington  
8 requested confidentiality of information supplied to the  
9 BLM?

10 A. I can't tell you any specific number of cases. I  
11 know that it happens very infrequently.

12 Q. Can you tell us any case?

13 A. Not off the top of my head, I could not.

14 Q. So Burlington, up to now, has been able to  
15 effectively operate in the San Juan Basin without  
16 requesting that one-year confidentiality from the BLM, to  
17 your knowledge?

18 A. Yes, for the vast majority of projects, we don't  
19 foresee the use of this rule.

20 Q. And Burlington is the successor to Meridian, and  
21 Meridian was the successor to El Paso Production Company,  
22 and it to El Paso Natural Gas Company. So the properties  
23 Burlington operates today have been operated for almost 50  
24 years in the San Juan Basin, many of them; isn't that true?

25 A. That's correct.

1 Q. Okay. And your company and its predecessors have  
2 been able to effectively -- efficiently operate in the  
3 Basin under existing Rule 1105 up to now; isn't that true?

4 A. I'd say that that's probably true, yes. I  
5 wouldn't -- Again, I don't know for certain where we've  
6 requested confidentiality on wells in the past. It hasn't  
7 been employed very often, for sure.

8 Q. Well, you will confirm for the Commission and for  
9 this record, Mr. Alexander, will you not, that on June 5,  
10 1997, Order R-10,815 was entered to increase the wildcat  
11 spacing rule for the San Juan Basin from 160 acres to 640  
12 acres?

13 A. If that was the Application and the date. I  
14 don't have any of that information in front of me.

15 Q. All right. Well, without the specifics, you're  
16 aware that your company on its application has obtained an  
17 increase in the spacing for exploratory so-called wildcat  
18 wells in the San Juan Basin from 160 acres to 640 acres?

19 A. For a specific depth interval we did, yes, sir.

20 Q. All right. Basically what we could loosely refer  
21 to as the deep formations, formations below the Dakota?

22 A. Yes, sir.

23 Q. All right. And as a result of that, there are a  
24 greater number of ownership interests that are subject to  
25 force-pooling in that case where Burlington wishes to drill

1 such a well and it's not able to obtain voluntary  
2 participation; isn't that true?

3 A. No, even if you were to develop this reserve on  
4 160 acres, it still doesn't preclude the possibility and  
5 the need to force-pool acreage even into those size drill  
6 blocks.

7 Q. Well, but it increases -- it increases the  
8 likelihood, the probability, that there will be more  
9 ownership interests involved when you go from 160 acres to  
10 640 acres. You don't argue with that, do you?

11 A. It probably would increase the amount of people  
12 you're dealing with. It doesn't necessarily follow that it  
13 would result in a force-pooling hearing.

14 MR. GALLEGOS: Okay. I think that's all the  
15 questions I have. Thank you.

16 THE WITNESS: Yes, sir.

17 CHAIRMAN LEMAY: Thank you, Mr. Gallegos.

18 Additional questions of the witness? Mr. Chavez?

19 MR. CHAVEZ: Mr. Chairman, Frank Chavez, Oil  
20 Conservation Division in Aztec.

21 EXAMINATION

22 BY MR. CHAVEZ:

23 Q. Mr. Alexander, have the current rules in any way  
24 prevented Burlington from developing their resources?

25 A. We're into that realm now. And as you can see

1 and note, we have addressed this rule up front. We knew  
2 that it would present a problem to us with this type of  
3 exploratory work, and we have been working on it for quite  
4 some time.

5 Q. Did it, the current, rule prevent you in any way  
6 or preclude you from perhaps doing more than you have on  
7 the current deep development that you're working on?

8 A. The current deep development has been undertaken  
9 with the very thought that we would come forward with the  
10 Commission and request a change in this rule.

11 And whether it will impair us in future  
12 application of our exploration of the deep, it may very  
13 well. But we had in mind all along that we would need to  
14 conduct considerable up-front seismic and geologic work,  
15 and, that in view, we were going to need to take a look at  
16 and review the current confidentiality rules. We knew that  
17 all along, and we've been working on it for quite some time  
18 to get to this position, to ask the Division to review that  
19 rule. So it does have an impact on us.

20 Q. So you were in a sense taking a risk, in a way  
21 trying to be confident you're -- that someone -- the  
22 Commission would rule in your favor on an application, and  
23 yet you did take this big risk and investment?

24 A. Yes, sir, we have taken a risk.

25 Q. What are the other ways that Burlington could use

1 to -- I use this expression loosely -- I guess protect  
2 themselves in a situation where they're acquiring a lot of  
3 data that they might want to keep proprietary?

4 COMMISSIONER WEISS: What are the other ways?

5 Q. (By Mr. Chavez) Are there some other ways to  
6 protect that data?

7 A. Outside of the current rule and the process?

8 Q. Yes. I mean, doesn't -- Isn't one possibility  
9 Burlington just coming in on a case-by-case basis, when it  
10 was necessary, for an exception to the existing rule for a  
11 specific well?

12 A. I don't think that would be the preferred -- I  
13 suppose that's possible, but why not address those  
14 circumstances up front and already have a rule in place  
15 when that exception need came about, so that we could go  
16 forward with it?

17 Q. But it's still there as a possibility, given the  
18 unique nature of each project, that where that was  
19 necessary you could come to hearing?

20 A. Well, it would be a rule change. Is that what  
21 you're referring to?

22 Q. No, for an exception to the existing rule --

23 A. To -- Exception to the existing rule.

24 Q. That's a possibility, isn't it, still?

25 A. That could be a possibility.

1 Q. One of the things that you mentioned -- You  
2 mentioned several issues about information on the logs that  
3 would be useful, or what could be derived from logs, and a  
4 couple of things that caught my mind were -- and correct me  
5 if I'm wrong here -- the change in casing design, possible  
6 from that information, addressing an H<sub>2</sub>S problem. Weren't  
7 those two issues that you said --

8 A. Yes, sir.

9 Q. -- might be available?

10 A. That's correct.

11 Q. As an offset operator to, say -- We talked about  
12 several hypotheticals here. As an offset operator to  
13 somebody who has drilled an exploratory well, wouldn't you  
14 be better able to design a casing program to protect your  
15 rights and for safety purposes to address H<sub>2</sub>S if you had  
16 that knowledge of -- that you gain from those logs?

17 A. Well, you would have the knowledge. If we were  
18 to encounter H<sub>2</sub>S I believe we're required to report that  
19 anyway, so I think that is a publicly known event, that you  
20 may be dealing with some hazardous vapors, H<sub>2</sub>S.

21 The realm that I was talking about, yes, it is an  
22 economic advantage to an offset operator to have a log to  
23 design his casing program. We spent considerable time and  
24 money evaluating the casing design for the well that we're  
25 drilling currently. So it is valuable information.

1           Q.    So an offset operator, then, without that  
2 information, may incur much higher costs than they would  
3 otherwise to protect their rights or develop their  
4 resources that would offset somebody who has a well with  
5 information that's confidential?

6           A.    They could, although they could also do the very  
7 same thing that we did and put the time and dollars into  
8 designing those casing profiles.

9           Q.    How does your proposed rule change decrease your  
10 risk and your costs, if you are the operator that wants to  
11 keep the well confidential?

12          A.    It allows us the time and the flexibility to  
13 continue with our project. As I was explaining, the  
14 economic parameters that go into these type of exploratory  
15 projects and other projects that may be applicable would be  
16 cost and revenue components.

17                   If we're unable to put together sufficient  
18 acreage in a particular area, that very well may terminate  
19 our project. We're not going to go ahead and drill a  
20 project that we can't economically justify.

21                   If we give out all the information that we  
22 develop, that we've worked for and paid for, then that puts  
23 everybody else on a competitive advantage with us and does  
24 not allow us the opportunity to take advantage of that  
25 information that we've worked for.

1 Q. The advantage you're talking about has to do with  
2 leasehold advantages?

3 A. A large part of it is leasehold, and it's getting  
4 the reserves together that are necessary to support these  
5 kind of interests.

6 Q. But to drill that first well, it doesn't decrease  
7 the cost at all, does it? Or how much would you say, if  
8 these rules were in place, it would have decreased your  
9 cost to drill this first well that you're drilling now?

10 A. Well, now, are -- Mr. Chavez, are you including  
11 all of the up-front costs that are necessary before you  
12 even get to the drill bit?

13 Q. Well, what I'm trying to get at is this: You've  
14 presented some economic figures that say it costs this much  
15 to drill this exploratory well.

16 A. Yes, sir.

17 Q. Does your proposed rule change decrease those  
18 costs?

19 A. The cost to drill an exploratory well?

20 Q. Yes.

21 A. No, sir, it wouldn't cost -- It wouldn't reduce  
22 those costs.

23 Q. Okay. Does it reduce the risk of drilling that  
24 exploratory well?

25 A. Yes, it does.

1 Q. Explain that to me.

2 A. Because now we're talking about -- We're not  
3 talking simply about the cost to drill a well; we're  
4 talking about all of the costs that a person has to conduct  
5 up front in seismic and geophysical and land-contract work.

6 Q. So you wouldn't have to spend as much money doing  
7 that if your rule was in place, versus the current rule, or  
8 take as much risk in that?

9 A. And you're talking about the future application  
10 of the rule --

11 Q. I'm talking --

12 A. -- in terms of logs being held confidential, or  
13 are you talking about the application of the rule about  
14 geophysical and geologic data being held confidential even  
15 before you might commence the drilling of a well?

16 Q. The current rule -- I guess maybe we need to get  
17 some understanding there. Is geophysical data required to  
18 be filed under the current rules?

19 A. No, it's not, and the rule does not talk about  
20 that. And I believe it's time for the Commission to  
21 consider that area of proprietary data.

22 Q. So under the current rules, without that  
23 geophysical data being required to be filed, there's no  
24 risk, really, operating under the current rule with the  
25 geophysical data, is there?

1           A.    We have seen some risk develop with some  
2 applications that have been filed with this Division. I  
3 believe the operators are at risk. It depends on what the  
4 Division eventually decides about bringing in that kind of  
5 data into hearings.

6                    And you go into hearings many times, just like we  
7 did on our Marcott well -- it was a pooling hearing -- but  
8 you go into those well before you -- many times before you  
9 drill the well, although we were drilling the Marcott, and  
10 if the Division determines that they need to bring that  
11 type of information into those preliminary hearings, then  
12 yes, we are substantially at risk.

13           Q.    That doesn't matter, whether your rule is in  
14 place, your proposal, or the current rules, does it?

15           A.    Well, we were talking about our proposed rule.  
16 And if you're simply talking about the current rule, and if  
17 you're saying that those types of information cannot be  
18 brought in pursuant to the rule, which I don't think is  
19 clear, and if we're only talking about logs and information  
20 derived when we drill the well, then you're talking about a  
21 post-application problem, in that, yes, we do need to  
22 continue with the work that we started before we drill the  
23 well, we do need to continue to consolidate our acreage, as  
24 we're currently doing.

25                    And then, yes, it becomes a real problem if that

1 information becomes public, because that takes away our  
2 competitive advantage.

3 Q. Okay, the competitive advantage that you have is  
4 not on a well issue then, if I understand correctly; it's  
5 on a leasehold issue. By having the information available,  
6 you're better able to evaluate acreage outside the drill  
7 tract?

8 A. That's one of the bigger components of it for  
9 sure. I'm sure there's other components of the problem.  
10 But for sure, that is one of the larger components, is the  
11 amount of acreage that you can build a block -- put  
12 together to get the reserves needed to support that  
13 project.

14 Q. So then part of the competitive advantage is in  
15 the way of land issues, not necessarily having to deal with  
16 a particular well as far as concerns -- waste or  
17 correlative rights?

18 A. Well, I don't think you can separate the two  
19 issues. The well, in turn, determines our ability -- The  
20 information derived from that well, in turn, determines our  
21 ability to go forward with our project. So I don't think  
22 the two issues are separatable; I think they're all one  
23 issue.

24 Q. Okay. Given the cost to drill the exploratory  
25 well, an offset operator to that well, in order to gain the

1 same information that you have, under your rules, would be  
2 required to spend, effectively, the same amount of money;  
3 is that kind of within the ballpark of what we're talking  
4 about here?

5 A. Are you talking about the dollars that are only  
6 expended in drilling the well, or are you talking about --

7 Q. Yes.

8 A. -- dollars that may be expended up front to  
9 develop their own prospect?

10 Q. Let's say they don't do the seismic. What I'm  
11 trying to get at here -- Let's see if I can make it a  
12 little more clear.

13 Without the information that would be derived  
14 from the data of the exploratory well, the offset operator  
15 has to spend more money in order to -- or has higher costs  
16 in drilling their well, either to get more data, or in  
17 design of a casing program that may not be necessary, to  
18 take precautions that they would take with an exploratory  
19 well, that they may not have taken had they had the  
20 information from their well? They spend more money doing  
21 that, don't they?

22 A. No, sir. I mean, they have the option and the  
23 opportunity and, I think, the obligation to evaluate their  
24 well on their property, and that includes any work that  
25 they need to do up front. They should know whether they --

1 They should do the appropriate amount of work to know what  
2 the expect to encounter there.

3 Now, if you're only talking about dollars  
4 expended on the well, versus dollars we're expending on our  
5 exploratory well, I think the tables are equal there. They  
6 will expend virtually the same amount of money if they're a  
7 competent operator, or maybe they could spend even less if  
8 they're a better operator than we are, in designing and  
9 drilling their well.

10 I don't think there's any advantage, one to the  
11 other, on simply the dollars to put that hole in the  
12 ground. They're going to do the work necessary to put that  
13 hole in the ground.

14 Now, do they want to do the work that's necessary  
15 to develop a prospect area? That's a decision they need to  
16 make. But I don't think it's up to us to furnish them with  
17 that information that we've expended our time and dollars  
18 for.

19 Q. If they have the information from your well, are  
20 they better able to make economic decisions concerning the  
21 drilling, design of the well, and even whether or not to  
22 even drill a well offsetting the exploratory well?

23 A. Certainly.

24 Q. So without that information they're at higher  
25 risk of having perhaps even well problems, by setting a

1 casing point at the wrong place or not using a mud program  
2 that would be more efficient, that would allow better  
3 control; isn't that right?

4 A. They're not at any higher risk than we are when  
5 we begin those very same well-drilling --

6 Q. Well, I don't understand. I thought when you  
7 were talking about the information available from the logs  
8 in your testimony, by you -- I thought what you were  
9 telling us was, with that information an offset operator  
10 can more efficiently set the casing, more efficiently drill  
11 their well and even, perhaps, decide not to drill a well?

12 A. They can. And I answered in the affirmative the  
13 question that they would be more economically -- They would  
14 be able to more economically drill a well if they had our  
15 log information; that is correct.

16 Does that put them at an economic advantage to  
17 us? Yes, it does, because they didn't pay for any of that  
18 information.

19 Q. Okay. So the equity that I'm understanding here,  
20 trying to understand, when you're talking about equity,  
21 it's not so much that you lower your cost to get your  
22 information, but the equity seems to be that the offset  
23 operator should have higher costs or in some way should  
24 have an increased cost that they would otherwise save had  
25 they had your information, in order for it to be fair?

1           A.    I will agree that they would have higher cost to  
2 go ahead and drill their project without our log  
3 information.  I would agree with that.  There is that  
4 potential.

5                    There is a potential that they could drill it for  
6 even less cost than we've drilled, because they could  
7 encounter less down time, they could have less problems.  
8 There's a whole lot of situations that could impact that  
9 determination.

10                   But I do agree that it is an economic advantage  
11 to an offset owner to have information that was developed  
12 by another party.  I will not deny that.  That's true.

13           Q.    With the information available from the  
14 exploratory well -- Without that information, an operator  
15 could take a risk to drill a dry hole, an unnecessary well,  
16 that, had they had the information, they wouldn't have  
17 drilled; isn't that so?

18           A.    That's true.  However, I think you're missing one  
19 point there also, that we're not precluding the  
20 availability of that information from offset operators.  In  
21 fact, if they're willing to work with us in developing the  
22 prospect area and they're willing to sell their property,  
23 retain some interest, farm out to us, we have, in fact,  
24 shared that information with them.

25                    So if they're interested in a viable economic

1 project and they do not wish to take the risk, they can  
2 work with us, and they cannot suffer that economic loss  
3 that they might otherwise suffer by being put on an equal  
4 advantage with us in not having that information.

5 So I mean, we're not saying that we're precluding  
6 that information from being available. We're simply saying  
7 that that information should not be available to a party  
8 that is unwilling to compensate us for it.

9 Q. On the issue of correlative rights, do you think  
10 that Burlington as an offset operator to an exploratory  
11 well could better protect their correlative rights if they  
12 had information, say, within 90 days rather than one year,  
13 and not suffer irreparable damage, say, from -- on an  
14 exploratory well producing in the high range?

15 A. Well, I would like to phrase that in, yes, that's  
16 true, but they can also work with us, or anybody else  
17 that's drilling one of these ventures, and not suffer any  
18 risk. They can cooperate, we can put a project together,  
19 we can share the cost of those up-front costs.

20 So I mean, yes, what you said is true, but that's  
21 not necessarily what they need to risk at all. I mean, if  
22 they choose to stand out and not be a part of the  
23 development, then I think it's appropriate for them to have  
24 that risk available to them. I think it's appropriate for  
25 them to go make those decisions on their own and not come

1 looking to the other parties that have these huge up-front  
2 costs, to provide that information to them so that they can  
3 develop their property at much reduced risk, much reduced  
4 cost.

5 Q. The scenario you're talking about there is with  
6 Burlington as the exploratory driller. Let's turn that  
7 around. Let's say somebody that offsets Burlington is  
8 doing an exploratory hole, but they don't invite Burlington  
9 in to it. Then the scenario you propose wouldn't be in  
10 effect. I mean, it's not a voluntary issue. You have to  
11 do something else, then, to protect your correlative  
12 rights, and without the data you're at a disadvantage,  
13 aren't you, in protecting your rights?

14 A. Well, what we would do in that situation, if we  
15 were interested in that project area, we would go to the  
16 operator and see if we could work a deal with him. It's a  
17 two-way communication. We would go to him and say, you  
18 know, We're interested in this project area, we will  
19 participate in your cost to develop this thing in -- either  
20 directly by paying our share of it; we may determine that  
21 we would like to farm out to you.

22 Now, if the operator simply says, No, you know,  
23 we don't need your acreage, we're developing this 100-  
24 percent us, we don't care about the offset properties, and  
25 he goes ahead and drills it, then we have some decision

1 points to make. We have to decide if we want to develop  
2 our property.

3 And quite frankly, we would wait, probably, and  
4 see the results from his well, because we're not going to  
5 know a lot about it, and probably develop it at that time.  
6 Or we would commence the activity that's necessary for us  
7 to evaluate his proposed target and be ready at the  
8 opportune time to go forward.

9 Q. Your proposed rule expands the amount of  
10 information that you want covered under the Rule 1105 to  
11 include basically any information, while the current Rule  
12 1105 speaks about C-105 and its attachments?

13 A. Yes, sir, although it does say in there there are  
14 special tests, and that's not well defined, and I'm not  
15 sure what all that might cover. So to some extent it's  
16 somewhat open, even right now, on what is -- can be covered  
17 by the confidentiality rule.

18 And yes, sir, you're correct, we have not  
19 proposed definite limitations on what we think should be  
20 covered by the confidentiality rule. I'm not sure I could  
21 tell you with a definite answer exactly the pieces of  
22 information that should be covered, because technology  
23 changes, quite frankly.

24 Q. In your work and experience in the San Juan Basin  
25 do you have an opinion as to whether or not the current

1 rule has perhaps prevented other operators besides  
2 Burlington from conducting their business and taking the  
3 risk necessary to develop the resources in the San Juan  
4 Basin?

5 A. Well, I do know of one other operator because  
6 they're a partner in the deep exploration play; that's  
7 Conoco. And they're as concerned about this situation as  
8 we are, so I know it's having an impact upon them and their  
9 future decisions too.

10 As to other operators, no, sir, I couldn't answer  
11 your question as to them.

12 MR. CHAVEZ: I don't think I have any more  
13 questions.

14 CHAIRMAN LEMAY: Additional questions of the  
15 witness?

16 Commissioner Weiss?

17 COMMISSIONER WEISS: Yes.

18 EXAMINATION

19 BY COMMISSIONER WEISS:

20 Q. On that May 15th letter you got two written  
21 responses. I take it you got some verbal responses also?

22 A. Only in generalities, that they had received my  
23 letter and that they didn't see any potential problems, and  
24 it was a very general acknowledgement of receiving it. And  
25 I didn't have anybody call back after they had received the

1 letter and go over specifically points. No -- Other than  
2 the written letters, nobody did.

3 Q. Did you send anything to Cinco?

4 A. I don't believe that they were included in the  
5 list of people that I asked for feedback.

6 Q. Did you send one to Amoco?

7 A. Yes, sir.

8 Q. Okay.

9 A. Yes, they are. I was just looking they're here.  
10 Generally, if they were an operator in the Blanco-Mesaverde  
11 Pool, that's who I tried to solicit information from.

12 Q. All right, thank you. I've got a list of things  
13 here that just occurred to me --

14 A. Yes, sir.

15 Q. -- while you were presenting your testimony.

16 Are you aware that the AAPG is trying to start a  
17 public seismic library? How do you feel about such a  
18 thing? They're to get the information together, make this  
19 kind of information public. Maybe not today's seismic  
20 data, but...

21 A. Yes, sir. In fact, we participate in some of  
22 those groups, in group shoots, and that's information that  
23 is released to that organization or that group of people  
24 after it's served its basic purpose for the company that  
25 has developed it. So we're in favor of those kind of

1 participations.

2 Q. How long does that usually take?

3 A. Generally -- Oh, it can vary, but I'd say  
4 generally probably one to maybe five years, somewhere in  
5 that range.

6 Q. You know, there's a value, obviously, to public  
7 access to the logs and all the information required. I  
8 assume the value to Burlington is the same as it is to  
9 these guys, say?

10 A. It should be the same for any operator,  
11 generally.

12 Q. Yeah. I know that Burlington has relied heavily  
13 on public information to develop things up there.

14 A. Yes, sir.

15 Q. I mean, the log base --

16 A. Yes, sir, that's true.

17 Q. -- et cetera. So there is a value to you, just  
18 as there is to other people, and all you guys are looking  
19 for is this delay of making that public, huh?

20 A. Yes, sir, we're not asking that this information  
21 not be made public at an appropriate point in time, not at  
22 all.

23 Q. But you do rely heavily on what is available  
24 publicly?

25 A. Yes, we do.

1 Q. Okay. So I guess, in my mind, the question is  
2 how to put a value to that, or a time, a value to that  
3 time, or how to estimate the proper amount of time to limit  
4 the public disclosure of any information you may develop.

5 And maybe one way to do that is, you know, to  
6 think about your investment and what -- I don't know what  
7 -- For example, on the last page of your exhibits, there  
8 you've got net present value. That usually requires a  
9 discount rate --

10 A. Yes, sir.

11 Q. -- to figure it out. What do you guys use?

12 A. I think this one was developed -- I didn't run  
13 these economics, but I believe this one was discounted at  
14 10 percent. I may have to check that for you, but -- I  
15 mean, I can check it for you, but I don't know the answer  
16 to it right off --

17 Q. Surely your hurdle rate for exploration projects  
18 is greater than 10 percent?

19 A. Well, our current hurdle rate for exploration  
20 projects is, in fact, 20 percent. But I don't know what  
21 this discount rate was run at. I do know that a lot of  
22 people are still running some 10-percent and 15-percent  
23 discount rates. And if you would like for me to check that  
24 for you, I'd be --

25 Q. Well, that would be interesting.

1           A.    I will get that for you.

2           Q.    As I see it, that might enter into -- You know,  
3 you could use that, discounted your \$2.5 million investment  
4 at 20 percent a year. When does it go to zero? Well, it's  
5 a number of years in the future.

6                   And maybe that's the value -- maybe that should  
7 be the time that this information should be held  
8 confidential.

9           A.    That could be an extended period of time, and --

10          Q.    Yeah --

11          A.    -- I'm not sure that -- You know, we're not  
12 asking to hold information confidential over the life of  
13 the project, over the reservoir. This -- The information  
14 that we gather has a value, has a definite life value to  
15 it.

16                   But that is more limited, I think, than what  
17 you're referring to. Because I mean, these projects, the  
18 life of these projects could be 40, 50 years. And the  
19 point in time when you get to your net present value  
20 positive flow, that would, of course, depend upon each  
21 particular project. And I see your point there.

22                   But we've looked at the offset rules that the  
23 other states have, and that was one of the reasons -- The  
24 point you just made was one of the reasons that we are  
25 suggesting to you that we not go to a fixed term, a one-

1 year term, because that may not be applicable, it may not  
2 be needed. A party may only need 90 days. And that's  
3 fine, that gets him through his objectives. He may only  
4 need six months. He may only need 270 days, or he may only  
5 need 360 days.

6 So that's why we propose to you that we have that  
7 flexibility in the rule. I mean, we could have proposed to  
8 you that we do like some of the other states do and go to  
9 one year or two years with an additional one year. But  
10 we're not interested in stretching it out to long periods  
11 of time. We're interested in the flexibility of having the  
12 shortest amount of time of confidentiality -- that status  
13 held confidential, as is practical. I don't see that every  
14 application should go for a year.

15 Q. I find that tough to believe that 20-percent  
16 discount rate on an exploration project. That's what you  
17 get on an apartment house. You know, why in the world take  
18 those big risks? My feeling is, it's more on the order of  
19 50 or 80 percent before you drill an exploration well. But  
20 I don't know, so...

21 A. But I can get you that discount rate that we ran  
22 this at.

23 Q. That would be an interesting number.

24 A. All right.

25 Q. The hurdle rate for exploration, real exploration

1 like drilling a deep well out there, that -- Not many have  
2 been done.

3 And then you say you've looked at exploration  
4 units. Now, what happens, or how come they don't come  
5 together? You very, very seldom see them up there.

6 A. Well, one of the major problems up here is the  
7 fact that the San Juan Basin has been producing for so many  
8 years, and all the acreage up here is virtually subject to  
9 being leased, and it's under production, it's held by  
10 production. That doesn't necessarily move a party to  
11 cooperate with people to develop deep place.

12 There is a large tendency for people just to hang  
13 out there and wait and say, No, I'm not going to  
14 participate in several million dollars' worth of seismic  
15 and geophysical and geoscience work. I'll let you drill  
16 your well, and I'll drill mine later.

17 So in some ways it's a deterrent, than trying to  
18 get this acreage together. And that's what we've found.  
19 We've been working on it for a year and six months to get  
20 these projects together.

21 There again, on the other hand, though, you know,  
22 if a person is willing and wants to increase his reserve  
23 base and go on, the fact that we're willing to spend those  
24 dollars might, and many times does -- We've found it to be  
25 true on the other side too, that we can go ask a party and

1 say, you know, We would like to farm out your acreage, and  
2 in return for that, in return for that compensation, we're  
3 willing to share with you our information.

4 Okay, that's an economic advantage to them  
5 because we're not going to farm out everything they own in  
6 the Basin. We're generally going to farm it out in our  
7 prospect area. They have other acreage remaining out  
8 there. They contribute to our well, they contribute to the  
9 cost of that up-front money, and they get the information.

10 So there's also -- That value component of that  
11 is out there also, that it is a good bargaining tool, and  
12 it does encourage partnerships and exploration from that  
13 standpoint.

14 Q. Yeah, that's a difficult question here.  
15 Personally, I kind of understand the need for public  
16 information. I think that's very important.

17 But then too, I think the oil business has always  
18 been, you take big risks and you're entitled to big  
19 rewards. How do those come together? I guess we're going  
20 to decide here, perhaps.

21 A. Well, there's an avenue for that to come  
22 together. Again, we're not asking for perpetual  
23 confidentiality, and that's the answer to your question, in  
24 my opinion. You're going to have that information  
25 available to you at some point in time. We just want the

1 opportunity to use the information that we've developed in  
2 a reasonable manner.

3 COMMISSIONER WEISS: That's all the questions I  
4 have. Thank you.

5 CHAIRMAN LEMAY: Commissioner Bailey?

6 EXAMINATION

7 BY COMMISSIONER BAILEY:

8 Q. Following upon Commissioner Weiss's question, how  
9 many units, exploratory units, in the San Juan Basin does  
10 Burlington already operate?

11 A. You're talking about wildcat wells; you're not  
12 talking --

13 Q. I'm talking about exploratory units.

14 A. Exploratory federal units, perhaps, or -- you  
15 know, all of our -- All of the units that we do operate  
16 were exploratory federal units, and we have got 15 of those  
17 things. But that doesn't mean that we're drilling deep  
18 exploratory wells on any particular one of those at the  
19 present time.

20 Q. And I'm not implying that --

21 A. Okay.

22 Q. -- that's where your prospect location is.

23 A. Yes, ma'am.

24 Q. But aren't those units to all depths?

25 A. They are.

1 Q. Okay, so you already had large exploratory units  
2 in the area, just as a follow-up to the Commissioner's  
3 questions.

4 When you apply for an exploratory unit with the  
5 BLM, a certain amount of geologic and geophysical  
6 information is given to them to justify the boundaries that  
7 the operator chooses for the exploratory unit; is that  
8 right?

9 A. That's correct.

10 Q. And that would normally be the only time that you  
11 would volunteer the geophysical information to the BLM in  
12 light of their rules here?

13 A. No, it wouldn't necessarily be the only time. I  
14 think we have on occasion taken over our geophysical and  
15 geological interpretations to the BLM when questions needed  
16 to be answered in those regards from the jurisdictional  
17 standpoint -- I mean from a regulatory standpoint. So it  
18 does happen. I would say it doesn't happen frequently.

19 Q. And the most obvious time would be during an  
20 application for an exploratory unit, where you would want  
21 to justify the unit boundaries based on structure? That  
22 is --

23 A. That is an obvious --

24 Q. -- that is one of their requirements?

25 A. Yes, ma'am.

1           Q.    I'm tying this in to why you would choose the BLM  
2 rule to try to apply it to all agencies statewide, rather  
3 than just the BLM requirements, because when you come up  
4 for an exploratory unit hearing with the OCD, do you also  
5 bring that information to the OCD, or do they not require  
6 that or even ask any questions concerning the justification  
7 for the unit boundaries?

8           A.    I have to think way back.  We haven't brought an  
9 exploratory -- federal exploratory unit in the San Juan  
10 Basin to the Division for many, many years.  I'm thinking  
11 that that information is shared with all of the  
12 jurisdictional agencies, but I could be wrong about that,  
13 but we just --

14          Q.    You don't look at it --

15          A.    -- we haven't brought it forward.

16          Q.    -- from BLM's side.

17          A.    Uh-huh.

18          Q.    I'm sure that unless a regulatory agency requests  
19 it, you wouldn't volunteer it?

20          A.    I couldn't answer that question it's -- I  
21 haven't brought one forward in any recent time period at  
22 all, so I'm not knowledgeable on that point.

23          Q.    When I was just glancing through your chart on  
24 these states, I notice that you had Texas offshore can go  
25 four to five years, but I didn't notice Texas onshore.  Are

1 there --

2 A. Yes, yes, that may not be clear in that exhibit.  
3 It was difficult to put in a very brief description. Some  
4 of these rules are rather lengthy, and they have different  
5 components to them.

6 For Texas, if you read over here to the side, it  
7 will tell you the answer you're looking for, I believe. It  
8 basically says, about middle way down there, it says, "When  
9 filing such a request, the owner or operator must retain  
10 the logs(s) and may delay filing such log(s) for one  
11 year..." And I believe that is the basic application in  
12 Texas. Now, you can go on to offshore applications and get  
13 further confidentiality periods.

14 Q. But I was confused because in the middle there it  
15 just referenced offshore. I wasn't sure that this on the  
16 right-hand side applied to offshore or onshore.

17 A. It applies to both.

18 Q. Okay.

19 A. Are you looking at that middle column?

20 Q. Yes.

21 A. That offshore only applies to the parenthetical,  
22 the four-year.

23 Q. Oh, okay.

24 A. It's grouped in that parenthetical there.

25 Q. Thank you for that clarification.

1           A.    Uh-huh.

2                    As a royalty owner in the -- throughout the  
3   entire state, it is very obvious that your interest right  
4   now is the deep exploratory projects in the northwestern  
5   part of the state, and your answers were very strictly  
6   confined to your emphasis in the northwestern part of the  
7   state with these deep exploratory projects.

8                    But this rule would apply statewide --

9           A.    Yes, ma'am.

10          Q.    -- to all projects --

11          A.    Yes.

12          Q.    -- to all operators, and would have a tremendous  
13   impact on offset operators and royalty owners throughout  
14   the state?

15          A.    Well, the rule already applies to all of those  
16   people.

17          Q.    Yes.

18          A.    We're simply asking for the flexibility to extend  
19   that in given circumstances.

20          Q.    And a delay in knowledge of the value of  
21   production in the area, which can affect royalty rates for  
22   leases. One of the statutory requirements for the Land  
23   Office in evaluating tracts to be put up for the monthly  
24   oil and gas lease sale is knowledge of the area, and  
25   without the most current information, with a distinct

1 disadvantage to knowing the value of the resource, then our  
2 royalty could be greatly impacted

3 A. They may not be impacted though, too, if we were  
4 in an area where you had some state leases available for  
5 sale and we had developed this information, we would be  
6 willing to bid much more for those, had we not developed  
7 that information.

8 Q. If you had competition, and if there is knowledge  
9 for us to set the correct royalty rate in evaluating the  
10 tract for lease?

11 A. And that can come through several alternatives.  
12 Like I said, we're putting together acreage plays, and  
13 people are participating with us, and that information --  
14 those properties will be developed, and so that information  
15 will be distributed.

16 Generally, nearly all the time, you know, when  
17 I've been at sales, people are familiar with those areas.  
18 And as an example, if Burlington would come over and bid on  
19 a land offsetting one of our exploratory tracts, people  
20 know we're drilling a well there. That's going to  
21 immediately pique the interest in it.

22 And as long as we stay in the bidding game,  
23 they're going to stay right in there with us, because if  
24 they say, Well, if Burlington was willing to devote the  
25 time and money drilling this thing, I think I'll take the

1 risk and compete with them on it.

2 Q. But in those areas where Burlington is not a  
3 player, if it is not a deep exploratory project, then we  
4 could face, couldn't we, the situation where smaller  
5 operators could invoke this, would have an advantage over  
6 competition and over us, who needs to know the value of  
7 our...

8 A. No, I don't believe that would happen at all.  
9 Our application of this rule is going to be very limited.  
10 The Division, as we've proposed the rule, has discretion in  
11 that over the 90-day period.

12 Now, you may not -- As the current rule is  
13 written, you may not have any discretion if anybody, for  
14 any project, asks to have confidential rules. That  
15 discretion may not be there. I don't know how the  
16 Commission has handled that. But they may have to grant  
17 that for at least a 90-day period.

18 But we thought it was wise to give the Division  
19 discretion in the extension periods so that there's no  
20 abuses taken of this rule, and that's the reason that we  
21 develop it the way that we did develop it.

22 I mean -- As I said before, we could have come  
23 forward and simply requested that you go to a one-year  
24 confidentiality period, like the other -- most of the other  
25 states have done. But we're trying to make it as flexible

1 and as applicable as we can.

2 COMMISSIONER BAILEY: That's all the questions I  
3 have.

4 CHAIRMAN LEMAY: Thank you, Commissioner Bailey.  
5 I've got a couple, Mr. Alexander.

6 EXAMINATION

7 BY CHAIRMAN LEMAY:

8 Q. I'm trying to narrow this down to the issues.  
9 There are some pretty big issues involved, if we want to  
10 look at the big picture. I think that was mentioned  
11 earlier.

12 Example: What information is considered  
13 proprietary? As I understand it, your Application would  
14 put that discretionary power in the operator. It could  
15 also reside with the Commission, if we indicated what items  
16 would be considered proprietary.

17 Example: You know, historically seismic has been  
18 considered proprietary, as has dipmeters. The location of  
19 wells has not. We require certain information be filed as  
20 a matter of record, including the well logs, although given  
21 certain wildcat wells that are drilled, I can see well logs  
22 would be a decided advantage for competitive purposes if  
23 others had it.

24 A. Yes, sir.

25 Q. The way you describe the San Juan Basin, what --

1 I still don't know why you want this additional time.

2 A. It's --

3 Q. Acquire more leases, buy royalty, drain your  
4 offsets? What's the advantage of the extra time you would  
5 require, for you?

6 A. It's exactly as the economic model presents to  
7 you. You have to have sufficient reserves in a given  
8 project area to make that project economically viable.

9 You can't go in and drill one of these deep  
10 exploratory wells on one section and be blind to the  
11 surrounding section, because that one section will not give  
12 you sufficient reserves to pay for the cost of that well  
13 plus all of the millions of dollars of up-front money that  
14 you're going to have to amortize or capitalize against a  
15 big-project area.

16 Q. I understand that. I'm just saying, okay, let's  
17 give a hypothetical example. You drill a discovery well.  
18 You've got your deal made before you go in.

19 A. Not all of it. We're still continuing, and  
20 that's where the confidentiality of the logs comes into  
21 play.

22 Q. What can you do? Buy additional leases --

23 A. Yes, sir.

24 Q. -- discovery well --

25 A. Most definitely.

1 Q. -- in the San Juan Basin?

2 A. Yes, sir. Not buy leases, but you can get in --  
3 because most of the acreage has already been leased. But  
4 you can certainly farm in acreage and you can purchase  
5 leases.

6 Q. You can, you can still make some land plays  
7 there?

8 A. Yes, sir.

9 Q. Do they require more than 90 days to make?

10 A. We've been working on it, you know, and they're  
11 still working on it now, and we've got people employed that  
12 are going to be working on this for at least another year.

13 Q. No, I'm saying on the basis of a well, if that --

14 A. Yes, sir.

15 Q. -- if that scenario changes, you'll need more  
16 than 90 days to increase your acreage position if you drill  
17 a discovery well.

18 A. You need the flexibility to continue the work  
19 that -- I mean, any prudent operator will start that  
20 activity before he drills a well.

21 Q. Sure.

22 A. And any prudent operator will continue that  
23 activity after he gleans some information from that well,  
24 because it's going to tell him the directions to turn.

25 It may tell him, this is the end of this project,

1 we'll never get enough reserves out of this to continue,  
2 and we would stop our lease plays at that point in time.  
3 Or it may validate our original assumptions.

4 And it may tell us that, well, in order to  
5 support this venture ongoing, in order to amortize all  
6 these up-front costs, we're going to need to acquire a  
7 certain size block of acreage in this area.

8 It may tell him that, well, thank goodness this  
9 well is a lot better than I thought it was, and we won't  
10 have to acquire as much acreage as we originally thought we  
11 may have to acquire in order to make this an economically  
12 viable project.

13 There's several different directions that you  
14 might go once this information is available to you.

15 Q. Granting all those arguments, what you're saying,  
16 you need an additional 90 days, beyond the 90 days of  
17 confidentiality, to accomplish whatever direction you want  
18 to turn, after you've gained the knowledge from the one  
19 well?

20 A. You may need an additional 360 days.

21 Q. You may need five years.

22 A. That's -- I mean -- But we're not asking for  
23 that. Your point is well taken. I mean, you could go on  
24 into infinity. But I do agree, there has to be a point in  
25 time that we don't want to go beyond.

1           Q.    They way you present your presentation -- of  
2   course, it's geared to the San Juan Basin.  Those operators  
3   in the southeast have requested that this particular rule  
4   apply to them, and I -- you know, I think these -- our  
5   rules do apply statewide.

6           A.    Yes, sir.

7           Q.    There have been situations, and I'm familiar with  
8   them, in the southeast where the bigger operators have  
9   controlled a play simply by not releasing their logs and  
10  trading them, and it's been to the detriment of  
11  development, that all of a sudden a log becomes a  
12  confidential piece of information, like it is in Alaska.  
13  You just don't release those things.  You keep them and you  
14  trade them.  But that makes it a kind of a narrow game that  
15  people can play.

16                    You get to that point when -- Seismic, we all  
17  agree, has always been confidential.  But logs in our state  
18  have always been -- beyond a certain period, have been  
19  released, and people use those, geologists use those, to  
20  acquire new prospects.  It generates activity, it gets  
21  wells drilled.

22                    And if, as a matter of practice, operators say, I  
23  can get a competitive advantage by keeping every well I  
24  drill confidential so I can trade with other active  
25  operators, information does not get released, wells do not

1 get drilled, there is not competition on state leases when  
2 they come up for competitive bid, nor federal leases.

3 What I'm saying is, the magnitude of what you've  
4 asked us to do here far exceeds what Burlington is  
5 contemplating doing in the San Juan Basin for making a  
6 Pennsylvanian play.

7 A. Well, I don't think so. All the other states  
8 have been dealing with these same rules for many years too,  
9 and it hasn't impaired the competition in any or all of  
10 those states.

11 Also, the fact that you have a confidential, a  
12 valuable piece of log, on the contrary, can increase the  
13 drilling activity, if people are willing to work with you  
14 and develop that property through farm-out/farm-in  
15 agreement, AOI, mutual areas of interest, contract areas.

16 The fact that somebody is willing to step out  
17 there and spend large sums of money to develop these new  
18 processes does not mean that that's going to curtail the  
19 amount of wells to be developed. It could be quite to the  
20 contrary.

21 Q. But that is your example in the San Juan Basin.  
22 What I'm saying is, the rule you propose, applying to all  
23 areas of the state, could allow operators that drill field  
24 wells -- I think the question was raised before, infield  
25 wells, field wells in southeast New Mexico that have no

1 wildcat potential, strictly as a trading tool, to be able  
2 to acquire someone else's log that they hold confidential,  
3 and soon you have a small group of traders that have a  
4 large competitive advantage over everyone else in bidding  
5 for leases.

6 The rule you're proposing as we enlarge it -- I'm  
7 concerned about some of the implications of it, not in the  
8 specific examples that you laid out before us.

9 A. Well, I worked in other areas, in other states  
10 too, and I do know -- And you may have a valid point. But  
11 I do know, also, on the other side, that that works to  
12 actually increase competition, and to get more work done  
13 and more wells developed. Because, you know, in some  
14 regards it's unfair to stack all the responsibility for  
15 additional development and exploration on one party and  
16 then take complete advantage of that.

17 Q. Well, not one party --

18 A. People should come in and join with parties to  
19 develop these properties, and they should share those up-  
20 front costs. Those are the things that kill you, is all  
21 that up-front cost.

22 Q. I have no problem with those arguments. We're  
23 not -- What I'm trying to do is bring up examples beyond  
24 the scope that you envision. That was my point -- When I'm  
25 talking about infield wells, we've never envisioned that

1 being taking advantage of your competitors; that's  
2 something we all trade as a matter of just common usage.  
3 There's an unwritten rule, you release your logs in this  
4 state. I mean, that's --

5 A. Yes, sir, and I don't --

6 Q. -- that's been a principle for years.

7 A. -- and I don't think you've seen that happen. I  
8 mean, I don't know that we've asked for any confidentiality  
9 on any infill wells. I mean, we share all of that  
10 information.

11 Q. There has been cases where they have, however.

12 A. Yeah.

13 Q. In the southeast -- I don't think you're familiar  
14 with it, but I am, specifically, where it has hindered out  
15 there.

16 A. Well, I think that's where the Commission ought  
17 to have some discretion. I mean --

18 Q. Well --

19 A. -- we're not proposing a rule to get it abused at  
20 all.

21 Q. No, the potential for abuse is enlarged when you  
22 extend the time limit, is the point.

23 A. Well, I mean, the potential for abuse is there  
24 already. I mean, even in a 90-day clock you have some  
25 potential for abuse. The fact that you extend it extends

1 the time period for some potential abuse, I will agree with  
2 that.

3 But I mean, I don't think -- I haven't seen an  
4 abuse of this rule and for the intention of this rule.  
5 Maybe you folks have, but I haven't.

6 Q. Are you familiar with the vintage of many of the  
7 confidentiality rules that exist in other states, when they  
8 were enacted?

9 A. Just some of them.

10 Q. They're pretty old, aren't they?

11 A. No, some of them have been updated fairly  
12 recently. I didn't bring -- I can give you a fuller copy  
13 of the documents that were sent to me, and some of the  
14 revisions have been more recently than -- within the last  
15 ten years.

16 Q. Really?

17 A. Yes, sir.

18 Q. That's interesting, because certainly times are  
19 different when you have a wildcat frontier. You can go out  
20 and sometime lease tracts a mile from you.

21 A. Yes, sir.

22 Q. You're familiar -- You're a landman --

23 A. Sure.

24 Q. -- you're familiar with plays as they develop,  
25 and the confidentiality rule has a specific purpose. You

1 can go out and lease lands based on the information that  
2 you pay for and gain for.

3 A. Uh-huh.

4 Q. It also -- It's kind of a relative thing. It can  
5 also be detrimental to economic development when all of a  
6 sudden one company starts withholding their logs, someone  
7 else does, you get to the point you get less wells drilled  
8 because of the way things are done in that basin.

9 A. I haven't seen that abuse, Mr. LeMay.

10 Q. Have you seen Alaska? I know you didn't give  
11 Alaska as an example.

12 A. No, sir, because quite frankly, you have to have  
13 the resources to put together these things, and somebody  
14 has to do it.

15 Q. Let me get on the resources. And this is the  
16 question I'd like to ask you, a specific question. What  
17 happened to dryhole money? What happened to bottomhole  
18 money? Is that ever requested and given on wildcat wells?

19 A. Yes, it is.

20 Q. For the information that you're talking about?

21 A. Yes, it is. And then that's compensation for the  
22 information that we've developed. That is compensation.

23 We haven't, to my knowledge, had any bottomhole  
24 contributions on our current play, but not to say that  
25 that's not a valuable tool, as well as the farmout or

1 purchasing the acreage. If they're willing to compensate  
2 us dryhole money to help spread our risk on these up-front  
3 costs, that is an approach, it has been used.

4 Q. But what we're exploring is ways for a company to  
5 be able to justify a highly risky economic venture like  
6 you're talking about. What you've brought to us is one  
7 aspect of it, the idea --

8 A. One aspect --

9 Q. -- that you have information you've paid for and  
10 should be kept confidential so it gives you a competitive  
11 advantage in the play --

12 A. Yes, sir.

13 Q. -- however big you want to define the play.

14 A. Uh-huh, yes, sir.

15 Q. And I will agree with you that as you drill a  
16 well it has implications beyond even the offsets,  
17 especially in what you're dealing with up in the northwest  
18 part of the state.

19 A. Most certainly.

20 Q. No one has seen a Pennsylvanian reef log in the  
21 middle of the Basin.

22 But some of these other things I question. I  
23 mean, would it be helpful if the Commission -- Because we  
24 have this when it comes to subpoenas. What truly is  
25 another party entitled to in a subpoena? Are they entitled

1 to the raw data, the interpretation?

2           Generally, we've ruled they're entitled to  
3 certain raw data, certainly not the interpretation. I  
4 mean, that's an artistic expression of whoever -- geologist  
5 wants to draw it up, and that shouldn't be something that  
6 someone has to give away. Maybe some of that raw data,  
7 because it was acquired on minerals, should be given -- I  
8 mean, that's an open question, what should be?

9           Logs are -- You can go either way with logs.  
10 Certain logs have been confidential. Dipmeters have been  
11 considered confidential.

12           A. Yes, sir.

13           Q. But when you drill a well, that log is probably  
14 the most valuable piece of information, I guess you gain  
15 from it, aside from some drill stem tests and cores, maybe?

16           A. It is.

17           Q. So that --

18           A. It's a very definitive piece of information.

19           Q. Very definitive.

20           A. Yes, sir.

21           Q. And how long that log could be kept  
22 confidential -- You might operate a system where if we went  
23 down and listed certain data and how long that data could  
24 be kept confidential, would that be --

25           A. You might decide to do that. However, as you're

1 well aware, we got information and logs are available today  
2 that weren't available ten years ago.

3 Q. Certain types of logs, you mean?

4 A. Yes, sir. And certain tools have been developed  
5 in the industry. I'm not sure that you want to limit  
6 yourself to that extreme. I mean, that is a consideration.  
7 We left it open for the purpose that the Division would  
8 have discretion in those areas, and it could recognize new  
9 technology when it came about.

10 Q. Well, there's the overriding question, what is  
11 considered proprietary? I mean, that seems to be a  
12 pervading issue all over. What is considered proprietary?  
13 And we've been struggling with it. Everyone else has too.

14 COMMISSIONER WEISS: I don't think so.

15 CHAIRMAN LEMAY: You don't think so?

16 COMMISSIONER WEISS: No, it's just time, it's  
17 just -- He wants leverage against whoever, trying to cut a  
18 deal. That's all it is.

19 COMMISSIONER BAILEY: And to broaden the scope  
20 and to limit the use in --

21 CHAIRMAN LEMAY: Uh-huh.

22 COMMISSIONER WEISS: I don't think proprietary --  
23 You're going to give it up in a year or three months or six  
24 months, you know.

25 Q. (By Chairman LeMay) Well, that issue comes up

1 with issuing subpoenas, I know, that that has --

2 A. Yes, sir.

3 Q. -- similar overlay to this, but not exactly.

4 A. But I think some of those times that that  
5 information gets subpoenaed for economic use. It's not to  
6 decide the case at hand or to decide a matter before the  
7 Commission, and that's what bothers me.

8 Q. I understand. I'm well familiar with the games  
9 that companies play.

10 A. Yes, sir.

11 Q. We see them. Our agency is used continually in  
12 the game-playing out there.

13 A. Yes, sir, I realize that.

14 Q. You know that there's regulatory one-upmanship  
15 that I think everyone in this room is familiar with.

16 A. Uh-huh.

17 Q. What we try and do is, as much as possible, keep  
18 that playing field level. And that's very trite, and what  
19 may be level for you may not be level for someone else.  
20 But you know, that's our role, I think, is to try and  
21 provide this level playing field.

22 A. Yes, sir.

23 Q. We struggle with these kind of questions in  
24 trying to provide it. Where we go from here is going to be  
25 a pretty interesting call. And I'd like to, before we

1 conclude this, get together with my fellow Commissioners  
2 and look at some of the options we can -- extending this  
3 hearing, ruling -- We could rule different ways on it,  
4 certainly. We have lots of options. You've brought the  
5 issue to us, and we need to address it.

6 A. Yes, sir, that was our purpose, to not only bring  
7 the issue to you; we feel there's an expanded issue that's  
8 coming to light these days that needs to be addressed in  
9 terms of the other data that's available, and we've wanted  
10 to give you a rule to work from, or our proposed rule that  
11 we think provides some flexibility to all parties  
12 concerned.

13 CHAIRMAN LEMAY: Well, I think you've done us a  
14 service in bringing the issue to light, certainly, because  
15 it needs to be discussed and it needs to be addressed.

16 Any other questions of the witness?

17 MR. KELLAHIN: No, sir.

18 CHAIRMAN LEMAY: Mr. Chavez?

19 FURTHER EXAMINATION

20 BY MR. CHAVEZ:

21 Q. Mr. Alexander, there's an issue of comparison  
22 between states, the information available and the rules.  
23 Since you've worked in several states, it was my  
24 understanding that -- from what we've heard from other  
25 operators also, that New Mexico is a good state to work in

1 because of the amount and the timeliness of the information  
2 that was available. Are you of that opinion?

3 A. Well, I think it is. I think New Mexico has done  
4 a good job in tracking its reserve base, and I think that's  
5 one of the areas that makes New Mexico a better area to  
6 work in. Some of the other states do not have the reserve  
7 base information that New Mexico has. And so I do believe  
8 that New Mexico, through its regulatory processes, has made  
9 a very workable environment; I would agree with that.

10 Q. One of the issues that still concerns me is the  
11 issue of the possibility of waste under the conservation  
12 definition that could include minerals that -- oil and gas  
13 that isn't developed, that could otherwise have been  
14 developed, that's left in the ground through different  
15 types of practices.

16 Under your proposal it would appear that there  
17 might be greater potential for waste underground because  
18 information is not available that would allow operators to  
19 develop or to make the right judgments they need to on  
20 their oil and gas minerals. How would you --

21 A. I don't think so. You would even have the  
22 situations where an operator might be so small, even if he  
23 knew all the information that he had, he couldn't develop  
24 that property, he doesn't have the wherewithal to do that.  
25 That invites that kind of an operator to do something with

1 his property. And I don't care whether he sells it,  
2 whether he farms it out, whether he retains the interest or  
3 he doesn't retain the interest. That's something that he  
4 should certainly investigate.

5 And we have seen it work to the advantage of  
6 those developments out there, because when you can share in  
7 these high-risk ventures you can get more parties involved  
8 in it, you can actually get more work done, you can get  
9 more wells drilled.

10 So I don't see a waste issue here at all. I  
11 think that's -- You know, the offset operator has decisions  
12 to make. He can decide not to drill any well and thereby  
13 potentially create waste for his minerals that he may own.  
14 He may decide to participate with the parties that are  
15 developing in a given area and share the risk and get that  
16 information developed. He may decide to wait a certain  
17 amount of time after the other parties have done the work,  
18 ride them down -- You know, it's the old story, ride them  
19 down and then assume any risks that remain that he will  
20 take on himself.

21 However, at that point in time his risks are  
22 greatly reduced because he already knows quite a bit about  
23 the offset well, and he's not in the same ballpark, he's  
24 not on a level playing field with the people that  
25 originally developed the properties. His risk has already

1     been substantially reduced.

2             So I don't see a waste issue here.

3             Q.     With his risk reduced, isn't it more likely that  
4     he'd make a better decision as to whether or not to develop  
5     the oil and gas properties that he has?

6             A.     With his risk reduced?

7             Q.     Yes.

8             A.     Well, it would lead him -- I mean, if he knew  
9     certain information or all of the information, it does  
10    reduce his risk.

11            Q.     The issue of correlative rights really doesn't  
12    start to surface, many times, until a well starts  
13    producing, actually, and one of the ways that correlative  
14    rights could be protected, probably, would be to withhold  
15    producing a well, so even the production information  
16    wouldn't be available.

17            A.     At some point would there be a problem with  
18    allowing a release of information within a certain time  
19    limit after a well starts production, or at the time that a  
20    well starts production, so that the offset operators would  
21    have the opportunity to have the information at that time,  
22    to start assessing whether or not they may be impacted by  
23    production?

24            A.     Well, I mean, if the well is produced, we are  
25    required to file production reports on it, so that

1 information is available.

2 Now, if an operator -- and I suppose it is done,  
3 and I suppose it's done for legitimate reasons. If an  
4 operator wants to produce a well at reduced volumes for any  
5 reason -- it could be mechanical, it could be reservoir, it  
6 could be competitive advantage -- but if that operator is  
7 reducing the production from that well, then you're also  
8 reducing the correlative-rights problems because you're not  
9 creating drainage.

10 So you know, I don't think there's a correlative-  
11 rights problem in terms of drainage to the offset operators  
12 under those conditions either.

13 Q. Would you be opposed to some type of a  
14 requirement that regardless of the time that was granted  
15 for confidentiality, that once a well starts producing then  
16 the information could be released?

17 A. No, sir, I -- I mean, I believe that the correct  
18 application of this is addressed in the confidentiality  
19 rule and for the specific period of time, because what you  
20 would be doing is, you would be circumventing -- to a  
21 greater or a lesser degree, you would be circumventing the  
22 rule where an operator would like to keep a log or other  
23 information confidential.

24 Now, are you talking about a termination of the  
25 confidentiality status for all information filed, or just

1 -- the production reports are already filed.

2 Q. That's right.

3 A. I mean, that's not confidential.

4 So I think that would really circumvent the true  
5 nature or the reason why somebody would want that  
6 information held confidential.

7 Q. Going to the questions that Commissioner Bailey  
8 asked, do you see the State Land Office as any other  
9 leaseholder, as far as concerns access to confidential  
10 information?

11 A. In terms of selling their oil and gas leases, or  
12 are they entitled to confidential information that's been  
13 developed by other parties?

14 Q. I just was asking if you consider them as the  
15 same status as any other land owner, as far as whether or  
16 not they're entitled to confidential information from a  
17 well which offsets some state minerals.

18 A. Is that for regulatory purposes you're asking me,  
19 or for speculative purposes, for selling oil and gas  
20 leases?

21 Q. Just for the application in this rule. They  
22 would not be -- what I'm asking is if -- as any other lease  
23 holder or land owner offsetting an exploratory well, they  
24 wouldn't be entitled to this information. As I would see  
25 and interpret the rules right now, if somebody from the

1 State Land Office would call me for information that I had  
2 that was confidential --

3 A. Oh, I understand your point.

4 Q. -- my idea is that, no, they wouldn't get it;  
5 it's OCD information, not State --

6 A. Yes, sir, I understand your question, and that is  
7 the current basis of the rule, and we are not recommending  
8 changing that status.

9 MR. CHAVEZ: Okay, thank you.

10 CHAIRMAN LEMAY: Additional questions of the  
11 witness? If not, he may be excused.

12 Thank you, Mr. Alexander.

13 THE WITNESS: Yes, sir.

14 CHAIRMAN LEMAY: I'd like to kind of huddle with  
15 my cohorts here and see where we go from here.

16 COMMISSIONER WEISS: Well, we've got the Cinco,  
17 though.

18 CHAIRMAN LEMAY: Oh, you have a statement to  
19 read --

20 MR. GALLEGOS: Yes, sir.

21 CHAIRMAN LEMAY: That will be after -- Let's hear  
22 the statement now; I think that may be the best, if you  
23 would, Mr. Gallegos --

24 MR. GALLEGOS: All right.

25 CHAIRMAN LEMAY: -- and then -- because we don't

1 want to preclude whatever you have to say in some of our  
2 discussion.

3 MR. GALLEGOS: I can keep it brief.

4 CHAIRMAN LEMAY: Well, that's fine, no, please --  
5 please do, as long as you want.

6 MR. GALLEGOS: Okay.

7 CHAIRMAN LEMAY: We don't require oath for  
8 statements but...

9 MR. GALLEGOS: All right.

10 Mr. Chairman, members of the Commission, I think  
11 the -- a lot of the industry and practical issues have been  
12 touched on and have been brought out by your questioning  
13 and that of Mr. Chavez, so what I think I might be more  
14 helpful in doing is addressing some of the technical legal  
15 questions that I think are also important that you'll want  
16 to think about.

17 I'm not going to read my statement because it's  
18 before you, we've marked it as exhibit, and I'd just as  
19 soon shorten this as much as we can.

20 But I would like to refer you to the second page  
21 of the statement, because we have a side-by-side  
22 presentation of the present rule and Burlington's proposed  
23 rule, and discuss with you what I think are some of the  
24 technical problems. It's almost as though Burlington wants  
25 to shoot a quail with a cannon here in the way they've

1 approached the drafting of the proposed rule.

2 Let's look at what the present rule really does.  
3 First of all, it says that the operator files a C-105, and  
4 then, with each copy, a summary of all special tests  
5 conducted on the well, including drill-stem tests, and one  
6 copy of the logs. That's all that's required.

7 And I suggest to you, probably that rule came  
8 about in connection with the statutory provision that  
9 you'll find at 70-2-12, subparagraph B(3), which is setting  
10 out various authorities of the Commission, and says among  
11 them, the Commission purpose is to, and I quote, require  
12 reports showing locations of all oil or gas wells and for  
13 the filing of logs and drilling records or reports.

14 So if you look at the statute and you look at the  
15 present rule, it's talking about information gained from  
16 drilling a well. It is not talking about what information  
17 did you rely on to decide what your prospect would be,  
18 where you were going to drill or your target formation, if  
19 you got that from your astrologist or you got it from your  
20 3-D seismic geophysicist. Neither the statute nor the rule  
21 speaks to that, and yet we have heard most of the  
22 discussion of Burlington here raise concerns about its  
23 geophysical and geological information by which it picks  
24 the prospect.

25 One has to ask, why does Burlington, when the

1 rule doesn't require it now and the law doesn't speak to  
2 that, why does Burlington want to file this information and  
3 then put the cloak of secrecy over it? It doesn't have to  
4 be filed now, only the information concerning what you gain  
5 from drilling the well.

6 Now, because that information is required under  
7 1105.A, 1105.C then provides a certain period of  
8 confidentiality. And note the time periods, because it is  
9 not necessarily a 90-day period. The filing has to be  
10 within 20 days following completion of the well. The 90  
11 days runs from the date of completion of the well. So  
12 theoretically and probably, you're really only talking  
13 about a 70-day period in practicality.

14 But the rule is specific and it sets forth so  
15 that anybody who's trying to follow it knows when your time  
16 periods run, when they start running and when they end.

17 In addition, the present rule, which I submit is  
18 well drafted and well thought out, contains a very  
19 important proviso that permits this body or its Examiners  
20 or the Division to hold hearings and be able to have this  
21 information available and, of course, in the case of a  
22 court of law, for it to be available.

23 That provision, I suggest -- and my statement  
24 refers the Commission and its attorney to various portions  
25 of our statute, both the Oil and Gas Act and the Open

1 Meetings Act and the Administrative Procedure Act -- it all  
2 suggests why you need to have that in there, or else you've  
3 just hog-tied yourself as to how you can go about having an  
4 effective hearing process if this information can be kept  
5 secret by fiat of a private party who decides it cannot  
6 come out in any place or any event.

7 And I suggest there was no real explanation by  
8 Burlington as why that proviso has been left out, other  
9 than to say something about, well, we're worried about  
10 somebody wanting this information in the hearing.

11 But you have to have a record, you have to make  
12 your decision on the relevant evidence, and that has to be  
13 available for judicial review.

14 What does Burlington's rule do -- And, you know,  
15 apart from the industry considerations that you've talked  
16 about, we're dealing, I suggest, with a very inartful  
17 attempt at rewriting the rule.

18 The first paragraph, the first paragraph  
19 literally says that anybody appearing before the Commission  
20 can classify anything as confidential information, anything  
21 can be marked confidential information. It's not what's  
22 required to be filed, it's not technical data. Anything.

23 So you have one broad category of information  
24 that, just by the discretion, not of the Commission, not of  
25 a governmental body, but of a private party can become

1 confidential information.

2           And then you have another category that doesn't  
3 necessarily even speak to whether the party marks it as  
4 confidential or decides it should be confidential, but  
5 because it is a trade secret, proprietary or other  
6 confidential information, it shall be withheld by the  
7 Division. How does the Division know to make that  
8 decision? It doesn't.

9           The second paragraph requires, evidently, the  
10 Commission to make that decision and puts the burden on you  
11 to decide if this is a trade secret.

12           And then you have a 90-day period. You don't  
13 know when it starts running, unlike the present rule which  
14 is very clear. Ninety days from when? Ninety days from  
15 completion of the well? We don't know. Ninety days from  
16 when it appears at the Commission offices? We don't know.  
17 Ninety days from when the Commission decides it's  
18 proprietary or confidential? Nobody knows. How can you  
19 enforce such a rule?

20           Basically what this does is, it completely  
21 expands the coverage of Rule 1105.C. It at least arguably,  
22 and I think clearly, contains two separate confidentiality  
23 provisions, and it completely eliminates the important  
24 saving provision of 1105.C, the proviso that I think is  
25 essential for you to be able to have effective public

1 hearings and for there to be judicial review of those  
2 hearings.

3           And I think the danger is that if this were -- if  
4 this became the rule, it would not be just a matter to be  
5 applied to a particular situation that you've heard from  
6 Burlington, but virtually any applicant, and I think  
7 frequently many applicants would mark much of their  
8 information confidential, it would become a practice and  
9 everybody would sort of say, Well, why not? You know,  
10 somebody else did it, Producer X down in Lea County does  
11 it, I'm going to do it because we're competitors. And  
12 pretty soon I think your hands are tied as to being able to  
13 effectively adjudicate.

14           At my statement at page 5, I point to certain  
15 provisions of the Oil and Gas Act concerning the subpoena  
16 powers of the Commission and the Division, the contempt  
17 powers of the Commission and the Division if somebody  
18 doesn't comply and produce records. And I think what you  
19 have is, you have at least an implicit suggestion of a  
20 policy of legislation governing this body for unqualified  
21 and complete disclosure. You certainly have nothing  
22 anywhere, in any section of the Oil and Gas Act, that  
23 speaks to confidentiality or that legislatively suggests  
24 that there should not be openness in disclosure.

25           And you are, after all, dealing with public

1 records. That invokes, of course, the Public Records Act,  
2 another provision that speaks to and requires access of the  
3 public to anything that's filed with a governmental agency.

4 We point out at page 6 how this rule lacks  
5 standards to be applied. There is no standard set forth  
6 for how the Commission is to decide under paragraph 2 that  
7 something is proprietary or a trade secret. That's a very  
8 technical area, and the courts wrestle with that all the  
9 time, as to what is proprietary and what is a trade secret.  
10 This rule makes no effort to set any standard for the  
11 Commission.

12 The rule makes no effort as to on what basis the  
13 90 days is to be extended to 180 days or another 90 days or  
14 another 90 days. Was it to be something that's rubber-  
15 stamped and automatic? There's no standard for that. And  
16 I don't believe you can rule-make, regulate, on that basis,  
17 with no standard to be applied that anybody then can  
18 question because of a failure to observe that standard.

19 We noticed in combing through the various  
20 statutes that relate to public bodies that although the New  
21 Mexico Administrative Procedure Act does not directly apply  
22 to the OCD, it has been said by the New Mexico courts that  
23 it's a general guideline for administrative law issues.  
24 And the APA does address this kind of question of  
25 confidential or privileged information.

1           And we point out the text of Section 12-8-15.G,  
2           which says when administrative agencies generally are faced  
3           with questions of withholding information on the basis of  
4           confidentiality or privilege, that under the Administrative  
5           Procedure Act the burden is on the party who invokes that  
6           confidentiality, not by just merely putting a stamp on it  
7           or throwing it in the lap of the Commission, but the burden  
8           is upon that party to establish the confidentiality and to  
9           go to the district court and do so, be determined by the  
10          district court of the county in which the requesting party  
11          resides upon application of that party. Again, I think,  
12          gives some indication of what the public policy of New  
13          Mexico is in regard to matters of the kind we're dealing  
14          with.

15                 At page 8 we discuss the necessity that I've  
16          already addressed of having an effective public hearing and  
17          making a record upon which judicial review can be  
18          conducted. And as your counsel knows, we now, once we get  
19          into the judiciary, then we deal with a new Supreme Court  
20          Rule 74, which says that judicial review depends on the  
21          complete record, which includes all papers and pleadings  
22          filed in the proceedings of the agency. How do you comply  
23          with that if certain papers that have been filed are to be  
24          withheld as confidential?

25                 So basically you have a very unusual situation of

1 a party coming forward and saying, we're not required to  
2 provide a good bit of this information presently. Neither  
3 the law nor Rule 1105.A requires it to be filed. But  
4 voluntarily we want to provide it and then hold it  
5 confidential.

6 A basic premise of law in this area of  
7 confidentiality is that when somebody voluntarily provides  
8 some information, you've waived confidentiality.

9 All in all, and to conclude my remarks, I think  
10 even if this Commission were minded to make some kind of  
11 change in the rule concerning the period of time for  
12 certain information to be confidential, the proposal by  
13 Burlington is entirely unworkable.

14 And if the Commission is going to make any change  
15 from what has been, obviously, a rule that everybody has  
16 lived with for decades, but if there's going to be any  
17 change, then we just suggest that one has to carefully  
18 weigh the policy of that and how that's done in comparison  
19 to the various statutory provisions that we've brought to  
20 your attention.

21 I'd be happy to answer any questions, but that  
22 completes my comments.

23 CHAIRMAN LEMAY: Thank you, Mr. Gallegos.

24 Are there any other comments, statements?

25 MR. KELLAHIN: Yes, sir, may I respond?

1           CHAIRMAN LEMAY: You may have -- Is this your  
2 wind-up?

3           MR. KELLAHIN: Yes, sir.

4           CHAIRMAN LEMAY: Okay.

5           (Off the record)

6           MR. GALLEGOS: May our -- the statement, marked  
7 Exhibit 1, be admitted?

8           CHAIRMAN LEMAY: Without -- Yes, it's part of the  
9 record, but let the record show that the statement of J.E.  
10 Gallegos in opposition to Burlington's Application, marked  
11 Exhibit 1, be admitted into the record. Without objection  
12 it will be so entered.

13           Any other statements, comments, questions?

14           You may conclude, Mr. Kellahin.

15           MR. KELLAHIN: Thank you, Mr. Chairman.

16           The purpose of the Application was not to give  
17 you a finished work product. It was to provide a forum to  
18 engage the Commission in a discussion about this particular  
19 topic and to present it to you in the broadest possible  
20 way. We obviously have accomplished that purpose.

21           The current rule that you have, 1105, I've  
22 attempted to search to figure out when and where that rule  
23 came from. I terminated my search when I got back to 1950  
24 and found it adopted in the general rule book back in 1950.  
25 I have difficulty searching your records beyond that point,

1 and I will continue to see if I can figure out when this  
2 current rule was enacted in the form you now have it, but  
3 I've traced it back to 1950.

4 The purpose of this Application was to bring this  
5 general topic before you so that you could give us some  
6 guidance or you could decide among yourselves how to handle  
7 the topic of confidentiality and trade secrets, if you  
8 desire, in a global way. We did not presume to suggest to  
9 you the standards at this point, we did not presume to  
10 narrow it to a specific item.

11 We considered this the commencement of a  
12 rulemaking process that we engage on before this Commission  
13 where this matter is continued, debated, discussed and,  
14 with your guidance, we can either go into large areas of  
15 review or we can simply talk on the very narrow, limited  
16 issue of this case.

17 One thing you can do is, you could debate this  
18 strictly on the narrow issue of how much more time is  
19 reasonable with regards to the confidentiality of the logs.  
20 If you choose to do so, you may do so within the context of  
21 this case.

22 If you choose to broaden it beyond that topic,  
23 then you have a forum in which you can ask us, the  
24 industry, for further comment, you can ask us with your  
25 guidance to frame the standards for making judgments for

1 the Director and the Division on how to handle these issues  
2 as they come before you, or you could choose not.

3 Mr. Gallegos points to the last portion of 1105.C  
4 with regards to this proviso business concerning  
5 confidentiality. Quite frankly, I looked at that, studied  
6 it, and I can't see how that adds or subtracts anything  
7 from your other regulatory obligations and statutory  
8 responsibilities. That adds nothing in my mind.

9 If I am coming before your regulators and  
10 maintaining the confidentiality of data, that is in a  
11 different forum and decided within the context of that  
12 adjudication. The presence or absence of that sentence  
13 gives me no comfort at all.

14 When I drafted this suggestion I took it out  
15 because I didn't think it added or subtracted anything to  
16 the substance of that rule or to your efforts to maintain  
17 and comply with the statute.

18 You may disagree with me. You have your own  
19 counsel. It's worth debating. What does it mean? Do we  
20 need it here? Does it serve any purpose?

21 We've broadened the scope of the debate so the  
22 Land Office can consider if they like using the regulatory  
23 process of the Division, the Division Rules, to access data  
24 that they use to satisfy their own jurisdictional  
25 responsibilities.

1           Perhaps the time has come for the Land Office to  
2 consider a confidentiality rule that the BLM enjoys, where  
3 they can require confidential data submitted and to be held  
4 confidential so they can analyze it for their own purpose.  
5 Perhaps the time has come for that. If you choose not to  
6 do that, that's your choice. But here is a forum for that  
7 discussion.

8           We have made no effort to analyze for you a  
9 standard for the 90-day basis of continuation. If you  
10 decide that's worthy of discussion, we can do that for you.

11           You may decide that there is a unique criteria  
12 for exploratory wells that sets them apart to be treated  
13 differently. You currently treat exploratory wells in a  
14 different way. They get bonus allowables if they're oil  
15 wells. They're treated special ways.

16           You may think that in order to encourage  
17 exploration we need to have a different criteria for  
18 confidentiality of the logs of an exploratory well for a  
19 period longer than you might have for development wells.  
20 That is a logical, reasonable policy decision to make, and  
21 if you choose to make that, give us some guidance and we  
22 can help draft the rules that accomplish that purpose.

23           At this point our intention was to do nothing  
24 more than to open this forum for discussion, because it  
25 continues to be an issue for us before your regulators when

1 we talk about seismic data.

2 If you decide that you like your regulators  
3 deciding those on a case-by-case basis, then strike that  
4 from the agenda of this case and we'll continue in that  
5 forum.

6 If you decide that you want to have guidance for  
7 the industry with regards to different time frames for  
8 filing information, let us know now so that we can work on  
9 that issue.

10 We're happy to work with the Commission, we're  
11 privileged to be before you often, we are here to help you  
12 with your rules.

13 Burlington has been a leader before the  
14 Commission in the last year, working on all your rule  
15 cases. We consider this to be a rule of importance. We  
16 have lots of rules that need to be attended to. We thank  
17 you for taking time to attend to this one.

18 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

19 Now it may be appropriate to huddle with my  
20 fellow Commissioners and Lyn to kind of decide where we  
21 want to go from here.

22 (Off the record)

23 CHAIRMAN LEMAY: Very short answer to a lot of  
24 discussion: We will take this case under advisement and  
25 leave the record open.

1           Thank you so much for your contributions,  
2 everyone. It was a contribution and there are some very  
3 interesting issues involved here.

4           More to come.

5           Thank you again.

6           (Thereupon, these proceedings were concluded at  
7 1:02 p.m.)

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## 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 Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL September 29th, 1997.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 14, 1998