

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARINGSANTA FE, NEW MEXICOHearing Date JANUARY 4, 1989 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION
Ch. Bobe Kendrick	El Paso Natural Gas Co	El Paso, TX
Scott Hall	Campbell & Black	SF
William A. Jan	Campbell & Black	S.F.
Bill Seaton Victor L. Lopez	Amman & Co OCD	Midland Santa Fe NM
Paul Fisher	Byram	Santa Fe
Louis MAZZUCCO	Nearburg Prod. Co.	Midland
Bill OWEN	David Perzola Corp	Roswell
Ron Bartel	BLM	Santa Fe
Charles Nearburg	Nearburg Prod Co.	Dallas
W. D. Kellin	Kellin, Kellin & Company	Santa Fe

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date JANUARY 4, 1989 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 STATE LAND OFFICE BUILDING
5 SANTA FE, NEW MEXICO

6 4 January

7 EXAMINER HEARING

8 IN THE MATTER OF:

9 Application of Amerind Oil Company CASE
10 for compulsory pooling, Rio Arriba 9567
11 County, New Mexico.

12 BEFORE: David R. Catanach, Examiner

13 TRANSCRIPT OF HEARING

14 A P P E A R A N C E S

15 For the Division: Robert G. Stovall
16 Attorney at Law
17 Legal Counsel to the Division
18 State Land Office Bldg.
19 Santa Fe, New Mexico

20 For Amerind Oil Company: William F. Carr
21 Attorney at Law
22 CAMPBELL and BLACK, P. A.
P. O. Box 2208
Santa Fe, New Mexico 87501

23 For Cibola Energy Corp.: Harvey E. Yates, Jr.
24 Attorney at Law
25 P. O. Box 0
Albuquerque, New Mexico
87103

I N D E X

BILL SELTZER

Direct Examination by Mr. Carr	3
Cross Examination by Mr. Yates	14
Redirect Examination by Mr. Carr	33

STATEMENT BY MR. YATES	34
------------------------	----

STATEMENT BY MR. CARR	36
-----------------------	----

E X H I B I T S

Amerind Exhibit One, Plat	5
Amerind Exhibit Two, List	5
Amerind Exhibit Three, AFE	6
Amerind Exhibit Four, Data	9
Amerind Exhibit Five, Letter and Affidavit	9
Amerind Exhibit Six, Contour Map	10
Amerind Exhibit Seven, Altered AFE	17
Amerind Exhibit Eight, Operating Agreement	20

1 MR. CATANACH: Call Case 9567.

2 MR. STOVALL: Application of
3 Amerind Oil Company for compulsory pooling, Lea County, New
4 Mexico.

5 MR. CATANACH: Are there ap-
6 pearances in this case?

7 MR. CARR: May it please the
8 Examiner, my name is William F. Carr, with the law firm
9 Campbell & Black, P. A., of Santa Fe. We represent Amerind
10 Oil Company and I have one witness.

11 MR. CATANACH: Any other ap-
12 pearances?

13

14

(Witness sworn.)

15

16

BILL SELTZER,

17

being called as a witness and being duly sworn upon his
18 oath, testified as follows, to-wit:

19

20

DIRECT EXAMINATION

21

BY MR. CARR:

22

Q

Will you state your full name for the

23

record, please?

24

A

Bill Seltzer, Midland, Texas.

25

Q

Mr. Seltzer, by whom are you employed

1 and in what capacity?

2 A I'm employed by Amerind Oil Company as a
3 land consultant.

4 Q Have you previously testified before
5 this Division and had your credentials as a land consul-
6 tant and accepted and made a matter of record?

7 A Yes, I have.

8 Q Are you familiar with the application
9 filed by Amerind in this case?

10 A Yes.

11 Q Are you familiar with the subject area
12 and the well which is the subject of this application?

13 A Yes.

14 MR. CARR: Are the witness'
15 qualifications acceptable?

16 MR. CATANACH: They are.

17 Q Mr. Seltzer, will you briefly state what
18 Amerind seeks with this application?

19 A Amerind seeks an order pooling all the
20 interests from the base of the Paddock formation to the
21 base of the Strawn formation covering the south half of the
22 northwest quarter of Section 29, Township 16 South, Range
23 37 East, Lea County, New Mexico.

24 Q Have you prepared certain exhibits for
25 introduction in this case>

1 A Yes, I have.

2 Q Will you refer to what has been marked
3 as Amerind Exhibit Number One, the land plat, and review
4 the information contained on this exhibit?

5 A Exhibit Number One is a land plat
6 showing the offset owners and the proration unit, being the
7 south half of the southwest quarter of Section 29, together
8 with the location of the test well, being 810 feet from the
9 west line and 1980 feet from the north line of the section.

10 Q And you're dedicating the south half of
11 the northwest quarter, is that correct?

12 A Yes.

13 Q And the well is at a standard location.

14 A At a standard location.

15 Q What is the primary objective in this
16 proposed well?

17 A To test the Strawn formation at approx-
18 imately 11,400 feet.

19 Q Would you refer to Amerind Exhibit Num-
20 ber Two and review the information contained thereon?

21 A Exhibit Number Two is an ownership of
22 the working interest of the proration unit and the parties'
23 interest before and after payout.

24 Q What percentage of the acreage in the
25 proposed spacing or proration unit has been voluntarily

1 committed to this well?

2 A 97 percent.

3 Q Could you identify on this exhibit those
4 interest owners that are not at this time committed?

5 A The only interest owner that is not
6 committed to the unit is Cibola Energy Corporation, which
7 is 3.181360 percent before and after payout.

8 Q All right, Mr. Seltzer, let's now turn
9 to Amerind Exhibit Number Three. Would you identify that
10 and review that for Mr. Catanach?

11 A Exhibit Number Three is our AFE, which
12 sets forth \$325 -- \$325,000 cost for a dry hole, \$290,000
13 for a completion cost.

14 Q And the total for a completed well is
15 therefore --

16 A \$615,000.

17 Q Are these costs in line with what is
18 being charged by other operators in the area for a similar
19 well?

20 A Yes.

21 Q Would you please summarize the efforts
22 you've made to obtain the voluntary joinder of Cibola in
23 the proposed spacing unit?

24 A On August the 25th, 1988, I forwarded by
25 certified mail to all the interest owners owning an inter-

1 est in this proration unit, a letter requesting them to
2 join and -- join Amerind in drilling this proposed test, or
3 farm out its interest.

4 A few days later I received a call from
5 Mr. Bob Bell at HEYCO stating that they would desire to
6 join with Amerind to drill a well here but they would de-
7 sire to do some joint seismic work in the area, which we
8 did and completed, and on October -- in the middle part of
9 October the two parties got together and came up -- came
10 forth with a joint, mutual location, which we have on this
11 plat.

12 On October the 28th I forwarded to all
13 the parties listed in the ownership an AFE and operating
14 agreement and that was also to Cibola. The interest of
15 3.18136 was never in dispute by Cibola.

16 In the early part of 19 -- of November
17 of 1988 I personally contacted their office and requested
18 them to execute the AFE and the operating agreement and
19 return same to me. I talked with Mr. Harvey E. Yates, Jr.,
20 and he said he would take care of same.

21 Based upon this information and on the
22 information that was handed to us by HEYCO, Amerind com-
23 menced drilling the well on November the 18th, 1988, and
24 we continued to drill this well and during the latter part
25 of the month I repeatedly called Cibola's office and re-

1 requested them to return my calls and the AFE and the oper-
2 ating agreement.

3 On December the 1st, 1988, Mrs. McBride
4 of Cibola's office, Mr. Bob Bell of HEYCO's office, inform-
5 ed us that Harvey Yates, Jr., was in Midland and would come
6 by our office and sign the AFE and the operating agreement.
7 He never showed up.

8 On December the 5th -- in the meantime
9 this well is already drilling. On December the 5th, 1988,
10 in a telephone conversation Mr. Yates states that he's con-
11 sidering farming out his interest and we requested to ask
12 him what he was -- kind of farm out he was thinking about
13 and he said -- come back for a half interest at payout.
14 Well, we told him that was unreasonable, that the well was
15 at that date drilling at 10,500 feet, within two days we're
16 going to be on total depth and see the formation.

17 On December the 7th, 1988, I received in
18 the office from Cibola operating agreement and AFE, alter-
19 ed, altered to the extent that it was not acceptable by
20 Amerind, and we refused it and wrote him a letter to that
21 affect on December the 8th, stating that it was not accep-
22 table, that the original operating agreement and AFE would
23 stand.

24 And to date we have not heard anything
25 further from Mr. Yates.

1 Q Mr. Seltzer, in your opinion have you
2 made a good faith effort to obtain the voluntary joinder of
3 Mr. Yates in this well?

4 A I think I have.

5 Q Would you identify what has been marked
6 as Amerind Exhibit Number Four?

7 A Exhibit Number Four is the Exhibit A
8 attached to the -- wait, excuse me.

9 Q It's a packet of material here. This
10 was sent by certified mail to all the interest owners re-
11 questing them to join or farmout, with additional informa-
12 tion, additional letters stating that Mr. Yates' altered
13 operating agreement and AFE was not acceptable and then
14 additional letters here of correspondence to me and my --
15 and my correspondence to Cibola, together with Exhibit A to
16 the operating agreement setting out the interest of the
17 parties before and after payout.

18 Q Would you identify what has been marked
19 as Amerind Exhibit Number Five?

20 A These are the letters and affidavits
21 giving notice of this hearing.

22 Q What is the status of the well at this
23 time?

24 A Amerind has completed this well from the
25 Strawn formation. We completed it on December the 18th,

1 flowing 561 barrels of oil per day.

2 Q Now, Mr. Seltzer, has Amerind drilled
3 other Strawn wells in the immediate area?

4 A Yes. We have drilled several Strawn
5 wells in the immediate area.

6 Q Now I would like to direct your atten-
7 tion to what has been marked as Amerind Exhibit Number Six
8 and ask you just to identify that, please.

9 A Exhibit Number Six is a contour map on
10 the Lower Strawn Lime formation.

11 Q Now, Mr. Seltzer, you're not an engineer
12 or a geologist, are you?

13 A No, I'm not.

14 Q Does this exhibit indicate the location
15 of the subject well?

16 A Yes, it does.

17 Q Does it show offsetting wells?

18 A Yes, it does.

19 Q Do you own an interest in any of those
20 offsetting wells?

21 A I own an interest with Amerind on all
22 the wells. I'm a partner of Amerind in all of their oper-
23 ations and have drilled some 20-some odd wells in the area.
24 If you'll notice in the west half of the northeast quarter
25 there are two wells, Amerind's "B" Wiser Well is a dry hole

1 and the Wiser Calmont Well in the southwest of the north-
2 east is a dry hole.

3 Q Those are the two immediate offsets to
4 the east?

5 A They are, yes. To the southwest of this
6 location is a Nearburg Well called the No. 2 Well is in the
7 northeast of the southeast of Section 30, is a dry hole,
8 and then that well was deviated to the southeast and it was
9 also a dry hole.

10 Q Are you prepared to make a recommenda-
11 tion to the Examiner as to a risk penalty that should be
12 assessed against any nonconsenting interest owner?

13 A Yes.

14 Q And what is that figure?

15 A 200 percent.

16 Q And what is that based on?

17 A That's based upon the fact that we have
18 taken the risk and paid all the interest of the parties
19 here, that we should have a -- a party should not have a
20 free ride to look at the well.

21 Q Have you made an estimate of overhead
22 and administrative cost while drilling the well and also
23 while producing the well if in fact it's successful?

24 A Yes.

25 Q And what are those figures?

1 A \$4500 for a drilling well and \$450 for a
2 producing well.

3 Q Are those costs in line with what is
4 being charged by other operators in the area?

5 A Yes.

6 Q And do you recommend that these figures
7 be incorporated into any order which results from this
8 hearing?

9 A Yes, we do.

10 Q Does Amerind seek to be designated oper-
11 ator of the well?

12 A Yes, we do.

13 Q In your opinion will granting this ap-
14 plication be in the best interest of conservation, the pre-
15 vention of waste, and the protection of correlative rights?

16 A Yes.

17 Q Were Exhibits One through Six prepared
18 by you or compiled under your direction and supervision?

19 A They were.

20 MR. CARR: At this time, Mr.
21 Catanach, we move the admission of Amerind Exhibits One
22 through Six.

23 MR. CATANACH: Exhibits One
24 through Six will be admitted as evidence.

25 MR. CARR: And that concludes

1 my direct examination of Mr. Seltzer.

2 MR. CATANACH: Yes, sir.

3 MR. YATES: I apologize for
4 being late. I thought you started at 9:00 o'clock.

5 May I see the exhibits,
6 please?

7 THE REPORTER: Would you like
8 to identify yourself for the reporter so I can put your
9 name in the record?

10 MR. YATES: Harvey Yates for
11 Cibola Energy.

12 MR. CATANACH: Who are you re-
13 presenting, please?

14 MR. YATES: Cibola Energy,
15 formerly Coronado Exploration.

16 MR. CARR: I'm going to ques-
17 tion whether or not Mr. Yates can represent a corporation
18 if he's not a member of the Bar.

19 MR. YATES: I am a member of
20 the Bar.

21 MR. STOVALL: Mr. Yates is a
22 member of the Bar.

23

24

25

1 MR. CARR: All right.

2 MR. CATANACH: Why don't we
3 take about a two or three minute break and let Mr. Yates
4 look at the exhibits?

5
6 (Thereupon a recess was taken.)

7
8 CROSS EXAMINATION

9 BY MR. YATES:

10 Q Mr. Seltzer, would you please give me
11 some of your background? Have you -- do you work for
12 Amerind? Are you a consultant? Who have you worked for?

13 A I've had 38 years experience in the oil
14 industry. I'm a graduate of TCU, SMU, with a law degree in
15 -- from SMU. I'm a member of the Bar in Texas.

16 I've been in the oil and gas business
17 for 25 years with Richardson and Bass. I have been an in-
18 dependent for 14 years.

19 Q You're an independent landman or you're
20 in the oil business yourself?

21 A Both. I do it all.

22 Q The only large company you've worked for
23 is Richardson and Bass?

24 A Uh-huh.

25 Q Otherwise you've been an independent?

1 Thank you. When this well was proposed it is ordinary to
2 have -- ordinarily one secures leases or farm ins before
3 the well is spudded. Did you make any representation or
4 did Amerind make any representation to the Commission to
5 the effect that the leases were in hand or farm ins were in
6 hand?

7 A What do you mean by that?

8 Q Did you make any representation to this
9 Commission?

10 A To this Commission?

11 Q To this Commission or to the Federal
12 government that leases were in hand? Or why did --

13 A When I -- go ahead.

14 Q Pardon me.

15 A I don't follow you.

16 Q Why did you spud the well if leases were
17 not in hand?

18 A The leases were communitized by HEYCO
19 and Amerind and filed with this office.

20 Q Did you check record title before --
21 before that happened?

22 A Uh-huh.

23 Q Did you find that HEYCO had record
24 title?

25 A There was a --

1 Q To all interest?

2 A No.

3 Q What did you find?

4 A The title was as set out in the -- the
5 exhibit.

6 Q And that exhibits shows that Cibola
7 Energy, formerly Coronado, has an interest.

8 A Right.

9 Q So you spudded the well before you had
10 secured from Cibola a farm in, before you had leased the
11 interest or before you had secured Cibola's consent to
12 drill.

13 A That's right.

14 Q Did you ever receive from Cibola a
15 signed agreement, a signed AFE?

16 A Yes. I received an altered one.

17 Q An altered AFE? Could I see that,
18 please?

19 A Yes.

20 Q Don't you have yours?

21 MR. CARR: It's part of
22 Exhibit Number Four, I believe, Mr. Yates.

23 Q Do you have -- will you point out to me
24 where that AFE is altered, please?

25 A Right under your signature.

1 Q That isn't -- here it is. This AFE is
2 altered the following way. Cibola agrees to this AFE as to
3 a proportionate share, approximately 3.18 percent but re-
4 tains the right to approved or disapprove any cost causing
5 the AFE to be exceeded by 10 percent or more.

6 Is that what you --

7 A Correct.

8 Q Did you reject the AFE because of that
9 alteration?

10 A I believe that's what Amerind rejected.

11 Q They rejected that?

12 A Uh-huh.

13 Q They objected to the alteration of this
14 AFE because Cibola retained the right to approve or disap-
15 prove any cost, actual cost, which exceeded the AFE by 10
16 percent or more?

17 A Uh-huh.

18 MR. STOVALL: Excuse me, gen-
19 tlemen, can I interrupt you for a second?

20 It appears that neither the
21 Examiner nor I have a copy of --

22 MR. CARR: Okay, let's mark
23 that, then, as Amerind Exhibit Seven.

24

25

1 Q Mr. Seltzer, you state you've been in
2 the oil business 25 years or 30 years, or so. Is it, in
3 your view, unreasonable or uncustomary for a company to
4 specify that it reserves the right to consent to any ac-
5 tual expense that exceeds the AFE by 10 percent or more?

6 A Unreasonable?

7 Q Is it unreasonable?

8 A Oh, I don't think it's unreasonable but
9 it should be done timely.

10 Q You received this AFE, did you not,
11 signed?

12 A Oh, yeah. I received that AFE on Decem-
13 ber the 7th after the well was at that depth, drilling at
14 10,500 feet with two more days to reach total depth.

15 Q Well, are you suggesting that this AFE
16 would have been ineffective as a legal instrument?

17 A No, I'm not saying that. I said being
18 timely.

19 Q In other words, if this language had
20 been attached, say, in November, it would have been accept-
21 able to you?

22 A Mr. Yates, we're going to get into an
23 arguing match, if that's what you want.

24 Q Well, as you wish. I'm asking a
25 question and I'd appreciate an answer.

1 A Well, I'm going to get into one with
2 you. You were in Midland on December the 1st and were
3 supposed to come by the office of Amerind and sign the AFE
4 and operating agreement. You did not show up.

5 Q Are you testifying that I was in Midland
6 on December the 1st?

7 A Yes, sir.

8 Q Well, that's not true but --

9 A What day were you there, --

10 Q I wasn't there at that point.

11 A Your office in Albuquerque said you were
12 in Midland. So did Mr. Bob Bell in the HEYCO's office, and
13 you were supposed to come by Amerind's office and they
14 waited all day long for you.

15 Q Mr. Seltzer, I'll be pleased to explain
16 that if you wish, but I would appreciate your answering my
17 question. If this language had been attached in October or
18 November, would it have been accepted by Amerind?

19 MR. CARR: If you know.

20 A I don't know.

21 Q Thank you. But you don't find that lan-
22 guage unreasonable.

23 A I don't know.

24 Q You don't know whether you find it un-
25 reasonable based on your years of experience?

- 1 A No.
- 2 Q No what, you don't know?
- 3 A I don't know.
- 4 Q Did you receive a signed operating
5 agreement from Cibola Energy?
- 6 A Yes.
- 7 Q Was it altered in any way?
- 8 A Yes.
- 9 Q Will you tell this Commission how it was
10 altered?
- 11 MR. YATES: I'm sorry, has an
12 operating agreement been submitted?
- 13 MR. CARR: It has not and we
14 will mark that as Amerind Exhibit Eight.
- 15 A The Exhibit C of the operating agreement
16 has been altered.
- 17 Q That is known as the COPAS form, is it
18 not?
- 19 A Correct.
- 20 Q Are you talking about paragraph 3 --
- 21 A Yes.
- 22 Q -- on page 1 COPAS?
- 23 A Yes.
- 24 Q This AFE, how has that been altered?
- 25 A It's been altered from payment of the

1 bills within 15 days to within 60 days.

2 Q Okay. How -- you worked for Richardson
3 and Bass, how long does Richardson and Bass take to pay
4 their bills on the whole?

5 Do they pay their bills within 15 days
6 in your experience?

7 A Yes, and I pay mine within 15 days, too.

8 Q Okay, do you think it's customary based
9 on your experience for companies in the oil business to pay
10 their bills within 15 days?

11 A Yes.

12 Q My experience is certainly different
13 from yours.

14 MR. CARR: Now are you going
15 to testify?

16 I object to that question.

17 MR. YATES: I withdraw -- I
18 withdraw (unclear).

19 Q Do you -- do you think that this lan-
20 guage is unreasonable, the 60 days?

21 A Yes.

22 Q Pardon me just a moment.

23 Would you please turn to Amerind's
24 letter of December 8th to me? You received a carbon copy
25 as indicated by the letter, Mr. Seltzer.

1 I'd like to read to you the last para-
2 graph there.

3 As far as your suggested changes to the
4 operating agreement, I would have been more than willing to
5 consider them had they been offered on a timely basis but
6 at this point I am not.

7 Would you say that Mr. Leibrock is in-
8 dicating that those changes are possibly reasonable?

9 A I don't know.

10 Q And that the reason they were not ac-
11 cepted by him was the date upon which he received the oper-
12 ating agreement?

13 A I don't know.

14 Q Mr. Seltzer, do you think that it is
15 more reasonable for a company to sign a COPAS agreement
16 stating that it will pay in 15 days and pay in 60 or do you
17 think it more reasonable that a company say it will pay in
18 60 and pay in 60?

19 A I think it would be that they paid with-
20 in 15 days.

21 Q Mr. Seltzer, have you presented to the
22 Commission any offer to lease from Cibola Energy Corpora-
23 tion its interest?

24 A No, I have not.

25 Q Did you offer to lease from Cibola

1 Energy Corporation?

2 A I asked you to join or farm out your
3 interest in August of 19 -- August the 25th, 1988.

4 Q Did you -- you did not offer to lease
5 this interest, is that correct?

6 A No. I just offered to join or farm out.

7 Q Okay. Do you have a copy of your offer
8 to farm in?

9 A It's in the exhibit.

10 Q Would you refer me to that, please?

11 A The first -- first page.

12 Q Is that a -- what is the first page,
13 letter to Mr. Bell?

14 A Yes.

15 MR. CARR: Dated August 25,
16 1988.

17 Q Okay. This letter is to Mr. Bell, is
18 that a correct --

19 A Yes, look at the list.

20 Q You list on page 3 a list of owners. Did
21 you ever communicate directly to Cibola Energy Corporation
22 and offer to farm in?

23 A I asked you to join.

24 Q So you, -- your testimony now is that
25 not only did you not offer to lease, you did not offer to

1 farm in. Is that correct?

2 A Here's the offer right there, to join or
3 to farm in.

4 Q That letter is addressed -- is not ad-
5 dressed to Cibola Energy.

6 A No, but it's Coronado and you're part of
7 Coronado.

8 Q This letter is not addressed to
9 Coronado.

10 A Look at the -- look over here on page 3.
11 There's the list it went to.

12 Q It went to --

13 A And your -- and your secretary accepted
14 that letter. I have that in the registered mail, right
15 there.

16 Q May I see it, please? You're saying
17 that you sent a copy of this letter to Cibola Energy Cor-
18 poration?

19 A Yes.

20 Q May I see this, please?

21 MR. CARR: The receipts are
22 attached ahead of that, Mr. Yates. I think maybe immedi-
23 ately ahead.

24 Q This letter is addressed to Harvey E.
25 Yates Company, Roswell, New Mexico, HEYCO, to the atten-

1 tion of Bob Bell, and on the back of it you list a list of
2 owners, is that correct?

3 A Yes.

4 Q You did not send a -- you did not ad-
5 dress a letter and send it to Cibola Energy Corporation, is
6 that correct? You sent, what this evidence shows is that
7 you sent a letter to --

8 A A letter went and to the attached listed
9 owners.

10 Q Okay. I had a conversation with Mr.
11 Leibrock Is he President of Amerind?

12 A Which one did you have?

13 Q I know neither of them except by voice
14 and information. I trust he's the younger one.

15 A They're father and son.

16 Q All right, I trust he's the younger one.

17 A Okay.

18 Q What is his position with Amerind?

19 A He's Vice President.

20 Q Do you know how that conversation ended?

21 A As I understand, it ended with him hang-
22 ing up on you.

23 Q Did -- and did he advise you that I
24 called in order to discuss this AFE because I was unable to
25 get to Midland?

1 A No.

2 Q Do you know that a conversation with Mr.
3 Bob Bell ended by Mr. Leibrock hanging up on him, Mr. Bob
4 Bell of HEYCO?

5 A I think that's correct.

6 Q Do you know that the same gentleman had
7 a very spirited conversation with Mr. Ken Hammond of Yates
8 Energy?

9 A No.

10 Q Do you have before you an operating
11 agreement?

12 A Yeah.

13 Q Would you turn to page -- pardon me,
14 page 4 of that operating agreement?

15 Do you see page 4?

16 A Yes.

17 Q Would you please read the date by which
18 the initial well is to be spudded?

19 A On or before January the 1st, 1989.

20 Q When did you actually spud the well?

21 A November the 18th, 1988.

22 Q And at that time you had not received an
23 agreement from all the parties who had an interest in --

24 A I was led to believe all parties would
25 join.

1 Q Let by whom?

2 A By you and by HEYCO and by Mr. Ken
3 Hammond.

4 Q How did I lead you to believe?

5 A You said that you would review the oper-
6 ating agreement and get back in touch immediately, it
7 looked all right.

8 Q I said it looked all right or I would
9 look -- I would get back in touch with you if it looked all
10 right?

11 A I don't know which one you said.

12 Q Okay.

13 A But you did not get back to me --

14 Q Why were you in such a hurry to drill
15 this well?

16 A Because it was draining, we were being
17 drained.

18 Q You were being drained.

19 A Yes.

20 Q The fact that you were being drained ex-
21 hibits a confidence that the well would hit, is that
22 correct?

23 A We were hoping it would be hit -- would
24 hit.

25 Q Well, you were worried about drainage.

1 Would you say that the risk was minimal?

2 A No.

3 Q And yet you were in a hurry to drill
4 this well even though you didn't have consent of all the
5 parties because you were worried about drainage?

6 A Run that by again.

7 Q You were not confident that the well
8 would hit.

9 A Mr. Yates, you're in the oil business,
10 they all don't hit.

11 Q No, they all don't hit but I'm talking
12 about this particular well where you said that the reason
13 for your hurry was that you were worried about drainage.

14 A If there is -- if the well would hit,
15 then it have been drained.

16 Q Did the well hit?

17 A Yes.

18 Q Has it been completed?

19 A Yes.

20 Q Is it a producer?

21 A Yes.

22 Q Would you say now that there's no risk
23 that the well will produce?

24 A That there is no risk now? There was
25 risk at the time.

1 Q I didn't ask that question.

2 A There's no risk now. We have the well
3 producing.

4 Q So there's no risk now.

5 A That's right. There's no risk now.

6 Q And when you spudded the well, you hur-
7 ried along before you had all of the paperwork done or
8 consent of all the parties because you thought that the
9 well would be a good well and that it was being -- and that
10 that location was being drained?

11 A No, we were trying to get the well
12 started in January. You knew the well was trying to being
13 started as soon as we could. You knew all along that we
14 were trying to get this well started.

15 Q When you say I knew all along, what do
16 you mean?

17 A From the conversation we had.

18 Q A conversation in August?

19 A No, I didn't talk to you in August.

20 Q When did you talk to me?

21 A I talked to you in October.

22 Q October. I knew all along from October
23 forward, as far as you know.

24 A You had this letter to join or farm out.

25 Q And so those -- and so Amerind's

1 schedule was one that I was to abide by.

2 A I don't know whether you want to abide
3 by it or not. We're going to drill the well.

4 Q Okay, well, that's -- that's what I'm
5 getting at. You were going to drill the well no matter
6 what.

7 A Right.

8 Q You were going to drill the well even if
9 you didn't have consent of --

10 A And I was told that you were going to
11 join.

12 Q By whom?

13 MR. CARR: Objection, this is
14 getting argumentative. If Mr. Yates wants to ask questions
15 I have no objection. If he wants to argue with Mr. Seltzer
16 and ask leading questions that mischaracterize what's been
17 done, then I do object.

18 Q By whom were you told that we would
19 join?

20 A By Mr. Bob Bell.

21 Q And when?

22 A One of these -- October. That's why I
23 sent all this information to you.

24 Q Today there is no risk. You've stated
25 that, is that correct?

1 A That's right.

2 Q Do you have any idea what the length of
3 payout on this well will be?

4 A The well will payout in less than six
5 months.

6 Q I see. Now, did I -- as I was walking
7 in I believe that you were asking for a 200 percent pen-
8 alty --

9 A Correct.

10 Q -- is that correct? So you're asking
11 for a 200 percent penalty on a well that will payout in
12 less than six months where there's no risk now, where you
13 --

14 A There was risk at the time we tried to
15 get you to join. We took and paid your proportionate part.
16 I'm a part of a guy who paid your proportionate part.

17 Q This is a well that you hurried --

18 A We're asking you to join right now, Mr.
19 Yates. If you want to join, let's -- let's sign the oper-
20 ating agreement and you put up your money. Then there's no
21 risk.

22 Q I have signed the operating agreement.

23 A Well, let's put up our money. I put up
24 my money. Everybody else in here put's up their money.

25 Q I have signed the operating agreement

1 and --

2 A No, you altered the operating agreement.
3 We did not accept it.

4 Q Okay. You did not accept the operating
5 agreement.

6 A That's right.

7 Q But it was signed, is that correct?

8 A It was signed but it was altered. Your
9 AFE was signed, it was altered. Neither one was accept-
10 able. You were so informed.

11 Q So am I -- am I to believe that you
12 believe it's reasonable now to come to the Commission based
13 on a disagreement over whether the operating -- the COPAS
14 form will have a 15-day or 60-day provision for payment --

15 A Mr. Yates --

16 Q -- may I finish question, please?

17 A Mr. Yates --

18 Q And ask for a 200 percent penalty when
19 the well is down, when the well is completed and when the
20 well will pay out in six months.

21 A You want to repeat that?

22 Q Do you believe that -- or have you come
23 to this Commission because of a dispute related to whether
24 an operating agreement, COPAS portion of the operating
25 agreement, will contain a 15-day payment period or a 60-day

1 period when the well is, in fact, down and when the well
2 will pay out in six months, rather than accept the signed
3 AFE and the signed operating agreement. You've come to the
4 Commission in a dispute over a 45-day period, is that cor-
5 rect?

6 A Mr. Yates, we have not accepted your AFE
7 nor your operating agreement.

8 MR. YATES: Those are all the
9 questions I have. I have a statement I'd like to make at
10 the end. I don't know whether it's appropriate now or
11 whether you prefer to wait until later.

12 MR. CATANACH: You can make
13 your statement --

14 MR. CARR: I have just a
15 couple of very short questions.

16

17

REDIRECT EXAMINATION

18 BY MR. CARR:

19 Q Mr. Seltzer, at the time that the well
20 was actually spudded, what was your understanding as to the
21 percentage of the interest owners that would voluntarily
22 join in the well?

23 A At the time, would be 100 percent of the
24 interest owners would have joined in this well. That's
25 what I was led to believe.

1 Q Have you reached a voluntary agreement
2 with Mr. Yates for the development of this property?

3 A No, I have not.

4 Q In your opinion could he pay his share
5 of the well today and therefore avoid this whole mess?

6 A We would accept it.

7 MR. CARR: I have nothing
8 further.

9 MR. CATANACH: Mr. Carr, you
10 want to offer these exhibits?

11 MR. CARR: I would move the
12 admission of Exhibits Seven and Eight.

13 MR. CATANACH: Exhibits Seven
14 and Eight will be admitted as evidence.

15 Mr. Yates, you may make your
16 statement at this time.

17 MR. STOVALL: Before we start,
18 let me make sure of one thing.

19 Do you wish to make it as an
20 evidentiary statement under oath or are you making it as an
21 attorney's --

22 MR. YATES: As an attorney.

23 MR. STOVALL: -- closing
24 statement?

25 MR. YATES: Amerind did not

1 offer to lease from Cibola Energy Corporation. Amerind
2 offered to farm in. The fact that Amerind had offered to
3 farm in is news to me today because the letter that was
4 addressed to -- that was offered as a farm in was addressed
5 to Harvey E. Yates Company, not to Cibola Energy Corpora-
6 tion.

7 It seems that we have had one
8 choice and that was to drill pursuant to their terms.
9 We're not here because one party wishes to drill and the
10 other did not. Cibola signed the operating agreement and
11 the AFE and in each case changed one term.

12 We're here because of a dis-
13 pute over whether the payment period required by the oper-
14 ating agreement is to be 15 days or 60 days. In reality
15 the custom in the industry is that a minimum of 30 days is
16 payment period and often those payment periods run from 60
17 to 90 days. So by being honest and by stating in the oper-
18 ating agreement COPAS form that we were asking for 60 days,
19 we ended up here at the Commission.

20 I do not think that this is
21 the purpose of the Commission.

22 These people were eager to
23 drill even without the agreement of all the parties. They
24 did regard the risk being as high or they would have had
25 the agreement of all the parties. The well is down. The

1 well is complete. The well is a producer. Today there is
2 no risk.

3 In paraphrasing the statutes, the Com-
4 mission in a case like this, is obliged, it shall assess
5 the cost of the well. It shall assess the reasonable
6 supervision fee, but it has discretion, it may assess a
7 cost for risk, a charge for risk. But here there is no
8 risk. The well is completed as a producer. Where there is
9 no risk, I wonder whether the Commission has discretion to
10 assess a charge for risk.

11 Thank you.

12 MR. CATANACH: Mr. Carr.

13 MR. CARR: May it please the
14 Examiner, I think we're all aware that when parties go out
15 and try and negotiated for the development of a tract,
16 there's no requirement that you have to offer to lease or
17 to farm out or any particular term. What you have to do is
18 make a good faith effort to obtain voluntary joinder, and
19 what we've heard is a lot of talk about efforts to try and
20 reach some sort of agreement for developing the property.

21 The pooling statute which
22 we're dealing with provides very simply that when there's
23 more than one owner in a spacing or proration unit, one has
24 the right to drill, one proposes to drill, and has been
25 unable to reach voluntary agreement for the development of

1 the tract, they may come to you and after notice and
2 hearing you -- and the statute provides you shall enter an
3 order pooling the lands.

4 Well, I think we obviously
5 have more than one owner. One has right to drill, has
6 drilled, and we don't have voluntary agreement, so we're
7 entitled to a pooling order.

8 The dispute between the par-
9 ties has been characterized as one over whether payments
10 are to be made within 15 or 60 days.

11 But the dispute is more than
12 that. The AFE as modified, would provide that if something
13 should happen and some cost factor should more than 10
14 percent over the AFE, then instead of just looking at what
15 the actual costs were and making payment, finally settling
16 up on those -- on that basis, we'd have another dispute,
17 and I think you can see from the parties here today, a
18 dispute is something you shouldn't rule out in that kind of
19 a situation.

20 We don't have a voluntary
21 agreement and there has been an effort to get to that point
22 and there is none, and so we submit to you we're entitled
23 to an order pooling the lands.

24 Now, I think the record is
25 clear that at the time the well was spudded, Amerind was

1 operating under the assumption based on conversations with
2 the Yates representatives that all interest owners were in
3 and that has not turned out to be the case, but they took
4 all the risk for the Yates, they carried them, and if their
5 concern about a risk penalty and saying you shouldn't
6 assess it, we think what ought to be done is you ought to
7 assess the penalty because they were carried and given a
8 free ride and if they want to avoid the penalty, under the
9 statute and by agreement, they can pay their share of the
10 well and therefore come into this as a co-participant from
11 the beginning. If not, we don't think you should reward
12 someone for not getting around to signing an AFE or for
13 making modifications all the time knowing that the well is
14 going ahead and that the operator thinks they're in.

15 We think that you have to pool
16 the lands and we ask that you impose a 200 percent risk
17 penalty.

18 MR. CATANACH: Thank you. Is
19 there anything further in this case? If not, it will be
20 taken under advisement.

21

22

(Hearing concluded.)

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, SALLY W. BOYD, C. S. R. DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 9567 heard by me on January 4 1989.
David R. Catamb, Examiner
Oil Conservation Division