

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

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION DIVISION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 12,910
)
 APPLICATION OF RICHARDSON PRODUCTION)
 COMPANY FOR COMPULSORY POOLING, SAN JUAN)
 COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Hearing Examiner

August 22nd, 2002

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID K. BROOKS, Hearing Examiner, on Thursday, August 22nd, 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.

* * *

STEVEN T. BRENNER, CCR
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I N D E X

August 22nd, 2002
 Examiner Hearing
 CASE NO. 12,910

	PAGE
EXHIBITS	4
APPEARANCES	5
APPLICANT'S WITNESSES:	
<u>PAUL LEHRMAN</u> (Landman)	
Direct Examination by Mr. Kellahin	11
Cross-Examination by Mr. Horner	32
Redirect Examination by Mr. Kellahin	54
Examination by Examiner Brooks	57
Examination by Examiner Stogner	64
Further Examination by Examiner Brooks	65
Recross-Examination by Mr. Horner	67
Further Examination by Mr. Kellahin	72
Further Examination by Mr. Horner	73
Further Examination by Mr. Kellahin	75
Further Examination by Examiner Brooks	77
Further Examination by Mr. Horner	78
Further Examination by Examiner Stogner	78
<u>DAVID B. RICHARDSON</u> (Geologist; President, Richardson Production Company)	
Direct Examination by Mr. Kellahin	81
Cross-Examination by Mr. Horner	91
Examination by Examiner Brooks	97
Examination by Mr. Jones	98
<u>PAUL LEHRMAN</u> (Landman) (Recalled)	
Examination by Examiner Stogner	101

(Continued...)

FISCHER WITNESSES:

MARY FISCHER (Land owner)

Direct Examination by Mr. Horner	105
Cross-Examination by Mr. Kellahin	117
Redirect Examination by Mr. Horner	125
Examination by Examiner Brooks	127
Examination by Examiner Stogner	131

GARY L. HORNER (Surveyor)

Direct Testimony by Mr. Horner	133
Cross-Examination by Mr. Kellahin	155
Examination by Examiner Brooks	169
Examination by Examiner Stogner	174
Examination by Mr. Jones	188

CLOSING ARGUMENTS:

By Mr. Kellahin	192
By Mr. Horner	196
By Mr. Kellahin	205

REPORTER'S CERTIFICATE	209
------------------------	-----

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	13	31
Exhibit 2	13	31
Exhibit 2-A	17	31
Exhibit 2-B	31	31
Exhibit 2-C	75	77
Exhibit 2-D-1&2	186	-
Exhibit 3	22	31
Exhibit 4	23	31
Exhibit 5	25	31
Exhibit 6	28	31
Exhibit 7	29	31
Exhibit 8		
Exhibit 9	82	91
Exhibit 10	84	91
Exhibit 11	87	91
Exhibit 12	89	91

* * *

Fischer	Identified	Admitted
Exhibit A	34	-
Exhibit B	44	-
Exhibit C	91	-
Exhibit D	110	-
Exhibit E	154	-
Exhibit F	145	145

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A P P E A R A N C E S

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* * *

ALSO PRESENT:

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Hearing Examiner
New Mexico Oil Conservation Division
1220 South Saint Francis Drive
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WILL JONES
Engineer
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* * *

1 WHEREUPON, the following proceedings were had at
2 8:24 a.m.:

3 EXAMINER BROOKS: Okay, Case Number 12,910,
4 Application of Richardson Production Company for compulsory
5 pooling, San Juan County, New Mexico.

6 Call for appearances.

7 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
8 the Santa Fe law firm of Kellahin and Kellahin, appearing
9 on behalf of the Applicant, and I have two witnesses this
10 morning.

11 MR. HORNER: And I'm Gary Horner, appearing on
12 behalf of Mary Fischer, the person who is intended to be
13 force-pooled here today.

14 EXAMINER BROOKS: Okay, and are you an attorney,
15 Mr. Horner?

16 MR. HORNER: Yes, I am.

17 EXAMINER BROOKS: And where do you practice?

18 MR. HORNER: Farmington.

19 EXAMINER BROOKS: Okay, thank you. Did you file
20 a written appearance, Mr. Horner?

21 MR. HORNER: No, I have not.

22 EXAMINER BROOKS: Do you by any chance have a
23 business card on you that we could put in the file, be sure
24 you get notices and everything in this case.

25 MR. KELLAHIN: Mr. Brooks, because the pooling

1 case is a contested matter, we have no objection if you'd
2 like to dispose of Mr. Carr's two cases. He follows us on
3 the docket, and they perhaps involve less time than the
4 case you've just called.

5 EXAMINER BROOKS: Okay, very good, I'll let Mr.
6 Stogner go ahead, then.

7 (Off the record at 8:25 a.m.)

8 (The following proceedings had at 9:30 a.m.)

9 EXAMINER BROOKS: Okay, at this time we'll call
10 Case Number 12,910, Application of Richardson Production
11 Company for compulsory pooling, San Juan County, New
12 Mexico.

13 Call for appearances.

14 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
15 the Santa Fe law firm of Kellahin and Kellahin, appearing
16 on behalf of the Applicant, and I have two witnesses to be
17 sworn.

18 MR. HORNER: And my name is Gary Horner,
19 appearing on behalf of Mary Fischer, and I probably will
20 have two witnesses myself, which indicates that I may have
21 to testify too.

22 EXAMINER BROOKS: Okay. Will those persons who
23 are testifying please stand, identify yourselves for the
24 record?

25 MR. RICHARDSON: David Richardson, President,

1 Richardson Production.

2 MR. LEHRMAN: Paul Lehrman, landman for
3 Richardson.

4 MR. HORNER: Gary Horner.

5 MS. FISCHER: Mary Fischer.

6 (Thereupon, the witnesses were sworn.)

7 MR. KELLAHIN: Mr. Brooks, Richardson is seeking
8 to pool the east half of Section 14.

9 Do you have another set of exhibits?

10 EXAMINER BROOKS: Do you have another set of --

11 MR. KELLAHIN: Let me give Mr. Stogner these.

12 EXAMINER BROOKS: Okay.

13 MR. KELLAHIN: Mr. Richardson is here this
14 morning to seek the force pooling of the one remaining
15 interest owner in the east half of Section 14. The balance
16 of the section has been consolidated, and we'll describe
17 how the section is subdivided. We're concentrating on the
18 east half. There's an existing PC well in the southeast
19 quarter.

20 We're seeking to drill in the east half, in the
21 northeast quarter, a well that will be a Fruitland Coal gas
22 well on 320, plus it will be a PC well on 160-acre spacing.

23 We believe we're dealing with the Basin-Fruitland
24 Coal Gas Pool for the gas well, and that if the Pictured
25 Cliff formation is productive, we believe that to be the

1 West Kutz-Pictured Cliffs Gas Pool.

2 We have agreement either by lease or other
3 contracts with the various interest owners. You'll see
4 from the maps that the east half is divided, and the maps
5 will demonstrate to you what we've called Lot 1. Lot 1 is
6 a tract in the northeast quarter that is north of the San
7 Juan River.

8 Within that tract the mineral interest is
9 divided. Dugan Production has 50 percent of that interest.
10 Dugan's production is committed to the well. The balance
11 of that interest is controlled by Ms. Fischer, and we have
12 not been able to reach an agreement with her, and we're
13 seeking to pool her interest.

14 The well was drilled and spudded on June 27th of
15 this year. Part of Richardson's program was such that this
16 well was drilled in June. It awaits completion, it hasn't
17 been frac'd, produced. It's simply standing idle until we
18 resolve the pooling issue.

19 EXAMINER BROOKS: The well has been drilled?

20 MR. KELLAHIN: It has been drilled.

21 I have two witnesses.

22 Mr. Richardson himself is a geologist by
23 education and has qualified as an expert in the past before
24 this agency, and he will talk to you about the well, about
25 his estimated costs, and he will discuss the risk

1 associated with the wellbore at this point for the Pictured
2 Cliff, as well as the coal gas.

3 Mr. Paul Lehrman is a landman consulting in the
4 San Juan Basin. He's currently retained by Richardson to
5 deal with this and other issues. Mr. Lehrman testified
6 before you back in July in Farmington on other pooling
7 cases. Mr. Lehrman has made himself knowledgeable about
8 the Richardson files. He has looked at the surveys. He
9 has calculated, or had calculated, the interests involved
10 in the east half of the section.

11 He has negotiated with Ms. Fischer and her
12 attorney as late as yesterday and is prepared to testify
13 about the fact that, despite their efforts, we cannot reach
14 an agreement. We're therefore asking you to commit her
15 interest pursuant to the pooling statute, subject to an
16 appropriate penalty so that, should she choose not to
17 participate within the election period, that we would have
18 the opportunity to recover out of production her share of
19 the costs, plus an appropriate penalty for each of the
20 pools.

21 So that will be our presentation this morning.

22 EXAMINER BROOKS: Okay, this well is named the
23 Navajo 14-2. Is this southeast quarter, is this tribal
24 land?

25 MR. RICHARDSON: Yes.

1 MR. KELLAHIN: I think so, I think that's Navajo
2 tribal land, administered by the Bureau of Land Management.
3 Mr. Lehrman can testify as to those points.

4 EXAMINER BROOKS: Okay, very good. You may go
5 ahead with your -- Call your witness.

6 MR. KELLAHIN: Paul, why don't you come on up?

7 PAUL LEHRMAN,
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 MR. KELLAHIN:

12 Q. Mr. Lehrman, for the record would you please
13 state your name and occupation?

14 A. Paul Lehrman, I'm a consulting landman out of
15 Farmington, New Mexico.

16 Q. Unlike the microphones in Farmington, Mr.
17 Lehrman, this is just for the court reporter.

18 A. Okay.

19 Q. It will not amplify your voice --

20 A. Okay.

21 Q. -- so you'll have to speak up.

22 In what community do you reside?

23 A. Farmington, New Mexico.

24 Q. And what's your profession?

25 A. I'm a landman.

1 Q. And what's your relationship with Richardson
2 Production Company?

3 A. I've been employed for approximately three months
4 as a consulting landman.

5 Q. Have you qualified as a petroleum land expert
6 before the Division on prior occasions?

7 A. Yes, I have.

8 Q. As part of your responsibilities to Mr.
9 Richardson, have you made a determination of the ownership
10 in the spacing unit?

11 A. Yes, I have.

12 Q. Have you studied the various informations
13 concerning the configuration of that section?

14 A. Yes.

15 Q. And have you reviewed the files of Richardson
16 concerning any prior contact with Ms. Fischer?

17 A. Yes.

18 Q. And have you personally been involved in
19 discussions with Ms. Fischer concerning the commitment of
20 her interest?

21 A. Yes.

22 MR. KELLAHIN: We tender Mr. Lehrman as an expert
23 witness.

24 EXAMINER BROOKS: As a petroleum landman?

25 MR. KELLAHIN: Yes, sir.

1 EXAMINER BROOKS: He is so qualified.

2 Q. (By Mr. Kellahin) Let me have you take Exhibit
3 Number 1, Mr. Lehrman. Before we discuss the details,
4 would you identify for me what Exhibit 1 is?

5 A. It's a map showing the existing wells in that
6 particular area, that nine-section area around Section 14,
7 29-14.

8 Q. When we focus on Section 14, does it depict the
9 approximate location of the San Juan River? Can you see
10 that displayed in that section?

11 A. Yes.

12 Q. What's the orientation of the display as to the
13 river in relation to this section?

14 A. The river is located in the north half of Section
15 14.

16 Q. Was this document prepared by Richardson using
17 public available information?

18 A. Yes.

19 Q. The wellspots shown on here, what do they
20 describe for us, Mr. Lehrman?

21 A. They show the existing approved well locations in
22 Section 14.

23 Q. Let's take a moment and set Exhibit 1 aside and
24 have you identify for us Exhibit Number 2.

25 A. Okay, it's a plat showing the proposed spacing

1 units for the Fruitland Coal and the West Kutz-Pictured
2 Cliffs well in the northeast quarter of Section 14, with
3 our depiction of the unleased mineral interests, the
4 location of the well and the percentages we currently hold
5 and the percentages to be force pooled.

6 Q. There's a well spot that's identified as the
7 Navajo 14-2. What does that signify?

8 A. That's the approved Navajo 14-2 location, 1948
9 feet from the north line and 1037 from the east line,
10 within Section 14.

11 Q. Is the east half of the section subdivided in any
12 way?

13 A. Yes, I believe there are some lots in the
14 northeast quarter. I believe the southeast quarter is
15 aliquot 40s.

16 Q. Okay, let's deal with the property south of what
17 is shown as the San Juan River.

18 A. Okay.

19 Q. What kind of lands are those?

20 A. Those are owned by the Navajo tribe, surface and
21 minerals.

22 Q. How have you gone about acquiring knowledge about
23 the ownership in the east half of the section?

24 A. Well, we use available BLM records, county
25 records, records available to us in Window Rock, Arizona,

1 at the Navajo tribal offices.

2 Q. Have you been involved in that process for this
3 spacing unit?

4 A. I have not been involved in the Navajo part of
5 it. I've done some research at the county and BLM levels.

6 Q. Okay. Can you describe for us who are the
7 interest owners in what is identified as Lot 1?

8 A. There are two mineral owners, one of which is
9 Mary Fischer. The other undivided 50-percent mineral owner
10 is a lady in Farmington by the name of Twyla Gooding, and
11 she's currently leased to Dugan Production Corporation in
12 Farmington.

13 Q. What's the status of the commitment of Dugan's
14 percentage in Tract I to your project?

15 A. Well, they've committed their interest to the
16 well via contracts with Richardson.

17 Q. How has the balance of the interest, excluding
18 Ms. Fischer, for the spacing unit been consolidated? Are
19 those by lease or by agreement or what? Within the east
20 half of the section, how were you able to gain control of
21 operations for the Navajo lands?

22 A. Oh, I believe we obtained that via agreement with
23 another party. I believe it's a farmout.

24 Q. So the only interest at this point is Ms.
25 Fischer's interest?

1 A. That's correct.

2 Q. Show me how you run through the bottom of the
3 exhibit to get, first of all, the tabulation of acreage in
4 each of the two spacing units, the one for the PC and the
5 one for the coal.

6 A. The calculations were arrived based on a recent
7 BLM survey. We came up with 166.47 acres in the northeast
8 for the PC and 326.47 for east half Fruitland Coal, and the
9 percentages depict our holdings versus the holdings of Ms.
10 Fischer, which are unleased at this point, and we're trying
11 to force pool based on the spacing unit, be ten percent, a
12 little over ten percent in the northeast, and five percent
13 in the east half.

14 Q. You testified that the calculation is based upon
15 a BLM survey.

16 A. That's correct.

17 Q. Can you give us the date or the reference to that
18 survey?

19 A. I believe it was done in 2001.

20 Q. Do you have a copy of that survey?

21 A. I do, it's back there.

22 Q. Would you identify what I've shown you as a
23 recorded plat? What is that?

24 A. It's a survey plat of the north half of Section
25 14 we obtained from the BLM.

1 Q. And what's the date of the plat?

2 A. 2-14-01, February 14th, 2001.

3 Q. February 14th of --

4 A. -- 2001.

5 Q. -- last year.

6 MR. KELLAHIN: Mr. Examiner, with your
7 permission, Mr. Lehrman brought this this morning, and I
8 didn't have a chance to copy it on this scale. If you'll
9 allow me after the hearing to withdraw this, I'll make a
10 full-size copy for all the participants. At this point I
11 have only copies of the reduced portion that shows the
12 outline.

13 EXAMINER BROOKS: Okay, that will be acceptable.

14 MR. KELLAHIN: I'm going to give Mr. Lehrman a
15 reduced copy and show the Examiner the full-size --

16 EXAMINER BROOKS: Okay.

17 MR. KELLAHIN: -- exhibit. And with your
18 permission, Mr. Examiner, we will label this as Applicant
19 Exhibit Number 2-A.

20 Q. (By Mr. Kellahin) Mr. Lehrman, where did you
21 obtain the BLM survey?

22 A. At the BLM office in Farmington, New Mexico.

23 Q. Is this the survey that you're utilizing for the
24 spacing unit?

25 A. Yes.

1 Q. Is this the survey that you utilized in order to
2 come up with the acreage for the northeast quarter as well
3 as the east half of the section?

4 A. We used the survey, and we also used the
5 Compensatory Royalty Agreement that we have approved with
6 the BLM.

7 Q. Describe for me what the Compensatory Royalty
8 Agreement is that you just referred to. What is that?

9 A. It's an agreement between the operator and the
10 Bureau of Land Management on acreage that's basically
11 unleased in a spacing unit and is unleaseable, and it's -- I
12 have a copy.

13 Basically, you make a deal with the government to
14 pool their small little pieces into that pooled unit for a
15 certain price. And the reason they do that is because they
16 have so many other larger parcels that go up on a normal
17 basis, these come up from time to time, and it's just
18 easier for them to do these agreements with the company
19 that's actually drilling the well versus putting it out on
20 the open market.

21 MR. HORNER: Are we going to introduce the
22 document as an exhibit?

23 MR. KELLAHIN: No, not at this point.

24 Mr. Brooks, let me have Mr. Lehrman explain to
25 you the east half of the section.

1 EXAMINER BROOKS: Okay.

2 Q. (By Mr. Kellahin) When you search the
3 descriptions for the east half of the Section 14, you have
4 used the identification Lot 1. What does Lot 1 mean?

5 A. Lot -- As far as Exhibit Number 2 or --

6 Q. Uh-huh.

7 A. -- just in general?

8 Q. Yeah.

9 A. It's just a description of a tract of land that
10 was at one time surveyed and then conveyed to separate
11 parties, the surface of which is now owned by Ms. Fischer.

12 Q. Let's go back. Have you searched the Fischer
13 chain of title --

14 A. Yes.

15 Q. -- back to see if you can describe for us the
16 description that was used by which she acquired her
17 interest?

18 A. Yes.

19 Q. What is that description?

20 A. Lot 1.

21 Q. Does it give you a metes and bounds description
22 for Lot 1 in the conveyance document?

23 A. No, it does not.

24 Q. Does it refer to a recorded plat as a reference
25 item for Lot 1?

1 A. Not to my recollection, it does not.

2 Q. When the BLM refers to Lot 1, are they referring
3 to the same lot that Mrs. Fischer has a 50-percent interest
4 in?

5 A. Yes, I believe they are.

6 Q. And how does the BLM currently describe the total
7 acreage in Lot 1?

8 A. They took the adjusted calculations for the
9 meander of the San Juan River and adjusted it accordingly,
10 based on their survey of their lots.

11 Q. When you run through the calculation, what
12 percentage or what net-acre interest does Ms. Fischer have
13 in Lot 1?

14 A. I believe it was 35 --

15 Q. -- and change?

16 A. Yeah, 35 acres.

17 Q. And that's what you're proposing to utilize in
18 terms of the allocation --

19 A. That's correct.

20 Q. -- of interest --

21 A. That's on a gross basis.

22 Q. All right, sir. Are you using the allocation
23 calculations for Ms. Fischer's interest based upon how the
24 BLM survey relates to her tract?

25 A. Yes.

1 Q. So the interior subdivision of the spacing unit
2 is based upon how the BLM relates their property to her
3 property?

4 A. Well, if I can elaborate just from what I know
5 about surveying, you know, when you survey a certain lot or
6 whatever within a section, you're going to have to break
7 down the section and survey the whole section, which is
8 what they appeared to do.

9 MR. HORNER: Objection, your Honor, motion to
10 strike. He's not been qualified as a surveyor.

11 EXAMINER BROOKS: We'll take that --

12 THE WITNESS: I'm just --

13 EXAMINER BROOKS: We'll take that into
14 consideration, the subject of that. I'll overrule the
15 objection.

16 Go ahead.

17 Q. (By Mr. Kellahin) Explain.

18 A. I am not a qualified surveyor, I'll say that.
19 But I know enough about surveying that, you know, that's
20 what they would have to do to arrive at these figures for
21 these lots.

22 Q. So that's how it was represented to you?

23 A. Yes, that's correct. I talked to the BLM
24 cadastral surveyor in Farmington about this on Tuesday.

25 Q. Did he supply you with the map that you're

1 utilizing for purposes of --

2 A. Yes, he did.

3 Q. -- this hearing?

4 A. Yes, he did.

5 Q. Let me have you refer to Exhibit 3. Identify
6 that document for us, Mr. Lehrman.

7 A. It's a list of the unleased mineral owners --

8 EXAMINER BROOKS: I'm sorry, I'm having trouble
9 finding --

10 MR. KELLAHIN: I'm sorry --

11 EXAMINER BROOKS: -- the exhibit, hold on a
12 minute. I hid it from myself. Okay, yeah, you may
13 continue.

14 THE WITNESS: It's a list of the unleased mineral
15 owners, the nature and percent of Mrs. Fischer's interest
16 in the proposed spacing unit, both the northeast Pictured
17 Cliffs and the east half Fruitland Coal, with her net
18 unleased acreage and the percent in that spacing unit.

19 Q. (By Mr. Kellahin) And again, this calculation is
20 based upon the BLM survey that you were provided with?

21 A. That's correct.

22 Q. Let's turn to see what Richardson's files reflect
23 concerning contacts with Ms. Richardson about her interest.
24 Have you reviewed those documents?

25 A. Yes, I have.

1 Q. Based upon that review, what is the first
2 document you find in their file that reflects a proposal of
3 this well to Ms. Fischer?

4 A. There was a letter dated 6-26-01 with the
5 proposal to Ms. Fischer for the proposed well.

6 Q. It's marked as Exhibit 4?

7 A. That's correct.

8 Q. Is this a correct and accurate copy of that
9 original?

10 A. Yes, it is.

11 Q. Behind the letter is a spreadsheet with numbers.
12 What's that?

13 A. It's an authority for expenditure, outlining the
14 costs involved in the proposed well.

15 Q. And behind that, what's the next page?

16 A. It's a copy of the return receipt card that would
17 be attached to the proposal sent to Ms. Fischer.

18 Q. To the best of your knowledge, is this the first
19 written correspondence to Ms. Fischer in which a well is
20 proposed and an AFE has been submitted?

21 A. Yes.

22 Q. Was she advised at that time that this well was
23 to be a dual completion with the Pictured Cliff and the --

24 A. That's the first paragraph, yes, it's supposed to
25 be a dual well.

1 Q. Was she advised of what Richardson believed to be
2 her net interest?

3 A. Yes, that's correct.

4 Q. And was she afforded the opportunity to review an
5 operating agreement?

6 A. Yes.

7 Q. And she was given estimates of well cost and well
8 charges?

9 A. Yes.

10 Q. Does the file reflect any response from Ms.
11 Fischer?

12 A. There's a notation on the right-hand bottom
13 corner that says "no to participate". I am speculating,
14 but I believe that was done by Cathleen Colby, who was the
15 land manager at the time.

16 MR. HORNER: Objection, your Honor.

17 EXAMINER BROOKS: Well, if you don't know -- If
18 you recognize the writing, you can so state. If you don't
19 know, well, just tell me you don't know.

20 THE WITNESS: Okay. Well, like I said, I
21 qualified, I'm just speculating.

22 MR. KELLAHIN: You don't know?

23 THE WITNESS: Somebody wrote this on there that
24 spoke with her.

25 EXAMINER BROOKS: Yeah. Well, don't speculate.

1 THE WITNESS: Okay.

2 Q. (By Mr. Kellahin) The next correspondence in the
3 file after June 26th is what, Mr. Lehrman?

4 A. It's dated November 16th of 2001.

5 Q. Do you have any indication in the file chronology
6 that between June and November there were any other
7 correspondence from Richardson or Ms. Fischer back to
8 Richardson on this topic?

9 A. Not to my knowledge.

10 Q. The November 17th letter of '01 is Exhibit 5?

11 A. That is correct.

12 Q. What is being proposed to Ms. Fischer in this
13 letter?

14 A. It's basically the same proposal as the first
15 letter.

16 EXAMINER BROOKS: Now, you said November 17th.
17 It appears to be dated November 16th.

18 MR. KELLAHIN: I'm sorry, I misspoke.

19 EXAMINER BROOKS: Go ahead.

20 MR. KELLAHIN: November 16th.

21 Q. (By Mr. Kellahin) Since then, have you had
22 direct contact with Ms. Fischer?

23 A. In the past week, yes, I have.

24 Q. Before Monday of this week, had you had any
25 contact with her?

1 A. No.

2 Q. How often did you meet with her this week?

3 A. I believe we met with her twice, and Gary had
4 come by once in the office to pick up some maps and stuff
5 that he had asked for.

6 Q. You're referring to Mr. Horner?

7 A. Yes, that's correct.

8 Q. All right. When was the last meeting with either
9 Mr. Horner or Ms. Fischer?

10 A. Yesterday.

11 Q. Yesterday when?

12 A. Oh, early afternoon.

13 Q. What was the topic of discussion?

14 A. They had come back with a counterproposal to our
15 offer of -- I believe it was Tuesday.

16 Q. All right, let me have you tell the Examiner what
17 Richardson had offered for a voluntary agreement of Ms.
18 Fischer's interest. What was offered to her?

19 A. We had offered her -- The specific dollar amounts
20 and everything?

21 Q. As best you can recall, at least the topics.

22 A. Well, we had discussed the whole issues involved,
23 one of which was, they were not sure of their mineral
24 interests and asked us to provide them documentation for
25 their 50-percent interest, which we did, and also some of

1 these maps, we provided those too. And we countered with a
2 \$100-an-acre bonus and an eighth royalty for an oil and gas
3 lease.

4 Q. Let me ask you this in terms of topics. Did you
5 offer her a proposal by which she would lease her interest
6 to you?

7 A. Yes, that was a proposal for a lease.

8 Q. Did you afford her the opportunity to participate
9 by paying her share?

10 A. Yes, that's always been on the table.

11 Q. Did she accept those terms?

12 A. No.

13 Q. What did she counter with?

14 A. Yesterday at our meeting, she countered -- and
15 Mr. Horner was in that meeting too. Basically, she wanted
16 to be carried on the well, her net interest, free and
17 clear, with an additional 1/6 royalty on top of that. And
18 we declined that counteroffer.

19 Q. Let me see if I understand the proposal. If you
20 look at Exhibit 3, if you look at the northeast quarter,
21 her acreage is the 17-plus acres?

22 A. That's correct.

23 Q. Those are net acres?

24 A. Yes.

25 Q. Her percentage in the spacing unit would be ten

1 percent?

2 A. That's correct, for the PC.

3 Q. For the PC. Was her proposal one where she would
4 carve out her royalty from her gross working interest
5 ownership, or was it in addition to --

6 A. My recollection is, it was in addition to. It
7 was kind of an unusual counteroffer but -- one that's not
8 normally done, so we declined.

9 Q. Did you accept her counteroffer whereby you would
10 carry her share of the working interest and recover that
11 share out of future production?

12 A. We didn't discuss that.

13 Q. What was discussed about carrying her interest?

14 A. We just declined that.

15 Q. As of this morning you're not in agreement with
16 Ms. Fischer about how to voluntarily commit her interest to
17 the well?

18 A. That's correct.

19 Q. Do you have a recommendation to the Examiner for
20 proposed overhead rates for completing the drilling and
21 completion of the well and for a monthly supervision cost?

22 A. Yes, those are on Exhibit Number 6.

23 Q. Identify for Mr. Brooks what your proposed
24 numbers are.

25 A. \$5000 for the drilling well rate and \$500 for the

1 producing well rate.

2 Q. Are these rates consistent with those rates for
3 which other interest owners in your wells have agreed to?

4 A. Yes.

5 Q. Are they consistent with the rates the Division
6 has awarded you in recent compulsory pooling orders?

7 A. Yes.

8 Q. And it's what you propose to utilize in this
9 case?

10 A. That's correct.

11 Q. Are you familiar with the Ernst and Young
12 overhead schedules?

13 A. Yes.

14 Q. We've got a copy of this marked as Exhibit 7.
15 Are you within the average and mean for depths of wells at
16 this interval, based upon their survey?

17 A. Yes.

18 MR. KELLAHIN: Mr. Brooks, that concludes my
19 examination of Mr. Lehrman. We move the introduction of
20 Exhibits 1 through 7, plus Exhibit 2-A.

21 MR. HORNER: Your Honor, there could be an awful
22 lot of objections here. There's a good case in hearsay
23 with regard to just about all of these things.

24 Exhibits 1 through 3, we have never seen before,
25 as opposed to being discussed in any kind of negotiations.

1 The map that they're proposing to use is --
2 again, could be objected to, hearsay, authentication
3 grounds. It's a supplemental map to a map to a survey that
4 was done in 1999, and I would suppose if we could also
5 admit the supplemental map from 1999 that I would not
6 object to that map.

7 Basically, most of this information I think I can
8 go ahead and not object to and allow to come in, being able
9 to use, with the exception that I would like to be able to
10 have admitted the original survey plat from 1999 that this
11 one that they are submitting now is a supplement to.

12 EXAMINER BROOKS: Well, I wouldn't anticipate
13 there would be any difficulty with admitting a public
14 record survey plat.

15 MR. KELLAHIN: I have a copy that Mr. Lehrman
16 brought this morning. I don't have extra copies, but I'm
17 happy to submit it now and mark it, and then we can
18 duplicate it and share it among ourselves.

19 EXAMINER BROOKS: Yeah, I assume Mr. Horner was
20 going to tender -- Are you going to tender something in
21 evidence?

22 MR. HORNER: I have a copy of the 1999 survey
23 plat.

24 EXAMINER BROOKS: Yeah.

25 MR. HORNER: Of course, I don't have it certified

1 either --

2 EXAMINER BROOKS: Okay, well --

3 MR. HORNER: -- and therefore, if we can reach an
4 agreement that both of them can be admitted as they are,
5 that would be fine.

6 MR. KELLAHIN: I have no objection.

7 EXAMINER BROOKS: We don't preserve the niceties
8 of the rules of evidence too closely in administrative
9 hearings as a rule, so things like technicalities of
10 certifications and seals, et cetera, are often passed over.

11 I will admit Exhibits 1 through 7 with the
12 understanding that Mr. Horner can submit a copy of the 1999
13 survey as an exhibit, or Mr. Kellahin can, and if there's
14 any controversy about authenticity, that should be brought
15 to our attention later, but we'll assume there is none
16 unless --

17 MR. KELLAHIN: This is the one I want. Let me
18 show Mr. Horner what I think is the map he was referring
19 to. Is this the one?

20 MR. HORNER: This is Dependent Resurvey, 1999.
21 That's right.

22 MR. KELLAHIN: We'd like to mark this as Exhibit
23 2-B.

24 EXAMINER BROOKS: Okay.

25 MR. KELLAHIN: Again, Mr. Examiner, if you'll

1 allow me after the hearing to temporarily withdraw those
2 two exhibits, we'll make hard copies for everybody.

3 EXAMINER BROOKS: That will be acceptable.

4 MR. HORNER: We could leave those copies, too,
5 Tom. I can get another one in Farmington, if you want to
6 do that. That way it won't be all taped up and --

7 EXAMINER BROOKS: Are you passing the witness?

8 MR. KELLAHIN: Yes, sir.

9 EXAMINER BROOKS: Mr. Horner?

10 CROSS-EXAMINATION

11 BY MR. HORNER:

12 Q. Yes, Mr. Lehrman, okay, Exhibits Number 1, 2 and
13 3, you have not shown either -- or any of those exhibits to
14 either myself or Ms. Fischer before, have you?

15 A. No.

16 Q. And did you prepare these maps on Exhibit Number
17 1 and Number 2?

18 A. With -- Ann Jones prepared them in our office. I
19 was involved in it too.

20 Q. Okay. Now then, in none of these Exhibits 1
21 through 3 is there any indication of Ms. Fischer's
22 interests relative to the total pool. And I notice in the
23 Application that has been filed with the OCD in this
24 matter, there also is no indication of Ms. Fischer's total
25 interest to the total pool. It's basically a pooling plan;

1 is that correct?

2 A. Well, Exhibit Number 2 does depict that at the
3 bottom, with the acreage in each spacing unit with her net
4 acreage.

5 Q. Okay, it doesn't show her acreage, does it?

6 A. Well, she's the only unleased mineral owner in
7 this pool, so her -- It says "Unleased mineral interest to
8 be force pooled", is Ms. Fischer in Exhibit Number 2.

9 Q. But it doesn't show her net acreage?

10 A. But it does at the top in the very corner, it
11 says 17.755.

12 Q. On Exhibit 2?

13 A. Yes.

14 Q. Oh, there it is.

15 A. Up in the right-hand corner.

16 Q. All right. Now, the 17.755, where did you get
17 that number?

18 A. It's basically half of the acreage that we feel
19 is encompassed by Lot 1.

20 Q. And why do you feel that it's encompassed -- that
21 that's the case?

22 A. Well, we took the numbers that we arrived from
23 the surveys and the royalty agreement with the BLM and
24 split it in half, because she has an undivided 50-percent
25 interest in that tract.

1 MR. HORNER: I haven't had an opportunity to mark
2 these. If I could -- as exhibits. If I could maybe mark
3 the top one as Exhibit A as I go and everybody could mark
4 it accordingly?

5 EXAMINER BROOKS: Okay.

6 Q. (By Mr. Horner) I have marked for identification
7 as Fischer Exhibit A a warranty deed. Would you tell us
8 who that warranty deed is from and to?

9 A. The warranty deed is from Norman A. King and
10 Rilla E. King, his wife, to O.G. Fischer and Elizabeth
11 Fischer, his wife, as joint tenants.

12 Q. And have you seen this deed before?

13 A. Yes, I have.

14 Q. Okay. And in this deed is there an indication of
15 how much land was deeded to the Fischers at this time?
16 What is the date on the deed?

17 A. 2-24-65, it looks like.

18 Q. Okay, and is there an indication of how much land
19 was deeded to the Fischers at that point?

20 A. Are you talking about Lot 1, specifically?

21 Q. I'm talking about the total amount of acreage.

22 A. I don't see a grand total. I see a total for
23 whatever's in Section 11, and I see a total for Lot 11.

24 Q. Okay, what do you see?

25 A. It says Section 11 contains 6.12 acres, more or

1 less, and also all of Lot 1 containing 45.47 acres, more or
2 less.

3 Q. Okay. Now, you have reviewed the chain of title
4 in this particular case with regard to this property?

5 A. Yes, I have.

6 Q. And in fact, this description that you're looking
7 at here and these acreages are consistent throughout the
8 chain of title, correct?

9 A. I'm sorry, could you repeat the question?

10 Q. Okay, throughout the chain of title the deed from
11 the Kings to the Fischers, from the Fischers to Dome, from
12 Dome to Mary Fischer, this legal description and these
13 acreages are consistent, are they not?

14 A. I believe they are.

15 Q. Okay. So consistently through the chain of
16 title, you're seeing Lot 1 in Section 14, Township 29,
17 Range 14 West, containing 45.47 acres, correct?

18 A. That's correct.

19 Q. And somehow you have decided, then, to use a
20 different number for the acreage with regard to this
21 property; is that correct?

22 A. That's correct.

23 Q. Now, let's look at how you came up with your
24 different acreage. So now, how did you come up with your
25 different acreage?

1 A. We used the recent BLM survey that was done in
2 2000, 2001, as certified.

3 Q. And how did you do that?

4 A. You mean me personally?

5 Q. How did you arrive at your new numbers?

6 A. We came up with the calculations based on the
7 survey.

8 Q. How did you go about doing that? I mean, you
9 look at Lot Number 1 on a document you have shown as
10 Exhibit 2-A, and there is no acreage listed.

11 A. That's correct.

12 Q. So how did you come up with an acreage for Lot 1?

13 A. We used the survey plat.

14 Q. Well, there is no acreage listed as Lot 1, for
15 Lot 1.

16 A. That's correct, there's not.

17 Q. Then how did you come up with an acreage?

18 A. We used the calculations on the survey plat.

19 Q. What calculations on the survey plat?

20 A. Well, there's calculations as far as the other
21 lots, what some of the accreted acreage was...

22 Q. Could you -- You're not explaining how you
23 arrived at whatever numbers you used, rather than 45.47
24 acres, which is --

25 MR. KELLAHIN: Mr. Examiner, it might help -- We

1 have a copy of this exhibit that's got the calculations
2 done on it. If that will help everybody, we can get this
3 duplicated.

4 EXAMINER BROOKS: Were these the calculations
5 that the witness made?

6 MR. KELLAHIN: I think they --

7 THE WITNESS: No, they were calculations that
8 were made by the BLM.

9 EXAMINER BROOKS: Okay. Well, I'll let -- Mr.
10 Horner has got the witness now, so he can decide whether he
11 wants to let the witness refer to additional materials or
12 not for the purposes of his examination, and then I'll make
13 the decision for purposes of my examination.

14 Q. (By Mr. Horner) Okay. Well, in fact, it says
15 for Lot 1 -- It lists no acreage at all, does it?

16 A. No, it does not.

17 Q. Okay. And on the map -- I don't know if you have
18 it in front of you. You'd better get it in front of you,
19 the 1999 survey, the Dependent Resurvey and Subdivision of
20 Section that has now been introduced as Applicant's Exhibit
21 Number 2-B, I believe.

22 MR. KELLAHIN: And what's the date of that one,
23 Mr. Horner?

24 MR. HORNER: It's September 29th, 1999.

25 MR. KELLAHIN: Okay.

1 MR. HORNER: Okay, let me give you my copy -- If
2 I may approach the witness?

3 EXAMINER BROOKS: You may.

4 Q. (By Mr. Horner) For the record, would you
5 identify what you're looking at here?

6 A. It's a survey of Section 14, 29 North, 14 West,
7 San Juan County, New Mexico, Dependent Survey and
8 Subdivision of Section.

9 Q. That would be Dependent Resurvey and Subdivision
10 of Section?

11 A. Right.

12 Q. Okay. So we're looking at Section 14. This is
13 the section of interest here. Do you find a Lot 1 on that
14 map?

15 A. Yes.

16 Q. Okay. On Lot 1, is there indicated any acreage
17 for Lot 1?

18 A. No.

19 Q. How about Lot 9? Is there -- Do you find Lot 9,
20 immediately to the left --

21 A. Yes.

22 Q. -- to the west?

23 Okay, is there an acreage indicated there?

24 A. I'm assuming this is the acreage, 23.41.

25 Q. Okay, and do you find a Lot 15?

1 A. Yes.

2 Q. Okay, what is the acreage indicated there?

3 A. 14.27.

4 Q. Okay. And do you see two lines indicating
5 meanders for the San Juan River?

6 A. Yes.

7 Q. And so in the east half of the northeast quarter
8 of Section 14, between those two meander lines, do you see
9 any indication of acreage?

10 A. I'm not really sure I'm following what your
11 question is.

12 Q. Okay, between the two meander lines --

13 A. Okay.

14 Q. -- in the east half of the northeast quarter of
15 Section 14, do you see any indication of acreage?

16 A. No.

17 Q. Do you see any indication of the lot number?

18 A. You mean right here?

19 Q. Right, in between the two meander lines?

20 A. No.

21 Q. Okay. On the right side of the plat there is
22 some indications of why this plat was prepared. Would you
23 please read that into the record?

24 A. This?

25 Q. Right.

1 A. It says, A history of surveys and additional
2 information are contained in the field notes. This plat
3 represents the dependent resurvey of a portion of the
4 subdivisional lines and the adjusted record meanders of the
5 1881 right and left banks of the San Juan River, designed
6 to restore the corners in their true original locations,
7 according to the best available evidence, and the
8 subdivision of Section 14, 29-14, NMPM New Mexico. Except
9 as indicated hereon, the lottings and areas are as shown on
10 the plat, approved 8-31-1882.

11 Q. Okay, that's what I'm now interested in. That
12 indicates that except as indicated hereon, the lottings and
13 areas are as shown on the plat, approved August 31, 1882.
14 So that's indicating where -- such as Lot 1, where there is
15 no indication that the acreage has changed, there is no
16 contention whatsoever by this survey to change that
17 acreage; isn't that correct?

18 A. It says, Except as indicated hereon, the lottings
19 and areas are as shown on the plat, approved 8-31-1882.

20 Q. Okay. And is there any indication in Lot 1 that
21 that acreage has been changed?

22 A. No.

23 Q. All right. And is there any indication between
24 the two meander lines below Lot 1 that that acreage has
25 changed?

1 A. No, not on this plat.

2 Q. Okay. But yet you decided to change the acreage
3 of Lot 1?

4 MR. KELLAHIN: I'll object, that's a
5 mischaracterization of the witness's testimony. He said
6 the BLM had changed this, not he.

7 EXAMINER BROOKS: Well, it's also argumentative.
8 I'll sustain the objection.

9 MR. HORNER: I mean, to any extent that the BLM
10 has stated this, I object on hearsay grounds, because the
11 BLM has not stated that.

12 THE WITNESS: Well --

13 MR. HORNER: This is the plat --

14 THE WITNESS: -- yeah, but you have to
15 understand, this is --

16 EXAMINER BROOKS: Okay, please, please -- I
17 sustained the objection to the question as asked, so
18 there's no question before you to answer at this point.

19 You may rephrase the question if you wish to.

20 Q. (By Mr. Horner) Okay. In fact, there is no
21 indication on this map prepared by the BLM that they had
22 any indication or any intention of changing the acreage in
23 Lot 1 pursuant to this survey; is that correct?

24 A. I don't think I'm qualified to answer that
25 question.

1 Q. Well, you felt yourself qualified on your own to
2 change the acreage of Lot 1, did you not?

3 A. Well, but you have to understand, Mr. Horner,
4 that this plat and the supplemental sort of go together,
5 along with the calculations beyond what's on this plat.

6 Q. Okay, on this plat and the supplemental plat, can
7 you find where the BLM has attempted to change the acreage
8 of Lot 1?

9 A. I can show you the calculations on that
10 supplemental plat.

11 Q. The BLM did not do those calculations on the
12 supplemental plat, did they?

13 A. Yes, they did.

14 Q. Well, not where they came up with the acreage for
15 Lot 1?

16 A. I didn't do those, Don Brewer did those.

17 Q. There's a copy of your supplemental plat. Where
18 does it indicate on your supplemental plat an acreage for
19 Lot 1 anywhere in the neighborhood of 33 acres?

20 A. I believe the calculations are on that one map
21 that we have over here. I don't know where it is now, I'm
22 confused. But the calculations on that plat were done by
23 the cadastral surveyors of the BLM, they were not done by
24 me. Those numbers are calculations that the BLM did.

25 Q. Do you see any indication on that map of an

1 acreage for Lot 1?

2 A. No, you've asked that question before, there's no
3 indication of any lot size. But that doesn't preclude the
4 fact that there may be a lot size for that lot, just
5 because it doesn't show up on the map.

6 Q. Well, in fact, this dependent resurvey, the
7 Exhibit 2-B, indicates that except as indicated hereon, the
8 lotting and the areas are as shown on the plat -- something
9 -- of August 31, 1882. So those acreages have not changed
10 specifically, pursuant to what is written on this plat,
11 correct?

12 A. I've given my testimony, there's no lot acreages,
13 you know, for this particular lot except on the additional
14 supplemental plat, those calculations that were done by the
15 BLM.

16 Q. Well, on the supplemental plat also, there is no
17 indication of an acreage --

18 A. That's --

19 MR. KELLAHIN: Objection, Mr. Examiner. Mr.
20 Horner has asked the same question three times. His answer
21 is, they're not calculated on the plat.

22 EXAMINER BROOKS: I'll sustain the objection.

23 MR. KELLAHIN: What more does he want?

24 MR. HORNER: I haven't got that answer yet, but
25 that's fine. Thank you very much.

1 MR. KELLAHIN: Well, take it with you.

2 Q. (By Mr. Horner) Now then, it is clear from your
3 searches so far that in fact Mary Fischer owns the entire
4 surface of Lot 1; is that correct?

5 A. That appears to be correct.

6 Q. And that somewhere along the line, apparently
7 half of the minerals were deeded to somebody else?

8 A. That's correct.

9 Q. Okay. I have here a document I've marked as
10 Fischer Exhibit B, and again I haven't marked yours as
11 Exhibit B, but if you want to...

12 And what's the title of this document?

13 A. Compensatory Royalty Agreement.

14 Q. And who is this agreement between?

15 A. It's between the United States of America and
16 Richardson Production Company.

17 Q. Now, is this the document that you were talking
18 about earlier?

19 A. Yes, it is.

20 Q. Okay. Now then, attached to this document is an
21 Exhibit "A"; is that correct?

22 A. That's correct.

23 Q. And Exhibit "A" shows a Tract I, Lot 1, and what
24 is the acreage under that?

25 A. 33.14.

1 Q. And is that intended to be Lot 1, the lot that is
2 owned by Ms. Fischer?

3 A. I would say yes.

4 Q. And what is the source of this Exhibit "A", do
5 you know?

6 A. You mean the source of the information?

7 Q. Yes, who prepared Exhibit "A"?

8 A. Bureau of Land Management.

9 Q. Now then, what is the point of this document?

10 A. What is the point?

11 Q. Yes, what is going on in this document? Why was
12 this agreement made?

13 A. There was a small tract of BLM land that was
14 unleased and unleaseable, and it's the kind of agreement
15 that's done on a regular basis between proposed operators
16 and the BLM to basically pool that small acreage, proposed
17 spacing unit, without going through the hassle of leasing
18 it and all that kind of stuff.

19 Q. Okay, so the tract of land that we're here
20 talking about is actually 2.24 acres, is it not?

21 A. That's correct.

22 Q. So this entire agreement is about a piece of land
23 of 2.24 acres. On your supplemental plat, marked as
24 Applicant's Exhibit 2-A, can you find the 2.24 acres that
25 is the subject of this agreement?

1 A. Yeah, it's in the northwest of the northeast of
2 Section 14.

3 Q. Okay, and could you -- In fact, it is the land
4 lying between their newly revised median line of the San
5 Juan River and their newly determined north boundary of the
6 San Juan River, is it not, in the west half of the
7 northeast quarter?

8 A. Say that again?

9 Q. Okay, it is the piece of property that lies north
10 of the median line and south of the north bank of the San
11 Juan River, correct?

12 A. Yeah, that appears to be correct.

13 Q. Okay. And just that portion in the west half of
14 the northeast quarter of Section 14?

15 A. Say that again? In the where?

16 Q. In the west half of the northeast quarter?

17 A. Okay. Yeah, northwest northeast, yeah, okay.

18 Q. Okay. Now, in fact, then, this Lot 1 is shown
19 over here in the east half of the northeast quarter, so
20 this 2.24 acres has nothing to do with Lot 1 or Ms.
21 Fischer's property at all, does it?

22 A. No.

23 Q. So the compensatory agreement here that we're
24 talking about, Compensatory Royalty Agreement, has nothing
25 to do with Ms. Fischer's property?

1 A. No.

2 Q. And so somehow, though, there's an Exhibit "A"
3 attached hereto that has some sort of indication of 33.14
4 acres for Lot 1 that somehow got picked up by yourself or
5 somebody to be used as her acreage; is that correct?

6 A. Yeah, that's a good assumption. I didn't prepare
7 the exhibit, so -- It was prepared by the BLM.

8 Q. Well, but the documents that you've sent to her,
9 or that have been sent to her, indicating that Lot 1 was
10 33.14 acres came from this document, did they not?

11 A. We got our figures from the 33.14 plus the 2.37.
12 I believe that comes up to the 35-plus acres, plus the 50
13 percent would equal the 17.55 which is depicted on the
14 earlier exhibits.

15 Q. 33-point -- What was it? What was your other
16 number you added in there? 33.14 plus what?

17 A. 2.37, which would be to the mid-channel of the
18 river.

19 Q. Where do you get that number, 2.37?

20 A. On Tract Number II, north of the mid-channel of
21 the San Juan River, within the east half of the northeast.

22 Q. Okay, this is off of Exhibit A?

23 A. That's correct.

24 Q. Okay, and so now that would give you 35.51 acres
25 or something like that?

1 A. Yeah, I think that's right.

2 Q. Okay. On Applicant's Exhibit Number 4, attached
3 to Applicant's Exhibit Number 4 is an authority for
4 expenditure, correct?

5 A. Okay.

6 Q. Commonly referred to as an AFE?

7 A. Okay.

8 Q. And at the bottom of this AFE are some calculated
9 costs, total cost for the well and costs associated with
10 each formation, for Ms. Fischer; is that correct?

11 A. That's correct.

12 Q. And -- Now, isn't it normally the case that when
13 you submit somebody an authority for expenditure that
14 you're looking for some sort of up-front cost participation
15 in a well?

16 A. Well, we're giving an owner several options,
17 based on the certified letter. I mean, we have to give all
18 the options, option to lease, option to sell their
19 minerals, option to participate in the well.

20 Q. Okay. But by this document and the cover letter
21 that goes with it, you are giving Ms. Fischer an option to
22 participate by contributing these funds indicated here, up
23 front in the participation of the well; is that correct?

24 A. That's correct.

25 Q. Okay. Now then, I would refer you to the front

1 page of this document.

2 A. Okay.

3 Q. Okay, would you please read paragraph 2?

4 A. "Enclosed for your review is an AFE itemizing the
5 estimated costs for the well. In the event you wish to
6 participate in this drilling and completion attempt, please
7 return an executed copy of the AFE to the undersigned by
8 July 17, 2001. Upon receipt of your executed AFE, or by
9 prior written request, we will forward an AAPL Form 610
10 Joint Operating Agreement for your review and execution,
11 providing for, among other things, a 300%/100% nonconsent
12 penalty and \$5000...\$500...overhead rates."

13 Q. Okay. And so what you have offered to her, then,
14 is the option of participating in this well by paying up
15 front these particular costs, at which time you said upon
16 receipt of her signed indication that -- of her executed
17 AFE, you will forward her another form for her review and
18 execution providing for, among other things, a 300-percent/
19 100-percent nonconsent penalty.

20 Is that fair, in your mind, where somebody agrees
21 to participate up front and you charge them a 300-percent/
22 100-percent nonconsent penalty?

23 A. There are certain terms that are commensurate in
24 the industry, and this is one of them.

25 Q. So when you deal with Dugan Production on this

1 particular well, who has certain leases in this area, and
2 you talk to Dugan Production about participating in this
3 well, and you want them to up-front the cost of the well,
4 or at least pay the costs as the costs are incurred, as the
5 bills are received, do you intend to charge them, or do you
6 charge them a nonconsent penalty of 300/100 percent?

7 A. All I can say, Mr. Horner, these are pretty
8 commensurate terms in the industry. But the operating
9 agreement is a pretty lengthy document, and there's other
10 things that go on in the operation of a well besides just
11 the initial costs. There's reworking, there's other things
12 in the document. You'd have to read the whole operating
13 agreement yourself. These are nonconsent penalties for not
14 participating in certain items after you agree to join in
15 on the well.

16 I don't have an operating agreement with you, but
17 I'd be happy to sit down and explain all that to you. This
18 is just kind of a general paragraph. It doesn't outline
19 every term in the agreement. That would be outlined to her
20 if she wished to participate.

21 Q. But what you have offered her, though, is the
22 ability to participate by paying up front her share of the
23 well, plus another 300 percent, or basically 400 percent of
24 her proportionate share of the cost, in order to
25 participate in this well?

1 MR. KELLAHIN: Objection, Mr. Examiner. Mr.
2 Horner is mischaracterizing the statement in this document.
3 If he knew something about oil and gas, he'd recognize his
4 statement is wrong, his question is wrong.

5 EXAMINER BROOKS: Well, I think that may possibly
6 be the case, but the question is addressed to the witness.
7 The witness is welcome to answer it. I will overrule the
8 objection.

9 THE WITNESS: All I can say is, my answer is,
10 you'd have to look at the complete operating agreement and
11 look at the provisions that are provided for with this
12 300/100-percent nonconsent penalty.

13 Q. (By Mr. Horner) Did you provide her a copy of
14 that agreement, or proposed agreement?

15 A. My understanding is, she never returned the
16 signed AFE.

17 Q. So by reading this document, you can expect Ms.
18 Fischer to expect that what you have offered her is to have
19 to pay, possibly up front, 400 percent of her proportionate
20 share of the cost to drill this well?

21 A. No, that's not what it says. That's not what it
22 says. These are terms that are commensurate in the
23 industry. You'd have to read the operating agreement. She
24 was made the offer, she's free to call Richardson Operating
25 or anybody else. We'd be happy to sit down and explain

1 everything in the whole agreement with her.

2 She's never made an option, she never agreed to
3 anything. These terms are offered to everybody for every
4 well we drill --

5 Q. Okay, now --

6 A. -- including -- including, if I could just
7 finish, including Dugan Production, Burlington or any other
8 operator that has an interest that wants to join in our
9 well.

10 Q. Okay, for instance, Dugan Production. When you
11 offer them the opportunity to participate in this well, you
12 are offering them the opportunity to participate by paying
13 up front, or at least as costs are incurred, their
14 proportionate share of the cost; is that correct?

15 A. That's correct.

16 Q. Do you tack on any kind of nonconsent penalty for
17 them to participate?

18 A. Yes.

19 Q. You do?

20 A. Yes, that's what I'm trying to explain to you.

21 The operating agreement has provisions there for other
22 items not related to just the joining of the well. Those
23 are AFE costs just for the drilling and completion of the
24 well. After that happens there's other costs that could be
25 incurred. You could have problems further on past the

1 completion point. A company could say, I don't want to
2 participate in those actions, and I'm going to incur a
3 certain penalty, and that's where these provisions come in.

4 The AFE costs are merely her costs to drill the
5 well. And that's what we ask her to do. Would you like to
6 participate in this well for X number of dollars, would you
7 like to lease, would you like to sell? I don't know of any
8 other options available.

9 Q. Okay. Now then, in your Applicant's Exhibit
10 Number 5, the letter dated November 16th, 2001, again to
11 Ms. Fischer --

12 A. Okay.

13 Q. -- that essentially has the same terms as the
14 letter we were just discussing, correct?

15 A. That's correct, appears to be so.

16 MR. HORNER: Okay. I have no further questions
17 of this witness at this time.

18 EXAMINER BROOKS: Thank you.

19 Redirect, Mr. Kellahin?

20 MR. KELLAHIN: I have two items.

21 EXAMINER BROOKS: Okay.

22 MR. KELLAHIN: May I show the witness Exhibit
23 Number 2-A?

24 EXAMINER BROOKS: 2-A?

25 MR. KELLAHIN: 2-A is the map.

1 EXAMINER BROOKS: That's this. Okay, you may.

2 REDIRECT EXAMINATION

3 BY MR. KELLAHIN:

4 Q. Mr. Lehrman, Mr. Horner asked you to read the
5 legend off of 2-B.

6 A. That's correct.

7 Q. Let's look at 2-A, which is the BLM supplemental
8 plat for this area.

9 A. Okay.

10 Q. In which direction is the riverbed of the San
11 Juan River migrating?

12 A. North.

13 Q. When you look at the resurvey caption, what does
14 it say?

15 A. It says, "This supplemental plat showing the
16 calculated N. and S. Center Line in the NW 1/4, the
17 calculated 2000 medial line of the main channel of the San
18 Juan River..." It goes on to depict the lots and the
19 section, township and range.

20 Q. Have you attempted, Mr. Lehrman, to resolve the
21 dispute between the BLM and Ms. Fischer over the acreage
22 contained in Lot 1?

23 MR. HORNER: Objection, your Honor. That assumes
24 facts not in evidence, that there is a dispute between the
25 BLM and Ms. Fischer.

1 EXAMINER BROOKS: With that qualification I'll
2 overrule the objection.

3 Q. (By Mr. Kellahin) Have you attempted to resolve
4 the difference in what the BLM is telling you is the lot
5 acreage in Tract I?

6 A. I don't feel it's up to Richardson Operating to
7 do that.

8 Q. You have not tried to do that?

9 A. No.

10 Q. Okay. Let's go back to the questions of the AFE
11 and the proposed letter.

12 A. Okay.

13 Q. Dugan has an interest. Let's talk about the
14 Dugan interest.

15 A. Okay.

16 Q. If Dugan is given a letter in which they're asked
17 to sign a letter of commitment to participate, and if they
18 execute the operating agreement as you have envisioned it
19 within the context of this type of letter, and if Dugan
20 pays its share, proportionate share of the cost of the well
21 for drilling and completing, either up front or as accrued
22 and billed, they do that without the imposition of any risk
23 factor component, don't they?

24 A. Yes.

25 Q. The risk factor penalty summarized in this letter

1 would be triggered in other circumstances --

2 EXAMINER BROOKS: Excuse me a minute.

3 You may continue.

4 Q. (By Mr. Kellahin) -- would be triggered by
5 circumstances other than those anticipated as costs of
6 drilling and completing the well, as outlined on the AFE?

7 A. That's correct.

8 Q. For example, if there are subsequent operations
9 to re-enter the well and choose to test another zone --

10 MR. HORNER: Objection, leading, your Honor.

11 EXAMINER BROOKS: Well, I'm going to overrule
12 that question once again. As I said, we're much less
13 formal than we are in court, and consequently I will not
14 press the leading questions.

15 MR. HORNER: Well --

16 MR. KELLAHIN: I can get him --

17 EXAMINER BROOKS: Okay --

18 THE WITNESS: Let me -- Can I just say something
19 for a second?

20 EXAMINER BROOKS: Well, no, I prefer it to be
21 done by question and answer.

22 THE WITNESS: Well, I can answer, maybe, both of
23 your questions at one time --

24 EXAMINER BROOKS: Okay, if you're addressing Mr.
25 Kellahin's question, you may go ahead.

1 THE WITNESS: My answer is, there are again
2 instances after the initial well is drilled where a company
3 would not be interested in participating in that activity,
4 those consent penalties are set forth in the operating
5 agreement ahead of time.

6 MR. KELLAHIN: That concludes my examination.

7 EXAMINER BROOKS: Okay, I have some questions,
8 and I think Mr. Stogner probably does too.

9 EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. First off, have you -- You're a petroleum
12 landman, correct, Mr. Lehrman?

13 A. That's correct.

14 Q. Did you run this title to determine what interest
15 the protesting party has?

16 A. We had a title attorney do that.

17 Q. Okay. And is your testimony based on the
18 assumption or the conclusion, whoever came to that
19 conclusion, that Ms. Fischer owns only that portion of Lot
20 1 north of the San Juan River? Is that correct?

21 A. That -- Yes, that's correct.

22 Q. Okay. Now, if you look at Fischer Exhibit A,
23 that purports to deed all of Lot 1, does it not?

24 A. Yes.

25 Q. So comparing Fischer Exhibit A with the title

1 representations that I understood that you were basing your
2 assumptions on, then there would appear to be possibly some
3 kind of title controversy between the government and Ms.
4 Fischer; is that a fair conclusion?

5 A. That's a possibility.

6 Q. Okay.

7 A. Am I understanding you right, though, there's not
8 a controversy on the plat?

9 Q. Well, no, I didn't say on the plat. I said if
10 you compare Fischer Exhibit A with the assumption that you
11 are making that her ownership is only north of the San Juan
12 River, that would suggest or indicate that possibly there
13 could be a title controversy, and --

14 A. Well, what I'm trying to clarify by your
15 statement is, there's no indication from Richardson that
16 any of Lot 1 is south of the river. Does that make sense?
17 The Fischer Exhibit A says all of Lot 1 -- we have always
18 believed, and I think the BLM does too, that that is north
19 of the river.

20 Q. Well, the area south of the river is Lot 15, and
21 the area in the river is not marked as being either, but I
22 guess it's outside the lots as they're shown on this plat;
23 is that correct?

24 A. (Nods)

25 Q. So what you're telling me, then, is -- and I

1 guess I misread the plat -- what you're telling me, then,
2 is that you have to have Lot 15, plus Lot 1, plus what's
3 depicted as being in the river channel to get the east
4 half, northeast quarter equivalent?

5 A. I believe that's --

6 Q. That does appear to be a correct --

7 A. I'm just curious, I mean, do you own any --

8 Q. No, she's on the witness stand.

9 A. Well, I just --

10 Q. Okay, with that in mind, we're focusing only on
11 Lot 1 and the area northeast of the river, and I assume
12 that probably is a correct reading of this plat.

13 Assuming that to be -- focusing, though, only on
14 the area northeast of the river, now, I take it as a
15 landman you have some experience reading these plats?

16 A. Yes.

17 Q. And these numbers that appear along the lines,
18 are those numbers footages?

19 A. Which plat are you looking at?

20 Q. I'm looking at Exhibit 2-B.

21 A. Are you talking about these numbers here?

22 Q. Yes.

23 A. I would assume those are some kind of footages
24 and bearings and distances.

25 Q. Well, they're distances, whether they be in feet

1 or in some other type of measure.

2 A. Right, I'm assuming that those were put on there
3 by the surveyors.

4 Q. Okay. Now, if you assume that those figures
5 represent distances and that the figures such as north 49
6 degrees, 23 minutes east, that appears along the south line
7 -- or the river line in Lot 1, are directions, then would
8 it not be fair to say that the determination of the acreage
9 of Lot 1 from solely the information appearing on Exhibit
10 2-B would be solely a matter of working a mathematical
11 formula, that there would not be any room for any dispute
12 as to what acreage is indicated by the information on this
13 survey; is that not correct?

14 A. Well, as long as those numbers were accurate.

15 Q. Well, that's true.

16 A. Assuming --

17 Q. That's why I said as indicated on this survey.
18 Now, on the ground they might be different, and that might
19 raise a question. But as on this survey --

20 A. Well, what you said is interesting because I'm
21 assuming that the BLM did all its calculations not only by
22 GPS but also put the correct numbers on the plats and
23 arrived at the correct numbers on the plats and the
24 Compensatory Royalty Agreement.

25 Q. Well, if we assume that the numbers are correct,

1 then there wouldn't be any room for difference of opinion,
2 right?

3 MR. HORNER: Objection, your Honor. We're
4 getting way beyond the expertise of a landman. You're
5 starting to talk about surveying. He's already indicated
6 he doesn't know what the numbers are.

7 THE WITNESS: Well, I didn't say that --

8 EXAMINER BROOKS: Okay, excuse me, I --

9 MR. KELLAHIN: Don't argue with him.

10 EXAMINER BROOKS: -- don't want to just get into
11 a free-for-all. Mr. Horner does have a point, that this is
12 really a matter for a surveyor, so I will abandon that line
13 of questioning.

14 MR. KELLAHIN: Mr. Examiner, I have an objection
15 to this whole line.

16 EXAMINER BROOKS: Yes, sir.

17 MR. KELLAHIN: I understand your jurisdiction not
18 to be one where you resolve boundaries interior to the
19 spacing unit, and it's not our obligation to resolve the
20 boundary difference between what Ms. Fischer contends is
21 her acreage and what the BLM shows in their documents to be
22 their acreage. If that's our responsibility, you need to
23 tell us, because we're going to have to go file a quiet-
24 title suit.

25 EXAMINER BROOKS: Well, I do understand my

1 jurisdiction the same way you do. I think any relevance
2 that the question of whether there's a title dispute or not
3 might have to any determination the OCD would make would be
4 that if the parties recognize the existence of a title
5 dispute, perhaps, prior to a force pooling, we might
6 consider there to be some obligation to allow for that in
7 terms of the negotiations that might take place. But if
8 there's not a title dispute, then there would be no
9 necessity to do that. We would not -- certainly not have
10 any jurisdiction to resolve the title dispute.

11 Okay. Well, I'll abandon that line of
12 questioning. Let me be sure I have all the basic
13 information here.

14 Q. (By Examiner Brooks) What you're requesting is
15 the pooling to the base of Pictured Cliff, surface to the
16 base of the Pictured Cliffs; is that correct?

17 A. That's correct.

18 Q. And you said this was the West Kutz-PC that would
19 be the Basin-Fruitland Coal?

20 A. Yes.

21 Q. And the location of the proposed well is shown
22 on --

23 A. -- Exhibit 2.

24 Q. -- Exhibit 2. Is that the correct and final
25 location where the -- This well has been drilled?

1 A. That's correct.

2 Q. And that's where the well is located --

3 A. That's correct.

4 Q. -- as shown on Exhibit 2?

5 Okay. Now, has the BLM consented to this force
6 pooling proceeding?

7 A. They don't normally do that.

8 Q. Have they been notified? I assume they have
9 been, have they not?

10 A. I believe they have been. I'm not aware that the
11 BLM is ever involved in a force pooling. It's usually
12 between the companies or unleased mineral owners. We have
13 the other interests either tied up via contracts with Dugan
14 or via lease.

15 Q. But the well is on the Navajos' land, so --

16 A. True.

17 Q. -- force pooling will have the effect of diluting
18 their interest to some degree. It looks like it would be
19 under the rule of capture, correct?

20 A. (No response)

21 Q. Well, you don't know if they've been involved in
22 this at all?

23 A. The BLM?

24 Q. The BLM.

25 A. Not to my knowledge, they haven't been, no.

1 Q. Very good.

2 A. Except via the Compensatory Royalty Agreement.

3 EXAMINER BROOKS: Very good. I think that Mr.
4 Stogner may have some questions, so I will defer to him.

5 EXAMINATION

6 BY EXAMINER STOGNER:

7 Q. Okay, I had some questions around the surveys,
8 and I'll abandon those too.

9 However, I'm going to refer to Exhibit Number 1.
10 On the east half of Section 14 there are two green marks,
11 and the one up in the northeast corner, that's the proposed
12 well that we're talking about today; is that right?

13 A. That's correct.

14 Q. Okay. Let's go to that green well to the
15 southeast quarter, and I'm sorry, I can't read that. It
16 looks like a Navajo 14 well --

17 A. I can't either.

18 Q. Are you familiar with that well? Is that a
19 Richardson well?

20 A. Yes.

21 Q. Okay. Now, what zone is it producing from
22 currently?

23 A. I believe it's Pictured Cliffs.

24 Q. Pictured Cliffs. That would be 160-acre spacing?

25 A. That's correct.

1 Q. Okay. Now, then, let's go back up into the
2 northeast corner.

3 A. Okay.

4 Q. You have a couple of old wells, two old wells
5 depicted, an NM Federal Number 1 -- I'm sorry, and NM
6 Federal --

7 A. -- Number 5.

8 Q. -- Number 5, and that's up in the northwest of
9 the northeast quarter?

10 A. Okay.

11 Q. And then you've got another one. Are these old
12 plugged and abandoned wells?

13 A. Yes, I believe they are P-and-A'd.

14 Q. Okay. Were those operated by somebody else, or
15 did Richardson ever have those wells?

16 A. I don't know.

17 Q. Okay. Now, did you take an opportunity to look
18 at the spacing units for those wells when they were
19 productive and how those royalties were shared?

20 A. No, we did not.

21 EXAMINER STOGNER: Okay. I guess I have no other
22 questions.

23 FURTHER EXAMINATION

24 BY EXAMINER BROOKS:

25 Q. Well, I did want to -- may have abandoned the

1 survey questions a little bit too soon, because I didn't
2 get to the question that probably is the one that matters.

3 Has there been any discussion between you and Ms.
4 Fischer, or between Richardson and Ms. Fischer or her
5 counsel concerning the possibility of any dispute as to the
6 extent of her interest in this unit, as opposed to what
7 she's going to do with it?

8 A. I guess I don't fully understand your question.

9 Q. Well, if I understood Mr. Horner's line of
10 questioning, it seemed to me to indicate a dispute as to
11 how much interest she owned in this unit, and Mr. Kellahin
12 is quite correct, if there is such a dispute, we don't have
13 jurisdiction resolving it. But the question that I have
14 for you is, have there been any negotiations about the
15 percentage interest that Ms. Fischer is entitled to, versus
16 whether she's going to lease or sell or participate?

17 A. No.

18 Q. Thank you. Oh, one other thing, I keep
19 forgetting. I assume that, as in most Richardson
20 applications, you are requesting that Richardson Operating
21 Company be named operator of this unit and well?

22 A. That's correct.

23 EXAMINER BROOKS: Okay, thank you. Anything
24 further, Mr. Kellahin?

25 MR. KELLAHIN: No, sir.

1 EXAMINER BROOKS: Mr. Horner?

2 MR. HORNER: Yes, sir.

3 EXAMINER BROOKS: Okay, you may proceed.

4 RECROSS-EXAMINATION

5 BY MR. HORNER:

6 Q. Let's see, just before I lose this one, with
7 regard to the questions about discussions between
8 Richardson and myself or Ms. Fischer on this acreage
9 business, in fact, that was the first question that came up
10 on Monday, was it not, where did you come up with the 17
11 acres as opposed to what we understood to be 45 acres?
12 That was the first question that came up Monday, was it
13 not?

14 A. I believe it was.

15 Q. And Monday is the first time that there has been
16 any discussions at all, other than the letter that was sent
17 to her July 31st informing her of this proceeding, and
18 possibly a June 6th, 2001, letter, correct? So Monday was
19 the first time there have been any discussions at all?

20 A. In person?

21 Q. Of any kind.

22 A. That's correct.

23 Q. Okay. And so the first question that came up is,
24 where did you come up with those acreages, right?

25 A. That's correct.

1 Q. And in the course of those discussions, you
2 insisted on standing on those acreages or something very
3 close to them; is that correct?

4 A. That's correct.

5 Q. And yesterday in our proposal, we proposed
6 participation based on the 45-something-or-other acres, did
7 we not?

8 A. I don't recall the acreage being mentioned. The
9 proposal I remember hearing is that you wanted to be
10 carried with the additional royalty thrown in there, which
11 is just not done in the industry. There's no reason why a
12 company should carry the unleased mineral owner.

13 MR. HORNER: Objection, unresponsive, your Honor.

14 THE WITNESS: I'm --

15 EXAMINER BROOKS: Beyond the fact that he only
16 recalls it being a carried interest offer, the rest of it I
17 sustain the objection.

18 Q. (By Mr. Horner) Okay. So there has been
19 discussions with regard to the acreage in the last three
20 days?

21 A. Yes.

22 Q. Which is the only time there's been any
23 discussions?

24 A. Yes, that I've been involved in.

25 Q. All right. Now then, you talked about an

1 attorney opinion with regard to the title.

2 Now then, the attorney opinion with regard to the
3 title, did that give you any indication of the acreage
4 owned by Ms. Fischer in Section 14?

5 A. I believe it did.

6 Q. And what did that indicate?

7 A. I believe it coincided with the BLM plat that we
8 had.

9 Q. And so you believe but you don't know that. Did
10 you bring that title opinion with you?

11 A. I don't know if I have that or not. Let me just
12 finish something. You know, a title attorney -- First of
13 all, there seems to be two things going on here. A lot of
14 people are mentioning title versus the acreage. The title
15 is not in dispute, okay, the title to the property. Ms.
16 Fischer owns an undivided 50-percent interest in Lot 1,
17 whatever that acreage is.

18 Q. Minerals?

19 A. Minerals, and surface.

20 Q. No, she owns 100-percent of the surface, correct?

21 A. Okay, that's correct. Excuse me, I'm sorry.
22 Anyway, that's the title end of it. Everyone keeps saying
23 title. That's incorrect.

24 The acreage dispute is something separate. But
25 what you just asked me is, the title attorney is going to

1 go and use all of his available means to determine his
2 opinion as to the title for this tract, and that's what our
3 title opinion attorney did. He would have used the BLM
4 records, the BLM survey, the courthouse records, et cetera,
5 to determine that.

6 Q. Okay. Now, you say that he would have, but you
7 don't know that he did. And in fact, he wouldn't, would
8 he? He'd be researching his information at the County
9 Clerk's Office --

10 A. Well --

11 Q. -- which is the deeds that say 45 acres?
12 So the attorney's opinion is going to be based entirely on
13 the --

14 A. Well --

15 Q. -- basis that --

16 A. -- I feel like --

17 EXAMINER BROOKS: Don't interrupt counsel, let
18 him finish the question.

19 Q. (By Mr. Horner) So the attorney's opinion is
20 going to be based entirely on the County Clerk's records,
21 which indicate that her share is 45 acres?

22 MR. KELLAHIN: Objection.

23 THE WITNESS: Can I answer now?

24 EXAMINER BROOKS: Well, let Mr. Kellahin state
25 his objection.

1 MR. KELLAHIN: Counsel is asking this witness to
2 speculate on what the title attorney did. We don't have
3 it. We can submit it if you want to look at it, but the
4 discussion goes nowhere based on his --

5 EXAMINER BROOKS: I will sustain the objection.

6 Q. (By Mr. Horner) Okay, did we ask you on Monday
7 for a copy of the attorney's opinion?

8 A. I don't recall if we did or not. I thought we
9 gave that to you. I really don't remember. I know there
10 was a lengthy meeting and you asked for quite a bit of
11 stuff. You asked for the deeds specifying where we came up
12 with our 50-percent undivided mineral interest and the
13 plats that we were talking about at that time. I'm going
14 to make the assumption you did ask for the opinion. I
15 don't know if we gave it to you or not.

16 Q. Okay.

17 A. I know Ann was involved in some of the
18 discussions. Can I say one more thing?

19 EXAMINER BROOKS: No, not at this time.

20 THE WITNESS: Okay.

21 EXAMINER BROOKS: Go ahead, Mr. Horner.

22 Q. (By Mr. Horner) Okay. Now then, there was some
23 discussion about being able to calculate acreages from
24 distances and directions on these plats, and just for
25 clarification, you have not attempted to do that, have you,

1 calculate acreages from distances and directions on the
2 plat?

3 A. No.

4 Q. Okay. Has anybody at Richardson attempted to do
5 that?

6 A. Not to my knowledge.

7 MR. HORNER: Okay, thank you.

8 I have nothing further of the witness at this
9 time, your Honor.

10 MR. KELLAHIN: One follow-up.

11 EXAMINER BROOKS: Okay.

12 FURTHER EXAMINATION

13 BY MR. KELLAHIN:

14 Q. What was the source of your testimony concerning
15 the net acreage attributed to Ms. Fischer in the north half
16 -- sorry, in Tract I? What was the source of --

17 A. The --

18 Q. -- that calculation?

19 A. -- survey and the royalty agreement.

20 Q. Who did the calculation if you didn't do it?

21 A. Geneva McDougall did it. She's a legal law
22 examiner for the Bureau of Land Management. She's been
23 there -- I don't know how many years, but that's what she
24 does.

25 EXAMINER BROOKS: Are you through, Mr. Kellahin?

1 MR. KELLAHIN: I'm sorry?

2 EXAMINER BROOKS: I'm sorry, are you through?

3 Q. (By Mr. Kellahin) Can you spell that woman's
4 name? I didn't catch that.

5 A. Well, it's on the Compensatory Royalty Agreement,
6 she signed it on page 4. Geneva McDougall.

7 Q. She's the lady that performed the calculation?

8 A. I'm assuming, yes.

9 MR. KELLAHIN: All right, no further questions.

10 EXAMINER BROOKS: Did you have further questions,
11 Mr. Horner?

12 FURTHER EXAMINATION

13 BY MR. HORNER:

14 Q. Just for clarification, the calculations you're
15 talking about are those shown on Exhibit A to the
16 compensatory agreement, as opposed to anything shown on the
17 plats, right?

18 A. No, I just said both.

19 Q. Well, those calculations, those acreages and
20 summing them up and coming to some sort of conclusion that
21 Ms. Fischer owns 33 acres is not indicated anywhere on
22 those plats, is it?

23 A. We've been through that about a hundred times,
24 but no, there's no lot number on -- there's no acreage
25 number on Lot 1.

1 Q. Or calculation on these plats?

2 A. I don't know if the calculations are on there.
3 Some calculations are on one of those plats. I don't
4 recall what it is, but I know they're on there somewhere.

5 MR. KELLAHIN: They're looking at a different
6 exhibit.

7 THE WITNESS: Okay.

8 Q. (By Mr. Horner) Yeah, and in fact, you're
9 talking about a copy of that plat where somebody has
10 actually added up acreages and subtracted and come up with
11 a number for Ms. Fischer's acreage, which does not appear
12 on the plats that these gentlemen are looking at?

13 A. No.

14 Q. No, it does not appear here?

15 A. No, it -- No, it does not appear on the plat.

16 Q. Okay. So in your mind you're remembering seeing
17 where somebody has added up a bunch of acreages and come up
18 with a number for Ms. Fischer?

19 A. Yeah.

20 Q. Right, but that is not what they're looking at,
21 right?

22 A. I can't even see what they're looking at. There
23 are so many exhibits here anymore, I'm getting confused.

24 But to answer your question, there is no acreage
25 number on Lot 1 on these plats.

1 MR. HORNER: Okay, I have nothing further.

2 MR. KELLAHIN: One further question, Mr.
3 Examiner.

4 EXAMINER BROOKS: Okay.

5 FURTHER EXAMINATION

6 BY MR. KELLAHIN:

7 Q. Let me show you what I've marked as Richardson
8 Exhibit 2-C. What am I showing you? Can you identify
9 this?

10 THE WITNESS: May I, your Honor?

11 EXAMINER BROOKS: You may.

12 THE WITNESS: This is the supplemental plat with
13 the calculation that I was just talking about for, I guess,
14 all the lots, really. There's more than --

15 Q. (By Mr. Kellahin) This copy --

16 A. -- Lot 1.

17 Q. -- contains the calculations that you've been
18 describing?

19 A. Well, there's more lots in the north half of 14,
20 but it also would include Lot 1. But it still does not
21 have an acreage number on the plat.

22 Q. This calculation in the balloon and the
23 signature, is that your signature? Are those your
24 initials?

25 A. No, no.

1 Q. Do you know who did this calculation?

2 A. Let me see, the -- I'm assuming it was one of the
3 surveyors that signed the plat. I don't know.

4 Q. Were you there when this was put on the plat?

5 A. No. No, we just got copies of those this week.

6 Q. Where did you get this from?

7 A. From the BLM.

8 MR. KELLAHIN: Okay. We move the introduction of
9 Exhibit 2-C.

10 MR. HORNER: Objection, authentication, hearsay.
11 What you're talking about is a bunch of hand figures on a
12 prepared plat that we have no indication of where they even
13 came from.

14 EXAMINER BROOKS: Well, insofar as they are being
15 offered, if they are, for the truth of the matter stated,
16 then your objection would be good. But an issue has been
17 raised to where Richardson got their acreage figure from,
18 and so I will admit this Exhibit 2-C for the limited
19 purpose of -- Well, actually this should be numbered as a
20 Richardson exhibit.

21 MR. KELLAHIN: Yes, sir, it should be. I've made
22 it 2-C.

23 EXAMINER BROOKS: Oh, 2-C, that's right.

24 MR. KELLAHIN: I'm sorry, what I wrote there --

25 EXAMINER BROOKS: No, that's what you wrote, I

1 just was confused.

2 I will admit Exhibit 2-C for the limited purpose
3 of showing the source from which Richardson obtained their
4 figure that they're relying on.

5 FURTHER EXAMINATION

6 BY MR. BROOKS:

7 Q. Okay, I had one further question. I keep
8 thinking of loose ends, but...

9 You said you had offered a 1/8 royalty for a
10 lease in this, and a hundred dollars an acre bonus?

11 A. That's correct.

12 Q. Are you familiar with what royalties are
13 customarily being offered in this vicinity in new leases?

14 A. Oh, yes, we're --

15 Q. What is the customary -- what is --

16 A. One-eighth.

17 Q. -- the going rate?

18 Aren't there some 1/6 royalties up in
19 this -- I know there are in the San Juan Basin, but --

20 A. Well --

21 Q. -- in other areas --

22 A. -- I'm sure there's higher royalties than that,
23 but I haven't gone through most of their lease files in the
24 last few months. And we're actively leasing now. Most of
25 them are 1/8.

1 EXAMINER BROOKS: Okay, that's all. Anything
2 further from counsel?

3 MR. KELLAHIN: No, sir.

4 MR. HORNER: Yes, your Honor.

5 FURTHER EXAMINATION

6 BY MR. HORNER:

7 Q. In that regard, in fact, the lease agreements
8 with the Indians, of which half of this is involving, are
9 for 1/6, are they not?

10 A. I don't know for the Indian leases. Some of the
11 old leases are 12 1/2 percent.

12 MR. HORNER: Nothing further, your Honor.

13 EXAMINER BROOKS: Mr. Kellahin?

14 MR. KELLAHIN: Nothing further.

15 EXAMINER BROOKS: Mr. Stogner?

16 EXAMINER STOGNER: I don't think the horse is
17 quite dead yet.

18 (Laughter)

19 FURTHER EXAMINATION

20 BY EXAMINER STOGNER:

21 Q. I'm going to refer to Exhibit 2-B.

22 A. Okay.

23 Q. There is no acreage dedication for Lot 1 on that
24 particular plat; is that correct?

25 A. That's correct.

1 Q. Okay. Now, there are some acreage depictions.
2 Let's refer down here to the southwest corner.

3 A. Okay.

4 Q. And it's cut up in four quarter sections; is that
5 correct? Or four quarter quarter sections, I should say.

6 A. Generally, yes.

7 Q. Okay. Now, are there some numbers or some
8 acreage shown for those squares?

9 A. For these lots or whatever the aliquot 40s or --
10 They're not even aliquot 40s. They must be some kind of
11 lots, because they're less than 40 acres.

12 Q. Okay, let's go to the southwest of the southwest.
13 What does it show is the acreage dedicated to that?

14 A. 37.96.

15 Q. How about the southeast southwest?

16 A. 38.13.

17 Q. Okay. Now -- And that depicts acreage square.
18 Okay, just observation. If those are 39-acres, give or
19 take, depictions, compare those squares to Lot 1. Does Lot
20 1 appear to be more than 34 acres? I'm just looking at
21 that plat, just taking a look at the numbers, but does that
22 more depict Lot 1 being 45 acres or 33 acres or 34 acres?

23 A. Well, I think you're asking me to speculate,
24 but --

25 Q. I'm just observing the map.

1 A. Well, my answer to your question is, you have to
2 take this plus the supplemental before you can answer the
3 question.

4 Q. You can't observe by just looking at that and
5 looking at what is depicted on this and the size of that
6 little Lot 1 --

7 A. Are you telling me --

8 Q. -- here to the southwest --

9 A. Are you telling me --

10 Q. -- southwest --

11 A. -- to take this and put it up here?

12 Q. Exactly. That's exactly what I'm doing. Does
13 that appear to be a little bit bigger than 39 acres, or
14 smaller?

15 A. I'm going to say yes, I guess.

16 EXAMINER STOGNER: Okay, that's all I'm getting
17 at, all I --

18 THE WITNESS: Okay.

19 EXAMINER BROOKS: Anybody else have anything
20 else?

21 MR. KELLAHIN: No.

22 MR. HORNER: No.

23 EXAMINER BROOKS: Very good, the witness may step
24 down.

25 MR. KELLAHIN: Mr. Examiner, at this time we'd

1 call Mr. David Richardson.

2 EXAMINER BROOKS: Yes.

3 DAVID B. RICHARDSON,

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 MR. KELLAHIN:

8 Q. For the record, Mr. Richardson, would you please
9 state your name and occupation?

10 A. David Richardson, President, Richardson Operating
11 Company.

12 Q. In what community do you reside?

13 A. Denver, Colorado.

14 Q. Do you hold any professional degrees?

15 A. Yes, I do.

16 Q. And what are they?

17 A. I have a bachelor of science in geology.

18 Q. Is the geologic work done for your company done
19 by you?

20 A. Yes, or under my direction.

21 Q. On prior occasions have you qualified as an
22 expert geologist before the Division in compulsory pooling
23 cases?

24 A. Yes.

25 Q. Are the geologic maps we're about to look at and

1 the opinions you express both your work product and your
2 opinions?

3 A. Yes.

4 Q. Are you also knowledgeable about the costs
5 involved in this well?

6 A. Yes, I am.

7 Q. And you can describe for the Division and the
8 parties your operations within the area described on the
9 maps?

10 A. Yes.

11 MR. KELLAHIN: We tender Mr. Richardson as an
12 expert witness.

13 EXAMINER BROOKS: He is so -- I'm sorry, any
14 objection?

15 MR. HORNER: No objection.

16 EXAMINER BROOKS: He is so qualified.

17 Q. (By Mr. Kellahin) Let me have you refer, Mr.
18 Richardson, to Exhibit 9. Exhibit 9 on here has your
19 company name, and then in the middle -- I'm looking at the
20 lower legends -- I'm seeing "Navajo 14-2 Hearing Docket".

21 A. Yes.

22 Q. That's the way this is described, and that's what
23 you're looking at?

24 A. Yes, it is.

25 Q. Let's start in Section 14, and you can start

1 anywhere you like. Let's go around the section. Identify
2 for us the wells and their status so that we're clear on
3 the current situation in the section.

4 A. The proposed location is the Navajo 14-2 in the
5 northeast quarter of the section.

6 Q. That is a proposed well location, it's an open
7 circle?

8 A. Yes, the well has been drilled.

9 Q. Okay, what's its status in terms of completion?

10 A. Wait on completion.

11 Q. All right. There's another well in the northeast
12 quarter, a spot for a well.

13 A. That's an old dry hole, probably an old Gallup
14 well, drilled in the 1960s, I would imagine.

15 Q. All right, please continue.

16 A. In the northwest quarter of the section is a new
17 well of ours, the Navajo Tribal H 12 Well. It's been on
18 line recently, and it's a productive well.

19 Q. All right, that's the one with the gas well
20 symbol below the numbers 4445?

21 A. Yes, it is.

22 Q. Okay. That's called the Navajo what?

23 A. Tribal H 12.

24 Q. And the status of that well is -- ?

25 A. It's producing.

1 Q. From what formation?

2 A. From the Pictured Cliffs.

3 Q. At approximately what rate?

4 A. 110 MCF per day --

5 Q. Okay, please continue.

6 A. -- and approximately 100 barrels of water.

7 The 14-3 well, the Benali 14-3 is a --

8 Q. Where is it?

9 A. Southwest quarter of the section --

10 Q. Okay.

11 A. -- recently drilled well. It is not on line yet.

12 Q. It's potentially what formation you're going to
13 produce?

14 A. Pictured Cliffs and eventually the Fruitland
15 Coal.

16 Q. Any other wells?

17 A. In the southeast quarter of the section we have a
18 well that's the Navajo 14-1 well. It's a Pictured Cliffs
19 well, and it's producing.

20 Q. Okay. Can you estimate for us its current
21 approximate daily producing rate?

22 A. The current production is 250 MCF per day and
23 about 120 barrels of water.

24 Q. Let's set that aside for a moment and turn to
25 Exhibit 10. What type of map are we looking at here?

1 A. This is a structure contour map on the top of the
2 Pictured Cliffs sand.

3 Q. When we compare Exhibit 10 back to Exhibit 9, the
4 contour lines we're looking at on Exhibit 9 are duplicated
5 on Exhibit 10, are they not?

6 A. Yes.

7 Q. Looking at 10, and confining yourself to the
8 Pictured Cliff and the Fruitland Coal, do you have a
9 geologic opinion as to whether structure is significant to
10 you for either the Pictured Cliff or the Fruitland Coal?

11 A. It's insignificant.

12 Q. Okay, let's use this as a locator. If we're
13 addressing the risk associated with the Fruitland Coal for
14 the 14-2 well, do you have an opinion for the Examiner of
15 what an appropriate risk factor should be for the coal?

16 A. For the drilling of the well or the production of
17 the well?

18 Q. For the drilling of the well?

19 A. For economic reasons?

20 Q. Describe it any way you like.

21 A. Okay. Well, it should be a very high risk
22 factor, because there's very little economic production in
23 the Fruitland Coal in this area.

24 Q. Are you aware that the Division's practice --

25 A. Yes, I am.

1 Q. -- is to award a maximum of 200 percent plus cost
2 in a formation that's targeted before the well is drilled?

3 A. Yes.

4 Q. Are you aware that the Division normally reduce
5 that penalty by 50 percent?

6 A. Yes.

7 Q. Do you have reasons to support an opinion as to
8 what penalty range ought to be awarded in this case for the
9 PC?

10 A. The maximum.

11 Q. Okay, so if they award you 200 percent divided by
12 half, do you have an opinion as to whether that is still
13 appropriate?

14 A. It would be appropriate.

15 Q. Describe for us the factors that go behind and
16 support that opinion.

17 A. Okay, as far as the risk factors?

18 Q. Yes, sir.

19 A. Okay, in this area, number one, it is a very
20 marginal area of low production and high water production,
21 and that greatly affects the economics. Those are the two
22 largest risk factors.

23 Q. Will you know the opportunity to produce this
24 well until you actually frac it and complete it?

25 A. You never do.

1 Q. Are those water risks associated with just one
2 formation, or are they associated with both?

3 A. They're associated with both. About an equal
4 amount comes from both zones.

5 Q. When you look at the Pictured Cliff formation in
6 this general area, what is your hopeful economic forecast
7 for a daily gas producing rate from the PC?

8 A. Well, 250 MCF a day would make an economic well.

9 Q. If you encounter a well like the Nevada H 12 in
10 the northwest quarter --

11 A. Yes.

12 Q. -- how do you compare to that well?

13 A. That well is uneconomic. We're hoping that the
14 production goes up as the well dewateres --

15 Q. Okay.

16 A. -- if it, in fact, dewateres.

17 Q. Describe for me what you believe are the risks
18 associated with the Fruitland Coal gas portion of the well.

19 A. Again, very little production history in the
20 Fruitland Coal in this area. It is an area where it is
21 thinning compared to other parts of the Basin, and our
22 experience is high water production.

23 Q. Let's turn to Exhibit 11. Identify the type of
24 display we're looking at.

25 A. This is an isopach map of the basal Fruitland

1 Coal, showing the average thickness of the coal in the
2 nine-section area.

3 Q. Interpret the contour lines and estimate for us
4 the coal thickness for the 14-2 well.

5 A. We're estimating, because we have the offsetting
6 log next to it, approximately a 12-foot zone in the basal
7 coal.

8 Q. Are there coal thicknesses in excess of that
9 number?

10 A. There are. It's pretty consistent throughout
11 this area. It goes up to 18 feet and thins down to eight
12 feet in some areas.

13 Q. Let me turn your attention to a different topic.
14 As president of Richardson operating company, you're also
15 the owner of Richardson Production Company?

16 A. Yes.

17 Q. You would use the operating company as the
18 operator for the well?

19 A. That's right.

20 Q. In the course of your business, is it customary
21 for you to approve -- to prepare or have prepared AFEs for
22 your wells?

23 A. Yes.

24 Q. And do you review AFEs prepared by others outside
25 your company for your participation?

1 A. Yes.

2 Q. Let's look at Exhibit 12. Can you identify this
3 for us?

4 A. This is an AFE for the proposed commingled
5 Fruitland-Pictured Cliffs well, the Navajo 14-2.

6 Q. What's the date of the AFE?

7 A. 11-16-2001.

8 Q. Do you have an opinion as to whether the
9 estimated costs displayed on this exhibit are fair and
10 reasonable?

11 A. I think it's fair and reasonable, yes.

12 Q. Okay. When you look at the east half of Section
13 14, is the only uncommitted interest the outstanding
14 interest of Ms. Fischer?

15 A. Yes, it is.

16 Q. All right. Do you know what royalty you're
17 paying for other interest owners in the east half of the
18 section?

19 A. The base royalty on the Navajos is 1/8.

20 Q. Is that consistent with what you've offered Ms.
21 Fischer?

22 A. Yes, it is.

23 Q. What's your plans for completion? Give us a
24 general summary of your completion plans.

25 A. Generally, we will go in, complete the Pictured

1 Cliffs, we'll start with the lowest zone first, produce it,
2 try and get flow rates on it, set a bridge plug, frac the
3 Fruitland Coal and produce that, pull the plug and produce
4 both zones.

5 Q. When do you anticipate undertaking those
6 additional operations on this well?

7 A. We would like to put the well in production as
8 soon as possible.

9 Q. Do you have an overall plan for development of
10 either the Pictured Cliffs or the Coal within this area?

11 A. Outside of this section?

12 Q. Within this section?

13 A. Yes, we do.

14 Q. And what additional activity might take place?
15 You've got wells in each of the 160s.

16 A. Right.

17 Q. Do you currently plan or anticipate any further
18 drilling at this point?

19 A. Not in this section, no.

20 MR. KELLAHIN: Okay, that concludes my
21 examination of -- Well, there's one further question. No,
22 Paul answered the overhead rates. That concludes my
23 examination of Mr. Richardson.

24 We move the introduction of his Exhibits 9
25 through 12.

1 EXAMINER BROOKS: Objections?

2 MR. HORNER: No objection.

3 EXAMINER BROOKS: Exhibits 9 through 12 are
4 admitted.

5 Mr. Horner?

6 MR. HORNER: May the record reflect that I'm
7 handing to the witness a document entitled Application for
8 Permit to drill and --

9 EXAMINER BROOKS: Okay, do you want to mark this
10 as an exhibit?

11 MR. HORNER: I have up there a little ways, your
12 Honor. This here is Exhibit C.

13 EXAMINER BROOKS: Okay.

14 MR. HORNER: Ms. Fischer's Exhibit C.

15 CROSS-EXAMINATION

16 BY MR. HORNER:

17 Q. Are you familiar with this document?

18 A. No, I am not.

19 Q. This is an application for permit to drill the
20 subject well, is it not?

21 A. Yes, it is.

22 Q. But you're not familiar with this document?

23 A. But I have not seen this.

24 Q. Well, on the -- let's see, page 8 of this
25 document, there is a paragraph 13, "Representation", and

1 underneath that is a paragraph. Would you please read that
2 paragraph?

3 A. "Richardson Operating Company has the necessary
4 consent from the proper lease owners to conduct lease
5 operations in conjunction with this well. Bond
6 coverage..."

7 Q. That's enough.

8 A. Do you want me to go on?

9 Q. That's enough.

10 So in fact, it's been certified here that you do
11 have the necessary consents from all the appropriate lease
12 owners; isn't that the case?

13 A. That's what this says, yes.

14 Q. And still, yet, you do not have an agreement with
15 Ms. Fischer?

16 A. That's right.

17 Q. That would be a misrepresentation of fact?

18 MR. KELLAHIN: Mr. Examiner, I object to the
19 witness [sic]. Mr. Horner has mischaracterized the
20 statement. It says "the proper lease owners". It doesn't
21 require you to have all the lease owners.

22 EXAMINER BROOKS: I'll sustain the objection.

23 Q. (By Mr. Horner) Now, you say this well has been
24 drilled?

25 A. Yes.

1 Q. And so this well was drilled then, obviously,
2 without the consent of Ms. Fischer --

3 A. Yes.

4 Q. -- in any form?

5 And this well was drilled before you had an order
6 from the OCD with regard to this pooling that we're here
7 for today; is that correct?

8 A. Yes.

9 Q. So in fact, Richardson Production, or yourself,
10 decided to take it upon yourself, without the necessary
11 documents, to assume this risk of drilling this well?

12 A. Upon the advice of my attorney, yes, I did.

13 Q. Okay. So you felt it was worth the risk of going
14 ahead and drilling this well?

15 A. Yes.

16 Q. Now then, if in fact it is determined that Ms.
17 Fischer has a 45-acre interest here, or looking at that 45-
18 acre interest, if there was a force pooling order with a
19 200-percent penalty, that would mean -- and she was then
20 required to pay out of production her cost plus 200 percent
21 -- that would be 300 percent -- that would mean that she
22 would have to pay over 75 percent of the cost of this well
23 pursuant to a force pooling order; would that be correct?

24 A. I really don't understand your question. I'm
25 sorry.

1 Q. It's just beyond you?

2 A. It must be.

3 Q. So -- Okay, if she were to have 45 acres out of
4 your Pictured Cliff unit -- The Pictured Cliff unit is 160
5 acres; is that correct?

6 A. Yes.

7 Q. And so her interest, then, at that point would be
8 28 percent, approximately, 45 divided by 160?

9 A. I wouldn't speculate on that, I don't know what
10 it is. We've calculated it to be in the 30s.

11 Q. In the 30-percent range?

12 A. Thirty-four, whatever the landman said it was.

13 Q. Her acreage or her percentage?

14 A. No, not her percentage, her acreage. And then
15 she owns 50 percent of that.

16 Q. Okay. Well -- Now then, so you prepared the
17 AFEs, then -- We're looking at here Exhibit Number 12 that
18 shows what you say you believe to be a fair representation
19 of Ms. Fischer's interest in this well?

20 A. On the percentages, I have not calculated her
21 percentages personally. I have calculated the estimated
22 cost.

23 Q. Okay, so you have taken these percentages from
24 somebody else and applied them to a total dollar figure for
25 the well?

1 A. From the land department.

2 Q. From the land department in your company?

3 A. Yes.

4 Q. Now then, are you aware that figures like these
5 or similar to these were ever presented to Ms. Fischer?

6 A. She never responded to any of our correspondence
7 until this week --

8 Q. Well, now --

9 A. -- so probably not. I'm not aware of that.

10 Q. No, the question is, were they presented to her?

11 A. I don't know.

12 Q. Were they ever sent to her?

13 A. I don't know. The land department, maybe they
14 did. I don't know.

15 Q. So you're not aware if this information was ever
16 sent to her?

17 A. It's not for me to answer that. That's really a
18 land question.

19 Q. So then you're also not aware if things like
20 potential production rates or payout terms were ever
21 discussed with her?

22 A. Before this week, nothing was discussed with her.

23 Q. Okay, during this week, are you familiar with any
24 of this stuff being discussed?

25 A. Oh, yes, all I'm aware of is when you and Ms.

1 Fischer walked in our office you wanted to be completely
2 carried with no penalty for your share of the well, plus an
3 additional 1/6 royalty to be carved out of the other
4 people's interest, and I had hoped to negotiate a deal with
5 you so we wouldn't all have to be here today. You said you
6 were unwilling to lease, sell your minerals. And when you
7 gave us those terms, we were forced to come here today.

8 Q. Well, she's pretty mean to you, isn't she?

9 A. No, I don't know her. She may be a wonderful
10 woman.

11 Q. Now, in fact, you've had one meeting with Ms.
12 Fischer in the whole course of this process, right?

13 A. Me personally, yes, right.

14 Q. And that was yesterday, correct?

15 A. Yes.

16 Q. And that meeting lasted how long? Five minutes?

17 A. Five to ten minutes, yes.

18 Q. If that?

19 A. Yes.

20 Q. Okay. But now, you prepared this AFE-type
21 information, I'm assuming, for submittal to Ms. Fischer,
22 but you don't know if it ever actually got submitted to Ms.
23 Fischer?

24 A. This is a question for the land department.

25 Q. In your company that you prepared to send to her,

1 you don't know if it ever got sent?

2 A. Well, you would probably get my land department
3 up there and see if it was in the certified mail.

4 MR. HORNER: I have nothing further of this
5 witness, your Honor.

6 EXAMINER BROOKS: Redirect, Mr. Kellahin?

7 MR. KELLAHIN: No.

8 EXAMINATION

9 BY MR. BROOKS:

10 Q. I just wanted to understand your testimony about
11 the risk penalty factor, because I believe we got a little
12 wound up in it when you were testifying on direct.

13 You are aware, I take it, that the OCD's practice
14 in many cases in the past has been, where the well has been
15 drilled prior to a force pooling proceeding, to award only
16 a 100-percent risk penalty factor, where we would have
17 awarded a 200-percent risk penalty factor, probably, if the
18 proceeding had been brought before the well was drilled; is
19 that correct?

20 A. Yes, I'm aware of that understanding that the
21 real risk is not in the drilling of the well, it's in the
22 completion of the well. But I am aware of that.

23 Q. Okay, do I understand -- When you said that you
24 felt that the maximum penalty factor was appropriate in
25 this case, did you mean the maximum giving effect to that

1 policy, or did you mean that you think the statutory
2 maximum of 200 percent should be --

3 A. I think the 200 percent should be applied, but I
4 am aware of your rules regarding having the well drilled.

5 Q. Are there particular factors in this case that
6 you would think that in your opinion would militate for a
7 higher risk factor than the 100 percent that we would
8 normally apply in this type of case?

9 A. Again, the unproven area, the low production
10 rates and the high water production, it's a question of
11 economics. And it is a marginal area, this is out of the
12 fairway.

13 EXAMINER BROOKS: Very good, thank you. Nothing
14 further.

15 Mr. Stogner?

16 EXAMINER STOGNER: No other questions.

17 EXAMINER BROOKS: Mr. Jones?

18 MR. JONES: I have a question.

19 EXAMINATION

20 BY MR. JONES:

21 Q. Mr. Richardson, what cutoff factor do you use on
22 density to determine your footage of coal in your wells?

23 A. We don't really go off of that in itself, but --
24 We go off of a lot of factors, but not the densities.

25 Q. Do you have a log on the well?

1 A. Yes, we do.

2 Q. So you're -- What in your estimate is the
3 thickness of the coal in the well that you encounter?

4 A. In this particular well?

5 Q. Yes.

6 A. The total thickness in the H 12 well?

7 Q. The Navajo 14-2 well.

8 A. Okay, we've estimated it to be 12 feet.

9 Q. Twelve feet, okay. And what about your PC -- How
10 much porosity did you get on the PC?

11 A. It is very tight in this area. Typically -- and
12 we've drilled a lot of wells out here now -- it's just the
13 very top portion of the PC that's productive. Some of the
14 more porous zone further down is non productive. So we
15 can't really look at the thickness of the PC. At least I
16 don't.

17 Q. Okay. On allocating your costs on your AFE, you
18 said the Fruitland is 850 feet, the PC is 1050 feet, and
19 that works out to a Fruitland Coal percentage of 45
20 percent, and yet on your drilling costs you used about 40
21 to 40 1/2 percent for the Fruitland and almost 60 percent
22 for the PC. Was that what you used on the actual cost too?
23 This is just estimated AFE, but --

24 A. Yes, we will go in when we actually allocate the
25 cost out, whatever the additional below the base of the

1 coal to the total depth of the well, that increment will be
2 added to the PC.

3 Q. Okay.

4 A. Whatever that exact percentage is.

5 Q. Based on -- What do you base the percentage on?
6 Is it the depth that you complete in the -- the total depth
7 for the PC versus the total depth for the Fruitland?

8 A. Total depth of the PC.

9 Q. Okay, so that's what you're going to use for the
10 actual --

11 A. Yes.

12 Q. Okay. And on the hearing order application you
13 mentioned downhole commingling of the PC and the Fruitland.
14 Did you intend the order to include a permit for downhole
15 commingling also, or are you going to apply for that --

16 A. We will apply for that later.

17 MR. JONES: Okay, that was all my questions.

18 EXAMINER BROOKS: Okay. Anything further,
19 gentlemen?

20 MR. KELLAHIN: Not from me, sir.

21 MR. HORNER: Not of this witness, your Honor.

22 EXAMINER BROOKS: Very good, the witness may
23 stand down.

24 How long do you anticipate your presentation is
25 going to take, Mr. Horner?

1 MR. HORNER: Well, it shouldn't be more than an
2 hour, I wouldn't think. It may not be that.

3 EXAMINER BROOKS: Okay.

4 (Off the record)

5 EXAMINER BROOKS: We'll stand in recess till one
6 o'clock.

7 (Thereupon, a recess was taken at 11:37 a.m.)

8 (The following proceedings had at 1:10 p.m.)

9 EXAMINER BROOKS: Okay, call the hearing back to
10 order and go back on the record.

11 My co-Examiner would like to recall Mr. Lehrman.

12 PAUL LEHRMAN,

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

15 EXAMINATION

16 BY EXAMINER STOGNER:

17 Q. Mr. Lehrman, in looking at Exhibit Number 1, I
18 believe this was one of your exhibits; is that correct?

19 A. Yes, it was. Okay.

20 Q. Okay. If I look over in the northwest quarter of
21 Section 14 --

22 A. Okay.

23 Q. -- there is a Navajo Tribal H Well Number 12.
24 Are you familiar with that well?

25 A. No, I'm really not.

1 Q. Okay, is it -- Who's the operator of that well?

2 A. I believe it's Richardson.

3 Q. Okay, do you know what pool that well is
4 producing from?

5 A. I believe it's the Pictured Cliffs. I'm just
6 taking a guess, I really don't know. I'm just assuming
7 it's Pictured Cliffs.

8 Q. Okay. Now, how long has Richardson had this
9 well?

10 A. How long have they had the well, you mean?

11 Q. Yes.

12 A. I think it's been drilled fairly recently. I
13 mean, all his stuff is within the last four or five years,
14 I believe.

15 Q. Okay. Now this particular well, you don't know
16 if it was a recompletion or a new well?

17 A. I don't I haven't been in his office that long,
18 so I'm not familiar with that well.

19 Q. But it's presently completing as a Pictured
20 Cliffs that you know of?

21 A. Well, I'm guessing, because this one that we're
22 talking about is going to be a PC-Fruitland with a PC in
23 the southeast, and I'm thinking the northwest is a PC.

24 Q. Okay, do you know --

25 (Off the record)

1 Q. (By Examiner Stogner) In fact, it's just been
2 pointed out to me Exhibit Number 9, it looks like it's
3 producing from the PC at 110 MCF a day. Do you know how
4 that production is allocated between the Navajo reservation
5 and any fee acreage on the north side of the river?

6 A. As far -- Percentagewise?

7 Q. Yes.

8 A. Well, it would just depend on what their acreage
9 is.

10 Q. Well, has that changed over time as the river
11 changes?

12 A. You mean do the percentages change every time the
13 river changes?

14 Q. Yes, because that's what you're proposing today.

15 A. I respectfully disagree with that. No, I would
16 assume that if that Navajo Tribal H 12 well -- when it was
17 drilled -- the allocations are probably the same now as
18 they were then.

19 Q. Uh-huh. And you wouldn't see any reason to
20 change, if the river changed tomorrow?

21 A. Well, let me ask you a question.

22 Q. No, sir, I'm asking the questions.

23 A. Well, no, because you'd have to go back and you'd
24 have to change it and re-survey the river constantly. The
25 river constantly moves.

1 Q. Uh-huh. Just for the record -- and I'd like to
2 make administrative notice of that well file -- actually,
3 that well was drilled in 1961 by Pan American, and it was a
4 Gallup well. And there were two nonstandard Gallup
5 proration units formed.

6 Now, you're shaking your head yes. Did you know
7 about this?

8 A. Tom showed me a couple of --

9 Q. Okay.

10 A. I believe that was the order -- Was that the one
11 you just showed me?

12 MR. KELLAHIN: I don't know.

13 EXAMINER STOGNER: I'd just like to take
14 administrative notice of how production has been allocated
15 historically out there, and not only on these two wells,
16 but also on that particular one.

17 And I have no other questions of this witness.

18 EXAMINER BROOKS: Well, I have no questions at
19 this time.

20 Did you, Mr. Jones?

21 (Off the record)

22 MR. JONES: I have no other questions.

23 EXAMINER BROOKS: Attorneys?

24 Very good, you may stand down.

25 Very well, Mr. Horner, you may proceed.

1 MR. HORNER: At this point I would call Mary
2 Fischer to the stand. Ms. Fischer?

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

6 DIRECT EXAMINATION

7 BY MR. HORNER:

8 Q. Would you please state your name and spell your
9 last name for the record?

10 A. My name is Mary Fischer, F-i-s-c-h-e-r.

11 Q. And where do you reside?

12 A. 1109 Acoma Place, Farmington, New Mexico.

13 Q. And are you familiar with the property that's
14 being discussed here, Lot 1 in Section 14?

15 A. Yes, I am.

16 Q. And how are you familiar with it?

17 A. I own it, and I go out every day and feed my
18 horses that reside on it.

19 Q. And how did you come to own it?

20 A. It was -- I acquired it from my father.

21 Q. And do you know when he initially acquired this
22 property?

23 A. I believe it was approximately 1965.

24 Q. Now, do you own property other than simply Lot 1
25 of Section 14 in this area?

1 A. In the community of Farmington?

2 Q. No, no, right here in this particular area.

3 A. I believe I do.

4 Q. Okay, do you own some property in Section 11,
5 just immediately to the north of it?

6 A. Yes.

7 Q. And so we've talked about 45 acres associated
8 with Lot Number 1. What is your understanding of the total
9 acreage of your piece of property there?

10 A. 45 acres.

11 Q. No, including the part to the north. Don't you
12 understand it to be 51 acres?

13 A. Oh, yes, yes, I understand I own in excess of 50
14 acres.

15 Q. Okay. Now, when were you first approached by
16 somebody with Richardson with regard to some sort of oil
17 and gas activity out there?

18 A. Approximately a year to a year and a half ago I
19 received a telephone call from a Cathleen Colby who told me
20 she was working on behalf of Richardson Oil Company and
21 that they were going to put a well on my farm.

22 And I questioned that. I said, How can you do
23 that? I own the surface rights and the mineral rights.

24 And she said, Well, we can pretty much do
25 whatever we want to do.

1 And so the conversation became a bit heated and
2 she said, You'll be hearing from us.

3 Q. And so when did you next hear from her that you
4 recall?

5 A. Well, I received a letter from them, and that was
6 the next dealing I had with them.

7 Q. And so would the time frame on that be
8 approximately -- They've submitted as Applicant's Exhibit
9 Number 4 a letter dated June 26th from Cathleen Colby to
10 you. Would that be about the approximate time frame?

11 A. Yes, I think it would be.

12 Q. Okay. Now, when was your next contact with them
13 that you recall?

14 A. The next one that I recall was a letter that I
15 received from the law firm telling me I was going to be
16 force pooled.

17 Q. Okay, and so that would be relatively recently,
18 then?

19 A. Yes, the last part of July, I believe.

20 Q. All right. Now then, when was the next time you
21 had any contact with the Richardson people?

22 A. This last Monday.

23 Q. And -- So what was the nature of that contact?

24 A. I received a message on my answering machine from
25 Mr. Lehrman telling me that he was representing Richardson

1 Oil Company and that he would like to get together with me
2 at my convenience to discuss the force pooling issue.

3 Q. And did you get together with him?

4 A. Yes, I did.

5 Q. When was that?

6 A. The message was left on my machine at
7 approximately, I would guess, around 8:30 in the morning.
8 I was gone walking my dog at that time. As soon as I
9 returned, I returned his phone call, and we set something
10 up for later that afternoon at Richardson Oil Company, and
11 I had my attorney present.

12 Q. Well, you did, in fact, have a meeting with them,
13 then, Monday afternoon?

14 A. Yes, I did.

15 Q. And so who was present at that meeting?

16 A. I was there, Mr. Horner was there, Mr. Lehrman
17 was there, and Ann Jones. And I was not ever told what
18 Ann's capacity was.

19 Q. Okay, was it your understanding she worked for
20 Richardson?

21 A. Yes, I mean, she was sitting behind a desk, but I
22 didn't know what her title was.

23 Q. Okay. At that time did you discuss their
24 proposal to lease or have you participate in this
25 particular well?

1 A. Well, I asked if their proposal was the same as
2 it had been, and they said yes.

3 Q. And now then, at that time did they give you
4 copies of letters that they --

5 A. Yes, they did.

6 Q. -- had sent to you --

7 A. Yes, they did.

8 Q. -- before? And at that time did you or I ask
9 them if this particular well had been drilled?

10 A. Yes.

11 Q. And what was their response?

12 A. Both Mr. Lehrman and Ms. Jones said no, it had
13 not. Mr. Lehrman said, Well, I'm not sure, I'm just the
14 landman.

15 Q. And Ms. Jones' answer was -- ?

16 A. It had not.

17 Q. Have you subsequently learned that it has been
18 drilled?

19 A. Yes, it has.

20 Q. Have you been to the well site to see it?

21 A. Yes, I have, and I had observed the rig across
22 the river when it was being drilled.

23 Q. Okay. Now, did you say you go to your property,
24 which is there across the river from this wellsite, every
25 day?

1 A. Yes.

2 Q. And why do you do that?

3 A. To go feed my horses.

4 Q. And so then, in the last -- well, the last two or
5 three months, did you see an operating drill rig across the
6 river?

7 A. Yes, I did.

8 Q. And so approximately when was this?

9 A. I would assume it was sometime this summer. I
10 mean, within the last couple of months.

11 Q. Okay. Now then, at your Monday meeting, did they
12 give you a copy of a proposed lease agreement?

13 A. Yes.

14 Q. May the record reflect that I'm handing to the
15 witness a document entitled "Oil and Gas Lease". Does this
16 look like the agreement that they handed to you Monday?

17 A. Yes.

18 Q. Okay. And there towards the top, about two
19 paragraphs down, is a description of the particular
20 property. Would you read that description, please?

21 A. "Township 29 North, Range 14 West, N.M.P.M.,
22 Section 14: Lot 1, and containing 33.14 acres, more or
23 less."

24 Q. Okay. Now at this Monday meeting was it
25 discussed, the discrepancy between what your understanding

1 of the acreage of Lot 1 was and what their understanding
2 was?

3 A. Yes, it was.

4 Q. And do you recall explaining to them that you
5 thought your acreage was 45-something?

6 A. Yes, I said, Where did these numbers come from?
7 I believe I have 45 acres.

8 Q. And do you recall in the letters that the showed
9 you that they had sent to you before, that they were
10 talking about 17-something acres?

11 A. Yes.

12 Q. And did you ask them then how they came up with
13 the difference in their numbers?

14 A. They explained -- Well, there was something to do
15 with a BLM survey that caused my acreage to go from 45 to
16 33.

17 Q. And did they also explain something about some
18 sort of a mineral deed in the past, transferring half of
19 your mineral rights?

20 A. Yes, they explained to me that I only had mineral
21 rights to half the property, that the other half belonged
22 to Twyla Gooding.

23 Q. Okay. And then did you ask them, well, if in
24 fact they were representing that you only owned half of the
25 mineral rights, why they would be putting 33.14 acres in

1 this particular lease agreement?

2 A. Yes, I said precisely that. I said, If I only
3 own 17 1/2, why is it saying that I own 33?

4 And they said, Oh, that's standard in the
5 industry. You'll have to sign another agreement that says
6 you only own 17, but you have to sign this one first.

7 Q. Okay, so they were saying you had to sign this
8 agreement, and then there would be some other agreement
9 where they cut what you're signing here in half?

10 A. Yes.

11 Q. Now then, that was on Monday. Did you
12 subsequently talk to the Richardson people about this kind
13 of thing again?

14 A. Yes, we went yesterday, as a matter of fact,
15 and -- with -- they had submitted to me another lease via
16 fax that then said that I had, I believe, 35 acres, not the
17 33 that this lease says, and they were making another offer
18 of bonuses and that sort of thing, and then they asked for
19 another meeting, which we attended -- we came into their
20 office yesterday afternoon.

21 Q. And at this meeting yesterday afternoon, did we
22 make an offer to them?

23 A. Yes, we did.

24 Q. And do you recall what royalty interest we were
25 discussing?

1 A. We were discussing a sixth, because an employee
2 of the BLM suggested that I ask for the same that the
3 Indians get.

4 Q. Okay, and when did you have that conversation
5 with the BLM guy?

6 A. About an -- really, only minutes before we went
7 over to the Richardson office. We stopped at BLM first and
8 went on over.

9 Q. And so that was yesterday?

10 A. Yes, it was yesterday.

11 Q. And so the guy at the BLM told you that all of
12 the current Indian leases are being done now with a 1/6 or
13 a 16 2/3 interest, royalty interest, to the Indians; is
14 that correct?

15 A. Yes. Yes, and he said, If I were you I'd ask for
16 that.

17 Q. Okay. Now, then, has the BLM ever come to you
18 with regard to any potential dispute over the boundaries of
19 your property there with Lot 1?

20 A. No.

21 Q. Has the BLM ever submitted to you any form of
22 copy of these plats that were introduced this morning, the
23 1999 or the supplemental 2001 plats?

24 A. No. I didn't even know they were in existence.

25 Q. Now, having reviewed the offers that Richardson

1 apparently made to you like in June of 2001 by letter, now
2 having a little bit of an understanding of what they might
3 mean -- Let me first give you a copy of what I'm talking
4 about.

5 And this is marked -- I guess it's actually been
6 admitted as Applicant's Exhibit 4, June 26th.

7 Okay, do you recall having reviewed that document
8 in the last couple weeks?

9 A. Yes.

10 Q. And do you recall the authorization for
11 expenditures that's attached to that?

12 A. Yes.

13 Q. And the amounts that are listed on the bottom?

14 A. Yes.

15 Q. And now, was it your understanding that in order
16 to participate they were going to ask you to pay those
17 amounts up front?

18 A. Yes.

19 Q. Now then, on the front page of this document
20 would you please read paragraph 2?

21 A. "Enclosed for your review is an AFE itemizing the
22 estimated costs for the well. In the event you wish to
23 participate in this drilling and completion attempt, please
24 return an executed copy of the AFE to the undersigned by
25 July 17, 2001. Upon receipt of your executed AFE, or by

1 prior written request, we will forward an AAPL Form 610
2 Joint Operating Agreement for your review and execution,
3 providing for, among other things, a 300%/100% nonconsent
4 penalty and \$5000 drilling/\$500 producing overhead rates."

5 Q. Okay, do you have an understanding of what that
6 could potentially mean to you?

7 A. Well, what I thought it meant was, if I agreed to
8 participate in the drilling, then I would be hit with a
9 400-percent nonconsent penalty.

10 Q. And does being hit with any kind of nonconsent
11 penalty make any sense if you are agreeing to participate?

12 A. No, it made no sense to me whatsoever. Why would
13 I have to -- Why would I be penalized when I had agreed to
14 participate?

15 Q. So is there anything, then, in that paragraph
16 that at all looks to you like something that you might be
17 interested in?

18 A. No, I mean, it looked to me like if I agreed to
19 participate I'd be penalized.

20 Q. Now then, are you currently an elected official?

21 A. Yes, I am.

22 Q. And in what capacity have you been elected?

23 A. I'm a City Councilor, City of Farmington.

24 Q. Now, have you had occasion to learn of the
25 reputation of Richardson Oil Company in your running around

1 Farmington?

2 MR. KELLAHIN: I'm going to object to that
3 question, Mr. Examiner. It has no relevance about the
4 reputation of Richardson in her opinion or anyone's
5 opinion. Are we going to get into that?

6 EXAMINER BROOKS: Well, I suppose it is arguable
7 relevance to the issue that we -- one of the issues that's
8 actually addressed to us, which is negotiation in good
9 faith. I'll overrule the objection.

10 THE WITNESS: I've had two personal dealings with
11 Richardson, one with a gas well that they --

12 EXAMINER BROOKS: Well, let me interject. I
13 believe this is not responsive to the question, because the
14 rule in courts, of course, is that you can prove reputation
15 by general opinion, but you can't rely on specific
16 instances.

17 THE WITNESS: Okay, well --

18 MR. HORNER: All right, let me ask the question
19 again.

20 THE WITNESS: Excuse me.

21 Q. (By Mr. Horner) And that is, have you had
22 occasion to learn of the reputation of Richardson Oil in
23 the community?

24 A. Yes.

25 Q. And what is that reputation?

1 A. That they did not honor their commitments, and
2 that I should watch out in any dealings that I would have
3 with them.

4 MR. HORNER: Okay, I have nothing further of this
5 witness at this time, your Honor.

6 EXAMINER BROOKS: Mr. Kellahin?

7 MR. KELLAHIN: Thank you, Mr. Examiner.

8 CROSS-EXAMINATION

9 BY MR. KELLAHIN:

10 Q. Ms. Fischer, your understanding is that you own
11 the surface of Lot 1?

12 A. Yes, and the minerals.

13 Q. Are you aware that Richardson claims that the
14 other 50 percent of the minerals is not controlled by you?

15 A. Yes, I am aware of that now.

16 Q. Are you?

17 A. Yes.

18 Q. When did you first become aware of that?

19 A. Monday.

20 Q. You did not know that before then?

21 A. I did not.

22 Q. Was the rig located on any of your surface?

23 A. No. That I observed?

24 Q. Yes, ma'am.

25 A. No, it was across the river.

1 Q. On the south side of the river?

2 A. Yes.

3 Q. And you don't have surface on the south side of
4 the river?

5 A. No, I don't.

6 Q. You acknowledge that you received the Richardson
7 letter dated June 26 of '01. You have a copy of that in --

8 A. Yes.

9 Q. -- front of you? You received that?

10 A. Yes.

11 Q. Would you turn to the last page? There's a copy
12 of a return receipt card.

13 A. Yes.

14 Q. It names you and it's signed by --

15 A. -- my mother.

16 Q. By your mother?

17 A. Yes.

18 Q. Okay. So you had this letter?

19 A. Yes.

20 Q. And you read it?

21 A. (No response)

22 Q. You did not understand this language about the
23 operating agreement?

24 A. I don't think anyone who's not familiar with the
25 drilling industry would assume anything differently than I

1 did.

2 Q. Did you call Cathy Colby and say, I don't
3 understand this, what's it about?

4 A. Ms. Colby was so incredibly rude to me, with such
5 profound arrogance, that I did not particularly wish to
6 discuss this further with her. She threatened me.

7 Q. My question for you is, did you ask Ms. Colby for
8 an interpretation of this language in the letter?

9 A. No, I did not.

10 Q. All right. Did you tell her you would not
11 participate in any fashion with your acreage?

12 A. I don't recall saying that.

13 Q. Okay. In addition to Ms. Colby, did you write a
14 letter to her in response to this letter?

15 A. No, I did not.

16 Q. Did you ask for someone on your behalf to deal
17 with Ms. Colby --

18 A. No, I did not --

19 Q. -- about the proposal?

20 A. -- because I didn't feel that this was any kind
21 of a proposal.

22 Q. Okay. Did you look in the first paragraph and
23 attempt to see if you agreed with her calculation of the
24 net acreage? Up in the second line it says 17.755 net
25 acres.

1 A. No.

2 Q. You didn't question her about how that
3 calculation was made?

4 A. Well, considering the reputation of Richardson
5 that I had, I was prepared for Richardson to misrepresent
6 facts to me.

7 Q. So did you check on the opportunity for
8 misrepresentation based upon what you learned in this
9 letter?

10 A. No, I did not, because --

11 Q. Did you check --

12 A. -- Ms. -- One of the other things that I was told
13 was if -- in what I considered a threat -- was that if you
14 don't cooperate with us, we'll drill this on the
15 reservation, but that could take many years. So I felt
16 that many years could have been a long time.

17 Q. The well, in fact, was not drilled on your
18 surface, was it?

19 A. No, but it was threatened to be.

20 Q. After this letter, did you then receive in
21 November, after November 16th of the year 2001, what was
22 marked as Exhibit 5?

23 A. Is that essentially the same letter? I don't
24 recall seeing this letter. I may have, but I don't recall
25 it.

1 Q. Would you turn to the last page, the copy of the
2 green card?

3 A. Yes.

4 Q. Is that signature familiar to you?

5 A. That's my mailman.

6 Q. Okay. Apart from the acreage difference, you
7 have approximately a claim for 45-plus acres?

8 A. Yes.

9 Q. And Richardson's position is that it's 33-plus
10 acres?

11 A. Well, I don't know really what their position is.
12 Once they said I owned 33 and once they said I had 35.

13 Q. Forget about the numbers.

14 A. Okay.

15 Q. Would you have leased your interest to Richardson
16 if the number of acres had agreed with your understanding
17 of how many acres you own?

18 A. Well, Richardson provided me with nothing. They
19 did not let me know what they intended to do, how they
20 intended to do it, in what time frame they expected to do
21 it. I wasn't told anything.

22 Q. Did you ask for those items?

23 A. I don't think it's mine to ask. I think they
24 should be presenting their proposal to me.

25 It was interesting, when I was sitting in here

1 listening to the other hearing that just went on, Ms.
2 Richardson from, I believe, Yates, was telling about the
3 efforts that they made to inform people that they wanted to
4 deal with and what lengths they went to. None of those
5 things were done with me.

6 Q. Did you make a request from Richardson to either
7 one of these letters to more fully inform you of these
8 items that are now of concern to you?

9 A. I don't feel it's up to me, I believe it's up to
10 them to inform me.

11 Q. These things are just a one-way street with you,
12 aren't they?

13 A. Well, I feel it's up to them to inform me, who is
14 not familiar with the industry, what they have in mind. If
15 they're going to make a good-faith effort to deal with me,
16 they have to educate me to let me know what I'm getting
17 into.

18 Q. At this point do you perceive that there still
19 can be an agreement with Richardson?

20 A. Well, I'm a little leery, but I would hope there
21 would be something that would be done, but I don't know.

22 I mean, I think that, again, I need to know what
23 they're doing, I need to be assured that I have 45 acres, I
24 think I need to be compensated properly, and I think I have
25 the right to see production records from the well that's --

1 what? -- 600 feet away, so that I could have some feel to
2 make an educated decision as to what this means to me. I
3 don't know what's in my best interest. I don't know what a
4 lease means. Am I going to get 35 cents, or am I going to
5 get 35 dollars?

6 Q. How long have you lived in Farmington?

7 A. I've lived since 1952.

8 Q. It's an oil and gas community, is it not?

9 A. Well, it isn't right now, but it has been, yes.

10 Q. Do you know oil and gas attorneys?

11 A. Do I?

12 Q. Yes.

13 A. Yes.

14 Q. Do you know oil and gas people with whom you have
15 confidence?

16 A. Yes, and they told me not to deal with
17 Richardson.

18 Q. All right, that's it, there can be no deal then,
19 right?

20 A. I didn't say that. That's what I was advised by
21 people in the field.

22 Q. Do you now understand that if you were to
23 voluntarily elect to commit your interest to the well, that
24 that is a voluntary agreement, would not subject you to
25 penalties for the drilling and completion of the well?

1 A. I understand that, but --

2 Q. That's clear to you now, is it not?

3 A. Well, what was told to me in this letter --

4 You're very familiar with oil and gas --

5 Q. Did you ask --

6 A. -- Mr. Lehrman is very familiar. I am not.

7 Q. Did you ask somebody who was?

8 A. You did not -- That isn't the point. You are to
9 make this clear to me, so I don't have to run out and incur
10 expense of hiring an oil and gas attorney or asking my
11 neighbor or anything else. It is your obligation to make
12 it understandable to me.

13 Q. Did you ask Ms. Colby to make it understandable
14 to you?

15 A. Oh, I have to ask someone, Please make this
16 understandable to me? That is their obligation.

17 Q. And when you find that this is not understandable
18 to you, you think they should have anticipated the fact
19 that you didn't know, and you don't have any obligation to
20 inquire that, I don't understand this?

21 A. I think what I expected was an honest proposal.
22 I did not get one.

23 MR. KELLAHIN: Okay. No further questions, Mr.
24 Examiner.

25 EXAMINER BROOKS: Redirect, Mr. Horner?

REDIRECT EXAMINATION

BY MR. HORNER:

Q. Well, in fact, you did make a proposal to Richardson yesterday, did you not?

A. Yes, I did.

Q. And so generally the nature of that proposal would have been that it encompass your share of the entire 45 acres --

A. Yes.

Q. -- which would be a half share --

A. Yes.

Q. -- and that it would involve a royalty interest of 16 2/3 percent --

A. Yes.

Q. -- and that your participation share for this well be taken out of the working interest, which would be the 83 1/3 percent, or whatever it would be?

A. Yes.

Q. And in fact, don't you believe that the offer that you made yesterday was fair and equitable?

A. Yes, I do.

Q. And did they accept the offer?

A. No.

Q. Did they consider the offer?

A. No.

1 Q. Did they want to discuss the offer?

2 A. No.

3 Q. Okay. Was it your impression that they didn't
4 want to discuss it because they were going to come in here
5 and hammer you for 200 percent today --

6 A. Yes.

7 Q. -- a 200-percent nonconsent penalty?

8 A. That or more, yes.

9 Q. So is it your impression that they were not
10 dealing in good faith?

11 A. Yes. And you know, I felt like they were always
12 trying to trick me. When I asked them if the well had been
13 drilled, No, it hadn't. They told me that this was virgin
14 territory, that it hadn't been drilled before, and this was
15 something new. And I was really surprised to hear that
16 because I can see tanks from my farm that are already
17 there, and that doesn't add up.

18 And so I -- at no point -- They just kept handing
19 me leases. They never said, Would you be interested in
20 participating, blah, blah, blah. They just said, Here's a
21 lease. Each lease had different numbers on it. One day
22 it's 33, one day it's 35. And so I really felt that they
23 were not dealing with me straight.

24 Q. Okay. Now, in your offer yesterday, okay, you
25 were offering that your share be taken, or your

1 proportionate share of the cost of drilling be taken out of
2 production, were you not?

3 A. Yes.

4 Q. Okay, and with no penalties.

5 A. That's correct.

6 Q. Okay, that was essentially your offer?

7 A. Yes.

8 MR. HORNER: Okay, I have nothing further of this
9 witness at this time, your Honor.

10 EXAMINATION

11 BY EXAMINER BROOKS:

12 Q. Okay. First of all, Councilor Fischer, let's go
13 back to the question of acreage. You had said that you go
14 to this property every day, and I believe you said you
15 owned it -- you acquired it from your father, who acquired
16 it in 1960-something --

17 A. Yes.

18 Q. -- is that correct?

19 A. Yes.

20 Q. How long have you owned it?

21 A. Since the -- probably mid-Seventies.

22 Q. How long have you been regularly going out there?

23 A. Every day since the mid-Seventies, yeah.

24 Q. As far as the surface is concerned --

25 A. Yes.

1 Q. -- I'm talking about surface, not minerals --

2 A. Yeah.

3 Q. -- you said something about the well being across
4 the river. Is it your assumption that your southern
5 boundary is the river?

6 A. I don't know. I mean, I assume that it is, but
7 at one time someone said that it went to the middle point
8 of the river. So I really don't know. But where I saw the
9 well being drilled was definitely on the reservation.

10 Q. On the south side?

11 A. Yes.

12 Q. But you would concede that the south side of the
13 river --

14 A. Yes.

15 Q. -- is the reservation?

16 A. Yes.

17 Q. Now, has the river channel moved since you've
18 been -- in the 30 years you've been familiar with the
19 property?

20 A. No.

21 Q. It's still in exactly the same place?

22 A. Well, I don't know that it's in exactly the same
23 place --

24 Q. Fairly close?

25 A. -- but we haven't had any catastrophic things

1 that would move that river.

2 Q. But you understand the river channels can move?

3 A. Well, they can, but I don't know that they move
4 12 acres.

5 Q. But if the river did move, then it would be a
6 question of the law whether your boundary was still -- was
7 where the river moved to or where the river was when you
8 got the property, right? That would be a question of law
9 that some judge would have to decide?

10 A. Probably.

11 Q. Okay. Now, going to the negotiations, you had a
12 meeting on Monday of this week with the Richardson people?

13 A. Yes.

14 Q. Was that the first face-to-face meeting you had
15 with the Richardson people?

16 A. Yes.

17 Q. And then you had another meeting yesterday?

18 A. Yes.

19 Q. And Mr. Richardson, if I understood him
20 correctly, testified that he was at the --

21 A. Yes, he was.

22 Q. -- meeting yesterday --

23 A. Yes.

24 Q. -- and he --

25 A. Yes, he was.

1 Q. Okay. Now, there is something that -- You made a
2 proposal, and if I understand Mr. Richardson's testimony,
3 and to the extent I understand yours -- I think there was a
4 misunderstanding between the two of you as to what you were
5 proposing, but I'm not sure that I understand your
6 testimony. You said you proposed a lease with 1/6 royalty;
7 is that correct?

8 A. No.

9 Q. No?

10 A. Well, Mr. Horner -- Yes, a 1/6 royalty,
11 consistent with what the Indians are given.

12 Q. And what does that mean, as opposed to just
13 normally what you would say is 1/6 royalty? I mean, the
14 Indians probably have a long, complicated lease --

15 A. Well, they probably do --

16 Q. -- that their attorneys have drawn.

17 A. -- but it seemed to me fair if they give one
18 group -- amount, they should give me the same.

19 Q. But were you -- when you say that, were you
20 requesting -- That's really kind of vague as to what you
21 were requesting, to me. If you're requesting more than --
22 I understand the lease with 1/6 royalty, that --

23 A. Yeah.

24 Q. Mr. Richardson seemed to be under the impression
25 that you were asking for a 1/6 royalty and that you were

1 also asking for an interest in the profits of the well
2 derived from the other 5/6, and I wasn't sure whether that
3 was an accurate understanding of what you were asking for
4 or not, but that seemed to be his understanding, as best I
5 understood his testimony. Now, was that, in fact, entailed
6 in your proposal?

7 A. Could I defer to Mr. Horner on what --

8 Q. Sure.

9 A. -- was actually discussed?

10 Q. Sure, sure.

11 Have you ever had your property surveyed?

12 A. It's been surveyed many times.

13 Q. But have you had your --

14 A. Have I --

15 Q. Yes.

16 A. No.

17 EXAMINER BROOKS: Okay, I guess that's all my
18 questions.

19 Mr. Stogner?

20 EXAMINATION

21 BY EXAMINER STOGNER:

22 Q. One quick question. You say you have owned this
23 property -- or Lot 1, when you say the property --

24 A. Yes.

25 Q. -- since 1977?

1 A. Yes.

2 Q. Since you have owned it, has this property been a
3 part, or have you received any oil and gas interest from
4 other production on the north side of the river?

5 A. No.

6 Q. How about before then? Do you know anything
7 about your mother and --

8 A. I would assume no, they -- My mother is still
9 living, my father is deceased. But she is unaware of
10 anything.

11 Q. So no royalties, no production --

12 A. No.

13 Q. -- income of any kind?

14 A. No.

15 EXAMINER STOGNER: Okay, that's all the questions
16 I have.

17 EXAMINER BROOKS: Anything further? Mr. Jones?

18 MR. JONES: No.

19 EXAMINER BROOKS: Gentlemen?

20 Okay, the witness may stand down.

21 THE WITNESS: Thank you.

22 EXAMINER BROOKS: Mr. Horner, were you going to
23 testify?

24 MR. HORNER: Yes.

25 EXAMINER BROOKS: You may take the witness stand.

1 MR. HORNER: Okay, let me see. Let me bring some
2 stuff with me here.

3 MR. KELLAHIN: May we have a two-minute break?

4 EXAMINER BROOKS: You may.

5 (Thereupon, a recess was taken at 1:50 p.m.)

6 (The following proceedings had at 2:00 p.m.)

7 EXAMINER BROOKS: Okay, we'll go back on the
8 record. And for the record, Mr. Horner is calling himself.

9 GARY HORNER,

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

12 DIRECT TESTIMONY

13 BY THE WITNESS:

14 MR. HORNER: My name is Gary Horner, H-o-r-n-e-r.
15 I am the attorney, I guess now of record, in this matter
16 for Ms. Fischer.

17 I am also a licensed professional surveyor in the
18 State of New Mexico. Okay, so all these questions you've
19 been wanting to ask, you can get somebody to ask.

20 And so before I jump into that, which was
21 probably most of what I wanted to be talking about today,
22 anyway for my part, the issue has come up with regard to
23 the offer that was made by myself and Ms. Fischer
24 yesterday. It was not made in writing, things were
25 happening so fast, trying to get things done and to -- this

1 would have been the first time that we had an opportunity
2 to make a counteroffer to Richardson in this process.

3 The first face-to-face discussions we had was on
4 Monday, and then we were trying to figure out why 33 acres,
5 why 17 acres, why 45 acres, where all this was coming from.
6 They were talking about, she only had half her mineral
7 rights. I was spending three days running all over the
8 county trying to figure out which end was up.

9 But then yesterday afternoon, early afternoon,
10 for the first time we made a counterproposal. And that
11 counterproposal was that her interest be calculated on the
12 45 acres and that we be looking at some sort of a
13 participation agreement as opposed to a lease. We said we
14 were not interested in a lease, and we were not interested
15 in selling them her mineral rights.

16 And I said that what we wanted to do was
17 calculate into this a royalty of $16 \frac{2}{3}$ percent and that
18 her proportionate share of the cost of participating in
19 this well be taken out of the other $\frac{5}{6}$, which then, as I
20 understand, even when you go to compulsory pooling, that's
21 the way things are done, that there is considered to be a
22 royalty interest, maybe in the statutes, of $\frac{1}{8}$, but the
23 other $\frac{7}{8}$ is considered to be the working interest, and
24 that the costs are taxed against that working interest and
25 that royalty interest continues to be paid untaxed.

1 That's the proposal we made then, except that it
2 was for 1/6 rather than 1/8. We based the 1/6 on a
3 conversation we had just had with a gentleman from the BLM
4 who said that currently all of the lease that are being
5 done with the Indians involve a 1/6 royalty rather than a
6 1/8, up in that area.

7 And in fact, in this particular well, you know,
8 there is a large proportion involved with the Indian
9 reservation.

10 We were asking the gentleman from the BLM for
11 information with regard to those Indian leases, for
12 information with regard to the permits associated with
13 these particular wells, with regard to production records,
14 which he would give us absolutely nothing, saying Indian
15 stuff is all proprietary and top secret. So we couldn't
16 get any of that.

17 But what he did say was that currently all of the
18 leases leased in that area with the Indian tribes are
19 currently being done considering a royalty interest of 1/6.

20 So that was generally the offer that we made.

21 There was a couple of other things, like we
22 wanted to audit the records. And there may have been one
23 or two other minor things. But that was generally -- We
24 were offering a participation agreement with her share to
25 be paid from production, with no penalties. And we thought

1 we were being fair.

2 So that's the offer that we made yesterday.

3 Now, regarding the survey and the issue of the
4 difference in the --

5 MR. KELLAHIN: Mr. Examiner, may we have the
6 witness present his qualifications, education, experience
7 and current work as a surveyor so that we have that for the
8 record?

9 EXAMINER BROOKS: Please.

10 THE WITNESS: Okay, I graduated from college in
11 1972 with a BS degree in electrical engineering, went to
12 work for Arizona Public Service as an electrical engineer
13 in 1980, '81, I quit, started my own company in Farmington,
14 Horner Development and Construction, got a bunch of
15 contractor's licenses. Before I had left APS, I got my
16 professional engineering license, so -- in Arizona. When I
17 moved to New Mexico, I got my professional engineering
18 license in New Mexico, which was -- so basically in Arizona
19 it was a PE in electrical engineering, in New Mexico it was
20 actually just a PE.

21 MR. KELLAHIN: What's the date of that, do you
22 remember?

23 THE WITNESS: The first one in Arizona was 1976,
24 so the PE in New Mexico would have been by reciprocity in
25 approximately 1982, I believe, 1983 maybe.

1 But then it became apparent with some of the
2 stuff that I was doing and wanted to get into that I needed
3 a civil PE. I ended up, while I was going to law school,
4 actually, between 1984 and 1986, taking the civil PE test,
5 and now I'm also a civil -- registered civil engineer in
6 Arizona and New Mexico.

7 Along the way it became apparent that I needed a
8 professional surveying license, so I got that in Arizona in
9 -- I don't remember exactly, it was 1985 or 1986. And I
10 ended up fighting for about ten years with the New Mexico
11 board to be able to take the tests in New Mexico and
12 finally got my New Mexico professional surveying license in
13 -- I think it was 1998.

14 So that's my background in that regard.

15 So then I went to law school, 1984-86 and was
16 admitted to the bar in New Mexico and Arizona, in New
17 Mexico in 1986 and Arizona in 1987.

18 MR. KELLAHIN: Are you currently practicing as a
19 surveyor?

20 THE WITNESS: I'm licensed to practice, and I --
21 Well, I'm a surveyor, I'm an engineer, I'm a lawyer, and I
22 do a little of all of the above. So, you know, to say am I
23 spending 100 percent of my time surveying, no, I'm not.

24 MR. KELLAHIN: Okay, do you have an estimate of
25 the percentage time you devote to that activity?

1 THE WITNESS: I really couldn't tell you at this
2 point.

3 MR. KELLAHIN: Do you do it for private clients?

4 THE WITNESS: Yes.

5 MR. KELLAHIN: Do you do it for any of the oil
6 and gas industry?

7 THE WITNESS: I have never worked on any oil and
8 gas matter in my life until this issue has come up, as a
9 surveyor or whatever else.

10 MR. KELLAHIN: I have no objection to his
11 testifying.

12 EXAMINER BROOKS: Okay, I believe the witness is
13 qualified as an expert in surveying and, to the extent it's
14 relevant, in law. In the courts, we normally didn't allow
15 people to testify as experts in law on the ground that the
16 judge was the best expert around.

17 To the extent it's relevant he's so qualified.

18 THE WITNESS: Okay. So what we have in this
19 matter is a significant discrepancy between the surface
20 acres involved here with regard to Lot 1. When you look at
21 the chain of title, it's consistently talking about Lot 1
22 specifying 45.47 acres, okay, and that runs consistently
23 through the chain of title.

24 Now there has been introduced from the Richardson
25 folks here some sort of perception that Lot 1 should

1 actually involve only 33 or 35 acres or something like
2 that.

3 And to support that position they look at a
4 couple of different documents. One is the Compensatory
5 Royalty Agreement, and the other is the plats that have
6 been introduced here so far.

7 Maybe I should dispose of the Compensatory
8 Royalty Agreement first. Maybe I can do that quickly. It
9 has been, so far, marked for identification as Fischer
10 Exhibit B. And what this agreement is actually involving
11 is only 2.24 acres. And apparently in the course of
12 looking at this issue, the BLM found a discrepancy with
13 calculating acreages to the median line of the river or to
14 the -- basically, meander line, which is the high-water
15 line. Okay, so the edge of the river.

16 And exactly what the problem was here that the
17 BLM had come up with I'm not sure, but there was this
18 discrepancy where apparently they were calculating acreages
19 only to the edge of the river, and now they wanted to do it
20 to the middle of the river, and so there was this 2.24
21 acres.

22 If you will look at the supplemental map --

23 EXAMINER BROOKS: That's Exhibit 2-A, I believe.

24 THE WITNESS: Okay, Exhibit 2-A. -- you will see
25 the 2.24 acres that is the subject of this Compensatory

1 Royalty Agreement as that piece in the river lying north of
2 the median line or essentially the middle line of the river
3 as depicted on this map, in the west half of the northeast
4 quarter. So this map is just the north half of the
5 subdivision, so it's --

6 EXAMINER BROOKS: Correct.

7 THE WITNESS: -- second from the left there.
8 Okay? And so you see a little 2.24 acres, or 2.24 in
9 parentheses, there above the median line, and so it's that
10 little hatched area above the median line that is the
11 subject of this compensatory agreement.

12 So one of the things that you will note is that
13 Lot 1 over here is not immediately adjacent to this 2.24
14 acres at all. So it is -- this 2.24 has nothing to do with
15 Lot 1. Okay. It is some sort of little hiccup that they
16 found in dealing with their lease that they wanted to
17 straighten up. And that is the whole point of the
18 Compensatory Royalty Agreement.

19 Now, in the course of doing that Compensatory
20 Royalty Agreement, they were talking, apparently, about
21 this well involving the east half of the Section 14. And
22 so what they apparently done in Exhibit "A" is somehow
23 tried to list the different portions of the east half of
24 Section 14.

25 Now, what that really has much to do with this

1 agreement, I guess the only thing it has to do with the
2 agreement is, in order to be able to establish the ratio of
3 the 2.24 to the total number of acres in the east half.
4 Okay. And so that is really the only purpose of Exhibit
5 "A".

6 Now -- and then this thing -- I'm not sure,
7 Exhibit "A", who came up with these numbers, but it wasn't
8 their surveyor. Okay, I'm not sure if it was Richardson
9 people or BLM people. It was probably somebody with the
10 BLM, but it is not indicated on here who came up with it,
11 but it was obviously not a surveyor.

12 Now, that brings us to the particular plats in
13 question. And one of the things that you will notice on
14 the big -- I don't have mine marked here. I think it's
15 2-C, it's the 1999 plat. Okay, the dependent --

16 EXAMINER BROOKS: That is 2-B.

17 THE WITNESS: 2-B, okay. The Dependent Resurvey
18 and Subdivision of Section where they're showing the whole
19 section, okay.

20 EXAMINER BROOKS: Correct.

21 THE WITNESS: As you look at this map, what they
22 were doing, okay, is trying to establish these meander
23 lines for the San Juan River on this section as they were
24 set out in 1881. Okay, now this is a trick, trying to
25 figure out where the meander lines of this river was in

1 1881. And so they had to go back to whatever records they
2 could find and see if they could actually come up with some
3 sort of evidence of where these lines were in 1881.

4 And that is the depiction on this plat. Is
5 Section 14 showing the meander lines as they had been found
6 in 1881? So that is what is going on, on this particular
7 plat.

8 Now then, you will notice over here on the right
9 side of this plat, that's what it's talking about they're
10 doing. And then in the third little paragraph down it
11 says, Except as indicated hereon, the lottings and area are
12 as shown on the plat approved August 31, 1882.

13 Okay. And so in that regard you see Lot 1. And
14 in Lot 1 is the same as it was in 1882, and there is no
15 indication of acreage there, which is indicating they
16 weren't trying to change any kind of acreage on this map.

17 Now for instance, you look over here at Lot 9,
18 immediately to the left or the west, and it shows 23.41
19 acres. Now then, they are making a change there. And in
20 fact, the 1882 map showed this where it says Lot 9 now as
21 Lot 2. Okay, so they've even changed the lot numbers.

22 And on this next map you'll find that I believe
23 where it says Lot 9 they've changed it again to where
24 they're showing it as Lot 20. So they're changing the lot
25 numbers around here, except for Lot 1. And the reason

1 they're not changing Lot 1 is, once you get a patent,
2 that's a done deal and you can't change that.

3 Now, what you have here in the rest of this
4 section is all BLM or Indian land. And so far as it's
5 completely government owned, they can draw their lines
6 wherever they want to draw their lines, and they're not
7 impacting anybody. But when you come up to a boundary with
8 somebody else and you start changing that boundary line,
9 then you've got a real problem.

10 Now, one of the things that you find, right
11 quick, is, in the difference between the 45 and the 33
12 acres -- subtract it, you get 12 acres, and multiply 12
13 acres times 43,560 square feet per acre. The distance
14 east-to-west on this Lot 1 is about 1320 feet, so if you
15 divide that number by 1320 feet, you'll find that the
16 difference between the 45 and the 33 acres amounts to a
17 movement of one of these east-west boundaries, either the
18 north one or the south one. In this case what they're
19 assuming is a movement in the south boundary of 400 feet.
20 This is a long ways. Okay. So it's a big deal.

21 Now -- But what is being indicated on this map,
22 then, and also on the next map is, there is no acreage
23 indicated for Lot 1, meaning they have no intention of
24 trying to change by this survey the acreage in that Lot 1.
25 And so they are trying to re-look at what's going on here

1 in the rest of the section, and where you see a lot number
2 and the number underneath it, the number underneath it is
3 their newly calculated acreage for that particular lot.

4 Now, you were asking about the little numbers
5 along the sides, okay. And so like in the southeast
6 corner, along the east line, it says 39.72. Well, that's
7 not feet. That would be a really little section. Okay --

8 EXAMINER BROOKS: Yeah, I guess I stand corrected
9 on that. Those are rods, aren't they?

10 THE WITNESS: Well, they're chains.

11 EXAMINER BROOKS: Chains.

12 THE WITNESS: Okay, and so a chain is 66 feet.

13 And so --

14 EXAMINER BROOKS: Okay, I've dealt with those
15 before, I just wasn't --

16 THE WITNESS: Yeah, well, even surveyors have to
17 get the books out to figure out what they're talking about
18 here. But the BLM still uses chains as the numbers that
19 they put on their maps. And so one chain being about 66
20 feet, so you'll have 80 chains in a mile or about 40 chains
21 in a half a mile.

22 And so then where you're showing 39.72, one of
23 the first things you're going to note is, well, it's just a
24 little bit smaller than a mile through there. Okay. Well,
25 that's a little bit smaller than a half a mile, and where

1 they've equally subdivided it, then you're going to end up
2 with a section that's actually just a bit smaller than a
3 mile square. So anyway, that's what you're looking at
4 there.

5 Now, what I would like to show you here to
6 substantiate some of the stuff I'm talking about, about not
7 changing the acreage, and number one, the bible that the
8 BLM surveyors use, or the surveyors of the public land, is
9 called the *Manual of Surveying Instructions* that was
10 published in 1973.

11 And so if I could introduce this -- and I'm not
12 even sure I can write on this and I can see it. I think my
13 next one is Exhibit D.

14 EXAMINER BROOKS: Yeah, I'd love for you to
15 introduce it. I've wished I had a copy of that for a long
16 time.

17 THE WITNESS: This is not the whole thing, this
18 is just excerpts of the part that's kind of relevant here,
19 but unfortunately it's kind of thick, so...

20 Now, one of the -- the particular issues that
21 we're talking about here, what I've done is copied the
22 cover, the title page, the table of contents so that you
23 can kind of track what's going on and the relevant
24 sections. The first part is about meandering, which I
25 don't think we need to really get into today. But anybody

1 that wants to go home and study this book is welcome to.

2 On through here you'll see at page 145 is a
3 Chapter 6 on resurveys, okay. Now then, so what this is
4 generally going to talk about, in a dependent resurvey what
5 they're trying to do is go out and find the -- what was
6 initially intended to be the corners as it was originally
7 surveyed.

8 And so in 1881 this was a real trick. They were
9 throwing rocks out there for section corners and sometimes
10 blazing trees and, you know, scratching things on sandstone
11 and this sort of stuff. So to find the original corner is
12 a bit of a trick. But you try to find that.

13 And then as they got up into the 1950s they
14 started setting out the monuments, the brass caps that
15 you've probably seen around. And so as they resurvey
16 things in later years, they will be setting the brass caps
17 where they go out and resurvey some of this stuff.

18 But the trick is not to straighten out section
19 lines or anything else; it's to figure out where they
20 initially set the section corners and to resurvey it from
21 there. Now then, in this particular case they're also
22 looking at the issues of the river.

23 But one of the things that you'll find here on
24 page 146 is a discussion of jurisdiction with regard to
25 these resurveys. And over in the bottom right-hand corner,

1 the last paragraph, it says, "The Bureau of Land Management
2 has exclusive jurisdiction over all matters pertaining to
3 surveys and resurveys affecting the public lands." Okay,
4 they don't have any jurisdiction over private stuff.

5 "As between owners of lands, the title to which
6 has passed from the United States, final determination in
7 the matter of fixing the position of disputed land
8 boundaries rests with the local courts of competent
9 jurisdiction." Which means you can't change a boundary
10 with a survey. Okay? If they decide that this is a big
11 enough issue that they want to do something about it, the
12 only way they're going to change the boundary is by going
13 to court.

14 So -- Or generally when a surveyor looks at a
15 boundary conflict, one of the things they tell them is, you
16 can go out and you can get a voluntary agreement between
17 adjoining land owners, exchange some deeds, that sort of
18 thing, or basically go to court. This is your quiet title
19 suit in many instances, to fight about where the boundary
20 should be.

21 And so what this is saying, then, is, the survey
22 is not going to change anything when it comes to a boundary
23 of private land. If they really want to change it, they've
24 got to go to court and get an order changing the boundary.
25 So this survey doesn't do that.

1 Now then, okay, on the next page, page 147, close
2 to the top of the right-hand side, about four lines down,
3 it starts out, "The Act of March 3, 1909, (35 Stat. 845),
4 as amended June 25, 1910, (36 Stat. 884; 43 U.S.C. 772)
5 reads in part as follows: 'That no such resurvey or
6 retracement shall be so executed as to impair the bona fide
7 rights or claims of any claimant, entryman, or owner of
8 lands affected by such resurvey or retracement.' The
9 rights of claimants are to be similarly protected under the
10 provisions of the Act of September 21, 1918, (40 Stat. 965;
11 43 U.S.C. 773)."

12 Then the next paragraph, "6-13. Bona fide rights
13 are those acquired in good faith under the law."

14 Under "6-14. The basic principles of protecting
15 bona fide rights are the same in either the dependent or
16 the independent resurvey. Each is intended to show the
17 original position of entered or patented lands included in
18 the original description."

19 A little bit farther down in that paragraph the
20 last sentence says, "There is no legal authority for
21 substituting the methods of an independent resurvey in
22 disregard of identified evidence of the original survey."

23 And then paragraph 6-15 just below that, "The
24 position of a tract of land, described by legal
25 subdivisions, is absolutely fixed by the original corners

1 and other evidences of the original survey and not by
2 occupation or improvements, or by the lines of a resurvey
3 which do not follow the original."

4 Then the last sentence starting on that page is,
5 "Under fundamental law the corners of the original survey
6 are unchangeable." Okay.

7 And again, then, on page 149, it starts off a
8 discussion of The Dependent Resurvey. Paragraph "6-25.
9 The dependent resurvey is designed to restore the original
10 conditions of the official survey according to the record."

11 Now then, when you understand these concepts and
12 you look at what they were doing on this plat, okay, then
13 stuff hopefully will start to be a little clearer. And
14 what you have then is, they have made no effort whatsoever
15 to try to change any acreage or any boundary associated
16 with Lot Number 1, a patented piece of property. Okay?
17 They have no authority to do it, and they have not tried to
18 do it, in this document. Okay.

19 So we actually have no conflict with the BLM.
20 They are not taking a position that they have changed
21 anything. Okay?

22 Now, if you look at the supplemental plat, which
23 is just the north half of the subject section, you will see
24 again that here now they're trying to draw the new position
25 of the San Juan River. But again, Lot Number 1, they are

1 not trying to say that the acreage has changed at all. And
2 down towards the bottom you have Lot 15, which again they
3 are not trying to change the acreage of at all, which is
4 lying south of the meander line from 1881, the meander line
5 being the high-water line at that particular time.

6 Now, what they have done is, above that they have
7 indicated accreted land, in parentheses, 29.70. Okay. So
8 they are indicating what they think they found, which we
9 would dispute if it ever went to court, but what they think
10 they found at that particular time was that the land
11 between this meander line and the left bank, or the south
12 bank of the San Juan River, is accreted land. Okay? And
13 so they are putting down there what they think they have
14 found, that that's 29.7.

15 But what they are not trying to do is indicate
16 that the ownership or the boundaries have changed. They
17 are showing the evidence of what they found in the field,
18 but they are not at all trying to indicate that there is
19 any ownership change.

20 And what you see there in that regard, where it
21 says "accreted land", they are not indicating a lot number.
22 Okay. So the Lot Number 15 down there below remains
23 unchanged, the acreage remains unchanged. Lot Number 1
24 above remains unchanged, and the acreage remains unchanged.

25 Okay. So at this point the BLM is not even

1 coming up and arguing that that has changed. Now, maybe
2 some- -- the BLM surveyor anyway.

3 Now, maybe somebody in the BLM, looking at this
4 map, started taking acreages off of here someplace and
5 doing things with them, and one of the documents that they
6 submitted today was a bunch of handwritten calculations on
7 a plat that somebody had tried to do that. It wasn't a
8 surveyor, and it wasn't somebody who understands the law in
9 these issues. The surveyors did not try to do that.

10 So we actually have no dispute with the BLM over
11 the boundary of this property.

12 Now, one of the things you also find in here that
13 I have -- just for the fun of it -- Once we've established
14 that nothing has changed, then we really don't have to get
15 into any of this stuff. But if we ever got into a dispute
16 with the BLM, one of the things that you find on the USGS
17 maps is, the boundary of the river runs right next to this
18 well site.

19 When I was out there two days ago, you see right
20 next to the well site is a fence, a line of brush, it drops
21 off, and it's rocks. Okay. And when you read in here how
22 you determine the high-water mark, that's how you determine
23 the high-water mark, where the water has left no
24 vegetation, which indicates that the high-water mark is
25 right up by this well site, and not at all where they're

1 indicating it to be.

2 Also on page 172 of, again, the *Manual of*
3 *Surveying Instructions*, it talks about avulsion as opposed
4 to accretion, what they have indicated as accreted land.
5 So accreted land is going to be the gradual deposition over
6 time of land.

7 Avulsion, it says in Paragraph 7-71, "'Avulsion'
8 is the sudden and rapid change of channel of a boundary
9 stream, or a comparable change in some other body of water
10 forming a boundary, by which an area of land is cut off.
11 An island may result or the avulsed land may become
12 attached to the opposite shore."

13 7-72 says, "In the case of *Nebraska v. Iowa*, 143
14 U.S. 359 (1892), the Supreme Court held: 'When grants of
15 land border on running water, and the banks are changed by
16 the gradual process known as accretion, the riparian
17 owner's boundary line still remains the stream; but when
18 the boundary stream suddenly abandons its old bed and seeks
19 a new course by the process known as avulsion, the boundary
20 remains as it was, in the centre of the old channel: and
21 this rule applies to a State when a river forms one of its
22 boundary lines.'"

23 So if they should ever decide that they want to
24 use this survey and come at Ms. Fischer with some sort of
25 resurvey over this property, they have a lot of factual

1 circumstances to deal with in court.

2 But what they have not tried to do by any of this
3 survey is indicate that that boundary has changed or should
4 change.

5 So therefore, when you look at what Richardson
6 has done, and based their information that Ms. Fischer's
7 property has shrunk from 45 acres to 33 based on this plat,
8 based on Exhibit "A" to this Compensatory Royalty Agreement
9 or anything like that, unfortunately, they just don't know
10 what they're doing. And whoever did -- If somebody at the
11 BLM advised them that that's what they should be doing,
12 they didn't know what they were doing either. The
13 surveyors did not try to do that, and know they can't do
14 that, so...

15 Anything else here? Let me see.

16 Oh, and in that regard, one of the things I have
17 is, I can show you all the deeds in the chain of title that
18 show consistently 45 acres. I have here a copy, and I only
19 have one, and so I can go away and make more copies and
20 send them to you. But for right now, I'll be happy to show
21 them to you.

22 It's an assessor's map plat showing Lot 1 that I
23 did August 19th -- so that was Monday or Tuesday -- again
24 indicating Lot 1 -- here's a parcel number -- Mary Fischer,
25 book and page number, 45.47 acres, which is still being

1 shown by the San Juan County Assessor. And the title
2 opinion that they referred to, I don't know how they can
3 come up with anything other than 45.47 acres.

4 This particular survey plat has not made it to
5 the Assessor's Office or the County Clerk's Office, and I
6 don't expect it to. There's no reason for it to go over
7 there. They're not trying to change any private land
8 boundaries.

9 I can leave that with you or I -- maybe I should
10 take it and make --

11 EXAMINER BROOKS: Whatever you prefer.

12 THE WITNESS: Okay. And so let me call this
13 Fischer's Exhibit E. At this time I would move for the
14 admission of Fischer's Exhibits A through E.

15 MR. KELLAHIN: No objection.

16 EXAMINER BROOKS: Well, if you're going to offer
17 Fischer's Exhibit E in evidence, I think you should leave
18 it with us --

19 THE WITNESS: Okay.

20 EXAMINER BROOKS: -- so the court reporter will
21 have the copy and you can withdraw it for the purpose of
22 copying if you feel you need to do so.

23 THE WITNESS: Okay. Now, actually, I have one
24 that has not been certified, and so I can --

25 EXAMINER BROOKS: Okay, that would be acceptable

1 for --

2 MR. KELLAHIN: Mr. Examiner, I know Mr. Horner
3 doesn't live here. I'm asking to withdraw some of the
4 other exhibits to duplicate them --

5 EXAMINER BROOKS: Okay.

6 MR. KELLAHIN: -- I'm happy to add his to the
7 pile.

8 EXAMINER BROOKS: Okay, that will be good.

9 THE WITNESS: You'll duplicate them?

10 MR. KELLAHIN: Yeah, I'll -- If it's all right
11 with you, I'll take care of it.

12 THE WITNESS: Okay. I'll leave this one for you.

13 EXAMINER BROOKS: Okay. Does that conclude your
14 testimony-in-chief, Mr. Horner?

15 THE WITNESS: I believe it does.

16 EXAMINER BROOKS: Okay, cross-examination, Mr.
17 Kellahin?

18 MR. KELLAHIN: Thank you, Mr. Examiner.

19 CROSS-EXAMINATION

20 BY MR. KELLAHIN:

21 Q. Mr. Horner, I don't have extra copies of the
22 maps, so I'm going to pull out a set. I want to show you
23 Exhibit 2-B. When you look at that map, who is the author
24 of this? Is this a published map that the public can rely
25 on?

1 A. Well, this will be a map that was prepared by --
2 whatever this guy's name is here, that works for the BLM.
3 And you will be able to go to the BLM and get a copy of
4 this map, if that's what you're asking.

5 Q. Would you as a surveyor rely upon this map as a
6 resource to --

7 A. Yes.

8 Q. -- do your investigation?

9 A. Yes.

10 Q. And if his representation is, he's attempting to
11 locate the San Juan River back in the 1880-whatever date,
12 would that be authoritative for you?

13 A. Yes.

14 Q. Is there any way to take that map and calculate
15 how many acres are associated with what's shown as Lot 1?

16 A. Yes.

17 Q. Have you done that?

18 A. No, I have not.

19 Q. What would be required for a surveyor such as you
20 to make that calculation?

21 A. Well, you can -- In the olden days, you'd break
22 it into rectangles and triangles and calculate the area of
23 each. Today what you'd probably do is just draw it on
24 Autocad, which will -- ask it what's the area, and it will
25 tell you what the area is. It'll calculate it for you real

1 quick.

2 Q. Can you do this in another way by taking the
3 northwest quarter of the section and determining how many
4 acres are in the northwest quarter?

5 A. You could do the same thing to determine the
6 acreage in the northwest quarter, yes.

7 Q. Could you do that and then by subtraction get to
8 how many acres are left for Lot 1?

9 A. The -- Well, in fact, you could do that, yes,
10 right.

11 Q. 2-A is this BLM resurvey document that we're
12 looking at for 1999.

13 A. Right.

14 MR. KELLAHIN: And there's another one that's got
15 the handwritten balloon on it with the footages somewhere.
16 Did we put that in your pile?

17 EXAMINER BROOKS: No, this is Mr. Horner's
18 exhibit, the assessor's plat.

19 THE WITNESS: What are you looking for? I don't
20 think I have --

21 MR. KELLAHIN: We're looking at this, that's
22 got --

23 THE WITNESS: -- the numbers on it?

24 MR. KELLAHIN: -- the numbers on it.

25 THE WITNESS: I don't --

1 EXAMINER STOGNER: I brought it back down.

2 MR. KELLAHIN: It didn't come back down. That's
3 one of our exhibits.

4 EXAMINER STOGNER: I brought it back down.

5 MR. KELLAHIN: You admitted it for a limited
6 purpose.

7 EXAMINER BROOKS: Yes, we did, I remember that
8 document, and I don't -- No, I don't see it around here.

9 MR. KELLAHIN: I think I can ask the questions
10 independent of it. It may be upstairs, but...

11 EXAMINER BROOKS: Well, I --

12 MR. KELLAHIN: I think I -- Maybe we ought to
13 stop and get the map so he doesn't have to guess on what
14 was said.

15 EXAMINER BROOKS: Well, check upstairs anyway.

16 EXAMINER STOGNER: Okay.

17 (Thereupon, a recess was taken at 2:40 p.m.)

18 (The following proceedings had at 2:45 p.m.)

19 EXAMINER BROOKS: Okay, we're ready to go back on
20 the record. Let us proceed.

21 THE WITNESS: Your Honor, just one quick
22 housekeeping matter. It was brought to my attention that I
23 had come up with two Exhibit D's, and so the second one of
24 those is the *Manual of Surveying Instructions*. I have
25 since added an Exhibit E, which is the assessor's map. If

1 I could, without objection, change Fischer's Exhibit D, the
2 *Manual of Surveying Instructions*, to Fischer's Exhibit F, I
3 think maybe that will make things a little clearer.

4 EXAMINER BROOKS: Okay, that will be acceptable.

5 THE WITNESS: Okay.

6 EXAMINER BROOKS: Mr. Kellahin, you may resume
7 your cross-examination.

8 MR. KELLAHIN: Thank you, Mr. Brooks.

9 Q. (By Mr. Kellahin) Mr. Horner, I gave you a copy
10 of the 1999 survey. Do you have that in front of you?

11 A. I have a copy of the 1999, but I think the one
12 you gave me is over there.

13 Q. We were discussing various ways to go about
14 calculating the acreage in Lot 1. Mr. Lehrman testified
15 that the source of Exhibit 2-C had been the BLM, and I want
16 to discuss with you the methodology that this person may
17 have used.

18 A. Now, Exhibit 2-C being -- Okay, you found the one
19 with the calculations on, okay.

20 Q. Same document, it's got the calculations.

21 A. All right. Okay, go ahead.

22 Q. All right. I'm trying to figure out how the BLM
23 personnel determined the acreage for what they contend is
24 in Lot 1. Can you describe for me the methodology that
25 they went through?

1 A. Well, I haven't studied it to be able to really
2 testify to what they did, and I certainly can't testify
3 that what they thought they did, they did correctly.

4 Q. No, I'm not asking you to make --

5 A. But --

6 Q. -- any judgment about how correct it is.

7 A. But just in having scanned this the other day,
8 what they -- They have taken, apparently a note from the
9 bottom of this Exhibit 2-A that you've got here, which is
10 the supplemental plat from 2001. In that note it says, In
11 Section 14 the total upland area north of the 2000 right
12 bank is 108.55 acres, and the total riverbed north of the
13 calculated 2000 medial line is 9.62 acres.

14 So what they have apparently done is started out
15 with 108.55 acres north of the river. Okay. And then they
16 have tried to come up with the other acres per each
17 individual lot and subtract it from 108.55, and whatever is
18 left over they say is Lot Number 1.

19 Q. I'm sorry, it's what?

20 A. Is Lot Number 1. Okay, it's --

21 Q. The number they calculated, the 35 we've been
22 talking about?

23 A. And I'm assuming that's what they did to come up
24 with 35.51.

25 Q. Do you know how many acres are in the east half

1 of the section?

2 A. Not --

3 Q. This document --

4 A. -- right off.

5 Q. -- shows that it's slightly more than 320 acres.

6 A. It says slightly more than 326. But I don't
7 know.

8 Q. You've not checked the size of the spacing unit
9 in totality?

10 A. No, and actually when you sit down and look at
11 it, the dimensions on the plat, the Dependent Resurvey and
12 Subdivision of Section, the 1991 plat, are indicating that
13 the outside boundaries are on the order of 39 chains, which
14 means they're less than 40 chains, which means the total
15 area of the section, then, would be less than one square
16 mile, which would mean that the total acreage in the
17 section would be less than 640, which would mean the total
18 acreage in a half section would be less than 320.

19 And so to come up with a calculation of more than
20 320, just by quickly looking at the exterior dimensions of
21 this section, really doesn't properly --

22 Q. So that, in your quick judgment, it appears that
23 the section doesn't compute to be a standard-size section?

24 A. It's smaller than a regular section. So you
25 wouldn't have a half section being larger than a standard

1 half section.

2 Q. Is there any way to change the geometry of the
3 square by slightly skewing it so that when you drew the
4 half line you could get more than 320 --

5 A. No.

6 Q. -- acres? It would not happen?

7 A. No.

8 Q. So there's something wrong with the calculation
9 as to the half section?

10 A. Right. Assuming that the stuff on the BLM map is
11 correct, which...

12 Q. Okay. We're trying to figure out the total
13 acreage in the half section --

14 A. Okay.

15 Q. -- and to disburse costs and revenue, disburse
16 costs -- collect costs and disburse revenue, based upon the
17 size of that section?

18 A. That's the east half that you're talking about.

19 Q. Whatever it is, the east half.

20 A. For the well.

21 Q. Right.

22 A. Okay, all right.

23 Q. And the spacing unit size, the standard is 320,
24 subject to variations?

25 A. Right.

1 Q. And then what we want to do is not exceed 100
2 percent, so if the BLM has taken 10 acres from Ms. Fischer
3 and added it to their pile, that may be what has happened?

4 A. Well, no, it is not what has happened. The BLM
5 has not taken 10 acres from Ms. Fischer, and they have not
6 indicated on these maps that they were taking it or
7 intending to take it.

8 Q. I said that wrong.

9 A. Okay.

10 Q. This calculation makes the assumption that by
11 subtraction, if you will, taking out the Navajo lands,
12 we're only leaving Ms. Fischer with 35 acres?

13 A. Well, this calculation apparently starts off with
14 the 108.55 figure, which is the figure of -- and you can't
15 derive that number from this plat. Those dimensions aren't
16 there. So where the 108.55 comes from is maybe -- I don't
17 know if they have some field notes or something someplace,
18 but the -- that number cannot be recreated from looking at
19 this plat, the 108.55.

20 But what they have done, to start with, 108.55,
21 is to determine the total amount of land north of the
22 river. And so in this line of thinking that whoever was
23 doing this that wrote these numbers on the page and -- the
24 handwritten numbers -- inherent in that methodology is
25 assuming that the river is going to be the boundary between

1 Ms. Fischer's property and the reservation. Okay. The
2 river as portrayed on this plat.

3 Q. Uh-huh.

4 A. Okay. And that assumption right there, where
5 they started to get the 108.55, is in error.

6 Q. Okay.

7 A. Okay. Because that assumes that the boundary has
8 changed. And that's what I was trying to explain before,
9 that --

10 Q. Well, I understand your position about that. I
11 was just trying to see the methodology by which the BLM is
12 making the calculation insofar as the Navajo lands are
13 concerned, and then perhaps by subtraction giving Ms.
14 Fischer less share than she believes she is entitled to.

15 A. Well, okay, there's a couple things wrong with
16 your statement that you just said, and that is, number one,
17 there's nothing on here where they're trying to determine
18 the Navajo lands.

19 Q. Okay.

20 A. Okay. They have not tried to determine the area
21 south of the river, okay. They have not tried to change a
22 boundary between the BLM and the Indian reservation, okay.
23 They have not tried to do that. And they have -- On this
24 map, there is no indication that they were going there.

25 They were trying to represent where they thought

1 the river was. Okay. That's like a surveyor goes out, and
2 one of the first things he's trying to do is figure out the
3 evidence on the ground. Okay. If he can find something
4 that appears to be a monument, he wants to figure out where
5 that monument is and probably shoot it, tie it to other
6 things. If he finds a fence that could potentially be
7 considered a boundary, he wants to shoot it and indicate on
8 his plat where the fence is, versus any other monuments you
9 have.

10 And so anything that may be relevant in the
11 things he's trying to do, he's going to try to represent on
12 his map.

13 And so apparently one of the things that they
14 have tried to do is figure out where the river is. And
15 that's what they're trying to do, is figure out where the
16 river is. They're not trying to figure out boundaries,
17 they're just representing where the river is in their mind.

18 Q. What map should I utilize, then, for the east
19 half of the section that would honor your opinion about Ms.
20 Fischer's 45 acres and show the balance of the acreage for
21 distribution to others?

22 A. The original 1881 plat, which as I was reading
23 out of the *Manual of Surveying Instructions*, is -- what you
24 try to do whenever you resurvey something is go back to the
25 original corners, okay. And what they -- initially --

1 Q. We have that before you, don't we? We have this
2 one?

3 A. Well, and what they initially tried to do, yeah,
4 the meander lines, 1881 meander lines, are shown on the
5 supplemental plat, which is the, apparently, primary
6 purpose of the 1999 plat, is to re-establish the meander
7 lines as found in 1881. And those being -- trying to re-
8 establish those, those having a bearing on the boundary
9 between Ms. Fischer's property and the BLM. That needs to
10 be determined before you go any farther. That's what is
11 going to determine your property boundaries.

12 Q. Let me ask you for your suggestion. If the
13 Examiner says this boundary problem with the BLM is ours to
14 solve, how do we go about solving it?

15 A. There is no problem to solve.

16 Q. So we would just show them that she has title to
17 the 45 acres --

18 A. Right.

19 Q. -- we'll show them the 1888 map, the base map,
20 and we're done?

21 A. Show them her Lot 1, 45.47 acres, has not
22 changed, and whatever was being used for the Indian lands
23 in your agreements and stuff before this that was based on
24 the 1881 determinations, and you're done.

25 Q. Okay.

1 A. That's it.

2 Q. Have you dealt with the BLM over boundaries along
3 the San Juan River?

4 A. Not specifically, no.

5 Q. I'm trying to avoid paying more than 100 percent.
6 So if we honor Ms. Fischer's 45 acres, present this to the
7 BLM and say they're inducing a problem into our spacing
8 unit that you believe, and perhaps we now believe, is not
9 there, you fix your files?

10 A. Well, I don't think you're introducing a problem.
11 I don't think the BLM has done this to you. I don't see
12 any place here that indicates that the BLM is saying that
13 the Indian lands have increased, okay? So that I don't see
14 where the BLM is indicating that in this east half of the
15 section there has been a change of boundaries. Okay.

16 And so inherent in your concern here is the
17 concept that this plat or something has changed something,
18 and you don't want to give the Indians something and not
19 take something away from Ms. Fischer. But in fact, nothing
20 has changed. It all remains the same. So...

21 Q. Let's assume that the BLM doesn't see it as a
22 problem and agree with you that we ought to honor her 45
23 acres. If we do that, is there an agreement between Ms.
24 Fischer and Richardson on the other issues? We would have
25 to talk about the royalty percentage. She wants a sixth,

1 and I think we have offered an eighth, so there's a
2 difference there.

3 And the other difference would be records,
4 auditing and participating based upon taking her share of
5 production costs out of future production without a
6 penalty.

7 A. Are we negotiating now?

8 Q. Now, sir, I'm just trying to see what the
9 position is. If the land problem goes away, is there a
10 solution, is there a deal?

11 A. Well, I mean, it kind of looked like yesterday
12 that I got blown away and we were headed for this hearing
13 today, and here we are in the hearing. So I'm not sure if
14 negotiations are an option.

15 Maybe you want to take a position that based on
16 the offer we made yesterday you think you can get to an
17 agreement and you'd like to have the opportunity to do that
18 by talking to the OCD folks here. I don't know. But --

19 Q. All I'm suggesting is, the Examiner normally
20 finds that the parties can't agree, and then he uses the
21 police powers to involuntarily commit them. And I'm
22 suggesting, is there a need to continue the discussions if
23 the 45-35 acreage disappears?

24 A. All I know is, we were the ones who made the last
25 offer and were told no. So...

1 MR. KELLAHIN: Nothing further, Mr. Examiner.

2 EXAMINER BROOKS: Thank you.

3 EXAMINATION

4 BY EXAMINER BROOKS:

5 Q. Well, Mr. Horner, you keep telling me that
6 nothing has changed, and you may be right. But I'm not
7 sure.

8 First of all, let me go back to your credentials.
9 In your law practice, is part of your law practice doing
10 opinions on titles?

11 A. I may have done one, but I mean, it's not
12 something that I --

13 Q. It's not something you do frequently?

14 A. Right.

15 Q. All right. But I know that you're familiar with
16 the doctrine of accretion and avulsion because you just
17 quoted to me the description of that doctrine that appears
18 on page 172 of the BLM's manual.

19 A. Right.

20 Q. And you did not read the sentence -- and let me
21 say that I'm reading it with the caveat that I do not
22 consider the BLM's regulations to be authoritative on the
23 question of law, unless it happens to be a question what
24 the BLM -- it's within the BLM's jurisdiction to regulate
25 about, and I don't think that titles are.

1 But with that caveat, the sentence immediately
2 following the quotation from the Supreme Court of the
3 United States that you quoted says, "An avulsive change
4 cannot be assumed to have occurred without positive
5 evidence. When no such showing can be made, it must be
6 presumed that the changes have been caused by gradual
7 erosion and accretion."

8 A. Right.

9 Q. Now, the sentence from the Supreme Court of the
10 United States says, "When grants of land border on running
11 water, and the banks are changed by the gradual process
12 known as accretion, the riparian owner's boundary line...
13 remains the stream...", which if I understand that would
14 say that if the stream has moved by the process of erosion,
15 the boundary line remains the stream, although the stream
16 has changed, ergo the boundary line has changed.

17 A. Well, but then what you have to do to get to
18 there is a basic problem of is the boundary line that we're
19 talking about here, is it the river --

20 Q. Correct.

21 A. -- or is it the patent, you know, and whatever
22 extent that the patent was based on back whenever the
23 patent was done.

24 Q. Right.

25 A. So that -- and what they have done in their first

1 map, the 1999 map, is try to re-draw the 1881 meander
2 lines --

3 Q. Right.

4 A. -- and the basis for that is the concept that the
5 1881 meander lines, which were the basis for the patents,
6 is controlling. Okay. So -- And all the stuff that I read
7 you about you can't change the original corners.

8 And so now then, the question is, do those
9 corners established by this 1881 survey of the meander
10 lines, do they control, or is there some sort of reference
11 someplace that says your boundary is the river? And in
12 fact, I don't see anyplace where it says the boundary is
13 the river.

14 Apparently what they have tried to do here is
15 establish the meander corners, because that is establishing
16 how the patents were done.

17 Q. Okay, let me ask another question.

18 A. Okay.

19 Q. Have you examined the patent under which Ms.
20 Fischer holds?

21 A. No, but I imagine what it says is the same thing
22 that everything else does in the chain of title, Lot 1.

23 Q. Well, we can imagine many things, but you don't
24 know what it says, correct?

25 A. I have not gone that far.

1 Q. Okay. Have you researched the question whether,
2 if a lot is patented by lot number and the survey that is
3 on file with the BLM at the time that the lot is patented
4 shows the lot bounded by a watercourse and also shows the
5 number of acres, whether in construing that patent the
6 number of acres shown on the survey controls or whether the
7 doctrine of accretion controls?

8 A. I can't answer that specifically. But generally,
9 having looked at some of the law with regard to calls in a
10 deed, okay, that typically a metes-and-bounds description
11 will prevail over acreage, but where you don't have a
12 metes-and-bounds description and you do have an acreage,
13 the acreage will prevail.

14 Now then, the question that you're asking is,
15 will the acreage prevail over some sort of Lot 1
16 designation, based on some sort of other plat, based on
17 some sort of concept that maybe the river is moving in your
18 lot and your boundary is changing.

19 And so what you have, the most firm number that
20 you have evidence of -- the size of that tract or where
21 that tract is, is the acreage. And so to me it looks like
22 the acreage is going to be your primary thing, and probably
23 subject to, you know, however it gets shot at in court with
24 people arguing the law and people arguing whatever facts
25 they can come up with.

1 But then that also gets back to these matters are
2 for the courts of competent jurisdiction, which means we're
3 getting away from OCD stuff if we're talking about
4 boundaries and --

5 EXAMINER BROOKS: Well, I agree with that, and I
6 was just trying to establish that there is a considerable
7 amount of uncertainty about this, whether the boundary has
8 actually changed or not. At least there is in my mind. If
9 I had done an exhaustive brief on the subject there might
10 not be, but I have not done it, and so there's considerable
11 doubt in my mind.

12 But I'm not the person who decides that, whatever
13 that might be.

14 Anything further --

15 MR. KELLAHIN: Not from me.

16 EXAMINER BROOKS: -- Mr. Kellahin?

17 MR. KELLAHIN: No, sir.

18 EXAMINER BROOKS: Mr. Horner?

19 THE WITNESS: Nothing further from me at this
20 time.

21 EXAMINER BROOKS: Very good. Before --

22 THE WITNESS: I would like to make a closing
23 argument.

24 EXAMINER BROOKS: Okay. Before I -- Well, I
25 guess I'll listen to closing arguments first. I need to

1 confer with my co-Examiners here before I decide whether or
2 not to take this case under advisement, so...

3 THE WITNESS: Okay, let me try to get stuff back
4 to people here before I completely foul things up. I have
5 an exhibit here --

6 MR. KELLAHIN: That's the Examiner's.

7 EXAMINER BROOKS: That's the exhibit that's been
8 admitted.

9 THE WITNESS: Goes here, and --

10 MR. KELLAHIN: That's mine.

11 MR. HORNER: -- this one...

12 EXAMINER BROOKS: Oh, I'm sorry, Mr. Stogner
13 would like to ask you some questions.

14 EXAMINER STOGNER: Mr. Horner, I'd like to ask
15 you just a few questions here --

16 THE WITNESS: Certainly.

17 EXAMINER STOGNER: -- kind of help educate
18 everybody here in the practice of this.

19 EXAMINATION

20 BY EXAMINER STOGNER:

21 Q. You said that I could go someplace and take a
22 look if this was an official survey. Where would that be
23 in New Mexico?

24 A. Well, that particular one, if I were looking for
25 that, I would go to the BLM office. It's on the La Plata

1 highway, just outside of Farmington, just north of the
2 highway to Shiprock, half a mile or so.

3 Q. Okay, I go there, I'm looking at this. Would
4 they also still have on file other surveys or older
5 surveys?

6 A. Yes.

7 Q. And for me to do some sort of review of this
8 north half, I would want to pull just this one, or all of
9 them?

10 A. Well, depending on what you're wanting to do.
11 Okay. If you have any question at all about what's on this
12 thing, you're going to want to see the original
13 information.

14 Q. Okay.

15 A. And what I have done in the past is say, I want
16 to see them all and see, you know, what kind of conflicts,
17 if any, there are.

18 Because what's going on is, these guys when they
19 go out to resurvey are finding to find a rock that's got
20 some sort of marking on it, that isn't there, that's lying
21 at the intersection of a street that disappeared 80 years
22 ago, and now they're trying to figure out where that corner
23 is supposed to be, and they end up trying to figure it out
24 based on, you know, the farmer over there that says, well,
25 there used to be something over here, and whatever evidence

1 that they can find.

2 And so you really do end up sometimes sticking
3 section corners where they didn't used to be. And so --

4 Q. Okay, you're kind of second-guessing my question
5 here.

6 A. Okay --

7 Q. Bear with me.

8 A. All right.

9 Q. Okay, I have two exhibits here, that's Exhibits
10 2-A and 2-B, and they both reference a Lot 1.

11 A. Right.

12 Q. But nowhere in here do they indicate the amount
13 of acreage. Where would I go to find the acreage assigned
14 to Lot 1 on a plat?

15 A. Okay. Well, you can look at all the deeds. But
16 if you're going to the plat, I'd go to the 1881 plat.

17 Q. Okay, and we do not have that here.

18 A. That's right.

19 Q. Okay. Would that plat indicate that Lot 1
20 consisted of 45.47 acres?

21 A. I would think so. Now, it -- exactly what has
22 happened, I don't know.

23 The 1881, I'm assuming that at that point this
24 was still a section that was -- well, 1881 -- the
25 reservation was created in 1868. Assuming that they made

1 the river the boundary of the reservation about that time,
2 then when they initially surveyed this stuff they probably
3 did not survey the reservation, and the -- if that was
4 entirely owned by the BLM at that point, there may have
5 been no reason to indicate a Lot 1 at that time --

6 Q. Okay.

7 A. -- in 1881. Okay. So therefore, to find,
8 actually, some sort of reference to Lot 1 and the size or
9 description of Lot 1, you may actually be looking for a
10 patent since 1881, where Lot 1 was initially created.
11 Because otherwise there may have been no reason to indicate
12 Lot 1 on that 1881 plat.

13 Q. Okay. Well, let's go to Exhibit 2-B. I have a
14 Lot 1, I have a Lot 9, but I do not have Lots 2 through 8.
15 What happened to them? What would this plat tell me?

16 A. Okay. Well, what you -- on the assessor's map
17 that I have given you, okay, Lot 1 is the same on these
18 maps as on the assessor's map. But just to the west of Lot
19 1 on the Assessor's map is Lot 2. Okay. Now, Lot 2
20 doesn't show up on these revised plats.

21 Q. That's where we're getting at.

22 A. Okay, so --

23 Q. What happened to them?

24 A. -- Lot 2 used to be indicated, then, on the BLM
25 maps. But now with these surveys they have come along and

1 they've shuffled things around and they've changed acreages
2 and this sort of stuff for some of the different stuff
3 that's basically all internal to the BLM land. And what
4 they have done in the course of doing that is, they have
5 re-numbered these lots. And in fact, on these two maps
6 we've got here, they've re-numbered them twice.

7 So what was Lot 2 on the assessor's map, or used
8 to be Lot 2, on the 1999 plat is indicated as Lot 9, and
9 then on the 2001 it's indicated as Lot 20. So --

10 Q. That would be known as a resurvey, right?

11 A. Well, it's part of the resurvey. What they're
12 doing is, you know, they can chop up the stuff that hasn't
13 been divvied up to anybody any way they want to chop it up.
14 It's not affecting anybody.

15 And so apparently -- I'm assuming, and I don't
16 know precisely, but what I'm assuming is, you know, they've
17 got a river in here and they've redrawn the meander lines
18 and they're recalculating things, and they are renumbering
19 their lots. And that's what the paragraph has indicated no
20 the right side of the 1999 thing, is they have renumbered
21 and re-figured out some of the acreages, and where they
22 have changed things they have indicated with a new acreage.

23 But then they've apparently come back and done it
24 again with some revised information, and I'm assuming what
25 they're doing is trying to -- each time they re-do this

1 they give it a different lot number than even existed
2 before, so that their new lot number, then, will not be
3 confused with their old lot number. Okay.

4 So now when they have changed all this stuff
5 around, when they change Lot 2 -- Now they say, Okay, well,
6 we can't call it Lot 2 anymore because we've changed it, so
7 let's call it something else. Let's call it Lot 9, and
8 we'll -- all these other different pieces that we want to
9 identify here, we'll give them new lot numbers.

10 And then they come along and they want to change
11 that. Well, okay, we don't want to change Lot 9, because
12 we've got a record someplace of what Lot 9 is and we just
13 changed it.

14 So let's now, instead of calling this Lot 9,
15 let's call it what's not used on the 1999 plat, and it goes
16 to 19. So okay, let's now call Number 9 Number 20. So
17 that now you're not confusing any kind of information,
18 specifically with regard to 20, to 9, to 2, or in fact,
19 that somebody, when they come into these different lot
20 numbers, they're going to say what's going on, and they're
21 going to ask questions, and why is this different, just
22 like you're doing.

23 Q. Okay.

24 A. And so anyway, that's why when they're making
25 changes, they're giving it new lot numbers and they're

1 changing acreages. And then like Lot Number 1, they're
2 saying, we're not messing with that, and we don't even have
3 the authority to mess with that. And so that's fine, it
4 stands as it originally was, and leave it alone.

5 Q. Okay, and that's where I'm getting at. When I
6 compare my 2-A to 2-B, in this case it's the 1999 survey
7 and the 2000 survey, so I have a Lot 20, and I'm referring
8 now to the newest one. So I have a Lot 20, and it has
9 23.24 acres. And then I move to the west and I have Lot
10 10, but they don't show acreage.

11 Is it the policy or surveyor's -- whatever you
12 want to call it, law, rule, not to repeat acreages once
13 they are established? Do you just put that information
14 there where you have to go back and see what was assigned
15 that particular lot at the time?

16 A. Well, you can find the details, but on this 1999
17 plat, like I indicated, on the right side there's the
18 paragraph. The third paragraph says, Except as indicated
19 hereon, the lottings and areas are as shown on the plat,
20 approved August 31, 1882. Okay.

21 And so -- but what -- The concept that they're
22 doing, then, that's jumping up here, is that where they
23 make a change they are showing a new acreage, a new lot
24 number where they've changed the lot number, and when
25 they've changed the acreage they're giving it a new lot

1 number.

2 So in the 1990 map you're seeing Lot 9 with 23.41
3 acres. That same place on the 2000 map, you're seeing Lot
4 20 with 23.24 acres. So the acreage has changed. Okay.

5 Now in the 1990 map, as you go to the left like
6 you just did, Number 10, here's a Lot Number 10 with the
7 12.84 acres, so they've changed that from 1881 as indicated
8 in their paragraph to the side here. And now as you go to
9 2001, it says Lot 10 still, but there's no acreage, meaning
10 they're not changing, at least from the 1999 map. Okay.

11 Q. Okay.

12 A. And so that's the kind of -- Does that help?

13 Q. Yes. Now, okay, Lot 1 --

14 A. All right.

15 Q. -- I go to the middle map. I'm going to call
16 this the 1999 map.

17 A. Okay.

18 Q. When I look at Lot 1, it's indicated here, and
19 it's got boundary lines established.

20 A. Well, not necessarily.

21 Q. Pardon?

22 A. Not necessarily.

23 Q. Okay, Lot 1, and it's got some -- It gives me
24 some indications of what Lot 1 is. To the north I have a
25 straight line, back to the east I have a straight line. To

1 the south I've got two lines, and it's broken, right?

2 A. Right. But what you have there to the south is a
3 meander line.

4 Q. A meander line. But that depicts Lot 1 in this
5 instance?

6 A. Well, actually it doesn't, just to confuse things
7 a little bit more. What it is, is a meander line. Okay,
8 that is the high-water line.

9 Now then, also in this information here -- that I
10 really didn't mark and specify and read to you, but it's in
11 here -- what they talk about is -- we'll get into this --
12 what they talk about, way back when, before a lot of these
13 states were created, the federal government passed a law
14 that when they are transferring this property to the
15 states, they are reserving the navigable rivers. Okay. So
16 the navigable rivers, then, the federal government still
17 owns, and that means bank to bank. Okay, so high-water
18 mark to high-water mark.

19 Now, on non-navigable rivers the federal
20 government didn't reserve it, and then what you're talking
21 about is going to the centerline of the river, or the
22 median line. And that's why on the supplemental plat they
23 are ultimately trying to determine the median line, or the
24 medial line, okay, of the river, the middle of the river.
25 Okay.

1 Now, so then back in 1881, here are the meander
2 lines. And then what they aren't showing, then, is the
3 median line. But in the instructions and in the materials
4 I gave for you, if you want to read them and study them, it
5 talks about how you calculate the median line. And that is
6 what they have done, then, for the San Juan River on the
7 supplemental plat. Okay.

8 So on the 1999 deal, the first consideration
9 you're looking for is what is the original meander lines,
10 the original boundaries of the river that were used way
11 back when, from which you will calculate, or can calculate,
12 a median line for the river, which would be, then, the
13 boundary line between lots on either side of the river.

14 Now, and that process, then, is what they did in
15 the 2001 map where they indicated -- where they tried to
16 determine, anyway, the high-water marks for the river as it
17 is today, which I have a problem with, but that concept.
18 And from that, then, they tried to calculate the median
19 line.

20 And so the calculations involve picking points on
21 either side and finding the midpoints of the line and
22 working around the angles, and there's a whole section in
23 here on how you go about doing that.

24 And then what you have represented on the 2001
25 plat, up above the map picture itself, is the description

1 of that median line as they calculated from the meander
2 lines of the river as they allegedly found it in --
3 recently.

4 Q. Okay. Let me try this approach.

5 A. Okay.

6 Q. Okay, Lot 1 is 45.47 acres, and I'm referring now
7 to Exhibit 2-B. Lot 15 is 14.27.

8 A. Right.

9 Q. Are you telling me that those two numbers
10 represent that total -- what I would consider the east half
11 of the northeast quarter?

12 A. No, there's the property between those meander
13 lines that would also be taken into consideration if you
14 want to know the total acreage in the east half of the
15 northeast quarter.

16 Q. And that is not indicated in there, that amount
17 of acreage?

18 A. On this particular page, no, they have not
19 indicated that.

20 Q. Would that have been depicted on the original
21 1881 survey, 1880 survey?

22 A. That total acreage?

23 Q. Yes.

24 A. I'm not really sure what they depicted on --

25 Q. It looks like to me we're losing some information

1 here, by both parties, by not having the original survey,
2 wouldn't you agree?

3 A. Quite possibly. And you've got to understand,
4 I've been chasing my tail around like crazy for the last
5 three days, and that's a piece of information I would have
6 liked to have had, that simply was not possible to get.

7 MR. KELLAHIN: We have --

8 EXAMINER STOGNER: Do you have it?

9 MR. KELLAHIN: -- the original survey, Mr.
10 Stogner.

11 EXAMINER STOGNER: I do not have the original
12 survey. I do have the depiction of what was on that
13 original survey, but both parties have failed to present
14 this today, and I thought I'd ask some questions to kind of
15 help the process along, and I've failed tremendously here.

16 EXAMINER BROOKS: Well, I don't believe it has
17 any relevance, but I would be interested to look at it out
18 of curiosity, if you want to offer it into evidence.

19 MR. KELLAHIN: Well, I'll offer it if it assists
20 you. Let me show it to Mr. Horner.

21 Q. (By Examiner Stogner) In that particular
22 depiction, do they show a thread of the San Juan River?

23 A. A thread?

24 Q. Yes.

25 A. No, they don't.

1 Q. They do not.

2 A. But they show certain lines for boundaries that
3 they're apparently trying to represent, and they do show
4 Lot 1 at 45.47 acres.

5 (Off the record)

6 EXAMINER BROOKS: Is this something you can offer
7 as an exhibit, or do you need it back?

8 MR. KELLAHIN: No, sir, I can offer it as an
9 exhibit. We'll make that 2-D? 2-D.

10 EXAMINER BROOKS: Okay, it's two pages. We'll
11 need to paste them together or staple them together.

12 MR. KELLAHIN: 2-D-1 and -2.

13 Q. (By Examiner Stogner) Now we've got a little bit
14 of information here.

15 Lot Number 1, nobody has taken the freedom to
16 change that acreage, because there is no acreage indication
17 on either Exhibits 2-A or 2-B. That doesn't mean it --
18 taken the liberty to change, it always -- and it should be
19 reflected on here and understood that it's 45.47 acres.

20 A. Right.

21 Q. Okay. That's kind of where I was getting at
22 there on that.

23 So when I refer now to -- this is the Fischer
24 Exhibit B, and this was the agreement, the compensatory
25 royalty agreement --

1 A. Right.

2 Q. -- where they refer to Tract I, Lot 1, 33.14
3 acres --

4 A. Right.

5 Q. -- that is wrong?

6 A. It appears to me to be wrong, and there's no
7 indication of how they came up with it. Apparently it was
8 some sort of calculation like Mr. Lehrman has been talking
9 about, although it comes up with different numbers than
10 he's come up with at different times.

11 And so exactly how they did it or what they did,
12 I don't know. And who did it, I don't know. But
13 hopefully, from what we've been talking about here, it
14 wasn't the surveyors that did it, it wasn't the guys who
15 understand what they're supposed to be doing that did it.
16 And it may have been somebody that was, you know, from the
17 BLM, it may have been somebody that was acting in good
18 faith but they didn't know what they were doing.

19 EXAMINER BROOKS: Mr. Lehrman, did you want to
20 interject something here?

21 MR. LEHRMAN: Yes, I -- During my testimony I've
22 said this several times. Those notes are the BLM notes.

23 EXAMINER BROOKS: Yeah, right.

24 MR. LEHRMAN: They were done by a surveyor at the
25 BLM.

1 EXAMINER BROOKS: Well, you said --

2 MR. LEHRMAN: I was --

3 EXAMINER BROOKS: -- you didn't know who they
4 were done by.

5 MR. LEHRMAN: No, I didn't say that it -- They
6 were done by the BLM.

7 EXAMINER BROOKS: Well, yeah, but you didn't know
8 who they were done by --

9 MR. LEHRMAN: No, I did not --

10 EXAMINER BROOKS: -- at the BLM.

11 MR. LEHRMAN: -- but I know they were done by the
12 BLM.

13 EXAMINER BROOKS: Okay. Well, in my opinion,
14 gentlemen -- Mr. Stogner said earlier he was going to beat
15 this horse some more, but I think it's pretty thoroughly
16 dead now. I suggest we go on to closing arguments and then
17 get to a determination if we're going to get this case
18 under advisement, before it gets any later in the
19 afternoon.

20 MR. JONES: I have a quick question or two for
21 Mr. Horner.

22 EXAMINER BROOKS: Okay.

23 EXAMINATION

24 BY MR. JONES:

25 Q. Mr. Horner, have you looked with any petroleum

1 landman as under -- as employed by you or Ms. Fischer in
2 this case?

3 A. No, I mean what you're looking at is the guy who
4 did anything that got done --

5 Q. Okay.

6 A. -- for Ms. Fischer.

7 Q. Okay.

8 A. I mean, except to have talked to Mr. Lehrman in
9 the course of the stuff and a couple guys at BLM, but
10 I'm --

11 Q. Have you approached any other -- Have you or Ms.
12 Fischer approached any other oil companies to potentially
13 lease out their acreage to them --

14 A. No.

15 Q. -- besides --

16 A. No.

17 Q. And why not?

18 A. Well, from the looks of things here, it looks
19 like, number one, she was initially approached with the
20 concept of, you know, leasing the property. And along with
21 that, in the typical leases that I've seen in the course of
22 researching some of this stuff, comes the right to drill a
23 well and put pipelines and all this sort of stuff, which
24 she was adamantly against in the very beginning, so she
25 very much disliked that concept. And when you look at the

1 sale of the mineral rights, it did look like it was working
2 out economically.

3 Then the trick was, what do we do and how do we
4 do it, and try to figure out the economics of a
5 participation deal versus a lease, because along the way
6 there was some sort of discussion about a no-occupancy
7 lease. And so now in order to be able to do that, you need
8 a whole lot more information: the production levels of some
9 of the wells around, what can be expected from this well,
10 price of gas, how the -- her shares work and all of that
11 sort of stuff, what the law is, how compulsory pooling
12 works.

13 And in the course of those investigations,
14 created a spreadsheet that showed what her shares would be,
15 how much money she could make under different scenarios,
16 lease versus participation and all of that sort of thing.
17 In the law you have -- if you get compulsory pooled and you
18 get a 200-percent penalty, you get a royalty of 1/8 percent
19 that is not -- the costs are not taxed against. So you get
20 that if you do the participation, which would be the same
21 as a lease.

22 Plus, if you get compulsory pooled and have to
23 pay your 300 percent, basically, at some point, if the well
24 is a producer and pays itself off, your return is going to
25 go up by a factor of eight at some point.

1 And so in that regard I advised Ms. Fischer,
2 after getting into this and getting my feet on the ground
3 and starting to understand some of this stuff, that the
4 lease was not in her best interest.

5 Prior to that, she decided a lease was not in her
6 best interest because of the right to come in and drill a
7 well anywhere they wanted to and put the pipeline anywhere
8 they wanted to and destroy her property and just really not
9 care what they did to her, and -- in return for a 1/8,
10 which apparently seems to be not very much most of the
11 time, so...

12 MR. JONES: Okay, thank you.

13 EXAMINER BROOKS: Thank you very much. You may
14 step down as witness.

15 We seem to do things a little differently in the
16 OCD than are done in court. In court we normally have the
17 movant make the argument first and the respondent argue in
18 the middle, and the movant got to close, but we don't
19 usually do that here.

20 But I guess I will call on Mr. Kellahin as the
21 movant to make his argument, and then Mr. Horner can make
22 his argument, and then I'll let Mr. Kellahin, if he wants
23 to close, he can close.

24 I think that's the normal way it should be done
25 under the Rules of Procedure.

1 MR. KELLAHIN: Your pleasure, Mr. Examiner.

2 This case has given me a headache. I can't tell
3 you how bad my head hurts right now. But I'm not sure it's
4 Richardson's headache, and I'm not sure it's your headache.
5 I'm going to go home and take a pill.

6 You need to decide several things. One is the
7 process by which Richardson engaged in negotiation with Ms.
8 Fischer. Ms. Fischer is an elected public official in
9 Farmington, she knows oil and gas attorneys, knows oil and
10 gas people.

11 She admits getting the letter in June of '01.
12 She calls Cathy Colby and represents to us that Cathy was
13 rude, and chose not to do anything else about the letter.
14 In today's business world with sophisticated people that
15 are publicly elected, you can't just ignore it. If someone
16 is rude to you, you call and ask for someone else, or you
17 at least write a letter. The letter invites Ms. Fischer to
18 call or ask questions about what's in here.

19 Ms. Fischer says she doesn't understand how this
20 risk factor works. It's also a clue as to what Richardson
21 is asserting to be her net acres. It's only 17 net acres,
22 and if she's thinking she has 100 percent of 45, I'd be
23 screaming and yelling. She does not do that, she doesn't
24 engage in any of that.

25 She says they didn't anticipate what I would

1 want, didn't give it to me, and therefore I'm going to
2 ignore it. They did not send me the kind of letter I would
3 want so I could understand it.

4 This kind of letter has been sent by Richardson
5 every time they do one of these things, and it's standard
6 industry nomenclature. It is not intended to say that Ms.
7 Fischer has to prepay her share of the costs of the well
8 and suffer additional penalties. That's not what this was.

9 EXAMINER BROOKS: I think I understand it.

10 MR. KELLAHIN: I know you do.

11 And if that's her concern, she should have called
12 you or someone else to say, What are you people doing to
13 me? Particularly if she's suspicious about their
14 reputation. She does nothing.

15 In November, on the 16th, the same year, she gets
16 another letter identical to the first. The AFE's are still
17 the same, it's got the same concerns. If I now get a
18 second letter from Ms. Colby, they're serious about a well,
19 and I ought to know that, because this is my community and
20 that's how deals are put together. You get participation
21 on a voluntary basis for your spacing unit. And if
22 somebody's coming after me, an operator drilling a well,
23 I'm going to call and figure it out. Nothing happens.

24 What is Richardson to think? There is no
25 negotiation, no discussion, no counter, no nothing.

1 And what do we do? We file a compulsory pooling
2 case. And lo and behold, Monday, they're coming to us and
3 we're sharing with them all the information we have.

4 You need to decide as an Examiner if it's within
5 your jurisdiction to decide interior boundary problems in a
6 spacing unit. I suggest to you, you cannot and should not.

7 When we come into a force-pooling case, we make
8 certain assumptions. You assume that the BLM map that they
9 give you, that they calculate for them and for you, is
10 reasonable and useful. And we do it all the time, we never
11 look into the subdivision of the tracts.

12 Do we want to spend our time and resources trying
13 to guess the answer to what do we do with the 45 acres?
14 Has it been added to or subtracted to?

15 Mr. Horner is well spoken, he's engaging, he
16 certainly represents an expertise, he's well-intended. But
17 he's asserting a point of view here that's not rebutted by
18 the other agency, the BLM, that's telling us, We think the
19 Navajos have X, and as a consequence Ms. Fischer has Y.
20 Somewhere in between there we don't want to pay a party
21 more than they're entitled to.

22 The typical solution is, you pool whatever
23 interests are uncommitted and leave it to the interest
24 owner pooled and the other owners to solve that with a
25 quiet-title suit. That's not up to us to fix.

1 If they don't like the cost of the wells after
2 it's drilled, there's a petition period in which you can
3 file and object to the actual cost. She has the choice
4 after a pooling order is served on her to take an
5 additional 30 days to see if she now wants to elect to
6 participate in a drilled well. The statute allows us to
7 drill the well first and pool later. She's a smaller
8 interest owner for which we wouldn't expect that she
9 wouldn't want to be the operator. We have done what is
10 normally required.

11 I apologize for her perception that Ms. Colby was
12 less than courteous. That has not been my experience, but
13 I wasn't talking to her. If that happens, there's ways to
14 go beyond her and around her and deal with your business.

15 This is an important family property to her. She
16 believes she has the surface, she believes she has all the
17 minerals, and then she becomes surprised to know that Dugan
18 now controls a part. If Mr. Dugan was having trouble with
19 his 50 percent of her acreage in Tract 1, he would have
20 done something about it, and I suggest that she should have
21 done something earlier.

22 We think we're entitled to a force pooling order,
23 we want one in the normal fashion, in order that the
24 concerns raised by Ms. Fischer and Mr. Horner be resolved
25 between them and the BLM. If Mr. Horner wants to write

1 this up or take the minutes from the transcript and submit
2 it to the BLM and demonstrate that there is no problem,
3 then it goes away.

4 It should not be our obligation to engage in the
5 time, money and effort to handle interior subdivisions in
6 the spacing unit, and if you ask us to do that, then we
7 have to face the consequence of trying how to figure it out
8 in this case or any other.

9 Thank you.

10 EXAMINER BROOKS: Mr. Horner?

11 MR. HORNER: Yes, what we have is -- the subject
12 today is Ms. Fischer's Lot 1. And she owns the surface
13 rights. She thought she had all the mineral rights. It
14 was news to her on Monday of this week that she did not.
15 And it wasn't until Tuesday of this week that she actually
16 had evidence that she did not. Okay? And so she heard
17 from the first time on Monday that she did not, and Tuesday
18 she found some evidence to that effect.

19 But in her mind she owns the land, she owns the
20 minerals, they're hers. And I don't see where there's a
21 problem with that kind of thinking. Richardson comes and
22 says, We want to drill a well on your property, we want
23 some sort of right to do that, we want a lease, we want a
24 participation agreement or whatever it is that we want.

25 And so, fine, you want it; I don't want to let

1 you have it. It's my land, my property, my minerals. I
2 don't want you drilling a well on my property.

3 And she gets threatened, We're going to do it
4 anyway. She basically hangs up on them. And that's all
5 she heard from anybody.

6 Now, there is some evidence that there was a
7 letter sent along with that in June, and then there was
8 some evidence that there was a letter sent in November.
9 And if you'll look at the back of that document, there was
10 some discussion who signed for that letter. Her postman
11 signed for it. I still haven't figured out how that works.
12 And she can't remember having seen it. But even if it was
13 delivered, and even if she did see it and ignored it, it's
14 still her land and her property.

15 And the next time she had any contact with them
16 was a letter dated July 1st, 2002, indicating that this
17 Application had been filed. At that time, it's time to
18 figure out what's going on.

19 A few days later she gives me a copy of it, and
20 we start working on it. And then, unfortunately, in
21 reading the statutes, we find there is some sort of statute
22 about compulsory pooling, that neither one of us
23 understood, that we are looking down the barrel of some
24 sort of order that's going to probably involve her in this
25 well.

1 And now the trick to figure out, what does it all
2 mean? What does the statute say? What are they looking
3 for? What have we got to do? Have we got to deal with
4 these people? Now it's time to try to figure out what's
5 going on, and that's what we've been doing for the last two
6 weeks.

7 Now then, but in this time period then -- And
8 then, even after that was received, it was not until Monday
9 that we had another contact, this Monday, that we had
10 another contact with Richardson, in the morning. They
11 wanted to meet, absolutely. We met with them Monday
12 afternoon.

13 Now then, it looks to me like we've got a real
14 problem with good faith here. And when you look at what
15 was offered in that letter -- in both letters, the June and
16 the November letters of 2001, we want you to agree to this
17 AFE. And as we talk to people now, AFE, apparently that's
18 somebody wanting some money up front to participate in a
19 well.

20 And then we want a nonconsent penalty of 300/100
21 percent. How does that -- What does that even mean, when
22 you're agreeing to something and somebody's going to hit
23 you with a nonconsent penalty? Certainly a 300 percent,
24 when you read a statute that says your worst-case
25 obligation under a compulsory pooling order is 200 percent,

1 how does that make any sense to even consider it?

2 And so -- And in fact, is there something that I
3 don't understand without a lot of background in oil and
4 gas, where maybe you understand that that means something
5 other than what it says? Because what it says is, we get
6 this agreement, then we turn around and do this next
7 agreement for this big penalty.

8 And so if it means something other than what it
9 says when you read it -- Yesterday in talking to the BLM
10 guy who understands oil and gas, and we don't, showed him
11 the letter, he had no idea what it meant. Now, if you
12 understand what it means, it's still a secret from us.

13 They haven't explained it to us, we've met with
14 them twice. Nobody else has explained it to us, the BLM
15 guy couldn't explain it to us. It looks to me like it's
16 just a scam. Okay? Okay, sign this thing, and 400
17 percent.

18 We were working on the basis, number one, here's
19 17 acres, and as we start looking into it, well, there's 45
20 acres in Lot 1, and that doesn't really make any sense to
21 make that kind of deal.

22 When you start looking at it, then, 300, 400
23 percent, whatever we're talking about, when I ran my
24 spreadsheet based on the fact that we thought she had 45
25 acres, which would be 28 percent of 160-acre spacing, 300

1 percent of her charges would mean that she's paying 75
2 percent of the cost of that well.

3 And this is just beyond Mr. Richardson, he
4 doesn't understand this concept. Yeah, right, he doesn't
5 understand it; it's more of his scam. And they've been
6 scamming her all along.

7 And so -- I mean, good faith -- There just is no
8 good faith here.

9 And then you come along and you look at the
10 Application itself that they attached to the July 31st
11 letter. You look at the statutory requirements for the
12 Application. 70-7-5, okay, in the Statutory Unitization
13 Act, item D, A copy of a proposed plan of unitization which
14 the applicant considers fair, reasonable and equitable. I
15 didn't see one of those.

16 We're trying to figure out who's in this unit,
17 what are the acreages, what are the percentages? We
18 couldn't find them. They should be attached to their
19 application.

20 EXAMINER BROOKS: I don't believe the Statutory
21 Unitization Act applies to this proceeding, Mr. Horner.
22 You may want to read the introductory provisions of it
23 somewhat more carefully. We deal with these things all the
24 time, and a compulsory pooling proceeding and a statutory
25 unitization proceeding are under different statutes and

1 involve different situations.

2 Anyway, you may continue.

3 MR. HORNER: Okay. Well, that's again news to
4 me, and it looks like it's exactly what we're doing here.
5 And when you talked about earlier the requirement for
6 dealing in good faith, I thought it was coming straight out
7 of this Statutory Unitization Act.

8 EXAMINER BROOKS: And it is, it's expressed in
9 the Statutory Unitization Act. I don't believe it is
10 expressly stated in the compulsory pooling statute. I
11 don't have the statute in front of me. I don't believe
12 it's expressly stated in there, although it has been our
13 policy to consider that as a factor.

14 MR. HORNER: Okay. So anyway, attached to the
15 Application, then, was none of this information. Okay?
16 None of the -- anything that looked like a pooling plan,
17 anything that looked the percentages, the acreages that
18 were within the pool, the percentages, how they arrived at
19 them, anything else to get us going on what we're talking
20 about here. None of that has ever been presented. So we
21 have a real problem with the concept of good faith.

22 Now again, yesterday we made a counteroffer that
23 appeared to be fair. It didn't have a 200-percent penalty
24 on it, they weren't interested. They absolutely weren't
25 interested. They're going to get a 200-percent penalty

1 today, so why should they talk to us yesterday? And that
2 was -- Mr. Richardson's express words were, Why should we
3 consider this? You know, we're going to get a 200-percent
4 penalty tomorrow. Why should we consider this today?

5 Now then, it's been talked about here that
6 there's nothing to indicate -- Well, I'm not sure exactly
7 how it was said, but some sort of concept expressed here,
8 at least in closing arguments, that the Navajos have X,
9 that something has changed and the Navajos have however
10 much. And I'm saying nothing has changed.

11 They have shown you no evidence here indicating
12 that there is anything that says the Navajos' property has
13 changed. So they're concerned about having to pay twice
14 with acreages overlapping and doubling up. There's nothing
15 here to indicate that that has happened. They have shown
16 no evidence of that. In fact --

17 EXAMINER BROOKS: Well, let me interrupt you.
18 They've shown a survey that shows the river in a different
19 position from what it was on the original survey, and even
20 under the evidence that you presented, you presume the
21 difference is a matter of accretion --

22 MR. HORNER: No.

23 EXAMINER BROOKS: -- an avulsion.

24 MR. HORNER: No -- Well, yeah, I didn't assume or
25 presume that it's accretion at all.

1 EXAMINER BROOKS: Well, but that's what Exhibit F
2 that you offered in evidence says.

3 MR. HORNER: Well, Exhibit F shows the difference
4 between accretion and avulsion.

5 EXAMINER BROOKS: Exactly.

6 MR. HORNER: Right.

7 EXAMINER BROOKS: And it says, "An avulsive
8 change cannot be assumed to have occurred without positive
9 evidence. When no such showing can be made, it must be
10 presumed that the changes have been caused by gradual
11 erosion and accretion."

12 MR. HORNER: Okay, and if we get to it and if we
13 get into the court of competent jurisdiction, then that's
14 going to be part of my job, to demonstrate the evidence
15 that it has changed --

16 EXAMINER BROOKS: And you're absolutely right
17 about that.

18 MR. HORNER: Okay. And so -- Anyway, what we
19 have, then, is still, they're trying to stand on 33 acres.
20 And what that is, 12 from 45, is again, you know, taking
21 another 25, 28 percent away from Ms. Fischer. You know,
22 take it away there, stick her with 300 -- 200, 300-percent
23 nonconsent penalty when she's consenting.

24 You know, the stuff we've gotten from Richardson
25 here is just crazy. They told her on Monday that they had

1 not drilled this well yet. Two people told her that.
2 Actually, I guess, Mr. Lehrman qualified it, he said he
3 didn't know. But Ann Jones said that the well had not been
4 drilled yet. And in fact, Ms. Fischer has seen it being
5 drilled, and we went over and looked at it. So the lack of
6 good faith here just goes on and on and on.

7 And then Mr. Richardson himself on the stand
8 today, just not being able to understand the concept of a
9 200-percent penalty and how that could make Ms. Fischer,
10 based on 45 acres, end up paying three-quarters of the cost
11 of his well. When he drills his well before there's an
12 agreement, when he drills his well before there's an order,
13 he assumes the risk.

14 He's the one who understands the geology, he's
15 the one who understands the business, he's the one who
16 understands the risk, and he's the one who decides to go
17 ahead and drill the well, without an agreement, without an
18 order. He understands the risk, he assumes the risks, and
19 he undertakes the job knowing the risks. And then to come
20 along and try to put three-quarters of the cost, or at
21 least three times what -- three or four times what they
22 should be, Mary's share, on her, is just crooked. And
23 that's what we've got going on here.

24 So then what we would ask is that, number one,
25 that there be no penalty involved, that again she pay her

1 proportionate share out of production. The Indians to the
2 south here are paying a 1/6 royalty. That sounds fair, a
3 1/6 royalty. And basically, you know, that her cost of the
4 production, or her share of the cost of the well be taken
5 out of production out of the other 5/6.

6 And what we would suggest to you, even, is that
7 the bad faith on the part of Richardson here is so bad that
8 you even consider allowing her to participate in this well
9 without paying her share of the cost of production, as a
10 penalty to them for their bad-faith efforts.

11 EXAMINER BROOKS: Do you have anything to add,
12 Mr. Kellahin, by way of closing?

13 MR. KELLAHIN: A couple of points, Mr. Examiner.

14 EXAMINER BROOKS: Go ahead.

15 MR. KELLAHIN: As you reminded Mr. Horner, he's
16 in the wrong part of the statute.

17 Your memory is also correct on the force-pooling
18 statute. It simply says when parties fail to agree you can
19 exercise your powers.

20 His characterization of Richardson is disturbing.
21 I think it's unfair. I expected better. But to suggest
22 that we have been in bad faith is truly unfair.

23 We send her two different letters, she ignores
24 them. The letter on itself says it's not going to be
25 drilled on her tract. She's out there watching a rig just

1 south of the river, she knows it's not on her property.
2 She asks no questions about any of this. We are the ones
3 that have initiated all written and all other contacts.

4 On Monday Richardson calls them, just a few days
5 before hearing. Ms. Fischer, what is going on? They meet,
6 they meet several times, Richardson shares the information
7 with them to the best we can, we give them that
8 information. There's no nastiness here, there's no deep,
9 dark secret.

10 The notice of hearing, which they admit they
11 received, is a letter that I sent that's boilerplate,
12 advising you to file an entry of appearance on Friday so
13 that we know you're out there.

14 If Mr. Horner had called me, we could have talked
15 about these things. I would have told him what the
16 practice is, what the rule is, the right part of the
17 statute to worry about, and we might have come up with some
18 solution.

19 But we don't hear anything from them until we contact
20 them on Monday, and I don't know they're coming here until
21 last night when Mr. Lehrman tells me he thinks that they're
22 coming to hearing. I see them for the first time this
23 morning. I don't accuse them of ambushing us, and I resent
24 the fact that they're saying we're in bad faith.

25 We're trying to consolidate the last of the

1 interest owners in order to pay everyone their fair share,
2 and we're also asking you not to engage in trying title or
3 determining boundary. We've done what the statute
4 requires, we have a well out there that's not yet
5 completed.

6 She has the chance to pay her share based upon a
7 well that's drilled, or choose not to. If she chooses not
8 to, we're going to pay her share, and we're going to be
9 reimbursed by taking it out of future production, plus
10 whatever penalty you tell us is appropriate. She doesn't
11 get it both ways.

12 Thank you.

13 EXAMINER BROOKS: Thank you very much.

14 Could I call a conference of the panel here for a
15 minute?

16 (Thereupon, a recess was taken at 3:54 p.m.)

17 (The following proceedings had at 4:02 p.m.)

18 EXAMINER BROOKS: Okay, Mr. Kellahin says this
19 title issue gives him a headache. Actually for me, after
20 12 years on the bench, I love that kind of thing. That's
21 the kind of thing I used to spend Saturdays and Sundays
22 researching in another life.

23 But the Oil Conservation Division has absolutely
24 no jurisdiction to make determinations of title or acreage.
25 All we can do is either compulsory pool or not compulsory

1 pool the interests, whatever they may be, and that's what
2 we would do if we entered an order on this.

3 However, we have determined that in our view the
4 parties have not sufficiently explored the possibility of a
5 voluntary agreement and have not sufficiently understood
6 each other in the negotiations, and we believe the
7 appropriate disposition of this case is to continue it to
8 our hearing docket on September the 19th, I believe --

9 EXAMINER STOGNER: Yes, September 19th.

10 EXAMINER BROOKS: -- which will give you
11 approximately -- which will give you exactly four weeks to
12 explore the possibility of voluntary agreement.

13 The record will be held as the record, and four
14 weeks from now it will not be necessary to come here and
15 present any more evidence unless somebody feels the
16 necessity to do so. If you just report to us that you're
17 still not in agreement, then we will take the matter under
18 advisement at that time.

19 If there's nothing further, we stand adjourned.

20 MR. KELLAHIN: Thank you.

21 EXAMINER STOGNER: Well, I've got one, the
22 nomenclature.

23 (Thereupon, these proceedings were concluded at
24 4:03 p.m.)

25

I do hereby certify that the above
is a complete record of the proceedings
the Examiner hearing of Case No. 12910
* * * heard by me on Aug 22, 2002

STEVEN T. BRENNER
(505) 989-9317

David K. Burtz Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL August 28th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002