

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. 10178
 APPLICATION OF NEARBURG PRODUCING)
 COMPANY FOR COMPULSORY POOLING,)
 EDDY COUNTY, NEW MEXICO.)
 -----)

REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

December 19, 1990

1:10 p.m.

Santa Fe, New Mexico

This matter came on for hearing before the Oil
 Conservation Division on December 19, 1990, at 1:10 p.m.
 at the Oil Conservation Division Conference Room, State
 Land Office Building, 310 Old Santa Fe Trail, Santa Fe,
 New Mexico, before Maureen R. Hunnicutt, RPR, Certified
 Shorthand Reporter No. 166 for the State of New Mexico.

FOR: OIL CONSERVATION
 DIVISION

BY: MAUREEN R. HUNNICUTT, RPR
 Certified Shorthand Reporter
 CSR No. 166

I N D E X

December 19, 1990
 Examiner Hearing
 CASE NO. 10178

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APPEARANCES

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NEARBURG EXHIBIT

1 Area Land Map, Ewing Prospect, Eddy County, 7 15
 prepared by Mr. Shelton

2 Ownership report, 12/10/90, prepared by 8 15
 Mr. Shelton

3 Authority for Expenditure, Ewing Prospect 9 15

4 Memorandum of Understanding 13 15

5 Notice Affidavit by William F. Carr, 15 15
 December 17, 1990, with copies of letters
 attached

6 Morrow Structure Map, "Middle Morrow SS 36 39
 Isopach by Geology by J.B. Elger

7 Morrow Clastics, Stratigraphic Cross Section 36 39

A P P E A R A N C E S

FOR THE DIVISION: ROBERT G. STOVALL, ESQ.
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Oil Conservation Commission
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Santa Fe, New Mexico 87501

FOR THE APPLICANT CAMPBELL & BLACK, P.A.
NEARBURG: Attorneys at Law
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Santa Fe, New Mexico 87501

FOR TORCH OIL & GAS: PADILLA & SNYDER
Attorneys at Law
BY: ERNEST L. PADILLA, ESQ.
200 West Marcy
Santa Fe, New Mexico 87501

FOR SANTA FE ENERGY KEMP, SMITH, DUNCAN & HAMMOND
OPERATING PARTNERS, Attorneys at Law
L.P.: BY: RANDY TURNER, ESQ.
Midland, Texas

* * *

1 (At this time Mr. Stovall was not present.)

2 EXAMINER STOGNER: At this time I'll call Case
3 No. 10178, which is the application of Nearburg Producing
4 Company for compulsory pooling, Eddy County, New Mexico.

5 At this time I'll call for appearances.

6 MR. CARR: May it please the Examiner, my name is
7 William F. Carr, with the law firm of Campbell & Black,
8 P.A., of Santa Fe. I represent Nearburg Producing
9 Company, and I have two witnesses.

10 EXAMINER STOGNER: Any other appearances?

11 MR. PADILLA: Mr. Examiner, my name is Ernest L.
12 Padilla, Santa Fe, New Mexico, for Torch Oil & Gas
13 Company; and I have no witnesses.

14 EXAMINER STOGNER: "Torch"?

15 MR. PADILLA: "Torch." T-o-r-c-h.

16 EXAMINER STOGNER: Any other appearances?

17 MR. TURNER: Mr. Examiner, my name is Randy Turner
18 with the Kemp, Smith, Duncan & Hammond law firm in
19 Midland, here representing Santa Fe Energy Operating
20 Partners, L.P.

21 EXAMINER STOGNER: Do you have any witnesses?

22 MR. TURNER: I have no witnesses.

23 EXAMINER STOGNER: Any other appearances?

24 (No response.)

25 EXAMINER STOGNER: Will the witnesses please stand

1 and be sworn?

2 (The witnesses were duly sworn.)

3 EXAMINER STOGNER: You may be seated.

4 Mr. Carr.

5 Or are there opening statements in order?

6 MR. CARR: I have no opening statement.

7 MR. PADILLA: I have no opening statement.

8 EXAMINER STOGNER: In that case, Mr. Carr, you may
9 proceed.

10 MR. CARR: May it please the Examiner, at this time I
11 would call Mr. Robert Shelton.

12 ROBERT G. SHELTON, JR.,
13 the Witness herein, having been previously duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CARR:

17 Q. Will you state your full name for the record,
18 please?

19 A. Robert Shelton, Jr.

20 Q. Mr. Shelton, where do you reside?

21 A. Midland, Texas.

22 Q. By whom are you employed and in what capacity?

23 A. I'm employed by Nearburg Producing Company as a
24 land manager.

25 Q. Have you previously testified before the

1 New Mexico Oil Conservation Division?

2 A. No, I have not.

3 Q. Would you briefly summarize your educational
4 background for the Examiner and then review your work
5 experience?

6 A. Graduated in 1976 with a degree in business
7 marketing from Texas Tech University, became employed in
8 the subsequent year of 1977 with Diamond Shamrock --
9 Diamond Shamrock Corporation, successor to ~Maxis Energy
10 and was employed with them in a landman role up to a land
11 manager role from 1977 to 1989, for 13 years. In 1989 I
12 joined Nearburg Producing Company and have been with them
13 since August 1989 to date.

14 Q. Do your duties with Nearburg include all
15 landman-type functions associated with the property
16 involved in this case?

17 A. Yes, they do.

18 Q. Are you familiar with the application filed in
19 this case?

20 A. Yes, sir, I am.

21 Q. And you're familiar with the subject area?

22 A. Yes, I am.

23 MR. CARR: We tender Mr. Shelton as an expert witness
24 in petroleum land matters.

25 EXAMINER STOGNER: Are there any objections?

1 MR. PADILLA: No, sir.

2 EXAMINER STOGNER: Mr. Shelton is so qualified.

3 Q. (By Mr. Carr) Mr. Shelton, will you briefly
4 state what Nearburg producing company seeks with this
5 application?

6 A. We seek the pooling of uncommitted, working
7 interest owners in the application covering the west half
8 of Section 16, Township 18 South, Range 25 East, Eddy
9 County, New Mexico.

10 Q. Have you prepared certain exhibits for
11 presentation in this case?

12 A. Yes, sir, I have.

13 Q. Would you refer to what has been marked for
14 identification as Nearburg Exhibit No. 1, identify that
15 and review it for Mr. Stogner?

16 A. This is an area land plat that I prepared,
17 setting forth the expected spacing unit for the Ewing
18 State East Well, which is operated by Nearburg Producing
19 Company, the spacing unit being the west half of Section
20 16, Township 18 South, Range 25 East; and also setting
21 forth the uncommitted interest owner of Felmont Oil & Gas
22 Corporation.

23 Q. Is the proposed well location indicated on this
24 plat?

25 A. Yes, it is. It's 1,980 feet from the north

1 line and 660 from the west line of Section 16.

2 Q. And that will be a standard location on the
3 pooled unit?

4 A. That is correct.

5 Q. What is the primary objective in this well?

6 A. The objective is the Morrow formation.

7 Q. Would you now refer to what has been marked as
8 Nearburg's Exhibit No. 2, identify that and review it for
9 Mr. Stogner?

10 A. This is an ownership report prepared by myself
11 which sets forth the ownership of the west half of Section
12 16 in two separate tracts. Tract No. 1 is a 200-acre
13 tract, comprised out of the west half of Section 16, which
14 record title shows to be owned by Santa Fe Operating
15 Partners, L.P.. Operating rights show to be owned by
16 Nearburg Exploration Company 60 percent; Santa Fe
17 Operating Partners and Felmont Oil & Gas Corporation
18 having the remaining interest.

19 Q. Okay. The next page?

20 A. The next tract is a 100-acre tract, which shows
21 ownership to be Santa Fe Energy Operating Partners, L.P.,
22 100 percent record title; and Nearburg Exploration Company
23 60 percent operating rights; Santa Fe Energy Operating
24 Partners, L.P., 40 percent operating rights.

25 Q. And Nearburg owns 60 percent of the working

1 interest under this tract; is that correct?

2 A. Yes. On the last page is a summary of the
3 entire spacing unit, which shows Nearburg Exploration
4 Company as the owner of a 60 percent working interest in
5 the subject proration unit.

6 Q. What percentage of the acreage at this time do
7 you understand to be voluntarily committed to the well?

8 A. We show the interest of Santa Fe Operating
9 Partners to be committed to the -- voluntarily committed
10 to the unit.

11 Q. Do you know what the status of the Felmont
12 acreage actually is?

13 A. No, we do not at this time. That is purported
14 to be subject to an agreement which is an unrecorded
15 agreement, and we do not know exactly the full terms of
16 that and can not tell what the interest is.

17 Q. Let's go now to Nearburg Exhibit No. 3. Would
18 you identify that, please?

19 A. This is an authority for expenditure for the
20 Ewing Prospect well to be located in Section 16, drilled
21 to 8,650 feet, test the Morrow, shows an expected dry hole
22 cost of \$318,223 and an expected total well cost of
23 \$575,093.

24 Q. Are these costs in line with the costs
25 associated with drilling similar wells in this area?

1 A. Yes, sir, they are.

2 Q. And has Nearburg drilled other Pennsylvanian
3 wells in the area?

4 A. Yes, sir, we have.

5 Q. Could you review for Mr. Stogner the events
6 that have resulted in this matter coming before the
7 division for hearing today and, in so doing, review the
8 efforts made by Nearburg to obtain voluntary participation
9 in this project of all owners in the tract?

10 A. Yes. In September of 1990 we were approached
11 by Santa Fe to participate in and develop with them a
12 prospect, Ewing Prospect, which is the subject of this
13 hearing. At that time they offered to sell to us a
14 60 percent working interest in the prospect of Nearburg
15 Producing Company, to be designated operator, and they
16 proposed the subject well be drilled.

17 At that time they made us aware that Felmont
18 Oil & Gas Corporation had an interest in the proration
19 unit for this well and furnished us with information,
20 telling us that the Felmont oil and gas interest was
21 subject to an exploration agreement, which was an
22 unrecorded agreement which required that Felmont either
23 participate subject to that agreement in the drilling of a
24 well or elect to go nonconsent and suffer a penalty.

25 Santa Fe informed us that regardless of the

1 election of Felmont, if Felmont elected to participate,
2 they would do so and pay their share and be a committed
3 interest owner; or if they elected to go nonconsent, Santa
4 Fe would pick up their interest, and Santa Fe would then
5 participate with that interest; thereby, in either event
6 100 percent of the working interest would be committed to
7 the unit, and Nearburg would be in either respect a
8 60 percent working interest owner.

9 Q. Now, were you ever permitted to review the
10 terms of that exploration agreement?

11 A. We requested that agreement be furnished at the
12 time we purchased the prospect. Santa Fe told us it was
13 personal in nature. They did not furnish us that
14 agreement; however, they did furnish us what you'll see in
15 some other documents being a memorandum of understanding
16 which sets forth in that, basically, the terms whereby
17 Santa Fe would either participate or go nonconsent; and
18 that led us to believe that, in fact -- what we had been
19 led to believe was true.

20 Q. Then what happened? You were able to negotiate
21 and reach an agreement with Santa Fe for the development
22 of the tract; is that correct?

23 A. We were. We entered into an operating
24 agreement, which also is a part of the exhibits we'll
25 submit. We were designated operator. We commenced

1 operations on the well under the terms of the operating
2 agreement. We drilled the well to the total depth, and
3 under the operating agreement, which includes a casing
4 point election, we notified, furnishing Santa Fe copies of
5 all logs and well information.

6 They made the election to go nonconsent in the
7 wellbore at completion, and also at that time notified us
8 that Felmont had not responded to their well proposal and
9 that they now felt that the agreement may not be in force
10 and effect, and notified us that Felmont was now to be
11 considered an uncommitted working interest owner.

12 Q. Now, what is the current status of the well?

13 A. The well has been drilled to total depth. It
14 has been cased and no completion attempt has been made and
15 no perforations in the wellbore have been made.

16 Q. Now, after you discovered that Torch or Felmont
17 might have an uncommitted interest in this well, what did
18 you do?

19 A. We contacted Torch and advised them of the
20 current status of the well. We requested that they make
21 an election to either participate or go nonconsent. We
22 negotiated with them for an attempt to get them to make
23 this election. We furnished them copies of all of our
24 agreements with Santa Fe to let them know the terms under
25 which we would like for them to execute our operating

1 agreement. To this date we've been unsuccessful in
2 gaining their participation.

3 Q. And is that the reason the pooling application
4 was actually filed?

5 A. The pool application was filed for that reason,
6 to get their -- to get their joinder

7 Q. And in your opinion have you made a good faith
8 effort to obtain the voluntary joinder of all interest
9 owners in this tract?

10 A. Yes, sir, we have.

11 Q. If this application is granted and the
12 interests of Felmont are -- or all the interests in the
13 tract are pooled, how does Nearburg propose to handle the
14 proceeds from production that would be attributable to
15 this interest in the property?

16 A. The interest in the property which is subject
17 to the pooling order would be after the penalty suffered,
18 and recoupment of our costs would be held in escrow, and
19 whoever the party is that has an ownership in that to be
20 determined at a later date or be determined by whatever
21 process ultimately occurs, that money will be set aside
22 and, of course, paid to them after that issue has been
23 settled.

24 Q. Let's look at Exhibit No. 4. Could you just
25 identify that for Mr. Stogner?

1 A. Exhibit No. 4, the first thing in here is a
2 Memorandum of Understanding, which I referred to earlier
3 which was furnished to me by Santa Fe. It purports to
4 cover the terms of the exploration agreement to which
5 Felmont Oil & Gas's interest was subject in the Ewing
6 Prospect among other land.

7 EXAMINER STOGNER: Hold it. Is that Exhibit No. 4 or
8 part of Exhibit 3?

9 MR. CARR: No, that is part of Exhibit No. 4,
10 Mr. Stogner, which is a large group of documents that are
11 clipped together, that we just marked the operating
12 agreement since it was the one page that was visible.

13 EXAMINER STOGNER: So it's not necessarily in that
14 order then?

15 MR. CARR: There we go.

16 THE WITNESS: There. The far side --

17 MR. CARR: That is Exhibit No. 4.

18 EXAMINER STOGNER: I'm sorry. Go ahead.

19 Q. (By Mr. Carr) Then in addition to that in
20 Exhibit No. 4, do you have copies of the letter to
21 Santa Fe and to Torch, attempting to obtain voluntary
22 joinder?

23 A. Yes, sir. All letters and correspondence, plus
24 our operating agreement between Santa Fe where we
25 solicited their participation in the well and had various

1 correspondence with both parties.

2 Q. Is Exhibit No. 5 an affidavit and copies of
3 letters providing notice to Santa Fe and Felmont of this
4 hearing today?

5 A. Yes, sir, it is.

6 Q. Does Nearburg Producing Company seek to be
7 designated operator of the well?

8 A. Yes, sir, we do.

9 Q. Will Nearburg call a geological witness to
10 testify to the risk associated with the completion of this
11 well?

12 A. Yes, sir, we will.

13 Q. Were Exhibits 1 through 5 either prepared by
14 you or compiled under your direction?

15 A. Yes, sir, each -- they were.

16 MR. CARR: May it please the Examiner, at this time
17 we would move the admission of Nearburg Exhibits 1 through
18 5.

19 EXAMINER STOGNER: Exhibits 1 through 5 will be
20 admitted into evidence.

21 (Nearburg Exhibits Nos. 1 through 5
22 were admitted into evidence.)

23 EXAMINER STOGNER: Exhibit No. 5, is that the --
24 beginning with the letter dated November 21st?

25 THE WITNESS: Exhibit 5 should be a notice affidavit

1 with attached letters.

2 EXAMINER STOGNER: There it is. Okay.

3 MR. CARR: That concludes my direct examination of
4 this witness.

5 EXAMINER STOGNER: Thank you, Mr. Carr.

6 Mr. Padilla, your witness.

7 CROSS EXAMINATION

8 BY MR. PADILLA:

9 Q. Mr. Shelton, when did you say you first you
10 were notified that interest in the well?

11 A. We had a spacing unit for the well at the time
12 the prospect was submitted for our consideration by
13 Santa Fe in approximately September of 1990.

14 Q. When did you start drilling the well?

15 A. I believe -- and I'm not absolutely sure. I
16 think the well was probably commenced in the very first
17 part of October, same year.

18 Q. And when did you reach the point that you are
19 now at?

20 A. Approximately 30 days. I believe it was --
21 No, I believe it was October 19th; I don't think I'll be
22 far off on that.

23 Q. And you're at casing point at this time; is
24 that right?

25 A. We are at the point where casing point has been

1 reached and Nearburg has elected to run casing into the
2 hole. Casing has been set. No other operations have been
3 conducted.

4 Q. And you set casing?

5 A. Yes, sir.

6 Q. When did you apply to pool the interests for
7 the outstanding interests in this case?

8 A. I believe the pooling was done probably in
9 November.

10 Q. When did you discover you had outstanding
11 parties that needed to be force-pooled?

12 A. We understood by notification from Santa Fe
13 that Felmont had not returned an election when they also
14 returned to us the notification of their nonconsent
15 election in the well when the well reached total depth.
16 Previous to that time they had represented that
17 100 percent of the interest was committed to the unit by
18 virtue of the exploration agreement.

19 Q. Did you ever contact Felmont or Torch Oil & Gas
20 Company to decide for yourself as to whether or not that
21 was true, that representation was true?

22 A. I attempted to determine that individually by
23 getting a complete copy of the agreement from Larry Murphy
24 at Santa Fe, which we were denied a copy of the entire
25 agreement and instead furnished this memorandum of

1 understanding which led us to believe that, yes, this
2 agreement was in full force and effect at the time we
3 commenced the well, and therefore, that 100 percent
4 interest in the well was committed to the unit at that
5 time.

6 Q. Can you show me the language in this memorandum
7 agreement which would indicate to you that the Felmont or
8 the Torch Oil & Gas interest was committed?

9 A. "Partner has maximum of 30 days to join or go
10 non-consent; unless there is a lease expiration earlier."
11 "Exploration: Non-Consent partner 400% on all leases
12 covering the spacing unit."

13 So under this drilling -- under the -- page 2
14 you'll notice under "Drilling Wells," we believe that the
15 30-day-notice period was appropriate as Santa Fe had
16 represented and that in that period they had 30 days to
17 join or go nonconsent as expressed in the memorandum of
18 understanding. And as expressed by Santa Fe, there was to
19 be a 400 percent penalty in the event there was a
20 nonconsent election; and as you'll notice under "Drilling
21 Wells," No. (4), "Non-consent Clause," you'll see a
22 400 percent interest there, Development wells showing a
23 300 percent penalty. This clearly is an exploratory well.

24 Q. I'm having trouble making sense of that
25 language in that didn't Felmont or Torch Oil & Gas, its

1 successor, have to actually go nonconsent under this
2 language?

3 A. We believe that they had the right to either
4 participate in the drilling of the well and pay their
5 proportionate share, or they had to go nonconsent. In the
6 event they participated, we were glad to have them as a
7 partner, and we would have had them as a partner, them
8 paying their share of the well casing point under the
9 operating agreement.

10 Santa Fe's representation to us was if,
11 however, they did go nonconsent, Santa Fe would assume
12 their nonconsent position and that they would participate
13 with that interest, paying that full share toward the
14 drilling of the well; thereby all parties would be
15 committed.

16 Q. What evidence did you have that Felmont or
17 Torch had gone nonconsent?

18 A. We had no -- we needed none because Santa Fe in
19 either case represented that that interest would be a
20 participating interest. They simply told us that they
21 would AFE Felmont, and prior to the time that the well
22 reached total depth, an election would have to be made by
23 Torch or Felmont, one way or the other, to join or to
24 participate.

25 Q. Why did you have to contact Torch at some

1 point?

2 A. We contacted Torch when Santa Fe came back to
3 us and told us that there was a dispute between themselves
4 and Felmont as to whether this agreement was in existence
5 and that they may -- we may consider -- or we weren't
6 really then looking at considering Felmont as a
7 nonparticipating and uncommitted party at that time; then
8 we were forced to talk -- to contact Felmont in an attempt
9 to get their election and joinder in the well, if that's
10 what they deemed to do.

11 Q. Did you ever have a drilling title opinion done
12 of drilling this well?

13 A. Yes, we did.

14 Q. And what did that drilling title opinion say?

15 A. It is the basis for which I prepared this
16 exhibit of ownership. It sets forth in that title opinion
17 the ownership as set forth in this ownership report,
18 Felmont having a 25 percent interest in a 200-acre tract
19 which comprises a part of the spacing unit.

20 Q. Does that drilling title opinion show that
21 Felmont or Torch had an interest in the well?

22 A. It had an interest in those oil and gas leases
23 and, by virtue of that, also an interest in the spacing
24 unit which the well was to be drilled upon. It also in
25 that title opinion set forth that their interest was

1 subject to the exploration agreement to which we were
2 furnished the memorandum of understanding.

3 Q. The title opinion actually lists the memorandum
4 of understanding?

5 A. No. No, it did not actually -- it did not list
6 the memorandum of understanding. It simply listed that
7 there was and does exist an exploration agreement between
8 the two parties. That was picked up in the abstracts on
9 an assignment that was made from Santa Fe to Felmont and
10 that assignment referred to this exploration agreement.

11 Q. So the division ordered title opinion itself
12 doesn't decide or take into consideration the memorandum
13 of understanding?

14 A. No, it does not.

15 Q. How did the memoranda of understanding effect
16 the ownership as shown in the title opinion?

17 A. It did not affect ownership of the land. It
18 only affected our belief to know that Santa Fe could speak
19 for and commit the interest of Felmont by virtue of their
20 having to make an election to either participate or go
21 nonconsent. Having that election to go nonconsent would
22 mean Santa Fe would pick up that interest and participate
23 with it.

24 Q. What did Torch tell you as to whether once you
25 contacted them as to your understanding of whether or not

1 Santa Fe spoke for them?

2 A. They did believe Santa Fe spoke for them. They
3 believed themselves to be an uncommitted working interest
4 owner and said that they would -- they needed information
5 from the well, they needed information on our agreements
6 before they'd make any election.

7 And a meeting was subsequently held on
8 December 4th, I believe, or on or about that date, between
9 Felmont and Santa Fe. I think Santa Fe -- I mean Santa Fe
10 at that time did furnish the well information to Torch;
11 and to this date, Torch has still not made an election.

12 Under the exploration agreement which, you
13 know, we had no knowledge of, whether it was actually in
14 existence or not -- Now, that's the dispute between the
15 two -- those two parties in a private dispute. We only
16 asked for them to make an election and sign our operating
17 agreement, which they have not done either.

18 Q. When was the first time that you contacted or
19 you proposed some kind of a proposal for seeking the
20 joinder of Torch in the well?

21 A. If you'll allow me to look through our
22 agreements here, our correspondence. I believe our
23 November 12, 1990, letter addressed to Torch Energy
24 Advisors, Inc., to Scott Guy, may have been the first
25 notification that we were proposing that they join or

1 elect not to join in and go nonconsent with regard to the
2 well.

3 Q. Was the well already done at that point?

4 A. The well had reached casing point, that's
5 correct.

6 Q. I'm sorry, Mr. Shelton. Which is that letter,
7 now?

8 A. It should be the second letter if yours are in
9 the same order mine are. The second letter in the
10 Exhibit 4, November 12, 1990, addressed to Torch Energy
11 Advisors, Inc.

12 (At this time Mr. Stovall entered the proceedings.)

13 Q. Mr. Shelton, what has Santa Fe Energy's
14 position been in all of this matter since you started
15 communicating with Torch?

16 A. Santa Fe has just indicated that they never got
17 a response from Torch on an election and that they may be
18 an uncommitted owner and that there was some dispute
19 between the two parties.

20 Q. Is it their position that they did not speak
21 for Torch at any material time?

22 MR. CARR: Do you know?

23 THE WITNESS: I don't know that. I mean I can't --

24 MR. CARR: Okay. I don't mind that, you know,
25 Mr. Shelton answers these questions; but I just think it's

1 important to reflect that he represents Nearburg, not
2 Santa Fe, and may not be in a position to speak for
3 what --

4 THE WITNESS: Yeah, that --

5 MR. CARR: -- Santa Fe's intentions are.

6 THE WITNESS: That's correct.

7 Q. (By Mr. Padilla) Well, as far as you
8 understand.

9 A. My understanding is there was a dispute between
10 the two parties.

11 Q. When did you know that there was a dispute
12 between the two parties? Or when did you reach that
13 understanding, I should ask.

14 A. At casing point when the well reached total
15 depth, and Santa Fe advised me then that there was no
16 election -- there had been no election made by Torch.

17 Q. And when was your drilling title opinion
18 prepared?

19 A. Approximately two weeks or a week before the
20 well was commenced, so it would have been, maybe, the last
21 week in September.

22 Q. And that showed ownership in accordance with
23 your memorandum and opinion of title?

24 A. That's correct. This ownership report.

25 Q. Do you know approximately how much money was

1 spent on the well through casing point?

2 A. No, I do not.

3 Q. Looking at your Exhibit No. 3, which is the
4 AFE, would that help you estimate as to how much money had
5 been spent through casing point?

6 A. I know the well -- the drilling of the well
7 went relatively smoothly. I do not expect that we spent
8 any more than the casing point cost reflected on the AFE
9 to get the hole to the condition where it was drilled to
10 total depth and encased.

11 Q. Do you know how much money has actually been
12 spent on drilling this well?

13 A. No, I do not.

14 Q. Do your technical witnesses have an idea of
15 that?

16 A. May possibly have; I do not know.

17 Q. Can you tell us what the substance of your
18 attempts to join the Torch Energy interests have been?

19 A. We agreed at their request to furnish them all
20 the contracts between ourselves and Santa Fe if they would
21 make an election to either participate in the well from
22 its inception or elect to go nonconsent and suffer the
23 appropriate penalty as provided for in our operating
24 agreement. That was the offer that we made.

25 We all, you know, obviously feel like they've

1 had a free look at the well because the well was at TD.
2 They also have received the well information from Santa
3 Fe, and we've asked them to make an election to
4 participate or go nonconsent.

5 Q. When did you make that request?

6 A. I believe that was also made in the
7 November 12th letter.

8 Q. I still haven't found that November 12th
9 letter, Mr. Shelton. I'm not sure that --

10 A. May I furnish you a copy of it?

11 Q. Sure.

12 A. Here you go.

13 Well, it looks like it's been -- It's stapled
14 individually. Well, let me make sure it's not -- There
15 may be something else attached to it. No.

16 EXAMINER STOGNER: If I might, the November 12th
17 letter is page 3 of my Exhibit 4.

18 THE WITNESS: That's correct.

19 Q. (By Mr. Padilla) Have you been negotiating
20 with Torch up to today's hearing?

21 A. Up until yesterday, that's correct. Yesterday
22 morning I talked to Torch.

23 Q. And you still haven't agreed; is that correct?

24 A. That's correct. We have no agreement.

25 MR. PADILLA: Mr. Examiner, I believe that's all the

1 questions I have.

2 EXAMINER STOGNER: Thank you, Mr. Padilla.

3 Mr. Turner, your witness.

4 MR. TURNER: I have just a few questions.

5 CROSS-EXAMINATION

6 BY MR. TURNER:

7 Q. Bob, could you clarify for me the position that
8 Nearburg is taking at this hearing and what you really
9 hope to accomplish; in particular, whose interests are you
10 trying to force pool by these proceedings?

11 A. The original uncommitted interest that we
12 believe now is that of Felmont Oil & Gas, the predecessor
13 to Torch Energy Advisors, Inc.; as I understand it, Torch
14 Oil & Gas.

15 Q. Okay.

16 A. And we are seeking to pool that interest.

17 Q. So you are taking the position that, pursuant
18 to these agreements that you've entered into with
19 Santa Fe, that you do have existing agreements with them,
20 and it is not their interest today that is to be force
21 pooled?

22 A. That is correct. Their current status is a
23 working interest owner who has gone nonconsent at casing
24 point in the well.

25 Q. Back to the --

1 A. What we don't know is what interest they have,
2 and that's the subject of the dispute.

3 Q. Who has actually paid for the costs of the well
4 up to this point?

5 A. Nearburg Exploration Company has paid the costs
6 of the well.

7 Q. 100 percent of the costs from --

8 A. That's correct.

9 Q. -- the date the well was spud up to this date?

10 A. That is correct.

11 Q. Regarding the status of the title to the
12 proration unit for this well, you state that you did have
13 a drilling title opinion rendered which did set forth the
14 interest owned in one of the leases, the 25 percent
15 interest in the 200-acre tract that was owned by
16 Felmont --

17 A. Felmont Oil & Gas.

18 Q. -- subject to -- the assignment into Felmont
19 was made subject to an --

20 A. Which made reference to an agreement.

21 Q. -- an unrecorded agreement?

22 A. That's correct.

23 Q. Once you reviewed your title opinion and saw
24 that that assignment was made subject to this unrecorded
25 agreement, did you then go to Santa Fe and ask about the

1 contents of that agreement?

2 A. I went to Santa Fe and specifically asked about
3 the contents and also asked for a complete copy of the
4 agreement so we could review it and determine its
5 parameters and terms.

6 Q. They furnished you, I believe you testified to,
7 this memorandum of understanding regarding the agreement;
8 is that correct?

9 A. That's correct.

10 Q. And after reviewing that memorandum of
11 understanding, in looking at it myself for the first time
12 here today, I see in paragraph 3 of that memorandum, there
13 is reference to the statement that "All future lease
14 acquisitions shall be subject to the election of each
15 party to participate under an area of mutual interest."

16 A. Uh-huh.

17 Q. Subsequently on the second page of that
18 memorandum, there's also a summary at the very top there
19 of the lease acquisition, stating that "New leases
20 acquired must be offered to the partner proportionately
21 reduced."

22 In reviewing this memorandum, did you ask
23 Santa Fe and Felmont about the precise terms of this area
24 of mutual interest and what rights either party may have
25 had to the acquisition of additional leases?

1 A. No, I did not because this wasn't an
2 acquisition. This was an acquisition by us, not an
3 acquisition under their area of mutual interest.

4 Q. I guess the question I've really got, though,
5 is the memorandum itself does state that there is in
6 existence an area of mutual interest between the parties;
7 and it's my understanding of the leases that are described
8 in the operating agreement that they also -- a couple of
9 these leases would have been acquired by
10 Santa Fe subject -- or subsequent to the execution of this
11 unrecorded agreement --

12 A. That's correct.

13 Q. -- which could have led one to believe that
14 there may be an interest that should have been offered to
15 Felmont when those leases were acquired.

16 A. Well, obviously one of the leases they have an
17 ownership interest in, so that if it was taken subject to
18 the area of mutual interest, they receive their
19 proportionate share of it, and that's -- you know, there's
20 no question. I would -- because they have an ownership
21 interest in it, I assume it was done pursuant to or
22 possibly was done pursuant to that AMI agreement, and that
23 may be how they acquired their interest.

24 Q. Okay. At this time, Bob, I'd like for you to
25 explain again what position Nearburg plans to take

1 regarding the recoupment of the costs of drilling this
2 well if you're successful here at this hearing in having
3 the commission grant the forced pooling order, as to who
4 is going to be entitled to the proceeds from production
5 and what penalty you will be asking for.

6 A. We're asking for a 200 percent penalty on the
7 well, and once that penalty is paid out, plus our costs of
8 drilling and completing the well, then any proceeds after
9 that date would be held in escrow, and whoever ultimately
10 is determined to be the owner of those proceeds, we'll be
11 more than happy to pay it to.

12 MR. TURNER: No further questions.

13 EXAMINER STOGNER: Mr. Carr, any redirect?

14 MR. CARR: No, sir.

15 EXAMINER STOGNER: Mr. Padilla?

16 MR. PADILLA: I don't have any.

17 EXAMINER STOGNER: Mr. Stovall?

18 CROSS-EXAMINATION

19 BY MR. STOVALL:

20 Q. At the risk of having walked in late and having
21 missed part of this, in response to Mr. Turner's
22 questions, I understand it's your position, however, that
23 whatever interest Santa Fe owns is not pooled under this
24 -- will not be pooled under this order; is that correct?

25 A. That is correct.

1 Q. And whatever interests Torch owns will be?

2 A. That is correct.

3 Q. And now Nearburg has paid a hundred percent of
4 the costs of the well?

5 A. That is correct.

6 Q. And it is your understanding that Nearburg is
7 entitled to the proceeds of production attributable to
8 what interest plus 200 percent?

9 A. Our individual interest, which is 60 percent,
10 plus that interest of Santa Fe during the nonconsent
11 portion -- since they've gone nonconsent under our
12 operating agreement.

13 Q. And that's the 200 percent penalty as well?

14 A. No. The operating agreement has a 500 percent
15 penalty in it.

16 Q. So with respect to the Torch interests, you
17 withhold proceeds plus 200 percent of costs or
18 proportionate share of costs?

19 A. That is correct.

20 Q. And with respect to Santa Fe's interest, since
21 they're nonconsent --

22 A. Under the operating agreement.

23 Q. -- under the operating agreement you withhold
24 500 percent?

25 A. That is correct.

1 Q. I assume it's cost plus 400 that you --

2 A. That's correct. That's correct.

3 Q. Do I understand you correctly that you're not
4 exactly sure how much is which, how much interest is
5 attributable to each party?

6 A. We know that there's a dispute between the
7 parties; that's correct; and until that dispute is
8 determined, we know what our individual interest is. It's
9 60 percent, and I guess that's determined by the ultimate
10 outcome. Whether the exploration agreement is effective,
11 that's something we cannot determine.

12 Q. And that's something that has to be resolved
13 between Torch and --

14 A. Yes, sir.

15 Q. -- Santa Fe; is that true?

16 A. Yes, sir; that's correct.

17 Q. But those funds which are attributable to the
18 non-Nearburg interests, then you will withhold those until
19 you've recovered costs plus at least 200 percent on the
20 entire -- you said Nearburg has got 60 percent, so that
21 would be 40 percent; is that correct?

22 A. That's correct.

23 Q. And then after that cost plus 200 is recovered
24 on the entire 40 percent, then the entire -- any proceeds
25 attributable to that 40 percent will be as if title has

1 not been resolved between --

2 A. The parties.

3 Q. -- Santa Fe, then you'll continue to hold it in
4 escrow for the benefit of those parties and whatever
5 issues are attributable to Santa Fe, you'll continue to
6 hold for another 200 percent; and whatever is attributable
7 to Torch, you will then pay to Torch?

8 A. That's correct.

9 Q. Your accountants are looking forward to this?

10 A. We look forward to a settlement by the parties
11 so we don't have to do that.

12 MR. STOVALL: Okay. I think I understand what your
13 intent is at this point.

14 EXAMINER STOGNER: Any other questions of this
15 witness?

16 (No response.)

17 EXAMINER STOGNER: You may be excused.

18 Mr. Carr?

19 MR. CARR: At this time, Mr. Examiner, we call Jerry
20 Elger.

1 JERRY B. ELGER,
2 the Witness herein, having been previously duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CARR:

6 Q. Will you state your full name for the record,
7 please?

8 A. Jerry B. Elger.

9 Q. Mr. Elger, where do you reside?

10 A. Midland, Texas.

11 Q. By whom are you employed and in what capacity?

12 A. By Nearburg Producing Company as a senior
13 geologist.

14 Q. Have you previously testified before the Oil
15 Conservation Division?

16 A. Yes, I have.

17 Q. And at that time were your credentials as a
18 geologist accepted and made a matter of record?

19 A. Yes, they were.

20 Q. Are you familiar with the application filed in
21 this case on behalf of Nearburg?

22 A. Yes, I am.

23 Q. Have you made a study of the area that is
24 involved in this acquisition?

25 A. Yes, I have.

1 MR. CARR: Are the witness's qualifications
2 acceptable?

3 EXAMINER STOGNER: Are there any objections?

4 MR. PADILLA: No objections.

5 EXAMINER STOGNER: Mr. Elger is so qualified.

6 Q. (By Mr. Carr) Are you prepared to make a
7 recommendation to the Examiner as to the risk penalty that
8 should be assessed against any nonconsenting interest
9 owner?

10 A. Yes. Two hundred percent.

11 Q. Is that based upon your geological study of
12 this area?

13 A. Yes, it is.

14 Q. Would you refer to what has been marked for
15 identification as Nearburg Exhibit No. 6, identify that
16 and review it for the examiner?

17 A. This is a Morrow Structure Map with a
18 superimposed isopach of a specific Morrow sand that has
19 been interpreted to be a channel deposit with a
20 north/south -- northwest/southeast orientation that runs
21 across the subject acreage.

22 This map, of course, has the use of the drill
23 hole in question, the Ewing State, in the subject
24 proration unit, the west half of Section 16; and that
25 wellbore did encounter 34 feet of the subject sand.

1 Q. Are you ready to go to Exhibit No. 7?

2 A. Yes.

3 Q. That is a cross section?

4 A. Exhibit No. 7 is a stratigraphic cross section,
5 indicated on Exhibit No. 6 as A - A', showing wellbores
6 that have penetrated the Morrow formation, surrounding the
7 Nearburg-Ewing 16 East, State Com. No. 1; and this cross
8 section includes the subject -- a well log, porosity log,
9 across the Morrow-Pennsylvanian and Morrow formation,
10 which was the objective of the subject test, and shows the
11 specific Morrow sand sections that were encountered by
12 that wellbore.

13 Q. What does the log on the subject well tell you
14 about the formation?

15 A. The log sweep that was run over this, in this
16 particular well, shows that the formation appears to be
17 tight and possibly wet.

18 Q. Was this log section the log section that was
19 -- a portion of the log that was proved to be Santa Fe on
20 this well?

21 A. Yes, it was.

22 Q. And it was following receipt of this log that
23 they elected to go nonconsent?

24 A. That's correct.

25 Q. How would you characterize the risk associated

1 with this well today as compared to when the well was
2 actually spudded?

3 A. I would say it's much riskier -- it is much
4 riskier now today.

5 Q. Because the information you've obtained is not
6 what you hoped?

7 A. That's correct. And I believe that's the way
8 Santa Fe has interpreted the data.

9 Q. Do you believe there's a chance that the
10 subject well could in fact not be a commercial success?

11 A. Definitely.

12 Q. Have you made an estimate of overhead and
13 administrative costs to be assessed against other interest
14 owners while drilling the well, and if it is successful,
15 while operating it after completion?

16 A. Yes. The figures we've arrived at are \$600 per
17 month for a producing well, \$6,000 a month for a drilling
18 well.

19 Q. And how do these figures compare with the
20 Ernst & Young figures for a well in this area at this
21 step?

22 A. They've been escalated by slightly over 8
23 percent from the 1989 figures.

24 Q. And are these figures the figures that are
25 reflected in the operating agreement with Santa Fe?

1 A. Yes, they are.

2 Q. Are these the same 1990 figures that are used
3 for other Nearburg operating wells in the area?

4 A. Yes, it is.

5 Q. Do you recommend that these figures be
6 incorporated into any order which results from today's
7 hearing?

8 A. Yes.

9 Q. Mr. Elger, do you believe that granting this
10 application and the pooling of all the lands will be in
11 the best interest of conservation and prevention of waste
12 and the protection of correlative rights?

13 A. Yes.

14 Q. Were Exhibits 6 and 7 prepared by you?

15 A. Yes, they were.

16 MR. CARR: At this time, Mr. Stogner, I would move
17 the admission of Nearburg Exhibits 6 and 7.

18 EXAMINER STOGNER: Exhibits 6 -- Or are there any
19 objections?

20 MR. PADILLA: No objections.

21 EXAMINER STOGNER: Exhibits 6 and 7 will be admitted
22 into evidence.

23 (Nearburg Exhibits Nos. 6 and 7
24 were admitted into evidence.)

25 MR. CARR: And that concludes my examination of

1 Mr. Elger.

2 EXAMINER STOGNER: Thank you, Mr. Carr.

3 Mr. Padilla, your witness.

4 CROSS-EXAMINATION

5 BY MR. PADILLA:

6 Q. Mr. Elger -- is it "Elger" or "Elgar"?

7 A. "Elger."

8 Q. "Elger."

9 Were any geological proposals ever made to
10 Torch or Felmont?

11 A. Geological proposals?

12 Q. For drilling this well.

13 A. By Nearburg Producing?

14 Q. Yes.

15 A. Not to my knowledge.

16 Q. Has Torch communicated to you any desire of
17 having drilled this well somewhere else?

18 A. I have never had any communication with anyone
19 at Torch.

20 Q. Looking at this cross section, Mr. Elger, what
21 specifically tells us that this well is not going to be
22 very good?

23 A. The fact -- several facts. One is the fact
24 that the wellbore in the southeast corner of the southeast
25 corner of Section 8 was completed from the subject sand,

1 that's Yates Sylvester ABC Com no. 1, and that has a
2 similar looking porosity profile to what was encountered
3 in our wellbore, and that is a poor commercial well.

4 The other evidence is the fact we did
5 drill-stem test that particular sand. Results of that
6 drill-stem test are captioned at the bottom, right below
7 the well log; and they indicate that the reservoir has
8 very low permeability, which is a backup to what the log
9 -- electric log sweeps were telling us.

10 Q. On this particular well, you did encounter
11 three sands; is that correct?

12 A. Yes.

13 Q. Three Morrow sands.

14 A. That's correct.

15 Q. And it's your testimony that all three are
16 likely not to have very good production?

17 A. That's correct. We believe that the bottom two
18 sands are probably water saturated or probably water
19 bearing. The same conclusion -- we feel like the same
20 conclusion about those sand intervals was arrived at by
21 Santa Fe in their decision to elect to go nonconsent on
22 the completion.

23 Q. Even though you've encountered better sands,
24 it's still your testimony that you'll have -- I mean,
25 that's the same story as Yates had in its Sylvester well,

1 correct?

2 A. Possibly. Production testing will tell.

3 Q. What kind of water did you encounter in your
4 well?

5 A. We didn't test any water in the wellbore, but
6 the redistributive profiles across these bottom two sand
7 intervals suggest or highly suggested that the sands are
8 water bearing.

9 Q. Did you encounter any pressures that would give
10 you an indication that -- of the reservoir extent?

11 A. Well, as you can see on the upper sand that was
12 drill-stem tested, the initial shut-in pressures of that
13 drill-stem test were 693 pounds and a 240-minute final
14 shut-in was 3,000 pounds, indicating that there is a
15 reservoir there, but it's very locally permeable.

16 Q. You didn't drill-stem test the other two sands?

17 A. No, we did not.

18 MR. PADILLA: I believe that's all I have,
19 Mr. Examiner.

20 EXAMINER STOGNER: Thank you, Mr. Padilla.

21 Mr. Turner, your witness.

22 MR. TURNER: I have no questions.

23 EXAMINER STOGNER: Any redirect?

24 MR. CARR: No, sir.

25 MR. STOVALL: Mr. Examiner, while you're looking at

1 your notes, I would like to ask Mr. Elger what is his
2 definition --

3 EXAMINATION

4 BY MR. STOVALL:

5 Q. What's your definition of risk? What does that
6 term mean and the industry standard of that and applied in
7 this situation?

8 A. Risk will -- the ultimate outcome of the well,
9 will it be an excellent well, a good well, a fair well, a
10 poor well, marginal well, noncommercial or dry hole? And
11 the risk is that drill-stem tests -- you know, that you'll
12 end up with basically a noncommercial well or a well that
13 will not even effectively pay out the completion -- the
14 completion procedures. You know, that won't -- you'd have
15 -- there's a lot of costs that go into completing one of
16 these wells in terms of acidizing and treating; and very
17 low volumes are -- or natural gas are encountered, and
18 laying pipelines and all that.

19 So the actual definition of risk is what kind
20 of well you will make, you know, and what are the odds,
21 what are the odds of making a good versus a poor well? I
22 think the odds are very high that we'll make a poor well
23 or a noncommercial well, a well that we would not -- we
24 would not recommend spending the money, definitely spend
25 the money to offset.

1 Q. It's my vision that when a risk, when we're
2 talking about a forced pooling and a risk penalty, you're
3 going in with a limited knowledge. As you acquire more
4 knowledge, it becomes less risk, more "we took the risk
5 and we failed" situation. We took the risk and the
6 downside element of the risk is present, that therefore we
7 don't have the risk in the sense of taking the chance is
8 removed. You're now encountering the results of having
9 taken that chance.

10 A. Well, there's still a lot of risk that could be
11 -- We could make a good well on -- you know, it's
12 possible if we, through some kind of fracturing technique,
13 encounter commercial bearing sand reservoir. The drill
14 test suggests we won't, but that's not beyond the realm of
15 possibilities, that is, you know.

16 And the risk we took when we drilled this
17 particular well was that -- and, in fact, we encountered
18 as much sand as we thought -- had hoped to encounter.
19 When we drilled this well -- elected to drill this well
20 where we did, and that sand being the productive interval
21 in the Yates' Sylvester "ABC," we had hoped -- and the
22 risk was there -- that we would encounter better quality
23 sand in terms of both porosity and permeability.

24 We encountered the thickness that we had hoped
25 to encounter, but it appears that we were not successful

1 in encountering the porosity and permeability that we had
2 hoped for.

3 Q. So when you go -- I mean what you've done now,
4 you've tested the well. You've got your logs and DST, and
5 you're now at the point where you make a decision with
6 respect to completion techniques and expenditures.

7 A. That's right.

8 Q. But in making that decision, aren't you, in
9 essence, making that decision with the pretty good base of
10 knowledge that there's a high probability that this will
11 not be a commercial well? Is that what you just told me?

12 A. Yes. The risk has increased now that the well
13 has been drilled of being a successful commercial well.

14 Q. Has the risk increased or is the probability of
15 a noncommercial well increased?

16 A. What's the difference?

17 Q. The difference being the knowledge that you
18 took a risk and drilled the well, you've made a major
19 expenditure at this point of drilling and setting pipe and
20 testing. You took that with only limited knowledge based
21 upon some geological mapping and analysis, I assume, of
22 some sort?

23 A. Yes.

24 Q. You're now done there. You've spent a large
25 portion of the money. Is it safe to say better than half

1 the total cost of the well?

2 A. Yes.

3 Q. And now your decision is: We've got a poor
4 well. Do we attempt to -- We've got what appears to be a
5 poor well. Do we spend an incremental, additional amount
6 to recover some of our costs, anticipating there may not
7 be a commercial well or may not even pay out?

8 A. Well, we made that decision at casing point
9 after we ran the log sweep to incur the expense of the
10 casing and cementing of that casing, and so all that --
11 you know, all that cost is included, not just the costs to
12 the point where we're at of perforating and acidizing or
13 treating the sand section in some fashion.

14 Q. I guess -- yeah, most of these questions are
15 primarily for my own clarification of the concept of risk.
16 You know, in my mind --

17 A. Each stage has -- is risk. The risk right now,
18 once we ran electric logs and ran the drill-stem test, the
19 risk hasn't changed any now the casing is in the ground.
20 The risk -- the same risk is there at this point as it was
21 after we acquired that information, and if we perforate
22 and acidize the sand after we do, the risk may change
23 again.

24 Q. So your question to decide is whether to put a
25 little more money in here in the hopes of recovering some

1 of the costs you've already incurred, as well as those
2 additional costs.

3 A. That's correct.

4 MR. STOVALL: Okay. That's all I have.

5 EXAMINATION

6 BY EXAMINER STOGNER:

7 Q. Mr. Elger, in reviewing our records, I see that
8 this particular proration unit is adjacent to an existing
9 Atoka gas pool. Did you look at the possibilities of
10 Strawn and Atoka production?

11 A. We did on the way down. Of course, we had a
12 mud logging unit that evaluated the cuttings all the way
13 from, I believe it was, the Glorieta-Yeso section all the
14 way to total depth. And the open hole log sweeps were run
15 all the way to the base of intermediate casing, which I
16 don't remember exactly where we set intermediate casing,
17 1,800 feet or roughly; and so we had the benefit of the
18 sample and hydrocarbon detection equipment throughout all
19 of those intervals.

20 And again I refer back to Santa Fe's election
21 to go nonconsent on the running -- the casing of this
22 well. Their conclusions were the same as ours; that there
23 is -- well, their conclusions are a little bit different
24 than ours. In fact, we think we can make some -- a little
25 bit of natural gas out of the Morrow here and maybe some

1 other zones, but Santa Fe didn't see anything that they
2 would deem to be commercial in this wellbore.

3 Q. Including the Morrow?

4 A. Including those other formations.

5 Q. Whom did you have this conversation in Santa Fe
6 with?

7 A. Well, I didn't -- I did talk with Santa Fe's
8 geologist, Bruce Insalco, you know, about the geology of
9 the well, and we did discuss the log calculations of the
10 various zones and so forth, and of course their management
11 reached their conclusion that there was -- they did not
12 want to elect to run pipe in this well.

13 EXAMINER STOGNER: Are there any other questions of
14 this witness?

15 (Discussion off the record with the reporter.)

16 THE WITNESS: I-n-s-a-l-c-o, I believe.

17 EXAMINER STOGNER: If there are no other questions of
18 this witness, he may be excused.

19 Gentlemen, are there any closing statements?

20 Mr. Padilla, I'll allow you to go first.

21 MR. PADILLA: Well, it would be no surprise for me to
22 argue that the applicant in this case, Nearburg, has
23 assumed a great deal of risk by drilling this well. I
24 think that the factors which show that the risk was
25 assumed are the indications, early indications that they

1 -- that Nearburg had with regard to ownership in the well.

2 I think that title opinion didn't point to and
3 include the memoranda of understanding. I think that that
4 is what they should have followed as early as October or
5 sometime. I believe that's what Mr. Shelton testified to.

6 And they knew that Felmont, who was the
7 predecessor to the Torch interest, had an ownership
8 interest and should have been forced pooled at the very
9 beginning.

10 Just simply for prudence, that would indicate
11 that some type of attempt to contact this interest should
12 have been made way back in October before the well was
13 even commenced. I think it would be eminently fair to,
14 under the circumstances of this type of factors where you
15 have notice from the people who tell you who owns an
16 interest in the well that those are the owners.

17 Even beyond that, they had some indication that
18 Santa Fe Energy may not have told them the straight story,
19 and they continued to drill the well. That, we contend,
20 is an assumption of risk that should not require a
21 200 percent penalty. I think there's plenty of precedents
22 lately before the division that indicates that lesser
23 penalties than 200 percent ought to be imposed in
24 situations such as this.

25 Finally, as a recommendation we would obviously

1 say that given the condition of the status of the drilling
2 of this well that no penalty ought to be assessed against
3 the Torch interest. Thank you.

4 MR. STOVALL: Mr. Examiner, may I ask Mr. Padilla a
5 question, just out of interest more than anything?

6 Presumably, you're taking the position on
7 behalf -- Torch doesn't have any witnesses here today;
8 isn't that correct?

9 MR. PADILLA: That is correct.

10 MR. STOVALL: Are you in a position to speak on
11 behalf of Torch to say that if -- obviously if the penalty
12 is 100 percent, they're not going to prepay their costs;
13 they're going to let them be recovered. Are you in a
14 position to say at what penalty level Torch would consider
15 tossing in the money and joining the risk with Nearburg?

16 MR. PADILLA: No, sir. I don't have any authority to
17 say one way or the other what their position would be.

18 MR. STOVALL: That was my only question, just to know
19 if they had given you any information on that.

20 EXAMINER STOGNER: Mr. Turner, any closing
21 statements?

22 MR. TURNER: None.

23 EXAMINER STOGNER: Mr. Carr.

24 MR. CARR: Very briefly.

25 May it please the Examiner, when we talk about

1 prudence in developing a property, I think when you look
2 at the facts, you'll see that Santa Fe came to Nearburg
3 and proposed this prospect. And when it was originally
4 proposed, an exploration agreement was mentioned. A title
5 opinion was obtained, and that also mentioned an
6 exploration agreement.

7 A memorandum of that agreement was provided to
8 Nearburg; and when you read that in conjunction with the
9 statements and representations that have been testified
10 to, it appeared that all interests were in and that
11 Nearburg was prepared and able to go forward with the
12 well, and that's what they did, and that is what they have
13 done, and they have got the well now to total depth.

14 Mr. Padilla references prior authority.
15 Obviously, it's the dispute between Mallon and Mitchell a
16 year ago, where Mr. Mallon had drilled a well before
17 obtaining a pooling order.

18 But I will tell you, those are not similar --
19 that is not a similar situation to what you have here, for
20 as you will recall in that case, Mr. Mallon wouldn't
21 release the log. The log is on the table, and the log
22 shows that there is a substantial amount of risk
23 associated with completing the well. In this situation,
24 the well was spudded with an understanding and, I think,
25 reasonable belief that all interests were committed; and

1 it was only after the fact that this interest was out.

2 If we're talking about what is fair and
3 equitable, it seems to me that an operator with good faith
4 after diligent title search and representations from other
5 parties, all of which are consistent, goes forward and
6 develops a property, that someone after the fact who has
7 an interest that may or may not be under an agreement that
8 we can't even tell you today if it's in effect, shouldn't
9 be given an opportunity to recover part of the production
10 from a well, but because right -- because today clearly
11 looks like an extremely risky venture, and I mean risk in
12 terms of just recovering the money that's already been put
13 in the ground.

14 We think that we've touched all the stones
15 necessary to entitle us to a pooling order, and that on
16 this record a 200 percent penalty should be assessed
17 against any interest owner who doesn't voluntarily join in
18 the well.

19 EXAMINER STOGNER: If there's nothing else on Case
20 No. 10178, this case will be taken under advisement.

21 (The foregoing hearing was concluded at the
22 approximate hour of 2:10 p.m.)

23 I do hereby certify that the foregoing is
24 a complete record of the proceedings in
the Examiner hearing of Case No. 10178.
25 heard by me on 19 December 19 90.

Michael E. Stogner, Examiner

Oil Conservation Division

HUNNICUTT REPORTING

(505) 982-9770

1
2 STATE OF NEW MEXICO)
3) ss.
4 COUNTY OF SANTA FE)

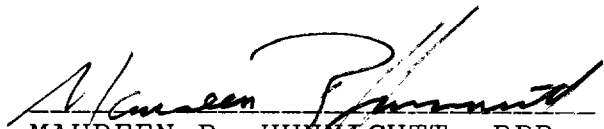
5 REPORTER'S CERTIFICATE

6
7 I, MAUREEN R. HUNNICUTT, RPR, a Certified Shorthand
8 Reporter and Notary Public, DO HEREBY CERTIFY that I
9 stenographically reported these proceedings before the Oil
10 Conservation Division; and that the foregoing is a true,
11 complete and accurate transcript of the proceedings of
12 said hearing as appears from my stenographic notes so
13 taken and transcribed under my personal supervision.

14 I FURTHER CERTIFY that I am not related to nor
15 employed by any of the parties hereto, and have no
16 interest in the outcome hereof.

17 DATED at Santa Fe, New Mexico, this 19th day of
18 January, 1991.

19
20
21 My Commission Expires:
22 April 25, 1993

23
24
25

MAUREEN R. HUNNICUTT, RPR
Certified Shorthand Reporter
CSR No. 166, Notary Public