

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:)

APPLICATION OF TMBR/SHARP DRILLING,)
INC., FOR COMPULSORY POOLING, LEA)
COUNTY, NEW MEXICO)

CASE NOS. 12,816

APPLICATION OF OCEAN ENERGY, INC., FOR)
COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

12,841

APPLICATION OF DAVID H. ARRINGTON OIL)
AND GAS, INC., FOR COMPULSORY POOLING,)
LEA COUNTY, NEW MEXICO)

12,859

APPLICATION OF OCEAN ENERGY, INC., FOR)
COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

and 12,860

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

ORIGINAL

Volume I: May 16th, 2002
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, May 16th, 2002, 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.

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A P P E A R A N C E S

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(Continued...)

A P P E A R A N C E S (Continued)

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:05 a.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order. I'm Michael Stogner, appointed Hearing Examiner for
5 this case.

6 At this time I'll call Case Number 12,816, which
7 is the Application of TMBR/Sharp Drilling, Inc., for
8 compulsory pooling, Lea County.

9 Call for appearances.

10 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
11 the Santa Fe law firm of Kellahin and Kellahin, appearing
12 on behalf of the Applicant in that case.

13 In association with me today is Mrs. Susan
14 Richardson. Mrs. Richardson is an attorney, a member of
15 the Texas bar. She represents TMBR/Sharp in the District
16 Court litigation against Arrington. She made a
17 presentation with me to the Commission hearing of the
18 permitting portion of this dispute a couple of months ago,
19 and she's here to assist me today.

20 MR. HALL: Mr. Examiner, Scott Hall, Miller,
21 Stratvert and Torgerson law firm, Santa Fe, on behalf of
22 David H. Arrington Oil and Gas, Incorporated.

23 I do have three witnesses today in these related
24 cases, and we'd prefer to have all of them sworn in at this
25 time.

1 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
2 representing Ocean Energy, Inc. Our case numbers are
3 12,841 and 12,860, and I have four potential witnesses, and
4 I would ask that all four cases be consolidated for
5 hearing.

6 MR. CARR: May it please the Examiner, my name is
7 William F. Carr with the Santa Fe office of Holland and
8 Hart, L.L.P. We represent Yates Petroleum Corporation in
9 this matter. I do not have a witness.

10 EXAMINER STOGNER: Any other appearances?

11 Mr. Kellahin, would you like to make a statement
12 at this time in request for consolidation?

13 MR. KELLAHIN: Mr. Examiner, I have spoken to all
14 counsel of record, and they have agreed that TMBR/Sharp may
15 proceed with its presentation first. We're the lowest-
16 docketed case on the docket sheet. In addition, all the
17 other cases are in opposition to the position taken by
18 TMBR/Sharp. We move that they all be consolidated.

19 EXAMINER STOGNER: Okay, how many witnesses do
20 you have?

21 MR. KELLAHIN: I have four witnesses to be sworn.

22 EXAMINER STOGNER: And again, Mr. Hall, how many?

23 MR. HALL: Three.

24 EXAMINER STOGNER: Mr. Bruce?

25 MR. BRUCE: Four.

1 EXAMINER STOGNER: At this time I'll call Case
2 Number 12,859, which is the Application of David H.
3 Arrington Oil and Gas, Inc., for compulsory pooling, Lea
4 County;

5 also Case 12,860, which is the Application of
6 Ocean Energy, Inc., for compulsory pooling, Lea County;

7 and Case Number 12,841, which is also an
8 Application of Ocean Energy, Inc., for compulsory pooling,
9 Lea County, New Mexico.

10 These are the four cases I understand to be
11 consolidated?

12 MR. BRUCE: Yes, sir.

13 EXAMINER STOGNER: And they are now consolidated
14 for purposes of taking testimony.

15 Is there any need for opening statement, or do we
16 need to just get started?

17 MR. KELLAHIN: I'd like to make an opening
18 statement, Mr. Examiner.

19 EXAMINER STOGNER: Okay, Mr. Kellahin, before you
20 do, Mr. Carr?

21 MR. CARR: Mr. Stogner, I just want to be clear
22 that the record shows that Yates is appearing in all four
23 cases.

24 EXAMINER STOGNER: Well, now it's on the record,
25 okay.

1 Mr. Kellahin?

2 MR. KELLAHIN: Did you want to swear the
3 witnesses before we start, or would you like to do that
4 after the opening statements?

5 EXAMINER STOGNER: Let's go ahead and get the
6 opening statements first.

7 MR. KELLAHIN: Okay. Bobby, would you deliver or
8 distribute the exhibit books?

9 Mr. Stogner, Mr. Sullivan is distributing the
10 exhibit books that Ms. Richardson and I are going to
11 present on behalf of TMBR/Sharp this morning. Make sure
12 Steve gets a copy.

13 EXAMINER STOGNER: There may be some new people
14 just coming in. We have consolidated four cases, 12,860,
15 12,841, 12,859 and 12,816. At this time we have opening
16 statements.

17 Mr. Kellahin?

18 MR. KELLAHIN: Thank you, Mr. Stogner. If you'll
19 turn to the TMBR/Sharp exhibit book and open the book,
20 you'll find that there's a cover sheet listing the proposed
21 table of contents of the exhibits.

22 If you'll turn past that table, there is a
23 timeline. I'd like to go through the timeline with you and
24 highlight certain items in the timeline to try to give you
25 a time sequence of activity as the parties have proceeded

1 through this dispute.

2 You can see that it's organized in such a way
3 that you have a date, then the next column is the
4 TMBR/Sharp activity, followed by Ocean in the next column,
5 and then other activity is in the last column.

6 What has occurred here, to try to move forward to
7 the point of the Blue Fin 24 well, if you'll turn to
8 Exhibit Tab 12, there's two displays. The second displays
9 -- The first display shows you well locations, and the
10 second display shows you a configuration map.

11 The four sections involved in the display --
12 there's Section 23, 24, 25 and 27 [sic] -- this area was
13 extensively studied by Louis Mazzullo as a geologist to
14 look for opportunities for deep gas exploration. He
15 commenced that activity a number of months ago. He will
16 testify on behalf of our client and talk about the timeline
17 or the chronology of his development of his hypothesis
18 about the geology and the subsequent evolution of his
19 story.

20 As a result of his work product, you'll find that
21 as we go through this timeline -- you start halfway down,
22 and if you'll look at an entry in November 22nd, TMBR/Sharp
23 is commencing to drill the Blue Fin 24 well. The 24 well
24 is in the southwest quarter of Section 24, just to the
25 north of Section 25. Section 25 is the disputed section.

1 There are not yet any deep gas wells in Section 25, and the
2 dispute has to do with the priority of how wells are
3 drilled and a consolidation of the acreage for the
4 appropriate spacing unit.

5 The first entry of significance with relation to
6 the Blue Fin 25 is that you'll see in January, on the 31st
7 of January of last year, Mr. Nearburg, Mark Nearburg, and
8 Mr. Mazzullo met with representatives of Ocean in a private
9 showing of Mr. Mazzullo's geologic work product.

10 At that time his geologic work product includes
11 seismic evaluation. He had access at that time to more
12 than just seismic data available on the market common
13 market. Chesapeake has shot this area on a special seismic
14 shoot, and as a result of failure to get all parties
15 approving of the seismic shoot, the settlement of that
16 dispute resulted in having the data turned over to
17 TMBR/Sharp on the properties affected by that seismic
18 trespass.

19 So Mr. Mazzullo had all the seismic data that he
20 then analyzed with the assistance of a geophysicist, and he
21 showed his conclusions to Ocean at a meeting in January.

22 As a result of that meeting, Ocean made a choice
23 after looking at the data and decided that the drilling of
24 the wells in 24, 25 and I think 23 -- this was prior to
25 spudding -- what's after the 25 well? What's after the 24

1 well? Time sequence, Mazzullo meeting in relation to the
2 24 well?

3 MS. RICHARDSON: The 24 well was spudded March
4 29th.

5 MR. KELLAHIN: Okay, this is prior to the
6 spudding of the 24 well. So in January they're meeting
7 with Ocean. Ocean's technical people decide that Mr.
8 Mazzullo's proposed locations for wells in 23, 24 and 25
9 was structurally too low and was too wet. So they declined
10 for technical reasons to participate, and I believe Ocean
11 had at least three opportunities to review that data.

12 Then you find in March 27th that a dispute now
13 occurs because a fellow named Huff takes some top leases.
14 They are top leases associated with the northwest quarter
15 section of 25.

16 The base leases, as Mr. Brooks may remember, are
17 a disputed tract in which the base leases are controlled by
18 TMBR/Sharp, and they're called the Hamilton and Stokes base
19 leases.

20 At this point in March, Huff has top-leased the
21 TMBR/Sharp leases, and then he subsequently assigns those
22 interests to Arrington.

23 You then find two days after that, on the 29th,
24 TMBR/Sharp spuds the 24 well in the southwest quarter of
25 24. They proceed with the drilling of that well and it is

1 a successful well.

2 Then if you turn to the next portion of the
3 timeline you'll find that in the end of July, on the 17th
4 and 18th, Arrington has filed applications for permits to
5 drill, one of which included an application to drill a well
6 using a west-half dedication in Section 24. That was his
7 Triple Hackle Dragon well. He got a permit from the Hobbs
8 Office of the Division as to those.

9 Mr. Carroll, when he represented Arrington in the
10 Commission Hearings, advised us that Arrington, when he
11 acquired these permits, had no intention of drilling this.
12 And as of the time of the Commission Hearing, he advised
13 the Commission that they still had no intention of drilling
14 these wells, despite having the permits.

15 In August, then, the next important item in the
16 timeline is August 6th, 7th and 8th. TMBR/Sharp files an
17 application for an APD with Mr. Williams. The Section 25
18 APD is for a north-half spacing unit for what TMBR/Sharp
19 calls the Blue Fin 25 well. They have the successful 24
20 well, they're seeking to drill the second well now.

21 And Mr. Williams denies the TMBR/Sharp APD's
22 because Arrington's APD's have blocked his approval. They
23 were there first, and they blocked that approval.

24 The next thing that occurs after Mr. Williams'
25 denial of the TMBR/Sharp APD is that because of this title

1 dispute over whether or not the top leases are in effect or
2 not, TMBR/Sharp files suit in District Court on August
3 24th.

4 In addition, on September 20th the Commission
5 holds an Examiner Hearing before Examiner Brooks, and we
6 talk about the permitting issue, we talk about the issue of
7 priority, whose APD should be approved, and who should go
8 forward as a result of the title dispute. We make that
9 presentation to Mr, Brooks.

10 And you'll also see on this timeline that in
11 November, on the 14th, Ocean and Arrington reach an
12 agreement. That agreement, when you see it, will be dated
13 September 10th, but it was signed by all parties on the
14 14th of November.

15 Then you'll see on November 20th, TMBR/Sharp in
16 the District Court pleadings files for summary judgment.
17 That is argued, everybody is before the District Court.

18 And on December 27th, the District Court enters
19 an order granting the summary judgment portion of that case
20 to the extent the District Court determines the top leases
21 are not in effect, that the underlying base leases held by
22 TMBR/Sharp are perpetuated and still in effect.

23 And then that case proceeds to trial, which has
24 not occurred yet, on the damage issue to determine to what
25 extent Arrington by his tortious interference has damaged

1 TMBR/Sharp, and that is the primary remaining portion of
2 the litigation.

3 Ms. Richardson represents TMBR/Sharp in the
4 litigation, and if there are questions about the litigation
5 or the status of that activity, I believe she can answer
6 those things.

7 Shortly after the District Court has decided,
8 Examiner Brooks, from the September hearing, on December
9 13th, enters the Division Examiner Order over the
10 permitting dispute. His Order said that there was the
11 appearance of color of title as a result of the top leases,
12 and he said that at this point in time the Arrington APD's
13 would be in effect because he was first in time and at
14 least represented a colorable title through the top leases.

15 TMBR/Sharp appealed that Examiner to the full
16 Commission, which subsequently heard that issue. The well
17 proposals for Ocean -- Ocean's applications for force
18 pooling and their well proposals all took place after this
19 occurrence. Ocean has two force pooling applications. One
20 is in the west half, proposing to drill a well in the
21 northwest quarter. There's another application for
22 drilling a well on the southwest quarter. In addition on
23 the docket this morning is Mr. Arrington's Application to
24 force pool the east half of 24, which is in conflict with
25 the TMBR/Sharp approvals.

1 So on March 22nd, the Commission has a Commission
2 Hearing to talk about and decide what to do with the
3 permitting dispute. And they decide that the Arrington
4 APD's had not been approved in accordance with their belief
5 that you needed to have colorable title, because his title
6 had failed at least through the District Court process.
7 They voided his APD's, they advised him that they were
8 doing so through Mr. Williams and that order.

9 And you'll see in the pleadings that we have, we
10 do have the Commission decision in that case. If you'll
11 turn to Exhibit 7, you'll see the Commission's work product
12 in that decision.

13 At the Commission Hearing Arrington and Ocean
14 argued then, as they continue to argue now, that the force
15 pooling process can trump the permitting process. They
16 raise the argument that the Commission ought to postpone
17 its decision on which APD's were valid until after the
18 Examiner Hearings on the force pooling cases. That was one
19 of the specific arguments that Mr. Carroll and Mr. Bruce
20 advanced for their clients back in the March 26th hearing.

21 You'll find in the Commission Order, under
22 Finding Number 25, the Commission is summarizing that
23 issue, and they repeat the Ocean-Arrington argument. They
24 say if the Commission were to adopt this approach, Ocean
25 then argues that compulsory pooling would be made

1 meaningless.

2 And that's not what they did. They simply reject
3 all these efforts to continue the permitting process and to
4 have that occur after the pooling hearing. And as a result
5 of the Commission's action, they've allowed TMBR/Sharp to
6 go forward with their permit, and TMBR/Sharp has commenced
7 drilling the well in the northwest quarter of Section 25.
8 That well was commenced on the 7th of May, 8:30 in the
9 morning.

10 As of the 14th of May, we talked at the pre-
11 hearing conference on Tuesday that I advised you that
12 TMBR/Sharp had drilled that well at this point to a depth
13 of 3900 feet. I understand from TMBR/Sharp that this is a
14 45-day anticipated drilling schedule, after which there is
15 a completion rig and opportunity to test and evaluate the
16 well.

17 You may remember at the prehearing conference on
18 Tuesday, that conference, prehearing conference, was to
19 address a motion to dismiss that I had filed, as well as a
20 request for continuance. I had filed to request that the
21 TMBR/Sharp force pooling case be postponed until the
22 results of the drilling well were known. In addition, we
23 moved to dismiss the force-pooling cases filed by Arrington
24 and Ocean because of the action taken by the Commission.

25 You have denied that request to continue or

1 dismiss, so we have a difference of opinion with respect,
2 Mr. Stogner, on how to interpret the Commission action.

3 We believe at this point, pursuant to the pooling
4 statute, that what should occur is that we be provided the
5 opportunity to complete that force pooling activity, to
6 consolidate the remaining owners in the north half of the
7 section after the well is drilled. Under the statute, as
8 you and I both know, you can pool before or after. Under
9 this circumstance, we're proposing to complete that
10 activity afterwards.

11 And if you agree with us today and issue us a
12 pooling order, the purpose of our presentation will be to
13 afford those people who are not already committed to
14 Arrington to have a free ride, which is the point.

15 You'll find out in our testimony that as of
16 today's hearing, that TMBR/Sharp has consolidated on a
17 voluntary basis more than 80 percent of the north half.

18 Of the interest owners that haven't been
19 consolidated, there are two people we can't find with tiny
20 little fractional interests. The remaining interests have
21 all been consolidated by Mr. Arrington, so he controls the
22 balance.

23 What we say, then, should occur under the statute
24 is to consolidate the remaining portion of the north half
25 of the section to commit those parties like Mr. Arrington

1 because of his adverse position to us, to now be committed
2 by the police powers of the state into participating in our
3 well.

4 What we believe should not occur is to have a
5 dispute with you over orientation of the spacing unit at
6 this time. We think that that's not what should occur, and
7 so we'll have a difference of opinion about that issue.

8 But because of your ruling on Tuesday, we are
9 fully prepared to go forward this morning, to show you the
10 sequence of activity, to present Mr. Louis Mazzullo's
11 technical study on the seismic data so that you can see how
12 he's developed his concept of the reservoir in where he
13 says these wells ought to be drilled.

14 In addition, we have witnesses to talk about the
15 sequencing of activity and the efforts to consolidate the
16 interest owners.

17 Time is of an issue for everybody in this case.
18 The underlying base leases that TMBR/Sharp have have a 180-
19 day drilling obligation between wells. We're in some
20 portion of that at this point.

21 The other part of this issue is a time component
22 that Ocean raises. They say their farmout interest in the
23 southeast quarter of Section 25, which they obtained in
24 July of last year, is due to expire at the end of June of
25 this year, and we'll find out from them what the status is

1 of their interest.

2 So if you're looking at the west half, it's a
3 southwest-quarter dispute in which Ocean, apparently
4 pursuant to some farmouts, controls that and, as a result
5 of a letter agreement with Arrington, proposes that some of
6 that interest be shared with him.

7 In the northwest quarter, that is 100 percent of
8 TMBR/Sharp's acreage at this point, based upon the status
9 of the current litigation in District Court.

10 In the northeast quarter, TMBR/Sharp's acreage
11 interest spills over into that quarter section. Currently
12 it's now subdivided between Arrington's control and
13 TMBR/Sharp's control with two missing parties that we can't
14 find.

15 So we intend to present four witnesses.

16 We'll present Mr. Nearburg to talk about the
17 development and sequence of the land issues that got him to
18 this point.

19 We'll present Jeff Phillips, who is an engineer
20 and is a principal with TMBR/Sharp to talk about his
21 activities, talk about his conversations with Mr. Arrington
22 over this well, talk about the various conclusions reached
23 from these discussions.

24 We will present to you Mr. Dennis Hopkins, who
25 did the final details on the ownership and can now validate

1 the consolidation of the acreage in the north half of the
2 section.

3 And then lastly we'll present Mr. Mazzullo's
4 scientific study of the reservoir.

5 Thank you, Mr. Stogner.

6 EXAMINER STOGNER: Thank you, Mr. Kellahin.

7 Mr. Hall?

8 MR. HALL: Mr. Examiner, TMBR/Sharp's perception
9 of the process is exactly backwards throughout this entire
10 proceeding.

11 What caused us to get to where we are today is an
12 act -- or a failure to act, I should say, an omission on
13 the part of TMBR/Sharp to abide by the express terms of
14 their oil and gas leases requiring them to file pooled unit
15 designations with the Lea County Clerk's office.

16 By that failure, that single failure dictated the
17 rest of events that have brought us here today. That same
18 omission has dictated the position that TMBR/Sharp has had
19 to take before the District Court and here.

20 TMBR/Sharp has represented to the District Court
21 judge in Lovington that filing a pooled unit designation is
22 not necessary; all you must do is mere filing of a C-102
23 plat with the Division's District Office in Hobbs, and they
24 say that is sufficient to preserve their leases.

25 I won't belabor the permitting issue much longer,

1 because I think it's largely irrelevant, and I think it
2 doesn't have much to do with the issues you're going to
3 hear today. Why we went into the recitation, that history,
4 again, is lost on me. I think TMBR/Sharp's position in
5 that regard is belied by the findings in paragraph 34,
6 Order R-11,700-B. It addresses the permitting issue square
7 on, and I think we should bear it in mind today as we
8 proceed in what would otherwise be generic compulsory
9 pooling cases.

10 In that finding the Commission said, "Issuance of
11 the permit to drill does not prejudice the results of a
12 compulsory pooling proceeding, and any suggestion that the
13 acreage dedication plat attached to an application to drill
14 somehow 'pools' acreage is expressly disavowed."

15 In other words, what the Commission is telling us
16 is that the filing of an acreage dedication plat does not
17 dictate the outcome in compulsory pooling cases, as you
18 well know. It is rare circumstance where a party comes
19 before you, having drilled the well first, before
20 undertaking to pool or otherwise consolidate its interest.
21 I can think of only one other case in my 20 years of
22 practicing before this body where that's occurred. It is a
23 rare day, indeed, where that happens.

24 With that issue obviated by the Commission's
25 ruling, the only cases before you here today are really,

1 truly generic compulsory pooling cases. You needn't
2 consider the permitting issues at all.

3 What's going to decide this case is geologic
4 evidence, engineering evidence and equitable evidence as
5 that data has a bearing on the prevention of waste, the
6 avoidance of drilling unnecessary wells and the protection
7 of correlative rights. That will determine the outcome in
8 this proceeding.

9 We will also look at good faith efforts to secure
10 voluntary participation in the various proposed units,
11 standup and laydown. All of those criteria, the evidence
12 in all of those matters will decide the outcome, not the
13 permitting issues. And that's what we're here prepared to
14 address for you today.

15 EXAMINER STOGNER: Mr. Bruce?

16 MR. BRUCE: Mr. Examiner, TMBR/Sharp has
17 performed us a favor here. If you could turn to Exhibit 9
18 in their booklet, they did do a nice little chart here.
19 The X's are wrong in the chart, but nonetheless they've
20 done us a favor because as Mr. Hall said, the thing you're
21 going to have to look at here is the geology and the
22 engineering, not the permitting issues.

23 When you look at the geology it's going to show
24 that the reservoirs, potential reservoirs for the well that
25 the people want drilled, are in the west half, and the west

1 half only. When you look at that, that means that when you
2 get to their correlative rights, if the reservoirs are in
3 the west half, then that ought to be the unit, a standup
4 west-half unit.

5 With respect to unnecessary wells, that's a good
6 issue, because if TMBR/Sharp gets its north-half unit,
7 there's going to be three wells drilled in this immediate
8 area, instead of the two wells that should be drilled.
9 Economic waste.

10 As I said, the geology will dictate the
11 orientation of the unit, and finally, the dates the
12 prospect was developed or proposed.

13 Both Ocean Energy and Arrington, along with our
14 opponents, have been out here for a number of years. Ocean
15 has drilled or participated in over 20 wells in this area.

16 When you look at all the factors, you just take
17 that column of X's and move it over to Ocean, and that's
18 what you're going to see in the testimony today.

19 So with that, let's proceed.

20 EXAMINER STOGNER: Mr. Carr?

21 MR. CARR: Mr. Stogner. I have no opening
22 statement.

23 MR. KELLAHIN: When has that ever happened
24 before?

25 MR. CARR: I'm just doing so well today --

1 (Laughter)

2 EXAMINER STOGNER: Okay, at this time I'm going
3 to have all the witnesses stand, and I should have 11 to my
4 count.

5 (Thereupon, the witnesses were sworn.)

6 EXAMINER STOGNER: Mr. Kellahin?

7 MR. KELLAHIN: Thank you, Mr. Examiner. At this
8 point I'd like to turn over our witness questioning to Mrs.
9 Richardson.

10 EXAMINER STOGNER: Tell you what, before we get
11 started let's kind of maybe plan the day out. The best
12 time to eat lunch in this town is about 11:30, so let's
13 proceed to 11:30, take an hour lunch, and then proceed with
14 as long as we can this evening. That will depend upon our
15 court reporter, and that's my plan at this point, and to
16 get us started as early as possible tomorrow, should we go
17 into tomorrow.

18 So with that, are there any suggestions?

19 MR. HALL: I'd like to invoke the no-coat rule.

20 (Laughter)

21 EXAMINER STOGNER: What is the no-coat rule?

22 MR. HALL: You get to take off your coat when
23 it's hot.

24 EXAMINER STOGNER: Feel free, this is an informal
25 proceeding. It is going to get hot in here. In fact, I'm

1 glad you brought that up. The temperature in this room
2 will get higher this afternoon, and with the many people in
3 here. So I apologize about that, I have no control over
4 the environmental controls in this building. But feel free
5 to loosen your necktie, except the attorneys.

6 (Laughter)

7 EXAMINER STOGNER: Okay, Mr. Kellahin.

8 MR. KELLAHIN: Thank you.

9 MS. RICHARDSON: Mr. Stogner, we'd like to call
10 Mark Nearburg to the stand.

11 EXAMINER STOGNER: Ms. Richardson, since you're
12 sort of new to me --

13 MS. RICHARDSON: Yes, sir.

14 EXAMINER STOGNER: -- let me have you introduce
15 yourself, if you don't mind, just for the record.

16 MS. RICHARDSON: Surely. My name is Susan
17 Richardson, I'm with the -- a shareholder in the law firm
18 of Cotton, Bledsoe, Tighe and Dawson. I've been practicing
19 for 27 years. I'm board-certified in oil and gas in Texas,
20 and a primary part of my practice is oil and gas
21 litigation.

22 EXAMINER STOGNER: And where do you live?

23 MS. RICHARDSON: In Midland.

24 EXAMINER STOGNER: In Midland.

25 MS. RICHARDSON: Midland, Texas.

1 EXAMINER STOGNER: Thank you.

2 MS. RICHARDSON: Thank you, nice to be here.

3 MARK K. NEARBURG,

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

6 DIRECT EXAMINATION

7 BY MS. RICHARDSON:

8 Q. Mr. Nearburg, will you please state your name,
9 full name?

10 A. Mark K. Nearburg.

11 Q. And who are you affiliated with?

12 A. Ameristate Oil and Gas. I'm appearing on behalf
13 of TMBR/Sharp in this hearing.

14 Q. And what business is Ameristate Oil and Gas in?

15 A. Ameristate generates oil and gas exploration
16 prospects, primarily in southeast New Mexico. We are not
17 an operating company.

18 Q. And could you give us a little bit about your
19 background, where you grew up, your education?

20 A. I grew up in Roswell, New Mexico. I have an
21 economics degree from Texas A&M University and a master in
22 communication from the University of Texas. I've worked
23 principally in southeast New Mexico since 1981 as a landman
24 and own my own company now.

25 Q. Okay. And you're aware the nature of the

1 proceeding today involves compulsory pooling in Section 25?

2 A. Correct.

3 Q. Could you please explain to the Examiner the
4 nature of -- the history of your company and TMBR/Sharp's
5 involvement in this area of southeast New Mexico?

6 A. Mr. Stogner, in the particular area -- I believe
7 you have the land plat. Do you know which exhibit that is?

8 Q. Turn to Exhibit Number 12, please.

9 A. Okay. Pretty much the particular area in
10 question. I began working in this township that
11 incorporates this map in the late 1980s, in conjunction
12 with a partner. We did extensive work and began --
13 geologic work, and began purchasing leases in 1991.

14 We continued this leasing up through the present
15 time, we've continued to develop the prospect through,
16 first, the geologic work, then the drilling of wells, then
17 2-D seismic purchase and, in the spring of 2000, the
18 acquisition of 3-D data that led to the drilling of the
19 well in question in Section 25 and the well in 24 and
20 another well located on this plat.

21 Q. And when did you first begin collecting geologic
22 information and studying the area?

23 A. In the late 1980s.

24 Q. What were the two prospects that your group was
25 looking at at that time?

1 A. We had a prospect on the west side of the
2 township, and we had -- that adjoins this prospect, and
3 then we had this project on the east side of the township.

4 Q. Okay. Was one called the Edson Ranch?

5 A. Edson Ranch -- Eidson Ranch actually incorporates
6 Sections 23 and 26, the Big Tuna prospect incorporates
7 Sections 24 and 25 and other lands that are not shown on
8 this plat, to the east.

9 Q. Okay. If you could explain in a little more
10 detail who was involved in the project, who did the
11 geological work that you were relying on, and then we'll
12 talk about the leasing activity.

13 A. The project began with Tom Bell, who I grew up
14 with in Roswell. Our initial geologic work was done by
15 John Herbig in Midland. He worked with us from 1991 --
16 actually continued to work with us in a support basis on
17 the geology as we drilled wells.

18 In 1995 we brought Louis Mazzullo in to help us
19 with what we were finding in the drilling of wells out here
20 and to further define the prospects. At that point we
21 purchased some 2-D seismic to help enhance that.

22 Once we acquired -- Well also, in 1997, we began
23 work with TMBR/Sharp to drill the wells, specifically the
24 wells in 23, 26, 24 and 25 on this plat, and they came in
25 as operator and took control of the project from that

1 standpoint.

2 We continued to work with TMBR/Sharp to develop
3 the prospect from a land and technical standpoint with
4 them.

5 In 1995, Louis Mazzullo joined the effort, John
6 Herbig continued to work with us.

7 At the point in time, somewhere around 1997 when
8 we bought the 2-D seismic, we obtained the help of Ed
9 Luckabaugh, who's a geophysicist in Midland. When we
10 acquired the 3-D seismic, we continued with Mr.
11 Luckabaugh's involvement, Mr. Mazzullo and Mr. Herbig
12 continued their involvement.

13 When we were working on the 3-D, we also took Mr.
14 Luckabaugh's interpretation and -- on a consulting basis,
15 his work was on a consulting basis -- and we hired a fellow
16 in Denver, Robert Scolman, who has experience working in
17 this area for Ocean, to look at our data. He did not have
18 a conflict in that. And he helped interpret our data to
19 find the features that we were trying to target in Sections
20 -- specifically in Sections 24 and 25.

21 Q. All right. Was there some preliminary drilling
22 in Sections 23 and 26 that provided some information that
23 made the Big Tuna prospect in 24 and 25 seem more
24 attractive?

25 A. Yes, we originally drilled the TMBR Eidson 23-1

1 in the southwest quarter of Section 23. That well was
2 primarily a test for the Atoka. We did take it deeper for
3 a deeper marker, and technically I'll leave that to Mr.
4 Mazzullo. We completed that well in the Wolfcamp
5 formation. The deeper zones were not productive.

6 We followed that up with the TMBR Eidson 26
7 Number 1 well in the northwest quarter of Section 26. Same
8 thing happened as the Eidson 23 Number 1 well. But at the
9 conclusion of drilling the 26-1, we did realize that there
10 were deeper structures and features in here that we needed
11 more information about. That's when we started
12 incorporating the seismic.

13 Follow-up to that, we drilled the TMBR Eidson 23
14 Number 2 well in the northwest quarter of Section 23 on a
15 west-half unit. That was possible because the 23 Number 1
16 was a Wolfcamp oil well. The Eidson 23-2 was completed in
17 the Atoka and then the Strawn as a gas well on a west-half
18 unit.

19 All of this activity occurred from 1997 to 1999.

20 In the southeast quarter of Section 23, once we
21 had acquired the 2-D seismic in 2000, we attempted re-entry
22 of the Del Apache Stokes well. It had only been drilled to
23 around 10,000 or 11,000 feet.

24 We tried to deepen that well based on what we had
25 learned from the 3-D. That was a mechanical failure. That

1 well was abandoned.

2 We then looked at Section 24 and 25. We had
3 enough information, we thought Mr. Scolman and Mr.
4 Luckabaugh had given us enough information to drill targets
5 well below the Atoka down in the Chester. The depths,
6 again I'll leave those to Mr. Mazzullo.

7 And we drilled the Blue Fin 24- Number 1 well, we
8 commenced operations in March of last year and finished the
9 well in May.

10 We then -- Well, then the interference began from
11 Mr. Arrington and we ended up in District Court. And with
12 the interference from Ocean, that's how we get to Section
13 25.

14 Q. Can you tell me when you first began taking
15 leases in Section 24 and 25, and if you would, if you would
16 turn to the front of your witness notebook and look at the
17 timeline?

18 A. Is that Number 1?

19 Q. Well, it's right behind --

20 A. Oh, before Number 1.

21 Q. -- the index.

22 A. Okay.

23 Q. Yes, sir. When did you first obtain Stokes
24 Hamilton acreage in Sections 24 and 25?

25 A. In 1994. We renewed those leases in 1997, and

1 again we took an extension, a six-month extension from
2 December to June prior to drilling the well in Section 24,
3 which incorporated Stokes Hamilton acreage. And our
4 operations were performed before and over the expiration of
5 the primary term of that lease.

6 Q. Okay. And you -- at that point, Ameristate
7 entered into an operating agreement with TMBR/Sharp in July
8 of 1998 which covered these properties?

9 A. That's correct.

10 Q. And then at some point the Stokes Hamilton leases
11 were to expire, and did you obtain an extension of your
12 leasing arrangement with the Stokes Hamilton group?

13 A. The lease taken in 1997 was extended, which gave
14 us -- When we saw we weren't going to be able to commence
15 the drilling under that primary term, we did extend that
16 lease so that we could do our drilling.

17 Q. Okay. Then TMBR/Sharp filed a written unit
18 designation and application for a permit to drill the Blue
19 Fin 24 in November of 2000?

20 A. Correct.

21 Q. Okay, and received a permit. During that time
22 period that the process of getting a permit to drill the
23 Blue Fin 24 on Section 24 and before drilling started, did
24 you have occasion to meet with or discuss with Ocean Energy
25 this Big Tuna prospect?

1 A. Yes, and I believe you're talking about the time
2 period November 22nd, and then just up through a point to
3 where we commenced operations.

4 Q. Right, right.

5 A. I don't have the exact date. We met with Ocean
6 in Midland in the fall of 2000 and talked to them about the
7 project.

8 Q. Why were you all meeting with Ocean at all?

9 A. We -- TMBR/Sharp had partners that did not agree
10 that the risk to drill these wells was appropriate. They
11 felt it was too risky, and they did not want to drill the
12 well. We had interest to sell in the prospect and these
13 wells, and we were trying to find partners, industry
14 partners, to drill with us.

15 Q. And what kind of information in the fall of 2000
16 did you provide Ocean about the Big Tuna prospect?

17 A. It was general information about where the
18 prospect was and what the objectives were. At that time we
19 did not get into the detailed information with them that we
20 did later.

21 Q. Okay. And then did you have further
22 communication with Ocean in January of 2001?

23 A. Yes, in the fall of 2000 when we were visiting
24 with Ocean, there were general conversations. There was a
25 conference held in Houston for all the oil and gas industry

1 to show prospects, and we were going to that prospect
2 showing in January, it's the last week of January.

3 During early January we talked with Mr. Maney and
4 Mr. Messa at Ocean. They requested that we -- Well, it was
5 mutually requested that we have a showing prior to the
6 public showing at the exposition to show them the prospect
7 prior to the public being able to view it.

8 On or about January 28th or 29th, we had a
9 meeting in Ocean's office in Houston, attended by myself,
10 Tom Bell, Louis Mazzullo, Derold Maney, Frank Messa, Bob
11 Silva [sic], Gerald Grocock and one other manager who I
12 don't know, and that was a detailed geologic, seismic and
13 land presentation to Ocean of this project.

14 Q. And when you say a detailed geologic
15 presentation, did Mr. Mazzullo have his laptop computer
16 with his analysis on it where he could show them the actual
17 studies and interpretations he had done?

18 A. Yes, we showed Ocean the relationship between the
19 prospect we wanted to drill, both geologically and
20 seismically and from a land ownership standpoint, and
21 correlated that to a well they had drilled up in section 10
22 of this same township, which was a very good well, proved
23 up that this reservoir could produce, and it was a detailed
24 relationship between our project and what they had done in
25 the area.

1 Q. And during the course of those discussions with
2 Ocean Energy where they were purporting to express interest
3 in the project, did you actually show them the locations
4 that TMBR/Sharp had picked for the Blue Fin 24, the Blue
5 Fin 25 and the Leavelle 23?

6 A. Mr. Examiner, we did not give them specific
7 locations, but we specified that we felt that the northeast
8 quarter of 23, the southwest quarter of 24 and the
9 northwest quarter of 25 were the prospective locations for
10 wells, based on the seismic and geology that we presented.

11 Q. And as a result of those conversations, did Ocean
12 agree to participate with TMBR/Sharp in the project?

13 A. They declined. They did not decline the day that
14 we showed it to them in their office, but the next day at
15 the prospect exposition they made it very clear that they
16 felt -- well, actually Mr. Silva made it clear the day
17 before in the private showing that he felt we were low and
18 wet to their well in 10 due to the crossing of a subsurface
19 feature which I'll let Mr. Mazzullo address. And they did
20 not feel that our project had the geologic or seismic merit
21 to be a valid project.

22 Q. Did they ever suggest to you that it wasn't the
23 geologic prospect that was problematic, but that they
24 didn't like the terms under which the prospect was being
25 offered?

1 A. No, their rejection was based solely on technical
2 merit. We did present terms for the sale of the prospect.
3 They never presented any counterproposal or counter-terms,
4 we were simply rejected that the prospect did not have
5 technical merit.

6 Q. At that time did Ocean Energy disclose to you
7 that they had an AMI in the area with Arrington Oil and
8 Gas?

9 A. No.

10 Q. Did they disclose to you that they had personal
11 interest in the prospect and intended to go out and get
12 farm-in acreage?

13 A. No, they did not.

14 Q. Did they ever disclose to you that they intended
15 to not participate with you but intended to be in
16 competition with you in that very section?

17 A. No, they did not.

18 Q. Did you ask them to sign a confidentiality order?
19 Were you concerned about their trustworthiness at that
20 point?

21 A. Mr. Examiner, at that point we had had a
22 relationship with Ocean that had always been honest and
23 direct regarding our efforts and areas. At that point we
24 had no reason to question that they would try to go around
25 us and later become involved in our play based on the

1 technical merits we presented to them.

2 Q. Then moving forward, TMBR/Sharp spudded the Blue
3 Fin 24 on March 29th, 2001?

4 A. Correct, we received an approved APD from the
5 Commission and commenced drilling on a west-half unit the
6 Blue Fin 24 Number 1 well. We drilled that well pursuant
7 to the terms of not only the Stokes Hamilton lease, but all
8 the leases incorporated into that unit. We've had
9 continuous operations through the drilling, completion and
10 production of that well to this day.

11 Q. And the actual production of hydrocarbons
12 occurred on June 29th, 2001?

13 A. I'll take your word for that.

14 Q. Okay, all right. And then production was first
15 sold in August of 2001?

16 A. Correct.

17 Q. With respect to the permitting issues which have
18 been decided by the Commission, I'll just ask you, but for
19 the fact that Mr. Arrington had applied for and received
20 permits on Section 25 and 23, was it the TMBR/Sharp group's
21 intention to move forward with drilling those wells after
22 it completed the Blue Fin 24?

23 A. Yes, Mr. Examiner, we were drilling 13,000-plus-
24 foot wells in a wildcat area at the time we drilled the
25 Blue Fin 24. You know, it was a very risky proposition.

1 We wanted to see the production. We planned to move
2 immediately to the well in 25 and then the well in 23.

3 Due to the -- Obviously, the logs were not kept
4 tight. Arrington and Ocean saw the logs from someone, and
5 they proceeded to interfere with title to our leases and
6 development of our prospect.

7 Q. Okay. Drawing your attention to Exhibit Number
8 1, which are the 1997 Stokes and Hamilton leases to
9 Ameristate --

10 A. Uh-huh.

11 Q. -- if you'll look to the third page, the Exhibit
12 "A" of the Stokes lease, can you describe to the Examiner
13 what a 180-day continuous drilling clause is and what
14 obligation it imposes on the lessee?

15 A. Mr. Stogner, as you're aware, we drilled over the
16 expiration of the primary term, which triggered the
17 continuous development of 180 days to commence a second
18 well on the Stokes Hamilton lease. That was from the
19 completion of one well to the commencement of drilling of a
20 subsequent well. So at that time we fell under continuous
21 development.

22 That's very important, because it creates the
23 time constraints and has a lot to do with the reason we
24 were forced to commence the well in 25 just recently. The
25 Stokes Hamilton lease covers a portion of Section 23, 24,

1 25, 26 and Section 13, so it's not an isolated lease. It
2 requires continuous development on additional tracts with
3 additional wells.

4 Q. What happens if the 180 days lapse without
5 drilling on the Stokes Hamilton acreage?

6 A. All acreage that's not incorporated into a
7 producing proration unit expires and we lose the rights to
8 that lease, that portion of the lease that we have not
9 drilled and developed.

10 Q. And looking again at your Exhibit 12, what
11 proportion of the north-half unit in Section 25 does the
12 Stokes Hamilton lease represent?

13 A. It represents the entire northwest quarter, being
14 50 percent of the unit.

15 Q. You are aware, are you not, that the District
16 Court has ruled that the TMBR/Sharp Stokes Hamilton lease,
17 base lease, is valid, and that the Arrington top leases are
18 not?

19 A. That is true. Mr. Examiner, the District Court
20 has ruled that our lease is valid and that we have the
21 right to continue operations on that lease. Obviously that
22 has to be done in accordance with the NMOCD, but we clearly
23 have the right to develop this lease.

24 Q. And after TMBR/Sharp and your company and all the
25 investors received the order of the Commission on the 26th

1 of April, what decision was made with regard to going
2 forward, now that the company had the permit to drilling
3 Section 25?

4 A. Okay, I want to go back to timewise.

5 Q. Surely.

6 A. Catch up with you.

7 Q. That would be great.

8 A. Are we back in -- Where are we going?

9 Q. Where we need to go is to April 26th, 2002, the
10 OCC order withdrawing Arrington's permits and granting
11 TMBR/Sharp.

12 A. Okay.

13 Q. Once that order was received, did we then receive
14 communication from Chris Williams from the Hobbs Office
15 that Arrington's permits actually had been withdrawn and
16 TMBR/Sharp's permit to drill on 25 had been granted?

17 A. Correct. Mr. Examiner, at the point in time that
18 this happened, I believe, if you'll correct me if I'm
19 wrong, at the point in time that the title dispute went
20 before the District Court, we received *force majeure* on the
21 180-day continuous development.

22 At the point in time, on April 26th, that our
23 permit was approved and Arrington's permits were denied --
24 and it should be noted, Ocean has filed no permit to drill
25 at this point -- that our clock began running again on our

1 180-day continuous development.

2 To mitigate damages, as directed by the District
3 Court, and to operate under the terms of the lease, we were
4 left no choice, and it was our desire to continue
5 development of that lease with the spudding of the well in
6 the northwest quarter of 25 on a north-half unit as
7 approved by the NMOCD.

8 Q. Okay. And if I could draw your attention to
9 Exhibit Number 16 --

10 A. Okay.

11 Q. -- this was the communication that we received in
12 a letter dated May 1st, 2002, from Chris Williams of the
13 Oil Conservation Division, the District Director, that the
14 two permits that Arrington Oil and Gas had on Section 25
15 had been withdrawn and that we were granted the right to
16 drill and permit to drill in Section 25?

17 A. Correct.

18 Q. And then the well on Section 25, the north half
19 of Section 25, was spudded by TMBR/Sharp on May 7th, 2002?

20 A. Correct.

21 MS. RICHARDSON: Thank you, pass the witness.

22 EXAMINER STOGNER: Mr. Hall?

23 MR. HALL: Mr. Nearburg --

24 EXAMINER STOGNER: Oh, for the record, sorry, Mr.
25 Nearburg's qualifications have been accepted for, and

1 assuming there's no objections --

2 MR. BRUCE: No objection, Mr. Examiner.

3 EXAMINER STOGNER: -- so qualified.

4 MR. HALL: I don't think he's been tendered as an
5 expert in any particular field, and to now he's not been
6 asked to render an opinion, so otherwise we have no
7 objection.

8 EXAMINER STOGNER: Okay.

9 THE WITNESS: My qualifications have been
10 accepted previously by the Commission as an expert land
11 witness.

12 EXAMINER STOGNER: Anyway, Mr. Hall?

13 CROSS-EXAMINATION

14 BY MR. HALL:

15 Q. Mr. Nearburg, as an expert land witness can you
16 tell me, just out of curiosity, how many compulsory pooling
17 cases have you been involved in before the Division?

18 A. Couldn't count them, Mr. Hall, don't know. I
19 could go back and find it for you, but we wouldn't be out
20 of here today.

21 Q. Yeah. Close to a hundred, wouldn't you say?

22 A. I doubt it.

23 Q. Between 150, safe to say?

24 A. Probably 50.

25 Q. In any of those pooling cases, did any of those

1 involve a well that was drilling before a compulsory
2 pooling application order was entered?

3 A. I believe back in the 1980s, if we want to argue
4 about that, we can go figure it out. But I do believe
5 there were one or two wells when I worked for Nearburg that
6 that was the case in the mid-1980s, yes.

7 Q. One or two out of 50?

8 A. Uh-huh.

9 Q. Earlier you made some representations about your
10 knowledge of the orders issued by the District Court in
11 Lovington. Now, I believe I understood you to say that to
12 satisfy one of the District Court's rulings, TMBR/Sharp was
13 compelled to commence drilling in Section 25 to satisfy the
14 180-day continuous operations clause. Is that accurate?

15 A. That's my understanding. That's a complicated
16 proceeding. I would refer to Ms. Richardson --

17 Q. Well, I want to ask you --

18 A. -- on a technical --

19 Q. -- since you raise it --

20 A. -- answer. However, it is my understanding that
21 to preserve our rights we did have to continue the
22 continuous development at the point in time that we
23 received a permit to drill.

24 Q. And you are aware also, are you not, that the
25 District Court has determined that a condition of *force*

1 *majeure* exists so that the *force majeure* provision of the
2 Stokes oil and gas lease is in operation so that the
3 obligation to commence drilling was suspended. Are you
4 aware of that?

5 A. I believe you're wrong on that.

6 Q. With whom did you --

7 A. But again, I would ask you to get with Ms.
8 Richardson, but I believe --

9 Q. With whom --

10 A. -- you're wrong.

11 Q. Well, let's tell us with whom you conferred to
12 reach your conclusion, anyway, that TMBR/Sharp was under an
13 obligation to commence the well in Section 25 immediately.

14 A. Commence the --

15 Q. What's the basis of that?

16 A. My conversations with Ms. Richardson.

17 Q. What else did Ms. Richardson tell you about that
18 particular point?

19 A. About --

20 MS. RICHARDSON: Objection, your Honor --

21 THE WITNESS: -- which point?

22 MS. RICHARDSON: -- privileged.

23 MR. HALL: Privilege has been waived.

24 EXAMINER STOGNER: I concur with Mr. Hall.

25 Answer the question if you can.

1 THE WITNESS: Well, I'm confused about his
2 question at this point, Mr. Examiner.

3 EXAMINER STOGNER: Do you want to restate your
4 question?

5 Q. (By Mr. Hall) Who initiated the conversation
6 about TMBR/Sharp's obligation to commence its well in
7 Section 25 in order to satisfy the continuous operations
8 clause? Was it you or Ms. Richardson?

9 A. I believe it was Ms. Richardson in her
10 representations at the law firm.

11 Q. And what did she tell you?

12 A. You know, Mr. Hall, I was not directly involved
13 in that. It was my understanding that the *force majeure*
14 has been relieved on Stokes Hamilton.

15 Q. All right.

16 A. Now, that may not -- I don't know about the
17 actions of Mr. Arrington or David H. Arrington Oil and Gas,
18 Inc. They may not have been relieved on Stokes Hamilton.
19 There's been a lot of interference in our business here,
20 and I may be confused on this. But I was under the
21 impression that we have a situation where we've been
22 allowed to continue our development of this project and
23 that that was action we needed to take.

24 Q. You've made two inconsistent statements to me
25 now. In the most recent statement, as I understand, your

1 understanding is that TMBR/Sharp did not have the
2 obligation to commence the Section 25 well in order to
3 satisfy its continuous operations provision --

4 A. Well --

5 Q. -- is that accurate?

6 A. -- why don't you ask Ms. Richardson?

7 Q. Well, I'm asking you, is that accurate? You're
8 the one who rendered the testimony.

9 A. My understanding is that we had to go ahead and
10 continue continuous development of that lease.

11 Q. *Force majeure* ruling notwithstanding?

12 A. Now, if I'm wrong, I'm wrong. Okay. But that's
13 my understanding.

14 Q. What is your understanding of the *force majeure*
15 ruling from the District Court? What does it do?

16 A. The *force majeure* -- as to Section 25 or --

17 Q. Yes.

18 A. -- 23 or 24? There's a lot of them.

19 Q. 25.

20 A. Well, obviously you think I'm wrong. You're an
21 attorney, I'm not, so I'll defer to you on this.

22 Q. No, I want to know your understanding, is all.

23 A. I've told you three or four times, Mr. Hall, my
24 understanding is, we needed to go ahead and develop these
25 leases.

1 Q. Does TMBR/Sharp or Ameristate plan on presenting
2 an additional landman witness to testify about the efforts
3 to secure the voluntary participation of Arrington in its
4 north-half well in Section 25?

5 A. Yes, they do.

6 Q. Who is that?

7 A. Dennis Hopkins.

8 MR. HALL: All right. Nothing further, Mr.
9 Examiner.

10 EXAMINER STOGNER: Mr. Bruce?

11 CROSS-EXAMINATION

12 BY MR. BRUCE:

13 Q. Mr. Nearburg, you said that some of the activity
14 got going in here because Ocean's well in Section 10 kind
15 of proved up the prospect, did it not?

16 A. It did not prove up this prospect, or I believe
17 they would have purchased an interest in it. It proved up
18 the fact that this reservoir was productive in the
19 township.

20 Q. Okay, so Ocean was the first one out there to do
21 that?

22 A. As far as I know.

23 Q. And then you showed the prospect to Ocean, what,
24 in -- well, in detail in what, January, 2001?

25 A. Discussed in the fall of 2000, and there was a

1 very detailed showing in January of 2001.

2 Q. And you also showed it to the entire industry at
3 the NAPE convention in January of 2001?

4 A. Correct.

5 EXAMINER STOGNER: What did you refer to that
6 convention as?

7 MR. BRUCE: NAPE, N-A-P-E.

8 EXAMINER STOGNER: Uh-huh.

9 MR. BRUCE: I forget what the acronym is for.

10 MR. HALL: North American Petroleum Expo.

11 EXAMINER STOGNER: Okay, that was just for the
12 record.

13 THE WITNESS: Actually the North American
14 Prospect Exposition, I think.

15 Q. (By Mr. Bruce) And what were the terms you
16 offered to Ocean on this?

17 A. We offered it at \$250 per net acre, 75-percent
18 net revenue interest and a 25-percent back-in after payout
19 on a well-by-well basis.

20 Q. Okay.

21 A. Which, by the way, are the terms upon which it
22 was subsequently sold, so...

23 Q. Now, you said something about a Robert Scolman
24 doing work for you?

25 A. Correct.

1 Q. Isn't it David Scolman?

2 A. David Scolman?

3 Q. His name is Dave, isn't it?

4 A. Could be. How about Mr. Scolman?

5 Q. How about Dave?

6 A. How about Dave?

7 Q. Now, he's a former Ocean employee, isn't he?

8 A. I don't know. When we contacted him he was a
9 consultant in Denver.

10 Q. Okay, just a couple more things. I haven't been
11 involved in the District Court proceedings, Mr. Nearburg,
12 but isn't the basis of the Court's ruling on the
13 maintenance of your bottom lease, in effect, is because the
14 filing of a form C-102 in the Hobbs OCD District Office
15 satisfied the pooling clock, I believe?

16 A. Are you asking about the well in 24?

17 Q. Yes, sir.

18 A. Okay, and what is your question?

19 Q. Isn't the basis of the District Court's summary
20 judgment ruling in favor of TMBR/Sharp on maintenance of
21 the lease, keeping the lease in effect, based on the filing
22 -- based on the assertion that the filing of a C-102
23 acreage dedication plat in the Hobbs OCD District Office
24 satisfied the pooling clause of that lease?

25 A. I believe so, but I would defer to Ms. Richardson

1 for the definitive answer.

2 Q. Okay.

3 A. I will say that it did agree, we performed under
4 the terms of the lease.

5 Q. Could you look at your Exhibit 12, Mr. Nearburg?

6 A. Okay.

7 Q. And I didn't catch all the wells that you have
8 drilled or plan on drilling out here, but I presume one of
9 them is the TMBR/Sharp Eidson 23-1?

10 A. Correct.

11 Q. What is the orientation of that unit?

12 A. That's a Wolfcamp well, it's either a 40- or an
13 80-acre proration unit.

14 Q. Did it drill to test the Morrow?

15 A. I'll defer to Mr. Mazzullo on the actual total
16 depth of the well.

17 Q. What about the TMBR/Sharp Eidson 26-1 well?

18 A. That again was a deeper test. I'll defer to Mr.
19 Mazzullo on the actual total depth. It has also been
20 completed in the Wolfcamp as a 40- or 80-acre proration
21 unit.

22 Q. As to the deeper formation, was it a standup or
23 laydown unit?

24 A. That was a north-half unit. The well in 23 was a
25 west-half unit.

1 Q. And what about the unit for the well in the
2 southwest quarter of 24, the Blue Fin 24-1?

3 A. That's a west-half unit.

4 Q. And of course, then, the Leavelle 23-1 would also
5 be a standup unit, would it not?

6 A. It would be an east half of 23 unit.

7 Q. Now, just for future reference, Mr. Nearburg,
8 just to get a couple of the names straight in here, you
9 have been out here probably individually and as Ameristate
10 Oil and Gas, Inc.; is that correct?

11 A. Correct.

12 Q. And some of your informal partners out here have
13 been Mr. Mazzullo?

14 A. Uh-huh -- yes.

15 Q. And Mr. Bell, Tom Bell?

16 A. Yes.

17 Q. And a company that he is involved in is Fuel
18 Produces; is that correct?

19 A. Correct.

20 Q. Do you and Mr. Bell have a position with
21 TMBR/Sharp at all, or are you just partners with them?

22 A. We generated the prospect, we sold the idea to
23 them initially, we've helped them with the development,
24 we're working interest owners and overriding royalty owners
25 with them.

1 Q. And I don't know if you mentioned this or not,
2 but you -- or Fuel Products and Ameristate did sell a
3 prospect further west to Ocean Energy, did it not?

4 A. Correct.

5 Q. The Eidson Ranch fee leases?

6 A. That's correct. They were not associated with
7 these Eidson leases, but --

8 Q. Correct.

9 A. -- they were on the same ranch.

10 Q. Yeah, it's a separate lease?

11 A. Correct.

12 Q. Was David H. Arrington Oil and Gas a competitive
13 bidder with Ocean on this?

14 A. On which? This --

15 Q. Further west.

16 A. Yes, they were.

17 Q. Okay, so you knew -- And you've been in this
18 township for several years, so you know that Arrington has
19 prospects or has leases in this area, do you not?

20 A. Correct.

21 Q. Have you or Fuel Products ever top-leased anyone
22 in this township?

23 A. Yes, we have.

24 Q. Who?

25 A. On the leases we turned to Ocean, which we

1 disclosed at the time we made the deal, we do have a top
2 lease. However, there's a significant difference between
3 theirs and ours and the actions of Mr. Arrington.

4 Q. You did top-lease Ocean, didn't you?

5 A. Oh, we did top-lease Ocean, and ours is
6 structured so it does not interfere with their operations,
7 and we've allowed them to drill several wells without
8 interference.

9 Q. Have you released that top lease?

10 A. The way our top lease is worded, it is not
11 required to be released, it does not interfere with title
12 the way it's structured, Mr. Stogner.

13 MR. BRUCE: That's all I have.

14 EXAMINER STOGNER: Mr. Carr. Note that he's not
15 here.

16 Any redirect, Ms. Richardson?

17 MS. RICHARDSON: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. RICHARDSON:

20 Q. If you could turn with me, Mr. Nearburg, to
21 Exhibit Number 13 --

22 A. Uh-huh.

23 Q. -- that exhibit is the Response of David
24 Arrington Oil and Gas, Inc., to Plaintiff's Motion for
25 Partial Summary Judgment Regarding Tortious Interference.

1 And if you would look to page 5, please, sir, paragraph
2 14 --

3 A. Okay.

4 Q. -- it says "Arrington -- "

5 EXAMINER STOGNER: Again, what paragraph?

6 MS. RICHARDSON: Paragraph 14 on page 5.

7 Q. (By Ms. Richardson) All right, the last sentence
8 of that paragraph says, "Arrington asserts that on August
9 8, 2001, the OCD denied TMBR/Sharp's application for a
10 permit to drill the Blue Fin '25' No. 1 Well in the N/2 of
11 Section 25... Arrington further admits that the OCD denied
12 the application by reason of the previous issuance of the
13 permit for Arrington's Triple Hackle Dragon '25' Well No.
14 1." Do you see that?

15 A. Yes.

16 Q. Okay. Has TMBR/Sharp and your group suffered
17 damages as a result of that interference by Mr. Arrington
18 which prevented TMBR/Sharp from getting its permit to
19 drill?

20 MR. HALL: Objection, Mr. Examiner.

21 THE WITNESS: Yes, we have.

22 MR. HALL: Objection. Just a minute, Mr.
23 Nearburg. The question is both leading and includes a
24 legal conclusion this witness is not qualified to testify
25 about. No foundation laid that he's so qualified to

1 testify about.

2 MS. RICHARDSON: May I give some background?
3 I'll try to lay a foundation.

4 MR. BRUCE: And if I could second that objection
5 and state that we're not here on a damages issue, we're
6 here to force-pool. This is totally irrelevant.

7 EXAMINER STOGNER: Ms. Richardson, go ahead
8 and --

9 MS. RICHARDSON: Thank you, Mr. Stogner, I'll lay
10 the foundation and then we'll move forward.

11 Q. (By Ms. Richardson) You are aware, are you not,
12 Mr. Nearburg, because you're a party to the litigation,
13 that District Judge Clingman in Lea County has held --

14 MR. HALL: Objection, Mr. Examiner, I'll object
15 to any leading testimony on direct such as this.

16 Q. (By Ms. Richardson) Let me ask it this way: Are
17 you aware of what Judge Clingman has ruled with respect to
18 tortious interference by Mr. Arrington?

19 A. I believe so.

20 Q. And what is that?

21 A. That he has tortiously interfered with our
22 attempts to develop our acreage, that we have the right to
23 do under our leases.

24 Q. As a result of that interference, has TMBR/Sharp
25 and the group suffered damages?

1 MR. HALL: Objection, he's not qualified to
2 render an opinion on damages. The most he can state is
3 that they're claiming damages in a lawsuit, but that's
4 totally irrelevant to this proceeding.

5 EXAMINER STOGNER: I concur with Mr. Hall in this
6 instance.

7 Q. (By Ms. Richardson) Has TMBR/Sharp -- Since
8 TMBR/Sharp was not able to drill until it got its permit to
9 drill, it of course was not able to produce any
10 hydrocarbons in Section 25, correct?

11 A. That's correct.

12 Q. If you would look, please, at Exhibit 10, which
13 is the Answer to Defendant Arrington Oil and Gas of James
14 Huff, Plaintiffs Third Amended Complaint for Declaratory
15 Judgment, et cetera, and if you would look to -- it's not
16 -- the pages aren't numbered, but it's after paragraph 87,
17 the First Affirmative Defense on the next page, "Plaintiffs
18 have failed to mitigate their damages."

19 What action has TMBR/Sharp and the group taken to
20 mitigate its damages for lost production on Section 25?

21 MR. HALL: Again, Mr. Examiner, I'm going to
22 object. What Mrs. Richardson is doing is simply trying to
23 establish some record testimony for purposes of her
24 District Court litigation. You shouldn't allow that.

25 MS. RICHARDSON: Mr. Examiner, the reason for all

1 of this, the urgency for drilling a well was, we were going
2 to lose the lease, as Mr. Nearburg has testified, because
3 we had a continuous drilling obligation, and we got a
4 permit to drill, which meant we had no more legal
5 impediment to drilling, and Mr. Arrington was taking the
6 position that to mitigate our damages -- that is, lost
7 value of production -- we had to have production. And I
8 think it's very relevant to the fact of the timing of our
9 drilling in Section 25.

10 We had two reasons: 180-day continuous drilling
11 and the duty to mitigate, and that's all I want to
12 establish with this witness.

13 MR. HALL: Mr. Examiner, I think there's been a
14 misrepresentation to the Division about the District
15 Court's ruling. There was an order issued invoking the
16 *force majeure* provision of this lease, and we'll produce
17 the ruling for you probably after lunch. It obviated the
18 obligation of TMBR/Sharp to proceed with its well in
19 Section 25 altogether, pending the outcome of litigation.

20 Furthermore, I don't think Mrs. Richardson can
21 establish that there's any relevance to this question in
22 the testimony it seeks to elicit to the issues of waste,
23 protection of correlative rights, conservation and the
24 prevention of the drilling of unnecessary wells. That's
25 what you need to look at here, not damages.

1 EXAMINER STOGNER: Mr. Bruce?

2 MR. BRUCE: I concur with what Mr. Hall said. I
3 don't want to take any more time on this issue. It's
4 completely irrelevant to a force-pooling proceeding.

5 MS. RICHARDSON: Your Honor, it was only
6 presented for the timing of the drilling of Section 25.
7 And with all due respect to counsel, and I believe that
8 with your able legal counsel to interpret for you, the
9 District Court said we were excused from fulfilling our
10 lease obligations so long as something prevented us which
11 was out of our control. That is, we couldn't drill without
12 a permit. And until we got a permit, we were protected by
13 *force majeure*.

14 At the point we got a permit, we no longer had
15 the protection of interference by Mr. Arrington, we no
16 longer had the excuse that we couldn't drill. Any party
17 that has a permit to drill in the State of New Mexico has a
18 right to drill. Therefore, we have lost our protections of
19 the *force majeure*.

20 And Mr. Hopkins will testify, this wasn't the
21 only lease, Stokes Hamilton lease wasn't the only one we
22 were worried about. We had others that were expiring in
23 July, one that potentially had expired in March. We had
24 several leases which are in jeopardy if we didn't go
25 forward.

1 (Off the record)

2 EXAMINER STOGNER: Okay, I'm going to sustain the
3 objections in this instance, and let's move on.

4 Q. (By Ms. Richardson) All right. One last
5 question, please, Mr. Nearburg. Over the time, beginning
6 in the late 1980s through today, what amount of money has
7 your group invested in this prospect area?

8 A. In excess of \$7.5 million.

9 MS. RICHARDSON: Thank you, no further questions.

10 EXAMINER STOGNER: Any other questions of this
11 witness?

12 MR. HALL: Briefly, Mr. Examiner, because new
13 material was raised.

14 RECROSS-EXAMINATION

15 BY MR. HALL:

16 Q. Mr. Nearburg, in response to a question of Mrs.
17 Richardson, you indicated that the reason the well was
18 drilled -- one of the reasons the well was drilled, that
19 that would precipitate damages to TMBR/Sharp and Ameristate
20 was because you would be unable to produce, because you
21 didn't have an APD. Do you remember that testimony?

22 A. You're going to need to clarify that for me.

23 Q. Didn't you say earlier that TMBR/Sharp and
24 Ameristate would be unable to produce the well in Section
25 25 because it did not have an APD in hand? Wasn't that

1 your testimony?

2 A. I didn't say we couldn't produce it.

3 Q. Is it your testimony that you can produce it?

4 A. If I said "produced", that's not the word I meant
5 to say.

6 Q. What did you mean to say?

7 A. You'll have to ask me the question that it was
8 related to.

9 Q. You don't recall your testimony in that regard?

10 A. If you can't recall the question, I'm not going
11 to try to recall the testimony. Now, if you'll work with
12 me here, I'll try to answer your question.

13 Q. Is it your position today that you can produce
14 the well with an APD?

15 A. In Section 25?

16 Q. Yes, sir.

17 A. I believe under NMOCD Rules we would need all the
18 voluntary joinder, we would need to carry those people or
19 we would need to have the pooling before or after we
20 drilled the well to consolidate the ownership in the unit.

21 Q. And you don't have any of those things today, do
22 you?

23 A. Well, we've got an Application to pool the
24 interests in the well, Mr. Hall.

25 Q. So the answer to my question is no?

1 A. If that's how you see it. That's not my answer.

2 Q. Your answer is yes?

3 A. My answer is --

4 Q. Let's be clear.

5 A. -- that when the pooling hearing is finished, and
6 we are given -- and we know where we are, then we can
7 produce the well.

8 Q. So let's be clear for the record. You don't have
9 voluntary joinder in your well today?

10 A. We have voluntary joinder except for Mr.
11 Arrington and except for two owners that we cannot locate.

12 Q. You don't have a communitization agreement?

13 A. Not necessary in this case.

14 Q. And you don't have a pooling order?

15 A. Not necessary in this case.

16 Q. Pooling order is not necessary in this case for
17 you to produce the well; is that your --

18 A. To produce the well we need a pooling order. To
19 drill the well we don't.

20 Q. And you don't have a pooling order?

21 A. Correct.

22 MR. HALL: Nothing further, Mr. Examiner.

23 EXAMINER STOGNER: Any other questions?

24 RECROSS-EXAMINATION

25 BY MR. BRUCE:

1 Q. Just one follow-up on your Exhibit 12, Mr.
2 Nearburg. The well in the northeast quarter, the Leavelle
3 23-1 --

4 A. Yes.

5 Q. -- that's a TMBR/Sharp well, proposed well?

6 A. Proposed well.

7 Q. Has not been commenced?

8 A. No.

9 Q. That's an east-half unit?

10 A. Correct.

11 Q. And that would include acreage in the leases at
12 issue?

13 A. It would.

14 MR. BRUCE: That's all I have.

15 THE WITNESS: It's not located on the leases at
16 issue, though, which is another issue.

17 Q. (By Mr. Bruce) What other issue?

18 A. You want -- Well, to perpetuate the lease, we
19 need the well located on the lease in question in case we
20 complete in a shallower zone, correct?

21 Q. Well, I'm not answering the questions today.

22 A. Okay, I'll tell you.

23 Q. If the east half is pooled, it reserves that
24 lease, does it not?

25 A. It does not, because the Leavelle is not located

1 on the Stokes-Hamilton lease.

2 Q. You mean -- Are you telling me that under your
3 lease the wells have to be on that lease?

4 A. No, Mr. Bruce, you know as well as I do that if
5 you drill a well for a deeper target, you pool the acreage.
6 If you do not complete on a unit that is pooled for
7 production, you know, from a deeper zone on a 320, and your
8 well is not located on the lease that has continuous
9 development, if you come up shallower you're not going to
10 preserve all leases located in the 320-acre unit. There is
11 not a geologic reason that we find to put a well in the
12 southeast quarter of Section 23.

13 So the Leavelle is located in the northeast
14 quarter where we feel there's geologic merit, but it is not
15 on the Stokes Hamilton lease.

16 Q. And you could simply file a pooling designation
17 and maintain that lease in effect under your 180-day
18 continuous drilling obligation, could you not?

19 A. Because of the --

20 MS. RICHARDSON: Objection, he's asking -- Excuse
21 me, objection. He's asking for a legal conclusion on that
22 subject. This witness certainly doesn't have to answer
23 legal questions regarding constructions of other portions
24 of the lease which are not germane to this hearing.

25 MR. BRUCE: He's already volunteered to say that

1 it won't satisfy the terms of the lease.

2 EXAMINER STOGNER: Objection overruled, answer
3 the question if you can.

4 Q. (By Mr. Bruce) I said you could file a pooling
5 designation and commence the well in the northeast quarter
6 of Section 23, and that would satisfy the 180-day
7 continuous drilling obligation under your lease, would it
8 not?

9 A. Well, I would like to defer to Mrs. Richardson on
10 that. Because of the actions of Mr. Arrington, that's a
11 difficult question to answer.

12 Q. You have an approved drilling permit on the east
13 half of 23, do you not?

14 A. I believe we do.

15 Q. And the Blue Fin well in the southwest quarter of
16 24, that is not on your acreage, is it?

17 A. On which acreage? We control all of the west
18 half of 24.

19 Q. It's not on the Stokes lease, is it?

20 A. No, it is not.

21 Q. On your Exhibit 2, that Blue Fin well is not --

22 A. I don't think so, I don't think so. I'd like to
23 check that.

24 Q. Go ahead.

25 A. I'd like to check that.

1 Q. Please check it right now.

2 EXAMINER STOGNER: While he's checking that, I'm
3 going to remind everybody, this is going to be a long,
4 drawn-out case, especially if we continue in this mode.
5 There's a lot of emotion going on through here. Stick to
6 the facts, if you would, everybody. We can get through
7 this, hopefully, in a short order.

8 THE WITNESS: The Blue Fin well is located on a
9 lease with the Sumrulds, I believe, not the Stokes Hamilton
10 lease.

11 Q. (By Mr. Bruce) Okay, it's not on the Stokes
12 Hamilton lease?

13 A. Correct.

14 MR. BRUCE: Thank you. That's all I have, Mr.
15 Examiner.

16 EXAMINER STOGNER: Any other questions of this
17 witness?

18 MS. RICHARDSON: Nothing further.

19 EXAMINER STOGNER: I have nothing further. It's
20 11:30, let's take an hour recess for lunch, and we'll
21 reconvene at 12:30.

22 (Thereupon, a recess was taken at 11:30 a.m.)

23 (The following proceedings had at 12:37 p.m.)

24 EXAMINER STOGNER: This hearing will come to
25 order. Again, I'm going to ask everybody, try to move it

1 along a little bit. I'm not going to put any time
2 stipulations, but we'd all like to get through this as
3 painlessly and as soon as possible, so keep that in mind.

4 Ms. Richardson?

5 MS. RICHARDSON: Thank you, Mr. Stogner. I'd
6 like to call Jeffrey Phillips to the stand.

7 JEFFREY D. PHILLIPS,

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

10 DIRECT EXAMINATION

11 BY MS. RICHARDSON:

12 Q. Mr. Phillips, will you please state your full
13 name and what you do?

14 A. My name is Jeffrey David Phillips. I'm the
15 president of TMBR/Sharp Drilling.

16 Q. And how long have you been employed by TMBR/Sharp
17 Drilling?

18 A. I've been employed by TMBR/Sharp about seven
19 years this March.

20 Q. And can you tell us a little bit about your
21 background, where you grew up, your education?

22 A. I grew up in Odessa, Texas, was educated in
23 Lubbock at Texas Tech, graduated with a BS in petroleum
24 engineering, worked for an independent, Adobe Oil and Gas,
25 through 1992, and worked for a couple other independents

1 and wound up seven years ago with TMBR/Sharp Drilling.

2 Q. Okay, and you are appearing here today in your
3 capacity as president of TMBR/Sharp drilling?

4 A. That is correct.

5 Q. Okay. Could you please tell the Commission a
6 little bit about the history of drilling the Blue Fin 24
7 and what the current status of that well is?

8 A. The current status of the well, some of the
9 history has already been covered, so --

10 Q. Sure.

11 A. -- I'm not sure where you want me to start. We
12 made a decision to drill the Blue Fin 24 for the Chester
13 objective and drilled it down and found a 35-foot thick,
14 roughly, chert interval, which is the Chester. We drilled
15 deeper into the Mississippian and found production in the
16 Mississippian lime itself, deeper. We attempted an initial
17 completion there. It did produce gas, it has commercial
18 reserves, and we carry it as PDNP reserves in our reserves.

19 We opted sometime back -- I'm not sure of the
20 date now -- to come up the hole and complete the Chester
21 interval, as it was our primary objective in this well.
22 It's currently producing about 4 million cubic feet of gas
23 a day, 220 barrels of condensate per day at a tubing
24 pressure of about 1950 pounds.

25 Q. And at the point the Blue Fin 24 was drilled, did

1 you have plans to drill other wells in the Big Tuna
2 prospect?

3 A. We did, we had three potential locations in the
4 Big Tuna area. One was the Leavelle 23-1 location in the
5 east half, northeast quarter of Section 23. One was the
6 Blue Fin 25 location in the northwest quarter of 25,
7 Section 25.

8 Q. And at the time you drilled the Blue Fin 24, you
9 had already picked the actual locations you intended to
10 drill in 25 and 23?

11 A. That is correct.

12 Q. Why did you drill 24 before 25 and 23?

13 A. We opted to drill the location in Section 24
14 first because -- well, for several reasons, the first being
15 that our acreage position was closer -- was better
16 consolidated in Section 24, closer to being ready to drill.
17 Secondly, they're similar in size. Thirdly, we felt like
18 it was closer to production, we felt like it had the best
19 secondary objectives and that the well in Section 25 would
20 be a little bit further away from what we felt could be
21 secondary objectives.

22 Q. Okay. The Blue Fin 24 was completed about June
23 29th, 2001. What was the next period in which TMBR/Sharp
24 had to drill in order to preserve its Stokes Hamilton
25 leases?

1 A. There was a 180-day continuous-development clause
2 in the lease, so we had that time frame within to drill the
3 next well.

4 Q. All right. Did you -- Well, your plan, then, was
5 to drill sometime before the end of 2001?

6 A. That's correct, provided that we had established
7 commercial production from the Blue Fin 24 in the Chester
8 interval, we would have started -- the next well would have
9 been the well in Section 25, sometime after observing that.

10 Q. At some point in time during the drilling of the
11 Blue Fin 24, before or after, were you contacted by Mike
12 Canon, attorney for the Stokes Hamilton group?

13 A. Yes, that was when we first became aware that
14 there was a top lease, was when an attorney in Midland
15 named Mike Canon called us and informed us that the people
16 who had taken the top lease contended that the leases were
17 now in effect and our lease was invalid.

18 Q. And looking at the time line which is at the
19 front of the book just behind the index, if I could focus
20 you on the March 27th, 2001, entry. Do you see that?

21 A. Yes.

22 Q. How did you all learn that it was Huff who had
23 actually acquired the top leases from Ms. Stokes and Ms.
24 Hamilton?

25 A. I believe we performed a search of the records

1 and found Huff's name in the record.

2 Q. At that point did you know whether Huff was
3 acquiring those leases for anyone else's interest?

4 A. We did not know at that time.

5 Q. Okay. When did you subsequently learn it was for
6 the interest of Arrington Oil and Gas?

7 A. It was, I think, about July the 24th, yeah.

8 Q. Okay, and can you describe the circumstances
9 under which you learned that it was Arrington Oil and Gas
10 who had top-leased?

11 A. Yes, I had -- We suspected it was David Arrington
12 because of previous associations we had seen him have with
13 Huff, but we didn't know that to be fact. I bumped into
14 David in the Petroleum Club in Midland, Texas, and having
15 known him socially and in business before, we talked for
16 several minutes, civilly and causally.

17 Before we parted ways, I came out and asked David
18 if that was he that had top-leased us in the area.

19 And his response was --

20 MR. HALL: Mr. Examiner, let me interpose an
21 objection here. Sounds like we're about to get some
22 hearsay testimony.

23 EXAMINER STOGNER: Okay, overruled.

24 THE WITNESS: Okay, I asked Mr. Arrington if it
25 was he that had top-leased us in the area.

1 And he said a couple of times, Oh, please don't
2 ask me that right now.

3 And I said, Well, David, it was you, wasn't it?

4 And he said, Well, I didn't know that that was
5 you and Tom in the area. I thought it was Tom Bell. And
6 he said --

7 Q. When he said "you and Tom", who was he referring
8 to?

9 A. Myself and Tom Brown. He's the chairman and
10 chief executive of TMBR/Sharp Drilling.

11 I said, Well, it was, David, and it amounts to an
12 eighth of the well we've just drilled.

13 And he said, Well, I'll come see you and Tom.

14 And I said, You need to, because it amounts to as
15 much as half of the next two wells we'll drill.

16 And he said, Well, we're going to fight you on
17 those. He said, You know, we were very surprised that you
18 all got the first well drilled. We were watching and we
19 were surprised when you got a rig in there and drilled.
20 But we're sure that you won't get the next two wells
21 drilled.

22 Q. Did you know what he meant at that time? Did you
23 understand what he had done?

24 A. Well, no, I didn't --

25 MR. HALL: Again, Mr. Examiner, let me just state

1 for the record, this will be a continuing objection to the
2 ongoing hearsay testimony.

3 EXAMINER STOGNER: So noted.

4 MR. HALL: I understand your ruling.

5 EXAMINER STOGNER: So noted.

6 Q. (By Ms. Richardson) Go ahead.

7 A. Did I understand what he meant by he was sure we
8 wouldn't get drilled?

9 Q. Right, do you know --

10 A. No, I did not know. What was in my mind at the
11 time was, somehow, that he had us blocked from drilling
12 those next wells.

13 Q. Okay.

14 A. We found out three days later that he had filed
15 drilling permits in Section 23 and in the northwest quarter
16 of Section 25.

17 Q. And how did you learn he had filed permits in
18 those sections?

19 A. I believe that we found them in the Anderson
20 reports, or some reports.

21 Q. And what did TMBR/Sharp then do about trying to
22 obtain its own drilling permits to Section 25 and 23?

23 A. Well, we knew that we had to file our permits in
24 there. We were already in contention with Mr. Arrington as
25 to whether or not he owned the leases or we did. We were

1 in the process of preparing to file a lawsuit in the
2 District Court.

3 We judged at that time that we needed to go ahead
4 and file our permits, even if they were rejected, so that
5 -- and the Commission would see that we had filed them, and
6 we would have some record as to why they were rejected.

7 Q. And after you filed for your permits in 25 and
8 23, what happened?

9 A. They were rejected.

10 Q. Because of Mr. Arrington's prior permits?

11 A. They were rejected because there were two
12 existing permits with unit designations.

13 Q. Did TMBR/Sharp then file an action in District
14 Court in Lea County on August 21st, 2001?

15 A. We did.

16 Q. Okay. And did TMBR/Sharp appeal the denial of
17 their drilling permits on 25 and 23?

18 A. We did.

19 Q. Okay. What other action did TMBR/Sharp take to
20 preserve its leasehold position in this area, and
21 particularly in Section 25?

22 A. We have tried a multitude of avenues to preserve
23 our leasehold. One was filing of the lawsuit initially,
24 and we have filed several lawsuits against several parties,
25 and have attached several parties, in an effort solely to

1 maintain our position hold.

2 We have appeared before the OCD regarding the
3 permits, and we have filed for a pooling hearing, and when
4 we did it was simply one of the only avenues available to
5 us at the time to continue to try and protect our interests
6 in that area.

7 We filed a lawsuit for -- as was mentioned
8 earlier, to protect our lease.

9 Q. TMBR/Sharp made application to pool the interest
10 it did not control on January 25th, 2002?

11 A. That's correct.

12 Q. How much of Section 25 did TMBR/Sharp control
13 prior to January 25th, 2002, approximately?

14 A. About 84 percent.

15 Q. The acreage that TMBR/Sharp did not control,
16 there's been testimony that it was either divided between
17 Mr. Huff and Mr. Douglas, acting for Arrington, or two
18 parties we couldn't reach; is that right?

19 A. That's correct.

20 Q. Why did TMBR/Sharp feel the need to begin
21 drilling the Section 25 well after the ruling of the
22 Commission on April 26th, 2002?

23 A. There are several reasons why we were compelled
24 to start drilling the well. The first reason is that we do
25 and did have leases expiring. We had a lease -- and I'm

1 not the landman, I don't know all the particulars, but we
2 had one lease expired possibly in March, other leases in
3 July.

4 We also --

5 Q. Leases other than Stokes Hamilton?

6 A. Yes.

7 We also had an obligation to mitigate our damages
8 in our District Court case, and we also felt we were no
9 longer under the protection of the *force majeure* order. So
10 it was -- and the clock was again running on our leases.

11 Q. At the time that TMBR/Sharp filed its pooling
12 Application in January, did it have a permit to drill at
13 that time?

14 A. No, we did not.

15 Q. Okay.

16 A. I believe our permit was granted March the 20th.

17 Q. And an order came down April 26th?

18 A. Correct.

19 Q. Have you done a study taking into account the
20 ownership interests in the full Section 25 and trying to
21 address the correlative rights of the parties who are
22 appearing in this hearing?

23 A. I have participated with others in that study.

24 Q. Okay. If you could turn to Exhibit Number 17,
25 please, sir. If you could explain to the Examiner and Mr.

1 Brooks what this pie chart and then the accompanying
2 correlative-rights analysis represents.

3 A. These pie charts are based on our estimation of
4 reserves in the section and the maps that we hold where
5 these reservoirs lay in the section, and as to the Chester
6 depth or reservoir.

7 If you look at the first pie chart and you
8 allocate ownership of those reserves to the mineral
9 interests as they are in the section now, that's the way
10 the ownership looks.

11 I'll explain, and it will be easier to see when
12 they see our maps in here, Lou Mazzullo's testimony, that
13 we made an estimation of reserves that the structure that
14 lays in the northwest corner of Section 25 holds, say, 4
15 BCF of reserves, and there is a similar but smaller
16 structure that lay in the south half of the section, in our
17 maps, nearly straddling the centerline north and south,
18 that is about 1 BCF. That would be a worst-case look at
19 these distribution of reserves. If the bump in the south
20 half is larger, these reserves will just be distributed in
21 the same manner, but to a varying -- different degree.

22 The second chart is how the reserves are
23 distributed if the wells are spaced on a north-half/south-
24 half unit designation, proration unit. Ownership of those
25 reserves would be such as the chart in the middle. That's

1 if our maps are the way it is, and there are two closed
2 lows, is what we're drilling here, they're not structures,
3 they're reservoirs, bowl-type reservoirs, as to the Chester
4 only.

5 So the correlative rights in the north-
6 half/south-half spacing are very nearly the same as they
7 are within the section itself and where the reserves lay.

8 If you look down at the last pie chart, it shows
9 the ownership of those reserves if you have east-half/west-
10 half spacing. And you can see that the red is reduced by
11 almost half and that the other -- the blue, Ocean's
12 interest, has increased greatly. The percentages are on
13 the next page there, but the blue and the black are
14 increased.

15 The black is a little larger in an east-half/west
16 half spacing than it is in the north-half/south-half, but
17 it's about the same in either of those. Ocean's interest
18 increases dramatically with an east-half/west-half spacing.

19 The point of these graphs is that to keep the
20 correlative rights most nearly the same as they are with
21 respect to ownership of the reservoirs as we see them, the
22 north-half/south-half spacing most nearly accomplishes
23 that.

24 Q. Thank you. Last couple of questions. Can you
25 tell me the current status of the drilling of the Blue Fin

1 25 in Section 25?

2 A. We have spudded the Blue Fin 25 Number 1 well.
3 It's drilling this morning at a depth of about 4200 feet.

4 Q. How long will it take you, if thing go well, to
5 complete the well?

6 A. We estimated -- well, from this point forward,
7 probably another 30 days.

8 MS. RICHARDSON: All right, thank you. Nothing
9 further, pass the witness.

10 EXAMINER STOGNER: Okay, Mr. Hall?

11 CROSS-EXAMINATION

12 BY MR. HALL:

13 Q. Mr. Phillips, I understand that the compulsory
14 pooling Application filed by TMBR/Sharp in this case was
15 filed with the Division on January 25th of this year; is
16 that right?

17 A. Yes, sir.

18 Q. Can you explain to the Examiner why TMBR/Sharp
19 made no effort to secure Arrington's voluntary
20 participation in its north-half unit and well before it
21 filed the Application?

22 A. We sent Mr. Arrington an AFE and a well proposal,
23 and I'm not certain of what the date is. I believe it was
24 prior to that.

25 Q. But you don't know?

1 A. But I don't know that for certain.

2 Q. All right.

3 A. Mr. Hopkins could possibly answer that.

4 Q. Can you also explain to the Examiner --

5 A. Let me continue, please.

6 Q. Go ahead.

7 A. We are also at that time involved in, as I said
8 before, multi-faceted litigation in the District Court, and
9 our ability to simply go over and talk to Mr. Arrington is
10 limited.

11 Q. Can you explain to the Examiner why you didn't
12 proceed to hearing on the compulsory pooling Application
13 filed in January until today? What was the reason for
14 that?

15 A. It was, and is still, our opinion that we
16 should have been allowed to pool this after we drill the
17 well.

18 Q. Can you answer my question? Why didn't you
19 proceed to hear the case, rather than continue the case a
20 number of times? Why didn't you just proceed directly to
21 hearing, the first opportunity?

22 A. We felt that the permit issue had to be resolved
23 first.

24 Q. Why did you feel that way?

25 A. I believe that's been stated in here before, but

1 we feel that the permitting process controls the
2 orientation of the unit, and that once it was decided that
3 we had the permit to drill and the designation of the
4 north-half unit, that we had the right to pool, either
5 prior to or after the drilling of the well.

6 There are -- Well, that's the answer.

7 Q. All right. And so you agree with the
8 representations your attorney Mr. Kellahin has made to the
9 Division that compulsory pooling proceedings are not
10 necessary any longer?

11 A. I don't believe I'm going to agree with that
12 statement.

13 Q. All right. Well, do you also disagree that the
14 filing of an acreage-dedication plat does not control unit
15 designation -- unit configuration, I should say?

16 A. Restate the question, please.

17 Q. Is it your position that the filing of a C-102
18 acreage dedication plat ultimately determines the
19 configuration of a unit in a section?

20 A. I believe it controls. I believe that what is
21 found in a compulsory pooling hearing will ultimately
22 determine how it is oriented.

23 MR. HALL: All right. Nothing further, Mr.
24 Examiner.

25 EXAMINER STOGNER: Mr. Bruce?

1 MR. BRUCE: Just a few questions.

2 CROSS-EXAMINATION

3 BY MR. BRUCE:

4 Q. On your Exhibit 17, Mr. Phillips, on the second
5 page of it --

6 A. Okay.

7 Q. -- I just want to clarify a couple of things.
8 You said this is for the Mississippian only, for the
9 Chester?

10 A. For the Chester only. This includes no reserves
11 in the -- what I discussed earlier was deeper into the
12 Mississippian lime itself.

13 Q. The Mississippian or Austin lime, as it's
14 sometimes --

15 A. Correct.

16 Q. Okay.

17 A. This is in the Chester detritus.

18 Q. And this would be dependent on what, Mr.
19 Mazzullo's geology?

20 A. It is dependent on Mr. Mazzullo's geology.

21 Q. And I just want to -- and then when you say the
22 northeast quarter, you are stating here that the northeast
23 quarter has no Chester reservoir in it?

24 A. That's correct.

25 Q. Okay.

1 A. According to our interpretation.

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

3 MS. RICHARDSON: Just a couple of questions.

4 REDIRECT EXAMINATION

5 BY MS. RICHARDSON:

6 Q. What is the target -- What was the target depth
7 for the Blue Fin 24?

8 A. For the Blue Fin 24?

9 Q. Right.

10 A. I don't remember what we had as the target depth.
11 I believe it was 13,200.

12 Q. What did you all -- What was the total depth
13 drilled?

14 A. I believe it was around 13,200.

15 Q. And what is the target depth for the Blue Fin 25?

16 A. I believe it is 13,200.

17 Q. If you would turn with me briefly to Exhibit
18 Number 14, I know you didn't prepare this chart, Mr.
19 Hopkins worked on this. But I want to ask you, was it
20 TMBR/Sharp's intent, after drilling the 25, to pool that
21 acreage such as the Mark and Bonnie Caldwell lease to
22 Douglas, George O'Brien lease to Douglas, those interests,
23 was it the intent of TMBR/Sharp to compulsory pool those
24 interests which it did not control after it had completed
25 the well in Section 25?

1 A. That is correct.

2 Q. Okay. So it wasn't TMBR/Sharp's position that it
3 didn't think it had to compulsory pool; it was just a
4 matter of who and when?

5 A. That's correct, it was a timing issue.

6 MS. RICHARDSON: Thank you, no further questions.

7 EXAMINER STOGNER: Any other questions of this
8 witness?

9 MR. BRUCE: No, sir.

10 MR. HALL: (Shakes head)

11 EXAMINATION

12 BY EXAMINER STOGNER:

13 Q. I do have a question on 17, the correlative
14 rights analyses.

15 What was the top chart again?

16 A. The top chart is the distribution of the reserves
17 as we see them -- and you'll see our maps in a minute and
18 how we have the reservoirs geographically located in the
19 section.

20 If you take the ownership that, as it actually is
21 located in the section, those reserves are owned in these
22 percentages. The percentages themselves are on the next
23 page; the chart just provides a visual representation.

24 So as the reserves are owned now, without a
25 proration unit assigned to it, either north half or west

1 half or anything.

2 EXAMINATION

3 BY MR. BROOKS:

4 Q. And based on your interpretation of where you
5 believe the reserve -- the --

6 A. -- the reservoir, yes.

7 Q. -- actually exists underneath the surface?

8 A. That is correct.

9 EXAMINER STOGNER: Okay, thank you for clarifying
10 that.

11 Any other questions?

12 Mr. Carr?

13 MR. CARR: No questions.

14 EXAMINER STOGNER: You may be excused.

15 Ms. Richardson?

16 MS. RICHARDSON: Thank you. Mr. Stogner, we'd
17 like to call Dennis Hopkins to the witness stand.

18 DENNIS J. HOPKINS,

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

21 DIRECT EXAMINATION

22 BY MS. RICHARDSON:

23 Q. Mr. Hopkins, will you tell the Commission who
24 you are and what you do for a living?

25 A. My name is Dennis J. Hopkins, I'm an independent

1 landman out of Midland, Texas. I consult extensively with
2 TMBR/Sharp Drilling.

3 Q. Do you have other clients besides TMBR/Sharp?

4 A. I do.

5 Q. Okay. And how long have you been in the land
6 business?

7 A. This is my 24th year.

8 Q. All right. And what -- You have some
9 professional associations and certifications, I believe?

10 A. Yes.

11 Q. If you could tell what those are.

12 A. I'm a certified professional landman, currently
13 serving on the AAPL Certification Committee which approves
14 the certification credentials and memberships, Permian
15 Basin landmen, New Mexico, et cetera.

16 Q. Can you tell the Commission what association
17 you've had with this Big Tuna prospect, what your role has
18 been either directly or in a supervisory capacity?

19 A. I would call it a supervisory capacity,
20 overseeing the leasing type operations.

21 MS. RICHARDSON: At this time, Mr. Stogner, we'd
22 like to tender Mr. Hopkins as an expert landman.

23 EXAMINER STOGNER: Any objections?

24 MR. HALL: No objection.

25 MR. BRUCE: No, sir.

1 EXAMINER STOGNER: Mr. Hopkins is so qualified.

2 MS. RICHARDSON: Thank you.

3 Q. (By Ms. Richardson) I'm sorry, could you repeat
4 your answer, what your involvement in this project has
5 been?

6 A. Oh, I call it supervisory. We have field landmen
7 that have done the leasing activity, the original takeoffs,
8 et cetera, on it. I kind of oversee it for the company's
9 record-keeping.

10 Q. Prior to the filing of the compulsory pooling
11 action in this matter on January 25th, 2002, what
12 percentage interest in the Section 25 did TMBR/Sharp
13 control?

14 A. At about that time I believe it was, if not 85
15 percent, almost 85 percent.

16 Q. Okay. And if you would turn with me to Exhibit
17 Number 3, and could you explain to the Commission what this
18 is?

19 A. This is a letter on January the 22nd, sent by
20 Federal Express to James D. Huff at, I believe, his
21 residence, proposing the drilling of the Blue Fin 25 Number
22 1 well.

23 Q. Why is it that at that time TMBR/Sharp did not
24 send notification to Arrington Oil and Gas?

25 A. At that time, to my knowledge, Mr. Huff was still

1 the record title owner of those interests.

2 Q. Of some of the leases in the northeast quarter of
3 Section 25?

4 A. Yes, uh-huh.

5 Q. All right. And it's true, is it not, that by
6 January 22nd TMBR/Sharp was already in litigation, not only
7 with Arrington Oil and Gas but also Mr. Huff individually?

8 A. I believe that's correct. With TMBR/Sharp they
9 were in litigation; I'm not sure if Mr. Huff was named a
10 party.

11 Q. Okay. Well, I think the pleadings that are part
12 of this exhibit will reveal that Mr. Huff was a party.

13 Did TMBR/Sharp receive any response from Mr. Huff
14 to this proposal?

15 A. No, he received -- Excuse me, I believe his wife
16 received the package, and there was no contact after that.

17 Q. Then if you would turn with me to Exhibit Number
18 14, please, sir, and I'd like to cover what the current
19 status of the ownership in the north half of Section 25 is.
20 The parties who are listed here -- Were the parties who are
21 shown leased to TMBR/Sharp, were those leased prior to the
22 filing of the Application for pooling?

23 A. I believe the Application for pooling was January
24 24 --

25 Q. January 25th.

1 A. 25th?

2 Q. 25th.

3 A. Okay, thank you. We had been in contact and
4 negotiating with these folks over the course of probably
5 several months. Some of the leases were taken as of
6 January 23rd, that's when they were mailed out, when the
7 broker was able to prepare the leases. The vast majority
8 of them on this page would be January 25th.

9 Q. All right. And then going down to the parties
10 who have not yet leased to TMBR/Sharp, Mr. Edsel, what was
11 the status of the contact with Mr. Edsel about this well?

12 A. Mr. Edsel was contacted last year, I believe it
13 was, in the spring --

14 Q. 2001?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. -- in the spring, and Mr. Edsel does not reside
18 in the country. From what I understand, he's in Italy.
19 His administrative assistant, executive assistant, relayed
20 that he would lease for a six-month lease, one-quarter
21 royalty and no bonus, or participate.

22 Q. Okay.

23 A. It was a short-fused lease. We decided we would
24 wait and come back to him at a later date.

25 Q. All right. And then Jacqueline Williams

1 apparently leased to Mr. Douglas?

2 A. They did eventually lease to Mr. Douglas, I
3 believe in February.

4 Q. What is the relationship of Dale Douglas, James
5 Huff and Arrington Oil and Gas, if you know?

6 A. This is an understanding, I've never had a
7 conversation, you know, so I guess you could call it
8 hearsay. I believe Mr. Huff and Mr. Douglas are college
9 friends, kept up a good friendship all these years. Mr.
10 Douglas, I know, does work for Mr. Arrington, and he
11 represents in these hearings frequently.

12 Q. You have been in hearings where he has been a
13 witness for Mr. Arrington?

14 A. Uh-huh.

15 Q. Okay. How about Harle, Inc.?

16 A. Harle, Inc., I spoke with Mr. Harle after he
17 received the well proposals that were sent out about two
18 weeks ago, I believe it was, and he has indicated that he
19 wishes to participate in the drilling of the well.

20 Q. Okay. And Yates Petroleum?

21 A. I've spoken to James Bullock at Yates Petroleum
22 Corporation, who also represents Yates Drilling
23 Corporation, Myco and Abo Petroleum, and he said he would
24 write it up and put it before management and see if they'd
25 want him to participate.

1 Q. Okay, and then James Huff we've talked about.

2 How about Branex Resources?

3 A. Branex Resources I have spoken to, and they have
4 right now taken the position that they would rather wait
5 and see what the OCD results are.

6 Q. Okay. And then we see the remaining persons. I
7 would like to ask you specifically about the Caldwells. I
8 believe that the Commission has received a correspondence
9 from the Caldwells, that they had not been contacted. When
10 did the Caldwells lease to Dale Douglas?

11 A. I believe that lease was mid-February of 2002.

12 Q. Okay. I think you had told me January 28th,
13 2002?

14 A. That's possible. I could clarify that.

15 Q. What efforts were made to find Robert Bullock, as
16 trustee, and Virginia Bernhardt?

17 A. Mr. Bullock, we have never had contact. He --
18 It's Robert Bullock, Sr., as I understand it, trustee for
19 Robert Bullock, Jr., who was the Speaker of the House, or
20 Speaker of the Senate for the State of Texas, that died a
21 few years ago. We've contacted neighbors, have hit dead
22 ends on how to get in touch with Mr. Bullock, Sr.

23 Q. Okay. And I think this record is going to
24 reflect -- I want to clarify so it will be clear -- that
25 the Caldwells wrote a letter on January 29th. If you would

1 look at the second page of this exhibit, which is 14, I
2 believe it's a copy of the first page of an oil and gas
3 lease dated January 28th, 2002, between Mark Caldwell and
4 Dale Douglas, does that refresh your recollection about the
5 date of the Caldwell lease?

6 A. Yes, it does. Thank you.

7 Q. Thank you. I believe that additional letters
8 have also been sent out. If you could look at Exhibit 4,
9 and could you explain to the Commission what this letter
10 is?

11 A. This is a letter proposing a well to our -- what
12 I'll refer to as our Blue Fin prospect partners, which
13 includes Mr. Nearburg's company; TMBR/Sharp, of course;
14 Fuel Products, Incorporated; several individuals.

15 Q. This was sort of an internal proposal, if you
16 will?

17 A. I would call it in-house partners.

18 Q. And everybody signed on?

19 A. Yes.

20 Q. Okay. And then I would also like you to look at
21 Exhibit Number 5, and if you could explain what this is.

22 A. This is a well proposal that I mailed on May 1st,
23 certified mail, to Mr. Dale Douglas and David H. Arrington
24 Oil and Gas, proposing the drilling of the Blue Fin 25
25 Number 1.

1 Q. And by this time in May, Arrington Oil and Gas
2 had a record title in Section 25?

3 A. Yes, ma'am.

4 Q. And did you receive any response from Arrington
5 Oil and Gas or Dale Douglas in response to this proposal?

6 A. No response to the proposal. I did receive the
7 delivery receipt from the Arrington office, and as of
8 yesterday, which is not unusual, the green mailing receipt
9 for Mr. Douglas has not appeared.

10 Q. Okay. Were you aware that Mr. Douglas may have
11 had some health problems?

12 A. I was just made aware of that here recently.

13 Q. Okay. Can you tell the Commission, please, with
14 respect to Section 25, other than Stokes-Hamilton, what
15 leases may have expired or were shortly going to expire if
16 there were not drilling?

17 A. Okay, if I could look at --

18 Q. Sure.

19 A. -- what I sometimes call my brains. We have a
20 series of leases -- there were six of them -- that would
21 expire in July 19th of this year.

22 Q. July 19th, 2002?

23 A. Yes, uh-huh.

24 Q. Six leases?

25 A. Excuse me, five.

1 Q. Five leases?

2 A. Five.

3 Q. All right.

4 A. One would have expired March 19th of this year,
5 2002.

6 Q. Okay.

7 A. And all six of those parties have been top-leased
8 by Mr. Dale Douglas.

9 Q. Okay. If TMBR/Sharp did not drill the Section 25
10 well prior to July, 2002, what was TMBR/Sharp's expectation
11 about these five leases?

12 A. We were in the process of going to renew them,
13 until the top leases appeared of record.

14 Q. And if we hadn't started drilling the well, what
15 would have happened in July, 2002?

16 A. Those would have expired.

17 Q. And the top leases taken effect?

18 A. The top leases would have taken effect, I
19 believe, on the 20th.

20 Q. The lease that you say arguably might have
21 terminated in March, 2002, does TMBR/Sharp have a position
22 whether it, in fact, terminated or not?

23 A. The position that's been taken is that it's held
24 under the *force majeure*, that we were prevented from
25 drilling on this lease or pooled with it, due to the

1 conflict of the drilling permits.

2 MS. RICHARDSON: Thank you. No further
3 questions, pass the witness.

4 EXAMINER STOGNER: Mr. Hall.

5 CROSS-EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Hopkins, briefly, as an experienced landman,
8 practiced in New Mexico, are you familiar with the
9 practices and procedures of the Oil Conservation Division
10 in terms of initiating compulsory pooling proceedings?

11 A. Yes. I wouldn't say I know the book from front
12 to back, but I'm familiar with it.

13 Q. Are you familiar with the Division's practice
14 that before an operator proposes to initiate compulsory
15 pooling proceedings, he's obliged to make a good-faith
16 effort to secure the voluntary participation of the other
17 interest owners in the proposed unit?

18 A. Yes.

19 Q. And are aware that it's the practice of the
20 Division that you must have initiated those efforts to
21 secure voluntary participation at least 30 days in advance
22 of initiating pooling proceedings?

23 A. I believe that's correct.

24 Q. Can you explain to us why -- As I understood, you
25 testified earlier that the TMBR/Sharp pooling Application

1 was filed on January 25th, 2002?

2 A. Uh-huh.

3 Q. You need to answer verbally.

4 A. I believe that's correct, yes.

5 Q. And if you'll refer back to your Exhibit 3,
6 that's the letter from TMBR/Sharp to Mr Huff soliciting
7 participation of his interest, anyway. What's the date of
8 that letter?

9 A. That letter is dated January 22nd, 2002.

10 Q. Can you explain why efforts to secure the
11 voluntary participation of Mr. Huff was not initiated
12 before that time?

13 A. This was an avenue that we were in litigation at
14 that point with Mr. Arrington. We were trying to preserve
15 -- I believe as Mr. Phillips testified, trying to explore
16 every avenue to preserve our leasehold position out there,
17 and we proposed the well to Mr. Huff, at that point knowing
18 or having good knowledge that Mr. Huff was acting on Mr.
19 Arrington's behalf, possibly. That's my speculation at
20 that point. And we filed a compulsory pooling Application
21 on the 25th in order to preserve our leasehold position.

22 Q. Isn't it true that there were owners of other
23 interests, not involved in the Huff-TMBR/Sharp litigation,
24 whose voluntary participation TMBR/Sharp did not seek
25 before filing compulsory pooling?

1 A. Yes, there was.

2 Q. And would that be Mark and Bonnie Caldwell?

3 A. Yes.

4 MR. HALL: If I may approach the witness?

5 EXAMINER STOGNER: Please.

6 Q. (By Mr. Hall) If you'll refer to what's been
7 marked as Exhibit H-1, H for Hopkins, 1, it's a letter to
8 Michael Stogner, dated January 29, 2002, indicating in
9 essence that there had been no effort on the part of
10 TMBR/Sharp drilling to contact them at all before they
11 received the compulsory pooling Application.

12 Do you disagree with anything that's set forth in
13 that letter?

14 A. No, I don't think I can.

15 Q. You'll see there in the middle of the second
16 paragraph, it says there's been no effort to contact us,
17 "nor some of the other mineral owners, that I am familiar
18 with." Do you have any idea who he might be referring to?

19 A. There's a group of four people that I believe he
20 refers to --

21 Q. Who those be?

22 A. -- as the other group. Pull them up here. That
23 would be Mr. and Mrs. Caldwell, Mr. and Mrs. Williams, R.N.
24 Williams --

25 Q. Is this from your Exhibit 14?

1 A. I believe it may be. Yes. George O'Brien, and a
2 predecessor in title to Mary Frances Antweil, which was Bar
3 Mar, Incorporated. Those four acted as -- generally as a
4 group.

5 Q. What is your understanding of when the Douglas
6 and Arrington interests in the north half of Section 25
7 first appeared of record?

8 A. The Douglas would have appeared -- I'll take a
9 look at this lease, I think I can -- I want to say it would
10 be early to mid-March.

11 Q. And you agree that the Exhibit 4 well proposal,
12 your so-called in-house well proposal, that was not sent to
13 Dale Douglas or Mr. Arrington, correct --

14 A. No, it was not.

15 Q. -- on May 3rd? Okay, just so the record is
16 clear, I understand the first effort to obtain voluntary
17 participation for the Douglas-Arrington interests was on
18 May 1st, 2002. That's shown on your Exhibit 5; is that
19 correct?

20 A. Yes, sir, correct.

21 MR. HALL: Nothing further, Mr. Examiner.

22 EXAMINER STOGNER: Mr. Bruce?

23 MR. BRUCE: Just a couple of things.

24 CROSS-EXAMINATION

25 BY MR. BRUCE:

1 Q. Mr. Hopkins, on your Exhibit 14 under Branex
2 Resources, are you aware that they've informed Phil Brewer,
3 who is one of the attorneys for TMBR/Sharp, that they would
4 only approve standup units?

5 A. No, I was not aware of that.

6 Q. And your Exhibit 3, which is your letter to Mr.
7 Huff, I guess, there's an AFE attached which appears to be
8 dated, up in the upper right-hand corner, 22 January 2002.
9 Are you aware of any other AFE for this well?

10 A. Yes, the AFE that was sent to Mr. Douglas and
11 David H. Arrington Oil and Gas, Incorporated.

12 Q. On May 1st?

13 A. Uh-huh.

14 Q. Okay.

15 A. That was a revised AFE.

16 MR. BRUCE: I think that's all I have, Mr.
17 Examiner?

18 EXAMINER STOGNER: Mr. Carr.

19 MR. CARR: I have no questions.

20 EXAMINER STOGNER: Redirect?

21 MS. RICHARDSON: Just a couple of follow-up.

22 REDIRECT EXAMINATION

23 BY MS. RICHARDSON:

24 Q. You had advised me earlier, Mr. Hopkins, looking
25 at your Exhibit 14, that the Williams, the Caldwells,

1 O'Brien and Antweil had all released to Dale Douglas on
2 January 28th, 2002?

3 A. Yes, ma'am.

4 Q. Okay. And was the fact that Mr. Huff and
5 Arrington Oil and Gas were represented by counsel,
6 including Ernest Carroll and Rich Olson, any impediment to
7 personal discussions with them about the compulsory
8 pooling?

9 A. I would have to say yes.

10 MS. RICHARDSON: Nothing further.

11 EXAMINATION

12 BY EXAMINER STOGNER:

13 Q. Mr. Hopkins, in looking at Exhibit Number 14,
14 what's these percentages add up to?

15 A. Those would be their unit participation
16 percentage in a north-half unit.

17 Q. And what does that come out to?

18 A. I'm horrible without a calculator, excuse me,
19 but --

20 Q. I assume the remaining would be TMBR/Sharp; is
21 that correct?

22 A. Yes, uh-huh.

23 Q. Because obviously this doesn't come out to 100.

24 A. If you take Mr. Arrington and TMBR/Sharp and Mr.
25 Douglas, the remainder would be essentially what's on this

1 list. Or excuse me, leave Mr. Douglas out of that last
2 statement.

3 Q. So I can add these figures up, and then the
4 remaining of it would be TMBR/Sharp?

5 A. Yes.

6 Q. Now, this north-half interest, as your list here
7 on 14, is this a divided or undivided interest?

8 A. This is a divided interest.

9 Q. It is a divided interest?

10 A. Yes, sir. It's split into the northwest quarter,
11 the east half, northeast quarter, and the west half,
12 northeast quarter.

13 Q. And I believe you go into some detail on what,
14 Exhibit Number 3 or -- one other exhibit I think you
15 referred to, 5 I think it was? I believe that lists up --

16 A. Yes, it breaks out what the percentages are in
17 each of those tracts.

18 EXAMINER STOGNER: Any other questions of this
19 witness?

20 MR. BROOKS: No, I don't believe so.

21 MS. RICHARDSON: Nothing further, Mr. Stogner,
22 thank you.

23 EXAMINER STOGNER: Thank you, Mr. Hopkins.

24 THE WITNESS: Thank you.

25 EXAMINER STOGNER: Ms. Richardson, do you wish to

1 admit the associated exhibits with this witness, or are we
2 going to take them all at one time?

3 MR. KELLAHIN: I think we have covered all the
4 exhibits in this exhibit book.

5 We have the geologic exhibits to present to you,
6 but we would move the introduction of Exhibits 1 through
7 19, I believe it is.

8 MR. HALL: I have some objections to make, Mr.
9 Examiner.

10 EXAMINER STOGNER: Okay, state your objections.

11 MR. HALL: I would object to the admission of
12 Exhibit 2, based on relevance.

13 I would object to Exhibit 3 as to the AFE, as
14 well as to Exhibit 4 as to the AFE. There's been
15 absolutely no effort to tender that through any witness.

16 I would object to Exhibit 7, relevance.

17 I would object to Exhibit 10, relevance. There's
18 been no effort to authenticate it.

19 Same for Exhibit 11, relevance and authenticated,
20 plus that witness was available to testify in person.

21 Exhibit 13, object on the basis of relevance.

22 I'll let him slide on Exhibit 19. It's been
23 offered. Professional courtesy.

24 MS. RICHARDSON: Mr. Stogner, we would withdraw
25 Exhibit 11. That was put in at a time we believed that Mr.

1 Phillips might not be able to make the hearing in person.

2 EXAMINER STOGNER: Okay, Exhibit Number 11 is
3 hereby withdrawn at this time.

4 MS. RICHARDSON: If need be, we can recall Mr.
5 Phillips to prove up the AFEs.

6 EXAMINER STOGNER: Why don't you recall him, and
7 let's go over those exhibits --

8 MS. RICHARDSON: Surely, surely --

9 EXAMINER STOGNER: -- please?

10 MS. RICHARDSON: -- be happy to. He's not quite
11 as happy, but I'm happy to. He thought he was done.

12 JEFFREY D. PHILLIPS (Recalled),
13 the witness herein, having been previously duly sworn upon
14 his oath, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. RICHARDSON:

17 Q. Mr. Phillips, I believe you're still under oath.
18 If you would look at Exhibit Number 3, please.

19 A. Number 3?

20 Q. Yes, sir.

21 A. Okay.

22 Q. This is a letter from you to James D. Huff dated
23 January 22nd, 2002. Can you explain for me the preparation
24 of the authorization for expenditure and how you or people
25 under your supervision went about preparing that?

1 A. We simply estimated the costs to drill the well,
2 based on our experience in drilling the previous well in
3 Section 24. This AFE is dated January the 22nd, I believe
4 -- yes.

5 We found that in the process of drilling the
6 first well, that it was necessary, or we felt it safer to
7 run a string of 7-inch through the Chester horizon and then
8 drill into the Mississippian or lower and run a liner, if
9 you had production down there. It was a way -- We just
10 essentially did this.

11 In the Blue Fin 24 well we ran 5-1/2-inch casing
12 through the Chester and drilled out below that with a 4-3/4
13 bit, so in the preparation of this AFE we included the cost
14 to run a 7-inch casing string through the Chester so that
15 we'd have a little bit bigger hole to go below it.

16 We felt like that is the safest way to do it,
17 because the Chester interval was slightly overpressured and
18 didn't have an extreme amount of -- we didn't have
19 extreme -- we had some problems with it when we drilled
20 into it, and there are a lot of houses around that area.
21 So we thought it would be the best and safest way to drill
22 the well.

23 And so I believe this -- an engineer that works
24 for me prepared this for me, and I reviewed it.

25 Q. Okay. The cost of completion versus the original

1 drilling, why is the cost of completion so high?

2 A. \$433,000? Is that the cost that you're talking
3 about it?

4 Q. Right.

5 A. Well --

6 Q. Are these complex wells to complete or --

7 A. They are. I believe he has -- I believe in the
8 subsequent AFE there is some stimulation that's not in this
9 one, but there's quite a bit of stimulation. There is a
10 liner in this cementing job for the liner. This one has a
11 tank battery and associated equipment. There's a lot of
12 cost associated with completing the well.

13 Q. All right, thank you. If you would look at
14 Exhibit Number 4.

15 MR. BROOKS: If I may interject at this point, in
16 my book it appears that Exhibit 3 and 4 are the same
17 document, and I don't think that was intended to be the
18 case, based on the testimony.

19 MS. RICHARDSON: I'm sorry, Mr. Brooks, that
20 would be wrong.

21 MR. BROOKS: It's correct in the Examiner's --

22 MS. RICHARDSON: I'm sorry, I --

23 THE WITNESS: It's correct in mine.

24 MR. BROOKS: -- and the court reporter's book,
25 it's just a mistake in mine.

1 MS. RICHARDSON: Let me give you the correct
2 Exhibit Number 4.

3 MR. BROOKS: Okay. I don't know if it matters
4 much that I have it. It just matters that the Examiner has
5 it and the court reporter has it.

6 MS. RICHARDSON: Well, you can have mine. No use
7 for it to be wrong.

8 MR. BROOKS: Thank you.

9 MS. RICHARDSON: In fact, I apologize. It seems
10 like every time we do this we try to get it right and we
11 don't.

12 There is another correction on the timeline. If
13 you all wouldn't mind looking at your timeline on the entry
14 on August 8th, 2001, it says "OCD denies TMBR/Sharp's
15 permit to drill the Blue Fin 25 No. 1 Well on the E/2..."
16 That should be north half. We corrected it one place but
17 we failed to correct it the other.

18 Q. (By Ms. Richardson) In looking at the AFE for
19 Exhibit Number 4, Mr. Phillips, the estimated cost of the
20 Section 25 well has jumped from -- what is it, \$1,359,000
21 to \$1,558,000?

22 A. That's correct.

23 Q. Okay, and to what do you attribute the
24 difference?

25 A. We revised the AFE to reflect current costs of

1 tubulars and services, some of which had changed since we
2 had made the first AFE out. You can see the cost of the
3 7-inch casing had increased.

4 After we had completed the Blue Fin 24 well, we
5 had to fracture-stimulate that well to produce at the rates
6 we're producing now, so we added the cost of a fracture
7 treatment to the second AFE, and that was \$100,000 up from
8 \$15,000.

9 So there's various little things like that that
10 changed the price of the AFE.

11 Q. Let me ask you just a bit of background, and then
12 we'll finish. TMBR/Sharp Drilling's primary business
13 activity is what?

14 A. Our primary business activity is the contract
15 drilling of oil and gas wells in southeastern New Mexico
16 and Texas.

17 Q. Approximately how many wells do you believe you
18 have participated in or supervised the preparation of AFEs
19 for in the last --

20 A. Oh, gosh.

21 Q. -- just -- pick five years, pick ten years.

22 A. Well, in the seven years that I've been at
23 TMBR/Sharp Drilling, we have drilled and operated in excess
24 of 45 wells, and I prepared most of those AFEs and
25 supervised most of the operations.

1 Q. Okay. In your opinion, are these costs as
2 reflected in these AFEs fair and reasonable?

3 A. I think they are.

4 Q. Okay. If you would look for me at Tab Number 15,
5 which was another, I believe, that was objected to, and if
6 you could explain what this table is.

7 A. This appears to be a -- well, it is a comparison
8 of well proposals and AFEs of different parties to this
9 hearing.

10 Q. To this compulsory pooling hearing?

11 A. Correct.

12 Q. Okay. Do you note that the well proposed by
13 Ocean on the northwest quarter of the section is AFE'd at a
14 total cost of about \$1,449,000, but the southwest quarter
15 well is AFE'd at \$1,783,000?

16 Do you know why there would be such a difference
17 between those two proposals?

18 A. I'm sure they have a good reason, but I don't
19 know why that is. Number of possibilities.

20 Q. Given the range of these proposals, of a high of
21 \$1,783,000 for one of the wells, down to Arrington's
22 northeast well, northeast quarter of \$1,418,000, do you
23 consider that a substantial difference for drilling these
24 kinds of wells?

25 A. Between which and which?

1 Q. Between any of --

2 A. Any of them?

3 Q. -- any of these wells.

4 A. No, not really. Like I say, Ocean may have a
5 horizontal lateral or -- I don't know why the one is more
6 expensive than the other, but obviously their well in the
7 northwest quarter is very similar to our well, is very
8 similar to Arrington's well. There's not a lot of
9 difference between the three proposals and costs as shown
10 here.

11 Q. Okay, thank you. With respect to the pleadings
12 that were included in these exhibits, you had testified
13 earlier the rationale of TMBR/Sharp for going forward with
14 drilling the Section 25 well. Were these pleadings
15 included for the purpose of showing the position Arrington
16 had taken and what effect that might have had on TMBR/Sharp
17 in its decision-making?

18 A. The pleadings included in --

19 Q. In these exhibit volumes, Arrington's pleadings
20 included in these exhibit volumes.

21 A. Yes, Arrington's -- Well, I'm getting a little
22 lost, there's a lot in my head right now.

23 Q. That's all right.

24 A. If you'll restate it to me, I'll try to answer
25 your question.

1 MS. RICHARDSON: That's fine, we'll quit. Thank
2 you.

3 EXAMINER STOGNER: Mr. Hall?

4 MR. HALL: We'll withdraw our objection to the
5 AFEs attached to Exhibits 3 and 4, maintain our objections
6 as to the pleadings in the order, based on relevance.

7 EXAMINER STOGNER: Your objection has been so
8 noted.

9 I'm going to allow all the exhibits, 1 through
10 19, admit them into evidence at this time.

11 MS. RICHARDSON: Thank you, sir.

12 EXAMINER STOGNER: You may step down.

13 MS. RICHARDSON: Yes, thank you, Mr. Phillips.
14 We won't call you again.

15 MR. KELLAHIN: Mr. Mazzullo is the next witness.
16 He has a substantial presentation.

17 EXAMINER STOGNER: Let's take a 10- or 15-minute
18 recess at this time.

19 (Thereupon, a recess was taken at 1:43 p.m.)

20 (The following proceedings had at 2:02 p.m.)

21 EXAMINER STOGNER: This hearing will come to
22 order.

23 Mr. Kellahin?

24 MR. KELLAHIN: Thank you, Mr. Stogner.

25 I'm going to present Mr. Louis Mazzullo as our

1 geologic expert.

2 LOUIS J. MAZZULLO,

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

5 DIRECT EXAMINATION

6 BY MR. KELLAHIN:

7 Q. For the record, sir, would you please state your
8 name and occupation?

9 A. Louis Mazzullo, I'm a petroleum geological
10 consultant out of Albuquerque.

11 Q. You're a certified professional geologist?

12 A. Yes, I am, with the American Association of
13 Petroleum Geologists.

14 Q. On prior occasions have you testified both before
15 the Commission and the Division of the Oil Conservation?

16 A. Yes, I have.

17 Q. And on all those occasions have you qualified as
18 a geologic expert?

19 A. Yes, I did.

20 Q. Does your background and experience allow you to
21 analyze and evaluate 3-D seismic data?

22 A. I could analyze and evaluate 3-D seismic data. I
23 don't claim to be an expert or a geophysicist, but I can
24 evaluate it to the extent that I need to when I'm supported
25 by other consultants.

1 Q. And have you done that in this case?

2 A. Yes, we did.

3 Q. I want to draw your attention to a four-section
4 area. It's in 16 South, 35 East of Lea County, New Mexico,
5 Sections 23, -4, -5 and -6. Within that four-section area,
6 are you familiar with the geology?

7 A. Yes, I am, very familiar.

8 Q. In addition to that immediate area, are you
9 regionally familiar with the deep gas geology within this
10 vicinity?

11 A. Yes, I am.

12 Q. And how long have you been working southeastern
13 New Mexico as a geologist?

14 A. I've been working in southeastern New Mexico
15 since 1981. I've been working this area specifically since
16 the mid-1980s, and this particular prospect, as Mr.
17 Nearburg testified in prior testimony, since 1995.

18 MR. KELLAHIN: We tender Mr. Mazzullo as an
19 expert witness.

20 EXAMINER STOGNER: Any objection?

21 MR. HALL: No objection.

22 EXAMINER STOGNER: Mr. Mazzullo is so qualified.

23 Q. (By Mr. Kellahin) Mr. Mazzullo, let's take
24 Exhibit 18-A as a reference map so that we can set the
25 stage and the background for your work product. First of

1 all, let's have you identify what it is that we're looking
2 at.

3 A. We're looking at a base map of parts of Townships
4 16 South and 17 South, Range 35 East that has most of the
5 well control on it. This base map is a little bit old in
6 terms of some of the activity that's occurred in the last
7 few months, but it shows all the deep well control -- by
8 "deep" I mean anything that penetrated the lower Wolfcamp
9 on down -- by the well symbols that are circled.

10 It also has on it the locations of several 2-D
11 seismic lines in dashed blue lines that we acquired for
12 analytical purposes prior to our acquisition of the 3-D and
13 the location of four key wells, including our Blue Fin 24
14 Number 1.

15 Q. Let's use this illustration as a starting point
16 and talk about your first geologic analysis of this
17 particular area. When did that occur?

18 A. That began in around 1995 of this particular
19 prospect, when I hooked up with Mr. Nearburg and Ameristate
20 Exploration. It began initially as an evaluation for new
21 locations centered around Sections 26 and 23.

22 Q. At this time, what kind of geologic data did you
23 have to work with?

24 A. At the time, I was working with all the downhole
25 electric log data, porosity logs, electric log data, as

1 well as running samples on a lot of key wells. That's my
2 area of expertise, is looking at downhole samples or core
3 to evaluate depositional environments, with the --

4 Q. Let's talk about that depositional environment.

5 A. Uh-huh.

6 Q. For purposes of this Application in the north
7 half of 25, what is the primary formation that is the
8 principal target of the well?

9 A. This well is being drilled with the upper Chester
10 as the Mississippian, the upper Mississippian-Chester as
11 the primary objective.

12 Q. In 1996 when you started this process with the
13 conventional log analysis, the conventional geology, were
14 you able to make a decision or reach a conclusion about the
15 depositional environment of the Chester?

16 A. I did not focus on the Chester in 1995 when I
17 began. My primary objective at the time, it started out as
18 infill or development drilling for the lower Wolfcamp. It
19 then proceeded to become a more widespread evaluation of
20 the Atoka sands, which is another primary pay objective out
21 in this area.

22 Q. What caused you to focus your attention on the
23 Chester?

24 A. I initially came upon the Chester prior to Ocean
25 drilling a Chester well out there, there was another well

1 out there that's indexed on this map. It's down in Section
2 35, the Buffton Number 1 Eidson.

3 I was questioning -- I questioned the fact of
4 whether or not -- what the pay zone was in that well. I
5 believe it was initially, or still is, reported as a Morrow
6 producer. But I didn't see it as that, I saw it as an
7 upper Mississippian producer because of the way it
8 correlated to the Morrow section in other wells in the
9 area.

10 I filed that away in the back of my mind. The
11 only reason I could tell that that was there at the time
12 was, it was sitting alongside a major deep fault, and I
13 thought there was some relation, although I didn't know
14 what the relation was at the time, to the occurrence of
15 that porosity in that upper Chester section and that deep
16 fault.

17 Q. Let me ask you about the Chester. When we focus
18 on this, is there any disagreement or difference about
19 nomenclature, about what you would call Chester?

20 A. There's always disagreement about nomenclature
21 anywhere you go in the oil patch, and particularly in this
22 area, because of the complex structure of this area, there
23 have been times when the Atoka has been mistaken for the
24 Morrow, the Morrow has been mistaken for the Chester. The
25 Chester at first was thought to be Morrow. It might still

1 be thought to be Morrow in some wells I'm not even aware of
2 out there yet, that I haven't had the privilege of getting
3 data on yet.

4 Q. What next happened to pique your curiosity about
5 analyzing the Chester?

6 A. A certain well that burned down, that blew out
7 and burned down.

8 Q. Where is that?

9 A. That's up in Section 10, it was drilled by Ocean
10 Energy.

11 Q. That was the Ocean well?

12 A. That was the Ocean well. I didn't know what it
13 was at the time. I had no idea what it blew out in. Later
14 on when well logs were acquired, I correlated the section,
15 and I ran samples in a well adjacent to it, in a Yates well
16 adjacent to it, and correlated that section to the Ocean
17 well, and I was pretty sure that I was not dealing with the
18 Morrow, that I was dealing with the Chester section in that
19 particular well.

20 Q. Let's talk about the Chester for a second around
21 the vicinity of the Ocean blowout well --

22 A. Uh-huh.

23 Q. -- in Section 10. Did the results of Ocean's
24 effort in that well result in other offsetting operators,
25 in a sort of a feeding frenzy, race out there and drill a

1 bunch of wells?

2 A. Well, I can't attest to their rationale for
3 drilling wells out there. I do know that in fairly rapid
4 sequence a couple more wells were drilled down in there,
5 but I don't think they hit the Chester. Well, I know they
6 didn't hit the Chester, they hit other objectives.

7 One other thing I might point out, after that
8 well was drilled -- and what's not on this map, further to
9 the south -- a well that I participated in also encountered
10 Chester reservoir. So the three wells together really
11 piqued my curiosity at that point.

12 Q. We had a number of hearings about the Ocean well,
13 and I think the nomenclature used at that time was to refer
14 to what you may call the Chester as the Brunson interval.

15 A. Uh-huh.

16 Q. Are you familiar with that?

17 A. I'm familiar with the term, but I don't apply any
18 particular -- I don't apply names or colloquial use, I like
19 to just --

20 Q. Chester would be a geologic term?

21 A. Chester is a geologic, it's a known formation, an
22 accepted formation name, and that's what I use.

23 Q. Without the seismic information, can you take
24 regional geologic log data and construct an analysis that
25 will tell you what the deposition is of this reservoir

1 you're seeking to find?

2 A. I had an idea from subsurface data because of the
3 faulting pattern in this area that because of the locations
4 of the Ocean well, the Buffton well and then the new Concho
5 well down south, they were all in close proximity to deep
6 faults, and I started to get the notion that, knowing the
7 history, the geologic history, from working this area for
8 over 20 years, I was starting to build a notion of a
9 different type of depositional mechanism here that was not
10 related to, for example, channel development.

11 But I couldn't prove it because I didn't have
12 that -- you know, the three-dimensional seismic, or any
13 seismic at the time, really, that substantiated it. You
14 know, those 2-D lines, none of them crossed -- except for
15 the very tail end of one line, none of them cross any known
16 producing Chester well.

17 Q. Let me ask you this about the Chester. Can you
18 describe the trapping mechanism, the structure of the
19 reservoir or how the hydrocarbons are trapped in these
20 Chester reservoirs?

21 A. Well, I can, and that's going to be addressed in
22 the model as we proceed through this geologic discussion.
23 But for now --

24 Q. Would it help me at all to understand your
25 discussion, to equate it in any way with the channel river

1 system deposits of the Morrow?

2 A. I don't believe it's channel-related.

3 Q. How is it -- What's it related to, how is it --

4 A. I think it's rather related to localized erosion
5 along deep faults that affected the Chester rocks shortly
6 after they were deposited and prior to deposition of the
7 Morrow.

8 Q. Is the exploration geology one that can be
9 attained with conventional analysis of log data and sort of
10 check tracking the size and the shape of the reservoir with
11 drilling, so you get a Morrow well and you find it in the
12 channel and you can test the size and the limits of the
13 channel?

14 A. You could guess. I mean, there's a lot of
15 geologic license involved in trying to predict locations,
16 width and thickness of channels in any formation. The
17 Morrow may be a little bit easier, because if they are
18 fluvially derived material there tends to be more
19 continuity to it, and you might be able to trace it from
20 well to well using the conventional subsurface data.

21 Q. If I'm looking at Chester and trying to find
22 those reservoir pods --

23 A. Uh-huh.

24 Q. -- is it of use to me if I have available seismic
25 data?

1 A. That, in my mind, is a key element in finding
2 them.

3 Q. In terms of the progress of your analysis, was
4 there available to you at this time any conventional 2-D
5 seismic data?

6 A. We acquired the 2-D seismic data that you see
7 here. The lines varied in quality. Unfortunately, they
8 are two-dimensional in nature, and they could not give me
9 this perspective that I needed, particularly in the areas
10 where I needed them to evaluate these reservoirs. You can
11 see that none of them intersect the known producers at the
12 time.

13 The only evidence that I had of any mechanism
14 that controlled that production was my subsurface mapping
15 and my projection of where deep faults lay, based on the
16 subsurface mapping. The 2-D data helped me locate some of
17 the faults along trends, but not exactly in the vicinity of
18 the wells that were already established as Chester
19 producers.

20 Q. Having exhausted your opportunities to further
21 refine your geologic analysis with the 2-D seismic, what's
22 the next data event that allows you to elevate your
23 analysis to the next level?

24 A. In about spring of 1990, our group -- and when I
25 say "our group" I mean TMBR/Sharp, Ameristate, Fuel

1 Products -- acquired a certain set, a partial set of 3-D
2 seismic data from another litigation that we had with
3 another company out in the area. I think this was
4 addressed in the prior testimony. The seismic data covered
5 approximately 6 1/7 or 7 square miles that included
6 Sections 24 and 25 and parts of 23 and 26.

7 Q. As a result of obtaining that data for the 3-D --

8 A. Uh-huh.

9 Q. -- were you given sufficient volume of data or
10 access to that data to analyze it in any way?

11 A. Yes, we were given all the necessary raw data,
12 which we promptly sent up to Mr. Scolman in Denver.

13 Q. And what did he do?

14 A. Mr. Scolman was charged with generating synthetic
15 seismograms, tying the data to formation tops and doing
16 some preliminary mapping, time-mapping, on the data in
17 order to give us an idea of what we were dealing with.

18 We also heard that he was somewhat of an expert
19 in this area and that he would be the best person to
20 evaluate the data for quality and for representation of the
21 section.

22 Q. Did he report to you any deficiencies in quality
23 or methodology of data collection?

24 A. No, he didn't.

25 Q. Okay, what then happens?

1 A. He produced a series of maps that identified at
2 the Chester level and at the -- well, everything from
3 basically the top of the Atoka down through the
4 Mississippian -- a series of maps that identified a series
5 of low areas in those rocks in that part of the section.

6 He also identified some of these what he called
7 closed lows as potential gathering points for reservoir
8 rock, particularly in the Chester. Where he got his ideas
9 from in terms of why he thought that they were potential --
10 I just assumed that, you know, he had worked other areas up
11 to the north here. I heard somebody say that he worked for
12 Ocean Energy, and maybe he did the work for them too. But
13 he was the recognized area expert in terms of evaluating
14 these closed low systems that he identified for us.

15 Q. His hypothesis is, those closed low Chester
16 systems --

17 A. Uh-huh.

18 Q. -- would contain hydrocarbons?

19 A. Would contain rocks that contained hydrocarbons.
20 And that's what finally got my interest fully piqued.

21 Q. Okay, what then happened?

22 A. I then took the information, and I had the
23 seismic data set -- well, I took the information and I
24 evaluated it, and it began to make sense to me in terms of
25 why those Chester rocks may have been where they were,

1 because he -- I said, Well, if that's the case, how did
2 they get there? My first question to myself was how did
3 they get there? It doesn't look like -- you know, these
4 closed lows were separated by intervening highs, so in my
5 mind that was not a good channel situation.

6 My next idea was, well, I know that in this
7 region there was a major tectonic event at the end of the
8 Chester that set up a lot of deep fault blocks. Well, that
9 made a lot more sense. These deep fault blocks were
10 exposed for a period of time, material eroded off of these
11 fault blocks, filled these lows. That made perfect sense
12 to me.

13 And so I began looking at it and agreeing with
14 Mr. Scolman's evaluation. I spoke to him several times
15 over the phone, we discussed it, and it began to make a lot
16 of sense to me. And then I began to evaluate the locations
17 that he specified in Sections 24 and 25 as best I could
18 from the subsurface data. I reconstructed some of my
19 subsurface data.

20 Q. Do you have an illustration that will serve to
21 explain this visually?

22 A. Okay, if you turn to Exhibit 18-B, 18-B is a
23 west-to-east structural cross-section that I constructed.
24 It goes from the southwest quarter of Section 23 -- this is
25 indexed on another map to come.

1 Well, it's -- no, it's not indexed on another map
2 to come, but basically it goes from the well in the
3 southwest quarter of Section 23, up to the Eidson 23 Number
4 2 in the northwest quarter of 23, and then it goes across
5 to a well in the southeast quarter of 24 that existed --
6 these wells existed at the time I drew this. This was
7 prior to the drilling of the Blue Fin 24 Number 1.

8 Q. The Blue Fin 24 Number 1 is the well that is
9 projected as a proposed location --

10 A. That's correct --

11 Q. -- on the display?

12 A. -- this served as a means of trying to promote
13 this prospect to TMBR/Sharp. And yes, that proposed
14 location, I have it indicated as 660 feet from the south
15 and west of 74. It's approximately in that location. It's
16 about 723 feet out of that corner, but --

17 Q. At this point in the analysis --

18 A. Uh-huh.

19 Q. -- have you shared this with TMBR/Sharp?

20 A. Oh, yes, they were --

21 Q. They were part of your collective group?

22 A. Yeah, they were part of the collective group.

23 Q. Was it shown to anyone else?

24 A. Not at this time.

25 Q. All right.

1 A. Okay? What I wanted to convince TMBR/Sharp of
2 was, why -- you know, what was the mechanism that
3 controlled this?

4 And on the left side of the cross-section you
5 notice that two of their wells, the Eidson 23 Number 1 and
6 the 23 Number 2, were projected as substantially
7 structurally higher than that closed low system where the
8 proposed location is located. And in that closed low
9 system I showed cherty interclastic limestones, upper
10 Chester, down towards the bottom of that proposed borehole.
11 Those were the materials that I thought were spalling off
12 of these emerging and constantly moving fault blocks during
13 Chester time.

14 And then on the right side I have the well in
15 Section 24, which is uplifted again.

16 And the locations of these faults were from the
17 2-D seismic data, the limited 2-D seismic data that we had
18 in the form of line -- I need my reading glasses for this
19 -- line ERH-3 that goes east west across 23 and part of 24.

20 So I based my evaluation of those faults -- and
21 it was a simplified evaluation because I couldn't see, you
22 know, the intricacy, the intricacies of faulting that you
23 can see on 3-D seismic now. So I put two major down
24 faults, in effect creating a graben at the proposed
25 location where these closed lows were mapped by Mr.

1 Scolman. And that was the idea --

2 Q. And where did you find a closed low?

3 A. Well, it's --

4 Q. You've got to locate the Chester and find the
5 Chester, and then see where it's dropped into this -- into
6 a bowl --

7 A. Into like a bowl, into like a circular or some
8 kind of semi-circular type of pattern, structural pattern.

9 Q. Yeah, the seismic data will allow you to perform
10 that function?

11 A. Yeah, right. I couldn't close any structures,
12 based on 2-D data, but now we had the 3-D data that
13 indicated that these were actually closed synclines.

14 Q. Okay.

15 A. Okay, deep synclines.

16 Q. You can manipulate the 3-D data to give you
17 perspectives in all angles and all degrees --

18 A. Well, "manipulate" is a bad word.

19 Q. In the sense that you use it in geophysics.

20 A. You can digitize any orientation of line you
21 wish.

22 Q. That's what I'm saying --

23 A. Yeah.

24 Q. -- you can arbitrarily select --

25 A. Right.

1 Q. -- the angle you go and how far you go with the
2 data?

3 A. Right.

4 Q. Okay. When you're trying to define the location,
5 the size and the shape of these Chester bowls --

6 A. Uh-huh.

7 Q. -- is there any judgment that you make as a
8 geologist that affects a parameter that will change the
9 location or the size and shape of the bowl?

10 A. You can do that to a certain extent if you have
11 good marker horizons on the seismic data, and I'll try to
12 address a little bit of that in a subsequent exhibit.

13 In this particular case, it's a little tricky,
14 all right? You can get an idea of the magnitude of the
15 closed low, but you don't know how much of that may be
16 filled with porous material.

17 Q. Okay.

18 A. Okay?

19 Q. What then happens?

20 A. We showed this to Mr. Brown, and at the time I
21 believe, if my memory serves me correct, that he was
22 looking for additional partners in order to actually get
23 this drilled. And so we went out, "we" being Ameristate
24 and Fuel Products, went out and tried to promote this to
25 industry, this idea to industry, in order to get another

1 partner in on the deal.

2 Q. At any time during this process of promoting to
3 obtain additional investors, did you make a presentation to
4 Ocean Energy?

5 A. Mr. Nearburg and Mr. Bell, as Mr. Nearburg
6 testified previously, had some initial discussions with
7 Ocean personnel in Midland. I was brought in -- I came in
8 on discussions with them in January of 2001, during a
9 prospect fair down in Houston.

10 We were asked by Ocean -- we were going to
11 present this -- basically, this is a cropped-down version
12 of the cross-section -- which is much longer, it shows
13 other horizons up here -- that we were going to present at
14 this prospect fair in order to sell the deal. Ocean
15 personnel asked if they could see it prior to us going
16 public with it, and having known a couple of the people at
17 Ocean we agreed to do so the day before the prospect fair
18 opened at their offices in Houston.

19 Q. Do you recall, Mr. Mazzullo, what Ocean
20 representatives were present at the private showing of your
21 analysis?

22 A. The exploration manager Gerald Grocock, the
23 geologist Frank Messa, Bob Silver was the geophysicist, is
24 it Darold Maney? Darold Maney, I believe, was the landman.
25 And one other engineer who came and went, and I can never

1 remember his name. I'm sorry. I --

2 Q. Summarize your presentation.

3 A. I had brought my laptop computer that had the 3-D
4 seismic data loaded into it with interpretations, with
5 basic interpretations of the data that I had made, in
6 addition to the paper copies that Mr. Scolman had made.

7 I also brought the full-scale cross-section, and
8 we sat down initially, I believe, and discussed some of the
9 deal terms and some of the land issues, and then we got
10 into a geologic discussion.

11 Q. At this point, then, this is looking for
12 additional investors for the Blue Fin 24 well --

13 A. Right.

14 Q. -- prior to drilling that well?

15 A. Right.

16 Q. The Ocean well has already been drilled?

17 A. The Ocean well was already drilled at the time,
18 yes.

19 Q. Summarize the presentation.

20 A. Basically, I went through what I -- some of the
21 basic stuff I just went through with you in terms of why I
22 thought things were the way they were in the area and
23 presented this, which was a -- the full-scale version of
24 this montage, which also included a seismic amplitude slice
25 map of the form that Mr. Scolman had provided to us, only I

1 generated it to paste into this montage. It showed the
2 locations of the closed lows, the line of this cross-
3 section and this 2-D section that we had as well to
4 substantiate what we thought was going on from the 2-D
5 data, and this geologic cross-section showing my concept of
6 what I thought we were going to encounter at the proposed
7 location.

8 Q. Did your analysis show, in your opinion, the
9 likely opportunity for the location of these Chester bowls
10 within Section 23, 24, 25 or 26?

11 A. The seismic amplitude map certainly did. But
12 then we made the seismic database available on my laptop to
13 Mr. Silver to evaluate, who took, oh, maybe a couple hours
14 and did his own independent -- you know, he took random
15 lines and took a look at the data, and I believe he tried
16 to compare it to some of the data quality that they found
17 on some of their own seismic data in the area. And the
18 rest of the time there was more or less spent poring over
19 each other's shoulders looking at the seismic data.

20 Q. What happened then?

21 A. There was some talk from Mr. Grocock about, you
22 know, the viability of the deal. But then Mr. Silver began
23 to question whether or not the structural setting of this
24 area was too low to be productive. In other words, it
25 would likely be wet, based on the fact that this area here,

1 structurally speaking, from a gross structural sense, was
2 low to the area -- was regionally low to the area up to the
3 north where they had made their initial discovery.

4 Q. Did you as a geologist see any geologic
5 continuity of a reservoir system that would have connected
6 the Section 10 well to what you were trying to develop in
7 Section 24?

8 A. No, the seismic data indicated a steep declivity
9 of the structure down towards the south, but with
10 intervening high areas in between these various bowls. In
11 fact, the termination of most of the good closed low
12 systems occurred under the 24 Number 1 location, and it
13 kind of died out towards the northwest into Section 23.

14 So I really didn't see that the closed low system
15 was viable much further north than the Section 23-24 line,
16 because we were getting -- What happens over here is that
17 it's very complex structure. From this cross-section you
18 can tell that when you're in the low you have a substantial
19 thickening of the section, including that of the overlying
20 Atoka and the Chester.

21 When you get up on these higher areas, the
22 Chester actually pinches out. And there are areas here
23 where there is no Chester at all. You go directly from
24 Atoka limestone into lower Mississippian when you get real
25 high on the structure.

1 What I was seeing was that we were getting
2 steeply higher towards the north, and the likelihood that
3 there was any continuity at all was pretty slim. Closed
4 lows cannot be defined any further to the north.

5 Q. Did the representatives of Ocean take advantage
6 of your opportunity to participate in some way in your
7 well?

8 A. No, the next day formally, I guess, while we were
9 exhibiting in the exhibit hall in Houston, several of their
10 personnel came by -- I think it was Mr. Grocock and Mr.
11 Messa or some combination -- came by to inform us that they
12 were going to pass on the deal.

13 Q. Did they indicate the reasons that they would
14 pass on the deal?

15 A. It was purely technical. They didn't think that
16 they could get low and productive. They thought it would
17 be low and wet. They didn't make any indication, at least
18 to me, or in front of me or in front of Mark Nearburg and I
19 that had anything other to do with technical issues.

20 Q. What happens now?

21 A. Well, we eventually -- as you've heard from prior
22 testimony, the well was ultimately drilled in -- help me
23 out here. A little later on in the year?

24 MS. RICHARDSON: March 29th.

25 THE WITNESS: March 29th of that same year, which

1 was just a couple months later, and we drilled and nearly
2 blew out in the Chester lime. That's what Mr. -- Mr.
3 Phillips was describing how special care had to be taken,
4 liners had to be set.

5 We got through the Chester and drilled on and
6 finally went to a total depth into the lower Mississippian
7 limestone and logged the well and found over 24 feet or so
8 of extremely porous material at the very top of the
9 Chester.

10 But we also found a very thickened section -- an
11 abnormally thickened section of the Chester which I
12 suspected might have happened, but I never really mapped it
13 in there because I thought there was a fault from the 3-D
14 data that may have cut the Chester section. Well, we
15 encountered it. Whether we encountered it because the well
16 drifted a little bit or not, I don't know. But we
17 encountered it.

18 So we got a repeat section of the Chester, and we
19 drilled all the way through the Chester section until we
20 were sure we were out of it and encountered the porous
21 material that we spoke of, that we were anticipating.

22 Q. (By Mr. Kellahin) How does the data derived from
23 the proposed well, the actually drilled Section 24 well,
24 compare with your hypothesis about where to put this well?

25 A. If you look at Exhibit 18-C, 18-C is a

1 duplication of Exhibit 18-B, but instead of a proposed
2 location I've now inserted the actual well log from the
3 Blue Fin 24 Number 1. The scale is just a little bit
4 different, because I had to extend the exhibit, because the
5 section that we drilled was so much thicker than what I
6 show on the previous exhibit.

7 But if you make a direct comparison between
8 what's seen in Exhibit 18-B and that which is seen in 18-C,
9 there's pretty good correspondence. We've got a thickened
10 section of Atoka, as we anticipated, a thickened section of
11 the Morrow shale above the Chester, we've got the Chester
12 detrital material in that bowl, and the structural value on
13 top of the Chester pretty much mapped what I subsequently
14 mapped out there seismically. And we've got that thickened
15 section of Chester that was the result of a repeat section
16 from that fault that cut the section.

17 Q. Was there anything you obtained from the Blue Fin
18 24 well that caused you to go back and alter any of your
19 prior analysis?

20 A. Well, I'm happy to say for the first time in my
21 professional life, I didn't have to change a thing.

22 Q. Can you display for us where you think we will
23 find these Chester bowls within Section 24?

24 A. Okay, we'll turn to Exhibit 18-D, which is a
25 depth map to the top of the Chester formation. Now, I'm

1 talking about the top of the Chester limestone, which on
2 the cross-section, on Exhibit 18-B and -C, is this brownish
3 limestone pattern directly beneath the detrital section.
4 Okay? So we're talking about the surface that's on top of
5 the limestone, and that's what's mapped here. That's
6 what's mapped in Exhibit 18-D, the top of the Chester
7 limestone.

8 Q. Are we looking at a display in terms of time, or
9 have you converted this to footage?

10 A. This has been converted to depth, subsea depth.
11 On the right-hand side is the color bar, which is the color
12 code. I didn't build any faults into this analysis. This
13 is a fairly recent analysis and I haven't completed the
14 whole area yet, so I left the faults out for simplicity.
15 But the color scheme on the bar shows that the hotter
16 colors, the oranges and yellows are higher structures, and
17 the blues, purples and azures and deep blues are the lower
18 structures in the area.

19 As you can see, there are three -- there's a
20 major low area that extends -- that kind of pinches out
21 into Section 23 and opens up into the southwest of 24 and a
22 little bit of the southeast of 23.

23 Q. That's the one I want to focus on first.

24 A. Right.

25 Q. That's the bowl in which you have drilled and

1 completed the Blue Fin 24?

2 A. Right, the Blue Fin 24 is in that deep blue
3 bull's eye, low bull's eye right there.

4 By the way, just for -- because I know somebody's
5 going to ask, those red hachured outlines that you see --

6 Q. Yes.

7 A. -- is my conservative estimation of where the
8 outlines of the porous material may be, and that's based
9 primarily on a look at the amplitude characteristics
10 immediately above the Chester lime, but it's by no means a
11 definitive outline, but it's my best guess of how large
12 these features are individually.

13 Q. Well, help me understand now. If you're
14 identifying the location and the size of the Chester
15 bowl --

16 A. Uh-huh.

17 Q. -- how do I relate the blue area to the area
18 that's outlined in red with the horizontal lines?

19 A. Okay, I think that's best addressed by looking at
20 the next model, which on the map on 18-D is labeled "West-
21 East Model". That's going to be Exhibit 18-E.

22 You open up Exhibit 18-E, the top part of 18-E is
23 a west-to-east seismic slice through the 3-D data, and
24 below that was my original model, which I also showed Ocean
25 when we were there. That was -- The original model that's

1 on the bottom part of 18-E was part of that montage that we
2 showed them down in Houston. It's a close match to what
3 you were seeing on the seismic section above. There's some
4 more intricate faulting involved in the lower part of the
5 section.

6 But the yellow area that I've outlined is
7 probably too much. That represents about 20 milliseconds,
8 which translates anywhere between 70 and 90 feet thickness.
9 I don't think they are that thick. Okay? I think the
10 features are smaller than that, which is what I tried to
11 indicate by those red hachured marks on 18-D. So the
12 extent of the yellow coloration on that west-to-east
13 seismic section is actually larger than those red envelopes
14 that I drew on the map, simply because I don't think they
15 are that thick. They're not 70 or 80 feet thick.

16 Q. So the reduction in size on some of the margins
17 where I'm looking at the blue area --

18 A. Right.

19 Q. -- that represents what you have defined as the
20 limits of the bowls?

21 A. The limits of the porous rock contained within
22 the bowl. The limits of the bowl are about those dark blue
23 or dark blue to purple transition zone. That's about the
24 limit of each of those bowls.

25 Q. From a geologic perspective, Mr. Mazzullo, if I'm

1 looking at the Blue Fin 24 well --

2 A. Uh-hun.

3 Q. -- is that single well in that bowl enough, or
4 are you going to have to drill some more wells in the bowl?

5 A. I wouldn't recommend it.

6 Q. And why not?

7 A. Because that one well will sufficiently drain
8 that one feature, and the next exhibit will illustrate why
9 I think so.

10 But let me go back to this model for a second,
11 just to clarify what this means on the bottom part of
12 Exhibit 18-E. You see a fault block off on the right side
13 where material is being eroded off and shedded into a low
14 area, into a graben, and then another fault on the left
15 side that faults back up to the other side of this major
16 low trend. Okay? And that's pretty much what we're seeing
17 on the 2-D seismic slice.

18 And bear in mind that this was the model that I
19 was working on prior to our acquisition of the 3-D. Okay?
20 This is not based on this line.

21 Q. Right.

22 A. Okay? It's just to show the correspondence of
23 the model to the actual seismic data.

24 Q. Having reached that point, continue with your
25 next slide.

1 A. Okay. On Exhibit 18-F, if you will refer to the
2 -- on Exhibit 18-D, if you refer to the line labeled
3 "North-South Model", that's what this line of section
4 follows, the north-south model line from northwest into
5 Section 23, down through the Blue Fin 24, to the Blue Fin
6 25 location, and then over to another small, closed low in
7 the south half of Section 25.

8 And below that section is a schematic that is
9 based upon this line. Okay? It's a schematic
10 representation of what I think this line is showing us,
11 faults and all.

12 And what it's showing us is a series of these
13 bowls that are filled in with material that I've
14 highlighted in yellow, separated by intervening highs,
15 okay?

16 So here's a low, here's a high, and here's
17 another low, there's another little high and another low,
18 which schematically on my section -- on my schematic
19 section on the bottom, is shown as a series of isolated
20 features, isolated closed low features, which I think goes
21 back to -- which goes back to the three blue bowls that are
22 on the seismic structure map.

23 Q. From your analysis, Mr. Mazzullo, you've
24 satisfied yourself that the Blue Fin 24 bowl is separate
25 and unique from the bowl that contains the well that's now

1 being drilled, the Blue Fin 25 well?

2 A. Yes, I believe that they are separate features.

3 Q. And when we look at the last bowl, which is the
4 one in the south half of 25 --

5 A. Uh-huh.

6 Q. -- your analysis shows that that is separate from
7 the bowl in the northwest quarter --

8 A. Yes --

9 Q. -- of 25?

10 A. -- that would be my interpretation.

11 Q. When we look at the summary sheet, let's come
12 back to Exhibit 18-D.

13 A. -D?

14 Q. Yeah, we're looking at the location of the bowls.

15 A. Uh-huh.

16 Q. You have in Section 25 cross-hatched the section
17 into the quarter sections?

18 A. Uh-huh.

19 Q. Is that what that line --

20 A. Yeah, those faint dashed lines are subdividing
21 the section into quarter sections.

22 Q. Okay. When we're looking at the Blue Fin 25
23 Chester bowl, is there any portion of that bowl that
24 extends into the south half of the section?

25 A. No, as a matter of fact, I gave that red-hachure

1 pattern probably more than it deserved.

2 Q. And what about the third bowl, the one that does
3 not yet have the well?

4 A. The third bowl, you know, is -- again, you know,
5 is as large as I care to make it, as I feel comfortable
6 making it, based upon an analysis of lines that cut through
7 it in a dip direction. That's how I evaluated -- I
8 evaluated the size of these features by taking arbitrary
9 slices this way and that way.

10 Q. Yeah. Well, you've approached this from multiple
11 orientations --

12 A. Yeah, from multiple orientations.

13 Q. -- so that you could determine the size, location
14 and shape --

15 A. Exactly.

16 Q. -- of the bowls?

17 A. Exactly.

18 Q. Recognizing that wells at this depth are spaced
19 by the Division, at least currently, on 320-acre gas
20 spacing --

21 A. Uh-huh.

22 Q. -- do you have a recommendation as to how the
23 section ought to be developed in terms of orienting those
24 spacing units?

25 A. Well, obviously if we oriented a north-south

1 spacing unit, we wouldn't be able to evaluate the southern
2 closed low system, locating -- for the Chester.

3 Q. Uh-huh.

4 A. Creating laydown east-west units affords the
5 opportunity to effectively evaluate two features and get
6 two wells into the Chester, whereas a north-south unit
7 would only really get one, maybe one and a half.

8 Q. Well, if you're looking at 25 and you're looking
9 at a west-half spacing unit --

10 A. Uh-huh.

11 Q. -- the west-half spacing unit, the initial well,
12 I guess, would be the one you're drilling in the northwest
13 quarter?

14 A. That's right.

15 Q. If you're going to try to capture some share of
16 the third pod --

17 A. Uh-huh.

18 Q. -- you're going to have to be over in the east
19 side of the southwest quarter of that section?

20 A. Yeah, real close to the lease line, yes.

21 Q. And if you've got a standup spacing unit, what
22 are you going to do with the rest of the reservoir that's
23 in the east half?

24 A. Oh, I see, yeah.

25 Q. Yeah, what happens?

1 A. You can't do anything with it.

2 Q. You either can't do it, or you have to drill
3 another well?

4 A. Or you have to drill another well, that's right.

5 Q. What's the advantage of laying the spacing units
6 down?

7 A. Well, we will effectively drain that large --
8 that -- what I'm showing as the Blue Fin 25 Number 1 unit,
9 we'll effectively drain that feature with that one well, I
10 would believe. Okay?

11 And then another well could be drilled into that
12 south-half unit, and by my analysis it's not in
13 communication with the one we're currently drilling.

14 Q. Do you see in your analysis any other pods that
15 are of sufficient size to be a Chester bowl, to justify a
16 well in this section?

17 A. At this point, within the confines of this area
18 that's represented on the map, no, I don't. I don't. As I
19 say, you lose section as you go up to the northwest, even
20 in this major -- you know, even within the confines of that
21 pale blue area you're losing section, and it's a higher --
22 high risk.

23 Q. Mr. Mazzullo, have you participated in any way
24 with the engineering employees or personnel among your
25 group to try to assess the recoverable gas or the amount of

1 gas contained in any of these bowls?

2 A. The only thing I did was provide these acreage
3 figures that you see on Exhibit 18-D for the sizes of these
4 features as I saw them.

5 I did not calculate recoverable reserves on my
6 own. I'm leaving that to the engineers.

7 Q. So when Mr. Phillips testifies about apportioning
8 shares --

9 A. Uh-huh.

10 Q. -- in Section 25, it's based upon this map?

11 A. I assume it is, yes.

12 MR. KELLAHIN: All right, sir.

13 That concludes my examination of Mr. Mazzullo.

14 We move the introduction of his exhibits 18-A
15 through --

16 MS. RICHARDSON: -- -F.

17 MR. KELLAHIN: -F.

18 EXAMINER STOGNER: Any objections?

19 MR. HALL: No objection.

20 MR. BRUCE: No, sir.

21 EXAMINER STOGNER: Exhibits 18-A through 18-F
22 will be admitted into evidence at this time.

23 Thank you, Mr. Kellahin.

24 Mr. Hall, your witness.

25 MR. BRUCE: If I could go first, Mr. Examiner?

1 EXAMINER STOGNER: Okay, in that case, Mr. Bruce.

2 CROSS-EXAMINATION

3 BY MR. BRUCE:

4 Q. Just a quick follow-up to Mr. Kellahin's last
5 question to you that this Exhibit 18-D is then what was
6 used by Mr. Phillips --

7 A. Well, you'll have to ask Mr. Phillips that. I
8 gave him the figures, and what he did with them after that,
9 I don't know.

10 MR. BRUCE: If I could just ask Mr. Phillips, is
11 this what you used, Mr. Phillips, in your Exhibit 17?

12 MR. PHILLIPS: I did not use this map.

13 MR. BRUCE: You did not use this map?

14 MR. PHILLIPS: I used Mr. Scolman's map, which is
15 similar to this map.

16 MR. BRUCE: So what you used isn't in evidence,
17 Mr. Phillips?

18 MR. PHILLIPS: That's correct.

19 MR. BRUCE: Okay.

20 MR. PHILLIPS: It is very similar.

21 Q. (By Mr. Bruce) A couple of things on your -- do
22 you have any -- is your Blue Fin 24 Number 1 productive in
23 the Atoka?

24 A. (By Mr. Mazzullo) We tested the Atoka and it
25 tested non-productive.

1 Q. Okay. In looking at your map 18-C, Mr.
2 Mazzullo, would this indicate that -- I notice kind of in
3 the middle of the map you have "Main Atoka Pay Zone".

4 A. Uh-huh.

5 Q. That would be to the west of the Blue Fin well?

6 A. That's how I see it, yes.

7 Q. Now, does your Exhibit 18-D, does that purport to
8 show what the drainage areas for these wells are going to
9 be?

10 A. No, that was for my own edification. That was
11 for my own edification and to give me some idea of the
12 relative sizes of these features.

13 Q. Okay.

14 A. I make no claim to what they're going to --
15 whether these are actually, you know, exactly correct or
16 not.

17 Q. Okay.

18 A. My best estimation.

19 Q. So there could be drainage from the Blue Fin 24
20 Number 1, say, to the northwest and to the southeast, and
21 if the Blue Fin 25 Number 1 is completed as a producer,
22 there could be drainage down into the southwest quarter of
23 Section 25?

24 A. I find that less likely because after I did my
25 analysis by drawing lines and cross lines through these

1 features I consistently came up with these intervening high
2 areas that seemed to me to prevent any significant
3 enlargement of the features, to the extent that I've drawn
4 them on this map. I think that's about as big as they get,
5 as far as where the productive facies are going to be
6 sitting.

7 Q. Do you have any data on the Blue Fin 24 like
8 bottomhole pressure, porosity, et cetera?

9 A. You'd have to -- Oh, porosity on the Blue Fin 24,
10 I believe, is in the order of -- 24 percent sound about
11 right? As far as bottomhole pressure, I'd have to defer to
12 Mr. Phillips. I don't have that information readily at
13 hand.

14 Q. So you're saying the porosity is 24 percent. Do
15 you have a water saturation for the well?

16 A. No, I haven't calculated a water saturation for
17 the well. It's currently producing dry gas and condensate.

18 Q. And you don't have a bottomhole pressure for the
19 well?

20 A. I don't, Mr. Phillips might.

21 Q. Do you have a thickness of the reservoir --

22 A. The reservoir is approximately 24 feet thick, 24
23 and 24.

24 Q. Does the reservoir thickness change as you move
25 away from the wellbore?

1 A. I don't know. We haven't drilled another well,
2 and we're not going to.

3 Q. So you don't know?

4 A. Seismically speaking, yes, but how thick I don't
5 know.

6 MR. BRUCE: Okay. I think that's all I have at
7 the present, Mr. Examiner.

8 MR. HALL: I have no questions, Mr. Examiner.

9 EXAMINER STOGNER: Mr. Carr?

10 MR. CARR: No questions.

11 EXAMINER STOGNER: Any redirect?

12 MR. KELLAHIN: One question.

13 REDIRECT EXAMINATION

14 BY MR. KELLAHIN:

15 Q. Having completed this analysis, Mr. Mazzullo, was
16 there any other involvement with any of the other
17 geophysicists? I think the hypothesis was originally done
18 by a David Scolman?

19 A. That's correct.

20 Q. Was he involved in reviewing or looking at any of
21 your final work?

22 A. No, he wasn't.

23 Q. When we look at Section 25 -- and I'm looking at
24 Exhibit 18-D --

25 A. Okay.

1 Q. -- am I clear in understanding that you have
2 concluded from this analysis, if these are laydown spacing
3 units --

4 A. Uh-huh.

5 Q. -- we can successfully access both pods with two
6 wells?

7 A. That's what I believe.

8 Q. And if they're standups, you would end up with a
9 competing second well in the second pod because of a
10 difference in ownership?

11 A. Yes, you would.

12 Q. There would be an interest in each side to have a
13 well?

14 A. Uh-huh, yes.

15 Q. So in one orientation you get two wells and in
16 the other one you get three?

17 A. You get -- three?

18 Q. Well, you have one well, the Blue Fin 25 --

19 A. Uh-huh.

20 Q. -- and in the second pod in the south half --

21 A. Uh-huh.

22 Q. -- if you stand them up, whoever drills that pod
23 first either gets it all --

24 A. Right.

25 Q. -- or you have to have third well for the other

1 owner?

2 A. Yes, you would, and it's a small pod.

3 MR. KELLAHIN: Yeah. No further questions.

4 EXAMINATION

5 BY EXAMINER STOGNER:

6 Q. Okay. Mr. Mazzullo, I'm going to refer to
7 Exhibit Number 18-E as in Edward.

8 A. E, okay.

9 Q. And please focus with me here on the -- this
10 erosion during an uplift.

11 A. Uh-huh.

12 Q. Now, you're showing, the way I understand it, the
13 yellow -- and I'm going to look at the bottom --

14 A. Right.

15 Q. -- drawing or exhibit, and it's my understanding
16 that the yellow area here --

17 A. Uh-huh.

18 Q. -- is the erosion that has occurred due to a
19 fault?

20 A. Yes.

21 Q. Of what material? Sand --

22 A. No, what happened at the end of the Mississippian
23 is, you had regional -- a tectonic event that uplifted
24 these fault blocks, okay, and exposed Mississippian rocks,
25 both Chester and lower Mississippian.

1 The Chester, as I said, has completely eroded off
2 the highest parts of these blocks, exposing lower
3 Mississippian. This is a combination of material derived
4 from the Chester and the lower Mississippian, derived from
5 the erosion of the Chester and the lower Mississippian.

6 Q. And this was in a deep marine environment, or
7 what kind of environment?

8 A. This is in a relatively shallow marine to near-
9 shore environment, probably. I'm not quite sure, because
10 the water depth -- You're getting into an offshore area
11 here. So it was probably in moderate-depth water that this
12 occurred. It rumbled. It's kind of like if you think of
13 offshore California during any earthquake, you have a lot
14 of material sloughing off into the canyons and the
15 continental shelf every time you have a major earthquake
16 out there.

17 And I base my interpretation on sample
18 evaluation, I've looked at these rocks in a number of wells
19 where they exist.

20 Q. Okay. Now, when I look at this depiction, is
21 this upper Mississippian-Chester on the surface, so we
22 actually have a fault slipping down where this is being
23 eroded off into the downthrown area; is that correct?

24 A. Yeah, you have an uplift. And then from probably
25 shallow marine erosional influences, wave action and

1 whatnot, you're eroding material constantly off of the high
2 areas, and it's just falling down into this low area and
3 getting continually reworked by bottom currents as well.
4 It's a fairly well-winnowed material, though it's got a lot
5 of what I call geotrash in it, a lot of mixed-up facies in
6 it.

7 Q. Okay. Now, when I look at Exhibit Number 18-C,
8 now, this same material that you're showing in yellow in
9 18-E, this is the white area with the orange triangles --

10 A. That's correct.

11 Q. -- in the upper --

12 A. Uh-huh.

13 Q. -- Chester?

14 A. Right.

15 Q. Now, up on the upthrown portion of it --

16 A. Uh-huh.

17 Q. -- I show a little bit of this area, and I'm
18 looking from the center of this depiction over to the
19 right-hand side --

20 A. Uh-huh.

21 Q. -- up on the upper-thrown area --

22 A. Uh-huh.

23 Q. -- you've got between the Chester and this upper
24 Morrow.

25 A. Uh-huh.

1 Q. You show some -- a little bit of this?

2 A. Yeah, because what happens is, these faults
3 were -- You notice that the fault is well -- continue on up
4 the section. Okay. These faults were periodically
5 reactivated. They were activated -- They started in the
6 very lowest paleozoic section and then periodically moved.
7 They moved a major event in the upper Mississippian, then
8 during the Morrow, then during various periods of the
9 Atoka, and finally culminated in the lower Wolfcamp, as a
10 matter of fact. Some of these faults go way up into the
11 lower Wolfcamp.

12 So those materials were shed during that period
13 of erosion and then subsequently faulted through the later
14 events.

15 And the reason I show that is because we had -- I
16 think we repeated a little bit, and I think the reason why
17 we have so much section is, we may have repeated in that
18 part of the section when we hit the fault, although that's
19 unclear to me right now, exactly where the fault cut is.

20 Q. Okay. Now, I'm going to switch over to Exhibit
21 18-F --

22 A. Uh-huh.

23 Q. -- and I'm looking at this depiction of the fold,
24 starting from the TMBR/Sharp Blue Fin 24 Number 1. If I
25 come straight down to my depiction --

1 A. Uh-huh.

2 Q. -- one of the things that I see is the fault
3 blocks extending all the way up into the Atoka, and I'm
4 assuming that that would equate to my depiction in 18-C; is
5 that correct?

6 A. Yes, that's correct.

7 Q. Okay. Now, I'm going to switch over now to the
8 proposed Blue Fin 25 Number 1. Now, what I see here is,
9 the faults do not extend up into the Atoka and the
10 Morrow --

11 A. No.

12 Q. -- it's -- you show it as down in the lower
13 Mississippian and up into the Chester --

14 A. Right.

15 Q. -- but yet you're still showing this --

16 A. Are you looking at -- You're looking at 18-F?
17 I'm sorry.

18 Q. Yes, 18-F.

19 A. Right. Yeah, you're looking at a section that's
20 essentially going down the spine of this low, down the
21 spine of the graben. You're not looking east to west at
22 the faults that are uplifting either side of the graben.
23 So you're looking at all these subsidiary faults, some of
24 which penetrate the entire section and some of which do
25 not.

1 Q. Okay, so this kind of gives me -- not a false
2 impression, but not an accurate depiction --

3 A. Right.

4 Q. -- or not a full description?

5 A. Yeah, if you were to take -- and maybe I should
6 have done it, but if you were to take an east-west section
7 across here, like the west-east model, you would get
8 basically the same type of configuration as you do in 18-E.
9 And it gets real high off to the west and high up to the
10 northeast.

11 Q. Okay. And so if I keep moving over to the
12 northeast of the southwest of 25, where the angle or the --

13 A. Uh-huh.

14 Q. -- the run of the cross-section goes more to the
15 east-west, as opposed to a north-south, then I'm starting
16 to pick up this --

17 A. Yeah.

18 Q. -- fault that extends through the whole area?

19 A. Yeah, the faults are in fairly close proximity to
20 the locations -- well, at least to the -- It's just off to
21 the east of the Blue Fin 24 Number 1, beyond the purple
22 envelope, okay, and it's about -- probably cuts through the
23 northeast of this northwest of 25, comes down there and
24 cuts fairly close to that other lower pod down at the
25 bottom.

1 Q. Okay. Now, back to 18-D. I want to make sure
2 this number that I'm looking at -- now, you mentioned that
3 -- you're showing some acreages, 36.5 --

4 A. Right.

5 Q. -- 54.6 -- Is that the blue area or the hachured
6 red?

7 A. That's the hached area --

8 Q. The hached --

9 A. -- that's the hached --

10 Q. -- red area?

11 A. -- area, right. The blue areas are the lowest
12 parts of the lows, as you can see from the color bar.

13 Q. Okay, tell me about the -- I'm going to refer
14 back to 18-A, and you can correct me if this is not the
15 right one. This depicts 2-D seismic, your sky-blue
16 hachured mark?

17 A. Yes.

18 Q. Okay, and when were those seismic lines run and
19 who did them?

20 A. We bought them in 1997 or 1998, and the initial
21 -- We didn't buy them for the Chester, we bought them to
22 evaluate the Atoka sands in this area, and we had a
23 geophysicist in Midland by the name of Ed Luckabaugh do the
24 analysis of those for us, to support or to supplement some
25 of the models that I was developing for the Atoka sands in

1 the area.

2 Q. So when did you go back again and look at the
3 lower Chester off of these lines?

4 A. Well, after the initial blowout of the Ocean well
5 and then our subsequent discovery down to the south, in 17-
6 35, that's when I decided to take a look at that one line
7 that just cut through that little area where the Blue Fin
8 is now, and I could see, you know, a definite low structure
9 in there. But I had no way of mapping a closed low,
10 because you can see that the two key lines that would have
11 covered that stopped short of extending far enough to do
12 that for us.

13 Mr. Luckabaugh did show structured dipping
14 steeply down in that direction, but that's as far as he
15 could take it with the data that we had.

16 Q. Okay. Now, we have made reference several times
17 to this Ocean blowout well.

18 A. Uh-huh.

19 Q. Let's identify that. How about going to Exhibit
20 18-A --

21 A. Uh-huh.

22 Q. -- and look at Section 18. This is where the
23 blowout occurred; is that correct?

24 A. Yes.

25 Q. Which well?

1 A. Is it the Carlisle 1-Y?

2 Q. Okay, that is the one that's marked with a box
3 and --

4 A. That was a replacement well, wasn't it? Yeah,
5 that was the replacement well for the well that blew out.

6 Q. Okay, so which one is the actual blowout?

7 A. It's right next to it, as I recall. How far
8 did -- You'd have to ask Ocean how far they skidded off to
9 that.

10 Q. Okay, I didn't know if it was one of the gas
11 wells depicted to the north and to the east --

12 A. No, those --

13 Q. -- or was it the well depicted to the south --

14 A. It's the one with the red box around it. The
15 ones with the red boxes around them are significant Chester
16 producers or, in the case of the Blue Fin 25, a proposed
17 Chester well.

18 Q. Okay, but the actual blowout well, because we
19 referred to this several times and I want to know which one
20 it was -- Now, the Ocean Carlisle State 1-Y, the well
21 that's depicted in the box; is that correct? --

22 A. Right.

23 Q. -- that was the skidded well or the replacement
24 well?

25 A. I believe so, yes.

1 EXAMINER STOGNER: Okay. Well hopefully, Mr.
2 Bruce, just for a complete record, whenever your witness
3 comes up, if we could reference which well that is. I know
4 it's in Section 10, but I don't know if it's the ones --

5 MR. BRUCE: We can do that, Mr. Examiner.

6 EXAMINER STOGNER: -- up to the north and east or
7 to the south and west. This is just as of -- And probably
8 we should state that was a BHP blowout well and not an
9 Ocean well; is that correct?

10 MR. BRUCE: UMC.

11 EXAMINER STOGNER: UMC, that's right. What did I
12 say?

13 MR. BRUCE: BHP.

14 EXAMINER STOGNER: Oh, I'm thinking of another
15 case.

16 MR. BRUCE: They're both my clients.

17 EXAMINER STOGNER: I'm thinking of another case
18 in which is spread all over my office right now.

19 MR. BRUCE: I don't want to hear that one.

20 THE WITNESS: The well -- the Ocean Carlisle
21 Number 1 has a porous Chester section in it.

22 EXAMINER STOGNER: Okay. Are there any other
23 questions of Mr. Mazzullo at this time?

24 FURTHER EXAMINATION

25 BY MR. BRUCE:

1 Q. Just one real quick one, Mr. Mazzullo. You said
2 the porosity was, you thought, 24 percent?

3 A. Yeah, I might be a little bit off on that.

4 Q. How was that calculated, or what log --

5 A. The log that was run was a compensated neutron
6 density well -- no, it was sonic -- a cased-hole neutron
7 log, cased-hole neutron log, it's estimated. Okay, cased-
8 hole neutron, compensated neutron log.

9 MR. BRUCE: Okay.

10 EXAMINER STOGNER: Any other questions of Mr.
11 Mazzullo?

12 With that, you may be excused.

13 Ms. Richardson, or Mr. Kellahin?

14 MR. KELLAHIN: That concludes our presentation.

15 EXAMINER STOGNER: Okay. How are we going to
16 proceed from here on?

17 MR. BRUCE: I think I was going to go next with
18 the Ocean presentation in the west half.

19 EXAMINER STOGNER: Okay. Would you like at this
20 time to rearrange the room or keep it as it is?

21 MR. BRUCE: It's fine the way it is, I think.

22 EXAMINER STOGNER: Okay. But I'll tell you what,
23 let's take about a short five-minute recess, and you can
24 get your troops together.

25 (Thereupon, a recess was taken at 3:10 p.m.)

1 (The following proceedings had at 3:25 p.m.)

2 EXAMINER STOGNER: This hearing will come to
3 order.

4 Mr. Bruce?

5 MR. BRUCE: Mr. Examiner, I'd like to ask
6 something unusual for a change. I would like to ask Mr.
7 Phillips to come to the stand so I could ask him some data
8 on the Blue Fin well.

9 EXAMINER STOGNER: Is there any objection?

10 MS. RICHARDSON: No.

11 EXAMINER STOGNER: You're not through yet.

12 MR. BRUCE: But it wasn't his attorneys.

13 MS. RICHARDSON: That's right, I didn't --

14 MR. BRUCE: And let the record reflect that Mr.
15 Phillips has already been sworn.

16 EXAMINER STOGNER: Mr. Phillips, you're still
17 under oath at this time.

18 JEFFREY D. PHILLIPS (Recalled),
19 the witness herein, having been previously duly sworn upon
20 his oath, was examined and testified as follows:

21 EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Phillips, we're talking about your Blue Fin
24 24-1 well. What is the -- I think you mentioned the
25 current rate, and I forgot what you said, the gas rate.

1 A. The current gas rate is around 4 million cubic
2 feet per day.

3 Q. And you said a couple hundred barrels of
4 condensate?

5 A. 220 barrels of condensate.

6 Q. Is the producing rate of that well restricted?

7 A. It is restricted by wellhead choke.

8 Q. Do you have any idea of what it could produce if
9 you weren't restricted?

10 A. I don't right now. We initially flowed the well
11 around 7 million cubic feet per day, as high as we got it.

12 Q. Okay.

13 A. And that was not on a full choke.

14 Q. Okay. What is the cumulative production to date?

15 A. I can't answer that right now.

16 Q. Okay. Has TMBR/Sharp conducted a decline-curve
17 estimate of reserves in that well?

18 A. We do not feel like we have enough history to
19 estimate reserves from a decline curve yet.

20 Q. What about otherwise, any other --

21 A. We plan to in the near future run another
22 bottomhole pressure survey so we can do material balance
23 calculations and determine the reserves in the well.

24 Q. Have you done any material balance calculations
25 to date?

1 A. We have not enough history yet to -- We have some
2 initial pressure points, but we don't have enough with the
3 corresponding amount of production to get a good P/Z curve.

4 Q. What is your last bottomhole-pressure figure, and
5 when was that?

6 A. I don't recall what the amount was or the date.
7 I think it was March the 6th, was the date --

8 Q. Okay.

9 A. -- but I see so many pressures in other places I
10 don't remember what it was. I can tell you that the
11 surface pressure is declining, and so therefore the
12 bottomhole pressure should be too.

13 Q. Do you have the surface pressure?

14 A. Initially, the well flowed at 3400 pounds at this
15 rate.

16 Q. Okay.

17 A. And now it is down to around 1925 pounds.

18 Q. Did you have an initial bottomhole pressure?

19 A. We do.

20 Q. What is that?

21 A. I don't recall.

22 Q. You don't recall.

23 A. That should be in information that was filed with
24 the OCD.

25 Q. Just a couple more. The porosity in the well, do

1 you have an estimate of that? Mr. Mazzullo said 24
2 percent, but --

3 A. That's a very -- a highly interpretive number
4 right now. I mentioned earlier that we had run the 5-1/2-
5 inch casing through the Chester. We did that without being
6 able to obtain open-hole logs across the Chester, and we
7 did it to get it under control.

8 We subsequently ran a cased hole neutron log, I
9 believe, through that interval, and the porosities -- and I
10 don't recall what they are, but I do remember that they are
11 inordinately low, and neutron is affected by gas. My
12 estimation of porosity used in my calculations was around
13 18 percent.

14 Q. Okay.

15 A. That is interpretive, and it's based on the
16 drilling rate that we encountered while we drilled through
17 this zone. It drilled less than a minute a foot for the
18 entire interval --

19 Q. Okay.

20 A. -- and in order to drill that fast, the porosity
21 would have to be pretty high, on the order of 18 percent.

22 Q. Okay, just a couple more questions. Do you have
23 a water-saturation --

24 A. The water saturations are calculated from
25 resistivity logs and porosity measurements. Again, we do

1 not have open-hole logs in that interval. The cased-hole
2 log we ran does attempt a water saturation, but it is
3 inordinately high so we've thrown that information out. It
4 indicates over 50 percent. The well produces no water, and
5 so our estimation that I've used in my calculations is 25
6 percent.

7 Q. And then you mentioned the well is producing at 4
8 million a day. How long has it been producing? When was
9 it connected to the pipeline, roughly?

10 A. Is that in our timeline?

11 MS. RICHARDSON: Look at Look at August 6th,
12 2001.

13 THE WITNESS: August the 6th of 2001. Yes, in
14 the timeline in the exhibit at August the 6th of 2001 it's
15 noted that "First production from the Blue Fin 24 Number
16 1...is sold." That is production from the lower
17 Mississippian and not the Chester interval.

18 Q. (By Mr. Bruce) Okay, and when approximately was
19 the Chester -- what you call the Chester interval, opened
20 up, then?

21 A. I believe it was -- Let me see if that is --

22 MS. RICHARDSON: It's not in there.

23 THE WITNESS: It's not in here?

24 MS. RICHARDSON: I don't know.

25 THE WITNESS: I think it was late February, I

1 think it was late February when we effected recompletion,
2 or in February sometime. I really don't recall.

3 Q. (By Mr. Bruce) Have you calculated gas in place?

4 A. We -- Yes.

5 Q. And what is that?

6 A. I don't -- there are so many moving numbers in
7 here and estimations. I've already told you about the
8 porosity and water saturations. The areal extent is
9 another guesstimation in this deal. I have calculated, to
10 my best recollection, about -- I think it's 4 1/2 to 5 BCF
11 in place in the Blue Fin 24.

12 Q. And what type of recovery rate are you using? 80
13 percent?

14 A. Roughly 80 percent. I think it's 4 1/2 BCF. I
15 get confused with which feature I was calculating.

16 MR. BRUCE: Just one second, Mr. Examiner.

17 Q. (By Mr. Bruce) And then on your Exhibit 17,
18 which is your pie chart, I mean, was that based on your
19 gas-in-place calculation, or what was it based on?

20 A. It was in part, because we knew the thickness of
21 the interval in the Blue Fin 24, we could make some
22 assumptions about what thickness we might encounter in the
23 Blue Fin 25, and also the same for the porosity and the
24 water saturations. If those were similar, then the only
25 difference would be the thickness and the areal extent.

1 Q. Okay. And do you agree with Mr. Mazzullo's
2 statement that in the Blue Fin it was 24 feet thick?

3 A. I am not certain if it's 24 feet thick or not. I
4 think on our mud log interval it was 32 feet thick.

5 Q. In the what interval?

6 A. The drilling break on the mud log was 32 feet
7 thick.

8 Q. Okay. Are these the same numbers you used, then,
9 in your pie chart?

10 A. The estimation of the pie chart reserves, I think
11 I stated earlier today, was 4 million for the Blue Fin 25
12 bump in the northwest quarter of Section 25, and 1 million,
13 and this is recoverable reserves. And I think those
14 numbers are close to what I used in that. The 25-percent
15 water saturation, 30 feet of thickness, 32 feet -- I
16 probably -- I may have used 25 feet of thickness, or I may
17 have used 35 feet of thickness, I don't remember. It comes
18 out about 4 BCF recoverable.

19 Q. In the 25-1?

20 A. In the 25-1 it's about 3 1/2 BCF recoverable, in
21 the 24.

22 Q. Excuse me, I was a little confused. In the 24-1,
23 what's recoverable?

24 A. I think it's about 3 1/2 to 3.7 BCF recoverable.

25 Q. And your estimates on the 25-1 are 4 BCF up?

1 A. 4 BCF recoverable.

2 MR. BRUCE: 4 BCF. Thank you very much, Mr.
3 Phillips.

4 EXAMINER STOGNER: Any other questions?

5 MR. KELLAHIN: Yes, sir.

6 EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Mr. Phillips, when you gave us two pressure
9 numbers, you gave us 3400 pounds and 1925 pounds, you got a
10 difference of 1475 pounds. Do you draw or attach any
11 significance as an engineer to that pressure difference?

12 A. Yes, I do. If these pods are as small as they
13 look like they are -- 3 1/2 BCF is a relatively small pod
14 -- it's performing, in my mind, consistent with that size
15 of reserves. In other words, there should be some pressure
16 decline when we're depleting reserves at the rate of 4
17 million cubic feet a day and 220 barrels, and the oil rate
18 had been higher than that.

19 So we're voiding -- or we're producing that
20 hydrocarbon out of the reservoir at a rate that you should
21 see some pressure decline.

22 Q. If Mr. Mazzullo is correct about his geologic
23 interpretation, would you expect to see a pressure drop in
24 the well? Mr. Mazzullo has defined a certain size --

25 A. Yes --

1 Q. -- and shape --

2 A. Yes --

3 Q. -- for the 24 well.

4 A. -- absolutely.

5 Q. Is this data consistent with his interpretation
6 of the size?

7 A. It is in my mind.

8 Q. Let me ask you another question, slightly
9 different topic.

10 Under the compulsory pooling statute, the
11 Division can allow you to recover your costs out of future
12 production. In addition, the maximum penalty is 200
13 percent.

14 A. Correct.

15 Q. For the risk involved in wells such as this and
16 for the well in Section 25, do you have a professional
17 opinion about the risk associated with the well under those
18 terms?

19 A. As to what the penalty should be?

20 Q. Yes, understanding the maximum is cost plus 200,
21 and that's all you're going to get back if you carry these
22 people that you're carrying or if they're afforded an
23 opportunity later to go nonconsent?

24 A. Well, sure I have an opinion, and our risk here
25 is even greater than normal because of all the litigation,

1 because of our exposure to appeals, to these hearings here;
2 I think it should be higher.

3 Q. All right, sir. If it cannot be higher because
4 there's a statutory limit, would your opinion be the
5 maximum is justified?

6 A. I believe the maximum would be justified.

7 MR. KELLAHIN: No further questions.

8 EXAMINER STOGNER: Mr. Kellahin, did we state any
9 overhead charges?

10 MR. KELLAHIN: We have -- I need to find out for
11 you because I'm not sure I have those.

12 EXAMINER STOGNER: Okay, so --

13 MR. KELLAHIN: I don't want to give you the wrong
14 numbers, I need to check.

15 EXAMINER STOGNER: So when you get ready to state
16 that --

17 MR. KELLAHIN: Yes, sir.

18 EXAMINER STOGNER: -- before this hearing is
19 over, you and Mrs. Richardson can get those.

20 EXAMINATION

21 BY EXAMINER STOGNER:

22 Q. One question. You mentioned pods. Mazzullo
23 mentioned bowls. Are you talking about the same thing?

24 A. Well, "pod" may not be the right word, because
25 when I say "pod" I picture in my mind the inverted -- It is

1 a bowl. When I say "pod" I mean -- I'm picturing a bowl.

2 Q. Okay, just wanted to clarify that.

3 A. They are bowls.

4 EXAMINER STOGNER: If the president says "pod",
5 then -- if the president said it could be a bowl, then I
6 guess it's a bowl.

7 Thank you. Any other questions of Mr. Phillips?

8 MS. RICHARDSON: Mr. Examiner, if Mr. Phillips
9 can be excused. He knows he's got a very important meeting
10 in the morning and needs to get back to Midland, if he
11 could.

12 EXAMINER STOGNER: Okay.

13 MR. BRUCE: No objection.

14 EXAMINER STOGNER: You may be excused.

15 MS. RICHARDSON: Thank you.

16 THE WITNESS: Thank you.

17 EXAMINER STOGNER: Mr. Bruce?

18 MR. BRUCE: Call Mr. Maney to the stand.

19 EXAMINER STOGNER: Refresh my memory, Mr. Bruce,
20 how many witnesses you have?

21 MR. BRUCE: I probably have four witnesses.

22 EXAMINER STOGNER: Four witnesses.

23 MR. BRUCE: I was only originally going to have
24 three, but I'll probably have four.

25 EXAMINER STOGNER: Okay, what are the --

1 MR. BRUCE: I will present a landman, geologist,
2 a geophysicist and an engineer.

3 EXAMINER STOGNER: Okay.

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

7 DIRECT EXAMINATION

8 BY MR. BRUCE:

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

11 A. Derold Maney.

12 Q. Who do you work for?

13 A. Ocean Energy.

14 Q. And in their Houston office?

15 A. Yes, I do.

16 Q. What is your job with Ocean?

17 A. I'm a landman.

18 Q. Have you previously testified before the
19 Division?

20 A. Yes, I have.

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

23 A. Yes, they were.

24 Q. And are you familiar with the land matters
25 involved in these various Applications?

1 A. Yes.

2 MR. BRUCE: Mr. Examiner, I tender Mr. Maney as
3 an expert petroleum landman?

4 EXAMINER STOGNER: Any objections?

5 MR. KELLAHIN: Let me ask him one question.

6 VOIR DIRE EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Mr. Maney, what's the period of time of your
9 involvement for Ocean in this particular case?

10 A. I've been working Permian Basin since June, July
11 of 1999.

12 Q. As to this case, what's the time frame.

13 A. From the beginning.

14 Q. From Ocean's beginning involvement?

15 A. Yes.

16 Q. So you were the landman responsible for that
17 activity?

18 A. Yes.

19 MR. KELLAHIN: All right, no objection, Mr.
20 Stogner.

21 EXAMINER STOGNER: Okay, now I'm a little
22 confused. You said you've been working the Permian Basin
23 since 1991, but with Ocean --

24 THE WITNESS: 1999.

25 MR. BRUCE: 1999.

1 EXAMINER STOGNER: I'm sorry, since 1999. Okay.
2 Thanks for clarifying that. Okay, please proceed.

3 DIRECT EXAMINATION (Resumed)

4 BY MR. BRUCE:

5 Q. Mr. Maney, let's turn to your Exhibit 1, the land
6 plat, and let's go over this a little bit. Could you first
7 identify what it is and describe what the color-coding --

8 A. Yes, the yellow acreage is acreage that Ocean has
9 a lease on or an interest in, and the red outline is an
10 outline of the seismic shoot and an AMI that was created by
11 that seismic shoot, and the light blue is the acreage that
12 all the litigation is about.

13 Q. Okay. And what we're talking about here is the
14 Section 25, which is over on the far east side of your
15 plat, right?

16 A. Yes, sir.

17 Q. And just to get this out of the way, the
18 southwest quarter of Section 25, Ocean Energy has under --
19 is it farmouts or term assignments?

20 A. Farmouts.

21 Q. Farmouts. And those farmouts covered 100 percent
22 of the southwest quarter; is that correct?

23 A. Yes.

24 Q. And Ocean has entered an agreement with David H.
25 Arrington Oil and Gas whereby they would acquire, what, a

1 30 percent interest --

2 A. Yes.

3 Q. -- in the southwest quarter?

4 A. Right.

5 Q. Now, going back -- and this goes back a little
6 bit beyond your last three years in this area, but when did
7 Ocean or its predecessors first become active in the
8 Townsend area, if we can refer to it as that?

9 A. Well, the Townsend Number 1 was drilled, I think,
10 in 1997, early 1997.

11 Q. Okay, and that was up in Section 2 of this same
12 township?

13 A. Yes, sir.

14 Q. Okay. Now, since then approximately how many
15 wells has Ocean drilled or participated in, in the west
16 Lovington or Townsend or Eidson area, however you want to
17 refer to that?

18 A. Twenty, plus or minus a few.

19 Q. Okay, quite a few?

20 A. Yes, sir.

21 Q. In the more immediate area of the acreage at
22 issue today, has Ocean been acquiring acreage over the past
23 couple of years?

24 A. Yes, sir.

25 Q. And I think Mr. Nearburg went into this, but if

1 you look at the yellow-coded acreage on the west side of
2 this township, how was that acquired?

3 A. We purchased that from Ameristate and -- Fuel
4 Company?

5 Q. Fuel Products.

6 A. Fuel Products --

7 Q. Fuel Products.

8 A. -- thank you, in 2000.

9 Q. Okay. And in dealing with that, you were dealing
10 with Mr. Nearburg and with Tom Bell, were you not?

11 A. Yes.

12 Q. How much was spent acquiring acreage from Fuel
13 Products and Ameristate?

14 A. We spent in excess of a million dollars --

15 Q. Okay.

16 A. -- on acreage only.

17 Q. Now, with respect to the -- If you look at the
18 Section 17, 20, 28 and 29 acreage, when Ocean acquired
19 that, was there a problem when Ocean agreed to buy that
20 acreage?

21 A. Well, there was a little bit of a problem. We
22 pointed out that the lessor -- the lease had been signed
23 improperly. There was an ownership change, and the lease
24 that they had wasn't valid.

25 Q. Okay.

1 A. So we requested that they get a new lease.

2 Q. Okay. Ocean didn't go out and try to release
3 that acreage? It informed Mr. Nearburg and his cohorts of
4 the problem with the acreage?

5 A. Yes.

6 Q. And a lot of them could go out and lease it?

7 A. Yes.

8 Q. Okay. You didn't attempt to top lease it or
9 anything else?

10 A. No.

11 Q. Now, let's move on more to the -- why we're here
12 today on the Section 25.

13 As to the west-half Section 25 well unit, could
14 you please describe the timing of Ocean's acquisition of
15 that acreage? And I refer you to your Exhibit 2.

16 A. In March of 2001 I called Andy Grooms and began
17 negotiating to acquire their interest in the southwest
18 quarter of Section 25.

19 Q. Branex, et al., are the actual lessees of that
20 acreage?

21 A. Yes.

22 Q. Okay.

23 A. And I sent my first proposal letter in April,
24 followed up again in May with a second proposal letter, and
25 in June I received a counterproposal from Branex, et al.

1 And 7-23-01, the final agreement was sent to all parties
2 and subsequently executed.

3 There has been a couple of amendments. The first
4 amendment in August changed the date, the acceptance date.
5 We had one party who had a date when they had to commit,
6 and they'd gone past that date, so --

7 Q. Okay.

8 A. -- and the second amendment was to change the
9 language so that the well did not have to be drilled on the
10 contract lands and the -- on the farmout lands, and the
11 contract depth from 12,500 to 13,200.

12 Q. Okay. Now as you said, as you testified earlier,
13 David H. Arrington Oil and Gas owns a portion of this
14 farmout?

15 A. Yes.

16 Q. Now, there have been some intimations in here
17 that that was some sort of special deal with Arrington, but
18 why was Arrington offered a portion of that interest?

19 A. Initially, when we did the seismic shoot, he had
20 already started on the seismic. It was all well down the
21 road, and so the AMI was entered into, and the second group
22 of leases were purchased from Fuel Products and Ameristate
23 and --

24 Q. And let me interrupt you there for a minute. If
25 you're looking at Exhibit 1, the second group of leases

1 you're talking about purchase from Ameristate, et al., is
2 what, Sections 22, 27 and 34?

3 A. Yes, sir.

4 Q. Okay.

5 A. Yes, sir.

6 Q. And then go ahead.

7 A. And since that was in the AMI, Arrington had a
8 piece of those leases, 50 percent of those leases.

9 And the large lease in the west half of the
10 exhibit is one lease that covers all of the acreage, and we
11 drilled one well in the southwest quarter of Section 20,
12 and it did not -- it's a Wolfcamp well, so it will not hold
13 the acreage. So we needed to drill an additional well.

14 Q. That well originally, what, had a -- was that a
15 south-half or a west-half unit?

16 A. It was a west-half.

17 Q. So since that was dry in the deeper gas
18 formations, it wouldn't hold that lease or that --

19 A. That's correct.

20 Q. Okay.

21 A. So we needed to drill another well under the
22 continuous drilling clause, which we proposed the Mustang
23 Midge in Section 28.

24 Q. In the northeast quarter?

25 A. Yes.

1 Q. Okay.

2 A. And that's a lease that Arrington owns 100
3 percent, and we own the northwest quarter 100 percent,
4 because those leases were required prior to seismic shoot
5 and entering into the AMI.

6 Q. Okay. Now, let me interrupt again. The north
7 half of 28 where it says T.M. Bell, those are the leases
8 that Ocean acquired from Tom Bell --

9 A. Yes.

10 Q. -- et al.? And then the northeast quarter where
11 it says Dale Douglas, that's actually an Arrington lease?

12 A. Yes.

13 Q. Okay, go ahead.

14 A. So we proposed the well. And Arrington
15 nonconsented the drilling of the well at the time, so we
16 didn't want to take all the risk and were interested in
17 having a partner or having Arrington change his mind at
18 that time.

19 And we've been competing out here. Even though
20 there is an AMI, when we were trying to acquire the large
21 lease in the western portion Arrington was competing with
22 us to acquire it.

23 We prevailed and acquired that, and when we were
24 trying to acquire the Primero Branex farmout agreements,
25 did not know it until after the fact, but Arrington was

1 also competing with us there. And from day one when we
2 came to our agreement, he had wanted an interest in that
3 farmout that we had.

4 Q. The southwest quarter of 25?

5 A. Yes. And it covers additional acreage over in
6 Section 26 and Section 35.

7 Q. Okay.

8 A. And so it came down to them wanting to acquire an
9 interest in that southwest quarter, and they would change
10 their election or drill and participate in the Mustang
11 Midge. And so the decision was made that in order to get
12 the well drilled and to save our lease and not have to pay
13 for the whole thing, take all the risk, that we would give
14 up a portion of the southwest quarter farmouts.

15 Q. So in other words, Arrington paid for half of the
16 well in the north half of Section 28, and there was an
17 exchange of seismic data, and Arrington got a portion of
18 your --

19 A. Correct.

20 Q. -- farmout?

21 A. We did not have any seismic to the east of that
22 outline right there. Our seismic is confined to that
23 outline on this exhibit.

24 Q. Okay.

25 A. And so we exchanged seismic that we have north in

1 the Morton prospect for a license to their seismic covering
2 Section 25 in there, so we would be able to map it and --

3 Q. Just part of the normal give and take of doing
4 business in the oil patch?

5 A. Yes, sir.

6 Q. Now, TMBR/Sharp has just stated that they showed
7 Ocean its Big Tuna prospect, and you did see it, did you
8 not?

9 A. We did.

10 Q. But that Ocean really didn't want to buy it
11 because they thought geologically it would be too low and
12 too wet, I think, was the comment. Is that why Ocean
13 turned down this prospect?

14 A. Well, I don't know about the technical aspects of
15 why we turned it down. You all can leave that for the
16 other witnesses. But the terms were, we thought, quite
17 steep and, you know, the price that I remember was
18 substantially higher and --

19 Q. Now, Mr. Nearburg testified that the price he was
20 asking was \$250 an acre. What do you recall was the price?

21 A. I remember paying \$750 an acre for most of this
22 other acreage, and the comment that was made to me was that
23 that's kind of set the price for this prospect.

24 Q. Okay, so this other yellow acreage to the west
25 side of this map you paid \$750 bucks an acre for?

1 A. Yes.

2 Q. And for the blue acreage on this plat, that's
3 what they were asking, plus a higher -- plus a higher back-
4 in?

5 A. There was a back-in involved, and again this is a
6 long time ago, but that's the way I remember it.

7 Q. Okay. So just from a land standpoint, that
8 doesn't meet your economic requirement?

9 A. That was part of the decision, I know that.

10 Q. Now, it was also stated that TMBR/Sharp wouldn't
11 have shown Ocean the prospect if they knew Arrington was
12 involved. Can you comment on that?

13 A. Well, I know they didn't want Arrington involved
14 in this other lease to the west here, and at the Arrington
15 wasn't involved.

16 But when we were trying to get this lease right
17 -- the acreage, the other yellow acreage, the second group
18 of leases that we bought, I had to disclose to them that we
19 were going to shoot the seismic with Arrington and that we
20 were going to enter into an AMI, so I don't know when that
21 was disclosed. And they may not have known that when they
22 showed us the Big Tuna, I'm not sure, didn't know at the
23 time.

24 Q. You have advised them that you were in certain
25 deals together with Arrington?

1 A. Yes.

2 Q. Now, with respect to the west half of Section 25,
3 did Ocean have an agreement with Arrington that Arrington
4 would operate the west half of 25?

5 A. Yes.

6 Q. Did you also inform them that you would act on
7 your own if they couldn't get the well drilled?

8 A. Well, that was our concern, because this -- You
9 know, we knew that there was going to be a problem with
10 claims of ownership in here.

11 And so when we finally decided in order to get
12 things rolling and get our Mustang Midge well drilled, we
13 were going to have to give up a little portion in here,
14 part of the agreement had to be that if they didn't drill
15 the well or cause it to be drilled, that Ocean would be
16 allowed to force-pool it if necessary and try to get a well
17 drilled in there to save our farmout. So that was part of
18 the agreement.

19 Q. So once that title dispute on the northwest
20 quarter of Section 25 warmed up, shall we say, what did
21 Ocean do?

22 A. Well, we said at the agreement -- I think had a
23 January date, that if they didn't force pool it and try to
24 get things going, that Ocean would be allowed to initiate
25 it ourselves and try to get the well drilled in order to

1 save our farmout agreement.

2 Q. Could you refer to your Exhibit 3-A and describe
3 what that is?

4 A. That's a proposal letter to Ameristate,
5 TMBR/Sharp, Fuel Products, Louis Mazzullo and David H.
6 Arrington.

7 Q. From Ocean's check of the land records, were
8 those the record owners under either lease --

9 A. Yes.

10 Q. -- of the northwest quarter of Section 25?

11 A. Yes, sir.

12 Q. And so you sent out that proposal letter because
13 you have an expiring farmout?

14 A. Right.

15 Q. And are the people listed -- Exhibit 3A, the
16 people who are the addressees of these letters, all of the
17 people that you seek to force pool in this case?

18 A. Yes.

19 Q. Now, Arrington has an interest in the southwest
20 quarter that is independent of the northwest quarter?

21 A. Correct.

22 Q. So you would seek to force pool a 50-percent
23 working interest in your proposed well?

24 A. Yes.

25 Q. Okay. Have you received any response from anyone

1 who you sent the letters to?

2 A. Louis Mazzullo has sent an election back not to
3 participate, and that's the only --

4 Q. Is that marked Exhibit 3B?

5 A. Yes, it is.

6 Q. Okay. What about -- Have you had conversations
7 with Arrington Oil and Gas?

8 A. We have.

9 Q. And what is their position in this matter?

10 A. I think they would have participated in a west-
11 half unit.

12 Q. Okay. Are they willing -- We'll get into this
13 later about the escrow of funds. Are they willing to
14 participate, or have they informed you verbally that they
15 were willing to participate in escrow funds?

16 A. We haven't gotten that far.

17 Q. Okay. In your opinion, has Ocean made a good-
18 faith effort to obtain the voluntary joinder of the parties
19 in your proposed well in the northwest quarter of Section
20 25?

21 A. I believe we have.

22 Q. What is Exhibit 4?

23 A. It's the AFE for the 25-1 well.

24 Q. And what are the dryhole and completed well
25 costs?

1 A. Dryhole is \$1,248,000, and completed is
2 \$1,783,000.

3 Q. And do you agree with what Mr. Phillips said,
4 that the AFEs presented in these matters are all fair and
5 reasonable estimates of what wells will cost in this
6 area --

7 A. Yes, sir.

8 Q. -- for wells of this depth?

9 What overhead rates is Ocean proposing?

10 A. \$6000 and \$600.

11 Q. And again, are these rates fair and reasonable
12 and in line with the costs other operators use in this
13 area?

14 A. I believe they are.

15 Q. Now, would you refer to your Exhibit 5? Did
16 Ocean also propose a west-half unit with a well in the
17 southwest quarter?

18 A. We did, yes.

19 Q. And Exhibit 5 is the letter pertaining to that
20 particular well proposal?

21 A. Yes.

22 Q. I know you have other witnesses, but will the
23 technical witnesses testify that that's not the preferred
24 location for an initial well on the unit?

25 A. Yes, they will.

1 Q. Why would the AFE be the same for a well in the
2 southwest quarter as a well in the northwest quarter?

3 A. They should be close. I don't know why they
4 weren't.

5 Q. Now, why did you propose a well in the southwest
6 quarter?

7 A. There was some remarks made and some issue by the
8 Commission about whether or not a well could be drilled on
9 acreage that you didn't own.

10 Q. Okay.

11 A. So in order to protect ourselves, we felt like we
12 needed to propose a well on acreage we did have control
13 over.

14 Q. Okay. But what Ocean really wants is a west-half
15 unit with a well in the northwest quarter?

16 A. Yes, sir.

17 Q. What are Exhibits 6 and 7?

18 A. They are the Application to drill, C-101, C-102.

19 Q. Now, let's look -- Exhibit 6 is for a well, an
20 Ocean well, in the northwest quarter, is it not?

21 A. Yes.

22 Q. And Exhibit 7 is for an Ocean well in the
23 southwest quarter; is that correct?

24 A. That's correct.

25 Q. Were these filed with the Hobbs District Office

1 of the Division?

2 A. They were.

3 Q. Were they approved?

4 A. They were not.

5 Q. Why were they disapproved --

6 A. Because --

7 Q. -- or returned unapproved, maybe not --

8 A. -- there was existing APD's in effect, and there

9 was...

10 Q. Because of the TMBR/Sharp and Arrington APD's --

11 A. Yes.

12 Q. -- did the Hobbs District Office not approve

13 these?

14 A. That's correct.

15 Q. But they have been filed?

16 A. Yes.

17 Q. Okay. If Ocean's Application for a west-half

18 unit is approved, does it request the Division to order the

19 Hobbs District Office to approve Ocean's APD's?

20 A. Yes.

21 Q. Now, Mr. Maney, obviously there's already a well

22 drilling. Does Ocean ask that the drilling be stopped?

23 A. No.

24 Q. It's not quite at the Ocean location, is it?

25 A. No, it's not.

1 Q. But would stopping drilling at this time cost a
2 lot of money?

3 A. It would cost a lot of money, and they've gone
4 too far to -- They'd have to find a place to put that rig.
5 It would be enormously expensive for them.

6 Q. Okay, and you don't wish to increase the costs
7 unduly in this matter?

8 A. No.

9 Q. Who should operate the well as it's drilling?

10 A. Well, I think they need to operate the well as
11 it's drilling, but I'd propose that Ocean assume
12 operatorship when the well is down and completed. As the
13 other parties are fighting over who owns it, we would like
14 to be able to produce the well.

15 Q. At this point in a west-half unit, it's certain
16 that Ocean has an interest in that well?

17 A. Yes.

18 Q. In the Applications, you've also asked the
19 Division to authorize the establishment of escrow accounts.
20 Just briefly, how would that work?

21 A. We'd ask that both Arrington and TMBR/Sharp put
22 their money in escrow, and the -- half the well costs would
23 be paid by the escrow fund and the other half -- the funds
24 remaining would be escrowed, and the party that didn't
25 prevail in their lawsuit would get their money back.

1 Q. Okay. And then the owners of the southwest
2 quarter of Section 25 would put their money up front?

3 A. Yes.

4 Q. Would the production proceeds attributable to the
5 northwest quarter working interest also have to be placed
6 in escrow?

7 A. Yes.

8 Q. And was notice given to all of the interest
9 owners of both of Ocean's Applications in this matter?

10 A. Yes.

11 Q. And are my affidavits of notice submitted as
12 Exhibits 8 and 9?

13 A. They are.

14 Q. One final question, Mr. Maney. TMBR/Sharp has
15 said, well, if Arrington and, by implication, Ocean hadn't
16 interfered with their APD's last fall, they would have
17 drilled the well. What type of action would Ocean have
18 taken last fall if it knew that this matter was coming to a
19 head at that time?

20 A. Well, I think we would have been prepared to
21 drill a well also if we didn't have the litigation issue
22 staring us in the face.

23 Q. Ocean was ready, willing and able to drill last
24 fall, was it not?

25 A. Yes, it was.

1 Q. And it keeps a close eye on this area, it's got a
2 lot of interests out here, doesn't it?

3 A. Yes.

4 Q. Mr. Maney, in your opinion is the granting of
5 Ocean's west-half spacing unit and force-pooling in the
6 interests of conservation and the prevention of waste?

7 A. It is.

8 Q. And were Exhibits 1 through 9 prepared by you or
9 under your supervision or compiled from company business
10 records?

11 A. They were.

12 MR. BRUCE: Mr. Examiner, I'd move the admission
13 of Ocean Exhibits 1 through 9.

14 EXAMINER STOGNER: Is there any objection?

15 MR. HALL: No, objection.

16 EXAMINER STOGNER: Mr. Bruce, I notice that each
17 exhibit doesn't reference a case number. Am I to assume
18 that all of these should reference both cases?

19 MR. BRUCE: Or all four, at your pleasure, Mr.
20 Examiner.

21 EXAMINER STOGNER: Okay, so Exhibits Numbers 1
22 through -- what did we say?

23 MR. BRUCE: One through 9.

24 EXAMINER STOGNER: One through 9 -- I'm just
25 going to mark them 12,860 and 12,841 at this point -- are

1 hereby admitted into evidence, but the record will show
2 that all four cases are consolidated for purpose of
3 testimony.

4 MR. BRUCE: Thank you.

5 EXAMINER STOGNER: Mr. Kellahin, your witness, or
6 Ms. Richardson.

7 MS. RICHARDSON: Thank you.

8 CROSS-EXAMINATION

9 BY MS. RICHARDSON:

10 Q. Mr. Maney, the AMI between Ocean and Arrington
11 which is represented by the fuchsia outline on this first
12 exhibit of yours, when was that entered into, the AMI?

13 A. I don't remember the date, but sometime I believe
14 in 2001, but I'm not sure.

15 Q. 2001?

16 A. Uh-huh.

17 Q. Was it prior to the time that Mr. Arrington,
18 through Mr. Huff, obtained top leases on the Stokes
19 Hamilton leases?

20 A. Yes.

21 Q. Okay. So sometime between January 1st, 2001, and
22 March 27th, 2001?

23 A. Yes, it was in effect at the time that they
24 acquired those leases.

25 Q. Was this AMI entered into prior to your meeting

1 in Houston with Mr. Nearburg and Mr. Mazzullo, Mr. Bell, on
2 or about January 31st, 2001?

3 A. I don't know. I'd have to look at the agreement.
4 I don't remember when it was, but I know that we disclosed
5 to Mr. Nearburg and Mr. Bell that we had entered into an
6 AMI involving seismic and acreage acquired after the date
7 of the AMI.

8 Q. Is it your testimony that you disclosed at that
9 meeting in Houston --

10 A. I don't know if I disclosed it at that meeting in
11 Houston.

12 Q. If their recollection is there was no such
13 disclosure that Ocean and Arrington had an AMI, can you
14 contradict that?

15 A. I can't.

16 Q. When did Ocean and Arrington first start talking
17 about an AMI in this area?

18 A. About the time we bought this big lease that we
19 were competing against.

20 Q. And what big lease is that?

21 A. That's the 960-acre Eidson lease.

22 Q. And what was the date of that acquisition?

23 A. Sometime in 2000, late in the year.

24 Q. Okay. Was it after that acquisition, was it
25 after Ocean had already had contact with Mr. Nearburg and

1 Mr. Bell, talking about the Big Tuna prospect in Section 24
2 and 25?

3 A. I think we talked about the Big Tuna. We had
4 already bought both of these leases, I believe, all the
5 leases, from Mr. Bell and Mr. Nearburg when they showed us
6 the Big Tuna. I think we had already completed that
7 transaction, and this was another deal that they had that
8 was in the area that they wanted to show us and we looked
9 at.

10 Q. And you agree that there was some communication
11 about the Big Tuna prospect on or around October, 2000?

12 A. I don't know. I didn't say that.

13 Q. Well, do you remember when the communication was?

14 A. No. No, I don't.

15 Q. Okay. Do you remember what was talked about in
16 the fall of 2000 regarding the Big Tuna?

17 A. They had a prospect that they wanted to drill,
18 and they showed it to us, they disclosed the terms.

19 Q. Did they talk about the seismic information that
20 they had or the geology information that they had?

21 A. Well, yes, they told us what -- that they had
22 seismic over it, we were aware that they had the Chesapeake
23 seismic and --

24 Q. Was Ocean actually interested in participating
25 with TMBR/Sharp and the whole group in the fall of 2000 in

1 the Big Tuna prospect?

2 A. We wouldn't have looked at it if we weren't
3 interested in it.

4 Q. Okay, and why were you interested?

5 A. We're interested in this area. It's in the area
6 where we've bought leases and spent a lot of money, we've
7 drilled wells, as we have up north also.

8 Q. And what prospects were you particularly
9 interested in, in Section 24 and 25?

10 A. I don't know. I think the one that we were
11 looking at was in Section 24. That was what they were
12 showing us. They were showing us their first well.

13 Q. In the fall of 2000, did Ocean have any seismic
14 data available to it on Section 24 and 25?

15 A. No, no.

16 Q. Did Arrington?

17 A. I don't know. We were shooting the seismic
18 inside this outline --

19 Q. Right.

20 A. -- and that's the only seismic that we had.

21 Q. Okay. So in the fall of 2000, Ocean didn't have
22 their own seismic?

23 A. No.

24 Q. Whatever information was provided to it by
25 TMBR/Sharp was more information about the area than Ocean

1 had previously had?

2 A. About this particular area. Yes.

3 Q. Yes. Okay, and then what -- in January of 2001,
4 what kind of information did you request from Mr. Nearburg
5 on the land matters? Did you ask him --

6 A. I don't remember, but I'm sure I asked him for a
7 land plat with the acreage that they owned.

8 Q. Okay. So Ocean at that time was still a
9 potential investor with the TMBR/Sharp group in Section 24
10 and 25?

11 A. We looked at it when they brought it by. I mean,
12 whatever the date that they testified to, yes.

13 Q. Okay. So when they had talked to you in October,
14 you had not made a decision that you were going to
15 participate with them?

16 A. No.

17 Q. After your discussions in the fall of 2000 with
18 Bell and Nearburg, did you discuss Section 24 and 25 with
19 Arrington Oil and Gas?

20 A. No.

21 Q. No discussions at all?

22 A. No, we've never had a discussion, to my
23 knowledge, with Arrington on Section 24 and 25.

24 Q. No discussions ever?

25 A. Well, I'm talking about -- You asked me in

1 October.

2 Q. Right.

3 A. Yeah, no. Why would we talk to them about a
4 prospect we were trying to obtain from them? I've already
5 told you that we were competitors out here. We wouldn't
6 talk to them about it.

7 Q. So your testimony is that between the October,
8 2000 meeting and the early January, 2000, time you asked
9 for a land plat, you had no discussions, Ocean had no
10 discussions with Arrington about --

11 A. About their Big Tuna prospect?

12 Q. Right.

13 A. Not that I'm aware of. I was never involved in
14 any discussions with them about that.

15 Q. And no discussions with Arrington about Section
16 24 and Section 25?

17 A. No.

18 Q. Okay. So after you got the land plat -- What was
19 the purpose of asking for the land plat?

20 A. To see what they owned. You know, they showed us
21 the prospect and I wanted to see where their acreage was,
22 and so they asked me for a land plat [sic] --

23 Q. And when you --

24 A. -- and the terms of the deal and --

25 Q. Sure. You saw they owned the Stokes Hamilton

1 acreage, which is in the northwest quarter of 25?

2 A. Yeah, I mean, they disclosed on a map -- and I
3 can't even tell you what it looked like, but I'm sure it
4 was just a map that showed the acreage colored in. I don't
5 think we asked them for leases or anything. I surely
6 didn't care who the lease was from.

7 Q. At that point had they quoted you a price?

8 A. They -- for this -- No, I don't think we talked
9 terms at that point. I don't know, I don't remember. But
10 I know that the last time we talked terms it was at \$750 an
11 acre, and that they -- the third for quarter promote on a
12 well-by-well basis and a 25-percent back-in. Those are the
13 terms I remember.

14 Q. As of the time that you talked to TMBR/Sharp in
15 early January, 2001, you had not seen the seismic data on
16 Section 24 and 25?

17 A. I had not.

18 Q. Had anyone in Ocean?

19 A. I don't know. I don't think so.

20 Q. Okay. Then apparently in late January, just
21 before the NAPE conference, Ocean asked for a private
22 showing of the Big Tuna prospect?

23 A. Yes.

24 Q. And that was held at Ocean's offices in Houston?

25 A. Yes.

1 Q. And Mr. Silva and Mr. Messa and you and who else
2 attended?

3 A. I believe they said Jerry Grocock, and I feel
4 confident he was there.

5 Q. Is that your memory?

6 A. Yes.

7 Q. And did Mr. Mazzullo at that time have his laptop
8 with him and show you his interpretations?

9 A. He did have his laptop. I didn't look at it.

10 Q. But other representatives --

11 A. Yes.

12 Q. -- of Ocean did?

13 A. Yes.

14 Q. How long did this presentation last?

15 A. I don't know, it was -- you know, an hour maybe,
16 you know --

17 Q. So that was really the first detailed geological
18 and seismic data that Ocean had access to?

19 A. I believe that's correct.

20 Q. Why did you all ask for a private showing? Why
21 were you still interested?

22 A. I don't know. I think they were coming up to
23 show it and thought, Well, maybe we'd better take another
24 look at it before it goes out to the general public.

25 Q. And the testimony that the comment was made to

1 them, the reason it was turned down was that it was too low
2 and too wet, do you recall those conversations?

3 A. I don't recall that, no, but maybe one of the
4 other gentlemen...

5 Q. At any time during that meeting or the next day
6 at NAPE, did anyone at Ocean ever suggest to Nearburg,
7 Mazzullo or Bell that the terms were unacceptable, and
8 that's why Ocean was not interested?

9 A. I don't believe so, but I know that that was part
10 of our decision process.

11 Q. Was the decision made at that time by Ocean,
12 after seeing the seismic and geological information, and
13 knowing what TMBR/Sharp owned and didn't own, that then
14 Ocean would go out and try to acquire its own acreage?

15 A. Absolutely not.

16 Q. What prompted Ocean two months later, a month and
17 a half later, to decide to go start acquiring acreage?

18 A. Well, I think there was some talk about the
19 acreage being open out there, that someone had some acreage
20 they were willing to farm out, and we started talking and
21 we went after Section 25, southwest --

22 Q. So Ocean had learned from the land plat it got
23 from TMBR/Sharp what acreage at least TMBR/Sharp didn't
24 own?

25 A. We knew what TMBR/Sharp owned, we -- yeah, we

1 could have -- yeah, we knew what they didn't own.

2 Q. Right. And now you had seismic information that
3 you hadn't had before?

4 A. We didn't acquire the seismic information.

5 Q. No, but you saw the data displayed, like these
6 kind of cartoons we've seen today?

7 A. You're going to have to ask the scientists, the
8 technical people, what seismic they saw. I don't know that
9 they saw anything over Section 25. I think it was limited
10 to Section 24, their prospect. I know that's the way we
11 show our prospects.

12 Q. Okay. But when they were showing this prospect,
13 TMBR/Sharp was talking in terms of a well on 24, a well on
14 25 and a well on 23, correct?

15 A. Uh-huh.

16 Q. Okay. So you knew they were interested in all
17 three sections?

18 A. Yes.

19 Q. All right.

20 A. And they had the acreage lease.

21 Q. So at the end of January, 2001, you had the
22 meeting with TMBR/Sharp, and then by March 27th, 2001, you
23 made your call to Andy Grooms with Primero Operating --

24 A. Uh-huh.

25 Q. -- and began negotiations to acquire a farm-in

1 interest in the southwest quarter of Section 25?

2 A. Yes.

3 Q. Knowing at that time that TMBR/Sharp planned to
4 drill a well in the northwest quarter?

5 A. Knowing that they planned to drill a well in
6 Section 24.

7 Q. And 25 and 23?

8 A. The first well was going to be drilled in Section
9 24.

10 Q. Sure, but there were subsequent wells planned?
11 Right?

12 A. Yes.

13 Q. Okay. What happened between not wanting to do
14 business with TMBR/Sharp in 24 and 25 and March 27th, 2001?
15 What happened that you all decided that you would, instead
16 of participating with them, go out and compete with them?

17 A. I don't know that we were competing with their
18 Section 24. They -- you know, that acreage was out there
19 for anybody to go after.

20 Q. But you were competing with them in Section 25
21 and intended to?

22 A. I don't know. The only person that we were
23 competing with when we tried to get this farmout was -- I
24 know after the fact -- was David Arrington. He was also
25 trying to get that farmout. And so there were two people

1 going after that lease, and we happened to prevail and get
2 it. So I don't understand what you're trying to say.

3 Q. Well, at what point -- I'm trying to figure out
4 at what point you decided that you wanted to compete with
5 TMBR/Sharp in Section 25.

6 A. At some point in March, we determined that that
7 acreage might be available, and we were interested in that
8 acreage, so we went out there and tried to make a deal on
9 it in Section 25.

10 Q. Between the end of January when you saw
11 TMBR/Sharp's seismic and geology, and March 27th, did you
12 see any other seismic or geology?

13 A. No. But then again, we're active in that area,
14 and we have our own geology for the whole area, and we have
15 seismic to the north, and we were shooting seismic here
16 already that was going to be processed, so we were going to
17 have some additional data.

18 Q. Okay. When was the first time you all did a
19 geological analysis of Section 25?

20 A. I don't know.

21 Q. Was it before March 27th, 2001?

22 A. I don't know.

23 Q. Is it any coincidence -- and if you could take
24 the blue book, please sir, the timeline of events which is
25 after the index --

1 A. You're going to go to the 25th of January date?

2 Q. No.

3 A. Okay, good.

4 Q. No, no, it's right at the first, right after the
5 index.

6 A. Okay.

7 Q. Yes, sir, it's called "Timeline of Events".

8 A. Okay.

9 Q. Okay, Huff acquired top leases from Madeline
10 Stokes and Erma Stokes Hamilton which covered acreage in 24
11 and 25 on March 27th, 2001. Do you see that?

12 A. Uh-huh.

13 Q. Is it coincidence that Arrington's acquiring
14 acreage in 24 and 25 through Huff on the same that you all
15 call Andy Grooms?

16 A. Absolutely, yes.

17 Q. You all hadn't discussed --

18 A. Absolutely not --

19 Q. -- him trying to get some and --

20 A. -- I --

21 Q. -- you trying to get some?

22 A. I really don't even like the implication.

23 Q. Let me ask you this: Between the end of January,
24 2001, and March 27th, 2001, did Ocean have any discussions
25 with Mr. Arrington about acquiring any acreage in 24 and

1 25?

2 A. No, no. We did not know that he had those top
3 leases until he already had them, and then he had to offer
4 them to us on the AMI provisions, and he only offered these
5 two tracts right here that you can see are in the AMI, and
6 that was the extent of it. And that was disclosed to us
7 after the leases -- he already had the leases.

8 Q. He did not offer Ocean any portion of the Stokes
9 Hamilton acreage in the northwest quarter of 25?

10 A. No.

11 Q. Okay. When was the first you learned that he had
12 acquired those top leases?

13 A. I don't remember, but it was after he thought
14 that they invested, because that's -- he offered them to us
15 shortly thereafter.

16 Q. Did you know on March 27th that TMBR/Sharp had a
17 permit to drill on Section 24, had prepared the location
18 and was getting ready to spud on March 29th?

19 A. No, I did not know that.

20 Q. You all didn't know they received a permit or
21 prepared a location --

22 A. No, I didn't -- didn't watch it. Maybe some of
23 the other guys did, but I didn't -- I wasn't aware of it.

24 Q. When did you first become aware that there was a
25 well being drilled on Section 24?

1 A. When the well started drilling, of course, it was
2 in an area that we watched, and so then I knew that it was
3 drilling at that point.

4 Q. Okay. So you sent your first proposal letter to
5 Mr. Grooms on April 25th, 2001, after learning that the
6 Blue Fin 24 was being drilled on Section 24?

7 A. No, no, it had nothing to do with the well or
8 anything. We were interested in the area, we wanted to get
9 the lease. Whether that well was drilling or not, it
10 wouldn't have mattered.

11 Q. But you knew it was drilling when you sent this
12 proposal to Mr. Grooms?

13 A. Well, I initiated the conversation with Mr.
14 Grooms in March, and then the next logical step is to send
15 a proposal and try to get the deal.

16 Q. Surely. But you knew at the time you sent him
17 the proposal that TMBR/Sharp was drilling its Section 24
18 well?

19 A. I don't believe -- I don't know if I did or I
20 didn't. I may have, I may not have. That wasn't why I
21 sent the proposal.

22 Q. No, I'm just asking you if you knew?

23 A. I don't remember.

24 Q. Were there any discussions about the progress of
25 the Blue Fin 24 while it was being drilled? Did you talk

1 to anybody, hear anything?

2 A. I didn't, no.

3 Q. Anybody in Ocean?

4 A. You'd have to ask them.

5 Q. Was somebody at Ocean following the progress of
6 the drilling?

7 A. Most of the people that worked at Ocean know the
8 areas that they work, and they follow them, yes.

9 Q. Did Ocean have access to the drill stem test that
10 was run on the TMBR/Sharp well on May 15th, 2001?

11 A. I don't know the answer to that question.

12 Q. Did it have access to any logs that were done on
13 the Blue Fin 24?

14 A. I don't know.

15 Q. The actual agreement with Mr. Arrington regarding
16 the farm-in acreage wasn't actually signed by Ocean until
17 November 14th, 2001, correct?

18 A. Yes.

19 Q. It had been sent by Arrington, I guess, on or
20 about September 10th, 2001?

21 A. That's right.

22 Q. Since Section 25 was outside the AMI with
23 Arrington, why did Arrington and Ocean come to an agreement
24 regarding farm-ins in the southwest quarter of Section 25?

25 A. Well, I just told that story. Because of the

1 Mustang Midge we wanted to drill, and as you can see right
2 here, this letter -- as I stated when Jim asked me the
3 question, to get the Mustang Midge drilled we entered into
4 this agreement so that we could get that well drilled, and
5 we gave up additional interest in Section 25, the southwest
6 quarter, as part of the negotiations.

7 Q. And when was the Mustang Midge drilled?

8 A. It was drilled shortly after November. I think
9 they -- Well, no, they spud the well in September or
10 October, I can't remember which.

11 Q. September or October of 2001?

12 A. Yes.

13 Q. When did Mr. Arrington convey to Ocean a
14 proportionate interest in the Stokes Hamilton acreage in
15 Section 25?

16 A. I don't remember the exact date, but you probably
17 have it there.

18 Q. Was it about October 31st, 2001?

19 A. I don't know. You could tell me if you like, but
20 I don't know.

21 Q. That's what we have on our timeline, is October
22 31st, 2001. Any reason to disagree with that?

23 A. No.

24 Q. And that assignment of the Stokes Hamilton leases
25 were actually the top leases, were they not?

1 A. Yes.

2 Q. Okay. And Ocean still owns those?

3 A. We have offered to sign those back.

4 Q. But you have not?

5 A. No, that hasn't happened yet.

6 Q. Okay. Ocean continues to claim an interest in
7 those top leases?

8 A. We claim an interest in a portion of the top
9 leases in Section 23 and Section 26.

10 Q. And is it Ocean's position that the top leases
11 are valid or not yet valid?

12 A. I think that's up to the courts to decide, not
13 me.

14 Q. Okay. As far as you know, Ocean doesn't have a
15 position on the Stokes Hamilton bottom lease or top lease
16 validity?

17 A. It's not my place to -- The courts will decide.

18 Q. Okay. With respect to the agreement that was
19 entered into with Mr. Arrington about Section 25, Arrington
20 agreed that he was going to commence its test well before
21 July 1st, 2002 --

22 A. Uh-huh.

23 Q. -- pursuant to the farmouts that --

24 A. Yes.

25 Q. -- Ocean had received?

1 Ocean started getting those farmouts, actually
2 getting things signed up in July of 2001?

3 A. Right.

4 Q. At what point did Ocean know that Mr. Arrington
5 had obtained a permit to drill on Section 25?

6 A. I don't remember, I don't know.

7 Q. When Ocean first started acquiring the farm-ins,
8 did it discuss with Mr. Arrington what its progress was
9 and --

10 A. No, no, absolutely not.

11 Q. Okay. When were the first discussions regarding
12 the farm-ins between Ocean and Arrington?

13 A. After we were successful in acquiring the farm-
14 ins, he was interested in acquiring the interest and wanted
15 to buy an interest from us, and --

16 Q. Well, a lot of these farm-ins weren't acquired
17 until December, 2001, were they?

18 A. Look at the dates, you tell me.

19 Q. Okay, can you identify this package of material
20 which has been marked as TMBR/Sharp Exhibit Number 20?

21 A. Yes, those are the farmout agreements.

22 Q. And if you'll look, for example, at B.B.L., Ltd.,
23 it's dated December 13th, 2001 --

24 A. Right.

25 Q. -- do you see that one?

1 A. Uh-huh.

2 Q. Okay. You have one -- I mean, they'll speak for
3 themselves, so we're not going to go through each one, but
4 several of these weren't acquired until December, 2001.

5 A. But the agreement was made. I had verbal
6 assurance that the agreement was made, Andy Grooms spoke to
7 his people, and he signed his -- let's see, is this --
8 dated November 30th, and it was all subject to the farmout
9 letter that was dated July 23rd.

10 So we had the farmout letter dated back in July,
11 and then we had the actual long agreement that was dated in
12 November. So you know, back in July we had the deal.

13 Q. When you talked to Branex about what they wanted
14 for their acreage -- and you said you paid \$750 an acre?

15 A. Pardon?

16 Q. When you talked to Branex about acquiring their
17 acreage, did you pay \$750 an acre?

18 A. Branex didn't pay anything.

19 Q. No, no Ocean pay Branex?

20 A. We didn't pay Branex.

21 Q. You didn't pay Branex anything?

22 A. No.

23 Q. Just got a farmout?

24 A. With a commitment to drill the well.

25 Q. Okay. And at that point were there ever any

1 discussions between you and representatives for Branex
2 about the Blue Fin 24 and whether it was a good well, bad
3 well, anything about it?

4 A. I don't remember having a conversation with Andy,
5 Mr. Grooms, about the Blue Fin. I know that everybody was
6 interested in it because it was a drilling well in the
7 immediate area.

8 Q. By the time you signed this farm-in with Mr.
9 Grooms, did you all have a belief, did Ocean have a belief,
10 that the Blue Fin was a successful well?

11 A. I don't know when it was down, but I don't think
12 we knew anything in July when we were getting these things.
13 I don't think we knew anything.

14 Q. In Exhibit 19, in Arrington's commitment to drill
15 the Triple Hackle Dragon 25 Number 1 well, and he was going
16 to be the operator, on page 2 of that agreement it has a
17 provision that "In the event that the drilling title
18 opinion rendered by a law firm licensed to do business in
19 the State of New Mexico shall contain title requirements
20 such that Arrington or Ocean as a reasonable and prudent
21 operator is unable to commence drilling operations...
22 Arrington or Ocean shall no later than January 5, 2002,
23 initiate force pooling..."

24 Did Arrington get a title opinion that contained
25 title requirements?

1 A. There was a title opinion on it, and there are
2 some title requirements on it.

3 Q. And what were the title requirements that --

4 A. Well, there's a dispute. It indicated there's a
5 title dispute, that there are some top leases and -- needs
6 to get the leases released.

7 Q. When was that tile opinion done for Mr.
8 Arrington?

9 A. I don't know.

10 Q. At the time you all entered into the agreement in
11 November, did you already know that there were title
12 disputes that couldn't be resolved?

13 A. Well, I knew when we were offered the top lease
14 that there was going to be a title dispute. I knew there
15 was probably going to be some...

16 Q. One of the inherent dangers of top leases is, you
17 don't know when it becomes valid?

18 A. Right.

19 Q. Okay. In your experience, when you have a top
20 lease like that and you don't know when it becomes valid,
21 do people go to the courthouse, file suit for declaratory
22 judgment and ask the court to declare which lease is valid?

23 A. I haven't had to do it, I'm not an attorney, so I
24 don't know how they would do it.

25 Q. Sure. In fact, you're not a lawyer?

1 A. Right.

2 Q. Don't have any formal legal training?

3 A. Right.

4 Q. And don't have an opinion about whether
5 TMBR/Sharp pooled their lease or not?

6 A. I have an opinion, you asked me earlier if Ocean
7 had an opinion.

8 Q. Ah, you have an opinion. But it's not an
9 official Ocean opinion?

10 A. Absolutely not.

11 Q. Okay, well, that's fine. You're here as a
12 representative of Ocean --

13 A. Yes.

14 Q. -- not in your own personal capacity?

15 A. Yes.

16 Q. Okay, we won't burden the record with that, then.
17 Because it was suspect whether the top leases
18 were valid, did Arrington and Ocean decide the next step
19 would be to force-pool them?

20 A. The only way we could get our well drilled is to
21 force-pool whoever is claiming that acreage.

22 Q. Okay. Since the first farm-in came from Mr.
23 Grooms in July of 2001 and he thought everybody was going
24 to sign up, why didn't Arrington or Ocean file a force-
25 pooling on Section 25 then, back in September?

1 A. I don't know. I think felt like that maybe some
2 time could run and this thing would solve itself and we'd
3 just see how things shook out. And it became apparent that
4 this was going to be a real long, drawn-out process.

5 Q. These farm-ins have a *force majeure* provision,
6 don't they?

7 A. They do.

8 Q. Paragraph 16?

9 A. (No response)

10 Q. Okay. Since Ocean is concerned that its farm-ins
11 may terminate July 1st, 2002, why has Ocean not gone to the
12 courthouse as TMBR/Sharp did and get a *force majeure* ruling
13 protecting it from having his farm-ins expire?

14 MR. BRUCE: And I would object insofar as it
15 requires a legal conclusion from my client. I think that's
16 for the attorneys at Ocean to decide, but if he has an
17 opinion I would allow him to go ahead.

18 THE WITNESS: Do you want to ask the question
19 again, please?

20 Q. (By Ms. Richardson) Sure. In the TMBR/Sharp-
21 Huff-Arrington lawsuit in Lea County, because TMBR/Sharp
22 could not get a permit to drill it filed a *force majeure*
23 summary judgment with the Court, asking the Court to hold
24 that there had been a *force majeure* event, because it had
25 no permit to drill at that point. Do you know why -- and

1 were granted that *force majeure*, at least until it got a
2 permit to drill.

3 Do you know why Ocean did not go similarly try to
4 protect its own interest in these farmouts by going to the
5 Court for a *force majeure* order?

6 A. It was discussed and it's something we may still
7 have to do.

8 Q. Because Ocean still doesn't have a permit to
9 drill?

10 A. That's correct.

11 Q. And however these pooling cases are resolved,
12 likely somebody in this room will appeal, correct? Likely
13 in your mind?

14 A. I suspect the loser will appeal.

15 Q. Okay. And it could take months if not years
16 before all these matters are finally sorted out?

17 A. That's correct.

18 Q. In light of that, if a party has leases expiring
19 because there's no current end in sight of all these
20 controversies, don't you agree that the prudent operator
21 would go out and drill and try to preserve his acreage?

22 MR. BRUCE: I would object. That calls for a
23 legal conclusion under the prudent operator standard, the
24 normal oil and gas lease.

25 MS. RICHARDSON: That's a mixed question of fact

1 and law at best. It's really a fact question.

2 EXAMINER STOGNER: Do you want to restate your
3 question?

4 MS. RICHARDSON: Surely.

5 Q. (By Ms. Richardson) Is it understandable to you,
6 Mr. Maney, why in light of one potential expired lease in
7 Section 25 in March, five more in July, Stokes Hamilton
8 sometime in the summer -- in light of that fact, that
9 TMBR/Sharp was looking at expiring leases in Section 25,
10 does it make sense to you as a land person and as a person
11 who understands about preserving leases, does it make sense
12 to you that an operator would want to go ahead and drill
13 under those circumstances?

14 A. Would want to drill or would go ahead and drill?

15 Q. Both.

16 A. I would want to drill, but I don't know that I
17 would drill under the circumstances in this situation.

18 Q. Would you let the leases expire?

19 A. I think I would go to the District Court and try
20 to get the *force majeure*.

21 Q. If you had a permit to drill, how could you get a
22 *force majeure*?

23 A. Well, again, I don't know.

24 Q. Sure. Assume with me that you couldn't get a
25 *force majeure* if you a permit to drill. Do you agree with

1 me it would be good to go forward?

2 A. It's a business decision, how much risk you want
3 to take, yes. Sure.

4 Q. Is the reason Arrington and Ocean did not try to
5 drill Section 25 earlier is, it was too concerned that its
6 top leases might not be any good?

7 A. I can't speak for Mr. Arrington, but we've been
8 trying to get the well drilled from the git-go, and we
9 would still like to get the well drilled on a west-half
10 standup unit and, you know, let the legal system determine
11 who owns it, and --

12 Q. But the acreage you're proposing to drill on is
13 not even Ocean acreage, right?

14 A. The best location to drill is not on Ocean
15 acreage.

16 Q. It's on TMBR/Sharp acreage?

17 A. It's on TMBR/Sharp acreage, or Arrington's
18 acreage, whoever the Court determines.

19 Q. Okay. And you are aware of circumstances in
20 which an operator has chosen to drill after getting a
21 permit before compulsory pooling?

22 A. Well, I've only worked, you know, the Permian
23 here for a couple years. I haven't seen it done in that
24 short length of time. But maybe some people do it. I
25 really wouldn't feel comfortable with that.

1 Q. Okay. If you'd look at Exhibit Number 7 for me,
2 paragraph 34?

3 A. In the book?

4 Q. Yes, sir, thank you.

5 A. Okay.

6 Q. Okay, the first sentence, first couple of
7 sentences, "It has long been the practice in New Mexico
8 that the operator is free to choose whether to drill
9 first..." I'm sorry?

10 A. Is this Number 7?

11 Q. Number 7, uh-huh.

12 A. Okay.

13 Q. Paragraph 34.

14 A. Okay.

15 Q. "It has long been the practice in New Mexico that
16 the operator is free to choose whether to drill first,
17 whether to pool first, or whether to pursue both
18 contemporaneously." Do you agree that is a correct
19 statement?

20 A. Yes.

21 Q. Okay. Then it says, "The Oil and Gas Act
22 explicitly permits an operator to apply for compulsory
23 pooling after the well is already drilled." Do you agree
24 with that statement?

25 A. Yes.

1 Q. Okay. Were you aware that when TMBR/Sharp first
2 attempted to get a permit to drill the Section 25 well in
3 August of 2001, that it owned approximately 85 percent of
4 the acreage in the north half of Section 25?

5 A. I don't know if the ownership is -- until it was
6 disclosed to me today.

7 Q. Okay. Does it sound reasonable to you if an
8 operator owned 85 percent, controlled 85 percent and that
9 the parties owning the acreage it didn't control, it was in
10 litigation with and unlikely were going to be able to reach
11 agreement about the time of day, much less these issues, is
12 it reasonable to you that that operator would go ahead and
13 drill and then, if it couldn't get voluntary agreement, go
14 ahead and compulsorily pool?

15 A. I think that there's always been an argument as
16 to which orientation should be drilled, and it would make
17 me very nervous to drill a well until that was determined,
18 if you have everybody arguing about it.

19 Q. And the orientation -- if you'll look at Exhibit
20 14, please sir, back in the book -- the orientation that
21 Ocean wants is a west-half section, west-half proration
22 unit.

23 A. Okay.

24 Q. Is that correct?

25 A. Yes.

1 Q. Yes, okay. And these people shown on here, on
2 Exhibit 14, you understand, are people that own in the
3 northeast quarter of Section 25?

4 A. Okay.

5 Q. Okay, because the Stokes Hamilton lease
6 represents the whole of the northwest quarter of Section
7 25?

8 A. Okay.

9 Q. You realize that?

10 A. Yes.

11 Q. Okay. So what Ocean is asking, even though
12 there's a well being currently drilled on Section 25 is, as
13 to all of these people, take away any rights they might
14 have in that Section 25 well?

15 A. I think it needs to be determined if there's any
16 oil and gas under this northeast quarter before they take
17 anything away from them.

18 Q. Well, let me try to ask it another way so you
19 understand. I want to be sure we understand one another.

20 If Ocean gets its way and there's a west-half
21 proration unit -- correct? --

22 A. Uh-huh.

23 Q. -- all of the people who now potentially have an
24 interest under TMBR/Sharp's Blue Fin 25 listed here will
25 have no interest?

1 A. It's up to the Commission to determine -- That's
2 what we're trying to do here, is to determine what
3 orientation it should be. And if it's proven that the
4 northeast quarter is not prospective for what we're
5 drilling, they shouldn't share in it. Why should they
6 share in it?

7 Q. I think it's a yes or no. Ocean is asking that
8 these people not have an interest in the Section 25 well
9 that's being drilled.

10 A. Then it's a no, we're asking that they don't have
11 an interest.

12 Q. If you would look at the last Exhibit on Exhibit
13 7, the application to drill the Blue Fin 25 Number 1, filed
14 by TMBR/Sharp --

15 A. Okay.

16 Q. -- do you see that?

17 A. Yes.

18 Q. Okay, this was actually a supplemental
19 application regarding that well, same API Number,
20 everything is the same. And you look at the second page on
21 the C-102 --

22 MR. HALL: Excuse me, which exhibit is that?

23 MS. RICHARDSON: It's Exhibit 7, the C-101 and
24 C-102, which are the last couple of pages of the exhibit.
25 Did we short you, Mr. Hall? I'm sorry.

1 THE WITNESS: Okay, the C-102?

2 Q. (By Ms. Richardson) Right.

3 A. Okay.

4 Q. Okay. You see that -- in that acreage dedication
5 that was originally filed in August of 2001, you see that
6 it's the north-half section of Section 25 that was
7 dedicated?

8 A. Yes.

9 Q. Yes. Don't you believe that those people shown
10 on Exhibit 14 who are in the north half of 25 have some
11 expectation now that a permit has been granted dedicating
12 that acreage, and a well is being drilled, that they would
13 like to participate in that well?

14 A. I'm sure they do.

15 Q. Did Ocean give any of those people that's listed
16 on Exhibit 14 notice that it was trying to, in effect,
17 disenfranchise them by a west-half unit?

18 A. No.

19 Q. Going back to the offer that was made by
20 TMBR/Sharp to Ocean to participate in the Big Tuna prospect
21 on 24, 25, 23, et cetera, do you recall that the acreage
22 was offered at \$250 with a 75-percent net revenue interest?
23 Do you recall that?

24 A. No, I don't. And I remember talking about \$750
25 an acre because that's what we had paid out here before,

1 and when that thing was first shown to me they were talking
2 \$750 an acre. Now, they may have changed the terms to \$250
3 later on when they showed it -- when we were -- when it was
4 first shown to me, that's the number that jumps out in
5 front of me, I remember.

6 Q. Okay. So it was \$750, you think, was being
7 offered before the Blue Fin 24 was being drilled?

8 A. I believe that's the terms that they were asking.
9 It wasn't offered.

10 Q. Well, they were asking \$750 --

11 A. Right.

12 Q. -- before the Blue Fin was drilled, that's your
13 recollection?

14 A. Yeah.

15 Q. Not \$250?

16 A. No.

17 Q. But later -- All right.

18 Isn't it true that Ocean's permit to drill on
19 Section 25 was denied in -- well, it was denied in April of
20 2001? 2002, I apologize.

21 A. Yes.

22 Q. Denied in April, 2002. It was denied on the
23 basis of the fact that Arrington had permits on that
24 section, wasn't it?

25 A. No, it was denied on the basis that those permits

1 were stayed, and now TMBR/Sharp had the -- I believe that's
2 right.

3 Q. Well, when was it denied?

4 A. Here just recently. I think the April date is
5 correct, but again, I --

6 Q. You don't recall when it was denied?

7 A. No. It was done verbally with our regulatory
8 person.

9 Q. Was it denied when it was filed with the --

10 A. Yes, yes, it was denied when we filed it.

11 Q. Okay, and what is the filing date? If you could
12 look at your Exhibit Number 6, tell me the filing date for
13 the Triple Hackle Dragon 25 Number 1.

14 A. Okay, Number 6. Let's see, March 28th is the
15 date. It's on the bottom, down here.

16 Q. That's when it was filed?

17 A. That's the date on this piece of paper, yeah.
18 And I'm assuming it was --

19 Q. Okay, is that when it was denied?

20 A. No, it was a little bit later. It was sent to
21 them, it may have even been faxed to them, and --

22 Q. Like maybe a week later or --

23 A. Again, I don't know the exact time, but it was
24 denied. I was told that it was denied by a regulatory
25 person.

1 Q. Okay, I really need you to try to remember when
2 it was. Was it a week from the time it was filed, two
3 weeks from the time it was filed?

4 A. I can't just pull a date out, I don't remember.
5 I'm sorry.

6 Q. Do you have a letter for the denial date?

7 A. We did not get a letter, no.

8 Q. It was just verbal --

9 A. It was verbal.

10 Q. -- communication?

11 A. They called our regulatory person and told them
12 that the permit would not be approved as there was another
13 permit on there that TMBR/Sharp had for the north-half
14 location.

15 Q. Okay. TMBR/Sharp got at least one permit on
16 March 20th, and then later the Commission entered its order
17 regarding the conflicting permits between Arrington and
18 TMBR/Sharp on April 26th. Were you aware of that?

19 A. I knew that had happened. I didn't know the
20 dates, I don't remember the dates.

21 Q. Okay. But until April 26th, you understood that
22 there were conflicting permits, one for Arrington and one
23 for TMBR/Sharp?

24 A. Right.

25 Q. Right, okay. Is there any reason Ocean hasn't

1 obtained a farmout extension from Branex?

2 A. He sent a letter to u here a while back and
3 indicated -- or just told me that it was not going to be
4 extended. They expected us to perform under the agreement.

5 Q. But you all are still leaving open the option of
6 going to the Court for a *force majeure* order of your own?

7 A. That's an option.

8 MS. RICHARDSON: Okay. Nothing further, pass the
9 witness.

10 EXAMINER STOGNER: Mr. Hall?

11 MR. HALL: No questions.

12 EXAMINER STOGNER: Mr. Carr?

13 MR. CARR: No questions.

14 EXAMINER STOGNER: Redirect?

15 MR. BRUCE: Just a few, Mr. Examiner.

16 REDIRECT EXAMINATION

17 BY MR. BRUCE:

18 Q. Let's start off with this, Mr. Maney. I hand you
19 what's been marked Ocean Exhibit 9A. Would you identify
20 that for the Examiner?

21 A. It's a letter from Branex to Dale Douglas at
22 David H. Arrington's office; Phil Brewer, attorney for
23 TMBR/Sharp; and to me. And it references the pooling
24 Application of TMBR/Sharp, and it talks about the -- not
25 going to -- well, I guess the important part to me is, "We

1 have..."

2 Q. Top of page 2?

3 A. Yeah, right, on the bottom [sic] it says, "We
4 have however categorically stated and we reaffirm herein,
5 that we will not extend said July 1, 2002 spud date for the
6 initial test well, which will comprise the W/2, Section 25.
7 We believe that both seismic and geology indicate that the
8 W/2 spacing unit is appropriate for the first well to be
9 drilled Section 25. Regardless of the status of the
10 Arrington/TMBR-Sharp title dispute..."

11 Q. Okay. So you've got a firm date of July 1, 2002,
12 at this point?

13 A. That's the way I read it, yes, sir.

14 Q. Okay. And on this farmout -- Ms. Richardson
15 handed you Exhibit 19, and again there was give and take
16 for the execution of that letter agreement because
17 Arrington reversed an earlier nonconsent on a well and
18 agreed to pay 50 percent of the cost of a well in Section
19 28 to the west?

20 A. Yes.

21 Q. Okay. And their Exhibit 20, this pile of
22 farmouts, these November letters, that's actually an
23 amendment to the original farmout, is it not?

24 A. Yes.

25 Q. And then there's an August 14th amendment to some

1 of these farmout letters also?

2 A. Yes.

3 Q. All the original farmouts were dated July 23rd
4 and were dated in or signed in late July or sometime in
5 August of 2001, were they not?

6 A. Yes.

7 Q. And is it fair to say that since you didn't have
8 to pay any cash up front you got better economic terms on
9 these farmouts than was offered by TMBR/Sharp et al., on
10 the northwest quarter of 25?

11 A. Yes, sir.

12 Q. Now, regarding this acreage -- and you said it
13 covers more -- in looking at your exhibit, it covers what,
14 acreage in Sections 25, 26 and 34?

15 A. No, sir, it's 23, 26 and 35.

16 Q. The Branex farmout?

17 A. Yes.

18 Q. It covers acreage now in what?

19 A. In Section 25, 26 and 35.

20 Q. Okay, okay, sorry, I misspoke.

21 But while you were out there looking for this
22 farmout, TMBR/Sharp could have gone out and gotten this
23 farmout itself, could it not?

24 A. Yes, they could.

25 Q. And to the best of your knowledge -- well,

1 TMBR/Sharp testified that they showed this prospect at the
2 NAPE convention in late January, 2001, did they not?

3 A. Yes.

4 Q. So anyone who went to NAPE and looked at this
5 prospect could have run out to Lea County and obtained the
6 same farmout that you did?

7 A. Yes.

8 Q. I mean, Ocean wasn't the only one who could go
9 look for this, could it?

10 A. No.

11 Q. Any operator could go out and check for it?

12 A. Yes.

13 Q. Contact Mr. Grooms and the rest of the parties
14 and get the same deal you have?

15 A. Yes.

16 Q. You were just first; is that correct?

17 A. Yes, sir.

18 Q. Just one final question then. Ms. Richardson
19 asked you about the Exhibit 14 and about these parties
20 being cut out of the proposed well. You've been here
21 throughout the full testimony, haven't you, from
22 TMBR/Sharp?

23 A. Yes.

24 Q. And you heard Mr. Phillips testify that there's
25 no reservoir in the northeast quarter, is there?

1 A. Right.

2 MR. BRUCE: So -- That's it, Mr. Examiner. I
3 pass the witness.

4 EXAMINER STOGNER: Any other questions of this
5 witness?

6 MS. RICHARDSON: Yeah, just a couple to clear up.

7 RE CROSS-EXAMINATION

8 BY MS. RICHARDSON:

9 Q. If the farmouts covered 26 and 35, why doesn't
10 Ocean go drill on those sections?

11 A. Best location is as we're proposing the well.
12 That's the one we want to drill.

13 Q. So it's a matter of preference, not necessity?

14 A. You don't want to drill a well -- You want to
15 drill the best well, your best economic shot.

16 Q. Sure, sure.

17 A. You don't want to go out there and just put a
18 hole down --

19 Q. Right.

20 A. -- to hold a lease.

21 Q. That would be foolish, wouldn't it, just to -- It
22 would be foolish to drill a \$1.5 million well to hold a
23 lease if you were pretty darn sure it was going to be a dry
24 hole?

25 A. Yes.

1 Q. Okay. So do you all have locations actually
2 picked out on 26 and 35?

3 A. I don't believe so. That's a question for some
4 of the other witnesses.

5 Q. But the reason you want to drill on 25 is,
6 basically, TMBR/Sharp and Ocean are in agreement that the
7 northwest quarter is the most attractive location for a
8 well?

9 A. We think the northwest quarter is the best
10 location.

11 Q. Right, and these farmout agreements, which are
12 Exhibit 20, commit to drilling a well on that northwest
13 quarter to a depth to test the Mississippian formation or
14 to a depth of 13,200?

15 A. Yes.

16 Q. Which basically sounds like much the same kind of
17 well that TMBR/Sharp is now drilling?

18 A. Yes, it's a different location, that's the only
19 difference.

20 Q. Substantively different, do you know?

21 A. That's not a question I'm willing to answer.

22 Q. Okay. With regard to what people knew and didn't
23 know and what information Ocean had about 25 they had
24 obtained from TMBR/Sharp, you are in no position to testify
25 to this Hearing Examiner what TMBR/Sharp showed to the

1 public, as opposed to what they showed in your private
2 showing?

3 A. No, I couldn't --

4 MS. RICHARDSON: All right, thank you. Nothing
5 further.

6 EXAMINER STOGNER: Any other questions of this
7 witness?

8 MR. BROOKS: Just -- Oh, go ahead.

9 MR. BRUCE: No, I was going to seek the
10 introduction of our exhibits, Mr. Brooks.

11 EXAMINATION

12 BY MR. BROOKS:

13 Q. I was just going to say this -- so I won't have
14 to read it all, under the terms of the farmout agreement,
15 this acreage could be earned by Ocean drilling a well
16 anywhere on the farmout acreage?

17 A. No, sir, initially the farmout agreement was to
18 drill in the -- Let's see, I'd better look at them before I
19 say this.

20 (Cell phone rang)

21 MS. RICHARDSON: I'm sorry, excuse me for
22 interrupting.

23 THE WITNESS: I think at one point -- and again,
24 I'd have to go back and look at these, but at one point one
25 of the individuals wanted us to drill on the lease -- on

1 the premises of the farmout, and we amended that to drill
2 on the premises or on acreage pooled therewith.

3 Q. (By Mr. Brooks) Okay, but it could be anywhere
4 on --

5 A. Yes.

6 Q. It does not have to be in the west half of 25?

7 A. It does -- Well, Andy Grooms' letter and some of
8 these other letters prefer the west-half location, that
9 was --

10 Q. But from the point of view of earning the
11 acreage, it could be drilled anywhere on the farmout
12 acreage or acreage properly --

13 A. Yes --

14 Q. -- pooled --

15 A. -- yes.

16 Q. Okay. And of course a west-half -- you've
17 proposed a southwest-quarter well, that would also earn the
18 acreage, would it not?

19 A. Yes, it would.

20 Q. And given that there's an optional infill well in
21 this unit, that would be a legal location from the OCD
22 standpoint, whether you have a west-half unit or a south-
23 half unit, correct?

24 A. Right.

25 MR. BROOKS: Okay, that's all I have.

1 EXAMINER STOGNER: Any other questions?

2 MR. BRUCE: No, sir.

3 EXAMINER STOGNER: Okay, let's get these
4 exhibits --

5 MR. BRUCE: I'd move the admission of Ocean
6 Exhibit 9A, Mr. Examiner.

7 EXAMINER STOGNER: Any objections?

8 MS. RICHARDSON: No, and we'd move admission of
9 TMBR/Sharp 19 and 20.

10 MR. BRUCE: No objection.

11 EXAMINER STOGNER: Okay, Ocean Energy's Exhibit
12 Number 9A will be admitted into evidence at this time, as
13 will the TMBR/Sharp Exhibits 19 and 20. You may be
14 excused.

15 Let's take a ten-minute recess at this time.

16 And your next witnesses are going to be --

17 MR. BRUCE: My next witness is a geologist. His
18 direct is fairly brief, Mr. Examiner.

19 EXAMINER STOGNER: Okay.

20 (Thereupon, a recess was taken at 5:00 p.m.)

21 (The following proceedings had at 5:15 p.m.)

22 EXAMINER STOGNER: This hearing will come to
23 order.

24 Mr. Bruce?

25 MR. BRUCE: Okay. The next witness is Mr. Messa,

1 our geologist, Mr. Examiner.

2 FRANK MESSA,

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

5 DIRECT EXAMINATION

6 BY MR. BRUCE:

7 Q. Would you please state your full name for the
8 record?

9 A. Frank Messa.

10 Q. Where do you reside?

11 A. In Houston, Texas.

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

13 A. I work for Ocean Energy as exploration geologist.

14 Q. Have you previously testified before the
15 Division?

16 A. Yes, I have.

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

19 A. Yes, they have.

20 Q. And are you familiar with the geology involved in
21 this prospect?

22 A. Yes, I am.

23 MR. BRUCE: Mr. Examiner, I'd tender Mr. Messa as
24 an expert petroleum geologist.

25 EXAMINER STOGNER: Any objections?

1 MR. KELLAHIN: No, sir.

2 EXAMINER STOGNER: Mr. Messa is so qualified.

3 Q. (By Mr. Bruce) Mr. Messa, first of all what is
4 the total depth that Ocean has proposed for a well in the
5 northwest quarter of Section 25?

6 A. 13,200 feet.

7 Q. And that would test the Mississippian?

8 A. Yes, that is correct.

9 Q. Okay. What are the primary zones of interest in
10 a well in the southwest quarter, northwest quarter of
11 Section 25?

12 A. Primary zone of interest is the Atoka sandstone,
13 and a secondary objective would be the Austin Chester.

14 Q. Okay, the Mississippian?

15 A. The Mississippian.

16 Q. Okay. Could you identify Exhibit 10 for the
17 Examiner, please?

18 A. This is a net sand isopach on the lower Atoka
19 what we call Brunson sand.

20 Q. And let me -- The Brunson designation, is that
21 used further to the north in this township?

22 A. Yes, this is a local name used further to the
23 north. It's fairly common among most of the guys that work
24 this area, and it's Lou Mazzullo's lower Atoka fluvial
25 sand.

1 Q. Okay. Go ahead.

2 A. First off, you see two channel systems that are
3 trending in a north-northwest/south-southeast direction.
4 The blue dots are Atoka producers, and the red dots are the
5 Austin-Chester-Mississippian producers in this area.

6 I'd like to point out that the Austin -- excuse
7 me, the Atoka production is overwhelmingly the largest gas
8 producer in this area, and it is our contention that this
9 is a primary prospect, primary objective in this prospect
10 and many of the others in this area.

11 Q. Now, looking at this map -- and we'll get to your
12 cross-section in a minute -- you have, like you say, this
13 northwest-southeast trending sand. Is that the general
14 trend of these deeper sands in this area?

15 A. Yes, that's true, it's very common for these
16 sands, as well as deeper sands, to have the same trend.

17 Q. Okay. Now, would a well in the northwest quarter
18 of Section 25, or more particularly in the southwest of the
19 northwest of Section 25, in your opinion, adequately test
20 the Atoka?

21 A. Yes, it would.

22 Q. Now, the well wouldn't go down to test the
23 Mississippian. Is a well in the southwest of the northwest
24 of Section 25, will that also test the Mississippian
25 adequately?

1 A. Yes, it will.

2 Q. Okay. Would you move on to your Exhibit 11 and
3 identify that for the Examiner?

4 A. This is a cross-section that's indicated on the
5 map as cross-section PR-PR'. It's a general north-south-
6 trending cross-section. Beginning at the north end in the
7 US Operating Leavelle Number 1 well, it shows two sands
8 that were encountered, and both were productive in this
9 well. The lower Atoka-Brunson sand is productive, although
10 it's not very well developed, and the lower -- well, the
11 Mississippian-Austin is also productive in this well.

12 And then moving to the next well is the
13 TMBR/Sharp Blue Fin well. This well did not encounter
14 Brunson sand that I felt was pay, so it's mapped as a zero
15 for Brunson, and it did encounter a very nice Mississippian
16 zone we locally call the Austin.

17 And then the last well on the cross-section -- of
18 course, it goes through the location that's proposed, and
19 then the last log on the cross-section is about a mile and
20 a half to the southwest, and it shows another well that had
21 a similar Austin sand, and that was productive and its cum
22 there is shown as 750 million cubic feet of gas, 23,000
23 barrels of condensate.

24 The purpose of the cross-section is to show some
25 of the continuity that you can see in the Austin zone. The

1 Leavelle well on the north end is less than a mile away
2 from the TMBR/Sharp well. It's thinning in that direction,
3 it's thickening at the TMBR/Sharp location. Our 3-D
4 seismic data shows a continuing thickening along the west
5 half of Section 25.

6 And the last well on the cross-section really is
7 just to show that there are other Austin producers, it's
8 not intended to show the continuity between the two wells
9 on the left side of the cross-section.

10 Q. Now, based on your mapping, is the Brunson-Atoka
11 reservoir completely within the west half of Section 25?

12 A. Yes, it is.

13 Q. And is the optimum location for a west well in a
14 west-half well unit in the northwest quarter?

15 A. Yes, it is.

16 Q. Would one well in the northwest quarter -- in the
17 southwest quarter or the northwest quarter, be the best
18 place to test both the Atoka and the Mississippian and any
19 other zone?

20 A. Yes.

21 Q. Would that be the best location to test all of
22 those zones with one well?

23 A. Right, that would be the best location to test
24 the Brunson and the Mississippian. It's the only location
25 within Section 25 that you can actually get a good shot at

1 both of those zones.

2 Q. Okay. Now, this is a pretty high-risk area,
3 isn't it?

4 A. Yes, it is.

5 Q. And if possible, you'd like to be able to stack a
6 couple of prospective zones in a well?

7 A. We always try to stack as many zones as possible
8 when we drill these wells, to lower risk and increase the
9 economics.

10 Q. Okay. Now, just from a geologic standpoint, is
11 it best to drill a well in the northwest quarter at one of
12 the proposed locations and then even see if another well is
13 needed in this west-half well unit?

14 A. Yes, that is correct.

15 Q. Now, if you -- and our next witness will have
16 information on the Mississippian, will he not?

17 A. That's correct.

18 Q. Which you have reviewed?

19 A. Yes, I've reviewed.

20 Q. If you're going to have a well in the southwest
21 quarter of Section 25, are you really just going to test
22 either the Atoka or the Mississippian, as opposed to both?

23 A. I think so, the way I have the Brunson sand
24 mapped and knowing the structure at the Mississippian
25 level, I don't think you can get a single location that

1 will test both zones.

2 Q. Okay. And again, you've mapped the Brunson
3 because in this area, this really is the -- I mean, there
4 are a couple of zones out here, but this is the primary
5 zone, is it not?

6 A. This is the primary zone in our opinion.

7 Q. Okay, and that's based on historical production
8 to the north?

9 A. That is correct.

10 Q. Okay. Because of the risk involved in drilling
11 this, if anyone goes nonconsent in the pooling case, do you
12 recommend that the maximum cost-plus-200-percent penalty be
13 assessed against any nonconsenting interest owner?

14 A. Yes, I do.

15 Q. And in your opinion, is the granting of Ocean's
16 Application in the interest of conservation and the
17 prevention of waste?

18 A. Yes.

19 MR. BRUCE: Mr. Examiner, I'd move the admission
20 of Ocean Exhibits 10 and 11.

21 EXAMINER STOGNER: any objection?

22 MR. KELLAHIN: No objection.

23 EXAMINER STOGNER: Exhibits 10 and 11 will be
24 admitted into evidence at this time. Thank you, Mr. Bruce.

25 Mr. Kellahin?

1 MR. KELLAHIN: Thank you, Mr. Examiner.

2 CROSS-EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Mr. Messa, let me have you look at Exhibit 10
5 with me. I need to make sure I understand the nomenclature
6 that you're using.

7 A. Okay.

8 Q. I recall having been involved in wells for the
9 Brunson sand up in Section 10, in which now Ocean has
10 tested and produced that sand. That nomenclature would
11 identify a sand member of the Atoka --

12 A. That's correct.

13 Q. -- am I correct in understanding that?

14 A. That is correct.

15 Q. When I look at all these Atoka codes on here,
16 it's the purple symbol that is an Atoka well?

17 A. That's correct.

18 Q. Can I distinguish by this code in some way which
19 ones are specific as to the Brunson sand?

20 A. Every one of these are specific to the Brunson
21 sand, every one.

22 Q. Are there wells drilled out here that did not
23 produce from the Brunson sand?

24 A. Yes, there are.

25 Q. And would they be Atoka wells?

1 A. Most of these that are not Brunson producers are
2 Devonian producers.

3 Q. Okay, I want to make sure I'm looking at a map
4 that depicts the Brunson sand, all right? And that's what
5 I see here by looking at the purple dots.

6 When I get down into Section 23, there are two
7 purple dots in the north half of 23?

8 A. Correct.

9 Q. Do you see those?

10 A. Yes.

11 Q. Does your company have any acreage position in
12 the south half of 23?

13 A. Not that I'm aware of.

14 Q. Is the south half of 23 available for drilling of
15 a well in which you would have an interest?

16 A. Not that I'm aware of.

17 Q. Are these spacing units configured so that
18 they're standups? Do you know that?

19 A. I do know that most of these spacing units out
20 here are standups.

21 Q. In Section 23?

22 A. Just about every section.

23 Q. So when we go from 25 north, the first control we
24 have for the Brunson sand is in the north half of 23?

25 A. First control you have is in the southwest of 24.

1 Q. But you're not showing that with purple?

2 A. It's not productive --

3 Q. All right.

4 A. -- in the Brunson.

5 Q. So it missed the opportunity somehow to produce
6 out of the Brunson sand?

7 A. That's correct.

8 Q. So you see no reason to put the Brunson channel
9 system, if you will, whatever you call this, in any portion
10 of Section 24, right?

11 A. That's the way I have it mapped.

12 Q. You have defined the Number 24 well, the
13 TMBR/Sharp well, as being an eastern boundary for that sand
14 channel, right?

15 A. Correct, correct.

16 Q. When we look to the west of the TMBR/Sharp well
17 in 24, what's your next control point to tell you that this
18 sand member has this certain thickness and location?

19 A. The next subsurface control point would be the
20 TMBR/Sharp well in the west half of 23.

21 Q. All right, let me -- Don't go too quick for me,
22 I'll find it. I see the west half of 23, up in the
23 northwest quarter?

24 A. Right.

25 Q. Right? When we look at the portion of the sand

1 you have displayed with a control thickness of 20 feet as
2 it moves into the southwest quarter of 25, what is your
3 database for believing that that has got a 20-foot
4 thickness through that portion of the section?

5 A. That's based primarily on experience, proximity
6 to the --

7 Q. -- is it not?

8 A. Pardon me?

9 Q. You have simply inferred by what you see
10 elsewhere that it may have that kind of thickness, right?

11 A. Yes.

12 Q. Yeah. There is no control point in either
13 Section 24 or 25 that shows us the thickness of the Brunson
14 sand, right?

15 A. In 24 we do have a control point.

16 Q. I'm sorry, in 25 and 26.

17 A. In 26 we have a control point.

18 Q. In 25 there's no control point?

19 A. No control in 25.

20 Q. Wouldn't it help your analysis if we waited until
21 TMBR/Sharp completed the well in the north half of 25, and
22 then you would know for certain how accurate this map is?

23 A. This map is also constructed with the use of the
24 3-D seismic data, to help control the channel orientations,
25 the channel directions.

1 An additional well would help control the
2 thickness, but the data that I have so far leads me to
3 believe that I would be very close to these thicknesses at
4 a well drilled in Section -- well, at a well drilled in the
5 20-foot contour.

6 Q. Let me understand. TMBR/Sharp's well in the
7 northwest quarter of 25, the drilling well that's drilling
8 now, it will validate the accuracy of this map if it's
9 drilled to completion through that interval? We'll have a
10 data point, won't we?

11 A. That's correct.

12 Q. Okay. Until we have that data point, we do not
13 know what the thickness of that sand is going to be or
14 whether you're properly located it, right?

15 A. It will -- yes, it -- half yes, the first part,
16 yes. I do have enough data to lead me to believe that the
17 channel is trending through here. I don't have enough to
18 tell me how thick it will be.

19 Q. Is this the first map like this you have
20 generated in this area for the Brunson interval?

21 A. No.

22 Q. Did you have a map of the Brunson interval prior
23 to the drilling by TMBR/Sharp of the 24 well in Section 24?

24 A. I think so.

25 Q. Yeah, what did it look like?

1 A. It was a little bit wider.

2 Q. Uh-huh.

3 A. Actually, my first pass was a gross isopach map,
4 which would be contoured on the black data values.

5 Q. Uh-huh.

6 A. This map was generated subsequent to that well,
7 to narrow it down to just the net sands that appear in the
8 red.

9 Q. And your porosity cutoff value, your net is
10 achieved by using 8-percent porosity?

11 A. Eight-percent density porosity.

12 Q. All right. Did you use any other cutoffs in
13 generating a net component to the map?

14 A. Yes, the gamma-ray also has to be less than 60
15 API --

16 Q. Okay.

17 A. -- in order to be qualified as a sand.

18 Q. Where would be the best location to attempt a
19 well for the Brunson sand in Section 25 that under your
20 interpretation would have the opportunity for the greatest
21 thickness?

22 A. In the southwest quarter of Section 25.

23 Q. In the southwest quarter? Your preference is to
24 be at the thickest point, is it not?

25 A. Yes, it would. But I would also consider

1 multiple pay zones, and I would spot a well that would come
2 close to getting as many pay zones as possible.

3 Q. I haven't gotten quite that far with you. Give
4 me a chance to get that far. I'm looking at the Brunson
5 interval, I'm looking at the Brunson interval alone.

6 Is that interval, when it's successful,
7 sufficient in terms of productivity to support the costs of
8 the well and make them profitable without secondary support
9 from any other formation?

10 A. Occasionally. This area has been highly drilled,
11 and there are depletion issues out here.

12 Q. Okay. Is there a depletion risk in the southwest
13 quarter of 25 for the Brunson sand?

14 A. Probably not.

15 Q. There's no one near it to deplete it, right?

16 A. That's correct.

17 Q. All right. If there is a south-half orientation
18 to the Brunson sand opportunity in Section 25, that well
19 could be located at a standard location even for a south-
20 half spacing unit, right?

21 A. That's correct.

22 Q. And that would still be within the greatest point
23 of contour thickness as displayed on this map?

24 A. Yes, it would, for this sand only.

25 Q. Okay. When we go to the Austin gas well symbol,

1 the red symbols, what are we meaning by that terminology?

2 A. It means that gas was produced and sold from the
3 Austin.

4 Q. Where is this Austin in relation to Mr.
5 Mazzullo's Chester? Is it different?

6 A. No, this is one and the same.

7 Q. Okay, so when you heard Mr. Mazzullo's testimony
8 about how he has determined these Chester bowls, are the
9 purple symbols indication of accessing those Chester bowls?

10 A. No.

11 Q. I'm sorry, I've got my symbols wrong, it's the
12 red symbols.

13 A. Right, but the answer is no.

14 Q. Why no? Why is it no?

15 A. The bowls are an area where you would find a
16 maximum thickness, that's true, but it's not the only place
17 where the sands will be deposited.

18 Q. Looking on this map by itself, I see no
19 opportunity displayed on this map for access to this
20 Chester bowl in the south half of 25.

21 A. That's right, we cannot drill a well in 25 that
22 will get the Chester Bowl and the Brunson sand.

23 Q. Can you pick out of the Brunson wells the wells
24 that are successful as being economic?

25 Let me restate this.

1 When we look at the purple wells, are we looking
2 at wells that produce from the Brunson sand? Right?

3 A. That's right.

4 Q. They were, in fact, productive?

5 A. Correct.

6 Q. Which ones have been successful economically?

7 A. Most every one of them.

8 Q. Okay. Is there a certain net minimum thickness
9 of Brunson sand necessary in order to make the well
10 economic?

11 A. We found two feet is productive and commercial.

12 Q. Okay. Is there a relationship between the
13 productivity of the well and the thickness of the
14 reservoir?

15 A. In some cases yes, some cases no.

16 Q. That's not true in all instances?

17 A. Not true in all instances.

18 Q. Show me an example of a well that has a two-foot
19 thickness that is a commercially successful well.

20 A. Have to go off the map into Section 28. It's not
21 on this map.

22 Q. So none of these wells on this map will satisfy
23 the economic criteria if they're two feet?

24 A. Two feet, probably not. Not within this small
25 postage-stamp map of the entire area.

1 Q. Is there a water component to the Brunson sand
2 productivity?

3 A. Not in this area, now.

4 Q. So the presence or absence of water in the
5 Brunson sand interval will not affect its productivity?
6 There's not a water component?

7 A. There's not a water drive or a water leg --

8 Q. I'm talking about water saturations.

9 A. There are no wells that have been wet wells --

10 Q. That's what I'm talking about.

11 A. -- on this well -- on this map.

12 Q. There is not a structural component to the
13 reservoir that matters?

14 A. There is a paleostructural component, not a
15 present-day structural component.

16 Q. Did you use the seismic data to help you define
17 the Brunson sand interval?

18 A. Not to define the interval, to define the channel
19 orientation.

20 Q. Other than defining the channel orientation, are
21 you able to use the seismic data to forecast the thickness?

22 A. Not very reliably.

23 Q. To what extent is the use of seismic information
24 important to you in this mapping conclusion?

25 A. It's very critical in understanding the

1 structural complexities, as Lou has mentioned, but not to
2 determine the thickness of the sands.

3 Q. So we can't use the seismic to give us a clue
4 about the thickness in the immediate vicinity of Section
5 25, can we?

6 A. That's right.

7 Q. The seismic information we're talking about,
8 what's the source of that data?

9 A. Vibra-seis seismic.

10 Q. Where did you get it?

11 A. We made an arrangement with David Arrington for
12 his seismic data.

13 Q. So independently of Mr. Arrington's seismic data,
14 Ocean did not have any 3-D seismic data?

15 A. We had 3-D seismic data up to the 26-25 section
16 line boundary.

17 Q. 26-25. What, going north of that?

18 A. Yes.

19 Q. Okay. So your data set stops at the southern
20 boundary of Sections 23 and 24?

21 A. That's right.

22 Q. Any other seismic data source, other than through
23 Mr. Arrington?

24 A. None.

25 Q. Do you know where Mr. Arrington got his seismic

1 data?

2 A. Yes, I do.

3 Q. Where?

4 A. He shot it.

5 Q. This is Arrington's data?

6 A. Proprietary seismic data, yes.

7 Q. Did he get it in any arrangement with Chesapeake?

8 A. No.

9 Q. This is independent of the Chesapeake data?

10 A. It was a joint shoot between Ocean and David
11 Arrington, and the outline of the AMI which was presented
12 earlier was the outline of the 3-D data that Arrington and
13 Ocean shot together.

14 Q. All right.

15 A. The additional 3-D that we acquired from
16 Arrington was outside of the AMI. It was not offered to us
17 at the time when the data was shot.

18 Q. I'm trying to understand the different categories
19 of 3-D data that you utilized, or was utilized by Ocean.
20 Did you utilize the same database that Mr. Mazzullo had
21 available for him?

22 A. No, absolutely not.

23 Q. You didn't utilize the seismic data that was
24 acquired through Chesapeake?

25 A. No.

1 Q. Have you identified any other opportunities for
2 deep gas production in Section 25, other than the Brunson
3 sand and this Chester zone?

4 A. Yes, we have.

5 Q. What zones?

6 A. We believe there's a Morrow section that looks
7 extremely prospective at this location also.

8 Q. Did you present a Morrow map?

9 A. No.

10 Q. Do you have a Morrow map?

11 A. This will be presented with the next witness.

12 Q. All right, that's part of your presentation,
13 includes a Morrow analysis?

14 A. It includes seismic data that relates to the
15 Morrow, the Mississippian and the Atoka.

16 Q. Give me a list, Mr. Massa --

17 A. Messa.

18 Q. -- of the zones -- I'm sorry, Massa -- of the
19 zones that you're targeting, that Ocean is targeting.

20 A. The primary, number-one target is the Atoka
21 Brunson sand --

22 Q. Uh-huh.

23 A. -- the secondary is the Austin-Chester-
24 Mississippian zone, and a third potential zone would be the
25 Morrow.

1 Q. And we'll have presentations from Ocean on all
2 three of those, right?

3 A. Correct.

4 Q. Do you see any other deep gas opportunity, other
5 than those three?

6 A. Not of commercial quantities.

7 Q. Okay. Are any of those, in your experience,
8 sufficient enough to stand alone?

9 A. Yes.

10 Q. Which ones would stand alone?

11 A. Actually, the Brunson sand and the Morrow sand.
12 We have not seen the Austin sands to be commercial enough
13 to stand on its own.

14 MR. KELLAHIN: All right. Thank you, Mr.
15 Examiner.

16 EXAMINER STOGNER: Thank you, Mr. Kellahin.
17 Any other questions on redirect?

18 MR. BRUCE: A few redirect questions, just some
19 clean-up, Mr. Examiner.

20 EXAMINER STOGNER: Yes.

21 REDIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q. Looking at your Exhibit 10, Mr. Messa, where you
24 map the Brunson-Atoka to the west of the Blue Fin 24-1
25 well, Mr. Mazzullo also had the same thing on his maps, did

1 he not, showing the main Atoka pay zone to the west of the
2 Blue Fin well?

3 A. I don't recall.

4 Q. You don't remember?

5 A. No. I don't think I've seen a Brunson map from
6 Mr. Mazzullo.

7 Q. Okay. Well, just to -- Okay. Now, does your map
8 show any Brunson-Atoka reservoir in the southeast quarter
9 of 25?

10 A. No, it does not.

11 Q. Or in the northeast quarter of 25?

12 A. No, it does not.

13 Q. Once again, if you're drilling in the southwest
14 quarter, based on what you've seen, can you hit both the
15 Mississippian and the Brunson-Atoka in the same wellbore?

16 A. No, we cannot.

17 Q. And just one final thing. As far as the seismic
18 that Mr. Kellahin asked you about that Ocean had, the
19 dividing line is actually a north-south dividing line
20 between Sections 26 and 25, is it not?

21 A. That's right.

22 Q. It runs north and south, and you had seismic to
23 the west of that line?

24 A. Yes, that's right.

25 Q. Okay.

1 MR. KELLAHIN: Do that again for me, Jim, would
2 you?

3 MR. BRUCE: Just the section line between
4 Sections 25 and 26.

5 MR. KELLAHIN: To the west of that --

6 MR. BRUCE: To the west of that --

7 MR. KELLAHIN: -- is the Ocean data?

8 MR. BRUCE: -- is the data Ocean had.

9 MR. KELLAHIN: Okay.

10 Q. (By Mr. Bruce) Is that correct, Mr. Messa?

11 A. That's correct.

12 MR. BRUCE: Okay. That's all I have, Mr.

13 Examiner.

14 MR. KELLAHIN: I have a follow-up, Mr. Examiner.

15 EXAMINER STOGNER: Mr. Kellahin?

16 RECROSS-EXAMINATION

17 BY MR. KELLAHIN:

18 Q. Let's look in Section 28. In the northeast
19 quarter there's an Ocean Energy Primero -- and I can't
20 quite see that -- Primero 26-1. What is that?

21 A. In Section 26 --

22 Q. Yeah.

23 A. -- or 28?

24 Q. I'm looking at 26.

25 A. Okay, I thought I heard 28.

1 Q. Well, I have a little trouble with numbers here,
2 you have to bear with me. Twenty-six.

3 A. Okay. In which location are you referring to?

4 Q. In the northeast quarter. Do you see that?

5 A. Yes.

6 Q. It's on the 20-foot contour line.

7 A. Yeah, that's a location that I have put on my map
8 where I believe to be a good place to drill for the Atoka
9 sand.

10 Q. Is that on any type of drilling schedule?

11 A. No, it's not.

12 Q. Has it been proposed to the operators or interest
13 owners?

14 A. No, it has not.

15 Q. Okay. If I look at the yellow, am I looking at
16 Ocean's acreage position?

17 A. Yes.

18 Q. Okay. In the south half of 28, do you have a
19 producing gas well in that Brunson sand?

20 A. In the south half of --

21 Q. I'm sorry, 26.

22 A. Yes, that well is productive.

23 Q. Okay. And the spacing unit for that well?

24 A. It is a standup.

25 Q. All right, so the east half of 26 is available as

1 a spacing unit, right?

2 A. Right.

3 Q. And you would have 50 percent of that, or
4 whatever fractional interest you have out of the southeast
5 quarter?

6 A. By virtue of the southeast quarter.

7 Q. Yeah.

8 A. Yes, that's right.

9 Q. When I look at the southeast quarter, I also see
10 the Ocean Energy Primero 28-2 well. Is that a location?

11 A. That is a location.

12 Q. Did you recommend that location?

13 A. No, I put it on my map.

14 Q. Well, where did it come from?

15 A. It came from my previous map. As I mentioned
16 earlier, I had a gross map and then I refined this map to a
17 net map.

18 Q. Does Ocean propose to drill on your
19 recommendation of a Brunson sand that appears to be less
20 than two feet?

21 A. No.

22 Q. No? So we're going to take this dot off of here?

23 A. No, we're going to move it north about a quarter
24 mile.

25 Q. Okay. And you're going to drill the Number 1?

1 A. We'll drill two wells there if we need to.

2 Q. Uh-huh. The first primar choice is in the
3 northeast quarter of that section?

4 A. Yes.

5 Q. Were you involved in any of the conversations
6 with TMBR/Sharp representatives about Section 23, 24, 26
7 and 25?

8 A. Yes, I was.

9 Q. Uh-huh. How come Ocean didn't agree to
10 participate with TMBR/Sharp in the drilling of that
11 activity for the Big Tuna well?

12 A. We felt that the terms of the -- the terms that
13 were offered to us would not meet our economic criteria and
14 that we could not afford to drill a well.

15 Q. Did your land department discuss with you
16 countering any of those terms to see if you could come to
17 some agreement with TMBR/Sharp about participation?

18 A. Not, not that I'm aware of or that I recall.

19 Q. Was Ocean's rejection of participation in the Big
20 Tuna prospect conditioned at all on the opportunity to be
21 in the Chesapeake interval at a position that you
22 characterize to be too low and too wet? I'm sorry, in the
23 Chester, too low and too wet?

24 A. No, this prospect was never showed to us as a
25 Chester prospect. As I recall, the primary prospect was

1 Brunson.

2 Q. All right, you disagree with Mr. Mazzullo about
3 what you were shown?

4 A. Well, to be honest, this area has always been a
5 Brunson prospect area. If the Austin was brought to the
6 table as prospective, it would have been discounted
7 immediately, in my opinion, because it is not a very solid
8 producer in this area.

9 Q. So --

10 A. When were looking at it -- It may have been shown
11 to us that way, but we were only giving value and ran
12 economics on the Brunson.

13 Q. Were you involved in the meetings in Houston?

14 A. Yes.

15 Q. You went there?

16 A. (No response)

17 Q. Were you shown by Mr. Mazzullo any interpretation
18 other than his interpretation about the Chester bowls?

19 A. I don't remember.

20 Q. At that time did you have an opinion or
21 recommendation for Ocean about the Morrow or about the
22 Brunson sand in the section?

23 A. I thought that the Brunson was prospective.

24 Q. Well, why didn't you accept the deal on the basis
25 of your strength of belief for the Morrow and for the

1 Brunson sand?

2 A. I would not have been able to convince anyone to
3 drill the well under those terms, and so it would not have
4 been economic. On a risked-reserve basis, which is the way
5 we put value to these things, it would never have worked.

6 Q. Do you know what terms were proposed?

7 A. \$750 an acre is what I recall, a third for a
8 quarter, a 25-percent back-in on every well. And we just
9 thought that was too expensive.

10 Q. And it wasn't rejected for any difference of
11 opinion about the technical merits of the TMBR/Sharp
12 proposal?

13 A. No.

14 Q. And it's your clear and distinct recollection
15 that Mr. Mazzullo showed you a Brunson interpretation?

16 A. I believe so.

17 Q. Okay. Did he show you a Morrow interpretation?

18 A. I don't recall.

19 Q. Did he show you the Chester interpretation?

20 A. I don't recall.

21 Q. All right, sir.

22 A. I honestly don't.

23 MR. KELLAHIN: Thank you, Mr. Examiner.

24 EXAMINER STOGNER: Okay, any redirect?

25 MR. BRUCE: No, sir.

1 EXAMINER STOGNER: Any other questions of this
2 witness?

3 EXAMINATION

4 BY EXAMINER STOGNER:

5 Q. Referring to Exhibit Number 10, the channel that
6 you're showing to the west, the skinny one there --

7 A. Yes.

8 Q. -- okay, you only have one control, or actually
9 two control points to the south. Where do I -- If I keep
10 following this channel, where do I hit the next one?

11 A. On the western channel, if you go south, the HNG
12 Shoe Bar Ranch Number 1 would be the next well that that
13 channel would encounter.

14 Q. Okay, but how about if I go north?

15 A. Well, it goes off my map. Let's see, Section 15,
16 Section 16 -- There is control in Section 16 that carries
17 it to the north and west.

18 Q. Okay. Is this mapped just on well control, or
19 does it have seismic information also?

20 A. This one has seismic information also.

21 Q. Is this what we usually -- or do these channels
22 usually trend in this manner in the Atoka, or are they kind
23 of every which way depending on where you're at?

24 A. No, pretty much throughout the Morrow and Atoka
25 depositional basin, they pretty much trend north-south.

1 EXAMINER STOGNER: Any other questions of this
2 witness? You may be excused.

3 MR. BRUCE: Mr. Bruce, let's go ahead and get
4 started on your next one.

5 ROBERT SILVER,
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. Would you please state your name for the record?

11 A. Robert Silver.

12 Q. And where do you reside?

13 A. Houston, Texas.

14 Q. Who do you work for?

15 A. Ocean Energy.

16 Q. What's your job with Ocean?

17 A. I'm a geoscience advisor, essentially a
18 geophysicist.

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

21 A. Yes, I have.

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

24 A. Yes.

25 Q. Are you familiar with the geophysics involved in

1 the wells proposed or drilling in Section 25 and the nearby
2 area?

3 A. Yes, I am.

4 MR. BRUCE: Mr. Examiner, I'd tender Mr. Silver
5 as an expert geophysicist.

6 EXAMINER STOGNER: Any objection?

7 MR. KELLAHIN: No, sir.

8 EXAMINER STOGNER: Mr. Silver is so qualified.

9 Q. (By Mr. Bruce) Let's run through your exhibits,
10 Mr. Silver. What is Exhibit 12?

11 A. Exhibit 12 is a time-structure map on the lower
12 Mississippian limestone.

13 Q. And what does it show?

14 A. It shows a regional low that trends in
15 essentially a north-south direction, in the western half of
16 Section 25.

17 Q. Does the yellow outline -- Is that the west half
18 of Section 25?

19 A. Yes.

20 Q. Okay. And you've got lines 123 and 142 on that.
21 Will we get to those in a minute?

22 A. Yes, we will.

23 Q. Okay. Now, this map, it shows what, in Section
24 24 to the north the Blue Fin 24 Number 1?

25 A. That's correct.

1 Q. And then what you have as the Number 1 Triple
2 Hackle Dragon, which was Ocean's and Arrington's proposed
3 location, right?

4 A. That is correct. And apparently it's a little
5 bit different location than the TMBR/Sharp location.

6 Q. Apparently a couple hundred feet away from the
7 well that is now drilling?

8 A. That's right.

9 Q. Okay. In looking at this, does this indicate
10 where the reservoir is in this west half of 25?

11 A. Yes, it does.

12 Q. And could you explain where that reservoir is,
13 just by -- and how you derive that from your geophysical
14 survey?

15 A. Well, that would be a little bit easier to
16 explain when we look at the seismic lines next, but it
17 basically shows in that blue area the approximate low
18 feature that is also the thickest feature, and that would
19 be where we would find the reservoirs that we're looking
20 for.

21 Q. And although it bleeds over a little into the
22 southeast quarter of 25, basically what, 90 percent of the
23 Mississippian reservoir is in the west half of Section 25,
24 is it not?

25 A. Yes, it is.

1 Q. And there's virtually nothing in the northeast
2 quarter of Section 25?

3 A. Nothing.

4 Q. Why don't you move on to your next two exhibits
5 together, your 13 and 14, those two lines we discussed, and
6 that way you can describe in more detail how you derived
7 your Exhibit 12?

8 A. Okay, the first one is Line 142, that's the
9 northernmost line. It goes through our Triple Hackle
10 Dragon location and approximately would be fairly close to
11 the TMBR/Sharp well, the Blue Fin 25.

12 And I have labeled on here the various horizons
13 that correspond with the black peaks that are associated
14 there. There's a little bit of nomenclature difference
15 between what we've labeled and what TMBR/Sharp would label,
16 but they can be explained.

17 You can see the top one is labeled as the Strawn,
18 and then there's an Atoka lime, a Morrow limestone event
19 that's got a red line that goes through it, and just above
20 that there's a little black outline that's colored yellow
21 in the center that says the Brunson sand. That's not
22 saying that that is exactly the Brunson sand, but that's
23 where it would fall in the seismic.

24 And then below that is an Austin lime, which is
25 the upper cycle of the Chester. And what I have labeled as

1 Chester lime would be the lower cycle in the Chester. So
2 both Austin lime and Chester lime together would constitute
3 what Lou Mazzullo calls the Chester.

4 And then the Lower Miss. lime is the bottom
5 horizon. It's kind of pink, but it's the bottom one that's
6 marked there, and that is what the first map was that we
7 looked at.

8 Q. Okay. And when you're looking at this, there are
9 some vertical lines, solid red lines and dashed red lines.
10 Those lines do not indicate the well location, do they?

11 A. No, the solid line is the centerline of the
12 section.

13 Q. Of Section 25?

14 A. Of Section 25. So if you were looking at a
15 standup unit, that would be the boundary of the center of
16 the section.

17 The dashed lines in each case, as they're listed
18 above, are 660 feet either west of center or east of the
19 centerline. So that would be legal locations.

20 Q. Okay.

21 A. That would be as close to the centerline with a
22 legal location as you could get.

23 Q. Okay.

24 A. And what that points out is that, as you go to
25 the east you are definitely getting out of the low and

1 getting up on the structure and getting thinner and out of
2 the prospect area.

3 And you can look at the same thing on the next
4 line, which is Cross Line 123, and it shows that the
5 structure has moved a little bit closer to the center of
6 the section, but yet you still could not get a legal
7 location in the southeast of the section, southeast of
8 Section 25, that would hit the prospective horizons.

9 Q. Okay, so taking your Exhibits 13 and 14 and then
10 your Exhibit 12 and comparing that with Mr. Messa's Exhibit
11 10, what you're saying is that in the northwest quarter of
12 Section 25, at a well in the southwest quarter of the
13 northwest quarter, you can test at least a couple of
14 different zones with one well?

15 A. That's correct.

16 Q. Can you do the same thing in the southwest
17 quarter of Section 25?

18 A. Not really. You'd have a hard time getting
19 everything in one wellbore. I mean, there's locations, but
20 it would take more than one well to --

21 Q. To test the best Brunson sand, you have to move
22 toward the west side of the southwest quarter, correct?

23 A. Right.

24 Q. And to test the best Mississippian, you have to
25 move toward the east side of the southwest quarter?

1 A. That's correct.

2 Q. So you really don't want to compromise between
3 those two?

4 A. No.

5 Q. You really have to drill two wells in the
6 southwest quarter to adequately test the Atoka and the
7 Mississippian?

8 A. That's the way we have it mapped.

9 Q. Okay. Now, we've talked about other zones. What
10 does Exhibit 15 show?

11 A. Exhibit 15 is again a time-structure map on the
12 Morrow lime, and essentially that just shows that this
13 structure persists up through time and it has essentially
14 the same shape as you move up the section.

15 Q. Okay, it's kind of the same shape as the
16 Mississippian reservoir?

17 A. Yes, very similar.

18 Q. Will a well in the southwest quarter, northwest
19 quarter of Section 25 also have a chance to test the
20 Morrow?

21 A. Say that one again?

22 Q. Will a well -- And this doesn't have a yellow
23 outline --

24 A. Right.

25 Q. -- of the half-section on it, but will a well in

1 the southwest of the northwest of Section 25 also have a
2 chance to test the Morrow?

3 A. Yes.

4 Q. Okay. Once again, at least as to the Morrow, you
5 can't get the Morrow and the Atoka in the same well,
6 apparently, in the southwest quarter?

7 A. In the southwest, no, you cannot.

8 Q. Okay. And you agree with the other witnesses who
9 have presented, these are high-risk prospects out here?

10 A. Well, yeah. I mean, when you say "high-risk",
11 that's a --

12 Q. Well, I mean, you know, if you were pooling you'd
13 ask for the maximum --

14 A. Of course.

15 Q. -- cost-plus-200-percent penalty?

16 A. Uh-huh.

17 Q. Okay. And Exhibits 12 through 15 were prepared
18 by you or under your supervision?

19 A. Yes.

20 Q. Okay, let's just touch on a couple more things.
21 Do you have a couple of Mr. Mazzullo's exhibits with you?

22 A. Yes, I do.

23 Q. Which ones, for the Examiner, so he can get
24 those?

25 A. 18-D and 18-F.

1 Q. Okay. And before we get to those, how much 3-D
2 information does Ocean have in this general area?

3 A. Contiguous to this particular area, we would have
4 around 45 square miles.

5 Q. To the best of your knowledge, is that more than
6 was available to TMBR/Sharp?

7 A. I think that they testified that they had six to
8 seven.

9 Q. Okay. Now, looking at Mr. Mazzullo's exhibits,
10 could you comment on those? In particular, with respect to
11 looking at Section 25, are the Mississippian reservoirs in
12 the west half of 25, are they in your opinion isolated?

13 A. No, they're not. And I think one of the comments
14 I wanted to say on that is, if you look at his color bar,
15 at the very bottom he goes kind of abruptly from kind of a
16 purple into a solid blue. And so when you look at the map
17 it makes it look like these little holes are just very
18 distinct instead of grading into them naturally.

19 Q. It's a bigger visual impact?

20 A. Yeah, it gives a big visual impact, but it's
21 somewhat deceiving.

22 Q. Okay, then go to Exhibit 18-F. And if I
23 understand this, looking at it, it shows the Blue Fin 24-1,
24 and it's colored yellow, which is what, the Mississippian
25 where that well is producing from, if I understand that?

1 A. Yes, right on top of that magenta horizon which
2 he has labeled as the Chester he has it colored in in
3 yellow.

4 Q. In yellow. And then moving over to the right,
5 you're moving to the south, if I understand it?

6 A. Yes.

7 Q. And it's got a yellow -- I guess it was referred
8 to as a bowl or -- I can't remember right now -- which
9 would be where the 25-1 well is, correct?

10 A. Yes.

11 Q. And then over to the right there's another yellow
12 bowl, and that would be --

13 A. Well, he has three yellow bowls --

14 Q. And that third yellow bowl would be in your
15 Exhibit 12, the southeasternmost --

16 A. Right.

17 Q. -- spots --

18 A. Uh-huh.

19 Q. -- reservoir areas? Could you --

20 A. Could I comment on those?

21 Q. Yes, please comment.

22 A. Okay. One thing that I would like to back up and
23 give a little bit of an explanation about this. And maybe
24 to help explain, I picked up a couple of pamphlets from out
25 in the hall on one of the state parks here in New Mexico,

1 the Bottomless Lakes State Park, down near -- is that
2 Carlsbad or --

3 MR. HALL: Roswell.

4 THE WITNESS: Yeah. Anyway on that first page,
5 it talks about sinkholes. And at the bottom of the first
6 page it says, These lakes, actually sinkholes ranging in
7 depth from 17 to 90 feet, were formed when circulating
8 underground water dissolved salt and gypsum deposits to
9 form subterranean caverns. When the roofs of the caverns
10 collapsed from their own weight, sinkholes resulted and
11 soon filled with water.

12 If you think of Carlsbad Caverns and some other
13 very large caves down there, that is actually what is
14 occurring here that causes these low spots on the seismic
15 that we see. And you can see all the events from the
16 Strawn down to the Chester pretty much mirror and follow
17 the same feature.

18 There was a recent paper written by the Texas
19 Bureau of Economic Geology, Bob Hardigen, Charles Cairnes,
20 that described this in detail in the Boonesville field near
21 Fort Worth, which has been peer-reviewed and accepted by
22 the geophysical and geological community, talking about the
23 collapse of these cave features that were in deeper
24 horizons and how everything collapses in.

25 Well, the important point and why I bring this up

1 is that the time of deposition of the Chester, it wasn't
2 necessarily at the very bottom of a bowl. Maybe it was
3 just starting to form, but it wasn't completed.

4 And if you do a little seismic trick here and
5 take another piece of paper and measure the thickness or
6 the time interval between the two horizons that were picked
7 that are on Sal's [sic] cross-section, seismic cross-
8 section here --

9 MR. MAZZULLO: Lou, Lou.

10 THE WITNESS: Lou, I'm sorry, I apologize.

11 -- Lou's cross-section, you can measure that.

12 And then you can slide on down or up to the top of the
13 structure and you can measure that again, and you can see
14 just a little tiny bit of thinning; where if you look down
15 on his cross-section, what he has labeled as Morrow -- and
16 it is colored light blue -- it shows a four-to-one increase
17 in thickness between the top of the Morrow and the top of
18 the gray Chester.

19 The seismic does not show anywhere near that much
20 thinning, so that's kind of highly exaggerated and somewhat
21 misleading to have that much thinning shown on his cross-
22 section there.

23 And the importance of that is that the reservoirs
24 actually extend beyond the very low parts that you see on
25 the seismic here. And you can't just color in that yellow,

1 you have to extend that beyond, because the structure did
2 not form until the later collapse of some caves below this,
3 in which case everything fell all at once.

4 Q. (By Mr. Bruce) In short, looking at your Exhibit
5 12, then in your opinion there'd be really no separation
6 between the well that's currently being drilled and then
7 what they call the bowl to the southeast of that location?

8 A. Well, there could be a small amount of separation
9 because it is a little bit lower, but again to say that the
10 limits of the pay is strictly limited to those blue dots on
11 Lou's map is misleading.

12 Q. They're not necessarily separated?

13 A. Yes, right.

14 Q. In your opinion, Mr. Silver, is the granting of
15 Ocean's Application in the interests of conservation and
16 the prevention of waste?

17 A. Yes.

18 MR. BRUCE: Mr. Examiner, I'd move the admission
19 of Ocean Exhibits 12 through 15.

20 EXAMINER STOGNER: Any objections?

21 MR. KELLAHIN: No, sir.

22 EXAMINER STOGNER: Exhibits 12 through 15 will be
23 admitted into evidence at this time.

24 Thank you, Mr. Bruce.

25 Mr. Kellahin?

1 MR. KELLAHIN: Thank you, Mr. Stogner.

2 CROSS-EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Mr. Silver, would you look at Exhibit Number 10,
5 the Ocean exhibit?

6 A. Okay.

7 Q. Are there Morrow gas producers on this map?

8 A. They're not highlighted. I don't -- Most of the
9 Morrow wells that I am familiar with in production are just
10 outside of the boundaries of this map, and without a key
11 that would highlight it I can't just look at one right away
12 and say that that's a Morrow well. There's a lot of Atoka
13 wells and some Chester or Austin wells.

14 Q. When we look at your Exhibit Number 12, this is
15 your analysis of the Morrow? Is that the wrong map?

16 A. Exhibit Number 12?

17 Q. No, I've got the wrong one.

18 A. Okay.

19 Q. I want the Morrow map. It's 15, right?

20 A. Yeah, 15 is just a time-structure map on the top
21 of the Morrow, it's not necessarily saying where the sands
22 would be.

23 Q. Have you asked Ocean's geologist to prepare an
24 isopach of the Morrow interval through this area?

25 A. I have personally done an isochron of the Morrow

1 interval in this area.

2 Q. Do you have it with you?

3 A. Yes, but I'm not sure that I'm prepared to submit
4 that as evidence.

5 Q. Okay. Where do we have to go to find the nearest
6 Morrow gas producer, if I'm looking at Exhibit 10?

7 A. If you're looking at Exhibit 10 -- and if my
8 colleagues want to correct me, I would certainly accept
9 that, but as far as a Morrow producer I know that just
10 north of Section 11, in Section 3, there's a bunch of
11 Morrow producers there, Section 2, there's Morrow
12 producers. As you go -- I think the David H. Arrington
13 well in 22 had a show in the Morrow, but I don't think it
14 produced from that.

15 Are there any other Morrow --

16 Q. Did I hear Mr. Messa right a while ago when he
17 testified that the Brunson sand and the Morrow sand were
18 the two best opportunities that you could package together
19 in this area?

20 A. I think you heard that right, and we do feel very
21 strongly that the Morrow sand is highly prospective in this
22 particular area. What I term as the Morrow sand, I
23 couldn't point to some specific --

24 Q. Do I have to go off of Exhibit 10 to find any of
25 these?

1 A. Not very far.

2 Q. Well, far enough away from Section 25 to be six
3 miles away, right? Five miles away?

4 A. Four miles. Well, four miles north, probably
5 less than that if you went west.

6 Q. All right, help me understand Exhibit 15.

7 A. 15?

8 Q. 15 is the Morrow map.

9 A. Yes.

10 Q. If I want to know where the section lines for 25
11 are --

12 A. They're black.

13 Q. They're the black outlines?

14 A. Uh-huh.

15 Q. And if I subdivide Section 25 in a north-half,
16 south-half subdivision -- right? --

17 A. All right.

18 Q. -- lay down your spacing unit --

19 A. A lay down?

20 Q. I've got a north-half laydown and a south-half
21 laydown.

22 A. Okay.

23 Q. When I do that, and I want to access what looks
24 to be your best location in the northwest quarter of
25 Section 25 for the Morrow -- right? --

1 A. Okay.

2 Q. -- I'm going to be in that feature you have
3 displayed in the northwest quarter of Section 25?

4 A. Okay. Do you want to -- just to make sure I'm
5 seeing the same thing --

6 Q. I've subdivided, I'm looking at the center of
7 this --

8 A. Okay.

9 Q. -- blue or purple bull's eye, right?

10 A. Uh-huh.

11 Q. What portion of that Morrow opportunity is
12 contained in the northwest quarter of 25?

13 A. I'm not quite sure I understand what you're --

14 Q. If I subdivide Section 25 into quarter
15 sections --

16 A. Right, uh-huh.

17 Q. -- have I contained this Morrow feature in the
18 northwest quarter?

19 A. It's in the northwest, not in the northeast, for
20 sure, there's still some in the south half of the section.

21 Q. I'm trying to find some. If I'm looking at the
22 southwest quarter of 25, I see a different blue area,
23 right?

24 A. Right.

25 Q. This is the area I'm looking at --

1 A. Uh-huh.

2 Q. -- is the center blue area. Is not the center
3 blue area totally within the northwest quarter of 25?

4 A. Yes, that is totally within the northwest
5 quarter, but that smaller sinkhole feature that's just
6 under the number "25" --

7 Q. Uh-huh.

8 A. -- possibly could have Morrow potential as well.

9 Q. Okay. Are you suggesting that there is any
10 connection between those two features in Section 25? When
11 I look at this, I have two opportunities in Section 25, one
12 in the center of the south half and one in the center of
13 the northwest quarter. Can you tell me if they are
14 connected?

15 A. The low that runs through there, you can see, you
16 know, that this is the lowest point here and this is the
17 lowest point here, but there is a general trend low that
18 runs all the way through here. I don't think that we can
19 say where the sand sits, I mean the limits in a north-south
20 direction. I think it's pretty easy to confine what the
21 potential of the sand would be in an east-west direction.
22 North-south, I don't know that I could do that.

23 Q. Has Ocean successfully used your Morrow
24 interpretation for any well within the area displayed on
25 Exhibit Number 10?

1 A. Well, seeing as how there's no Morrow producers
2 in the area on Section 10, no. But we have done that just
3 outside of the map.

4 Q. For any of these wells that didn't produce out of
5 the Morrow, that produce out of the Brunson sand, did they
6 use your analysis to try to locate Morrow, as a package to
7 the Brunson? If your strategy is to multiply the
8 opportunities --

9 A. Yes. Well, okay, let me...

10 Q. I'll ask you again.

11 A. Okay.

12 Q. If you want to package the Brunson sand --

13 A. Uh-huh.

14 Q. -- with a Morrow opportunity --

15 A. Uh-huh.

16 Q. -- have you tried that strategy in the area
17 displayed on Exhibit 10 with any of these wells that are
18 now only productive out of the Brunson sands?

19 A. Yes, I would have to say yes, we have. We've
20 always tried to maximize our, you know, potential pay
21 zones.

22 But the chance that we would give the Morrow
23 depends upon the seismic and the features and whether
24 there's something on the seismic that would indicate its
25 presence or not, you know, the approximate -- the

1 thickening in the right zone. And in some of those areas,
2 we -- Well, in Section 25 we see some indication that that
3 might be very good. In some of these other sections it
4 hasn't been that way, so we would give it less credence in
5 the other wells that we have drilled out here.

6 Q. Were you present in Houston at your offices in
7 January on -- approximately the 31st of last year, when Mr.
8 Mazzullo and Mr. Nearburg made a presentation to your
9 company?

10 A. Yes, I was.

11 Q. All right. Was Mr. Mazzullo correct in his
12 recollection and his testimony about the fact that you had
13 rejected his concept of the Chester bowls because they were
14 regionally too downdip and would potentially be wet?

15 A. I would like to explain that, since my name has
16 been used quite a bit with that. I would like to give you
17 my story on exactly what was said and --

18 Q. Will your response deal with the fact that Mr.
19 Nearburg also testified to that same point?

20 A. Yes, because -- I would have to say that even
21 within our own company, within Ocean, we are not in
22 complete agreement as to the risk of water, and I felt that
23 there was some risk that the Brunson, the Atoka sand, might
24 be wet. I also recognize that any sort of a cross-fault
25 would separate that sand and make it so that that would be

1 an acceptable risk.

2 But there are two wells just off this map that
3 have encountered the Brunson wet, that are in approximately
4 this same structural interval. That's the APK 4 and the
5 Gillespie well in Section 2.

6 And so that was a concern of mine.

7 Frank personally didn't think that that was a
8 risk, but I did. And so I expressed to Mark that I thought
9 there was some risk of it being wet. And that was my
10 opinion, and it may not necessarily represent Ocean's
11 opinion.

12 Q. I understand that. I just wanted to see if you
13 had any disagreement with Mr. Nearburg or Mr. Mazzullo
14 about their recollections of your statements concerning
15 your rejection of the opportunity in the Chester.

16 A. No. Well, wait a minute, that was wrong what you
17 said. That was not with respect to the Chester, that was
18 with respect to the Atoka. I never made any statement
19 whatsoever about the Chester being wet, only the Atoka.

20 Q. Did Mr. Mazzullo show you any Brunson sand map at
21 that meeting in Houston, or any interpretation of the
22 Brunson sand interval?

23 A. I don't remember the specific maps that he showed
24 in Houston, so I can't testify that I saw a Brunson map.
25 But I know that the Brunson was the major reason that we

1 were interested in their presentation at the time that they
2 made it.

3 Q. Were you not also interested in their
4 presentation in terms of Mr. Mazzullo's analysis of these
5 opportunities for accessing what you characterize as these
6 Chester bowls?

7 A. We have always thought that the lows out here
8 were places to drill in the primary spots to accumulate
9 Atoka and Chester sands.

10 Q. Was the review of Mr. Mazzullo's seismic
11 interpretation in January of last year your first
12 opportunity to see seismic data on Section 25?

13 A. On the exact square of Section 25, yes, I would
14 not have seen other seismic data that crossed Section 25,
15 but in a regional picture I was very familiar with the area
16 and have looked at seismic all around the area and knew
17 what the grain in the fabric was.

18 Q. At the time you met with Mr. Mazzullo, your data
19 for seismic stopped on the eastern boundary of Section 26,
20 right?

21 A. Yes, but the trends are still there, and you can
22 project them into 25.

23 Q. When did you have available to you the seismic
24 that Mr. Arrington had?

25 A. The seismic data that Mr. Arrington has was made

1 available to us approximately near -- I would guess
2 approximately near the end of 2001. It might have been the
3 beginning of 2002, three to six months ago, something like
4 that.

5 Q. Do you know Mr. Dave --

6 A. -- Scolman?

7 Q. -- Scolman? Do you know him?

8 A. Yes, I do.

9 Q. What association does he have with Ocean?

10 A. Actually, I took his place. When he refused to
11 move from Denver to Houston, I was hired to fill that
12 position.

13 Q. Okay. Did you understand Mr. Scolman had a
14 belief and opinion about the opportunity to access the
15 Chester out of this concept that Mr. Mazzullo has
16 presented?

17 A. I had many conversations with Dave Scolman prior
18 to him being a consultant for Nearburg about this area and
19 about the prospective areas. He was still on retainer with
20 Ocean when I first -- when we talked a lot about this area
21 and the potentials, and we had many discussions that would
22 be -- not necessarily with respect to Section 25 but with
23 respect to the general area.

24 Q. After you met with Mr. Mazzullo, did you contact
25 Mr. Scolman about his interpretation of the Chester?

1 A. About the interpretation of the Chester?

2 Q. With regards to the four-section area for the Big
3 Tuna prospect?

4 A. I saw Dave at the NAPE convention, and we had a
5 conversation.

6 Q. Did you have a conversation about the TMBR/Sharp
7 presentation that you had seen the day before with regards
8 to the four-section area?

9 A. I recall talking about the Townsend area in
10 general. I don't recall talking about the Nearburg
11 presentation *per se*, other than that he was consulting for
12 them.

13 Q. Was Mr. Mazzullo truthful in his testimony when
14 he said that Ocean had rejected the opportunity afforded
15 them to participate in this play for the Big Tuna because
16 you had recommended that the area was too low and
17 potentially too wet?

18 A. I had expressed my opinion that I thought it was
19 too low, but the company's position was that it wasn't a
20 well that we could drill immediately, and it was too risky
21 for the price that was being -- and since Frank and I in
22 our own conversations didn't agree, the company thought
23 there was too much risk.

24 So it's -- I mean, I spoke and I said I thought
25 it might be wet in the Atoka, and that added to the risk of

1 the prospect.

2 Q. Let's look at the Chesapeake map -- Chester.
3 Where is that? I'm holding on to it.

4 A. Okay, which map are you looking at?

5 Q. I'm looking at Number 12.

6 A. Okay, that's the lower -- okay, lower
7 Mississippian lime structure map --

8 Q. Right.

9 A. -- time-structure.

10 Q. Yeah. Am I looking at an analysis that equates
11 to what Mr. Mazzullo showed us earlier today, in terms of
12 looking at this Chester opportunity?

13 A. This is a time-structure map that's very similar
14 as his, but the interpretation of the Chester would be, you
15 know, your own interpretation. That's just strictly a
16 time-structure map that would show, you know, the current
17 present-day structure in time.

18 Q. Do you have any disagreement with Mr. Mazzullo's
19 interpretation that he presented earlier today?

20 A. Yes, I have some disagreements with it.

21 Q. Show me where they are.

22 A. Well, I mean, I talked about some of those, about
23 how the thickness change is very limited on the seismic
24 versus how his cross-section shows a dramatic change. You
25 know, that's one example of a difference of opinion.

1 Q. All right. Let's look at Exhibit 12, then, your
2 exhibit --

3 A. Okay.

4 Q. -- and look at Section 25 --

5 A. Okay.

6 Q. -- and Section 25 has been outlined for us by the
7 yellow outline to show us the west half, right?

8 A. Correct.

9 Q. If we also outlined what would be a laydown
10 spacing unit, consisting first of the north half and then
11 another one consisting of the south half of Section 25 --

12 A. Uh-huh.

13 Q. -- when I look at this map and do that, what
14 percentage of this interval that you've shown in the
15 northwest quarter exceeds the limits of the northwest
16 quarter of Section 25? Do you see the feature I'm looking
17 at?

18 A. I think so.

19 Q. What percentage of that feature is in the
20 northwest quarter?

21 A. Probably 60 to 70 percent, and the rest would be
22 in the south.

23 Q. When we look at the second bowl --

24 A. Yes.

25 Q. -- what Mr. Mazzullo has called the second bowl

1 in the south half, in your opinion is it going to be
2 necessary to locate a well to access that Chester bowl?

3 A. I don't think that a well can hit that low spot
4 that's legal.

5 Q. Pardon?

6 A. I don't think that there's a legal location that
7 hits that.

8 Q. What if it's a south-half spacing unit?

9 A. I'm not sure, I'd have to check with the landman
10 whether you could get more than 660 from that line.

11 Q. In a regional sense, Mr. Silver --

12 EXAMINER STOGNER: Mr. Kellahin --

13 MR. KELLAHIN: Sorry, Steve.

14 Q. (By Mr. Kellahin) -- why did Ocean propose to
15 have its well located in the northwest quarter of Section
16 25, as indicated by your filings? It's just a little bit
17 off of where TMBR/Sharp's actually drilling.

18 A. Well, it is --

19 Q. What's the point of doing that?

20 A. The point of doing that is, it's the deepest part
21 and thickest part available in the whole section. It
22 combines both what we say is the Chester potential, as well
23 as the Atoka potential, are stacked together at that
24 location, and that is probably the only location where you
25 can stack all of the potential targets together in one

1 spot.

2 Q. Can I satisfy the conditions of stacking by
3 taking the Brunson sand map -- do you see this one? --

4 A. Uh-huh.

5 Q. -- and looking in the southwest quarter and
6 staying within the 20-foot contour line in the southwest
7 quarter, and also access in the southwest quarter the
8 Morrow opportunity that you're displaying on Exhibit Number
9 12?

10 A. To stay in the Brunson or the Atoka thick, you
11 can't really do that and get into the maximum part of the
12 low where we think the Chester might be productive in the
13 south. You know, there might -- You know, if you drill a
14 well, you know, you might possibly do it, but it's hard to
15 predict that you would do that based on this information.

16 Q. Mr. Silver, when we look at Exhibit 12 --

17 A. Uh-huh.

18 Q. -- can we approximate, as Mr. Mazzullo did, what
19 you believe to be the limits of that opportunity shown on
20 this map?

21 A. For which zone?

22 Q. For the zone that's shown on Exhibit 12.

23 A. I think that's maybe where there's a little bit
24 of confusion. This isn't showing necessarily a thickness
25 of the pay, this is just showing the structural grain of

1 the present-day structure.

2 Q. Okay. So you don't have a map that's equivalent
3 to the way Mr. Mazzullo made a presentation on his map --
4 or his Exhibit 18-D? This one?

5 A. I disagree with the way Lou made his anomalies
6 and pay anomalies. That's why I testified to earlier that
7 the structural change, if those solution-collapse features
8 occurred after the deposition, they don't have a whole lot
9 of bearing on the -- you can't say that the particular lows
10 and the pays are exactly coincident and that they don't
11 extend any further.

12 Q. Do you accept his hypothesis that these lows or
13 these bowls are going to be unique unto themselves?
14 They're not going to be connected?

15 A. I do not accept that hypothesis --

16 Q. Okay.

17 A. -- they're not connected.

18 Q. I know you disagree with Mr. Mazzullo. Can I
19 take your Exhibit Number 12 --

20 A. Uh-huh.

21 Q. -- and have you show me what you expect to be the
22 size of the bowl?

23 A. I would -- I mean, my best guess would be the
24 outline of the blue or, you know, one contour below that.
25 But of course, until -- I mean, that's -- The most

1 definitive map would actually be an isochron map between
2 the -- say, the Morrow and the top of the Chester or the
3 top of the Mississippian, and that isochron would probably
4 be the best map to look at.

5 Q. Have you done that?

6 A. I have done that, but I do not have it --

7 Q. You don't have it for presentation today?

8 A. I don't have that for presentation. I didn't
9 realize that was going to be such an issue.

10 MR. KELLAHIN: No further questions, Mr. Stogner.

11 EXAMINER STOGNER: Redirect?

12 MR. BRUCE: Just a couple, Mr. Examiner.

13 REDIRECT EXAMINATION

14 BY MR. BRUCE:

15 Q. Looking at Mr. Mazzullo's Exhibit 18, Mr. Silver,
16 you do not agree that the size of these bowls defines what
17 the size of the reservoir is?

18 A. No, I do not agree with that.

19 Q. Okay. And then just one follow-up question on
20 Mr. Messa's map, and this gets back to something the
21 Examiner asked before. Up in Section 10, in the southwest
22 quarter where the Carlisle well is mentioned, the old UMC
23 well --

24 A. Uh-huh.

25 Q. -- there's two little stars put together in the

1 northeast quarter, southwest quarter of that section. That
2 would be the Carlisle Number 1 and the Carlisle Number 1-Y,
3 would it not?

4 A. That is correct.

5 Q. Probably only 100-plus feet apart from each
6 other?

7 A. Yeah, 100 or 150, pretty close.

8 Q. And one thing with respect to Mr. Mazzullo. Mr.
9 Mazzullo said that that was the well that keyed him off on
10 the Chester.

11 Do you agree that the correlation is the same
12 between the Blue Fin and the Carlisle well?

13 A. No, it's not the same, and we have 3-D seismic
14 over that whole area, and it would show that the productive
15 zone in the Carlisle 1-Y is a sand that would actually be
16 located stratigraphically just above the limestone that is
17 productive in the TMBR/Sharp well.

18 Q. Okay, so that's a limestone as opposed to a sand?

19 A. Right.

20 MR. BRUCE: Thank you. I have nothing further of
21 this witness, Mr. Examiner.

22 EXAMINATION

23 BY EXAMINER STOGNER:

24 Q. Okay, I have a question, let me make sure I get
25 this straight.

1 I'm referring now to Exhibit Number 10.

2 A. Okay.

3 Q. In Ocean's proposed wells, the first one being in
4 the northwest quarter, that would be primarily for the
5 Chester or the Austin; is that correct?

6 A. No, it's -- I would say it's a dual objective for
7 the Chester-Austin and for the Atoka-Brunson.

8 Q. Okay. How about the well in the southwest
9 quarter? Would that be -- Would there be any chance that
10 that one would hit the Chester or Austin?

11 A. Very limited. It would be -- The one in the
12 southwest quarter would be primarily an Atoka-Brunson well,
13 and you would have to move way over to almost the section
14 line to get the Chester-Austin.

15 Q. The section line?

16 A. Yeah, the north-south section line. Remember
17 that hole that we've been talking about, it's right on the
18 section line. You'd have to move over.

19 Q. To the east?

20 A. To the east.

21 Q. No, the section line would take you over there
22 to --

23 A. I'm sorry, the center section line, I apologize.
24 Center section line, I'm sorry. I saw the line on this map
25 and I said section line. I meant centerline.

1 Q. So your proposal would essentially leave that
2 lower bowl untapped?

3 A. Our proposal in the northwest?

4 Q. In the southwest.

5 A. In the southwest?

6 Q. Yes.

7 A. Which proposal in the southwest? I'm not --

8 Q. Case Number 12,860.

9 A. Yeah, make sure that I understand what --

10 MR. BRUCE: If I could, Mr. Examiner, I'm just
11 handing Mr. Silver what is Marked Ocean Exhibit 7, which is
12 the APD for the Number 2 well, which --

13 EXAMINER STOGNER: Oh, okay.

14 MR. BRUCE: -- is the case that the Examiner is
15 talking about. I'm sorry, Mr. Examiner.

16 THE WITNESS: Okay, I was not sure exactly what
17 you were talking about there.

18 The well in the southwest, the Number 2 well that
19 I'm looking at right here, I believe it would have a shot
20 at both zones, but it looks to me a little bit riskier than
21 the one in the northwest quarter of the section.

22 Q. (By Examiner Stogner) The well in the southwest
23 quarter, what's the primary zone of interest for that well?
24 Is it still the Atoka?

25 A. I believe so.

1 Q. But you're only going to get about five to ten
2 feet -- is that what you're proposing? -- of thickness,
3 according to the map, Exhibit Number 10?

4 A. Well, that location would be there to try to get
5 both zones, and so you'd be giving up a little bit of
6 thickness in the Brunson in order to have a possibility at
7 the Chester.

8 But it would probably still be productive.

9 Q. What would happen if I tried to go for the 20-
10 foot section in the southwest quarter of 25 and go for the
11 middle of the south half and go after that blue interval?
12 How would that -- Would that be a good idea?

13 A. You're saying stay within the 20-foot contour on
14 the Atoka and then --

15 Q. Yeah, go after the center of your Morrow and your
16 Mississippian?

17 A. You're getting a little bit close to the edge of
18 the hole but -- you know, I'd have to actually stack those
19 two together to see if you're okay, but it looks like it's
20 close.

21 Q. That would be do-able, do you reckon?

22 A. It might be. I'd sure like to put that contour
23 on the structure map and make sure that I'm, you know,
24 measuring it appropriately.

25 But it looks like -- actually, it looks like it

1 would be pretty -- you'd miss the deepest part of the hole.
2 I'd be a little bit concerned.

3 Q. Why would I miss it? Because if I had a south-
4 half development, couldn't I get right in the middle of it,
5 almost?

6 A. Well, if I'm looking at what you're trying to do
7 on these two maps it looks like to stay within the 20-foot
8 contour you're going to be almost to the green area in the
9 low. Pretty close. It would be kind of right on that dark
10 line.

11 Q. Why would I need to move over there to the green?

12 A. I'm just trying to stack the two anomalies.
13 Since they're different scales, that's a little bit hard
14 to...

15 EXAMINER STOGNER: Okay. Any other questions of
16 this witness?

17 MR. KELLAHIN: No, sir.

18 EXAMINER STOGNER: You may be excused.

19 Let's take a ten-minute recess.

20 (Thereupon, a recess was taken at 6:40 p.m.)

21 (The following proceedings had at 6:55 p.m.)

22 EXAMINER STOGNER: This hearing will come to
23 order.

24 Mr. Bruce?

25 MR. BRUCE: One more witness, Mr. Examiner, and

1 then we'll quit.

2 RAY PAYNE,

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

5 DIRECT EXAMINATION

6 BY MR. BRUCE:

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

8 A. Ray Payne.

9 Q. Where do you reside?

10 A. Houston, Texas.

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

12 A. Ocean Energy, I'm a petroleum engineer
13 specializing in reservoir engineering.

14 Q. Have you previously testified before the New
15 Mexico Oil Conservation Division?

16 A. No, I have not.

17 Q. Would you summarize your educational and
18 employment background?

19 A. I graduated from Texas A&M with a BS in petroleum
20 engineering in 1985 and subsequent to that worked for
21 Marathon Oil Company in south Texas and offshore Louisiana
22 and Texas for nine years, also east Texas and mid-continent
23 region; left to work with Sonat/El Paso for the next six
24 and a half years and working primarily mid-continent and
25 east Texas; and recently came to work with Ocean Energy,

1 about a year ago in June of 2001, and working the Permian
2 Basin and Rockies properties as a reservoir engineer.

3 Q. So your area of responsibility at Ocean includes
4 this particular area of New Mexico?

5 A. Yes, sir.

6 Q. Now, your involvement in this particular case is
7 fairly new, is it not, Mr. Payne?

8 A. Yes, I wasn't privy to all the history that's
9 been laid out here.

10 Q. Okay. And were you present during the second set
11 or maybe the third set of testimony from TMBR/Sharp's
12 president when he discussed the reservoir properties in the
13 Blue Fin 24-1 well?

14 A. Yes, I was.

15 Q. And have you made calculations regarding drainage
16 from those numbers that were given to you?

17 A. Yes, sir, and --

18 Q. And --

19 A. Yes, sir.

20 MR. BRUCE: Yes, you have. Okay.

21 With that, Mr. Examiner, I would tender Mr. Payne
22 as an expert reservoir engineer.

23 EXAMINER STOGNER: Any objections?

24 MR. KELLAHIN: No, sir.

25 EXAMINER STOGNER: I've got a couple of

1 questions.

2 When you were with Marathon did you have any New
3 Mexico property you oversaw?

4 THE WITNESS: No.

5 EXAMINER STOGNER: How about with Sonat/El Paso?

6 THE WITNESS: I was involved with just a smidgeon
7 of New Mexico, but not much. Very little. Not until I
8 worked with the current job at Ocean Energy did I have
9 significant Permian Basin exposure in New Mexico.

10 EXAMINER STOGNER: What part of New Mexico did
11 Sonat/El Paso operate in?

12 THE WITNESS: It was Amazon Ditch Fields, as I
13 recall. It was a field review that I went on, and quite
14 honestly I don't remember a lot of the details. I do
15 remember the field name. Amazon Ditch, yeah, that's right.

16 EXAMINER STOGNER: Okay, so qualified.

17 Q. (By Mr. Bruce) Okay. Mr. Payne, can you tell
18 the Examiner what you did with the numbers that were given
19 by TMBR/Sharp, and could you look at what is TMBR/Sharp's
20 Exhibit 18-D and discuss the drainage calculations you made
21 from those numbers and how they relate to Exhibit 18-D?

22 A. Yes, sir, this is -- You know, one of my jobs is
23 working with the geophysicists and geologists, try to take
24 the engineering data and reconcile that with the geologic
25 and geophysical data, try to help tune in how big these

1 reservoirs are. And this is an analysis that I've been
2 doing in the area on other cases and have come to the
3 conclusion that these reservoirs are not isolated to the
4 sinkholes, and that's based on the reserve analysis of the
5 wells, compared to the volumetric analysis of these holes.

6 And I did a similar analysis based on data -- I
7 was not privy to a lot of the Blue Fin 24-1 data, but based
8 on the information that Mr. Phillips provided in earlier
9 testimony, I tried to frame up what the possible reserve
10 and acreage, drainage acreage potential for the Blue Fin
11 24-1 is and tried to demonstrate that these reservoirs
12 extend significantly outside the holes, the pods or bowls,
13 however you want to frame the accommodation area.

14 Based on Mr. Phillips' estimate that he feels
15 like the 24-1 has 5 BCF of reserves in place, and assuming
16 some of the optimistic parameters that TMBR/Sharp tried to
17 explain, I think there was some uncertainty as to what
18 numbers they actually used in their volumetric
19 calculations.

20 But you know, to kind of summarize those, a
21 porosity of 24 percent, water saturation of 25 percent, a
22 net thickness, based on a mudlog, of 32 feet, and a
23 recovery factor of 80 percent.

24 And assuming a bottomhole pressure of 6100, 6200
25 pounds and 5 BCF of gas in place, my best estimate of the

1 reservoir size is 80 acres, which is double the size of the
2 anomaly that the Blue Fin 24-Number 1 -- is indicated on
3 Exhibit 18-D where they note the reservoir is 36.5 acres in
4 size.

5 Now, if you use more realistic parameters,
6 being -- the porosity from Blue Fin, I think, is difficult
7 to interpret with a cased-hole neutron log. But if you use
8 porosity logs in the area, and they range 15 to 20 percent,
9 or 12 to 20 percent, and then effective porosity, after you
10 take out clay volumes and whatnot, I feel like a reasonable
11 estimate of porosity in the area is 15 percent, you know,
12 as a whole reservoir.

13 Water saturation of 25 percent I agree with.
14 Average thickness over the entire anomaly of 20 feet I
15 think is aggressive but possible. And a recovery factor of
16 75 percent makes better sense.

17 With 5 BCF in place, that gives you a size of 219
18 acres, which is far in excess of any one of these
19 anomalies, these holes.

20 Q. So on Exhibit 18-D you wouldn't agree that for
21 the Blue Fin 24 Number 1 that the area being drained is
22 36.5 acres?

23 A. It does not seem practical at all.

24 Q. Using those same realistic parameters for the
25 Blue Fin 25-1 as it is on this map, would you think it's 55

1 acres or substantially larger than that?

2 A. Yes, sir, I think that the potential is much
3 larger than that 55 acres.

4 Q. So it wouldn't be draining just the northwest
5 quarter of Section 25?

6 A. That is correct.

7 Q. And assume they make a well out of it. Chances
8 are, it will be draining the southwest quarter of Section
9 25?

10 A. The sand trends are clearly along this
11 accommodation area in the northwest, and so yes --

12 Q. Northwest-southeast trend?

13 A. Yes, sir. Yes.

14 Q. Do you have anything further in this matter?

15 A. Yeah, I would like to make some observations in
16 that the net-pay thickness on these reservoirs does not
17 necessarily, in my observations in working this area, do
18 not necessarily coincide with the sinkholes. The holes,
19 the bowls, provide an opportunity with a high degree of
20 confidence in the seismic data to locate places where we
21 feel that there's sand present, but it does not necessarily
22 mean that the maximum thickness of the pay section is
23 within those holes.

24 Q. Okay, one final question. Did you have anything
25 to do with the January, 2001, meeting between Mr. Mazzullo

1 and Ocean?

2 A. No, sir, I did not.

3 Q. In your opinion, is the granting of Ocean's
4 Application in the interest of conservation and the
5 prevention of waste?

6 A. Yes, sir.

7 MR. BRUCE: Mr. Examiner, I pass the witness.

8 EXAMINER STOGNER: Mr. Kellahin?

9 CROSS-EXAMINATION

10 BY MR. KELLAHIN:

11 Q. Mr. Payne, if we look back at Mr. Mazzullo's
12 Exhibit 18-D, by your calculation using these variables,
13 you say that the bowl that is being drilled by the Blue Fin
14 25 well --

15 A. Yes, sir.

16 Q. -- in your best judgment, based upon these
17 assumptions, would be 219 acres?

18 A. No, sir, I was --

19 Q. What was the number?

20 A. I was referring to the potential in the Blue Fin
21 24-1 --

22 Q. Okay.

23 A. -- and trying to relate that as analogous to the
24 potential in the Blue Fin 25-1, based on --

25 Q. I'm sorry, I forgot. So tell me how big an area

1 is affected by the well in 24.

2 A. Based on the performance and the data that we
3 have to date on the Blue Fin 24-1, the most reasonable
4 estimate of drainage is 219 acres.

5 Q. All right, 219 acres. If we take those same
6 assumptions and move them down to 25 where the bowl is
7 being accessed by the Blue Fin 25 well, then Mr. Mazzullo
8 has underestimated the size of that bowl when he says it's
9 only 54 acres, right? Is that the argument?

10 A. No, sir. I want to make it clear that this is
11 not an isopach map. These bowls indicate areas of
12 preferential deposition of the pay sand. The thickness of
13 the sand does not necessarily have to coincide with these
14 bowls. The pay sand is an opportunity for us to locate
15 low-risk drilling opportunities, where we feel a high
16 degree of confidence that the pay sand would be there. It
17 does not necessarily represent the thickest part of the
18 reservoir.

19 Q. Well, let me --

20 A. Volumetrically, it's --

21 Q. -- go back to my question.

22 A. -- You're trying to tie the volumetrics of the
23 reservoir to the size of the hole, and I'm saying that
24 that's invalid.

25 Q. What I'm trying to say is, you've made the

1 assumption that there is 5 BCF of -- is that recoverable
2 gas or gas in place?

3 A. That was gas in place, and that was what was
4 testified earlier by Mr. Phillips.

5 Q. As to what pod?

6 A. As to what they felt like the recoverable gas in
7 place -- where the gas-in-place figures were on the Blue
8 Fin 24-1 that's currently producing.

9 Q. Well, if his gas-in-place assumptions are right,
10 then he's affecting, under your analysis, 219 acres with
11 the 24 well?

12 A. That is correct, and that 219 acres could extend
13 north as well as it does south.

14 Q. If the Blue Fin 25 well pod is underestimated, in
15 order to have the opportunity to produce this volume of gas
16 in that spacing unit, that reservoir will spill over into
17 the southwest quarter of 25, won't it?

18 A. No, sir, based on the information I'm getting
19 from the -- Oh, the southwest quarter, yes, that's correct,
20 I'm sorry.

21 Q. What I'm trying to do is take your values --

22 A. Yes.

23 Q. -- and analyze whether or not we can put gas in
24 place within the 54 acres of the pod for the Blue Fin 25
25 well. Your opinion is, if that's done in a manner similar

1 to how you did the southwest quarter of 24, the container
2 is too small?

3 A. The reserves were estimated on the 24, based on
4 the performance, and that's just based on the evaluation
5 that Mr. Phillips did.

6 Q. All right, if you use those values and move them
7 to the well in 25 --

8 A. Yes, sir.

9 Q. -- what happens?

10 A. You get the same drainage area. It would be 219
11 acres, but --

12 Q. All right, that's only --

13 A. But we don't know what those values are. That
14 location has not been drilled yet, so the size of that
15 reservoir has yet to be determined.

16 Q. I'm trying to make sense of what you're saying.
17 If I use the calculation for the 24 well and make the
18 inference that those values will give me gas in place and
19 therefore recoverable gas for the Blue Fin 25 pod, or that
20 bowl, TMBR/Sharp has underestimated the size of the bowl?

21 A. No, sir, the size of the bowl does not relate to
22 the size of the reservoir, is what I'm saying. The bowl is
23 the accommodation area, it is not the sand. The sand lies
24 within this accommodation area.

25 Q. Now, your calculation is going to assume uniform

1 thickness?

2 A. We make some judgment on the thickness of the
3 reservoir --

4 Q. Well, it's inherent in the calculation?

5 A. Yes, absolutely.

6 Q. And your assumption is 20 feet of net thickness?

7 A. Yes, sir.

8 Q. So you're assuming a container of a certain size,
9 uniform thickness and properties, that has a sharp edge to
10 it, that contains a certain area of gas?

11 A. Yes, sir, and I feel like that's probably an
12 optimistic number, based on the fact that the Blue Fin
13 24-1 cut by some estimates 24 feet of pay. The geologist
14 testified to that earlier.

15 A. Well, if we take Section 25 and have laydown
16 spacing units, and you are required to consolidate the
17 south half and exercise this opportunity in the southwest
18 quarter, if the Blue Fin Chester pod is bigger than we have
19 shown, you also have that opportunity to share in that gas
20 with a second well?

21 A. Well, as you're seeing the performance in the
22 Blue Fin 24-1, these sands can be of very good quality, and
23 the need for two wells in that -- three -- standup west-
24 half unit may not be necessary.

25 Q. What significance do you attach to the pressure

1 data that Mr. Phillips testified to?

2 A. Well, what you see -- the well is making over 200
3 barrels of condensate, and that's a very important number.

4 As the reservoir pressure declines, or actually
5 your flowing bottomhole pressure, you drop the flowing
6 bottomhole pressure and you have fluids that drop out in
7 the reservoir, the relative permeability to fluids moving
8 in the reservoir declines, it's smaller.

9 So the decline in tubing pressure may or may not
10 be directly related to a depletion in the reservoir.
11 Obviously, you take out 1 MCF out of a reservoir, you're
12 going to have some depletion, pressure is going to decline
13 some.

14 But the magnitude of the pressure decline on a
15 flowing tubing pressure measurement may not be related to a
16 drainage, based on -- if you calculate the reserves in
17 place volumetrically, using this 36-1/2-acre number, you
18 only come up with 1 1/2 BCF in place. I doubt that
19 TMBR/Sharp would be looking to develop these opportunities
20 at 1 1/2 BCF.

21 Q. Well, let me ask you this. If we do the
22 calculation in the manner you've suggested, there are
23 methods to validate the reliability of your end product,
24 are there not?

25 A. Yes, sir. And --

1 Q. We would do it with the material balance, you
2 would do it P/Z, there was a way to judge the performance
3 of the well and ultimately determine the size and the shape
4 of the reservoir?

5 A. Yes, sir, that's why I try to bracket in between
6 this 80 to 219 acres. At this point my reasonable range is
7 pretty wide, but --

8 Q. At this point, with the current level of data,
9 wouldn't this be sort of just a guessology, is it not?

10 A. I'm relying quite heavily on Mr. Phillips'
11 estimate of reserves in place, and he's more privy to all
12 the data than I am, so that assumption is, I feel like, the
13 best thing I can work with.

14 And also with the knowledge that 5-, 10-, 15-BCF
15 wells in this trend, in the general area within six to
16 eight miles from our prospect, are not uncommon. So I
17 think a 5-BCF estimate is not an unreasonable number at
18 all, based on the performance of this well.

19 MR. KELLAHIN: I wonder if I might do this, Mr.
20 Examiner: Rather than prolong the discussion, perhaps Mr.
21 Payne can over the evening provide a calculation for us
22 where he gives us the conventional volumetric presentation,
23 we get to see his choice of parameter values, we get to see
24 the calculation and the end product? And if we can do
25 that, I'm happy to stop.

1 MR. BRUCE: That's fine with me, Mr. Examiner.

2 EXAMINER STOGNER: Okay, so something in the
3 morning, we can have this witness -- recall him --

4 MR. BRUCE: Just recall him very briefly and let
5 Mr. Kellahin ask a few questions.

6 EXAMINER STOGNER: With that, then --

7 THE WITNESS: If I could make one statement, is
8 that my data is predicated a lot on data that TMBR/Sharp
9 provided today, and they may very well have much clearer,
10 much more exact data that has not been presented to us,
11 so...

12 EXAMINER STOGNER: But you're preparing
13 information in which you have at this point --

14 MR. KELLAHIN: Yes.

15 EXAMINER STOGNER: -- and that's not
16 unreasonable. And since everybody's agreed to it, I think
17 we'll call it a night.

18 However, before I go off the record for tonight I
19 have asked you a couple of times, Mr. Kellahin, about the
20 overhead charges. And for the record, I'd like to at least
21 have those on the transcript.

22 MR. KELLAHIN: We can do it in several ways. One
23 is, Exhibit 6 already has been introduced. It's the joint
24 operating agreement, and it shows \$5000 drilling and \$500
25 producing well rates, and that would be our request, and I

1 can call one of these witnesses to say that if you like.
2 It's already in the record.

3 EXAMINER STOGNER: Do you see any reason to at
4 this point?

5 MR. HALL: We'll stipulate to that.

6 EXAMINER STOGNER: Okay. Let's make it part of
7 the record, so we'll take it at that.

8 MR. KELLAHIN: All right, thank you.

9 MS. RICHARDSON: It's on page 4 of the COPAS
10 accounting procedure attached as Exhibit "A" to the
11 Operating Agreement, which is Exhibit 6.

12 EXAMINER STOGNER: The record will so reflect.
13 With that, we're adjourned until 8:15 in the
14 morning.

15 (Evening recess taken at 7:15 p.m.)

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I do hereby certify that the foregoing is
a complete and correct transcript of the
proceedings before me on May 16, 2002.
12816, 12841, 12859, 12860
Michael J. Stogner

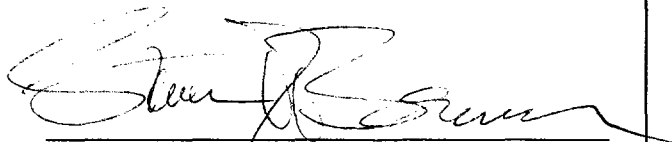
CERTIFICATE OF REPORTER

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 May 23rd, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002