

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:) CASE NO. 12,319
)
APPLICATION OF NEARBURG EXPLORATION)
COMPANY, L.L.C., FOR COMPULSORY POOLING,)
EDDY COUNTY, NEW MEXICO) ORIGINAL
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

February 3rd, 2000

Santa Fe, New Mexico

OIL CONSERVATION DIV
00 FEB 17 AM 9:02

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, February 3rd, 2000, 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.

* * *

I N D E X

February 3rd, 2000
 Examiner Hearing
 CASE NO. 12,319

	PAGE
EXHIBITS	3
APPEARANCES	4
APPLICANT'S WITNESSES:	
<u>C. MARK WHEELER</u> (Landman)	
Direct Examination by Mr. Carr	6
Cross-Examination by Mr. Bruce	16
Examination by Examiner Catanach	17
<u>JERRY B. ELGER</u> (Geologist)	
Direct Examination by Mr. Carr	18
Cross-Examination by Mr. Bruce	28
Examination by Examiner Catanach	30
DEVON WITNESSES:	
<u>CARLA WOOD</u> (Landman)	
Direct Examination by Mr. Bruce	34
Cross-Examination by Mr. Carr	45
Redirect Examination by Mr. Bruce	54
Recross-Examination by Mr. Carr	55
Examination by Examiner Catanach	55
<u>GAYLE RIGGS</u> (Geologist)	
Direct Examination by Mr. Bruce	57
Cross-Examination by Mr. Carr	64
Examination by Examiner Catanach	69
CLOSING STATEMENTS:	
By Mr. Bruce	72
By Mr. Carr	75
REPORTER'S CERTIFICATE	82

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	8	16
Exhibit 2	8	16
Exhibit 3	9	16
Exhibit 4	13	16
Exhibit 5	14	16
Exhibit 6	14	16
Exhibit 7	19	28
Exhibit 8	21	28
Exhibit 9	23	28
OCD Memorandum dated 4-5-95	75	-

* * *

Devon	Identified	Admitted
Exhibit 1	36	45
Exhibit 2	37	45
Exhibit 3	41	45
Exhibit 4	42	45
Exhibit 5	43	45
Exhibit 6	44	45
Exhibit 7	58	64
Exhibit 8	60	64

* * *

A P P E A R A N C E S

FOR THE DIVISION:

LYN S. HEBERT
Legal Counsel to the Division
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

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

FOR DEVON ENERGY CORPORATION (NEVADA):

JAMES G. BRUCE, Attorney at Law
3304 Camino Lisa
Santa Fe, New Mexico 87501
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 9:55 a.m.:

3 EXAMINER CATANACH: We'll call the hearing back
4 to order, and at this time we'll call Case 12,319.

5 MS. HEBERT: Application of Nearburg Exploration
6 Company, L.L.C., for compulsory pooling, Eddy County, New
7 Mexico.

8 EXAMINER CATANACH: Call for appearances in this
9 case.

10 MR. CARR: May it please the Examiner, my name is
11 William F. Carr with the Santa Fe law firm Campbell, Carr,
12 Berge and Sheridan. We represent Nearburg Exploration in
13 this matter, and I have two witnesses.

14 EXAMINER CATANACH: Call for additional
15 appearances?

16 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
17 representing Devon Energy Corporation, Nevada. I have two
18 witnesses to be sworn.

19 Also at this time, Devon has filed a counter-
20 application, which is actually set for the next hearing,
21 and we would ask that we be allowed to present testimony
22 regarding that application at this hearing, to prevent
23 further delay in this matter.

24 EXAMINER CATANACH: Do you anticipate having to
25 come back at the next hearing, Mr. Bruce?

1 MR. BRUCE: No.

2 EXAMINER CATANACH: Okay, can I get the witnesses
3 to stand and be sworn in?

4 (Thereupon, the witnesses were sworn.)

5 C. MARK WHEELER,

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

8 DIRECT EXAMINATION

9 BY MR. CARR:

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

11 A. C. Mark Wheeler.

12 Q. Mr. Wheeler, where do you reside?

13 A. Midland, Texas.

14 Q. By whom are you employed?

15 A. Nearburg Exploration.

16 Q. And what is your position with Nearburg
17 Exploration?

18 A. Senior landman.

19 Q. Mr. Wheeler, have you previously testified before
20 this Division?

21 A. Yes, I have.

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

25 A. Yes, they were.

1 Q. Are you familiar with the Application in this
2 case filed on behalf of Nearburg Exploration?

3 A. Yes, I am.

4 Q. And are you familiar with the status of the lands
5 in the subject area?

6 A. Yes, sir.

7 MR. CARR: We tender Mr. Wheeler as an expert
8 witness in petroleum land matters.

9 EXAMINER CATANACH: Any objection?

10 MR. BRUCE: No, sir.

11 EXAMINER CATANACH: Mr. Wheeler is so qualified.

12 Q. (By Mr. Carr) Would you briefly state what it is
13 that Nearburg seeks with this Application?

14 A. Nearburg seeks an order pooling all mineral
15 interests from the surface to the base of the Morrow
16 formation in the north half of Section 30, in Township 17
17 South, Range 27 East, Eddy County, in the following manner:
18 the north half for all formations or pools developed on a
19 320-acre spacing, including the Logan Draw-Morrow Gas Pool;
20 the northeast quarter for all formations or pools developed
21 on 160-acre spacing; the south half, northeast quarter, for
22 all formations or pools developed on an 80-acre spacing;
23 and the southeast, northeast quarter for all formations or
24 pools developed on 40-acre spacing.

25 Q. And to what well do you propose to dedicate these

1 spacing or proration units?

2 A. We will dedicate this to Nearburg's Logan Draw
3 Federal "30" Com Number 1 well, to be drilled at a standard
4 location in the southeast quarter, northeast quarter of
5 Section 30.

6 Q. Mr. Wheeler, let's go to what has been marked for
7 identification as Nearburg Exhibit Number 1. Would you
8 identify this exhibit and review the information thereon
9 for Mr. Catanach?

10 A. This is a land locator exhibit showing the
11 slightly irregular north half of Section 30. This is up
12 against the west side of the township, and so there's a
13 slight irregularity in the shape of the section. It's
14 slightly under 320 acres. It shows the proposed well
15 location of Nearburg's proposed Logan Draw "30" Fed Com
16 Number 1 and shows the ownership in the area.

17 Q. What is the status of the acreage in the north
18 half of Section 30?

19 A. The northwest quarter is fee, and the northeast
20 quarter is federal.

21 Q. And what is the primary objective in this
22 proposed well?

23 A. The Morrow formation and the Logan Draw-Morrow
24 Gas Pool.

25 Q. Let's go to Exhibit Number 2, and I would ask you

1 to refer to the exhibit and review the ownership and the
2 spacing unit for Mr. Catanach.

3 A. This is an ownership exhibit of the north half of
4 Section 30. It shows Nearburg with approximately 49.93
5 percent and Devon with approximately 50.07 percent. We own
6 the northwest quarter of the section, Devon owns the
7 northeast quarter. And because of the slight survey
8 variance, instead of it being 50-50 it's slightly
9 different.

10 Q. Is the south half of Section 30 currently
11 dedicated to a well?

12 A. Yes, sir, it's dedicated to the Yates Petroleum
13 Dos Equis Federal well.

14 Q. What percentage of the working interest is
15 voluntarily committed to the well you are proposing?

16 A. Approximately 49.93 percent.

17 Q. So the Nearburg interest is committed, the Devon
18 isn't?

19 A. That's correct.

20 Q. And Devon is the interest owner, the only
21 interest owner, subject to pooling in this matter?

22 A. Yes, sir.

23 Q. I'd ask you to refer to what is marked as
24 Nearburg Exhibit Number 3, and it is the large exhibit with
25 the clip on it in the back of the exhibit package. And I

1 would ask you to, by referring to this exhibit, summarize
2 the efforts that have been made by Nearburg to put this
3 acreage together and obtain the voluntary joinder of Devon
4 in the proposed spacing unit.

5 A. Yes, sir, this exhibit chronicles all the
6 correspondence between Nearburg and Devon. It also
7 includes some phone logs of some conversations that have
8 taken place since I began working at Nearburg in December.
9 It starts in September of 1998 when Nearburg requested the
10 term assignment from Devon.

11 Devon responded shortly thereafter, it was not
12 interested in granting a term assignment and asked that
13 Nearburg forward an AFE.

14 On January 22nd of 1999, Nearburg forwarded an
15 AFE at a location 1980 feet from the north line and 1650
16 feet from the east line. We offered to send an operating
17 agreement if Devon wanted to participate or to take a
18 mutually acceptable farmout if they did not.

19 We received no reply from Devon for approximately
20 two months, and we again, Nearburg again, contacted Devon
21 in writing and proposed acquiring a farmout on the
22 northeast quarter of Section 30, offering a 75-percent net
23 revenue interest delivered, and a proportionate third back-
24 in after payout.

25 Nearburg sent a new AFE in April of 1999. It was

1 amended because we had changed the production casing
2 string, made the well slightly more expensive. We also
3 sent a north-half-of-the-section joint operating agreement
4 for Devon's review at that time.

5 On May 13th of 1999, Devon executed Nearburg's
6 AFE, the original one, not the new one, but executed the
7 original one that was sent in January. They did not
8 execute an operating agreement at that time, but they made
9 no conditions on their participation except a compliance
10 with their well requirements, geologic well requirements.

11 During the summer of 1999, we were made aware
12 that Murchison was about to drill a well offsetting Section
13 30 in the northwest quarter of Section 29.

14 On September 14th of 1999, Nearburg withdrew its
15 AFE, and we were waiting on geologic review after the
16 Murchison well was drilled, and we had a small working
17 interest in the Murchison well. So we withdrew the AFE and
18 we stated that if, after that well was drilled, a well in
19 the north half of 30 was still warranted, we would furnish
20 a new AFE to Devon.

21 While we waited on the information from that
22 well, we received the information from a formation micro
23 log that we -- FMI tool that we paid for. We received that
24 information on November the 10th and started the review of
25 the information from that well, the Murchison well.

1 On November the 11th Devon faxed and mailed an
2 AFE to Nearburg for a Morrow well at the same original
3 location we had proposed.

4 We quickly completed our review of the FMI and
5 faxed and mailed back an alternate AFE at our location that
6 we're requesting now, which is 1650 feet from the north
7 line and 660 feet from the east line.

8 A few days later we forwarded a new operating
9 agreement. Basically, it was the same as the one that was
10 previously sent, same overhead rates and everything.

11 And then since that time we have had numerous
12 conversations about trying to get this matter settled.
13 Devon asked us to go along with their gas-balancing
14 agreements, which we agreed to. They've asked us on
15 several occasions to change our overhead rates to a lower
16 rate, they've told us on the phone that they've had no
17 problem with us operating or with our location, but we have
18 been unable to reach agreement with them at this time.

19 Q. And at this time, is it your understanding that
20 the two basic issues are who will operate and the location
21 of the well?

22 A. As of a conversation just about a week ago, I was
23 made aware that the issues related now are who will operate
24 and where the well will be drilled.

25 Q. In your opinion, has Nearburg made a good-faith

1 effort to put this acreage together and obtain the
2 voluntary participation of Devon in the proposed well?

3 A. Yes, sir, we have.

4 Q. Could you refer to what has been marked as
5 Nearburg Exhibit Number 4?

6 A. That's our AFE for the well, 1650 from the north
7 and 660 from the east.

8 Q. What are the totals set forth on the exhibit?

9 A. Dry hole \$417,508, completed well, \$721,310.

10 Q. Originally there was another AFE submitted on the
11 well, correct?

12 A. Yes, yes.

13 Q. That was the AFE that Devon executed; is that
14 right?

15 A. Yes, it was, in May of 1999.

16 Q. Are the costs as set forth on the AFE which is
17 marked as Exhibit Number 4 in line with what's been charged
18 or what is charged for similar wells in this area?

19 A. Yes, sir, they are.

20 Q. Have you made an estimate of the overhead and
21 administrative costs to be incurred while drilling the well
22 and also while producing it, if it is successful?

23 A. Yes, sir, we have reviewed the Ernst and Young
24 1999 well standard rates and have come up with a rate of
25 \$4168 during the drilling and \$424 per month during the

1 producing.

2 Q. Is a portion of the 1999 Ernst and Young survey
3 -- is that has been marked Nearburg Exhibit 5?

4 A. Yes, sir.

5 Q. And these rates are shown on the bottom of that
6 exhibit?

7 A. Yes, sir, they are.

8 Q. For a well at a depth of 5000 to 10,000 feet?

9 A. Yes, sir.

10 Q. And approximately how deep will the well be?

11 A. 9400 feet.

12 Q. So you're at the deep end of this range?

13 A. Yes, we are.

14 Q. You've recommended these figures be incorporated
15 into the order that results from this hearing?

16 A. Yes, I do.

17 Q. Does Nearburg also request that the overhead
18 figures approved by the Division be subject to and be
19 increased in accordance with COPAS guidelines applicable to
20 a well of this nature?

21 A. Yes, sir.

22 Q. Would you identify what has been marked as our
23 Exhibit Number 6?

24 A. This is the affidavit that was filed by your firm
25 on behalf of Nearburg for this hearing.

1 Q. And this confirms that Devon has been notified of
2 the Application in the hearing?

3 A. Yes, sir.

4 Q. Does Nearburg Producing Company, L.L.C., seek to
5 be designated operator of the proposed well?

6 A. Yes, we do.

7 Q. Does Nearburg have a gas contract available that
8 would cover the production from the well?

9 A. Yes, sir, we have other wells in the area, we
10 have an immediate connection and a good gas contract.

11 Q. Does Nearburg have a rig available to drill the
12 well?

13 A. Yes, sir, we currently have a rig under contract
14 from Peterson Drilling Company that we believe will be
15 available for this well around April 1st.

16 Q. How soon does Nearburg plan to drill the well?
17 April the 1st?

18 A. We'd like to drill it as soon as possible if that
19 rig becomes available prior to then and we've got this
20 matter settled, we would like to drill it as soon as
21 possible, but certainly no later than April 1st.

22 Q. Is Nearburg facing a lease expiration in the
23 area?

24 A. Yes, sir, we have a slight interest that's
25 expiring in mid-May in the northwest quarter.

1 Q. And for this reason, are you proposing an
2 expedited order?

3 A. Yes, sir.

4 Q. If you get an expedited order, will that enable
5 you to let the time frames that are required in a
6 compulsory pooling order run prior to spudding the well?

7 A. Yes, sir.

8 Q. Were Exhibits 1 through 6 either prepared by you
9 or compiled under your direction and supervision?

10 A. Yes, sir, they were.

11 MR. CARR: At this time, Mr. Catanach, we move
12 the admission into evidence of Nearburg Exhibits 1 through
13 6.

14 EXAMINER CATANACH: Exhibits 1 through 6 will be
15 admitted as evidence.

16 Mr. Bruce?

17 CROSS-EXAMINATION

18 BY MR. BRUCE:

19 Q. Just a couple of questions. Welcome back, Mr.
20 Wheeler.

21 A. Thank you.

22 Q. Does Nearburg have an approved APD for its
23 location?

24 A. No, sir, we do not. We have filed for that, but
25 we have not received an approved permit.

1 Q. One other thing I'm a little confused about. You
2 say you're pooling 160-acre and 80-acre and 40-acre zones,
3 but doesn't Devon own 100 percent of those?

4 A. Devon owns 100 percent of the northeast quarter,
5 yes, sir.

6 Q. So they would own anything 100 percent based on
7 those spacing units, would they not?

8 A. Yes, sir.

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

10 EXAMINATION

11 BY EXAMINER CATANACH:

12 Q. So the pooling of the 160, 80 and 40 is
13 unnecessary, in fact?

14 A. We have an interest in the northwest, obviously,
15 and would want to pool anything on 320s.

16 On the shallower I suppose that that would be
17 unnecessary, yes, sir, although the well will be drilled to
18 the Morrow.

19 Q. Right, for the 320 the pooling is necessary --

20 A. Yes.

21 Q. -- but for the 160, 80 and 40 it's not necessary?

22 A. That's correct.

23 EXAMINER CATANACH: Okay. I don't have any
24 questions for this witness.

25 MR. CARR: At this time we call Jerry Elger.

1 which is involved in this Application?

2 A. Yes, I have.

3 Q. And are you prepared to share the results of that
4 work with Mr. Catanach?

5 A. Yes.

6 MR. CARR: We tender Mr. Elger as an expert
7 witness in petroleum geology.

8 EXAMINER CATANACH: Any objection?

9 MR. BRUCE: No, sir.

10 EXAMINER CATANACH: Mr. Elger is considered
11 qualified.

12 Q. (By Mr. Carr) Mr. Elger, have you prepared
13 exhibits for presentation here today?

14 A. Yes.

15 Q. Let's go to what has been marked for
16 identification as Nearburg Exhibit Number 7. They're
17 marked in the upper left-hand corner. And I would ask you
18 first to identify the exhibit and review the information on
19 the exhibit for the Examiner.

20 A. Exhibit Number 7 is a production map in a portion
21 of Township 17 South, Range 27 East. It identifies the
22 proposed location in the north half of Section 30 and the
23 320-acre spacing unit.

24 The production is indicated by color coding.
25 Morrow producers have been indicated in red on this

1 display, Cisco producers in green, and there's one Atoka
2 producer indicated in orange.

3 Total performance of each well is indicated by
4 how much gas they've made, and each well has been indicated
5 whether they're either on active status or inactive status.

6 Q. Mr. Elger, if I look at this exhibit, can you
7 identify wells operated by Nearburg on this plat?

8 A. Yes. There are three wells -- actually four
9 wells that Nearburg operates. Three are Morrow gas
10 producers. The Trigg 29 well is located in the southeast
11 quarter of Section 29, the Chevron 32 is located in the
12 northeast quarter of Section 32, and immediately to the
13 east of that is the Exxon 33 well, which is the 1.05-BCF
14 well.

15 We also operate the San Andres well in the
16 southeast quarter of Section 32, which was drilled as a
17 Morrow test and plugged back to the San Andres.

18 Q. And it is the gas contract by which you sell
19 production from these wells that can be extended to add
20 additional gas from the well you are proposing?

21 A. That's correct.

22 Q. Nearburg also owns an interest in the new well as
23 it's indicated, immediately offsetting the proposed
24 location to the east; is that right?

25 A. That's correct.

1 Q. That's the Murchison well that we were -- that
2 Mr. Wheeler --

3 A. Yes, it is.

4 Q. -- was talking about?

5 Do you own an interest in the well due south, in
6 the south half of Section 30?

7 A. Yes, we do. We own approximately a 50-percent
8 interest in the Yates Dos Equis well, which was drilled in
9 the southeast southeast of Section 30.

10 Q. And is it the information that you have obtained
11 by paying your share of these wells that you have utilized
12 to develop the prospect in the north half of Section 30?

13 A. That is correct.

14 Q. Let's go to Exhibit Number 8. Would you identify
15 and review that, please?

16 A. Exhibit Number 8 is a net sand isopach map of the
17 upper "C", the "C" zone being the lower Morrow, and the
18 upper sand developed in the lower Morrow is the main target
19 for wells in this particular area.

20 Wells that are productive from the upper "C" pay
21 have been identified on this exhibit as red, with the net
22 feet of pay and the gross feet of total sand thickness
23 identified also by each well, the net porosity cutoff being
24 at 8 percent, based on the formation density cutoff
25 porosity.

1 Q. If we look at this exhibit, the location being
2 proposed by Devon is farther to the west, is it not?

3 A. Yes, it is.

4 Q. If I look at the location that is being proposed
5 by Nearburg, the exhibit indicates "FMI interpretation:
6 Upper 'C' sand thickening direction." Is that what the red
7 -- basically, the red arrows indicate?

8 A. That is correct.

9 Q. Could you explain what is an FMI interpretation?

10 A. An FMI tool is the tool that is run by
11 Schlumberger, and it's a very high-resolution resistivity
12 tool capable of identifying very subtle sedimentary
13 structures, internal structures within sandbodies. It can
14 be used for that purpose. And those, in turn, can be used
15 to identify or interpreted as to where you are within a
16 particular sandbody, whether you're -- current direction --
17 it uses current direction indicators, thickening direction
18 indicators from the high-resolution data that's obtained.

19 Q. Was it the information you obtained from this FMI
20 interpretation, was it that data that caused you to move to
21 the new well location?

22 A. Yes, sir, that in combination with the results of
23 the Murchison Potter Number 2 well.

24 Q. And you own an interest in that well?

25 A. Yes, we do.

1 Q. And did anyone else share in the costs of
2 acquiring this FMI interpretation?

3 A. No, they did not.

4 Q. Let's go to Exhibit Number 9. Will you identify
5 and review that for Mr. Catanach?

6 A. Exhibit Number 9 is a stratigraphic cross-section
7 of the Morrow interval in the surrounding wells to the
8 proposed spacing unit.

9 On the far left side of the cross-section is the
10 well that Nearburg participated in with Yates in the
11 southeast southeast of Section 30, the Dos Equis well.

12 Q. And there's map in the lower portion of the
13 exhibit, correct?

14 A. That's correct.

15 Q. All right.

16 A. That well is productive from this pay sand, the
17 upper "C" zone.

18 The Murchison Potter Number 2 well, which is the
19 immediate offset, east offset to the proposed well, is the
20 next log, and a remnant of the upper "C" channel is
21 identified on there with the yellow shading. There's
22 approximately ten feet of sand with four feet of porosity
23 that meets the cutoff specifications. That sand was drill-
24 stem tested and had a slight show of gas. It was
25 subsequently perforated and production-tested, which

1 indicated it to be noncommercial quantities of gas, and the
2 well was plugged back for a completion attempt in the
3 Cisco.

4 The next two wells, to the right side of the
5 cross-section, are wells that were drilled by Mesa
6 Petroleum back in the 1970s. Both of those wells were
7 completed from sands in the upper "C". The well on the --
8 The Yates Federal Com 1Y is the southernmost of the two
9 wells.

10 If you'll notice that the equivalent of the Dos
11 Equis sand, the upper "C" sand that was encountered in the
12 Potter 2 and the Dos Equis well, is very poorly developed,
13 has very poor porosity. It was perforated along with the
14 middle "C" sand and a "B" zone sand, all of which showed,
15 indicated very poor performance. The cumulative production
16 from that particular well since 1979 is 180 million cubic
17 feet of gas, which is really noncommercial.

18 And the immediate north offset to that is the
19 well log on the far right, the Mesa Peterson Fed Com Number
20 1. That well was completed from two "C" zone sands. Our
21 interpretation is that the majority of the gas production
22 from that well came from the upper "C" interval. There's a
23 tremendous difference in the resistivity profiles of the
24 two sands that have been completed in that well, with a
25 significant invasion profile indicated on the upper sand or

1 the upper "C" equivalent to what our target is. And
2 therefore we've concluded that the majority of the over 5
3 BCF, 5.8 BCF that's been produced from that well, has been
4 from that upper "C" interval.

5 Those wells were drilled in fairly close
6 proximity to each other, so you went from a scenario where
7 you were -- situation where you had very poor -- you had a
8 remnant of the sand but fairly poor reservoir quality to a
9 very good reservoir situation, in the approximate distance
10 that we're proposing to drill west of the Murchison Potter
11 2 in Section 29.

12 Q. In your opinion, does moving farther than you're
13 proposing, does that increase the risk of intersecting the
14 offsetting Morrow channel?

15 A. Yes, it does.

16 Q. Is it fair to say that the farther from the
17 Potter well you move, the more unpredictable this entire
18 reservoir becomes?

19 A. That's correct. There's no well control anywhere
20 in Section 19, there's no well control other than the Dos
21 Equis well in the far southeast corner of Section 30.

22 Q. And your interpretation of the reservoir in this
23 area is based on the well control that you've reviewed and
24 the information from the FMI tool; is that correct?

25 A. That is correct.

1 Q. Are you prepared to make a recommendation to the
2 Examiner concerning the risk penalty that should be
3 assessed against Devon if they do not participate in the
4 well?

5 A. Yes, sir.

6 Q. And what is that?

7 A. That would be 200 percent.

8 Q. In your opinion, Mr. Elger, is there a chance
9 that you could drill a well at this location which would
10 not be a commercial success?

11 A. Yes, sir.

12 Q. Could you summarize for Mr. Catanach Nearburg's
13 geological conclusions?

14 A. Our conclusions are that based on the thickness
15 and near proximity that our interpretation is of the upper
16 "C" sand and the Murchison Potter 2, we would opt to stay
17 fairly close to that, because the FMI indicator is
18 indicating a thickening of that particular sand to the
19 west, towards our drill site.

20 And we would be hesitant to drill farther to the
21 west than where our current -- the proposed location is,
22 for fear of moving onto the other side of the channel,
23 basically, and ending up with another Potter-like
24 reservoir.

25 Q. Nearburg has drilled numerous other deep wells in

1 southeastern New Mexico; is that not correct?

2 A. That is correct.

3 Q. In fact, in 1999 Nearburg may have been the
4 company that drilled more wells to approximately 10,000
5 feet and beyond than any other operator; is that fair to
6 say?

7 A. That's very fair to say.

8 Q. In your opinion, will approval of Nearburg's
9 Application and the drilling of the well at Nearburg's
10 proposed location be in the best interest of conservation,
11 the prevention of waste and the protection of correlative
12 rights?

13 A. Yes, it will.

14 Q. In your opinion, if the Devon application is
15 granted and a well drilled where they proposed, is there a
16 chance that reserves, in fact, will be left in the ground?

17 A. Yes, there is.

18 Q. How soon does Nearburg plan to spud the well?

19 A. We would like to drill it ASAP.

20 Q. Were Exhibits 7 through 9 prepared by you or
21 compiled under your direction?

22 A. Yes, they were.

23 MR. CARR: At this time, Mr. Catanach, we move
24 the admission into evidence of Nearburg Exhibits 7 through
25 9.

1 EXAMINER CATANACH: Exhibits 7 through 9 will be
2 admitted as evidence.

3 MR. CARR: That concludes my examination of Mr.
4 Elger.

5 EXAMINER CATANACH: Mr. Bruce?

6 CROSS-EXAMINATION

7 BY MR. BRUCE:

8 Q. Mr. Elger, just to make sure, the well in Section
9 29 -- what is it, the Potter Number 2?

10 A. That's correct.

11 Q. That is noncommercial in the Morrow?

12 A. That is correct.

13 Q. What's the current status of that well? Do you
14 know?

15 A. Murchison was attempting to complete the well
16 from the Canyon or the Cisco formation, the Logan Draw-
17 Cisco-Morrow Pool, or the Cisco Pool, and I don't believe
18 they were successful.

19 So I believe the well has not been plugged but is
20 currently shut in.

21 Q. Nearburg was an interest owner in that well?

22 A. Yes, sir.

23 Q. Was it a consenting or nonconsenting party in
24 that well?

25 A. In the --

1 Q. In the Potter Number 2.

2 A. In the completion or the drilling? We
3 participated in the drilling of the well.

4 Q. Okay.

5 A. And we --

6 Q. -- nonconsented in the completion?

7 A. That is correct.

8 Q. Now, looking at your Exhibit 8, you show what?
9 About 25 feet at your location, 25 feet of net sand?

10 A. The contour interval is five feet. We're
11 showing --

12 Q. Or maybe 30 feet, excuse me?

13 A. Yes, sir, 30 feet.

14 Q. And based on this map, wouldn't Devon's location
15 also have about 30 feet?

16 A. No, I believe they'd be farther to the west than
17 the 30-foot -- the western edge, the boundary of the 30-
18 foot contour. I believe they'd be more in the 15-to- --
19 between 15 and 20 foot.

20 Q. And again, the FMI you talked about -- What is
21 that short for, by the way?

22 A. Formation micro-imaging tool.

23 Q. Those results have not been shown to Devon?

24 A. No.

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

EXAMINATION

1
2 BY EXAMINER CATANACH:

3 Q. Mr. Elger, what was your original location?

4 A. The original location was 1980 from the north and
5 1650 from the east line.

6 Q. So you had your original location further to the
7 west?

8 A. About 1000 feet farther west.

9 Q. Okay. That FMI log was run in the Potter Number
10 2 well?

11 A. That's correct.

12 Q. And you had access to that, being an interest
13 owner?

14 A. Actually, we paid for it and ran it. Based on
15 the operating agreement, we had the right to run whatever
16 surveys we thought would be necessary. Yates and Murchison
17 were both involved in that well, and neither one wanted to
18 pay for their share.

19 So at Nearburg's sole expense, we ran that
20 particular too, even with a very small working interest,
21 just to have access to the information indicating -- giving
22 us comfort factor that the sand did, indeed, thicken to the
23 west rather than to the east.

24 You could have applied another interpretation to
25 this and actually had the Potter well on the western side

1 of the channel, so the channel could have run down the
2 middle of Section 29. We wanted to verify with this tool
3 that the Potter well was indeed situated on the eastern
4 side of the channel and that the sand appeared to be
5 thickening to the west, and that's what the tool did tell
6 us.

7 Q. Okay, the tool told you that the sand thickened
8 as you moved to the west?

9 A. That's correct.

10 Q. It doesn't tell you what rate the sand thickens?

11 A. No.

12 Q. So tell me why you chose the current location.

13 A. Again, I referenced the cross-section indicating
14 the two Mesa wells and the fact that the distance between
15 those two wells is approximately 1000 feet, and you went
16 from a situation in the Mesa Yates Fed Com Number 1Y, which
17 has a remnant of the upper "C" sand very similar to what
18 was encountered by Murchison in the Potter 2, to a very
19 productive, very prolific sand with thicker net porosity in
20 the Mesa Peterson well.

21 Just using that relationship that is observed in
22 those wells and applying it to where the channel is,
23 relative to the Potter 2, we're moving about the same
24 distance from the Potter that the Peterson was from the 1Y.

25 Q. The well in the southeast quarter of Section 30,

1 is that a commercial well?

2 A. Yes.

3 Q. And you've shown that to have encountered
4 somewhere between 15 and 20 feet of sand?

5 A. 27 feet of gross sand, 15 feet of greater than 8
6 percent.

7 Q. So it's possible, in your opinion to drill a
8 commercial well with 15 feet of net sand?

9 A. Yes, that's true. But the maximum recovery is
10 going to be, obviously, from the maximum thickness or
11 reservoir height. Therefore we think we can -- with the
12 interpretation we've applied here, encountering even a
13 thicker than 15 feet of sand, we can recover greater
14 reserves.

15 There are other -- where the FMI is used -- OXY
16 has used the FMI to a fairly high degree in this same
17 township and has gone from situations similar to the Potter
18 Federal Number 2 where you encounter just a remnant of a
19 sand, and instead of drilling a new well 1000 feet away,
20 they've actually sidetracked wells 300 feet from where
21 they're encountering remnants of sands and noncommercial
22 types of reservoirs, to where they were encountering very
23 commercial reservoirs in a distance of 300 feet.

24 We're proposing a 1000-foot offset, and I think
25 if you look at the Devon location even farther to the west,

1 I think there's a high possibility of moving out of the
2 center of the channel and moving over to the western side
3 of the channel. These channels really are not that wide.

4 Q. Mr. Elger, in the process of your negotiations
5 with Devon, would it not have been helpful to share this
6 information with them?

7 A. They -- I don't believe they ever asked for the
8 information.

9 (Off the record)

10 EXAMINER CATANACH: They did?

11 MR. WHEELER: They did recently, yes, sir.

12 Q. (By Examiner Catanach) Are there any other
13 besides the upper "C", are there any other potential
14 producing sands, in your opinion, at this location?

15 A. You can have additional sands develop. As you
16 can see on the cross-section, in the Mesa Peterson well
17 there's a kind of a middle "C" sand that's developed.

18 One of the reasons I concluded most of the gas,
19 again, was from the upper sand, however, in that well, was
20 that you have a sand that almost looks identical to it and
21 that was encountered in the Yates Fed Com 1Y, and yet when
22 it was completed from that sand, it was noncommercial from
23 all of the sands in that particular well.

24 The conclusion, again, points very strongly that
25 most of the gas is out of the upper "C" sand in that well.

1 Again, if you compare the production map with the
2 isopach map, you'll see that the majority of the wells,
3 productive wells out here, are from the upper "C". The
4 well in 32, the well in 33, our well in 29, the commercial
5 well in the north half of 20, there's a well in the
6 southeast of 30 -- They're all upper "C" completions.

7 EXAMINER CATANACH: I have nothing further of
8 this witness.

9 Any other questions?

10 MR. CARR: That concludes my examination of Mr.
11 Elger, and that concludes our presentation.

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

15 DIRECT EXAMINATION

16 BY MR. BRUCE:

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

18 A. Carla Wood.

19 Q. And where do you reside?

20 A. Oklahoma City.

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

22 A. I'm a landman at Devon Energy Corporation.

23 Q. Have you previously testified before the Division
24 as a petroleum landman?

25 A. Not before this Division.

1 Q. Would you summarize your educational and
2 employment background for the Examiner?

3 A. Yes, I graduated from OU in petroleum land
4 management program in 1988. Prior to that I did field
5 landwork, in 1981, from 1981 to about 1988. I went to work
6 with Conoco for six years from 1988 to 1994. I worked the
7 San Juan Basin with Conoco in Michigan and various other
8 areas. And from 1994 to 1997 I worked with Enron Oil and
9 Gas, and I started work at Devon in 1997.

10 Q. Are you familiar with the land matters involved
11 in this Application?

12 A. Yes.

13 Q. And does your area of responsibility include
14 southeast New Mexico?

15 A. Yes.

16 MR. BRUCE: Mr. Examiner, I'd tender Ms. Wood as
17 an expert petroleum landman.

18 EXAMINER CATANACH: Any objection?

19 MR. CARR: No objection.

20 EXAMINER CATANACH: Ms. Wood is considered
21 qualified.

22 Q. (By Mr. Bruce) Briefly, what does Devon Energy
23 seek in its case?

24 A. We seek an order pooling the north half of
25 Section 30, 17 South, 27 East, to the base of the Morrow

1 formation for all pools or formations spaced on 320 acres.

2 Q. Would you refer to your first exhibit and briefly
3 identify that for the Examiner?

4 A. Exhibit 1 is a land plat showing the -- The red
5 outline is the unit outline for the spacing unit of the
6 Logan Draw 30 Fed Com Number 1 well. The acreage shaded in
7 yellow is Devon's interest. It also shows the original
8 location proposed at 1980 feet from the north line and 650
9 feet from the east line.

10 Q. And that's Devon's location in this area?

11 A. Yes.

12 Q. And it also has Nearburg's proposed location on
13 here?

14 A. Yes, it does.

15 Q. Okay. And again, just briefly, what is the
16 leasehold ownership in the well unit?

17 A. The northeast quarter is a federal lease, and
18 Devon owns that, all rights in that lease, 100 percent.
19 The northwest quarter is owned by Nearburg and Yates, and
20 I've been told that Nearburg has a farmout from Yates. I
21 haven't seen it, but I believe that to be the case.

22 Q. And again as to the pooling, the only rights
23 you're seeking to pool are the deep gas zones spaced on 320
24 acres?

25 A. Yes.

1 Q. Now, let's go down the chronology of events on
2 this matter. First of all, if you can identify what
3 Exhibit 2 is for the Examiner?

4 A. Exhibit 2 is a chronology that I started keeping.
5 I started working this area in early March, and the first
6 request that I had seen in this area was a farmout request
7 from Nearburg.

8 Q. Okay. So on Nearburg's chronology there were
9 some dates prior to March, 1999, but that was before you
10 started working the area?

11 A. Correct.

12 Q. And you weren't familiar with those?

13 A. Right.

14 Q. Okay. So let's -- First of all just briefly, you
15 received the farmout from Nearburg in March, and what
16 happened over the next couple of months?

17 A. Well, Nearburg proposed the well. We had had
18 conversations about operatorship, and at the time we
19 thought they may have had 50-percent interest. We got the
20 AFE and the joint operating agreement, and they had 7-
21 percent working interest.

22 I advised them in May that Devon would want to
23 operate this well, since they only had 7-percent working
24 interest, and at the time I was advised that they were
25 trying to tie up the remaining interest in the northwest

1 quarter.

2 Q. Okay. So then in June and during the summer,
3 what happened?

4 A. In June I ordered a title opinion, and Devon
5 filed an APD and staked a location.

6 In August I received the title opinion, and there
7 was a title requirement that required a survey to be taken
8 into account. And so we had a survey done in August.

9 Q. So that's been satisfied now?

10 A. Yes, that's been satisfied.

11 Q. Okay. Now, you filed the APD. Does Devon have
12 an approved APD from the Bureau of Land Management?

13 A. Yes.

14 Q. Okay. So right around that time you were ready
15 to propose the well, I presume?

16 A. Yes, I talked with Nearburg and advised them that
17 we were ready to propose the well, and at that point they
18 advised that they were in the middle of negotiations with
19 Yates. And we discussed it, and I -- so that I'd wait a
20 couple of weeks before I proposed the well, so they could
21 tie up their negotiations.

22 Q. Okay, so as not to cause any problems for
23 Nearburg?

24 A. Right.

25 Q. Okay. So you waited a couple of weeks, and now

1 we're in September. What occurred next?

2 A. At that point Bob Shelton called, and he was
3 calling to inquire the status of the well. And he advised
4 that they were -- I told him that we were ready to propose
5 a well, and then he told me about the Potter Federal well,
6 and they would like to see that well go down, because it
7 could change the location on the Logan Draw. So we agreed
8 to wait.

9 Q. Okay, so for the second time you held off for a
10 while in proposing a well, at Nearburg's request?

11 A. Yes.

12 Q. Okay. The well was drilled, as Mr. Wheeler
13 talked about and -- what? In November after that well was
14 down, counterproposals were made?

15 A. Well, in November the field had reported that the
16 well had TD'd, and I contacted Bob Shelton and inquired
17 about the results of the offset. He advised that they had
18 elected to nonconsent, because it was virtually a dry hole,
19 but some parties were going to run pipe because there was
20 small pay in the Cisco/Canyon, and he said that they were
21 re-evaluating Section 30 because they wanted to incorporate
22 the FMI into their mapping.

23 And I told him we were ready to propose the well
24 and needed to make a decision on the location, because we
25 already had an approved APD. And we had this well budgeted

1 for the fourth quarter, and we really wanted to get it
2 drilled by then, and if we were going to have to file for a
3 new location, that --

4 Q. That could slow it down?

5 A. That could slow it down. And he advised me at
6 that point that they would want to operate the well.

7 Q. Okay. Now, you had the well budgeted for the
8 fourth quarter. There was also another factor, wasn't
9 there? The well in the southeast quarter had been drilled?

10 A. Yeah, and there was a drainage concern there.

11 Q. Okay. So that well was drilled at some point in
12 -- I don't know when, in 1999?

13 A. I don't recall when it was -- I know there was a
14 drainage concern with that well.

15 Q. Okay. Now, during November-December, were there
16 discussions between you and Nearburg representatives?

17 A. Yes, there were various discussions regarding the
18 location and operatorship, and -- We work in teams at
19 Devon, and the team had decided if -- We did not want to
20 get into a fight over operatorship, and if it can get the
21 well drilled before the end of the year, that we would
22 concede operations under certain terms and conditions in
23 the agreement.

24 Q. Okay. So regarding the prior testimony about
25 Devon agreeing Nearburg could drill, that was part and

1 parcel of an agreement to get the well drilled --

2 A. Yes.

3 Q. -- before the end of the year?

4 A. (Nods)

5 Q. Okay. And you were still in negotiations, and
6 then what happened?

7 A. We were hit with the pooling Application.

8 Q. So you received the pooling Application, and here
9 we are today?

10 A. Yes.

11 Q. What is contained in Exhibit 3?

12 A. Exhibit 3 contains copies of letters sent by
13 Devon to Nearburg where we proposed the well.

14 Q. And any other correspondence on this matter would
15 probably be contained in Nearburg's packet of documents?

16 A. Right.

17 Q. Now, there's a couple of things. On the
18 chronology submitted by Nearburg it said that at some point
19 in January you called about a -- and wanted a \$3000-per-
20 month drilling rate. Is that what you were talking about
21 at this point?

22 A. No, we -- Just the producing rate.

23 Q. Just the producing rate.

24 A. Right.

25 Q. And what were you proposing at that point?

1 A. Three hundred dollars.

2 Q. Okay, we'll get into that in a minute. In your
3 opinion, has Devon Energy made a good-faith effort to
4 obtain the voluntary joinder of Nearburg in this well?

5 A. Yes.

6 Q. Would you identify Exhibit 4 for the Examiner and
7 discuss its contents?

8 A. Exhibit 4 is a copy of Devon's AFE and its
9 proposed a 9400-foot Morrow test with estimated dryhole
10 costs of \$421,000 and completion cost of \$397,000.

11 Q. Okay. Now, this AFE is a little higher than
12 Nearburg's. What is the difference between the two AFEs?

13 A. I believe the difference is due to a frac job.
14 This has a \$120,000 frac job.

15 Q. Okay, so if a frac job is necessary, that's
16 already accounted for in the --

17 A. Yes.

18 Q. -- Devon AFE?

19 A. Yes.

20 Q. In our opinion, are these costs in line with the
21 costs of other wells drilled to this depth in this area of
22 New Mexico?

23 A. The producing rate -- Oh, the --

24 Q. No, I mean the well cost.

25 A. -- cost? Yeah. Yeah, for this depth it is.

1 Q. Okay. And what are your recommendations for the
2 amounts which Devon should be paid for supervision and
3 administrative expenses?

4 A. \$6000 a month for drilling and \$300 a month for
5 producing.

6 Q. Now, Nearburg has requested for the drilling rate
7 \$4168 a month, which I guess is the new Ernst and Young
8 rate. If the Division decides that rate should be
9 applicable, will Devon accept that?

10 A. Yes.

11 Q. Okay. And are these overhead rates those
12 normally charged by Devon Energy in this area for wells of
13 this depth?

14 A. The producing rate is lower.

15 Q. Okay, lower than normally charged --

16 A. Yes.

17 Q. -- by other operators?

18 A. Yes.

19 Q. Well, let's talk about that producing rate.
20 You're asking \$300 a month. Would you refer to Exhibit 5,
21 identify that and discuss briefly why Devon proposed that
22 relatively low producing rate?

23 A. Exhibit 5 is an exhibit that depicts the Devon-
24 operated wells in the area in red and the Nearburg-operated
25 wells in green. We've got 260 wells in this area.

1 Therefore, we can --

2 MR. CARR: I'm sorry, I can't hear the witness.

3 Can we speak just a little bit --

4 THE WITNESS: Oh, sure. Exhibit 5 is an exhibit
5 that depicts the Devon-operated wells in the area and the
6 Nearburg-operated wells, and Devon's got 260 wells in this
7 area. That's why we could cut our producing rate in half.

8 Q. (By Mr. Bruce) Okay. This is what's normal for
9 Devon to charge on these other wells in this area?

10 A. Yes.

11 Q. And finally, is Exhibit 6 my affidavit of notice
12 to Nearburg regarding Devon's pooling application?

13 A. Yes.

14 Q. Were Exhibits 1 through 6 prepared by you or
15 under your supervision, or compiled from company business
16 records?

17 A. Yes.

18 Q. And in your opinion, is the granting of Devon's
19 Application in the interests of conservation and the
20 prevention of waste?

21 A. Yes.

22 MR. BRUCE: Mr. Examiner, I would move the
23 admission of Devon Exhibits 1 through 6.

24 EXAMINER CATANACH: Any objection?

25 MR. CARR: No objection.

1 EXAMINER CATANACH: Exhibits 1 through 6 will be
2 admitted as evidence.

3 Cross-examination, Mr. Carr?

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Ms. Wood, initially, just to be sure we
7 understand your testimony, you were not testifying here
8 today that Nearburg did not represent and own all the
9 working interests in what is the northwest quarter of this
10 section?

11 A. No, I wasn't representing that.

12 Q. Now, if I look at your Exhibit Number 2, the
13 chronology --

14 A. Yes.

15 Q. -- if I understood your testimony, this is a
16 summary of events after you actually became involved with
17 the project?

18 A. Yes.

19 Q. Did you look at the land files of Devon in
20 preparing this exhibit?

21 A. Yes.

22 Q. In that land file, did you see the letters dated
23 September of 1998, whereby Nearburg was attempting to
24 acquire the interests in the north half of this section?

25 A. No, I did not. And in fact, I think that is why

1 the letter, the March 25th letter --

2 Q. -- is the first thing on the list?

3 A. Right, but it talks about a previous letter that
4 was sent.

5 Q. Are you aware that in January of 1999, before you
6 start your list, that, in fact, Nearburg did propose a well
7 in the north half of this section?

8 A. Well, through the correspondence, yes, I was.

9 Q. So you're not disputing that on January the 22nd,
10 Nearburg did write and propose a well in the north half --

11 A. Right. I did not see that, but I know the letter
12 in March indicated that. For some reason, we were not able
13 to locate that.

14 Q. If I look at the exhibit between the 20th of May
15 and the 4th of September there was a fair amount of
16 activity on the part of Devon, which looks like you were
17 going forward with plans to drill a well; is that right?

18 A. Yes.

19 Q. Is that fair to say?

20 A. Yes.

21 Q. Isn't it true that on May the 13th, in fact, you
22 had signed Nearburg's AFE for a well?

23 A. Yes.

24 Q. So signed an AFE for a well in the north half,
25 and it was at that time, then, that you went out and

1 ordered the title opinion?

2 A. No, during this time -- The AFE was signed and
3 executed, and during this time I was hospitalized with
4 viral spinal meningitis, and when I looked at the operating
5 agreement and discovered they had 7-percent interest,
6 that's when we advised them that we would want to operate
7 this well.

8 Q. But you had already signed their AFE for a well
9 in the north half?

10 A. Yes.

11 Q. And so while we go through all of this exercise
12 in the summer, there was an AFE that had been approved by
13 Devon for a well in the north half of the section?

14 A. Right.

15 Q. Now, you ordered a title opinion. Has Nearburg
16 requested a copy of that title opinion?

17 A. Nearburg requested a copy of that title opinion
18 probably around in November.

19 Q. And are you willing to supply that information to
20 Nearburg?

21 A. Yes.

22 Q. You have not yet?

23 A. Right.

24 Q. If I understood your testimony, you were anxious
25 to go forward and drill this well in the fourth quarter; is

1 that right?

2 A. Yes.

3 Q. And although you were interested to get it
4 drilled in the fourth quarter of 1999, your formal well
5 proposal didn't actually come until November the 10th or
6 12th; isn't that fair to say? Why did you delay that long?

7 A. At the time, we merged with Penn's Energy, there
8 were a lot of things going on internally, and --

9 Q. And although you were hoping to get it drilled
10 before the quarter, you didn't actually get a proposal out
11 until --

12 A. Right, we knew we had an approved AFE.

13 Q. Approved by whom?

14 A. Internally.

15 Q. Okay. Not by Nearburg?

16 A. Right, not by Nearburg.

17 Q. Now, you still were interested in getting the
18 well drilled during that fourth quarter; isn't that right?

19 A. Yes.

20 Q. If I look at your Exhibit Number 3, it's a letter
21 dated January 24th of this year, and that is when you are
22 sending to Nearburg revised pages to the JOA for the well
23 you're proposing in the north half; isn't that right?

24 A. Yes.

25 Q. If you were so anxious to get this well drilled,

1 why did you wait until mid-January to even propose JOA
2 amendments?

3 A. Well, Mr. Shelton had advised in November that if
4 we wanted to operate, that we would probably not be able to
5 get the well drilled by the end of the year, because there
6 would be an operatorship issue.

7 Q. And there is, right?

8 A. Right.

9 Q. Devon submitted to Nearburg. When, about, was
10 that? Do you know?

11 A. When -- Excuse me?

12 Q. When was the Devon AFE that's your Exhibit Number
13 4 actually submitted to Nearburg?

14 A. On November 11th.

15 Q. And were you involved in the preparation of this
16 AFE?

17 A. Yes.

18 Q. Does it strike you as unusual that the totals on
19 the Devon AFE are identical to the totals on the AFE that
20 you approved for Nearburg that was submitted early in 1999?

21 A. What's the question? Does it --

22 Q. I mean, you would agree with me that the totals
23 are identical, right?

24 A. They're identical.

25 Q. Did you independently prepare the AFE for Devon,

1 or did you just take Nearburg's numbers and use them?

2 A. I believe that most of the Morrow wells that we
3 have drilled out there were 11,000 feet, and since this was
4 a 9400-foot well, we took our AFE for an 11,000-foot well
5 and compared what Nearburg had proposed and prepared it
6 that way.

7 Q. Did you accept the Nearburg figures? Is that
8 what --

9 A. Yes.

10 Q. -- this indicates?

11 A. Yes.

12 Q. There have been discussions concerning overhead
13 and administrative charges.

14 A. Uh-huh.

15 Q. If I understand your testimony, Devon is
16 proposing -- correct me if I'm wrong -- \$6000 a month while
17 drilling and \$3000 while producing; is that not right?

18 A. Three hundred.

19 Q. I'm sorry, \$300.

20 Are those the charges that you, in fact, are
21 charging other operators for wells to this depth?

22 A. No, because they're not in this area.

23 Q. Do you operate any wells to this depth in this
24 area?

25 A. No, not that I know of.

1 Q. When you say you charge \$300 monthly operating
2 charges, are those charges subject to escalation pursuant
3 to the COPAS forms?

4 A. Yes.

5 Q. And in fact, when you say here today that you
6 charge \$300, isn't it true that in wells in Sections 5 and
7 6 of 18 South, 27 East, those rates are escalated to
8 approximately \$350 a month at this time?

9 A. I'm not sure.

10 Q. They could be escalated?

11 A. They could be, yeah.

12 Q. Now, in the course of the negotiations -- In
13 fact, the wells that you operate and that you have
14 experience in terms of costs and administrative charges,
15 those are actually mostly San Andres wells, are they not?

16 A. Yes.

17 Q. In the Red Lake area, is that the area that
18 you're operating?

19 A. (Nods)

20 Q. Do you operate any deep wells within the nine
21 sections surrounding this area?

22 A. No.

23 Q. Do you have a gas contract for wells in this
24 area?

25 A. Yes, we do.

1 Q. You could provide an immediate connection?

2 A. Yes, I believe so.

3 Q. Do you have a rig available to drill the well?

4 A. I'm not sure.

5 Q. During the negotiations there was a dispute
6 between Devon on the one hand, Nearburg on the other, about
7 overhead and administrative costs; we agree on that,
8 correct?

9 A. Uh-huh.

10 Q. You are here today recommending less than the
11 Ernst and Young figures?

12 A. Yes.

13 Q. And those are the figures that Nearburg is asking
14 for here today?

15 A. (Nods)

16 Q. In terms of trying to avoid this hearing, isn't
17 it true that Nearburg agreed to accept those numbers as an
18 effort to try and settle this so we wouldn't be here today?

19 A. Nearburg agreed to accept these figures on
20 January 27th, earlier this week.

21 Q. Earlier this week, in an effort to avoid the
22 hearing?

23 A. Uh-huh.

24 Q. And you would not accept it at that time?

25 A. No, because at that point it was an operatorship

1 issue.

2 Q. You had previously had a dispute over the
3 balancing agreement; isn't that correct?

4 A. Yes.

5 Q. And earlier this week, Nearburg said to avoid the
6 hearing they'd accept your balancing agreement; isn't that
7 right?

8 A. (Nods)

9 Q. That was no longer an issue for you?

10 A. The gas-balancing agreement?

11 Q. Yes.

12 A. Right, no.

13 Q. And earlier this week, Nearburg said if you
14 wanted to join the well you could look at the FMI
15 information; isn't that right?

16 A. Yes, they did, and I was told by -- there was no
17 way that we could get it faxed, the FMI, and have that
18 interpreted, because it's -- so it wouldn't have --

19 Q. If I would have questions about the locations of
20 wells, I should ask your geologist; is that fair to say?

21 A. Yes, please.

22 Q. Do you operate deep wells in southeast New
23 Mexico?

24 A. Yes, we do.

25 Q. Do you operate a well for Mewbourne in Section 22

1 of 21 South, 26 East?

2 A. Yes.

3 Q. And are you aware of the overhead rates that are
4 in the operating agreement for that well?

5 A. That particular well probably has \$6000 and \$600.

6 Q. The gas lines that are in the area that you would
7 use to remove -- take gas from a well at the proposed
8 location, are those gas lines low-pressure lines for the
9 San Andres wells that you operate?

10 A. I am not sure.

11 Q. You don't know if those gas lines could
12 reasonably service a deep gas well?

13 A. Right. I have been told by our operations
14 engineer that we would not have a problem with that.

15 Q. And you don't know the caliber of the lines or
16 any of those --

17 A. Huh-uh.

18 MR. CARR: So I won't ask you about them. Okay,
19 thank you very much.

20 MR. BRUCE: Could I ask a couple of follow-up
21 questions?

22 EXAMINER CATANACH: Sure.

23 REDIRECT EXAMINATION

24 BY MR. BRUCE:

25 Q. Just to reiterate, Ms. Wood, Mr. Carr asked you a

1 question about why no proposal until November, 1999.

2 Again, you were ready to make a proposal in August and
3 again in September regarding this well, were you not?

4 A. Yes.

5 Q. And you held off at Nearburg's request both
6 times?

7 A. Right.

8 MR. BRUCE: Thank you.

9 RE-CROSS-EXAMINATION

10 BY MR. CARR:

11 Q. And wasn't that request so they could acquire
12 additional information from the well that was being drilled
13 by Murchison to the east?

14 A. On the second occasion. On the first occasion it
15 was so they could acquire additional interest.

16 MR. CARR: Thank you.

17 EXAMINATION

18 BY EXAMINER CATANACH:

19 Q. A couple. Ms. Wood, your proposed location,
20 again, just to verify, is 1980 feet from the north line,
21 1650 from the east line?

22 A. Yes.

23 Q. Okay. I believe you testified earlier that Devon
24 was willing to concede operations before the first of the
25 year if the well, indeed, was drilled by then? Is that

1 your testimony?

2 A. Yes. We wanted to -- We had the well budgeted
3 for an end-of-the-year well, and we wanted to do whatever
4 we could to get that well drilled prior to the end of the
5 year. And we knew that we could cut the producing rate in
6 half, and if Nearburg was willing to do that, because
7 that's what we would do for them, then we would let them
8 operate.

9 Q. Did that include letting Nearburg drill at their
10 proposed location?

11 A. Based on conversations with the geologist -- and
12 you'll have to visit with Gayle about this, but I don't
13 believe she had a problem with their location, based
14 strictly on the conversation.

15 But we wanted to see the FMI, and I believe that
16 she requested the FMI data and was told that it was
17 proprietary data. And our concern with changing the
18 location would be that we wouldn't be able to get the well
19 drilled by the end of the year. And so we really wanted to
20 evaluate the FMI data, because we had the location staked,
21 we had it permitted, and we were ready to go, and we had
22 rig availability.

23 Q. Do you know what your rig availability is if you
24 are awarded operatorship of this well? Nearburg has some
25 lease concerns. Do you know if you will be able to drill

1 that well?

2 A. Yes, I'm certain we'll be able to drill the well.
3 We've got one rig drilling right now that will go down in
4 14 days. We can always move that rig, and that's -- I've
5 been advised by our operations engineer, he didn't believe
6 that we'd have a problem getting another rig, but we do
7 have control of one.

8 EXAMINER CATANACH: I have nothing further of
9 this witness. She may be excused.

10 MR. BRUCE: I have nothing further.

11 GAYLE RIGGS,

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

14 DIRECT EXAMINATION

15 BY MR. CARR:

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

17 A. Gayle Riggs.

18 Q. Where do you reside?

19 A. Oklahoma City, Oklahoma.

20 Q. What is your occupation?

21 A. I am a district geologist for Devon Energy.

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

24 A. No, I have not.

25 Q. Would you summarize your educational and

1 employment background for the Examiner?

2 A. I was a 1979 graduate from Oklahoma State
3 University in geology. I worked for the first ten years
4 for two different independent oil companies in Oklahoma
5 City as a geologist, worked for Anadarko Petroleum there in
6 Oklahoma City, and employed by Devon Energy in 1992, and
7 have worked there ever since.

8 Q. Does your area of responsibility at Devon
9 currently include southeast New Mexico?

10 A. Yes, it does.

11 Q. And are you familiar with the geologic matters
12 involved in this Application?

13 A. Yes, I am.

14 MR. BRUCE: Mr. Examiner, I'd tender Ms. Riggs as
15 an expert petroleum geologist.

16 EXAMINER CATANACH: Any objection?

17 MR. CARR: No objection.

18 EXAMINER CATANACH: Ms. Riggs is considered
19 qualified.

20 Q. (By Mr. Bruce) Ms. Riggs, would you identify
21 your Exhibit 7, discuss the geology in this area and why
22 Devon supports its proposed well location?

23 A. This is a nine-section plat, highlighting the two
24 proposed locations in Section 30 of 17 South, 27 East.
25 There's quite a bit of information on here. If you'll bear

1 with me, I'll go through a little bit at a time.

2 The main object of this map is, it's a net
3 isopach map of a middle Morrow sand that I mapped, that I
4 felt was the producing horizon in the northeast quarter of
5 Section 30.

6 The color-coded producing formations, the yellow
7 is Morrow. Most of it is undifferentiated, although the
8 triangle symbols are the mapped sand that I find would be
9 productive in Section 30. The orange is a shallower
10 Wolfcamp producer, the pink is Atoka, green is
11 undifferentiated Pennsylvanian.

12 The gas cums are noted in the legend. The gas
13 cums for the Morrow are on the bottom, below the completion
14 dates. And my figures are the total gross of sand versus
15 the net pay sand at 10-percent porosity cutoff.

16 Q. Now, you're using a 10-percent cutoff, rather
17 than the 8 percent used by Mr. Elger?

18 A. That's correct.

19 Q. Okay. Now, based on your mapping -- You have
20 this zone trending northwest-southeast. Is that the
21 general trend of the Morrow in this area?

22 A. As I understand it. Other geologists that I've
23 worked with that have previous experience in this area have
24 advised me that that's its depositional trend.

25 Q. Okay. Now, at Devon's proposed location you

1 show, what? Twenty-plus feet of net sand?

2 A. Yes.

3 Q. Is that what you believe is roughly necessary for
4 a commercial Morrow well out of this zone?

5 A. The particular channel that is productive in
6 Section 32 and 33 both had over 20 feet of net-pay sand at
7 that interval thickness.

8 Q. Okay. And that's where there's -- well, several
9 commercial wells?

10 A. Yes.

11 Q. Okay. Based on your mapping, would you have a
12 greater sand thickness than the Nearburg location, which on
13 your map is shown as Location Number 2?

14 A. Based on the well data that I have visually seen,
15 this is the only way that I could map it and present it to
16 our management. Okay, and you would -- Based on your
17 mapping, the Devon well would have a greater thickness than
18 the Nearburg location?

19 A. Yes, based on the data I have seen.

20 Q. Okay. Let's move on to your Exhibit 8, and could
21 you discuss that for the Examiner?

22 A. This is a stratigraphic cross-section running,
23 from the left-hand side, the northwest to the southeast.
24 It is a correlation section to show the correlation of the
25 primary Morrow objective in Section 30. The datum is on

1 what I consider the top of the Morrow clastics section.

2 The Morrow sand that is highlighted in yellow is
3 the crossover between the two porosity curves that I mapped
4 as gross thickness, and the red indicates the 10-percent
5 porosity of the density.

6 And the Potter well that is in the northwest of
7 29 appears to have had a -- two particular sands developed,
8 one being a 10-foot gross sand in the upper portion of its
9 interval, and then a -- possibly a clay plug with lag sand
10 in the bottom.

11 Q. Now, this map also has the cumulative and --
12 what? Current rates on it?

13 A. Yes, it does. It has completion rates,
14 perforated intervals, initial rates, current and
15 cumulatives.

16 Q. Were any of these wells on this exhibit frac'd?

17 A. From the available data I have, the well in
18 Section 30 was frac'd with a CO₂ bomb.

19 Q. That's that Yates --

20 A. They apparently were not in the most porous part
21 of the channel, and --

22 Q. That's the --

23 A. -- they like to frac where it's necessary.

24 Q. -- Yates Dos Equis well --

25 A. Yes.

1 Q. -- that you're talking about?

2 And then these other wells, that Section 32 and
3 33, they were not frac'd, were they?

4 A. Not to my knowledge.

5 Q. And they were in the thicker part of the sand?

6 A. Yes, they were.

7 Q. Okay. Now, if you could summarize, why do you
8 prefer Devon's location to Nearburg's location?

9 A. When I was assigned to this particular area, the
10 well location, the first well location, had already been a
11 subject matter in this area, and I was assigned to evaluate
12 its potential.

13 And after seeing the log on the Potter Number 2,
14 given the northwest-southeast generalized trend of
15 deposition, I was more inclined to move away from the dry
16 hole, rather than move closer to it, so I -- Of course, we
17 had concerns about moving closer towards it after we got a
18 call from -- or after Carla had told me they had moved the
19 location, and I called their geologist to find out why. I
20 assumed he had additional well data, and he said that he
21 did.

22 And I said, Is this an FMI?

23 And he said yes, and he just explained that there
24 were things that he saw in there that made him inclined to
25 move closer to the well.

1 Q. Okay. And again, you haven't seen that FMI?

2 A. I have not. I did ask for it, and he said it was
3 proprietary data.

4 Q. Okay. Are there any secondary zones in this
5 area?

6 A. There are shallower Cisco/Canyon completions in
7 two adjacent sections that I would consider secondary.

8 Q. Okay. But apparently, now, based on the
9 testimony today, that Potter Number 2 well is not
10 commercial in the Cisco/Canyon either, is it?

11 A. Apparently not.

12 Q. Do you agree with Mr. Elger that if a party goes
13 nonconsent in this well, the maximum cost-plus-200-percent
14 penalty should be assessed against any interest owner?

15 A. Yes, I do.

16 Q. Were Exhibits 7 and 8 prepared by you or under
17 your supervision?

18 A. Yes, they were.

19 Q. And in your opinion, is the granting of Devon's
20 Application in the interests of conservation and the
21 prevention of waste?

22 A. Yes.

23 MR. BRUCE: Mr. Examiner, I'd move the admission
24 of Devon's Exhibits 7 and 8.

25 MR. CARR: No objection.

1 EXAMINER CATANACH: Exhibits 7 and 8 will be
2 admitted as evidence.

3 Mr. Carr?

4 CROSS-EXAMINATION

5 BY MR. CARR:

6 Q. Ms. Riggs, when did you first become involved
7 with this project?

8 A. The second half of September of this year -- of
9 1999.

10 Q. Of 1999? Your Exhibit Number 7 has a date on it
11 of February the 1st of this year?

12 A. Yes, sir.

13 Q. Is that when this map was, in fact, prepared?

14 A. Yes, this is a Geographics program. Anytime you
15 enter into the mapping program, it updates the date, and I
16 had made a few corrections on some of the offset wells on
17 the day before we came here.

18 Q. Had you mapped the channel in this fashion prior
19 to that time?

20 A. Yes.

21 Q. Had you mapped it in September this way?

22 A. No, because we were waiting on the -- Actually,
23 the way that we originally had it mapped was very similar
24 to this, but I incorporated the data off of Potter Federal
25 Number 2.

1 Q. Did you map the channel in this fashion prior to
2 the time you knew there might be a dispute as to well
3 locations?

4 A. No, I did not.

5 Q. It was after you knew there was a dispute?

6 A. I'm sorry, say that again.

7 Q. Did you develop this map after you knew there was
8 a dispute as to the proposed well locations of Nearburg and
9 Devon?

10 A. This particular map, yes.

11 Q. You did?

12 A. Yes.

13 Q. Now, in preparing this map, what data was
14 available to you? Did you have just well control?

15 A. Yes, I had well logs.

16 Q. Any seismic information available?

17 A. No, sir.

18 Q. No FMI data?

19 A. No, sir.

20 Q. And you would agree with me, would you not, that
21 FMI data might have been useful to you in your analysis of
22 the reservoir?

23 A. Yes.

24 Q. It is a valuable tool?

25 A. It is.

1 Q. You requested it, but it was not shared?

2 A. That's correct.

3 Q. Were you aware of any dispute between Nearburg
4 and Devon concerning the sharing of title data or anything
5 else like that?

6 A. No.

7 Q. So you're looking at just the technical part of
8 this case?

9 A. Uh-huh.

10 Q. If we look at your map and we compare it to Mr.
11 Elger's, you have mapped these channels in very different
12 ways; you would agree with me?

13 A. Yes.

14 Q. Yours is more northwest-southeast?

15 A. Yes.

16 Q. His is more north-south.

17 It was your decision to orient this channel in
18 this fashion?

19 A. Yes.

20 Q. And if I look at the information on this exhibit,
21 you have pulled your channel off to the northwest into
22 Section 19?

23 A. Yes, I have.

24 Q. And that's where you state you have no deep
25 control?

1 A. Yes, I have.

2 Q. And yet you have not pulled your channel down
3 through Section 20 where you have two wells, one of them
4 clearly commercial; is that right?

5 A. That's correct.

6 Q. And you just see that as sort of a little
7 appendage off of the channel extending to the north?

8 A. They could be splays. Yes, I believe it was --
9 The map that I have drawn would be of the main channel.

10 Q. You stated this was the only way you could map
11 this for your management. Was your management interested
12 in having an exhibit that would hold a channel to the west,
13 or were you free to map it as you saw it?

14 A. No, I am free to map it as I saw it. I think
15 they would really question my intentions of wanting to
16 pursue, say, location 2, given that it -- on my -- the way
17 that I have it mapped would only possibly be 15 feet of net
18 pay, versus 20 or more.

19 Q. And basically it's your understanding that other
20 people and the general trend in the area is this northwest-
21 southeast?

22 A. That's my understanding.

23 Q. Did that influence your interpretation of the
24 channel being in that place, and not more north-south?

25 A. It influenced my evaluation of the initial

1 proposal, yes.

2 Q. When we look at your mapping and the way you've
3 oriented the channel, you actually have no well control,
4 really, to the west or to the north and west of the well in
5 the southeast of Section 30; isn't that correct?

6 A. That's correct.

7 Q. And so to the extent that you pulled the channel
8 across that section, you're having to interpret from the
9 data south and east?

10 A. That is correct.

11 Q. And if we look even at Mr. Elger's map, the
12 extent to which this channel may extend to the west has got
13 to be a matter of interpretation; is that right?

14 A. Yes, sir, I agree with that.

15 Q. Have you looked at logs or anything on the Potter
16 Federal well?

17 A. Yes, I have.

18 Q. And you have seen evidence of reservoir in that
19 well, have you not?

20 A. I have seen evidence of an upper development that
21 is actually, I believe, an overbanking-type deposit above
22 the main channel.

23 Q. Do you disagree with the statement that, in this
24 formation, the farther away you move from data, the less
25 reliable the information on the reservoir actually is?

1 Closer, more reliable; farther, less reliable?

2 A. I'm not real sure you could state that with the
3 nature of the deposition of the Morrow sands.

4 Q. When you're making an interpretation of the
5 reservoir, don't you feel more comfortable with your
6 interpretation, the closer you actually are to actual data?

7 A. Yes, I do use the closest data.

8 MR. CARR: That's all I have. Thank you very
9 much.

10 EXAMINER CATANACH: Mr. Carr, is it Nearburg's
11 intention to share that FMI data with Devon?

12 MR. CARR: Yes. We offered to share the FMI data
13 earlier this week in an attempt to resolve the issues
14 concerning the well location. We simply do believe that we
15 have incurred substantial cost here and in offset wells to
16 prove up this, and that's been the reason for the delay,
17 coupled with some delays in getting title. But we are
18 going to share this, and we will share that.

19 EXAMINATION

20 BY EXAMINER CATANACH:

21 Q. Ms. Riggs, in your opinion, once you review the
22 FMI, do you think that that information will cause you to
23 change the orientation of the sand channel?

24 A. It certainly could.

25 Q. It could?

1 A. It could.

2 Q. Approximately how long do you think it would take
3 to evaluate that?

4 A. I'm not an FMI expert by any means. We have run
5 them in wells that I've been in control of, but we have a
6 Schlumberger rep that, at a moment's notice, comes over and
7 can interpret with his expertise better than mine, and it
8 wouldn't take any time at all to probably give support to
9 the fact that we need to be closer or farther.

10 Q. So do you think within -- I don't know when you
11 plan on giving this information to Devon.

12 MR. CARR: We actually can provide it today. We
13 would like to receive the title opinion and the title data
14 quickly in exchange for it. If you don't have it today, I
15 mean, I understand.

16 MR. BRUCE: I can print that up and either hand
17 it to him today or fax it.

18 MR. CARR: Are you the keeper of that
19 information, Mr. Bruce?

20 Q. (By Examiner Catanach) Ms. Riggs, is two weeks
21 insufficient time to evaluate that?

22 A. No, sir, it is not.

23 Q. Okay.

24 A. I think the issue will be -- You know, not seeing
25 the FMI, I do understand the nature of what we're working

1 with, and there appears to be two separate deposits, and
2 thickening of the upper deposit isn't necessarily the main
3 channel that I have mapped through, so I would hope that it
4 would give us other information, other than the thickening
5 of the upper deposit.

6 Q. If you subsequently agree with Nearburg's
7 location, are we still arguing about operatorship of the
8 well, even though the location may be the same?

9 A. I think -- It was my understanding when I got on
10 the project that we were operating the well, and we would
11 still probably want operatorship of it.

12 EXAMINER CATANACH: Okay, let me get you to -- At
13 the February 17th hearing, when we reconvene this matter --
14 and I don't expect anybody to show up, but if you could
15 provide the Division a summary of your position on the well
16 location, whether you want to change your position or
17 whether you want to maintain what you're seeking --

18 THE WITNESS: Okay.

19 EXAMINER CATANACH: -- and based on that, we'll
20 just probably take the case under advisement at that time
21 and make a decision.

22 MR. CARR: I would like to make a closing
23 statement in this case.

24 EXAMINER CATANACH: Okay. I don't have any
25 further questions of the witness.

1 Let Mr. Bruce go first.

2 MR. BRUCE: Once again, we're playing by Mr.
3 Carr's rules of procedure here, so I will go first.

4 MR. CARR: I would note that generally, the
5 applicant -- and we are the one applicant who has a case on
6 the docket today -- does go last. And perhaps -- It's not
7 my rules; I just happen to be aware of *the* rules.

8 MR. BRUCE: I'm glad he's aware of something, Mr.
9 Examiner.

10 Mr. Examiner, we are here today with two
11 competing Applications where each party owns approximately
12 50 percent of the working interest. Both Devon and
13 Nearburg are good operators, and their AFE's are
14 equivalent. So you need to look at other factors to decide
15 who should be operator.

16 From our point of view, there are several factors
17 which should be considered. Devon has substantial
18 operations in this area, 260 wells, and can operate this
19 well less expensively than Nearburg on a producing basis.
20 We believe that's a significant factor and favors Devon.

21 Secondly, Devon owns 100 percent of the rights
22 above the Pennsylvanian. So if and when this well is ever
23 completed uphole, there's no doubt that Devon will be
24 operator, absent the parties' coming to terms under a JOA.
25 We believe that this is also a reason for awarding Devon

1 operations, and that's one of the factors set out in Order
2 Number R-10,731-B.

3 Now, the --

4 EXAMINER CATANACH: I'm sorry, Mr. Bruce, what
5 was that order number again?

6 MR. BRUCE: 10,731-B.

7 Now, the parties have been negotiating about this
8 well for quite some time. Nearburg did make first contact
9 about this well or about this area some time ago, but at
10 that time Nearburg only owned 7 percent of the working
11 interest, while Devon owned, as we said, 100 percent in the
12 northeast quarter. At that time there was no doubt who
13 would operate once those figures came out.

14 As a result, filed for an APD with the Bureau of
15 Land Management and received approval for its location in
16 August. It also ordered a title opinion so that it could
17 be ready to drill the well by late summer.

18 Nearburg said, Wait, don't propose the well yet,
19 we're trying to make a deal with Yates, who are the Yates
20 companies, were the only other working interest in this
21 half section.

22 So Devon, as a sign of cooperation, held off on
23 making its proposal.

24 In September, 1999, Devon was again going to
25 propose the well, but Nearburg again wanted to wait because

1 of the offset well. That's a valid reason, we're not
2 complaining about that. But Devon did hold off as a sign
3 of cooperation and did not make its proposal.

4 Finally, both parties made their proposals,
5 Nearburg's at a slightly different location, and the
6 parties had numerous, numerous phone calls back and forth
7 between them after that.

8 From May to November, at least Devon's
9 understanding was that it was to operate the well. At that
10 time, in the November-December time frame, Nearburg said it
11 wanted to operate. Devon said, Okay, if certain terms were
12 agreed to, because Devon was set to drill that well in the
13 fourth quarter, had it budgeted and had a rig available.
14 It also had an approved APD. And as noted today by the
15 geologist, there's offsetting production. They need to get
16 this well drilled to protect their correlative rights.

17 The next thing Devon receives is a force-pooling
18 application, and that's why we're here today.

19 We believe that Devon has tried to work this
20 matter out and has continually cooperated in trying to get
21 the well drilled. We believe the equities are on Devon's
22 side, and this favors Devon being named operator. We
23 reiterate that due to Nearburg's expiring farmouts or
24 whatever, Devon is willing to work with them on that and
25 drill the well in a timely fashion to preserve those

1 farmouts.

2 The next thing is well location, and maybe that
3 will change over the next couple of weeks, Mr. Examiner.
4 But looking at the exhibits, both locations are pretty
5 good. The only way you'll know is when the well is
6 drilled.

7 Now, Nearburg has the FMI, which it claims
8 supports its location. If we can look at that, maybe we
9 can agree.

10 But Devon's problem right now is -- Well, Mr.
11 Carr asked our geologist witness, isn't it better to be
12 near the closest data? The problem is that the closest
13 data is a dry hole, and that's why Devon favors its
14 location. We believe that location will give it over 20
15 feet of net sand, which is probably necessary for a really
16 good well in this area.

17 In summary, we believe Devon has the better
18 location and approved APD post haste, we ask that that
19 Nearburg's Application be denied and that Devon's
20 Application be granted.

21 Thank you.

22 EXAMINER CATANACH: Thank you, Mr. Bruce.

23 Mr. Carr?

24 MR. CARR: May it please the Examiner, I have
25 just handed you a memorandum from the Division dated April

1 the 5th, 1995. This memorandum was prepared by the
2 Division, and it provides guidance to operators who come
3 before them with competing force pooling applications. I
4 think it's important, and to evaluate the case, that you
5 remember the things in this memorandum that have been
6 identified as relevant and pertinent evidence.

7 We stand before you today with competing force
8 pooling applications. The issues are, operations and well
9 location.

10 The well location is the first issue, and that
11 may be resolved, it may not. But Devon is standing on the
12 location that was originally proposed, and they're standing
13 on it because of a review made of only well-location
14 information.

15 We submit that today, absent a resolution on this
16 issue in the next two weeks, and when you retire to
17 consider the Application, the better evidence on this point
18 has been presented by Nearburg.

19 Mr. Elger testified that we have narrow channels
20 and that although perhaps on his interpretation there would
21 be 15 feet of pay and you could make the well, it is very
22 clear that you can more effectively drain the reservoir if
23 you're able to hit the channel in the thicker portion; 25
24 feet will result in a substantially better well for
25 everyone than 15 feet on the west side of the channel.

1 You know, Mr. Bruce said both locations look
2 pretty good. We submit to you, however, that when you
3 integrate into well data FMI information, there may be a
4 reason to accept the location that is based on more
5 comprehensive information. They stand before you and say
6 really they couldn't evaluate an FMI in two weeks, but if
7 you look at what happened in this case, we got the data
8 from the FMI on November the 10th and had moved the well on
9 November the 12th.

10 We will submit the data today, it can be
11 addressed in the two-week period of time. It is data that
12 we paid for in addition to the expense incurred in proving
13 up this deep location by wells we've drilled offsetting it.
14 We believe that the location we're proposing reduces the
15 risk. We think we've done a better job in picking the
16 location, we have better information, and our location
17 should be adopted.

18 The next question is who should operate, and
19 that's when we get to the questions and the issues that
20 fall within the guidelines set forth in your memorandum of
21 April the 5th.

22 If we look at the first item, the first item of
23 relevant and pertinent evidence is any information related
24 to prehearing negotiations conducted between the parties.

25 We made the initial contact in September of 1998.

1 In January of 1999, we proposed a well. And something that
2 seems to be ignored by Devon is that in May of last year
3 they accepted our AFE. They signed it and somehow today
4 they maintain the notion that having signed Nearburg's AFE,
5 they still thought they would operate the well.

6 The proposal was withdrawn for the specific
7 purpose of acquiring information on a well that was being
8 drilled offsetting this location to the west. And as soon
9 as the data from that well was obtained, a new location was
10 proposed.

11 Devon stands before you and tells you how anxious
12 they were to develop the property. But if they were so
13 anxious to develop the property, it is curious that they
14 didn't even submit amendments to their proposed JOA until
15 January of 2000.

16 We believe that the record clearly shows we were
17 first, and we've clearly made the greatest effort to
18 negotiate an agreement with Devon.

19 I think it's even more obvious when you go to the
20 second point in your memo. That is the willingness of the
21 operators to negotiate a voluntary agreement, to get this
22 thing off dead center and to resolve it. We even accepted,
23 for the purposes of settling, the lower overhead charges,
24 those below Ernst and Young, that are based on shallower
25 wells. They changed their mind.

1 We agreed to accept their balancing agreement.
2 Again, that no longer was the issue. We agreed to share
3 FMI, but they say the time frame was too short.

4 We look at the interests, the interests are as
5 set out by both parties, but we have the northwest, they
6 have the northeast, and there's about a 14/100 difference
7 in the ownership position because of survey variations.

8 Look at the geological testimony. I've
9 previously mentioned it, but I would submit to you that a
10 geological interpretation prepared before there was a fight
11 that honors the data from good producing wells in Section
12 20 should be more believable than an interpretation of a
13 different channel that extends off to the northwest where
14 their own exhibit states they have no deep control.

15 We submit that not only have we submitted better
16 geology, but when you look at the interpretations, ours,
17 very simply, is more reasonable.

18 The next point is information regarding the dates
19 the project was proposed. I've discussed that already. We
20 were first in time.

21 Overhead rates, we've been back and forth on
22 that. We believe for deep wells in this area you should
23 adopt those we have proposed, which are the rates that are
24 being charged by Devon for the Mewbourne well which we
25 discussed with Ms. Wood.

1 Risk penalty? Well, there's no dispute on that.

2 Significant differences in AFE costs? There are
3 none because, in fact, the totals in their AFE are the
4 totals that we proposed with our original AFE.

5 And then there's other information, other
6 information deemed pertinent by the Division. That's the
7 last item in your memo. I think you ought to consider
8 several things in this regard, Mr. Catanach.

9 Experience in the area. We've drilled more wells
10 to this depth in this state than virtually any other
11 operator in 1999. Devon has no deep well in the immediate
12 area.

13 We have a good gas contract for the wells
14 immediately offsetting this one and can immediately connect
15 the well. We have a rig available, and we must drill soon.

16 We submit, if you use the best evidence
17 available, Nearburg's location is the best and it should be
18 drilled. If you apply the Division's list of relevant,
19 pertinent evidence, we come out ahead on absolutely every
20 single point.

21 What we think we have here, very simply, is a
22 well that we've been trying to drill for over a year.
23 We're looking at the end of a lease term on one of the
24 tracts involved in the spacing unit, and we believe Devon
25 shouldn't be allowed to jump in now and try and drill the

1 well. We want to go forward, get it drilled, save our
2 lease and go forward with the development of the deep
3 rights.

4 We ask that you grant our Application and you
5 deny the Application of Devon.

6 EXAMINER CATANACH: Thank you, Mr. Carr.

7 This case, Case 12,319, will be continued to the
8 February 17th hearing, at which time I will expect to
9 receive a position statement on the geologic issues from
10 Devon. And at that time I believe we'll be able to take
11 the cases under advisement.

12 MR. CARR: And it's our understanding that no
13 additional testimony will be presented at that time; is
14 that your understanding?

15 EXAMINER CATANACH: Correct, that's my
16 understanding, although that's --

17 MR. CARR: If there is a change in that, we will
18 advise each other.

19 MR. BRUCE: I will let Mr. Carr know beforehand.
20 I don't anticipate presenting anything else.

21 EXAMINER CATANACH: Okay.

22 (Thereupon, these proceedings were concluded at
23 11:37 a.m.)

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 12319,
heard by me on Feb 3 1950.

David R. Catanach, Examiner

Oil Conservation Division

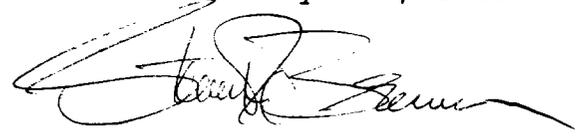
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL February 7th, 2000.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002