

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. 12,706

APPLICATION OF NADEL AND GUSSMAN)
PERMIAN, L.L.C., FOR COMPULSORY)
POOLING, EDDY COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID BROOKS, Hearing Examiner

August 9th, 2001

Santa Fe, New Mexico

01 AUG 23 AM 7:53

JUL 10 2001 10:00 AM

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID BROOKS, Hearing Examiner, on Thursday, August 9th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

August 9th, 2001
 Examiner Hearing
 CASE NO. 12,706

	PAGE
EXHIBITS	3
APPEARANCES	4
APPLICANT'S WITNESSES:	
<u>WILLIAM J. McCAW</u> (Landman)	
Direct Examination by Mr. Bruce	7
Examination by Examiner Brooks	16
<u>SAM H. JOLLIFFE, IV</u> (Landman)	
Direct Examination by Mr. Bruce	19
Examination by Examiner Brooks	29
Examination by Examiner Catanach	29
Further Examination by Examiner Brooks	30
<u>SCOTT H. GERMANN</u> (Geologist)	
Direct Examination by Mr. Bruce	31
<u>JOE HELM</u> (Mineral Interest Owner)	
Direct Testimony	42
Examination by Examiner Brooks	45
CLOSING STATEMENT BY MR. BRUCE	48
REPORTER'S CERTIFICATE	53

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	9	15
Exhibit 2	9	15
Exhibit 3	20	28
Exhibit 4	22	28
Exhibit 5	26	28
Exhibit 6	26	28
Exhibit 7	28	28
Exhibit 8	33	-
Exhibit 9	35	41
Exhibit 10	36	41
Exhibit 11	37	41
Exhibit 12	37	41
Exhibit 13	38	41
Exhibit 14	40	41
Exhibit 15	40	41

* * *

Additional submission by Mr. Helm, not offered or admitted:

Identified

Printed one-page statement by Joe Helm	42
--	----

* * *

A P P E A R A N C E S

FOR THE APPLICANT:

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

FOR DEVON ENERGY CORPORATION:

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

* * *

ALSO PRESENT:

DAVID R. CATANACH
Hearing Examiner
New Mexico Oil Conservation Division
1220 South Saint Francis Drive
Santa Fe, NM 87501

JOE HELM
Mineral Interest Owner
P.O. Box 1081
Artesia, NM 88211

* * *

1 WHEREUPON, the following proceedings were had at
2 9:49 a.m.:

3 EXAMINER BROOKS: Call Case Number 12,706,
4 Application of Nadel and Gussman Permian, L.L.C., for
5 compulsory pooling, Eddy County, New Mexico.

6 Call for appearances.

7 MR. BRUCE: Mr. Examiner, James Bruce of Santa
8 Fe, representing the Applicant. I have three witnesses to
9 be sworn.

10 EXAMINER BROOKS: Would the witnesses stand --

11 MR. BRUCE: I believe there are some other
12 appearances in this --

13 EXAMINER BROOKS: Oh, are there other
14 appearances?

15 MR. HELM: I'm the mineral interest owner.

16 EXAMINER BROOKS: And your name is -- ?

17 MR. HELM: Joe Helm.

18 EXAMINER BROOKS: And you are appearing on your
19 own behalf?

20 MR. HELM: Yes.

21 EXAMINER BROOKS: Okay.

22 MR. BRUCE: And Mr. Examiner, Mr. Kellahin has
23 stepped out momentarily, and he can enter his appearance
24 after the break. He's entering an appearance for Devon
25 Energy Production Company, L.P.

1 EXAMINER BROOKS: Okay. And you, Mr. Bruce, are
2 appearing for the Applicant?

3 MR. BRUCE: Yes, sir.

4 EXAMINER BROOKS: And I'm sorry, I remember you
5 were at my office on a prehearing conference, but I do not
6 recall your name. Could you state again --

7 MR. HELM: I haven't appeared anywhere.

8 EXAMINER BROOKS: And would you state your name?

9 MR. HELM: Joe Helm, H-e-l-m.

10 EXAMINER BROOKS: Joe Helm.

11 MR. HELM: Yes.

12 EXAMINER BROOKS: And you're appearing on your
13 own behalf?

14 MR. HELM: Yes.

15 EXAMINER BROOKS: And do you intend to testify,
16 Mr. Helm?

17 MR. HELM: Whatever is necessary, yes.

18 EXAMINER BROOKS: Okay. Well, in that event
19 we'll have you sworn.

20 Do you know if Mr. --

21 MR. BRUCE: -- McCaw?

22 EXAMINER BROOKS: -- Mr. Kellahin, is he going to
23 present any witnesses?

24 MR. BRUCE: He will not be presenting any
25 witnesses, I don't believe.

1 EXAMINER BROOKS: Very good. Will the witnesses
2 stand, including Mr. Helm? Please each state your name,
3 please, for the record, beginning with you.

4 MR. McCAW: William J. McCaw.

5 MR. GERMANN: Scott H. Germann

6 MR. JOLLIFFE: Sam Jolliffe.

7 MR. HELM: Joe Helm.

8 (Thereupon, the witnesses were sworn.)

9 EXAMINER BROOKS: Okay, you may proceed when
10 ready, Mr. Bruce.

11 WILLIAM J. McCAW,
12 the witness herein, after having been first duly sworn upon
13 his oath, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BRUCE:

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

17 A. William J. McCaw.

18 Q. What is your occupation?

19 A. I'm a landman.

20 Q. Where do you reside?

21 A. Artesia, New Mexico.

22 Q. Are you an independent landman?

23 A. Yes.

24 Q. What's your relationship to Nadel and Gussman in
25 this case?

1 A. I did some brokerage work for them --

2 Q. Okay.

3 A. -- in this case.

4 Q. Helped them put the prospect together?

5 A. Yes.

6 Q. Have you previously testified before the
7 Division?

8 A. It would have been a long time ago.

9 Q. Just briefly, could you summarize your
10 educational and employment background?

11 A. Yes, I graduated from college in 1970, went to
12 work for Yates as a landman for four or five years, then I
13 worked with Ralph Nicks since the year 2000, and then I've
14 been self-employed.

15 EXAMINER BROOKS: If I may interrupt you, Mr.
16 Bruce, I believe Mr. Kellahin came into the room. Would
17 you like to state your appearance on the record?

18 MR. KELLAHIN: Thank you, Mr. Examiner. I'm Tom
19 Kellahin of the Santa Fe law firm of Kellahin and Kellahin.
20 I'm appearing this morning on behalf of Devon Energy
21 Corporation.

22 EXAMINER BROOKS: Thank you. You may proceed,
23 Mr. Bruce.

24 Q. (By Mr. Bruce) And are you familiar with land
25 matters involved in this Application with respect to the

1 negotiation with the land owners?

2 A. Yes, I am.

3 MR. BRUCE: Mr. Examiner, I tender Mr. McCaw as
4 an expert petroleum landman.

5 EXAMINER BROOKS: Any objections?

6 MR. KELLAHIN: No, sir.

7 EXAMINER BROOKS: Mr. McCaw's credentials will be
8 accepted.

9 Q. (By Mr. Bruce) Mr. McCaw, briefly just could you
10 identify what Exhibit 1 shows?

11 A. Exhibit 1 is an aerial photo of the location and
12 Mr. Helm's residence.

13 Q. Okay, so this shows a part of Section 17, 19
14 South, 24 East?

15 A. Yes, sir.

16 Q. Okay. And then just briefly identify, what is
17 Exhibit 2?

18 A. Exhibit 2 is my breakdown of the negotiations
19 that I did leasing these lands --

20 Q. Okay.

21 A. -- or attempting to.

22 Q. And this was prepared by you; is that correct?

23 A. Yes, it was.

24 Q. Okay. Now, moving back to Exhibit 1, and we'll
25 get into this in a little more detail with the next

1 landman, but the south half is comprised -- what -- The
2 southwest quarter is state land; is that correct?

3 A. The which, now?

4 Q. The southwest quarter of the section?

5 A. Yes.

6 Q. And then the southeast quarter, which we're
7 looking at here on Exhibit 1, or most of Exhibit 1, is fee
8 land?

9 A. Yes, sir.

10 Q. And to the best of your knowledge do Joe Helm and
11 his brother Bill Helm own an interest in the fee land?

12 A. Yes, they each own an eighth.

13 Q. Okay. And would you -- I know we've got time
14 constraints here, I don't want you to go through all of
15 Exhibit 2, but could you tell the Examiner what you did to,
16 number one, get the fee lands leased and, number two, to
17 come to a satisfactory well location to accommodate Mr.
18 Helm's request?

19 A. In October, 2000, I contacted all of the land
20 owners. I negotiated an oil and gas lease with all of them
21 except Bill and Joe Helms, which would be 75 percent of the
22 minerals, at \$75, 3/16, for a three-year lease.

23 I then went out, had maybe a phone conversation
24 with Mr. Helm, I went out to his ranch. We talked about
25 the oil and gas lease. He wanted to know where they were

1 going to be drilling, and I told him at that time I really
2 didn't know. And he wanted to know what the damages --
3 what Nadel and Gussman would be paying for damages, the
4 roads locations and for water if they purchased water. And
5 I told him I didn't know, but I would get back with him.

6 He told me that he had leased to Yates Petroleum
7 years back and had a service entry agreement, and I asked
8 him if he would bring that in and I would look at it. And
9 he did bring it in, and I went ahead and forwarded it to
10 Nadel and Gussman. They looked at it on the damages, like
11 on the water and the roads and the right-of-ways, and they
12 said that they saw no problem with it.

13 I went back out to Mr. Helm's, and he really
14 didn't want them drilling south of his house, due to the
15 fact that that was his back porch and his view, and he
16 didn't really want a drilling rig in his back yard.

17 I then got with Nadel and Gussman and asked, you
18 know, where they might want to drill, and it was 990 from
19 the south, 1980 from the east. I got a GPS, calculated it
20 out, went back out with Mr. Helm, and I went and walked out
21 -- with my GPS, and walked out where that location would
22 be. Mr. Helm looked on the back porch with binoculars, and
23 I showed him, you know, exactly where it would be. And he
24 didn't want that location there.

25 So later I went back with a Nadel and Gussman

1 representative. We went over in the southeast -- around
2 the southeast southeast. Mr. Helm said he wouldn't mind
3 out in the pasture over there. We went out and we did a
4 990 location out of the south and the east. It fell too
5 close to his windmill. He has a windmill over there, and
6 it would be too close to the windmill. And there is a draw
7 right in there, and it's fairly -- it can run pretty good
8 in there, and so we felt that it wouldn't be good to be
9 that close to the draw also. So I went back and visited
10 with Mr. Helm about that.

11 We then -- Nadel and Gussman wanted to stake a
12 location with a surveyor so that we would know, you know,
13 actually where it would be. So they went out and they
14 staked a 1980 from the south and 990 from the east.

15 Mr. Helm -- after several meetings he indicated
16 that he wanted a 1/16 more royalty, making it a 25-percent
17 net revenue lease. I told him that they wouldn't do that.
18 He felt that because -- he was the landowner; because of
19 the noise and the traffic, he should be entitled to more
20 than the other mineral owners. And I indicated to him that
21 that's why we pay damages, to compensate for that.

22 After that, we talked about the damages again,
23 and he said that we would have to talk about -- I said the
24 damages would be what would be in that agreement, and I did
25 type another one up, and he indicated on our last

1 conversation that he wanted to talk about those damages
2 again, and that he needed, you know, a quarter. And at
3 that time I told him that he would have to talk directly to
4 the company, that that was all that I had been given, you
5 know, to pay.

6 Q. Okay, Mr. McCaw, how many actual well locations
7 have you looked at with Nadel and Gussman and tried to get
8 the approval from Mr. Helm on it?

9 A. Well, I went out the one time by myself, and so
10 that was one. Then I went out again, and we did the one in
11 the southeast southeast, which again weren't acceptable
12 because of the windmill and the terrain. And then the
13 third time I went out was when the surveyor staked the
14 1980-990 location.

15 Q. Okay, there is a proposed location. What is the
16 footage of that location?

17 A. 1980 from the south and 990 from the east.

18 Q. Do you believe you've made a good faith effort to
19 accommodate Mr. Helm with respect to the well location?

20 A. Yes. You do have problems out there with the
21 draw, so I mean, you know, the draw, the windmill, and his
22 house is there, and so --

23 Q. Does Eddy County also have an ordinance which
24 requires a well to be 300 feet away from, say, a residence?

25 A. Residence, yes.

1 Q. Okay, so you've looked at several locations,
2 you've never come to terms on damages --

3 A. No.

4 Q. -- the last conversation he wanted to revisit
5 that?

6 A. Yes.

7 Q. And you've never been able to come to terms on an
8 oil and gas lease?

9 A. No.

10 Q. There's a couple other mineral interest owners in
11 this southeast quarter, are there not?

12 A. Yes, sir.

13 Q. And are they babes in the woods, or are they
14 experienced mineral owners?

15 A. One of them owned a third of it, and they're New
16 Mexico Western, and they are -- they have minerals in Eddy
17 County, Lea County, Chaves, and also ranches, so -- they
18 also sometimes carry their part of a well, so they're also
19 working interest owners. They did indicate that they might
20 want to carry their part of this well, and I told them our
21 clients had to have that lease, there wouldn't be enough
22 for them to go drill a well, so there would be no point,
23 and --

24 Q. They leased on the terms --

25 A. They leased on those terms --

1 Q. -- you originally offered?

2 A. -- yes.

3 Q. Okay. So at this point, from your standpoint,
4 you're done with your negotiations, and the Nadel and
5 Gussman landman can testify as to company-to-company
6 relationships?

7 A. Yes.

8 Q. Or company-to-Mr. Helm relationships?

9 A. Yes.

10 Q. One final thing. In your discussions with Joe
11 Helm, did he tell you that he represented his brother Bill
12 Helm?

13 A. Yes, he did.

14 Q. Were Exhibits 1 and 2 either prepared by you or
15 compiled from company business records?

16 A. Yes, I prepared 2, and the company did Number 1.

17 Q. And in your opinion is the granting of Nadel and
18 Gussman's Application in the interests of conservation and
19 the prevention of waste?

20 A. Yes, sir.

21 MR. BRUCE: Mr. Examiner, I would move the
22 admission of Nadel and Gussman Exhibits 1 and 2.

23 EXAMINER BROOKS: Objections? Exhibits 1 and 2
24 are admitted.

25 MR. BRUCE: Pass the witness to whomever.

1 EXAMINER BROOKS: Mr. Helm, did you wish to
2 examine the witness?

3 MR. HELM: No.

4 EXAMINER BROOKS: Mr. Kellahin?

5 MR. KELLAHIN: No, sir.

6 EXAMINATION

7 BY EXAMINER BROOKS:

8 Q. I need to get myself oriented. I notice you have
9 not offered Exhibit Number 3, which is the land map, but --

10 MR. BRUCE: Our next --

11 Q. (By Examiner Brooks) -- that will get oriented
12 from an aerial photograph to a land map, looking at Exhibit
13 Number 3, where is the well location?

14 A. It would be at 1980 from the south and 990 from
15 the east.

16 Q. Okay, what section now?

17 A. In 17 --

18 Q. 17 --

19 A. -- of 19-24.

20 Q. Okay, that would be up in the -- Now I've found
21 17. That's the same Section 17 that's shown in the
22 slightly upper left-hand portion of Exhibit Number 3,
23 correct?

24 MR. BRUCE: Yes.

25 THE WITNESS: Yes.

1 Q. (By Examiner Brooks) And it's 1980 from the
2 south, did you say?

3 A. Yes, sir, and --

4 Q. And 990 from the east?

5 A. Yes, sir.

6 Q. And I take it that the negotiations with Mr. Helm
7 centered primarily on the question of the location on the
8 surface; is that correct?

9 A. We spent a lot of time on that, and then towards
10 the end he told me that he wanted the 1/16.

11 Q. Did he indicate any location on the surface that
12 would be acceptable to him?

13 A. Yes, sir, down in the southeast southeast he did,
14 and that's where me and one -- the Nadel and Gussman
15 representative went out there, and they just fell too close
16 to his windmill and in that creek bottom.

17 Q. And I gather -- What I understood from your
18 previous testimony, though, was that after he saw where it
19 was in relation to his windmill, that that was no longer an
20 acceptable location to him?

21 A. We never talked with him about it because I knew
22 it was too close to the windmill and that it was just -- I
23 mean, it wouldn't be -- couldn't be drilling a well that
24 close to his water well.

25 Q. Were there any other locations he indicated would

1 be acceptable?

2 A. I didn't talk to him any more about it. I told
3 him that we had gone out and staked those, and they
4 weren't, you know, in our mind acceptable because of the
5 windmill and the creek, and I would visit with Nadel and
6 Gussman -- Scott Germann is the geologist.

7 And so all I was telling him, you know, what it
8 looked like, the terrain, and then he would have to decide
9 on his geology, you know, where it would be acceptable.

10 And that's where he decided, you know, on the
11 location that we staked, the 1980 from the south and the
12 990 from the east. And then because he felt that that
13 would be geologically good and then acceptable, you know, a
14 location, and so we went ahead and staked it because we
15 wanted a surveyor out there so that there wouldn't be any
16 error in, you know, where the location was.

17 Q. But you didn't have any further conversations
18 about the location?

19 A. I only told him that we were going out to stake
20 it, and then I told him that it was staked and that
21 everybody needed to talk about it.

22 Q. Okay. Is Mr. Helm the only nonjoining interest
23 owner in this unit?

24 A. In this 160. I don't know about the rest of the
25 unit. The Nadel and Gussman landman is negotiating on

1 that.

2 MR. BRUCE: We have another landman who will
3 testify more about the nonconsenting --

4 EXAMINER BROOKS: Okay, very good.

5 MR. BRUCE: -- interest owners.

6 EXAMINER BROOKS: So I don't have to go into that
7 with this witness. Very good.

8 Mr. Catanach?

9 EXAMINER CATANACH: No questions.

10 EXAMINER BROOKS: Very good, the witness may
11 stand down and may be excused.

12 THE WITNESS: Thank you.

13 MR. BRUCE: Mr. Examiner, if you desire to take a
14 break now --

15 EXAMINER BROOKS: I would like to do so. We'll
16 take a 15-minute recess.

17 (Thereupon, a recess was taken at 10:07 a.m.)

18 (The following proceedings had at 10:17 a.m.)

19 EXAMINER BROOKS: Okay.

20 SAM H. JOLLIFFE, IV,

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

23 DIRECT EXAMINATION

24 BY MR. BRUCE:

25 Q. Would you please state your name and city of

1 residence?

2 A. Sam Jolliffe, and I live in Midland, Texas.

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

4 A. I work for Nadel and Gussman Permian. I'm --
5 capacity as land manager.

6 Q. Have you previously testified before the
7 Division?

8 A. Yes, I have.

9 Q. And were your credentials as an expert petroleum
10 landman accepted as a matter of record?

11 A. Yes.

12 Q. And are you familiar with the land matters
13 involved in this Application?

14 A. Yes.

15 MR. BRUCE: Mr. Examiner, I tender Mr. Jolliffe
16 as an expert petroleum landman.

17 EXAMINER BROOKS: His credentials will be
18 accepted. By the way, how do you spell that name?

19 THE WITNESS: J-o-l-l-i-f-f-e.

20 EXAMINER BROOKS: Thank you.

21 Q. (By Mr. Bruce) Mr. Jolliffe, could you identify
22 Exhibit 3 for the Examiner and discuss its content?

23 A. Yes, sir. Exhibit 3 is a land plat which
24 highlights the south half of Section 17, Township 19 South,
25 Range 24 East, in Eddy County.

1 I'd like to point out, Mr. Examiner, we do have
2 our well location. There's a little triangle there, kind
3 of in the northeast southeast.

4 EXAMINER BROOKS: Yeah, it's a little hard to
5 see, but --

6 THE WITNESS: A little hard to see, but you were
7 asking a minute ago about the -- That is our well location
8 on there, as far as the land plat.

9 Now, we seek an order pooling the south half of
10 Section 17 from the surface to the top 200 feet of the
11 Mississippian formation, for all pools and formations
12 spaced on 320 acres, and also seek to pool the southeast
13 quarter for 160-acre units.

14 Q. (By Mr. Bruce) Now, before we go to page 2, this
15 south-half unit is composed of basically two tracts, is it
16 not, Mr. Jolliffe?

17 A. That's correct.

18 Q. The southwest quarter is leased by the state?

19 A. Right, HBP, State of New Mexico lease, and as Mr.
20 McCaw said, the southeast quarter is all mineral fee.

21 Q. Okay, what is the ownership of the 320-acre well
22 unit? And I refer you to page 2 of Exhibit 3.

23 A. Okay, the actual working interest ownership under
24 that south half would be Nadel and Gussman Permian 37 1/2
25 percent, Marathon Oil Company approximately 6 percent,

1 Ameristate Exploration approximately 3 percent, OXY USA
2 approximately 7 1/2 percent, Devon Energy approximately 15
3 1/2 percent, Yates Petroleum approximately 17 2/3 percent,
4 Joe Helm and Billie Helm and Bill and Clara Helm with 12
5 1/2 percent.

6 Q. Okay. Which of these parties do you seek to
7 pool?

8 A. We seek to pool Marathon Oil Company, OXY USA,
9 Devon Energy and Joe and Billie Helm and Bill and Clara
10 Helm.

11 Q. Okay. Let's discuss your efforts to obtain the
12 voluntary joinder of these interest owners. Could you
13 identify Exhibit 4 for the Examiner?

14 A. Yes, Exhibit 4 is copies of written
15 correspondence. We mailed our initial proposal letter to
16 Marathon Oil on May 16th. Marathon then followed up with a
17 letter May 31st that they had some other owners in
18 agreement with them, that being Mark Nearburg, Ameristate,
19 Concho, now Devon, and then OXY. So that instigated that
20 particular chain.

21 And then June 11th we sent our proposal to OXY.

22 Q. Okay.

23 A. And then we also sent Mr. -- the Helms their AFE
24 on June the 20th.

25 Q. Okay.

1 A. Okay.

2 Q. Now, this first proposal letter went out to
3 Marathon and -- what, Marathon had some other working
4 interest owners, I take it?

5 A. Right, they had what I believe is their Southern
6 Cross agreement, which none of that is really filed of
7 record.

8 Q. Okay.

9 A. And you know, Marathon by this May 31st letter
10 forwarded on to Concho and Ameristate the AFE and our
11 proposal.

12 Q. Okay, so that's the second letter in the pack,
13 right?

14 A. Yes, sir.

15 Q. And of course Concho is now Devon Energy. Okay.

16 Now, besides your letters to the various parties,
17 have you had phone conversations with them? Maybe let's
18 break it down between the companies and then the Helms.

19 A. Sure. I've had -- Let's start with OXY. I had
20 phone conversations with the landman at OXY. She said,
21 We're working it, we're working it. She has since left and
22 gone to Pogo. The landman that has taken over her area has
23 said that he thinks they will participate and try to get us
24 a JOA back. I was advised of that late last week and
25 hadn't heard anything from them.

1 And as far as Marathon, I haven't talked to
2 Marathon probably in a couple weeks. I anticipate they're
3 going to want to do something with this, but there again we
4 hadn't heard anything from them in a couple weeks.

5 Concho, now Devon, we understand that they
6 probably will participate with us.

7 Q. Okay. And will you notify the Division in the
8 event that any of these other companies subsequently join
9 in the well?

10 A. Yes.

11 Q. And do you believe you've made a good faith
12 effort to obtain the voluntary joinder of these companies
13 in the well?

14 A. Yes.

15 Q. Now, let's move on to, I guess, Mr. and Mrs. Joe
16 Helm and Mr. and Mrs. Bill Helm. What have been -- Now,
17 Mr. McCaw on your behalf had various contacts?

18 A. Right, he had the majority of the conversations.

19 Q. Which started -- regarding leasing their
20 interest, which started last October?

21 A. Right.

22 Q. And you've continued those negotiations, trying
23 to obtain a lease on the Helms' interest, have you not?

24 A. That's correct, basically to go over -- after Mr.
25 McCaw realized that he probably wasn't going to get any

1 farther than he had.

2 Q. Okay, and could you summarize those contacts?

3 A. Yes, with the Helms?

4 Q. Yes.

5 A. Yes, Mr. Helm and I met in Mr. Baxter -- Dick
6 Baxter's office, in Midland on July the 3rd. We had a
7 meeting there. At that time he still requested that he
8 wanted a quarter royalty and some other things. I had
9 authority at that time to go up to a 1/5 royalty, a 20-
10 percent royalty, if you will, to try to compensate him for
11 being the landowner and -- in addition to the damages that
12 we would pay him. He said that would not be acceptable and
13 basically still wanted a 1/4 royalty.

14 Q. And a 1/4 royalty is not acceptable to Nadel and
15 Gussman; is that correct?

16 A. No, sir.

17 Q. Okay. But you had previous to that meeting sent
18 an AFE to the Helms, had you not?

19 A. Yes.

20 Q. And asked them to participate in the well if they
21 chose not to lease their interest?

22 A. Right, and then we sent that on June 20th.

23 Q. Okay. And is the correspondence, then, with all
24 the various parties, including the Helms, reflected in
25 Exhibit 4?

1 A. Yes, it is.

2 Q. What is Exhibit 5?

3 A. Exhibit 5 is -- Scott Germann, our exploration
4 manager and myself did a phone interview with Gordon
5 Barker, our operations manager. Gordon's been out in the
6 field working the wells for us and just has not been able
7 to come in to the office. Basically this is his testimony
8 on his meeting with Mr. Helm.

9 Q. So it wasn't only Mr. McCaw trying to work with
10 Mr. Helm, you also did, and also your field operations --

11 A. That's correct. Gordon Barker, again our
12 operations manager, spent considerable time one day with
13 Mr. Helm. They basically drove around in Mr. Helm's golf
14 cart, and Gordon had showed where the well and the well pad
15 was staked. Mr. Helm said that was fine. They talked a
16 little bit about the water situation, but Mr. Barker did
17 not discuss any term -- any royalty, if you will.

18 Q. Okay. In your opinion, has Nadel and Gussman
19 made a good faith effort to either lease the Helms' mineral
20 interest or get them to join in the well?

21 A. Absolutely.

22 Q. Okay, what is Exhibit -- let me see -- 6, Mr.
23 Jolliffe?

24 A. Exhibit 6 is our AFE of the drilling costs.
25 Basically our cost to casing point would be estimated

1 \$611,641, with estimated completion cost of \$276,025.

2 Q. Okay. So the total completed well cost would be
3 what, close to \$888,000?

4 A. Yes, that's correct.

5 Q. Is this cost in line with the cost of other wells
6 drilled to this depth in this area of New Mexico?

7 A. Yes.

8 Q. And what is the depth of this well again?

9 A. The depth of this well is approximately 8700
10 feet.

11 Q. Does Nadel and Gussman request that it be
12 designated operator of the well?

13 A. Yes.

14 Q. And do you have a recommendation for the amounts
15 which Nadel and Gussman should be paid for supervision and
16 administrative expense?

17 A. Yes, we do, and we have sent those out, sent
18 joint operating agreements reflecting these rates, and
19 these rates are \$5500 for drilling and \$550 for producing.

20 Q. And are these amounts equivalent to rates
21 normally charged by Nadel and Gussman and other operators
22 for wells of this depth in this area of the state?

23 A. Yes.

24 Q. Do you request that this rate be adjusted
25 periodically as provided by the COPAS accounting procedure?

1 A. Yes.

2 Q. And finally, were the interest owners,
3 nonconsenting interest owners, notified of this hearing?

4 A. Yes.

5 Q. And is Exhibit 4 my affidavit of notice with the
6 certified return receipts -- or Exhibit 5 -- 7, excuse me.

7 A. Yes.

8 Q. Were Exhibits 3 through 7 prepared by you or
9 under your supervision or compiled from company business
10 records?

11 A. Yes.

12 Q. And in your opinion is the granting of Nadel and
13 Gussman's Application in the interests of conservation and
14 the prevention of waste?

15 A. Yes, sir.

16 MR. BRUCE: Mr. Examiner, I tender the admission
17 of Nadel and Gussman Exhibits 3 through 7.

18 EXAMINER BROOKS: Any objection? 3 through 7
19 will be admitted.

20 MR. BRUCE: And I pass the witness, Mr. Examiner.

21 EXAMINER BROOKS: Mr. Helm, any questions?

22 MR. HELM: No questions.

23 EXAMINER BROOKS: Mr. Kellahin?

24 MR. KELLAHIN: No questions.

25 EXAMINER BROOKS: Okay, let me clarify one thing

1 here.

2 EXAMINATION

3 BY EXAMINER BROOKS:

4 Q. Did you say that -- Did I understand you to say
5 that Mr. Helm at some point had indicated that the location
6 of the well was acceptable to him?

7 A. Yes, he did that in the on-site visit with our --
8 Gordon Barker, our operations manager. They were together.

9 Q. Would that have been after his conversations with
10 Mr. McCaw?

11 A. Yes, it would.

12 Q. Okay. Now, are all these interests undivided
13 interests in the entire 320?

14 A. Yes. Yes, that's based on those two -- You know,
15 they had their certain interest under that 160, and so it
16 is a blended interest under the 320.

17 Q. There's no horizontal division of ownership?

18 A. No. No, sir.

19 EXAMINER BROOKS: I believe that's all the
20 questions I have.

21 Mr. Catanach?

22 EXAMINER CATANACH: Just one.

23 EXAMINATION

24 BY EXAMINER CATANACH:

25 Q. Is there a reason why the well was proposed at

1 various -- at different times? You have letters proposing
2 the well to OXY on June 11th, proposing the well to various
3 other interest owners on May 31st, and then on June 20th
4 proposing a well to the Helms. I mean, is there a reason
5 for these, you know, different well proposal --

6 A. No, basically we were still in negotiation with
7 the Helms at that time in trying to obtain the lease on
8 their one-quarter minerals under the southeast quarter at
9 the time that we sent the AFES out to the southwest quarter
10 working interest owners, OXY, et al. When we realized we
11 probably weren't going to get there, that's when we decided
12 we need to go ahead and send an AFE and get this process
13 rolling.

14 EXAMINER CATANACH: Okay, that's all I have.

15 FURTHER EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. I'm sorry, I forgot to ask you, did you have an
18 agreement with the Helms on surface damages?

19 A. That was done mostly with Mr. McCaw. Initially I
20 believe Mr. McCaw thought he did.

21 Q. But nothing was ever signed?

22 A. No, nothing was ever signed at all.

23 Q. Okay.

24 A. Never signed.

25 EXAMINER BROOKS: Thank you.

1 THE WITNESS: Uh-huh.

2 EXAMINER BROOKS: You may call your next witness.

3 MR. BRUCE: Call Mr. Germann to the stand.

4 That's spelled with two n's on the end, Mr. Examiner.

5 SCOTT H. GERMANN,

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. BRUCE:

10 Q. Will you please state your full name and city of
11 residence for the record?

12 A. Scott Germann, Midland, Texas.

13 Q. Who do you work for?

14 A. Nadel and Gussman Permian.

15 Q. What's your job with them?

16 A. Exploration manager.

17 Q. By profession are you a geologist?

18 A. Yes, I am.

19 Q. Have you previously testified before the Division
20 as a geologist?

21 A. Yes, I have.

22 Q. And were your credentials as an expert petroleum
23 geologist accepted as a matter of record?

24 A. Yes, they were.

25 Q. And are you familiar with the geologic matters

1 involved in this Application?

2 A. Yes.

3 MR. BRUCE: Mr. Examiner, I tender Mr. Germann as
4 an expert petroleum geologist.

5 EXAMINER BROOKS: Okay, his credentials will be
6 accepted.

7 MR. BRUCE: Let's get off your testimony for a
8 minute, your geologic testimony, but as exploration
9 manager, going back to the Examiner's last question of Mr.
10 Jolliffe, or I believe it was Mr. Catanach's, about the
11 timing of the proposal letter, at least, to Mr. Helm, do
12 you have some drilling deadlines to meet with respect to
13 this?

14 A. Yes, we do. We have contracted a rig, a
15 Patterson rig, for a five-well commitment. Currently we --
16 As a matter of fact, last evening we spud the second well
17 of that commitment. This is a rig that's rated to 11,000
18 feet. So a majority of these wells, as is this one, are,
19 you know, somewhere between 21- and 30-day wells.

20 So we were trying to put this together as we
21 went, and of course it's been a fairly moving target, if
22 you will, trying to put this together with the timing. And
23 we picked up that rig about July 15th. So early, late
24 June, you can see all the correspondence kind of coming
25 together the first week in July, visitations and

1 discussions. We knew that we were having that rig to come
2 and see us, and we knew that we had to get it -- Of course,
3 we've not even built the pad, there's only a stake in the
4 ground. So there's a lot of timing issues there that we
5 were trying to balance --

6 Q. Okay.

7 A. -- not to stack a rig at several thousand dollars
8 a day.

9 Q. But in order to get everybody to join in by the
10 time -- Is this going to be probably the fifth well in that
11 drilling program?

12 A. It looks like it. It would not be optimum to be
13 that, because of the way the move -- We're in Chaves
14 County, and drop way down to Eddy and then come back up
15 into northern Eddy, it would be better if it wasn't. But
16 it looks like just because of timing and what we've been
17 doing with the permitting process and the force pooling
18 process, yes, it will be the last and the fifth well of
19 that program.

20 Q. Okay.

21 A. Which will be done by this year. It's going to
22 be a fall drilling program.

23 Q. Okay. Well then, let's move on to your exhibits.
24 First of all, just briefly, what is Exhibit 8?

25 A. Exhibit 8 is just a permit, the C-101 form that

1 we turn in to the State, in to the OCD Division. And
2 you'll notice that it's been approved July 22nd of 2001,
3 has the casing program, the fill designations, with the
4 location, the last location we've been talking about, which
5 is 1980 south, 990 east, in Section 17, of course.

6 A pertinent page, if I may, in this packet is
7 page number 5 -- it's the next to the last page -- and it
8 is the certified -- Basin Surveys, a surveying company out
9 of Hobbs, that has actually staked the location there, and
10 it outlines the pad. And you can see that the pad's
11 offsets are there.

12 And again, this is the one that, as Mr. Jolliffe
13 just testified to, that our operations engineer Gordon
14 Barker met with this data out there, with Mr. Helm, and
15 that was the first week in July, the same -- a few days
16 just after Mr. Helm and Mr. Jolliffe met in Midland. So if
17 we need to come back to that...

18 I might note also, on the first exhibit, the
19 satellite picture, it's so blown up to get the detail, it's
20 not even the whole southeast quarter. So you're not
21 looking at the southeast quarter there, you're only looking
22 at parts of the southeast quarter. And I did that just to
23 get the scale, so if we need to kind of talk about anything
24 in relative distance, there is a scale at the bottom of 300
25 yards there, that if we need to scale that or discuss that,

1 we'll be glad to do it.

2 Q. Okay, why don't you move on to your Exhibit 9 and
3 discuss the primary zone of interest in this well?

4 A. Sure. Exhibit 9 is just a quick type section I
5 put together for our management, for approval process.
6 Obviously this is located in the western Eddy area, in that
7 red square.

8 On the right is a kind of a very simplified type
9 log section. The main targets are in red there, the
10 Wolfcamp, the Cisco and the Morrow. We are drilling into
11 the Mississippi. That's very common, because that's a very
12 important top to the geologist, to know that we've
13 penetrated the entire Morrow section. And sometimes
14 there's even production out of the top of the
15 Mississippian, though it's not a major target, but still we
16 need that top. It's a limestone versus sandstone, and it
17 lets us know where we're at.

18 In this area the Wolfcamp and the Cisco and the
19 Canyon are very confusing to work, and they're commonly
20 lumped in together called the upper Penn. And if you go
21 back to Exhibit Number 8 you'll see that actually it's in
22 the Antelope Sink Field (Upper Penn), and that's the way
23 it's designated by the OCD.

24 Now, geologists are trained to split things out
25 and do as much detail work as we can, so we're going to

1 concentrate today on primarily the Cisco, which is in the
2 upper Penn, and that is my main target.

3 We will be also drilling to the Morrow. The
4 Morrow is much more risky, but it is not that much more
5 depth for us to see the Morrow formation and top into that
6 Mississippian. And it does produce -- the Morrow also
7 produces in the township.

8 So those are our two targets. So Cisco is the
9 primary Penn target, and then Morrow is a backup or
10 secondary target. It just happens to be that it's a little
11 deeper than the primary target in this particular case.

12 Q. Okay. Let's move on to your primary zone of
13 interest, the Cisco/Canyon. Could you identify Exhibit 10
14 for the Examiner?

15 A. Sure. This is a map of almost the whole township
16 that we were discussing. The south half of 17 is
17 highlighted in yellow. There's a red triangle there to
18 show where the well spot is currently at, that 1980-990
19 location.

20 This structure is made on a marker inside of the
21 Cisco, and we have basically pretty much straight easterly
22 dip down to the east. Updip is to the west. Structure is
23 not a truly crucial controlling factor in the Cisco/Canyon,
24 and the next map, if I may --

25 Q. Sure.

1 A. -- Exhibit 11, is an isopach that goes with the
2 next exhibit, which is Exhibit 12.

3 Q. Well, why don't you put, then, Exhibits 11 and 12
4 in front of you there and discuss the geology in a little
5 more detail?

6 A. Certainly. This is a cross-section that has a
7 little index map to the right. It's also cross-sectioned
8 on the isopach map.

9 Basically what I've done is, I went through and
10 I've detailed correlations, and I've numbered these, my own
11 little numbering system, basically 1 through 8. And
12 geologists use a word called parasequences, and these are
13 flooding surfaces that we identify to help correlate the
14 zones.

15 You can see that when you have these big blue
16 zones or these blue pay, that's what we're looking at. Our
17 location is closest to the fourth well in the cross-
18 section, and that's in Section 16, and that well is
19 approximately 660 feet off that lease line. That well has
20 accumulated over a BCF. And this target, as you might -- I
21 don't know if you can see on that cross-section, is about
22 6400 feet. So this is a little shallower drilling than
23 some of the normal Eddy County drilling. And that well has
24 produced out of that blue pay there, out of that Sequence
25 6.

1 And then over in 18 there's another excellent
2 well that has also produced out of these same Cisco
3 limestones, and it's been a good well, 3 BCF. But Section
4 17 itself has never had a penetration for any depth in it,
5 for any formation. All right. One of the flies in that
6 ointment, if you will, is the well located in the north
7 half of 20. That was a well -- and it's on the cross-
8 section as well. It's right south of Section 17.

9 That well Yates drilled a few years ago in the
10 middle 1980s. It tried every zone possible to man. It
11 tried everything, and it was basically dry. It did produce
12 very small volumes of gas. In my opinion, that might be
13 one of the reasons that Section 17 has not seen activity in
14 it either. Plus the west half of 17 has been HBP'd for a
15 number of years, so that could also explain it.

16 So we are looking for these blue mounding
17 carbonates, and of course what we're hoping to do is to
18 mound into 17 and get some hydrocarbons in the south half
19 of 17 competing with those in Section 16 and those in
20 Section 18.

21 Q. What is Exhibit 13?

22 A. Exhibit 13 is the well that I just mentioned in
23 Section 16. It is the State MV Com well, located in the
24 west half of 16. You can see that it came on in the early
25 1980s, 1983. It's cum'd 1.1 BCF, as the records show, and

1 it's still currently producing volumes in the 150 to 160
2 MCF a day.

3 The following page is just a little pressure
4 diagram indicating that there's still pressure remaining
5 possibly in that reservoir. Of course, we're going to have
6 some depletion risk. We are not anticipating virgin
7 pressures here where we're going to go down there and find
8 that we know that it's going to be drawn down. But that's
9 the state of our industry in southeast New Mexico. We find
10 that very common.

11 And so that's why also, by the way, I picked a
12 little bit different location initially than this 1980-660,
13 because at this location I have a chance to see more
14 drainage. But I'm starting to get kind of cornered here on
15 where I can physically put a wellbore.

16 Q. Looking at the risk factors you've mentioned, the
17 possibility of pressure depletion, number one, also does
18 that dry hole in section -- in the northeast of the
19 northwest of Section 20 also play a factor in assessing
20 risk in this process?

21 A. Yes, sir.

22 Q. Now, you've mentioned already the Morrow as a
23 secondary objective. Why don't you move on to your Exhibit
24 14 --

25 A. Sure.

1 Q. -- and 15 and discuss the Morrow a little bit?

2 A. This is the -- Exhibit 14 is a structure map on
3 the Mississippian unconformity. The Morrow here lies
4 directly on that Mississippian, again, the reason I want to
5 penetrate the Mississippian with the well. Section 17 is
6 highlighted as well.

7 The isopach that goes with it is a lower Morrow
8 -- I call it the orange sand. The well in 20 tried it and
9 was not profitable, not economic. The well in 16, which
10 is, obviously we just discussed, a good Penn well, it was
11 basically also a dry hole in the Morrow.

12 But there is a well down in Section 27 that's
13 very economic, over 1.5 BCF. There's a well in 30 that's
14 made 1.8 BCF out of the Morrow. And also there's some
15 interesting drilling now occurring in the township to the
16 north that we've already alluded to called Southern Cross,
17 and that is also some Morrow drilling.

18 So we know that there are some Morrow fairways
19 going through here, though they might be a little risky,
20 are still worth taking the difference between the 6900- or
21 7000-foot tests down to the 8700-foot test.

22 Q. In looking at your Morrow isopach, actually from
23 the viewpoint of the Morrow you'd probably prefer to be a
24 little bit further to the south?

25 A. Yeah, that's exactly right. Probably that -- a

1 660 or a 990 location would be preferred for the Morrow,
2 that's right.

3 Q. But Nadel and Gussman was willing to work with
4 Mr. Helm on a surface location?

5 A. Yes, sir, we were.

6 Q. In your opinion, what penalty should be assessed
7 against any interest owner who goes nonconsent in this
8 well?

9 A. Cost plus 200 percent.

10 Q. Were Exhibits 9 through 15 prepared by you or
11 under your supervision or compiled from company business
12 records?

13 A. Yes, they were.

14 Q. And in your opinion is the granting of this
15 Application in the interests of conservation and the
16 prevention of --

17 A. Yes, it is.

18 MR. BRUCE: Mr. Examiner, I would move the
19 admission of Nadel and Gussman Exhibits 9 through 15.

20 EXAMINER BROOKS: Any objections?

21 MR. KELLAHIN: No objection.

22 EXAMINER BROOKS: 9 through 15 will be admitted.

23 MR. BRUCE: And I will pass the witness.

24 EXAMINER BROOKS: Any questions?

25 MR. KELLAHIN: No, sir.

1 EXAMINER BROOKS: Very good, I don't believe I
2 have any questions. Do you, Mr. Catanach?

3 EXAMINER CATANACH: No.

4 EXAMINER BROOKS: The witness may stand down.

5 THE WITNESS: Thank you, sir.

6 MR. BRUCE: That concludes my presentation in
7 this case, Mr. Examiner.

8 EXAMINER BROOKS: Okay, Mr. Helm, if you would
9 like to be seated at the table over to my right.

10 JOE HELM,
11 the witness herein, after having been first duly sworn upon
12 his oath, testified as follows:

13 DIRECT TESTIMONY

14 BY MR. HELM: I don't have any credentials or
15 expertise, and all this is interesting but it doesn't seem
16 to relate to my problem. I own the surface there. The
17 well is going to be real close to my house, and
18 specifically close to my guest house, to my water well,
19 which is the only well I have on the ranch that is potable
20 water. I pipe it all over the ranch for the cattle and for
21 the house use. But I realize that the area they staked is
22 probably the only area that they could reasonably drill on.
23 My concern is trying to recover some of the
24 damages that will be occurring because of their drilling.
25 And I don't know if you read my little affidavit-type thing

1 there. If they just -- They're presuming that they will
2 hit something --

3 MR. BRUCE: Mr. Examiner, I don't have a copy of
4 that.

5 MR. HELM: Oh, you don't?

6 EXAMINER BROOKS: Do you have an extra copy that
7 you could furnish Mr. Bruce?

8 MR. HELM: Oh, yeah.

9 MR. BRUCE: Thank you, Mr. Helm.

10 EXAMINER BROOKS: Mr. Kellahin, do you want a
11 copy?

12 MR. KELLAHIN: No, sir.

13 EXAMINER BROOKS: Go ahead.

14 MR. HELM: I think I lost my train of thought.

15 Well, the damage -- If they don't hit anything, as it
16 points out here, all I'll be left with is a scar there
17 right in the landscape near the house, and that will be the
18 end of it. If they do make a well out of it, well then the
19 damage will begin at that time, a significant damage, tank
20 batteries and traffic and smells and noise and everything
21 that goes with a producing well. It's right close to one
22 of the major cattle waterings there, which I imagine cattle
23 can get used to it.

24 But the point is, it would reduce the value of my
25 ranch because it is the headquarters right there in it, but

1 in the headquarters. Therefore, I needed some idea on what
2 damages I could expect.

3 As I pointed out here, just for the pad I figured
4 \$6000, and there would be no charge for the lease. I know
5 that the lease they leased from the other absentee owners
6 at \$75 an acre, I just doubled that for damage to the land.
7 And instead of -- I think they're talking about -- I think
8 we agreed, perhaps, on somewhere around \$3000 for the pad.
9 So the \$3000 for the pad and the \$3000 for the lease would
10 make \$6000. If they drilled a dry hole, I would have \$6000
11 to pay for the disfigurement of the landscape.

12 Then if they had the additional damage that will
13 occur if they make a successful well, I don't know how in
14 the world you can estimate what your damage is up front and
15 in one sum, because it's continuing damage, it goes on and
16 on. So I suggested on the telephone to Mr. Jolliffe maybe
17 a rental factor there, rather than a percentage, over and
18 above the 3/16, \$1100 a month. If they don't make a well,
19 then it's a moot point anyway. But if they make a well and
20 I have to contend with it, then they would just be a rental
21 factor there for the inconvenience of it.

22 And at the same time I think I've mentioned
23 possibly settling for 1/32 more than the 3/16 that everyone
24 was getting, or the \$1100 a month rental. And all I am
25 doing is, I'm not -- 3/16 is fine with me, as long as I can

1 get some damages for the existence of a well. And the way
2 I calculated it is, maybe an extra 1/32 or \$1100 a month
3 rental.

4 MR. BRUCE: Mr. Examiner, if I could --

5 EXAMINER BROOKS: Are you through? Is that all
6 you wanted to say?

7 MR. HELM: Yes.

8 EXAMINER BROOKS: Okay, Mr. Bruce, you wish to
9 question?

10 MR. BRUCE: I don't -- I do have a short closing
11 argument. I don't have any questions.

12 EXAMINER BROOKS: Okay, but you don't have any
13 questions for Mr. Helm?

14 MR. BRUCE: No, sir.

15 EXAMINER BROOKS: Okay. Mr. Kellahin?

16 MR. KELLAHIN: No, sir.

17 EXAMINATION

18 BY EXAMINER BROOKS:

19 Q. Mr. Helm, do you feel that Nadel and Gussman has
20 negotiated with you in good faith in this matter?

21 A. Oh, I would have no reason to believe that they
22 were acting in bad faith.

23 Q. Okay, but you haven't reached an agreement. What
24 you're saying is that you have not reached an agreement?

25 A. No, not --

1 Q. Either on the surface damages or on the terms of
2 the lease?

3 A. No.

4 Q. Okay. Can you think of anything that Nadel and
5 Gussman could do in terms of their operations that would
6 accommodate your requirements as the surface owner that
7 they have refused to do?

8 A. On the damages on the pad, they haven't agreed to
9 the \$6000, nor did -- we didn't come to any conclusion on
10 -- I believe they refer to it as a bonus payment for --

11 Q. Yes.

12 A. Yeah. Well, they were operating on \$75, because
13 that's what the absentee owners were paid.

14 Q. Right.

15 A. And I feel like it ought to be \$150. And I have
16 20 acres. That would be \$3000, \$3000 for the pad. So if
17 the damage is just to the surface, it would be \$6000. I
18 don't remember if I presented that to Mr. Jolliffe or not.
19 Probably not.

20 Q. But you're not taking the position that the well
21 site should be located somewhere else?

22 A. Not -- I don't -- yeah, not at this point. I
23 don't think they can drill anywhere else because of the
24 configuration of the geology there.

25 Q. Okay.

1 A. If they're going to drill -- I realize they have
2 to drill somewhere there, so it is an undesirable place,
3 but I'll go along with it.

4 Q. Okay. Now, do you understand that if the
5 Commission -- or the Division, rather, were to grant the
6 force pooling requested by Nadel and Gussman, that you
7 would receive a 1/8 royalty under the -- proportionately
8 reduced to your 1/8 interest in the land?

9 A. Yeah, I'm not really certain what their proposal
10 is, as it relates to me.

11 Q. Okay, if the Commission -- or the Division, were
12 to grant the relief that has been requested by Nadel and
13 Gussman to force pool your interest into their unit, then
14 you would receive a 1/8 royalty, 1/8 of 1/8 as a royalty.

15 And in addition you would receive what in oil-
16 industry parlance is called a back-in. That is, you would
17 come in for your entire 1/8 interest in the well instead of
18 1/8 and 1/8 after they have recovered their costs plus
19 whatever risk penalty the Division chooses to assess, which
20 would be up to 200 percent of their costs in addition to
21 recovery of their costs. In other words, if we granted
22 everything they've asked for, then you would get your 1/8
23 royalty, and then you would come in for your entire
24 interest in the well, once they have recovered 300 percent
25 of their costs of drilling and operating the well.

1 So I just give you that by means of explanation
2 as to what they're asking us to do here.

3 A. Yeah, I prefer not to do that.

4 EXAMINER BROOKS: Okay. Well, I have no further
5 questions. Is there any questions from you, Mr. Bruce?

6 MR. BRUCE: I don't have any questions, I just
7 have --

8 EXAMINER BROOKS: Okay --

9 MR. BRUCE: -- two-minute --

10 EXAMINER BROOKS: -- very good.

11 MR. BRUCE: -- closing.

12 EXAMINER BROOKS: Anything further, Mr. Kellahin?

13 MR. KELLAHIN: No, sir.

14 EXAMINER BROOKS: Very good. You may proceed
15 with your closing statement.

16 MR. BRUCE: Mr. Examiner, all I'm going to say is
17 that Nadel and Gussman has tried with Mr. -- with the Helms
18 brothers. If you would look at -- One thing I would like
19 to point out is that if you'd look at your Exhibit 1, that
20 aerial photography map, it's right at the head of the table
21 here, Mr. --

22 EXAMINER BROOKS: Oh, thank you.

23 MR. BRUCE: If you'll notice over in the -- kind
24 of the middle, it shows County Road 21. The fact of the
25 matter is, there's a public road out to this southeast

1 quarter of the section, and therefore there's public access
2 to it. The law is, actually, if you have access to that
3 land, then the operator has the right to reasonable use of
4 the surface without compensation to the surface owner, and
5 that's the *Amoco vs. Carter Farms* decision of the New
6 Mexico Supreme Court.

7 The fact of the matter is, companies like Nadel
8 and Gussman like to keep on good terms with the land
9 owners, so they do negotiate with them over surface
10 damages. But the fact of the matter in this particular
11 case, unless their use of the surface is unreasonable --
12 and I note that the well pad is going to be just
13 immediately off this road -- they don't owe the Helms
14 anything for the use of the surface. They would like to
15 come to terms, but \$6000 and a monthly fee is not only not
16 reasonable, it's not standard.

17 They will continue to work with Mr. Helms if they
18 can. But they need to get a well drilled, and the fact of
19 the matter is, drilling a well, if they make a well, will
20 benefit not only Mr. Helms but the other interest owners.

21 Thank you.

22 EXAMINER BROOKS: Thank you.

23 Do you wish to make a statement Mr. Helms?

24 MR. HELM: In regards to that, I really didn't
25 understand what he was getting at as far as he didn't owe

1 any damages on what portion.

2 MR. BRUCE: If -- What I'm saying, Mr. Helms, is,
3 since Nadel and Gussman has access to your property by a
4 public road --

5 MR. HELM: Yeah.

6 MR. BRUCE: -- they can use a reasonable portion
7 of your surface, and this is going to be about 150 feet by
8 150 feet for the well pad, and they don't have to pay you
9 anything. And that's just a matter of state law.

10 EXAMINER BROOKS: Yes, I would recommend that --
11 You know, Mr. Bruce is not your attorney and neither am
12 I, and I would recommend --

13 MR. HELM: Yeah.

14 EXAMINER BROOKS: -- if you have questions about
15 what your legal rights are under New Mexico --

16 MR. HELM: I didn't know exactly --

17 EXAMINER BROOKS: -- that you consult an
18 attorney.

19 MR. HELM: -- but it extends from the county road
20 over onto my deeded property.

21 EXAMINER BROOKS: Yeah.

22 MR. HELM: The point is, it seems that they're
23 not too concerned about my loss, as opposed to the other
24 mineral owners who could care less. I do own the surface,
25 and it does damage my ranch as a whole. The other mineral

1 owners are getting 3/16. All I'm asking for is a little
2 addition to that to pay for the damage that will occur.

3 EXAMINER BROOKS: Yes. Well, I would like to
4 explain, although, as I say, I'm not your attorney and I
5 don't mean to be giving you legal advice, but I would like
6 to explain that the Commission does not have jurisdiction
7 under the -- the Division does not -- I keep calling us the
8 Commission; we're the Division.

9 The Division does not have jurisdiction under the
10 statute to award you surface damages as such. We have
11 jurisdiction over determining the terms on which you can be
12 required to participate as a party to this unit, but we do
13 not have any jurisdiction over how much, if any, surface
14 damages you might be entitled to. That would be a matter
15 for the District Courts of the State of New Mexico.

16 Anything further, anyone?

17 MR. HELM: Is this hearing subject to appeal to
18 District Court?

19 EXAMINER BROOKS: It is. And once again, if you
20 -- It is subject to appeal first to the Commission, to the
21 Oil Conservation Commission, and then the decision of the
22 Oil Conservation Commission can be appealed to the District
23 Court. Once again, I would ask you, if you have questions
24 about your legal rights --

25 MR. HELM: Yes.

1 EXAMINER BROOKS: -- I strongly advise you to
2 consult a private attorney.

3 Okay, there being nothing further, Case Number
4 12,706 will be taken under advisement.

5 (Thereupon, these proceedings were concluded at
6 11:02 a.m.)

7 * * *

8
9
10
11
12
13
14
15
16
17 I do hereby certify that the foregoing is
18 a complete record of the proceedings in
the examination hearing of Case No. 12,706
heard by me on Aug 9, 2001.
19 David K. Brooks, Examiner
20 Oil Conservation Division
21
22
23
24
25

CERTIFICATE OF REPORTER

[illegible]

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 August 12th, 2001.

James H. Brown

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002