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 NOS. 10955,
10956, 10957

APPLICATIONS OF CONSOLIDATED OIL & GAS INC.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: David Catanach, Hearing Examiner

April 14, 1994

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Division on April 14, 1994, at Morgan Hall, State Land Office Building, 310 Old Santa Fe Trail, Santa Fe, New Mexico, before Deborah O'Bine, RPR, Certified Court Reporter No. 63, for the State of New Mexico.

ORIGINAL

MAY 27 1994

I N D E X

April 14, 1994
Examiner Hearing
CASE NOS. 10955, 10956, 10957

E X H I B I T S

CONSOLIDATED'S EXHIBITS:

Exhibit 5	30	57
Exhibit 6	31	57
Exhibit 7	31	57
Exhibit 8-A	31	57
Exhibit 8-B	31	57
Exhibit 8-C	31	57
Exhibit 9	33	57
Exhibit 10	33	57
Exhibit 11	36	57
Exhibit 12	39	57
Exhibit 16	77	

EXHIBITS FOR ANDERSON:

Exhibit 2	148	150
Exhibit 3	148	150
Exhibit 4	148	150
Exhibit 5	148	150
Exhibit 6	148	150
Exhibit 7	148	150
Exhibit 8	148	150
Exhibit 13	149	150

A P P E A R A N C E S

FOR THE DIVISION: RAND L. CARROLL, ESQ.
General Counsel
Oil Conservation Commission
State Land Office Building
310 Old Santa Fe Trail
Santa Fe, New Mexico 87501

FOR THE APPLICANT: KELLAHIN AND KELLAHIN
117 N. Guadalupe
Santa Fe, New Mexico
BY: W. THOMAS KELLAHIN, ESQ.

FOR HIMSELF AND THE MARY ANDERSON BOLL FAMILY TRUST: EDMUND T. ANDERSON
2521 Humble
Midland, Texas 79705

EXAMINER CATANACH: Call the hearing back to order. At this time call Case 10955.

MR. CARROLL: Application of Consolidated Oil & Gas Inc. to amend Division Order No. R-9033, San Juan County, New Mexico.

EXAMINER CATANACH: Are there appearance in this case?

MR. KELLAHIN: If the examiner please, I'm Tom Kellahin of the Santa Fe law firm of Kellahin and Kellahin, appearing on behalf of the applicant.

With your permission, Mr. Examiner, we would request that this first case be consolidated for purposes of testimony with the next two cases, and that all three be heard together.

EXAMINER CATANACH: Is there an additional appearance in this case?

MR. ANDERSON: Mr. Examiner, my name is Edmund T. Anderson. I'm from Midland, Texas, and I'm making an appearance on behalf of myself, as well as in my capacity for trustee for the Mary Anderson Boll Family Trust.

I have an interest in two of the three cases that Mr. Kellahin wants to combine. It's Case No. 10955 and 10957, but I don't think I have an interest in 10956. I don't have any objection to

10955 and 10957 being combined together, and I really don't know anything about 10956.

MR. CARROLL: Mr. Anderson?

MR. ANDERSON: Yes.

MR. CARROLL: I have a copy of the lawsuit you filed in Midland County, Texas.

MR. ANDERSON: Right.

MR. CARROLL: Are you an attorney?

MR. ANDERSON: Yes. I'm licensed in Texas and California. I'm inactive in both jurisdictions.

MR. CARROLL: Okay.

EXAMINER CATANACH: So I guess for the purpose of this hearing, we'll go ahead and consolidate the cases. I guess that would be the easiest way to do it.

At this time call Case 10956 and 10957.

MR. CARROLL: Application of Consolidated Oil & Gas Inc. to amend Division Order No. R-9178 San Juan and Rio Arriba Counties, New Mexico.

Application of Consolidated Oil & Gas Inc. to amend Division Order No. R-9179, San Juan and Rio Arriba Counties, New Mexico.

Mr. Examiner?

EXAMINER CATANACH: Yes.

MR. CARROLL: We have received -- the

Division has received numerous correspondence from a James J. Rubow, initially requesting continuance of this hearing to April 28, 1994.

After consideration, the Division denied Mr. Rubow's request, and I should bring up that Mr. Anderson also filed a request for continuance. Both requests were denied on April 13 by letter.

James Rubow has renewed his request for a continuance due to a conflict he has with a hearing before the Colorado Oil and Gas Conservation Commission.

I guess my recommendation is that you take his renewed request for continuance under advisement, and that if you see a need for Mr. Rubow's participation after the hearing has begun and the evidence indicates that his input would be valuable or necessary, that you take his renewed request for a continuance or reconsider that renewed request for continuance at that time.

We will take his correspondence as an entry of appearance without objection of any of the parties here.

EXAMINER CATANACH: Mr. Kellahin, I assume that your clients are in opposition to continuance at this time?

MR. KELLAHIN: Yes, Mr. Examiner, we are in opposition, and we are ready to proceed.

EXAMINER CATANACH: Probably what we'll do is, as my counsel has advised me, if during the course of the hearing I feel that Mr. Rubow's presence or testimony is necessary to adequately hear the case, we will likely continue it at that point until Mr. Rubow can be present.

With that I guess we'll go ahead and proceed at this point.

MR. KELLAHIN: I have two witnesses to be sworn.

EXAMINER CATANACH: Will the witnesses please stand to be sworn in?

MR. ANDERSON: Sir, I intend to testify also. Do you want me to be sworn in now?

EXAMINER CATANACH: Please do so, sir.

(Witness sworn.)

MR. ANDERSON: Mr. Examiner, do you mind if I move this around a little bit so I can see?

EXAMINER CATANACH: I have no problem with that.

THE WITNESS: Can we move it back? Otherwise, I can't get down to it.

MR. ANDERSON: Sure. I think that will

work.

MR. KELLAHIN: Mr. Examiner, if I might share with you the items that we would like to focus your attention on this afternoon. And after doing that, I'll present to you two witnesses, Mr. Phil Wood: Mr. Wood is a petroleum landman for Consolidated Oil & Gas, resides in Denver, and he is the landman for Consolidated that has handled the efforts to consolidate on a voluntary basis the interests.

He's familiar with the Richmond force pooling orders that we are asking you to reconsider. And he can discuss with you and the rest of us his course of conduct and dealings and his opinions concerning the parties involved, including the interest of Mr. Anderson and the trust he represents.

In addition, I'm going to present to you Alan Harrison. Mr. Harrison is a petroleum engineer. He is working on the details of the costs and the activity to be conducted on these three wells.

We are picking up where Richmond left off with three pooling orders issued by the Division. The prehearing statement that I have filed may serve as a useful outline for you because we are trying to present to you three different pooling orders, all of which have common components.

The orders were issued at the request of Richmond Petroleum, Inc., so that they could consolidate various tracts for a 320 coal gas spacing and to drill three wells.

Each of those three wells was drilled, but none of those wells was completed within the time sequences provided by the original pooling order. One well was completed in, or at least perforated in December -- it's the federal well -- in December of the year it was drilled, and that would have been December -- I'm sorry, the well that was perforated was the Miller well, and that was perforated in December of 1992.

The sequence is such that as you tract through the details of the transaction concerning the three pooling orders, there was significant concern by Consolidated that when they acquired interest in the leases and in the wellbores, that all of the necessary components for complying with the force pooling order by Richmond Petroleum may not have been complied with.

So part of what we're asking you to do is to reissue these pooling orders so that parties that are being subject to the pooling order will have new or additional election periods; that we adjust the various time components for the reporting of the costs of the well to the interest owners, and amend the various times in which the activities need to be completed.

There are certain parties in each of the wells that were pooled originally, and Richmond subsequently worked out solutions, and they participated.

In the case of Mr. Anderson, for the two wells that he has an interest in, it will be Mr. Wood's testimony that the tract in which Mr. Anderson has an interest is not the drill site. It is included within the 320-gas spacing unit, and that the lease that Mr. Anderson had originally executed to McElvain, which McElvain was committing to Richardson to the spacing unit, that the lease involved expired and was not otherwise held by activity on the appropriate wellbore.

The position is that Mr. Anderson's lease has expired. He was not pooled in the original pooling orders. And Mr. Wood will tell you that he has attempted to make a voluntary agreement with Mr. Anderson and has not been able to do so.

We're going to ask you to apply the commonly utilized pooling procedure in that instance and have Mr. Anderson's interest in the spacing unit pooled by an order of the Division and so that he and his trust will have the election to participate under the pooling order or to go nonconsent.

In addition, as to that interest, we are asking that if he elects and the trust elects to participate in the well, that they must pay their proportionate share of actual costs already spent plus our forecast of reasonable estimated future costs to put the well into production.

Mr. Anderson and Mr. Wood have a difference of opinion about those costs. And so that is going to be one of the issues for you to consider is the cost allocation. We will contend that we're entitled to recover from Mr. Anderson's interest the costs that were already expended.

When we turn to Mr. Rubow's interest, Mr. Carroll made reference to his correspondence in the file, his position is similar to the Anderson position with regards to the Rubow property. They had a lease for which the lessee was attempting to commit that interest to the spacing unit. It was not the drill site. That lease expired. There was no activity on that well that held the lease.

Despite efforts by Mr. Wood, he's been unable to get the Rubow interests committed to the lease. We take the position that we've exhausted our good faith opportunity. The interest is not committed, and we want the force pooling provisions of the statute invoked so that Mr. Rubow will have the opportunity to make his choices under that process.

In addition, we are going to ask you to continue with the imposition of the risk factor penalty. In this case, the original orders provided for 156 percent. Mr. Harrison is going to describe for you the status of the wells, what he anticipates he needs to do, and he is going to recommend to you that the 156 percent penalty continue on each of these wells.

In addition, we will recommend to you the overhead rates and the other modifications necessary in order to satisfy all of us that these orders have been reissued and that everyone who is now being pooled or is subject to pooling is going to have new elections. Whether they got them in the past or not, we're going to give them a chance to have a new election under these pooling orders and remove any doubt about whether Richmond ever gave them adequate notice.

And so that's where we're headed. The issues are the same in all three cases. The facts are slightly different. The material issues are identical with regards to the sequences. And when it's all said and done, then we will ask you to use your authority and jurisdiction to revise and amend the pooling orders as they now exist.

PHILIP WOOD,

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

EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Wood, for the record, would you please state your name and occupation.

A. My name is Philip Wood. I'm a petroleum landman.

Q. On prior occasions, Mr. Wood, have you testified before this Division?

A. No, I have not.

Q. Summarize for us your education.

A. I have a bachelor's and master's degree from the University of Northern Colorado.

Q. In what years?

A. I received my bachelor's in 1979 and my master's in 1981.

Q. In what fields?

A. Both were in geography.

Q. Describe for us what has been your involvement as a petroleum landman.

A. I started working as a landman immediately upon graduation in 1981 and have done nothing else since then; so I guess that would be 13 years. I worked for a company called DeKalb Energy Company for 12 of those years and ended up being land manager of that company. DeKalb sold out of the U.S. at the end of 1992, soon after which I became land manager of Consolidated Oil & Gas.

Q. Your activity with DeKalb involved what area of the United States?

A. For approximately ten years, it was the various Rocky Mountain states, including New Mexico. For the last two years, it was primarily Gulf Coast Texas.

Q. Your activity as a landman for Consolidated has involved what particular area, what geographic area?

A. Geographic area? Well, primarily most of the Rocky Mountain basins, and like I indicated earlier or just a few minutes ago, West Texas and the Gulf Coast.

Q. Have you been the landman with your company that's primarily responsible for the subject matters involved in these three cases?

A. Yes.

Q. Have you examined and are familiar with the transaction your company had with Richmond Petroleum, Inc.?

A. Yes.

Q. And have you been the employee of your company that has been designated the responsibility to negotiate and discuss Mr. Anderson's interest in the two spacing units out of the three cases?

A. Yes.

Q. And, similarly, have you had those discussions and negotiations with Mr. Rubow?

A. Yes.

Q. In addition, are you familiar with the parties and the interests involved in each of the spacing units?

A. Yes, sir.

Q. And have you examined and reviewed the leases and other documents involved in trying to consolidate these interests into the appropriate spacing units?

A. Yes, sir.

MR. KELLAHIN: We tender Mr. Phil Wood as an expert petroleum landman.

EXAMINER CATANACH: Mr. Wood is so qualified.

Q. (BY MR. KELLAHIN) Let me have you take a moment, Mr. Wood, and use the locator map which is not specifically in the exhibit package. Identify for us and help us see where we are.

A. I'd be happy to. If you'll refer to Exhibit 1 of your packets, there's a shot of a portion of this map. I thought it would be very beneficial to take just a minute and go through the acquisition of the Richmond properties so you could better understand how we ended up where we are today.

What you see here is the Colorado-New Mexico border, the San Juan-Rio Arriba County border, which meanders through here, through the Miller and the Carnes location.

Q. How is that identified on the display?

A. On the San Juan River. Then in Colorado you have the junction of La Plata County and

Archuleta County.

Back in 1993, Consolidated, through its efforts to acquire properties in the San Juan Basin, approached Richmond Petroleum, Inc., of Dallas to discuss a possible acquisition. They were very interested, and at the end of 1993, we acquired approximately 14 properties in Colorado.

The properties were in various states of completion. Two of the wells in La Plata County had actually been hooked up to a gas line and had produced; the rest had not but had all qualified for Section 29 tax credit for the coal bed methane. And these are all coal bed methane wells, by the way.

Also included in the Richmond package but not closed upon until January 1994 were the four New Mexico wells, the three that we're discussing, the Miller 11, the Carnes, the Federal, and then another well, which I'll just point out for reference, the Miller 10.

These wells, as you can see, are boxed in, shall we say, by the Navajo Reservoir. And the only access to the wells and eventually the only way that gas can be produced from those wells, as far as we can see, will be up through Colorado.

We are currently designing and hope to

implement this summer or install this summer a gas-gathering, water-gathering system coming through these Colorado wells and tying into the New Mexico wells. And that's one of the things I wanted you to see, and that's why this larger map is here.

So that pretty well takes care of the reference, I think.

Q. Okay. Let's talk generally about the New Mexico property or the New Mexico portion of the acquisition, and then we will talk specifically about each of the spacing units in that acquisition.

A. Fine.

Q. The closing date on the acquisition that involved the New Mexico property you said was January?

A. Yes. The effective date was -- the actual effective date was January 24, 1994. And I'm not sure what the exhibit is, but in your package you'll find the Special Warranty Deed recorded in both New Mexico counties that shows that date.

Q. We'll come back and talk in detail about each of the spacing units, but give us a general overview about the position you found yourself in as a landman in examining these three spacing units and trying to put them into a position where you could then complete these wells and produce and allocate the production among the interest owners.

A. The land, and when I say that, I speak to leases and mineral ownership, was basically in a state of disarray. Richmond had drilled these wells originally under the original orders in, I'll say the first half of 1990. They did so -- Richmond actually owned no leases; so most of the leases -- or all of the interests original were earned via farm-in from companies such as McElvain here in Santa Fe and others. Under the terms of those farm-ins, Richmond was required to drill the wells within a certain period of time, and they did so.

In my mind, Richmond, the main focus that Richmond was centering on was the Section 29 tax credit. When the tax credit was extended, or the deadline for qualifying for the tax credit was extended to, I believe it was the end of 1992, Richmond changed their completion program and did not bother to establish that there was coal bed methane production available and bring gas to surface until December of '92.

They did so in the two Miller wells. They did not do so in the Carnes. And the Federal well, as Mr. Harrison can tell you, it was never drilled to

-- it never penetrated the coal. Therefore, the land situation was somewhat in disarray. We knew that going in and don't seek sympathy for that. Several leases such as Mr. Anderson's and Mr. Rubow's had expired. The reason they expired is there was no production. In fact, in the case of the Federal, you clearly just had a borehole penetrating the ground. It never even got to the coal formation.

So that was the situation when we took over.

Q. When you acquired the interest from Richmond Petroleum, what did you acquire with regards to the three spacing units that are the subject of these cases?

A. We acquired all of Richmond's right, title, and interest, which in the wellbore and in the equipment, which I don't believe there was any -- Mr. Harrison can speak to that, as well as any rights to production that Richmond may have earned by virtue of drilling the well.

And I should point out that we believe, and still do, that Richmond's ownership in the wellbore is disproportionate today to their ownership in rights to production, or the rights that we purchased from them, due to expiration of leases, etc.

Q. Was consideration paid by Consolidated to Richmond for these spacing units and the wellbores and interests within the spacing units?

A. Yes, sir.

Q. Let's turn to the first of the spacing units. Let's look at Exhibit No. 2. This is the Federal 9 #1 Well. It's the subject of Order R-9033. First of all, let's look at how the tracts are configured in the spacing unit. Do you have an illustration of that?

A. I have an illustration. It's Exhibit 2.

Q. Describe for us what you've illustrated.

A. Exhibit 2 outlines the different tract ownership in what we hope to be the spacing unit for a producing coal bed methane well, being the east half of 9, or the east half equivalent of 9.

Below it I have shown the working interest owners and/or unleased mineral owners, their interest, or at least what I believe to be their interest, and the tract from which their interest is derived.

Q. There are four tracts that compose the configuration of owners in the east half of 9?

A. Yes, sir.

Q. And have you approximated the actual location of the wellbore itself?

A. As best we could, yes, sir.

Q. It's up in unit letter A of the section?

A. Yes, sir.

Q. You've tabulated the interest owners. Now let's focus the examiner's attention on the parties who at the date of filing your application had not, in your opinion, had their interests committed to the well in the spacing unit?

A. That would be --

Q. I'm going to read, just to keep it correct, from the application, it refers to a Jerry L. and a Donna M. Young?

A. Yes. Their interest is derived from Tract No. 1. They were an unleased mineral owner at the time Richmond drilled the well. We were successful in leasing their interest. And although I do not have a copy of the lease to provide to you, the lease has been taken, paid for, and is being recorded.

Q. On Exhibit No. 2, do you show the Young interest as part of the Consolidated Oil & Gas interest at this point?

A. Yes, sir, I do.

Q. Do you have all the executed documents necessary to satisfy yourself that the Young interest has been fully committed to a lease which is now held by Consolidated?

A. Yes, sir.

Q. So we may delete the Young interest from the effects of any pooling order the Division may enter in that spacing unit?

A. Yes, sir, that's correct.

Q. There are two other parties or interests within the east half of 9 listed in the application. First, there is the Ralph O. and Suzanne W. Bogeberg. Is their interest still shown on Exhibit 2?

A. Yes, sir, as tract No. 3.

Q. Describe that interest and why it is still shown on Exhibit 2.

A. The Bogeberg interest is a mineral fee interest that was force pooled in the original order by Richmond. Richmond was unable to locate the Bogebergs, and so were we.

Q. Summarize for the record the kinds of efforts you made to try to find the Bogebergs.

A. We contacted and actually hired the field landman that Richmond used in conducting their operations.

Q. Who was that individual?

A. His name is James Fullerton.

Q. To your knowledge, was Mr. Fullerton able to locate or find Bogebergs or anyone knowing where they might be located?

A. No, sir, he was not.

Q. Did you review for yourself and make a determination as a landman that Mr. Fullerton's efforts had been in good faith and had been diligent enough to try to find those people?

A. I believe they were more than diligent, yes, sir.

Q. Despite that effort, neither you nor Mr. Fullerton could find those people?

A. Correct.

Q. So you've left them on Exhibit 2 as an interest to be pooled?

A. Yes.

Q. Let's turn to what is characterized as the Edward Anderson, et al., interest. Was that an interest that Richmond pooled originally in this well?

A. Yes, sir. That interest was under lease to T.H. McElvain.

Q. Is there a pooling clause in that lease?

A. Yes, sir.

Q. So it was committed to the spacing unit not by the compulsory pooling order?

A. Correct. Or shall I say it was Richmond's intent if production were established to commit it to a spacing unit.

Q. Then what happened?

A. Richmond never completed the well. Under the terms of the lease, the lease expired and has sat dormant through today.

Q. Is that an interest that you seek to have pooled for this spacing unit and for coal gas production out of the Federal 9 Well?

A. Yes.

Q. Are there any other interests to be addressed by the examiner with regards to that well and that spacing unit?

A. No, sir.

Q. Let's turn to Exhibit No. 3. Identify and describe what you've prepared here.

A. Exhibit No. 3 is the proposed 320-acre spacing unit for the Carnes 11 #1 Well. The map above shows the location of the well, the configuration of the spacing unit, the proposed unit as well as the individual tract configurations. The interests or the portion below it shows the individual working interest owners, their interests and where that interest was derived.

Q. To expedite your responses, Mr. Wood, let me refer to the application filed for Consolidated in amending this pooling order and address the parties that you're seeking to pool. First of all, there's a James Rubow, Passport Energy, Inc., with a .025 interest?

A. Yes.

Q. Was that a party originally pooled by Richmond in the spacing unit?

A. That was a -- his interest was originally under lease. Mr. Rubow, as well as others, bought the mineral interest of someone after they had already leased to McElvain. Richmond was earning an interest in the lease via a farm-in from McElvain. I can't tell you today when they bought that interest, whether it was before or after the order was issued.

Q. At the time the application was filed, did you have voluntary commitment of the Rubow interest either by farmout, by lease, or by some voluntary agreement?

A. With Mr. Rubow?

Q. Yes, sir.

A. No.

Q. Do you have subsequent documentation in the proposed exhibits that addresses your contacts and negotiations with Mr. Rubow?

A. Yes.

Q. And have you as of today been able to reach a voluntary written agreement with Mr. Rubow to commit his interest to the spacing unit?

A. No, I have not.

Q. The next interest listed in the application is a Buddy Baker?

A. Yes.

Q. Is that interest shown on your Exhibit No. 3?

A. No, it is not. The reason why it is not is Mr. Rubow supplied Consolidated with a recorded mineral conveyance from Mr. Baker to himself conveying all Mr. Baker's right, title, and interest. Therefore, Mr. Rubow is credited with a full-- rather than 2-1/2 percent and Mr. Baker with 2-1/2 percent, we show Mr. Rubow with a full 5 percent on this exhibit.

Q. And so the Baker interest now held by Mr. Rubow is an interest that you seek to have pooled by the Division in this hearing?

A. Yes.

Q. And it's not an interest that's otherwise committed by some voluntary agreement?

A. No, it is not.

Q. The next listed interest is the Anderson and the trust interest that Mr. Anderson represents. Is that an interest in this spacing unit that's under the same lease that we've just described for the federal well?

A. Yes.

Q. And your answers are the same as to the Carnes spacing unit as they were to the Federal unit?

A. Yes.

Q. That you do not have a written voluntary agreement with Mr. Anderson or his trust interest to commit that interest to the Carnes spacing unit?

A. That is correct.

Q. Let's turn now to the next listed interest. There is a Manuel Rodriguez for the Carnes spacing unit?

A. Yes.

Q. Is that still listed on your Exhibit No. 3?

A. Yes, it is.

Q. Why is that still listed?

A. We were unable to locate Mr. Rodriguez. Richmond was unable to locate Mr. Rodriguez. We sent certified letters to Mr. Rodriguez's last known address. They came return to sender, and we have not been able to locate him.

Q. Have you or Mr. Fullerton made efforts to verify the address and made your best efforts to try to locate Mr. Rodriguez?

A. Yes, we have.

Q. And this is the last known best address that you had for him?

A. Yes, it is.

Q. It's one listed in Scottsdale, Arizona?

A. Correct.

Q. The Richard Clark interest, what's the status of that?

A. The Richard Clark interest is identical, as far as where we stand, to the Rodriguez interest.

Q. Was it originally pooled by Richmond?

A. Yes.

Q. Is this a party that you have not been able to locate despite your efforts?

A. That is correct.

Q. Let's turn to the third spacing unit. That's the one for the Miller 11, and that's the subject of Order R-9178. The application indicates two parties at the time the application was filed that had not committed their interest to the spacing unit. It's Rubow and Baker. What's the status of their interest with regards to the Miller 11 spacing unit?

A. It's identical to that with the Carnes. We have been unable to reach an agreement with them for either their lease or their participation, and Mr. Baker's interest has since been conveyed to Mr. Rubow. A copy of the deed is in the correspondence exhibit.

Q. Do you remember the title on the Rubow-Baker interest? Was it subject to a lease at the time Richmond held their interest?

A. It was subject to the same lease as the interest was under the Carnes' well.

Q. And so Rubow and Baker were not subject to the original pooling order by Richmond?

A. No, they were not.

Q. And subsequently then that lease, in your opinion, has expired?

A. Yes, it has.

Q. Let's turn now to the next subject matter in the exhibit package is Exhibit 5. And stapled together are the copies of the three Oil Conservation Division Orders issued in these cases?

A. Yes.

Q. Are you familiar with these orders, Mr. Wood?

A. Yes, I am.

Q. Let me have you go on to identify the next documents. Following 5 is a three-page legal size paper marked as Exhibit No. 6. What are we looking at here?

A. I don't have --

Q. It should be stamped on the very back if you turn it all the way over?

A. Oh, I do have. I believe these were the Richmond AFE's submitted to the Commission at the time of the original pooling.

Q. Let's go now and have you identify Exhibit No. 7.

A. Exhibit No. 7 is a letter from the Division to Richmond, granting them extension in which to commence operations on the Federal No. 9 Well.

Q. Let's turn now to the documentation on when each of these wells was commenced. If you'll look at what is marked Exhibits 8-A, -B, and -C, would you identify for the record each of those documents.

A. 8-A is the sundry notice on the Carnes 11.

Q. Which indicates what for the spud date?

A. Which indicates that the well was spud on June 5, 1990.

Q. Is that also your information as to when that well was spudded?

A. That is the information that we have, yes, sir.

Q. Let's turn now to the Miller.

A. Exhibit 8-B here is the sundry notice for the Miller 10. I believe the one we wanted to submit before the Commission was the sundry notice for the Miller 11.

MR. KELLAHIN: That's correct. With your permission, Mr. Examiner, I'd like to withdraw and substitute after the presentation a revised Exhibit B, which would be the one for the Miller 11. This is obviously the incorrect sundry notice.

Q. Do you have information, Mr. Wood, as to what your records show to be the commencement date of the Miller 11 Well?

A. I don't have that with me, no. Mr. Harrison will be able to answer that question for you.

Q. All right, sir. We'll come back to that then.

If you'll look at Exhibit 8-C, identify and describe for us the sundry notice that we're looking at there.

A. 8-C is the sundry notice for the Federal No. 9 Well showing that it was spud on May 13, 1990.

Q. Have you included as one of the exhibits, Mr. Wood, a copy of the document that shows that Consolidated now has a property interest in the spacing units and in the wellbores?

A. Yes. That would be Exhibit No. 9.

Q. What are we looking at when we see Exhibit No. 9?

A. You're looking at a recorded copy of a Special Warranty Deed from Richmond Petroleum, Inc., to Consolidated Oil & Gas, which essentially conveys all of Richmond's right, title, and interest, whatever that may be, in and to the wells shown on Exhibit A and the leases to follow on Exhibit A.

Q. Have you also made a search of information concerning what Richmond has expended for each of the wells involved?

A. Yes, sir. You should have before you

Exhibit 10, which is a fairly detailed itemization of the cost of each of the three wells.

Q. What's the source of this information?

A. Richmond's accounting department.

Q. Have you satisfied yourself to the best of your knowledge that the tabulation of costs spent for each of these three wells is as accurate as you can determine it to be?

A. Yes, we have.

Q. And what is your conclusion?

A. We believe this to be an accurate representation of what Richmond spent, especially when comparisoned to their well files.

Q. You have a copy for each of the three wells, starting first with the Carnes and then moving to the Federal and then finally the Miller 11?

A. That's correct.

Q. Describe for us from your perspective in terms of future costs at the time you acquired the property. What was your next step or next course of conduct for Consolidated to take the next phase of operation, if you will, for each of the wells?

A. Two of the wells, the Carnes and the Federal, had yet to qualify for Section 29 tax credits, which we saw as valuable not only to

Consolidated but for all parties, working interest and royalty.

The deadline for filing the application had been extended to March 31, and that was something that was deemed as valuable by all parties, and we felt the need to proceed with that immediately prior to entering into or conducting full-scale completion on all the wells.

Q. What was the timing to complete that particular phase of activity?

A. We had to have the application filed prior to the end of March.

Q. In order to file the application, what, if anything, did you have to do or have done to the Federal well or the Carnes 11 Well?

A. The Federal well, and let me say that Mr. Harrison can go into much greater detail, but the Federal well essentially had to be drilled into the coal formation, and we needed to establish that there was coal bed methane by bringing gas to surface.

The Carnes well had already penetrated the coal formation. Work needed to be done essentially to bring gas to surface.

Q. For the Miller 11 Well, that well under operations by Richmond had already been perforated in the coal?

A. Yes. They did that in December of 1992 prior to the original expiration of the filing date.

Q. Were the tax credit filings timely made for that well?

A. Yes, sir.

Q. Identify for us what we're looking at for Exhibit No. 11?

A. Exhibit No. 11 is Consolidated's authorization for expenditure. It was provided to all parties for the further completion work, and when I say that I mean bringing gas to surface that we just discussed on the Carnes' well and for the Federal well.

Q. Is this the last expenditure required for either the Carnes or the Federal well in order to have them ready and capable of gas production out of the coal gas pool?

A. No, sir. All we've established is the availability of coal and coal bed methane in these wells. Mr. Harrison can go into much greater detail, but essentially what we need to do is supply facilities to these wells, to fracture stimulate these wells, and to hook these wells up to a gas gathering system.

Q. Did you circulate the AFE shown on Exhibit No. 11 to any of the parties for which you now seek pooling orders from Examiner Catanach?

A. The appropriate AFE's were submitted to all parties.

Q. That would have included Mr. Anderson?

A. Yes, sir.

Q. Would it have included Mr. Rubow and Mr. Baker?

A. Yes, sir.

Q. And all the others for which you're seeking pooling?

A. Yes.

Q. Do you have any recommendation or opinion to the examiner as to what, if any, modification of the overhead operating rates for each of the wells? In the original pooling orders, if memory serves me correctly, the pooling orders provided for overhead rates.

And if you'll look at the Order R-9033 in Exhibit 5, for the Federal well, it was $3,500 drilling well rate and then $350 a month producing well. And then if you turn to the Miller 11 order, it's $4,500 a month and $450 a month producing. And then, finally, if you look at the last one, the

Carnes, that's going to be $4,500 and $450.

What, if anything, do you want the examiner to do with regards to modifying those levels of overhead rates?

A. Consolidated feels that the $3,500 and $350 is a fair amount to use and we would like to amend all three orders to read the same.

Q. So for the Miller 11 order, which is R-9178, you're seeking to have that reduced?

A. Correct.

Q. In addition, you're asking the Division to change the operator designated in each of the pooling orders?

A. Yes.

Q. What, if any, activity has Consolidated undertaken to file notices with the appropriate regulatory agencies that you have assumed operations?

A. Well, we have done just that. We have filed the necessary change of operator forms, bond requirements, and I believe we are fully installed as operator in that regard.

Q. And for each of these cases then you would like them amended to now substitute in Consolidated as the operator in place of Richmond?

A. Yes, sir.

Q. Let's turn now probably to the most important part of your dealings with these matters, Mr. Wood, and it's the package of correspondence and documents that has been stapled together as a single exhibit and marked as Consolidated Exhibit 12. Before we look at the specifics, identify generally what we are now looking at.

A. This is a copy of all of the correspondence that has transpired since my original notice to Mr. Rubow, Mr. Anderson, and Mr. Baker and the others. I've also included copies of any correspondence they have sent to me, some of which I believe were sent to the commission first; so it's somewhat redundant.

I've also included copies of, in Mr. Rubow's case, the deeds from Buddy Baker to himself, and prior to that, Mr. Rubow's interest was owned by, I believe, his company, which is Passport Energy, which conveyed it to himself.

I also, just for reference, include the lease from which Mr. Rubow's minerals were originally covered back in 1990 when the wells were drilled. And Mr. Anderson's case is identical, and I also include a copy of Mr. Anderson's lease that expired in 1990.

Q. Without having to read through all this, let me ask you to turn through the documents, and let's discuss Mr. Rubow's position and what, if anything, you've done. And if you'll turn with me until you find the Consolidated letter over your signature that is dated March 1st of 1994 -- are you with me?

A. Yes.

Q. In reference to the March 1st letter, prior to that date, did you have any verbal or written communications with Mr. Rubow concerning his interest in the Carnes' well?

A. I had had one face-to-face meeting with Mr. Rubow.

Q. What was the topic of discussion, and with what result?

A. The topic of discussion was not whether the lease that was in effect when Richmond drilled the well was still in effect today.

Q. Why was that not a topic?

A. Because that lease expired.

Q. Did Mr. Rubow communicate to you anything that caused you to believe that he agreed with that?

A. Yes, he believes it expired.

Q. In addition to the Carnes' well, is that also true of the Miller well in which Mr. Rubow had an interest?

A. It's identical. The situation is identical.

Q. That situation is identical with those two spacing units?

A. Yes. Except for the interest involved and the cost involved, they're identical.

Q. That meeting with Mr. Rubow, what was the topic?

A. The topic was twofold. One, I made Mr. Rubow an offer to lease his unleased mineral interest. At the time we were unable to reach any sort of consensus.

Also, in the event that he did not wish to lease, to invite his participation in the well, or both wells, actually, by virtue of him joining in all costs from this date forward, as well as paying his proportionate share of costs incurred by Richmond.

Q. What did Mr. Rubow do with regard to that proposal by you?

A. Mr. Rubow voiced his opinion first verbally, later in writing, that -- well, he rejected my lease terms. As far as his right to participate, Mr. Rubow believes he has a right to participate in the well; however, he believes his right -- and as far as I could tell, he was asserting that he already owned an interest in my wellbore, or Consolidated's wellbore.

MR. CARROLL: Mr. Examiner, before we go much further, I realize the Rules of Evidence are relaxed in these proceedings, but we're getting into a lot of hearsay here as to what Mr. Rubow said during these discussions.

MR. KELLAHIN: I respectfully disagree with you. It's not hearsay when a party of record before the Division has made admissions to my client who is under oath and here to testify. That doesn't constitute hearsay when a party involved has made admissions to this man about his interests.

MR. CARROLL: Whether those admissions are against his interests or not is a factual matter. It sounds like Mr. Rubow was asserting that he had an interest in the wellbore, and that is not against his interest in this matter.

I'd just interject that to make the examiner aware of the hearsay objections that can be made to evidence currently being entered.

MR. KELLAHIN: I don't want to play school on evidence, Mr. Examiner. Mr. Carroll and I are going to disagree on what that is and what that rule means. What I'd like to do, though, is to put on the record what Mr. Wood believes were the issues to negotiate between himself and Mr. Rubow, what happened with those negotiations, and why he now seeks to have that interest pooled.

That's the predicate I need to establish for you so that you can say we've got an uncommitted interest here, and, despite our efforts, have not been able to reach an agreement and therefore are entitled to a pooling order.

EXAMINER CATANACH: You may proceed.

Q. (BY MR. KELLAHIN) The issue of difference was that Mr. Rubow asserted to you that he had an ownership interest in the wellbore?

A. That is correct. And that he was more than happy to participate in the further completion of the well and operation of the well; however, he asserted that his right was absent of having to pay any costs previously incurred in the drilling of the well.

Q. Subsequent to that conversation, did you offer in writing for each of those two spacing units, the Carnes and the Miller spacing unit, another offer?

A. It was basically the same offer.

Q. But you have now repeated it in detail in writing?

A. In writing. And that was my letter of March 1st.

Q. With regards to the value of a proposed lease acquisition, did you offer Mr. Rubow the same range of compensation that you had been offering others?

A. I offered Mr. Rubow exactly what I had offered other people in the exact same tracts that Mr. Rubow's interest was derived.

MR. KELLAHIN: We are looking, Mr. Examiner, at the correspondence from March 1st of '94. And the particular copy I have in front of me says the Carnes' well. It's addressed to Mr. Rubow.

Q. In terms of the compensation under a lease arrangement, had you been successful in obtaining leases from other interest owners in those spacing units at those rates?

A. Yes, sir, we have.

Q. What, if any, response did you get from Mr. Rubow concerning your proposal of March 1, if you will, for the Carnes' well, and the March 4th letter for the Miller well?

A. Mr. Rubow verbally rejected our offer to lease and our premise concerning costs.

Q. Did his position change from your conversation earlier with him?

A. No, it did not.

Q. The point of difference is still the same?

A. Yes, it is.

Q. Summarize for us, Mr. Wood, if you have an opinion, why you have disagreed with Mr. Rubow on his contention about not having to pay for actual cost already spent in this basin?

MR. ANDERSON: Your Honor -- excuse me, I didn't mean to say Your Honor, but I did, didn't I? I'm going to object to Mr. Wood testifying as to a matter of law. The question that has been posed to him is not a question of fact that's within his capacity to answer, but rather it's a question of law and a matter for a court.

MR. CARROLL: Mr. Anderson, what exactly is the question of law that you're bringing up?

MR. ANDERSON: The question of law is why is Consolidated entitled to Richmond's costs from Mr. Rubow. That is a matter of law. The right of Consolidated to those costs is a matter of law. It's not an opinion question for a witness.

MR. KELLAHIN: Mr. Anderson and I are going to disagree. Without objection, Mr. Wood has been qualified as an expert petroleum landman, and within the context of that expertise, he certainly can reach and express an opinion as to why he and Mr. Rubow have disagreed about how and if Mr. Rubow participates in this well and whether or not he is entitled to benefit in some cost arrangements.

We've been talking about it for almost an hour now, and I think it's the next logical question to ask and fully within his expertise.

MR. ANDERSON: Certainly the question as to whether or not they agree to disagree is within his competence. As to why Consolidated is entitled to Richmond's costs, that's not within his competence.

MR. CARROLL: Mr. Anderson, and I'd recommend to the examiner here, I think he's testifying as to why there's a disagreement, and he is not testifying as to his opinion on the legal matter.

MR. ANDERSON: Okay.

MR. CARROLL: Is that correct?

MR. KELLAHIN: I'm going to ask him his opinion on that disagreement.

MR. ANDERSON: My point was he wants his legal opinion on that matter, and he's not competent to testify as to that.

MR. CARROLL: I think, Mr. Examiner --

MR. KELLAHIN: Mr. Anderson has misstated my question. I'm not asking him a legal opinion. I'm asking him a professional expert opinion within his expertise.

MR. CARROLL: Mr. Examiner, I'd recommend that the witness be allowed to answer the question, and you need to take under consideration that he's not a lawyer and his opinion is given for what it's worth, and it's sure not in any way binding upon you.

EXAMINER CATANACH: Yes, because this is not the final say-so by any means in this matter, I'm sure. And this will probably just be considered their opinion in the matter. So I will go ahead and allow it.

THE WITNESS: Can you restate the question?

MR. KELLAHIN: Yes, sir.

Q. Mr. Rubow asserted to you that he was unwilling to make an agreement, and the problem with the agreement was that he wanted to be credited with his proportionate share of the actual costs already spent. Is that a correct statement of what he told you?

A. Yes.

Q. All right. What position did you take on behalf of your company in response to his position?

A. I believe Mr. Rubow is incorrect. And the reasons I believe Mr. Rubow is incorrect, I mean, once again, take you back to the acquisition of these properties. When Consolidated was looking at and later acquired these properties from Richmond, we didn't -- we recognized that their ownership in the well might be disproportionate or higher than their rights to production. In other words, I knew that Mr. Rubow's interest was unleased. I did not credit Mr. Rubow with an automatic interest in the wellbore, and I'll explain why.

These, both wells, the Miller and the Carnes, were drilled under -- by virtue of farmouts and under the Commission orders. Those Commission orders provided Richmond the opportunity to drill Fruitland coal wells and subsequently establish production and to operate those wells on a unit basis and pool interests that did not participate.

Richmond did not perform under those orders, fully perform, in my opinion. Richmond did drill the wells, but Richmond never completed the wells, as I believe was required by the order, for quite some time afterwards.

In fact, the Carnes' well, Richmond never did touch again. Essentially, it was just a borehole that it penetrated, it was cased through the Fruitland coal. No gas had been brought to surface. No production had been established.

The Miller well was in the same position until December of '92, when, for whatever reason, Richmond chose to complete that well.

In other words, what I'm saying is that the original Commission orders provided Richmond with the opportunity to drill Fruitland coal wells and to subsequently pool interests. Richmond did not perform under the original orders.

Obviously, leases did expire, and I don't believe that anything that has transpired retroactively gives Mr. Rubow any sort of interest in that wellbore. We have never questioned Mr. Rubow's right to production in the event that coal bed methane production is established and 320-acre equivalent spacing unit is used. We have never questioned that.

We have merely questioned his right to

essentially have retroactive ownership in the wellbore or wellbores.

Q. Have you been involved in land title transactions and arrangements where oil and gas leases have terminated or expired of their terms and have not been held by production?

A. In this --

Q. In any of your dealings as a landman within the course of your professional experience, have you dealt with the sequence of expiring oil and gas leases within a spacing unit?

A. Yes.

Q. Do you have a copy of the Rubow oil and gas lease that is the subject in this case?

A. Yes.

Q. Mr. Rubow's interest in the spacing unit was a mineral interest?

A. Yes.

Q. Is there a copy of the oil and gas lease that affected his interest?

A. Yes. I believe it's stapled behind all of the correspondence. It's the Stella Quintana lease dated May 20, 1988.

Q. The Stella Quintana lease to McElvain?

A. That is correct.

Q. How in that lease does Mr. Rubow have an interest?

A. Have an interest in what?

Q. By the time that Richmond drilled the well?

A. Mr. Rubow purchased, along with others, the mineral interest that was covered by this lease.

Q. How does that interreact with the Quintana-McElvain lease that's dated May 20, 1988?

A. I'm not sure I understand the question.

Q. What is the source of Mr. Rubow's interest in the spacing unit? Did he get a lease from somebody, or does he own the minerals?

A. He owns the minerals.

Q. Were those minerals ever under lease to McElvain, to Richmond, or anyone else?

A. It's my understanding they were under lease at the time he bought them by virtue of this lease of May of '88 to T.H. McElvain, Jr.

Q. He bought the oil and gas mineral interest that was subject to the Stella Quintana lease to McElvain?

A. That's correct.

Q. When this lease expired then, he had the underlying mineral interest?

A. That is correct.

Q. All right, I'm with you. In order for Richmond to do something on either of those spacing units, to hold and make effective this oil and gas lease that would burden the Rubow interest, what would Richmond have to have done?

A. Richmond would have had to had either a producing well or a well, in this case, I'm assuming we're talking gas, a gas well capable of production shut in.

Q. And did that occur in either case?

A. No, it did not.

Q. And therefore the lease expired?

A. That is correct.

Q. Do you find any other document or agreement by which Mr. Rubow would have committed his interest to the well?

A. No.

Q. By which he would have committed his interest to the spacing unit?

A. No.

Q. Was the well located on his lease?

A. No, it was not.

Q. The Buddy Baker interest, is that a similar arrangement as the James Rubow interest?

A. It's identical.

Q. Would your opinions, conclusions, and statements about James Rubow be the same if applied to the Buddy Baker interest?

A. Yes.

Q. You contacted Mr. Baker before he committed his interest to Mr. Rubow, and you were not able to make a lease arrangement with him?

A. That is correct.

Q. Let's turn now to the subject of the Anderson interest. If you'll thumb through the correspondence, there is a letter dated March 1st of '94 as to the Federal well in the east half of 9 spacing unit, and then there's one for the Carnes in the south half of 11, dated also March 11.

A. Yes, sir.

Q. Do you recall those in succession?

A. Yes, sir.

Q. Following writing that letter, did you have any verbal or other correspondence, written or otherwise with Mr. Anderson?

A. I had telephone communication with Mr. Anderson.

Q. What was the context of the conversation?

A. Although I do not remember word for word, it was essentially the same as with Mr. Rubow. It was, one, an introduction; two, a description of our situation or our plans, how we perceived things to be. And I'm not sure, so I won't say -- I'm not sure if I made Mr. Anderson a verbal lease offer in any verbal communication.

Q. Do the two March 1st letters of this year represent your first written specific proposal to Mr. Anderson for his individual and the trust interests in each of those spacing units?

A. Yes, they do.

Q. What, if any, response did you receive back from him?

A. I'm not sure what other verbal communication. We've had other verbal communication. I'm not sure where it fits into the sequence of events. Essentially, Mr. Anderson responded in writing with his letter of March 14.

Q. Let's find that. Where in the package will we find that?

A. That will be right above my letters.

Q. It follows prior to your letter?

A. Subsequent to my letter, on top of.

Q. What position does he take concerning the negotiation?

A. Mr. Anderson essentially asserts a similar opinion as did Mr. Rubow in that he believes he does have the right to participate in the well without paying any share of any back expenses in drilling the well.

Q. Does Mr. Anderson maintain in any of his conversations or writings with you that the lease of his interest is still an effective lease?

A. No. Mr. Anderson and I fully agreed from the beginning, asserted that his lease had expired.

Q. When we look at his lease, what are we looking at, and where is it found in this package?

A. It's in the back of my letters.

Q. It's on legal paper?

A. It's on legal paper. It's a Xerox. My apologies, it's somewhat poor. It's in a different form than Mr. Rubow's. It's a lease dated July 19, 1988, once again, to T.H. McElvain, Jr., covering lands in the southeast southeast of Section 9 and the southeast southwest of Section 11.

Q. Primary term of two years?

A. Primary term of two years. The effective date of the lease was July 19, 1988.

Q. Did you make Mr. Anderson and the trust a similar offer as you made to Mr. Rubow and Mr. Baker concerning a proposed lease or farmout or participation?

A. I made them an identical lease offer and identical participation offers, the only adjustment being their interest.

Q. When you look at the sequence of events, did you come to a conclusion concerning whether any of the activity by Richmond on either the Federal well or the Carnes well was sufficient to extend the Anderson lease beyond its primary term?

A. After examining it, I don't believe that there was sufficient activity to extend the lease, no.

Q. Did you advise Mr. Anderson that you and he disagreed about the cost allocation and whether or not his interest should bear actual costs already spent?

A. Yes, both verbally and in writing.

Q. And you've not been able to resolve that?

A. No, I have not.

MR. KELLAHIN: That concludes my examination of Mr. Wood. We would move the introduction of his Exhibits 1 through 12, and let me renew my request to substitute the appropriate sundry notice for the Miller 11 Well instead of the Miller

10. We're asking permission to withdraw Exhibit 8-B and to give you the right form.

EXAMINER CATANACH: Is there any objection?

MR. ANDERSON: No objection.

EXAMINER CATANACH: Exhibits 1 through 12 will be admitted, and Exhibit 8-B will be substituted at a later time.

EXAMINER CATANACH: Mr. Anderson, do you have any questions of the witness?

MR. ANDERSON: Yes, sir, I do. Just for my own edification, since I've never done this before, Mr. Catanach, I met you, but, sir, I don't know who you are.

MR. CARROLL: Rand Carroll is my name.

MR. ANDERSON: Randy?

MR. CARROLL: Just Rand.

MR. CARROLL: Rand Carroll. And you are an attorney, Mr. Carroll?

MR. CARROLL: Yes.

MR. ANDERSON: Is it C-A-R-R-O-L-L?

MR. CARROLL: You got it.

MR. ANDERSON: Are you general counsel to the Commission?

MR. CARROLL: Yes, I am.

EXAMINATION

BY MR. ANDERSON:

Q. Mr. Wood --

A. Yes, sir.

Q. Let's see. After you completed the acquisition by Richmond, did you have to go back and buy a bunch of leases to shore up the title?

A. I'm not sure what you mean by a bunch, but we did acquire some new leases, both on minerals that were unleased -- were never leased by Richmond or anyone else at the time that they drilled the well, and some of those that had expired, that is correct.

Q. Can you give me an approximate number of the leases that you bought? This would include both New Mexico and Colorado?

A. The Colorado -- Colorado is not in a similar situation from the standpoint that there is -- and it is not shown on the map that there's conventional production. By that I mean Mesaverde and other production throughout the area in Colorado, that HVP's most of the leases.

Q. So Richmond's title in Colorado was okay?

A. Richmond's title in Colorado presented different challenges than their title in New Mexico.

Q. Then you didn't have to buy any leases in

Colorado?

A. I have not yet, no.

Q. But you're going to have to?

A. I'm not saying I won't, but I haven't finished my -- these wells are not -- the wells in Colorado are not on line either. I don't want to tell you that there won't be additional leases taken in Colorado. I'm saying I can't tell you of one today that I'm in the process of taking or that I know I have to take.

Q. So all the leases that you took were in New Mexico?

A. Yes.

Q. All the new leases?

A. All the new leases.

Q. And approximately how many of those did you take?

A. Two. Two leases, three individuals. Yeah, I wouldn't call it a bunch.

Q. What was the most you paid for any of these leases?

A. In dollar amount?

Q. Yeah?

A. $60 per net acre.

Q. And the maximum royalty that you paid?

A. 20 percent.

Q. And the best term that was given?

A. Primary term?

Q. Right, primary term?

A. One year.

Q. You said that Richmond acquired McElvain's interest by way of a farmout; is that right?

A. Yes. Most, and I stress the word "most," of Richmond's interest was derived through a farm-in from T.H. McElvain.

Q. Is that attached as an exhibit?

A. No, it is not.

Q. Do you have copies of those farm-in agreements with you?

A. No, I do not. I didn't think they would be pertinent to the discussion. I can tell you that in the McElvain, as well as any other farm-ins that Richmond may have had, no assignments have yet been made -- were made to Richmond or have been made to Consolidated.

When we were in the process, and I'm not sure of the sequence of the events, but either in the process or had just acquired these properties, I spoke with each and every farmor, such as T.H. McElvain, and secured an agreement, or I guess I'll use the term "ratification," even though nothing was called ratification, that those farmouts would still be in force and effect if indeed Consolidated was successful in establishing coal bed methane production.

Q. So apparently McElvain never felt compelled to assign the leases that McElvain owned to Richmond?

A. Not that I've ever seen, no.

Q. Have you checked the records in San Juan County?

A. Personally?

Q. Yes.

A. No. I might add that the new leases, that one of the new leases I took pursuant to my agreement was actually taken in the name of T.H. McElvain.

Q. In the farm-in agreement --

A. Which, with McElvain?

Q. Yes. I'm not sure I really want to ask you because I don't have a chance to cross-examine the document. I would like to know whether or not McElvain was obligated under the terms of the farm-in to convey its title to Richmond, but I would rather see the document. Would it be possible to have Consolidated send me those farm-in agreements?

EXAMINER CATANACH: Mr. Kellahin?

MR. KELLAHIN: I don't know what it's relevant for. If Mr. Anderson can persuade it's somehow relevant to your decision, Mr. Examiner. They are matters I guess we can find and are subject to discovery, if they're somehow determined relevant.

MR. CARROLL: Mr. Anderson, what is the relevance of the farm-in agreements to matters at hand here?

MR. ANDERSON: Well, it's related to whether or not my lease is still in force and effect. And there is an assignment on the record in San Juan County from Richmond to Consolidated in my lease, but the records are completely void of any assignment from McElvain to Richmond.

Consolidated is contending that they acquired all of Richmond's interest, but I don't think Consolidated acquired my lease. That's the point.

MR. CARROLL: Correct me if I'm wrong, Mr. Anderson, but hasn't Consolidated admitted that your lease has expired?

MR. ANDERSON: They think it's expired and I think it's expired, but of record it's still there. There's been no release filed. I haven't gotten a release from anybody. If you had an attorney examine the title, they would tell you that your minerals were still under lease until you got the release. And this bears on whether or not I am an owner under the terms of the statute that confers jurisdiction of the Commission upon me, that confers jurisdiction over me.

MR. KELLAHIN: Mr. Examiner, this is an issue of concern to Mr. Anderson but is not relevant to you. If McElvain has not filed a release of record to the oil and gas lease, that's of no consequence here.

MR. ANDERSON: I'm sorry --

MR. KELLAHIN: All parties admit that the lease has expired.

MR. ANDERSON: I'm sorry, but that's just not the case at all. For the Commission to have jurisdiction over me as an owner, I have to have the right under the statute to drill a well and to produce it. That's what the statute says.

MR. CARROLL: Mr. Anderson?

MR. ANDERSON: Right.

MR. CARROLL: You'd have to show me that statute. If you own mineral interest in the State of New Mexico, I believe we have jurisdiction over you.

MR. ANDERSON: No, sir, that's not right. For this Commission to have jurisdiction over me in this hearing, I have to be an owner in terms of the statute.

MR. CARROLL: I beg to differ there, Mr. Anderson.

MR. ANDERSON: Well, what I'm talking about is Section 7-2-17, paragraph C, and then further the term "owner" is defined by Section 7-2-33: "Owner means a person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another." And I'm telling you that I don't have that right as I stand here today because the condition my lease is in.

MR. CARROLL: Can we go off the record?

(A discussion was held off the record.)

MR. CARROLL: Let the record reflect that we've had a discussion whether the Commission has jurisdiction over this matter. After recommendation from counsel, the examiner has ruled as follows. Go ahead.

EXAMINER CATANACH: I think that we'll continue on the assumption that Mr. Anderson does have an interest, although that may be subject to some litigation. We can only assume at this point that he does have an interest and proceed at that, but I don't know what else we can do at this point.

MR. ANDERSON: Could I add one thing, please.

EXAMINER CATANACH: Yes, sir.

MR. ANDERSON: That we also discussed whether or not the Commission has jurisdiction over me as an individual, as an owner under the terms of the statute.

MR. CARROLL: That is correct, that discussion was had during the recess. Whether that interest is cloudy or in doubt, it is still an interest, and you are an owner of that interest, and by being here and voluntarily subjecting yourself to the jurisdiction of the Commission, we believe we have jurisdiction.

MR. ANDERSON: May I respond to that, please.

MR. CARROLL: Sure.

MR. ANDERSON: If I hadn't showed up, then probably the order would have been issued, and I would not have had the right to raise it on appeal because the district court in hearing appeals cannot hear new evidence. So me being here voluntarily is not an indication that I think I'm subject to the Commission's jurisdiction but rather preserving my right on appeal.

MR. CARROLL: Mr. Anderson, your interest is subject to the jurisdiction of this Commission, and just based upon that interest, I believe you would have the right of appeal.

MR. ANDERSON: Okay. Well, I guess there's no sense in going any further.

Back to my question, can I get copies of the farm-in agreement between McElvain and Richmond?

MR. KELLAHIN: We would object on the grounds of relevance, and you'll need to decide that issue.

MR. ANDERSON: Mr. Examiner, to explain what the relevance is, it's a question of whether or not I'm an owner under the terms of the statute which subjects me to the Commission hearing.

EXAMINER CATANACH: Will those documents enable you to make the determination that you are?

MR. ANDERSON: It will help me figure out who owns my lease. For instance, if all that was required under the farm-in agreement was for Richmond to drill a hole and it says nothing about completion, then Richmond probably is entitled to an assignment from McElvain.

If, on the other hand, the farm-in agreement, which is more customary, requires the actual completion and production, then it's possible that Richmond never earned the interest and that McElvain still owns the lease.

EXAMINER CATANACH: Mr. Anderson, is this the same issue that you're taking to court?

MR. ANDERSON: It's one of them. I'm trying to figure out who to sue to get my lease back or to get the lease terminated. And originally I sued Richmond and Consolidated, but after looking at the records in San Juan County, Richmond never acquired it of record.

Today is the first time I ever heard about the existence of this farm-in agreement, but I need to know whether the terms of the farm-in, Richmond is entitled to an assignment from McElvain.

Somebody is obligated to give me a release, and I don't know who it is. It's either McElvain, Richmond, Consolidated or everybody else that signed a voluntary pooling agreement.

MR. CARROLL: Excuse me, Mr. Anderson, but didn't Mr. Wood under oath say that the lease had expired that you have an interest in?

MR. ANDERSON: He did.

MR. CARROLL: It appears to me you have an open-and-shut case if you go to court.

MR. ANDERSON: I think it's open and shut, but I don't know who to sue to get it, whether I sue in Texas or New Mexico. I've got to sue somebody.

MR. KELLAHIN: This recourse is against McElvain. They're the ones that are the parties to the farm-in or the farmout.

MR. ANDERSON: We don't know what the farm-in says. Like I said, if Richmond is obligated to get an assignment or is entitled to an assignment from McElvain, then Richmond and Consolidated ought to be parties to the suit.

MR. CARROLL: Mr. Anderson, you're addressing matters outside the scope of this hearing. Your recourse is against McElvain. If they won't file a release of the lease, sue McElvain, but it really doesn't pertain to the matters here before the Division.

MR. ANDERSON: I think it bears on the ownership issue.

MR. CARROLL: Excuse me. You either have a royalty interest under the lease or you own the mineral interest.

MR. ANDERSON: Right.

MR. CARROLL: You're an owner either way.

MR. ANDERSON: No. If you're just a royalty owner, you don't have the right to drill and complete a well and to withdraw the production; therefore, you're not subject to any pooling order.

MR. CARROLL: But you've taken the position the lease has expired?

MR. ANDERSON: I have.

MR. CARROLL: And that you are the owner?

MR. ANDERSON: I have.

MR. CARROLL: You've said that on the record; therefore, you're an owner under the statute and we have jurisdiction over you and over this matter by your own admission.

MR. ANDERSON: No. That's not the way it works, though. You have to have legal right to drill and withdraw from the pool.

MR. CARROLL: You do have the legal right to drill. If you want to clear your title, then you sue McElvain to get a release of record.

MR. ANDERSON: If your title has a cloud on it, then you don't have the right. You couldn't get a partner in Texas or New Mexico to drill a well with you.

MR. CARROLL: That's outside the scope of our regulatory authority; so --

MR. ANDERSON: Can I get a copy of the farm-in?

MR. KELLAHIN: He needs to make demands upon McElvain to get the farm-in. It's not my problem. He can't have it both ways. He can't be a lessee and receive his royalty and, on the other hand, not, and yet want a share of actual costs spent without having paid for it.

His problem is with McElvain, and that's why we have force pooling, and that's why Consolidated gets to utilize it. And we don't need to get in his box in this problem. He needs to go see McElvain.

THE WITNESS: If it would be of assistance, and I hope I'm not out of line, I'm willing to testify that, in my opinion, Richmond did not earn an assignment or the rights to an assignment of your lease from McElvain, and, therefore, one was never given, having read the farmout myself.

EXAMINER CATANACH: Let's take a short recess.

(A recess was taken.)

EXAMINER CATANACH: We'll call the hearing back to order at this time, and we're going to continue with this case. And, Mr. Anderson, I believe that you're still cross-examining the witness.

MR. ANDERSON: Yes, sir. Thank you.

EXAMINER CATANACH: Maybe we ought to settle the issue about the agreement that you requested. Mr. Kellahin has agreed off the record to check with McElvain, and if it's not -- the agreement is not proprietary in any fashion, that he will release it to the Division.

MR. KELLAHIN: I will ask McElvain if they will release it to the Division, to Mr. Anderson, and to me, and we'll advise all the parties of what their response is. And I will do that tomorrow as soon as Mr. Wood and I can get back to our offices.

Q. (BY MR. ANDERSON) Let's see, Mr. Wood.

A. I've forgotten where we were at.

Q. Me too. Let me clear up something that's a problem in my mind. I got the impression from your earlier testimony that you weren't sure whether or not my lease was committed to the Carnes and the Federal wells; is that correct?

A. The question is, is your lease committed to those wells?

Q. Well, no. I got the impression that you didn't know or you weren't sure whether or not my lease was committed to the Carnes and Federal wells.

A. Okay. Why I --

Q. I'm asking you, do you know whether or not it was?

A. It was?

Q. I'm asking you, do you know whether or not it was committed?

A. Back when? I guess that's what I'm trying to figure out. How far back are you going, when? At the time of the original order or at the time the wells were drilled?

Q. At the time the wells were drilled, I guess.

A. Which was after the original order had been issued or orders. And your lease and the way I read the order and the way I understand is your lease was committed to the well if indeed Richmond -- to the unit, if indeed Richmond performed; i.e., drilling the well and completing the well as a producing coal bed methane well.

Q. So you're not aware of any declaration of pooling agreements -- you said you hadn't checked the records in San Juan County?

A. I said I personally had not gone to San Juan County and checked the records.

Q. So you're not aware of any declaration of pooling agreements?

A. I am aware that Richmond and the other working interest owners filed declarations pooling, I think, on all of these wells.

Q. My research shows there were two pooling agreements filed.

A. Are we talking about one well, or we talking about --

Q. They covered separate wells. One was on the Carnes well, and one was on the Federal well. And that my lease was listed in Exhibit A to those two pooling agreements. Do you know that to be the fact?

A. I believe that to be true, yes.

Q. Have you had a title opinion done on the Carnes and Federal wells?

A. No, sir.

Q. Do you plan to have one done?

A. Yes, sir.

Q. Are you familiar with how the Carnes and the Federal wells were drilled, or should I discuss that with --

A. Mechanically?
Q. Right.
A. I suggest you save your questions for Mr. Harrison.
Q. Okay. How much did Consolidated pay for the Carnes well?
A. I believe that's confidential information.
Q. Well, it may be confidential, but it's real relevant. I mean, you're asking me to reimburse Consolidated based on Richmond's costs, but you may have paid 15 bucks for it.
A. I can assure you we did not allocate 15 bucks to it. But when discussing -- and stop me if you wish, but I was asked the question. When you're trying to talk about one well in a large acquisition, the large acquisition includes countless liabilities, countless problems, and price is not merely on a well-by-well basis.
Q. Mr. Wood, I know that you all did an engineering study on these wells before you bought them because you guys are competent operators, and I know you allocated a percentage of what you paid Richmond for these two wells?
A. Yes, we did.
Q. I want to know how much you paid for the

Carnes' well.

A. I'm not going to share that information at this time unless instructed to do so.

MR. CARROLL: Mr. Kellahin, do you have something to say?

MR. KELLAHIN: The witness says he doesn't have his management approval to disclose those kinds of internal cost allocations with regards to this acquisition, and I can do nothing else than defend his statement.

I think he's got approval to tell you the overall gross price paid for the properties, but we're not at liberty with management to disclose how that may have been itemized, if at all.

MR. ANDERSON: Mr. Catanach, we're just doing the Texas two-step here. They're asking me to reimburse them for costs paid by Richmond, but it may bear absolutely no relationship to what they actually paid for them. This sounds like double-dipping or unjust enrichment to me, and I think I have a right to know how much they paid for the Carnes and Federal wells.

MR. KELLAHIN: My position is it's not relevant what they paid for it. The question is, what is it going to cost Mr. Anderson to participate. At this point he hasn't paid anything.

MR. ANDERSON: Fine. We'll just let Consolidated set the fare here.

EXAMINER CATANACH: We would rule that the information is relevant. So we would instruct the witness to answer the question as best he can.

THE WITNESS: If you would excuse me for a second. I didn't bring --

MR. KELLAHIN: May we visit about that topic, about how to respond?

EXAMINER CATANACH: Sure.

(A discussion was held off the record.)

EXAMINER CATANACH: Let's go back on the record at this time.

MR. KELLAHIN: Mr. Wood, in response to Mr. Anderson's question during the off-the-record break, did you examine in your briefcase and determine if you had a copy of that portion of the purchase agreement between Richmond and Consolidated that discloses the allocation of the purchase price back to the wellbores that are the topic of the discussion before the Division this afternoon?

THE WITNESS: Yes, I did.

MR. KELLAHIN: Has that copy that you brought with you been marked as Consolidated Exhibit

No. 16?

THE WITNESS: Yes, it has.

MR. KELLAHIN: Mr. Examiner, we would have this document entered in evidence as a privileged, confidential communication to be disclosed among these parties only for the purposes of the hearing, and that this portion of the transcript from here forward with the questions and answers that Mr. Wood responds to for the exhibit be treated as confidential and sealed from the public.

EXAMINER CATANACH: That request will be granted, Mr. Kellahin.

MR. ANDERSON: May I approach the witness and pick up the exhibit?

EXAMINER CATANACH: Yes, sir.

EXAMINATION

-Continued-

BY MR. ANDERSON:

Q. According to this exhibit, you paid roughly $192,300 for the Carnes well?

A. If that's what's indicated there.

Q. And Richmond's cost, as reflected on Exhibit 10, $199,000 plus under cost?

A. Richmond's, the total cost of drilling the well?

Q. Yes.

A. Well, I don't have it in front of me. I'm assuming you're quoting it correctly.

Q. I'm reading from Exhibit 10 here.

A. Okay.

Q. Then on the Federal No. 1, paid $264,000 for the well, and Richmond spent $135,000; is that correct? I think I've got that right, about $135,000?

A. I believe you're reading out of the net column.

Q. I'm sorry, you're right. $140,000 plus?

A. Gross cost of the well.

Q. I think I did that on the other one, too. Richmond spent about $224,616 on the Carnes well?

A. The exhibit that I just handed you is based upon Richmond's net. The figures I believe you're quoting are gross costs off Exhibit 10; is that correct?

Q. Yes, that's correct. So you must have given some value to gas in the ground, at least in the Federal well?

A. We gave value to the wellbore itself and to perceived reserves in the Fruitland coal.

Q. Can we go back to Richmond's costs? Did

Richmond prepare Exhibit 10, or did you?
A. Richmond did.
Q. And I take it they prepared this probably from their invoices or what?
A. Well, I would make that assumption but --
Q. But you don't know?
A. I have no idea what else they could have prepared it from.
Q. They didn't tell you where they got the information? They didn't say what the source of these numbers was?
A. Their accounting records.
Q. They told you that, Mr. Wood?
A. Yes.
Q. I imagine that Richmond as operator actually paid the cost, as is usual and customary, but do you know what percentages of these costs Richmond actually paid and what percentage they recouped under the JIB?
A. If I understand the question correctly, Richmond paid all the costs and collected all the money due them from the other joint working interest owners.
Q. That's what I'm trying to get at.
A. Yes.

Q. The percentage that they collected under the JIB's?

A. They had no outstanding JIB's at the time we bought.

Q. I don't mean that either. How much -- let's take the Carnes well.

A. Yes.

Q. Out of $224,616.72, how much did the partners contribute to that well?

A. Well, if you'll read, Richmond is showing their net at a little over $199,000. I'm assuming that the difference was collected from the other nonoperating parties.

Q. So you think that this net amount column here is what Richmond was actually out-of-pocket?

A. I believe that's correct.

Q. And you stated that Richmond actually paid all the bills?

A. I don't know that to be a fact. It is customary for the operator to pay the bills.

Q. There were a ton of liens filed against Richmond in San Juan County. I didn't look at all of them. But do you know whether in fact Richmond actually paid out $199,471.83 on the Carnes well?

A. No, I do not.

Q. Would the same be true of the Federal well, do you know that Richmond paid $135,415.25?

A. No, I do not.

Q. Would you know, for instance, on the Carnes well, the difference between the gross amount and the net amount, would possibly that be attributed to any moneys paid by McElvain?

A. Can you give me an example? I'm not --

Q. Let's say McElvain only had my lease when it went into the well. I don't think that was the case, but let's just assume that they only had 1/32 of the well. Do you know whether or not McElvain paid 1/32 of these costs?

A. No, I don't know. I know pursuant to the farmout agreement, they were not required to do that, and I'll make the assumption they did not, but I don't have a record of money changing hands.

Q. Do you know whether or not McElvain was billed anything by Richmond?

A. My answer is the same. Pursuant to the agreement that Richmond operated under, McElvain was to pay no costs. Richmond was to assume those costs or pay those costs attributable to McElvain's share, as is customary in a farmout agreement, if I understand what you're asking me correctly.

Q. What I really want to know is whether or not McElvain paid any of these costs on either the Carnes or the Federal well?

A. Not to my knowledge.

Q. But you don't know whether they did or not, actually?

A. I have no idea, no.

MR. ANDERSON: I think that's all I've got.

MR. KELLAHIN: I've got one point on redirect, if I may.

EXAMINER CATANACH: Okay, sure.

FURTHER EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Wood, Mr. Anderson referred to two declaration of pooling agreements. There's apparently of record a declaration of pooling agreement filed for the Carnes and one filed for the Federal well. Do you understand what a declaration of pooling agreement is?

A. Yes, I do.

Q. Describe what it is.

A. Declaration of pooling is a voluntary pooling amongst those who possess the right to pool, typically, the lessee in most cases, not always, to form a voluntary unit, typically to correspond to a spacing unit that's established by the Commission.

Q. Will that declaration be exercised by the operator or the lessee by utilizing the pooling provision clauses of the oil and gas leases, if those leases have those kinds of clauses?

A. Typically, yes.

Q. What happens if either before or after the declaration is filed or executed, one of the underlying oil and gas leases terminates or expires for any reason?

A. That lease is unaffected by the pooling. It is not a part of the pooling. The pooling requires, as I believe does the Commission order, for the operator to perform in a certain manner. It provides them an opportunity -- it outlines what will be if the operator performs; i.e., in this case, the well is drilled, the production established. If nothing happens or if that doesn't happen, then it carries no force or effect.

MR. KELLAHIN: Thank you.

EXAMINER CATANACH: Give me a couple of minutes. I've got to make a phone call.

(A recess was taken.)

EXAMINER CATANACH: Let's go back on the

record, and a couple of questions.

THE WITNESS: My exhibits are all messed up so give me time.

EXAMINER CATANACH: This has been like going through a maze here. I just want to clarify some issues to make sure I understand.

EXAMINATION

BY EXAMINER CATANACH:

Q. Going through each of these, I'm going to start with Exhibit 2, and I want to determine actually which interests have been consolidated and which interests you guys are actually pooling at this time. I mean, you've got a bunch of interests listed, if you'll look at Exhibit No. 2.

A. Yes.

Q. Obviously, all of Consolidated's interest is in the well. You don't have an agreement with Mr. Anderson, Mr. Bogeberg?

A. Yes.

Q. You do not have an agreement with him?

A. I do not have agreements with Anderson or Bogeberg. I was trying to show you the other working interest parties.

Q. Right.

A. I do have agreements with McElvain,

Raymond, and Southland Royalty.

Q. You do have agreements with those parties?

A. I do have agreements. If you'll allow me, I'll make the blanket statement that I have signed agreements -- well, they're not really agreements, they're just confirmations, from all of the original working interest owners.

I sent letters out that basically said our records indicate that this is the interest you have in this particular well, and please confirm that. And I also listed the agreements that they were subject to. And all parties returned those. And all parties except Mr. Anderson, Mr. Rubow, signed the AFE's for these wells.

Q. The Bogeberg interest was not locatable?

A. Correct.

Q. So is it your opinion that in each of these wells, the only interest that has not been consolidated are the Anderson and the Rubow interests?

A. Yes.

MR. KELLAHIN: No.

THE WITNESS: In addition to Bogeberg and Clark and Rodriguez, yes.

Q. (BY EXAMINER CATANACH) The Federal well did not penetrate the coal. That's what I heard?

A. Correct. Consolidated did that over the last couple of months. In order to qualify for the Section 29 tax credit, once again Mr. Harrison can tell you exactly what went on, but we had to drill into the coal. I don't know why Richmond stopped prior to reaching the coal.

Q. That was done recently, in the past two months?

A. It was done, yes, once again, in order to qualify the well for the Section 29 income tax credit.

Q. Was that well completed?

A. We brought gas to surface. We consider that well as being a shut-in gas well now, waiting on fracture stimulation and pipeline and facilities.

Q. Would it be more appropriate to ask Mr. Harrison?

A. I would save your questions for Mr. Harrison.

Q. The other two wells, one of the wells was completed, perforated?

A. The Miller 11 was perforated I believe in December of '92, which at the time I believe was the deadline for the Section 29 tax credit or just before the deadline.

Q. And the Carnes well?

A. The Carnes well was never perforated until just recently. I think it was done either -- I believe it was done just before the Federal well.

Q. That was done by Consolidated?

A. Yes.

Q. The actual drilling cost that you want to base your -- let me back up here. You've got an exhibit that shows actual well cost obtained from Richmond?

A. Yes, sir.

Q. Those just include drilling costs, or do they including costs incurred by Consolidated?

A. They do not include any costs incurred by Consolidated.

Q. Exhibit No. 11, your AFE for the Carnes and the Federal wells --

A. Yes, sir.

Q. -- those are estimates for completion costs?

A. Those are estimates for completion costs -- well, not all completion costs. Once again, the object of the work done in those two wells was to basically bring gas to surface, establish that it's coal bed methane, and qualify for Section 29 income tax credit.

Q. They're estimated costs of what Consolidated has already spent?

A. This is what was sent out prior to our conducting the work.

Q. But the work has been completed?

A. Yes.

Q. Is there an exhibit showing estimated completion costs?

A. From this point forward?

Q. Right.

A. No, there is not. Can I suggest you save that question for Mr. Harrison?

EXAMINATION

BY MR. CARROLL:

Q. Mr. Wood, I have a couple of questions. What happened to Richmond, are they still in operation?

A. Is Richmond still --

Q. A company, operating?

A. To the best of my knowledge, they are, yes.

Q. Do you know what problems they were experiencing up there north of Navajo Lake in completing the wells and connecting them to gathering lines?

A. You mean why wasn't it done?

Q. Right.

A. Do I know why? I know some of the reasons. I'm sure I don't know all. Richmond, you have to understand, drilled a lot more wells than just those that we're looking at. These are not a small portion of everything they did but certainly not the majority of everything Richmond did in whatever, four or five-year span they were an active operator.

I know the things that readily come to mind are the lawsuit, which all the Colorado wells, the Southern Ute lawsuit over ownership, certainly has a great impact or had on Richmond, as well as a lot of operators in Colorado. That would probably be one of the major items.

To be honest, I've tried to apply logic to a lot of things Richmond did, and I don't know. You'd have to ask them.

Q. Who owns the gathering lines in that little peninsula there?

A. What little peninsula?

Q. Jutting down south into Navajo Lake?

A. Into New Mexico?

Q. Yes.

A. There are no gathering lines.

Q. Who owns the closest gathering line?

A. Mr. Harrison can speak to it, but I believe it's the surface line in Colorado, which none of these coal bed wells are connected to, that's referred to as the old Tiffany line, and I believe it's owned by Southwestern, but I don't know.

Q. Mr. Rubow bought Buddy Baker's interest, and that was fairly recently?

A. He was reconveyed that interest. I'm assuming he bought it, but yes. The interest was originally at -- well, when we came on the scene, the interest was owned, split evenly between Passport Energy, I believe that's the name, and Mr. Baker. Passport conveyed its interest to Mr. Rubow, and so did Mr. Baker. So that's all been consolidated. And he has provided me, and I believe it's in the correspondence, a recorded mineral deed to that effect.

Q. Yes. I believe the date on it is March 24, '94.

A. Yes. It just happened.

Q. You said the Section 29 tax credit, the deadline was extended to March 31, 1994?

A. For some wells, of which these were some. I'm not sure of the full extent. I just know that in our conversation with the appropriate agencies, that these wells could qualify if indeed we did the necessary work and filled out the application, which forced us into somewhat getting the cart before the horse. We would have much rather gotten some things settled, but it's valuable to all parties, royalty owners, working interest owners, everybody. It was something that needed to be done.

Q. Just one more. What are JIB's?

A. Joint interest billings, invoices.

MR. CARROLL: That's all I have.

FURTHER EXAMINATION

BY EXAMINER CATANACH:

Q. Just a couple more, Mr. Wood. I'm still trying to make sense out of the Anderson/Rubow interests. Initially, the Anderson and Rubow interests were leased to McElvain?

A. That is correct.

Q. Now, McElvain, how did those interests get conveyed towards him?

A. Can I just kind of free associate here?

Q. Sure.

A. That's kind of what we've been doing. I don't know about you gentlemen, but I'm getting a little tired.

You're correct. Both leases were leased to T.H. McElvain, Jr. Richmond, by virtue of a farmout agreement, which merely states that if Richmond goes out and drills wells on the properties that are completed as producers or wells capable of producing, that they would receive assignments, certain interests in those leases from T.H. McElvain.

Q. And there's no cost to McElvain in drilling the wells?

A. That is correct. McElvain would have an interest in the wells after payout, after Richmond recouped their costs attributable to McElvain's original interests.

Q. I'm sorry, run that by me again. I was trying to write something.

A. McElvain went back in for a share, I believe it was a third, at such time as Richmond recouped their costs associated with the McElvain interests; i.e., if Richmond spent $100,000, and McElvain originally had 30 percent, once Richmond recouped the $30,000 that McElvain would have spent had they participated in the well, then McElvain would back in for a share, actually own a share of the well. Richmond did not perform, and no assignments were ever made.

The first thing I did when we were buying this interest is I flew down here and met with McElvain representatives and negotiated, just like I've done with everybody, laid all the cards on the table and said, "Now where do we go?"

The McElvains agreed to honor the terms of the farmout even though it was four years old or so, way past its term, if Consolidated would use its best efforts to complete the wells and hook them up for gas sales. McElvain and Consolidated both realized that McElvain does not have the full interest that it did back in 1990. Certain leases have expired.

Q. Rubow's?

A. Mr. Anderson's, Mr. Rubow's. And that just happens in the business. And the McElvains are fully cognizant of that. My agreement with them was to use my best efforts at Consolidated's sole cost to reacquire through leases any minerals or any old McElvain leases that had expired. The new leases I've taken were in McElvain's name, and I paid for them. And that's what I felt was the right thing to do, and that was the first start to putting all this back together.

Everything that could have gone wrong went wrong, and Consolidated has gone to -- we knew we were buying a mess. So I'm not trying to say we were innocent bystanders, but we've gone to great lengths to treat everybody fairly, straightforward. I have not offered anybody any more money to lease than I've already leased to other people for. And we've been very open and forthright, did as much as we can through this entire process. Tried to get these wells back on, and of course tried to do what's in everybody's best interests, especially Consolidated's, since that's my job.

And we're almost done. I'm glad to say it's almost there. Mr. Rubow and Mr. Anderson are really the -- not that some minor land issues may not come up in Division order type of title, but as far as reestablishing interests in the wells, we're almost done.

EXAMINER CATANACH: I have nothing further.

MR. ANDERSON: Could I ask just a couple of questions?

EXAMINER CATANACH: Briefly.

FURTHER EXAMINATION

BY MR. ANDERSON:

Q. Has anybody else proposed a well in the south half of Section 11, Township 32 North, Range 6 West or the east half of Section 9, Township 32 North, Range 6 West?

A. To Consolidated?

Q. Right.

A. Since our taking over?

Q. Yes.

A. A Fruitland coal well?

Q. Right.

A. Or any well?

Q. Any well?

A. Not to my knowledge.

Q. Has anybody contested your right to complete the Carnes and Federal wells?

A. Not to my knowledge, no.

Q. And I didn't contest your right to complete those wells?

A. No, sir, you did not.

Q. Has anybody else asserted the right to drill in the south half of Section 11 or the east half of Section 9?

A. Let me just make a statement, and then I'll answer your question. My rights are limited to the Fruitland coal.

Q. Okay.

A. Okay? So I'm not aware of other things that may go on.

Q. That's fine. You can limit the question to the Fruitland coal.

A. Okay. Can you restate the question?

Q. Sure. Has anybody asserted the right to drill into the Fruitland coal formation in the south half of Section 11 or the east half of Section 9?

A. I'm not sure what you mean by your question. It's very similar to the one I just answered, I thought.

Q. True.

A. Still I'm not sure what you're -- is it the same? I'm not sure what you're asking me.

Q. Nobody has proposed a well?

A. Right.

Q. Nobody has contested your right to drill or complete these wells, but has anybody asserted their right to drill an additional well?

A. I'm not sure what you mean asserted their right to drill.

Q. Has anybody called you on the phone or written you a letter and said, "I have a right to drill the well into the Fruitland coal formation in those two half sections also"?

A. Not in so many words, no. I'm still not clear what you're asking me, and I apologize.

Q. I don't know how else to say it.

A. Please try. I'm more than willing to answer the question. I just can't.

EXAMINER CATANACH: One at a time, please.

MR. ANDERSON: Sorry.

Q. Has anybody notified you, or have you heard of anybody insisting that they also have the right to drill a Fruitland coal well in the south half of 11 or the east half of 9?

A. Maybe this will answer your question. I have had nobody express their intent to do so.

Q. Have I proposed a well?

A. Not to my knowledge.

MR. ANDERSON: Okay. Thank you.

EXAMINER CATANACH: The witness may be excused.

MR. KELLAHIN: Mr. Examiner, at this time I call Mr. Alan Harrison.

ALAN HARRISON,

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

EXAMINATION

BY MR. KELLAHIN:

Q. Would you please state your name and occupation.

A. My name is Alan Harrison. I'm the district operations manager for Consolidated Oil & Gas.

Q. Do you hold a professional degree within the oil and gas industry?

A. I do. I have a Bachelor of Science Degree in petroleum engineering from Colorado School of Mines, and I obtained that in 1981.

Q. What do you specifically do for your company?

A. Okay. My primary function there is to oversee any reservoir- and operation-related activities to our properties that we operate. And in this particular instance I've been assigned the Richmond area or the San Juan Basin area.

Q. Including the Carnes, the Miller 11, and the Federal 9 Well?

A. That's correct.

Q. As part of your duties, have you made investigations of those wellbores to satisfy yourself what additional work needs to be done in those wells?

A. I have.

Q. And have you formulated opinions about the ranges of costs that are involved in completing and putting those wells into production?

A. I have.

Q. In addition as an engineer, have you reached an opinion with regards to the remaining risk involved for getting these wells into production and to have sufficient production to pay for the cost of those wells?

A. Yes. I have considered that and have various opinions on that.

MR. KELLAHIN: We tender Mr. Harrison as an expert engineer.

EXAMINER CATANACH: Any objection?

MR. ANDERSON: No objection.

EXAMINER CATANACH: Mr. Harrison is so qualified.

Q. (BY MR. KELLAHIN) Perhaps the easiest way is take them one at a time.

A. That's how I have them set up here. That will work just fine.

Q. Pick one. Which one do you want to start with?

A. We'll start with the Carnes.

Q. Okay. Before we talk about the costs, tell me the status of the wellbore at the point of acquisition or thereabouts.

A. Okay. At the time of acquisition, what existed was a wellbore that was not capable of producing gas to the surface. It had limited surface equipment, really only to the extent that it had a wellhead on there, and that was it, really no other type of surface facilities around, and again not capable of production at that time.

Q. Did you make an examination of the mechanical integrity of the wellbore, anything to do with whether or not it was still serviceable and suitable for the purpose to which it had been intended?

A. Yes, I did. For instance, I constructed the wellbore diagrams from the records that were provided in the Richmond files and so forth and tried to determine exactly what was below the surface.

Q. And what did you find out?

A. Okay. Basically, what they had done is they had drilled to a certain death above the coals, set an intermediate string casing, came back at a later date, that being in December of '92, drilled down through the coal, set a liner in place, cemented that liner in, and at that point came out of the hole.

Subsequent to that activity, they attempted to go in and perforate the well but encountered a cement bridge very close to the liner top. They simply walked away at that point from everything I see. They never returned to either clean out the well or attempt to perforate it.

Q. When we look at the Carnes well in that status, and recognizing that I have told you the pooling order in that case provides for a risk factor penalty of 156 percent, and that if there are nonconsenting interest owners, their proportionate share of a working interest may be assigned a risk penalty number, the 156 number, do you have an opinion as to whether the examiner ought to reduce or change or somehow modify that penalty factor for the Carnes well?

A. I would have to say that that assessment, in my opinion, is a fair assessment, and it should be continued with.

Q. Does the fact the wellbore has been drilled reduce or diminish the risk factor penalty?

A. No, it doesn't. And I want to qualify that, to the extent that, from a geological standpoint, the presence of the coals, we're fairly certain that they would be there. The mechanics of drilling a well to that depth are taken under a slight risk to the operator because they're usually drilled under a turn-key type contract.

So really the majority of the risk lies in knowing what type of well you're going to get. There's just a wide variance throughout the Basin in regards to coal bed methane-type wells in terms of their production volumes, water volumes, and their feasibility to produce.

Q. Does that risk then still remain ahead of or in the future for Consolidated and the other working interest owners?

A. It does.

Q. Is there anything about the way the Carnes well was drilled that affects the risk?

A. Yes. And I have to say, it not only affects the Carnes well but all the wells here. And that is, at the time these wells were drilled, which was back in the middle of 1990, a lot of operators and drilling companies, for that matter, to reduce their risk of blowout drilled with drilling mud. And that was to counteract the poor pressures they might encounter to prevent a blowout.

A lot of operators have undertaken a lot of steps to research the damage that's caused by drilling in an overbalanced situation and drilling with a fluid that poses some contaminants to the coal beds. And nowadays what you see are operators drilling in the coals with either water or air.

Again, it's something that at the time the wells were drilled, it was probably an acceptable practice. Now we know that it can cause some formation damage, given the fact that the Carnes as well as the other two wells were drilled with drilling mud, we do anticipate there could be some formation damage, and we're hopeful that through our research and determining a way to stimulate this that we might be able to rid that damage, but it is a risk that still lies ahead, and it's not certain as to what extent we may be able to correct the formation damage.

Q. When we look at the Carnes well, the Division records reflect an AFE in the case file for the Carnes. It's in our package as Consolidated Exhibit No. 6. It shows certain dry hole and proposed completed well costs.

Then we have submitted the costs as

accounted to us by Richmond for moneys actually spent on that well. And that was marked as Exhibit No. 10. Do you have a copy of that, Mr. Harrison?

A. Yes, I do.

Q. And then Exhibit No. 11 is an AFE for the additional work that was done to qualify the well for the tax credit. Do you have that?

A. I sure do.

Q. Lead us through the process now. What I want to know is your opinion on the range of costs for a completed well. Show us where we are with actual costs spent by Richmond, actual costs spent by Consolidated, and what lies ahead then as future potential cost to be paid for by the working interest owners.

A. Sure. I've looked at the AFE estimate that was provided to the working interest owners prior to the drilling of the well, and based on the itemized cost items there, in my opinion, they're reasonable, given the time that they were prepared, that being in 1990.

You know, I can't say that these costs are reflective of today because prices have changed regarding certain services, but yes, the AFE does appear to be reasonable.

Looking at what they have incurred in costs, that Richmond has incurred in costs to date in getting to the point where they have cased the well but were unable to perforate it, those costs are also reasonable costs. I think it's pretty obvious that in just seeing the relocations themselves that Richmond was concerned about costs and then probably took precautions to keep the costs down.

So yes, everything that was incurred, again, is reasonable.

As far as what we've undertaken, as was alluded to earlier, there was a deadline in order to complete our application for the Section 29 tax credits under the NGPA 107-2. We put together a work-over procedure that would allow us to go in and recover gas from the coal beds, analyze that gas, and supply that to the proper state agency to verify that yes, this well is producing coal bed methane gas.

That was done. We prepared an AFE that was sent out to partners prior to our conducting this work. Our AFE estimate was $24,850. We went out there, and we actually did the work for under $20,000.

I can't give you an accurate cost estimate at this point because there still are some bills that are coming in. It's very common practice in an oil field that when you go out and conduct work with the various service companies, that you dispute some of theirs charge. We're going through that process. I imagine in another two or three weeks, we will have an accurate cost for describing the work here. I know it does come in under the AFE cost.

As far as what we see ahead for this well, as was indicated, this well has nothing on it more than a wellhead. We haven't installed tubing in the well, which was done during the time of the workover. We will need to go in there, stimulate the well to produce it at its optimum levels.

That is going to probably be the majority of our cost estimate at the time that we prepared that. We also have to equip the well with the proper facilities to allow the gas to come from the well, rid itself of any liquids, and then eventually lay a flowline from that well to our gathering system and get the well on production. I've estimated those costs to accomplish that are going to be in the range of $150,000.

And I would like to qualify that and say that the reason we have not prepared a detailed estimate on that at this time is we are probably two to three months away from actually getting to that point on these wells. We're still not comfortable that we have researched the stimulation process enough to go out and say that, here's what we're going to do on this well, and here's how much it's going to cost.

Over the next course of a month, I will be researching that more intensely and expect to arrive at a decision on how we will stimulate the well, and then we will go to the proper service companies to get bids. Again, that's probably going to be the main cost in the cost of completing this well in order to put it on production. That's where we are with the costs.

Q. Subject to the fine-tuning the specific details of future remaining expenditures, your best estimate at this time is that it's in the range of $150,000?

A. That's correct.

Q. Let me share with you what the procedure normally is for AFE's under pooling orders and see how we might fit supplemental AFE's into a schedule. Quite frankly, the Division, I think, has not been faced with amending or reissuing pooling orders in the middle of the drilling activities. The industry, I believe, deals with it in terms of supplemental AFE's, as you have done?

A. That's correct.

Q. Let me suggest a procedure, and you tell us how it would work. If the Division examiner agrees to reissue the pooling order, after the pooling order is issued within some time sequence, you would have an obligation to submit a specific AFE for remaining future costs to all interest owners that are subject to the pooling order. And it would be the same AFE that you're going to send to the working interest owners that are committed to the wells either by a JOA or some other document.

After that notice is sent out, then the parties under the pooling order have a chance to pay their share. Thereafter, once money is actually spent, all those parties under the pooling order can object to actual reasonable costs and bring you back before the examiner and talk about if all those expenditures were fair, reasonable, and appropriate.

Would that general schemework of things apply to give us a solution for how to handle remaining future costs for these wells by having you prepare and submit to the Division and to these other owners that specific AFE that identifies the items that go into the $150,000?

A. Yes. I can prepare that within, I'm going to say, a 30-day period after the order is issued.

Q. That time frame, would that be a sufficient time frame in which to have elections made for the additional work and to get that work done in a timely fashion?

A. Yes, it would. And if we felt that it needed to be done earlier, then we would just send out the AFE's earlier.

Q. Let's turn to the next well in your package. What's the next --

A. I have the Federal.

Q. Let's look at the Federal 9 Well. At the time Consolidated acquired that well, describe for us the status of the well as you have determined it to be.

A. Okay. This was, is what the industry calls it that works in the San Juan Basin, a top-set well. It was drilled down to the top of the coals. An intermediate casing string was set right above that to keep the integrity of the hole, and it was left at that.

I might also add, again, it was only equipped with a wellhead, no other type of facilities on location.

Q. Have you examined the integrity of that wellbore and the method of drilling that well?

A. I have.

Q. What's your conclusion?

A. It was done as most operators would do it in drilling a top-set well.

Q. What remains to be done?

A. Let me say that we have done some work since Richmond, and then I'll lead into what we plan on doing.

Again, this was a well that because gas had not been brought to surface, the application was not completed. So our intent was to go out there, drill the well down through the coal bed, bring gas to surface, have it analyzed, submit that data along with other data gathered during that drilling process, submit that to the proper agency to comply with the deadline for the Section 29 tax credit.

Probably the one interesting feature about the Federal well is that most top-set wells are drilled for the purpose of either going in and doing what is called the cavity-type completion, which is basically an open hole-type completion. We feel based on conversations with other operators that that might be a good method for this well.

So we, in our decision to go in and get this gas sample, we have left it in an open-hole condition after drilling down through there. Again, the cost associated with doing that in the AFE, like the other well, the AFE's were prepared in advance, sent to partners.

We've gone and have done the work. We achieved our goals. And the AFE, I believe, was estimated, or the costs shown on the AFE are $46,400. We were actually able to do the work for in the range of $30,000.

We overestimated our costs because we were under the opinion that we needed a certain type of rig, and, again, through our research and diligence, we were able to determine that we could do this process using a different type of rig and consequently lowered our costs significantly below the amount stated on the AFE.

As far as what lies ahead of us, again, we feel strongly at this point that this may be a cavitation candidate. That is a process of, when you're in the completion process of completing this cavity, it's an ongoing, it's a day-to-day decision as to whether or not you continue. With my knowledge of the area at this point, I'm going to estimate that the future cost for completing this well, if we are successful with the cavity-type completion, will be $195,000.

Again, the bulk of that cost would be attributable to the cavitation process, which I'm estimating could take two weeks at a daily cost in the range of $7,000, and that's a figure that again we have researched.

So that's what we're going with at this point. Again, we would prepare an AFE to reflect this type of completion process as well the other costs associated with doing this type of completion, as well the equipment needed to equip the facility and enable it to produce into our gathering system.

Q. Those additional future expenditures would be sent out to the working interest owners with a supplemental AFE?

A. Yes.

Q. Can that process be utilized to send out this supplemental AFE to any party that would be subject to the pooling order?

A. Yes.

Q. And allow them to make an election based upon that AFE as actually submitted?

A. Yes.

Q. When you look at the costs involved in the well, what Richmond spent, what you spent to get the sample for the tax credit, and what you forecast as remaining expenditures, can you tell us what that total number, in your estimate, is going to be?

A. Sure. Richmond in their AFE estimated a producing well equipped on production would cost $385,000. In getting to the top-set status, they spent $140,000. We have gone in, as I stated earlier, spent an additional $30,000 to drill the well down through the coal, obtain the gas sample. That and the $195,000 that I'm estimating we will spend to finish completing the well and equip it will bring us to a total cost of $365,000, which is approximately $20,000 less than the original AFE sent out by Richmond.

Again, I believe that the costs that they incurred were reasonable. They did it in a quick manner. They did not have any problems. And, consequently, any contingency items that would be in the AFE that would support a higher cost estimate were not incurred. So the $140,000 they spent was very reasonable.

Q. Let's go back to the Carnes well and have you give me that arithmetic for that well.

A. Sure.

Q. What do you forecast to be the total cost to the Carnes well?

A. The total forecasted cost for that well would be $393,000.

Q. And you get to that number by?

A. By taking into account the $224.6 thousand that Richmond incurred in cost, the additional $18,000 we spent in getting the gas sample for the NGPA application, and then the additional $150,000 for completing the well and equipping it.

Q. How does that compare to the original AFE submitted to the Division by Richmond for the Carnes well?

A. It's approximately $77,000 greater than the Richmond's estimate.

Q. And that difference is attributed to what?

A. I would say that probably the primary increase is in the stimulation process. Again, they prepared this AFE back in 1990. The cost for materials and so forth to stimulate the well at the size that they had planned on stimulating it, those costs are much greater in today's market.

The other thing is they incurred more road cost and site preparation cost as reflected in their cost allocation. And of course there is that $18,000 that is really an incremental phase of the completion phase, but we had to segregate it in order to meet the deadline.

So those three main areas are the reasons.

Q. Are you still satisfied that the reevaluated cost for the well as a total completed well is reasonable?

A. Yes, I would still say that.

Q. Let's go on to Miller 11. What was the status of that well when you acquired it?

A. It was a completed wellbore. In other words, it had been drilled down through the coals, casing was set through the coals, the coal beds were perforated, and gas sample was taken, and the wellhead was installed, and that ended their process.

Q. Have you examined that wellbore and its status and reached any conclusions?

A. Not to the best of my knowledge. It has the integrity necessary to carry forth with it from a completion standpoint. There's nothing in the records that would indicate otherwise. So we do believe it's a wellbore with integrity and can be carried on with in the future.

Q. Do you have a forecast of the remaining future cost to spend on that well?

A. Yes. That amount is $170,000. This well is very similar to the Carnes well, which I estimated at $150,000. I'm estimating an additional $20,000 here because we have determined that additional road work is going to be necessary, site reclamation, and there have been some other issues regarding the landscaping around there that are going to generate more costs.

Q. Let's go through the cost components. Looking at Richmond's actual costs, what costs you have actually spent to date, and what you look as future costs in order to complete and produce the well.

A. Okay.

Q. Give us the total number, and then let's talk about the components.

A. Sure. Again, their AFE to drill and complete that well us $326.4 thousand. Their costs to date have been $142.8 thousand. We have not spent any additional dollars on that well for its completion.

Given the estimated remaining cost to complete that well of $170,000, that, with the cost to date, would give us a total of approximately $313,000 or $13,000 lower than Richmond's estimate.

Q. Any opinion or conclusion about the reasonableness?

A. No. I'd say again that everything appears to be in line. Looking at their itemized costs that they incurred, again, they were able to accomplish this fairly closely to their AFE estimates.

Again, what we see in terms of what lies ahead, Richmond did not qualify exactly what they had planned in terms of stimulation and so forth, but we believe, with the estimates that we've made to date, that the $170,000 is a very good number. And add that to the actual costs, that brings you very close to their AFE cost. So everything seems to be in line.

Q. The remaining future cost, the $170,000, has that been itemized in an AFE ready for submittal to the working interest owners?

A. Not at this point.

Q. Again, the same process then as we have suggested for the other two wells; that when that AFE is ready, it goes out to the working interest owners. It would also go out to any party with rights for election under the pooling order, and they would have the opportunity to make elections in a similar fashion, if you will, as the other working interest owners?

A. That's correct.

MR. KELLAHIN: That concludes my examination of Mr. Harrison.

EXAMINATION

BY MR. ANDERSON:

Q. Let me see if I understand. On the Carnes well, Richmond set a liner through the Fruitland coal?

A. That's correct.

Q. How big was that liner?

A. 4-1/2 inch.

Q. Do you know how many feet that was, by chance?

A. I'm going to use rounded-off numbers, call it 300 -- I can tell you exactly.

Q. I'll tell you what, would you just give me the casing program on that, please.

A. Sure. They set surface casing, which is 9-5/8 inch, they set that to a depth of 233 feet. They drilled down through that surface to a depth of 2,517 feet. They set a string of 7-inch casing.

Q. 2,517?

A. 2,517. They then came in and drilled down to the coal beds, set a liner with the top being at approximately 2,298 feet, extending to a depth of 2,839 feet.

Q. And that got them through the Fruitland coal?

A. Yes, it did.

Q. They spent $19,866 on their casing program. That's just the cost of the casing. That doesn't include the cement; right?

A. Yes, that would just strictly be casing cost, the surface, the intermediate, and the liner.

Q. We're paying about $10 a foot for 9-5/8. What are you all paying?

A. You paid how much?

Q. About $10 a foot.

A. I'm going to say -- you know, let me qualify that and say that I'm not real familiar with pipe prices in the San Juan Basin area, but I'm going to venture to say that we're probably going to be able to acquire, if we get to the point where we ever need pipe like this that it will probably be in that neighbor. Again, I have not checked on pipe prices in the area; so I really can't answer that question with any degree of accuracy.

Q. 7-inch we're paying about $6.50 a foot in West Texas. What are you all paying out here?

A. Again, we haven't purchased any pipe in this area for that. We do very little drilling.

Q. In this area?

A. Well, in any of our areas that we operate in. Our drilling is somewhat limited, and again that's not my department. I would not be responsible for going out and securing pipe and things of that order. We have somebody else that would do that, that would be more in tune with what prices are for pipe.

Q. So you're working mostly as a completion or reservoir engineer?

A. Well, let me say this. Up to this point in this basin, we have not had the need to go out, or we haven't drilled any wells. We have not had to put anything in the hole other than tubing. So for me to be familiar with what pipe charges are in this area, I haven't ventured into that area, but since I am in charge of this project, when we get to a point where we will need those kinds of things, I would be working with another individual in our office in the design and procurement of pipe and various other services. So, yes, I would become familiar with those.

Q. Did you have a chance to review Richmond's invoices?

A. No.

Q. I have a couple questions about these items that I guess Richmond has provided you. The second item, previously unallocated clear to property account, do you have any idea what that is, $6,378.50?

A. Are we talking about the Carnes well?

Q. I'm sorry, yes. The next thing. Let's go back to the Carnes. The first item, approved leasehold nonproducing, $2,892.23, do you know what that charge is for?

A. No, I don't.

Q. How about the third item, approved leasehold now producing recording fees and title, $21,050.70?

A. I don't know exactly what those are for. I know enough to know what they're saying there, but I have not seen the actual invoices that would indicate what the itemized breakdown of those total costs are.

Q. What do you think that cost covers?

A. Well, attorneys fees for doing a title opinion, recording fees with the various county court houses once they've obtained leases, assignments, whatever. Again, those -- I would venture to say those costs are related to those types of issues.

Q. Well, I wonder how that differs with item 4, recording fees and title work?

A. There's that item "WK" next to that, and, again, I don't know what that abbreviation stands for.

Q. I suspect that stands for work, title work, probably attorneys.

A. Again, I can't speak for those type of cost items.

Q. How about the fifth one, previously unallocated clear property account, $16,254.31, do you know what that's for?

A. No.

Q. On the wellhead equipment, I guess it's item 7, more or less, $10,357.75. What kind of wellhead equipment was on the location?

A. What they had were -- they had a main master valve, and they had two wing valves, and they were brand new type equipment. The manufacturers, I couldn't tell you who the manufacturers of those were, but what we did do, we took them to a local well servicing company and have placed them on their properties to avoid anybody walking off with them because the two wing valves were laying off on the side. But they are new quality, they have been inspected and so forth.

Q. Since they ran a liner but didn't run to surface, did they have a wellhead for both surface casing and the 7 inch?

A. What they have is a casinghead, which would be tied on to the 7 inch. The liner is actually hung off near the bottom of the intermediate string with the use of a liner hanger, which is nothing more than a packer-type element.

Q. This cost doesn't sound high to you?

A. On which?

Q. On the wellhead equipment?

A. For brand new equipment of the type of quality valves and the size that they had, that to me is probably pretty close.

Q. Really?

A. Yes.

Q. We're only paying about $2,000 for a new wellhead and about $1,000 for a used.

A. This Carnes well was the exception to what they normally equip their wells with out here. On almost every one of these, they just had a Larkin type wellhead that can be purchased for that type of price with a bonnet sticking up from that underneath the cap.

And, again, that type of equipment, especially in a used condition can be purchased for those types of prices. This well was an exception. Why they had this premium-type equipment out there, I can't answer that.

Q. You said the only surface equipment was the wellhead, but item, it looks like No. 9, was a gathering system, $426.83. Do you know what that's for?

A. No. It's a low amount. I'm going to -- no, I can't say exactly what that's for. Various companies, when they go to coding invoices and so forth, have different cost items under various cost names, for instance, gathering systems. It's my guess that something they did on that well either in the roadside preparation or anything that at all would be related to what they had planned to do down the road in terms of installing a gathering system, whether it be a flowline path or something like that, that's the only thing, but, again, I do not know exactly what that stands for.

Q. Have you visited the Carnes and the

Federal location?

A. I sure have.

Q. And there's nothing there but a wellhead?

A. There's nothing there but a wellhead, that's correct. Let me venture to say that, yeah, there are open pits at those locations as well.

Q. The pits haven't been closed?

A. No, they haven't. That's something that, again, we have addressed with the various agencies, and that will be taken care of.

Q. How about the tenth item, cleared from working progress, $546.21?

A. Again, I couldn't tell you exactly what itemized amount that would be.

Q. How about the drilling contract, do you know if it was footage or turnkey?

A. It's my understanding that these were drilled on a footage basis.

Q. So it looks like about what, $12 a foot or so?

A. According to their AFE's, they were estimating $11.25 a foot. I take that back. That's on the Federal well. On the Carnes, $12.00 a foot.

Q. The next item, site preparation, etc., $30,000?

A. Right. If you look at this location, it's cut into the side of a hill. You can see a lot of dirt had to be moved, the road into the location again has to make a cut through a hillside, plus it's a long road. It's probably three quarters of a mile. It was rocked. They took some precautions to assure them they could reenter the location in bad weather an so forth.

Q. So that looks like a reasonable charge to you?

A. Yes. I'm going to say it's probably a little on the high side, but again when you look at all the work, the dirt that has been removed out there, and depending on which contractor they used, I could easily see it costing that much.

Q. They drilled and set a liner. They've got a charge here for acidizing, fracing stimulants, inhibitors, I guess it is, IMHI. Do you know what that $1,455.08 is for?

A. I'm going to venture to say that what probably happened is, after they perforated the well, they were not able to bring in a sufficient amount of gas and probably thought that that was due to some near wellbore formation damage. So they probably put a small acid job on the well to clear those perforations to allow the gas to come out easier.

Q. Any idea what the other service is, $1,899.53 is for?

A. No. Again, it's one of those things that varies by company. It could very well be some miscellaneous-type contract labor that they had out there, welders. Of course, I really haven't looked to see if they have it itemized for welders, but my guess, it is various services such as welding and things like that.

Q. On the overhead charge, if they were charging $3,500 a day overhead, what, it took about ten days to drill the well?

A. What they did, keep in mind it was done in stages. They actually drilled a top-set type well initially. So when the well was spudded back in June, and I'd have to pull out the drilling reports, it was probably a total time on location, I'm going to estimate probably five to six days, but before I say that, I do have something that should -- it's actually in a file down there on the table.

MR. KELLAHIN: Which one do you want?

THE WITNESS: It's the Carnes. It should be up on top.

It would be five days.

Q. (BY MR. ANDERSON) Five days to drill?
A. On the initial drilling procedure to top set the well.
Q. And then how many days to set the liner, do you know?
A. That's in a separate report here. I believe that includes -- those dates have been filed on a sundry notice as well. Actually, Richmond's files, to a large extent, were incomplete regarding a lot of these questions that you're asking. So that's what's taking some time here.
It would be my guess that it was, again, a three- or four-day process.
Q. On the liner?
A. So setting the liner, right. That would be -- you have to drill down the well and set your liner, cement it, wait a day for your cement before you go in and perforate.
Actually, I believe I found it right here. That was a four-day process.
Q. On the completion, I guess they attempted a completion there, did they?
A. Well, are you referring to Item 104, completion work over swab?
Q. Yes.

A. Again, that's the additional cost they incurred by bringing a work-over rig out there to drill the well down. It was probably a well with a fairly large size substructure just as a precautionary measure. They would hook up a power-swivel, drill down through the casing shoe into the coals, use that same rig to set their liner with, cement with, and so forth. And that's why you see the almost $24,000 charge under that cost item. That would be, again, associated with the drilling out into the coal beds, setting the liner, cementing, and so forth.

Q. Does it say on the drilling report what kind of rig they used?

A. I do know that they used what's called in the Basin a completion rig, which is a rig that's equipped for 24-hour-type operation. They generally have a substructure of anywhere from 18 to 24 feet to accommodate the BOP's, because, again, when you go into a drill-out situation, you may want to drill out under balance and you want to have the protection.

Q. Do you think that's reasonable?

A. We, again, in our research in the area, a lot of companies, even a lot of major companies, prefer to use a rig with a large substructure because they have certain policies regarding BOP-type setups. We feel that we can do this with a modified daylight rig, which is less costly, and that's how we undertook this project for drilling out the Federal, for instance.

Q. Finally, I guess mud and chemicals, item No. 111, those were incurred during the setting of the liner, do you think?

A. Those were likely incurred during the drilling process. Again, they were using a gel-type system to drill down with. So it would be the mud and chemicals involved in the drilling to the placement of the 7-inch casing, again, which is at a depth of about 2,500 feet.

Again, that's -- it's one of those cost items that not knowing exactly where the mud came from, if they were a prudent operator, that mud would have been mixed off location and brought in, hauled in in trucks to assure the quality of it. And, yes, I could see costs that high.

Q. How about item 124, other services, any idea what it's for?

A. Item 124. Again, I'm going to have to refer back to my answer on the other services. Again, what I think is happening here is they have cost categories, intangible, tangible, and so forth, which probably relate to which phase of drilling or completion they're in.

So given that this other service is under what would be an intangible-type item, again, it's probably a welding type service, any slew of services that might be required for the operation that they were undertaking.

We do the same thing a lot of times in our company. We have items that, because you don't want to present an AFE that's so cumbersome with details, that you will put contract labor, miscellaneous services. If it's something that you have a real good feel for what they might be, you might put some parentheses in your AFE stating what you expect those other services to be.

That's how we would do it. I don't know what Richmond's policy was. That's my guess as to what it is.

Q. How about item 201, there's another casing charge in addition to the other casing charge?

A. Again, that's probably just their service casing, given that they only ran 233 feet at a cost of $14 a foot I believe is what they -- let me get to the Carnes here.

Yes, they estimated a cost of $1,900 in their AFE for surface casing. As you can see, that charge is $1,967. So I would assume that would be the cost for that.

Q. I guess I have the same question with items 204 and 213. Why are they duplicated here again?

A. The wellhead equipment, that could, again, be a needle valve or some other small valve that maybe they ordered on location. Something, again, a small auxiliary piece of equipment, whether it be the bonnet that was installed on the wellhead afterwards.

Again, without a detailed estimate, looking at that small of a cost, that would be my guess, is an auxiliary item, whether it be a packing element, the bonnet itself, or whatever.

Q. And item 213, the surface equipment?

A. Surface equipment installation?

Q. We had that under item 10 also.

A. Again, that's probably based on what phase of the drilling or completion process that they were in. They would have duplication of cost items to refer to whether it was a dry hole cost item, a producing well cost item.

The surface and equipment installation there, that could -- again, it would have to be related to the wellhead because there is no other surface equipment out there, and there never has been other than rental-type equipment.

Q. And then finally 214, noncontrol well maintenance?

A. Noncontrollable well maintenance.

Q. Noncontrollable?

A. I can't answer what that would stand for. What I did in assessing these costs, just to reiterate, a lot of times when you go into a drilling operation and so forth, you know, a lot of unexpected things occur or other services, some come in greater than you would anticipate, some come in less.

By the time those charges get back to the office and are coded into the proper cost categories, as you can see, there's a much more itemized statement of the types of costs that are incurred versus what the AFE has. It's my guess or, excuse me, it's my opinion that the total cost that they have incurred here to the point that they were are within reason at the time that a lot of these services were conducted and so forth.

When I see this itemized statement and see these items, again, that pose some questions in my mind, I have to just go back and say without seeing what exactly their policy is for coding invoice items from the field, I have to look at this more in a general sense, and that's what I've done.

Q. Were you part of the team that worked up the bids for the property?

A. No, I wasn't.

Q. I take it, though, that whoever worked on these bids from Consolidated pretty much relied on these figures without actually getting into the invoices?

A. That's -- well, again, I can't answer that from the standpoint that, since I wasn't involved with that, I don't know how they treated that. I think it's safe to say that in any evaluation, there are a lot of items that come into play, and I would guess it would mainly be reserves.

Q. Do you have any idea percentagewise how much Consolidated allocated to the reserves in these bids?

A. When you say bids --

Q. Well, in the offer to --

A. No, I don't.

Q. To Richmond?

A. No. It was my function there, those things are totally kept separate from what I do. It's really not my business to ask about those things. Those are other persons' responsibilities.

Q. But is it your understanding that in the money paid to Richmond that part of the money, though, was consideration for reserves in place?

A. I think -- the only thing I can speak to is that the cash consideration given to Richmond was for what we felt was the market value of those properties and everything associated with those properties.

Q. Which included the reserves in place?

A. That would include, sure, some forecast of estimated remaining reserves.

Q. You said you were going to have to bill your own gathering system. If I join you in this well, will you sell my gas?

A. Again, that's not my position. It's not my -- I don't have the authority to make those decisions; so I can't speculate on that one. Those issues are handled by other departments.

Q. Who would be able to answer that question?

A. That would probably be our gas marketing department, probably them with our executive staff.

We have direction from our executive staff as to how we're going to handle situations like that.

Q. Can Consolidated guarantee me that if I join in the drilling of this well, they will sell my gas?

MR. KELLAHIN: Objection. That's irrelevant to the discussion here. We're not here to market Mr. Anderson's gas. We're here to force pool his interests.

EXAMINER CATANACH: I would agree with that, Mr. Kellahin.

MR. ANDERSON: I understand they're here to force pool me, but if I pay all this money and they refuse to market my gas, then I've wasted a lot of time and money.

MR. CARROLL: Is there a question here, Mr. Anderson?

MR. ANDERSON: Yes. I want to know if Consolidated will market my gas if I join in drilling of this well.

MR. KELLAHIN: What he does is he writes them a letter and enters into negotiations about gas marketing, which has nothing to do with force pooling. We're going to be the operator of the well. We don't have any obligation to market his share of the gas. If that's what he wants to do, he needs to negotiate with Consolidated. And I propose that that take place outside the context of this hearing.

MR. CARROLL: There are other marketers out there that can market your gas produced from these wells.

Q. (BY MR. ANDERSON) I take it that when you drilled down through the Fruitland formation in the Federal well, that you used water?

A. That's correct.

Q. Is this cavitation process done with nitroglycerin?

A. No, it's not. It's done with either air or nitrogen and maybe a foaming agent of some type to help carry back some of the coal, but, no, no nitroglycerin whatsoever.

Q. There's no downhole explosion involved?

A. No, there sure isn't.

Q. Any indication how the Federal well will turn out?

A. We feel very positive about it just based on the response that we saw doing what we did on the well. It seems to have a certain degree of permeability. We don't know to what extent, but based on shut-in pressures after we've taken analysis and so forth, it looks very encouraging. Again, that's why we're leaving it open for a possible cavitation type of completion.

MR. ANDERSON: Thank you.

EXAMINATION

BY EXAMINER CATANACH:

Q. Mr. Harrison, under an amended force pooling order, would you propose that Mr. Anderson and Mr. Rubow be given a new election period with which to decide whether or not they want to join the well?

A. Sure.

MR. KELLAHIN: Yes, sir, that's our commitment.

EXAMINER CATANACH: Standard 30-day election period?

MR. KELLAHIN: Whatever we can build into the sequence, but my presumption was it would be 30 days.

Q. (BY EXAMINER CATANACH) The terms of the force pooling order require the submittal of an AFE. After the effective date of the order, you would be required to furnish that to the interest owners. Would that AFE contain the costs you've summarized in your testimony?

A. What I see, the AFE would cover the future remaining costs. To give the working interest owners an idea of what would have to be incurred from this day forward, I would -- and this is something I have to discuss with our people, but I would imagine that there would be another type of cost allocation item, and I don't know if you want to call it an AFE, summarizing the costs that have been incurred to date that would be paid if they elected to join.

I don't see them being one AFE. I see them being two separate items. The AFE I would submit would be for costs to be incurred related to the completion of the well.

Q. But you would be able to put those two AFE's together and submit them to --

A. I sure could.

Q. You are maintaining that should these parties elect to go nonconsent, that they still be assessed a risk penalty of 156 percent for each well?

A. I do. As I stated earlier, I feel there's still a great degree of risk ahead of us. It's just the nature of the beast that we're dealing with out there, in addition to those other -- that other area of risk, which would be the possible formation damage as a result of drilling with a drilling rig.

EXAMINER CATANACH: I have nothing further of the witness.

MR. CARROLL: I just have a couple of questions here.

THE WITNESS: Sure.

EXAMINATION

BY MR. CARROLL:

Q. The closest gathering line is owned by Southwestern?

A. Yes. Southwestern Production Company. Do you mind if I step down, and I'll show you on this topo map that we have here. Southwestern Gas purchased what is called the Tiffany system, gas gathering system, and it basically runs through the middle of our properties as they're shown here, which would be approximately a mile and a half north of the New Mexico State line, right along this county road.

There are some diverge points that pick up some of their wells, but, yes, there is a gathering line in place. It is a surface line. I want to emphasize that.

Q. Who does Southwestern connect to?

A. Northwest Pipeline.

Q. And then how far are your wells from the

Southwestern gathering line?

A. We're the same distance that their wells are for the most part because, as was spoken to earlier, we have the coal rights only. We have twin wells to our wells in a lot of our locations, which are conventional-type wells. Those conventional-type wells are owned by Southwest Production. So they're taking the gas from those conventional wells to their gathering system.

So in answer to your question, their line is very close to our properties.

Q. What about the three wells in question here?

A. No, they are not close to these wells. The nearest proximity, again, would be about a mile and a half north of our properties would be the closest interconnect point into that Tiffany line.

Q. So would they build a connecting line, or you would build a line to Southwest?

A. That's something that's typically negotiated. If they were going to gather our gas, they would probably say, "Okay, we'll bill to you, and here's going to be your gathering cost." If we bill to them, they would probably offer us a reduced type gathering fee since they didn't have to incur that cost to bill to us.

MR. CARROLL: That's all I have.

EXAMINER CATANACH: The witness may be excused.

MR. KELLAHIN: That concludes our direct presentation.

EXAMINER CATANACH: Thank you, Mr. Kellahin. Do you want to take a little break here?

MR. ANDERSON: I don't care. I've got an eight-hour drive. I'd just as soon plow ahead.

EXAMINER CATANACH: Let's take five.

(A recess was taken.)

EXAMINER CATANACH: Call the hearing back to order, and at this time I'll turn it over to Mr. Anderson who is going to testify in a narrative fashion?

MR. ANDERSON: I suppose so. If there's no objection, I would like to enter some testimony into the record.

EXAMINER CATANACH: Any objection, Mr. Kellahin?

MR. KELLAHIN: Let's do it. I recognize that Mr. Anderson has advised the Division he is an attorney that doesn't practice in New Mexico. I don't want to interrupt his presentation. I would object to the legal conclusions. Be that as it may, I'm interested to hear his position and what he has to say. So let me just make that comment, and it can run as to an objection as to the legal conclusions. But I assume to let him make his presentation and let's see what he has to say.

THE WITNESS: I really didn't intend to make any legal arguments.

MR. KELLAHIN: All right, sir. Let's proceed.

THE WITNESS: My name is Edmund T. Anderson IV, and I'm from Midland Texas. I'm here representing myself and myself as trustee for the Mary Anderson Boll Family Trust.

The minerals in question were purchased by my father in about 1949, and they were leased to T.H. McElvain, Jr., on July 19, 1988. It's an undivided one quarter mineral interest in the southeast quarter of the southeast quarter of Section 9 and the southeast quarter of the southwest quarter of Section 11, both in Township 32 North, Range 6 West, of the New Mexico Prime Meridian, San Juan County, New Mexico.

The lease provided for a two-year term and a two-year limitation on shut-in gas royalties. I won't go into too much detail on the lease, but paragraph 12.E. obligated McElvain to notify me of any assignment of my lease and to send me a copy.

I never received anything from McElvain even though the lease provided in paragraph 13 that he was obligated to send me location plats and drilling reports. The first communication I had from McElvain was on November 14th of 1990 when he sent me a check for shut-in gas royalties. Since this was passed the end of the primary term, I wrote on November 20 of 1990 and requested a drilling report.

Originally the shut-in gas royalties were tendered for the Federal 32-9-6 No. 1 only. It wasn't until April the 22nd of 1991 that I received a reply from McElvain, at which time a Rhonda Wilkinson of his office called me to tell me that somehow my request had slipped through the crack and they would send me a drilling report. In fact, I did get a drilling report. I believe it was on the Federal No. 1 only. I seem to have misplaced it; so I can't really say that for sure.

At any rate, it was very clear from the drilling report that the well had not been completed. So I asked for a completion report. And several months passed, I never received a completion report, so I destroyed the shut-in gas royalty check.

I don't remember for sure whether shut-in gas royalties were tendered in 1991, but on May the 11th of 1992, Richmond Petroleum, Inc., sent me a check for shut-in gas royalties. Again supposedly it covered only the Federal No. 1 well.

I wrote Richmond on May 22, 1992, and told them that in my opinion the lease had expired. Apparently, Richmond was unphased by my correspondence because on April the 23rd of 1993, Richmond again sent me shut-in gas royalties. And on April the 28th of 1993, I sent them back. I wrote them a letter. It was very short. It just said that the lease had expired and the check is returned.

I also filed an affidavit in San Juan County noting that the lease had expired. And sometime in January or February of 1994, Consolidated called me -- actually, it was Phil that called me, and he told me that Consolidated had acquired Richmond's interest and intended to complete both of these wells and would like for me to lease.

And when I raised the question of participation, Consolidated objected to it. And finally on March the 1st, 1994, Consolidated sent me an offer to lease, and in the alternative they would let me participate if I paid my proportionate part of what they thought Richmond's costs were.

I have checked the records in San Juan County, New Mexico, and there is no release on file for my lease, nor have I ever received one. I also cannot find any assignment from McElvain to Richmond or Consolidated or any other party. Of record McElvain still owns this lease.

The lease is recorded in Volume 1092 at Page 165 of the records of San Juan County.

The east half of Section 9 was pooled in a designation of pool unit which is recorded in Volume 1121 at Page 313 of the records of San Juan County, and T.H. McElvain, Jr., signed this designation of pool unit. The designation was corrected in Volume 1143 at Page 129. Whatever correction they made did not affect my interest in my lease.

This pooled unit covers the Federal No. 1, and my lease was listed in the exhibit of leases that was attached to this designation of pool unit. The south half of Section 11, which is the Carnes No. 1, was pooled, and that designation was recorded in Volume 1127 at Page 379. My lease was listed as an exhibit in that pooling agreement also, and McElvain was named as the owner of the lease.

I have a number of objections to the costs which I would like permission to submit to you in writing, if that's possible.

EXAMINER CATANACH: That would be fine.

THE WITNESS: I have not proposed to drill a well with my interests, nor have I ever indicated that I have the right to drill one. I have not tried to stop Consolidated from completing either the Carnes or the Federal wells.

I would like to state that of record in San Juan County, there were a lot of liens filed against Richmond. I don't have an exact number, and I didn't look at them, and there were some releases filed. I don't have any idea if any of these applied to the Carnes or the Federal wells, but I would like to reserve the right to check into that further.

MR. CARROLL: Into whether release of liens were filed?

THE WITNESS: Yes. There were a bunch of them filed against Richmond.

THE WITNESS: I have a number of exhibits which I would like to leave with you. Some of these have already been entered into the record; so I won't leave them. Exhibit No. 2 is McElvain's letter of November 14, 1990, sending me shut-in gas royalties on the Federal No. 1. There are two parts to that exhibit.

Exhibit 3 is my letter to McElvain dated November 20, 1990, requesting a drilling report.

MR. CARROLL: Mr. Anderson. Pardon me, what was Exhibit No. 1?

THE WITNESS: I'm sorry. 1 was the oil and gas lease, but it's already been entered; so I don't intend to enter it again.

MR. CARROLL: All right.

THE WITNESS: That's why these numbers probably aren't in order.

Exhibit No. 4 is the letter of Richmond Petroleum dated May 11, 1992, again tendering shut-in gas royalties.

Exhibit 5 is my letter to Richmond dated May 22, 1992.

Exhibit 6 is the affidavit that I filed, which is recorded in San Juan County.

Exhibit 7 is the letter of Richmond Petroleum dated April 23, 1993, again tendering shut-in gas royalties.

Exhibit 8 is my letter of April 28, 1993, to Richmond returning their shut-in gas royalties. And I believe the remainder of what I had previously marked has been entered by Consolidated; so I won't bother with trying to enter those.

I do have a prepared written statement which I would call a response which I've marked as Exhibit 13 that I would like to leave with you. And I request at this time that these exhibits be entered into the record.

EXAMINER CATANACH: Okay. Can you repeat the numbers that you had again for me, please.

THE WITNESS: Sure. No. 2 is the letter from McElvain --

EXAMINER CATANACH: You don't have to-- just the numbers.

THE WITNESS: Okay. There's a No. 2; it has two pages to it. There's a No. 3, consisting of one page. No. 4, which is one page. No. 5, which is two pages. No. 6, which is one page. A No. 7, which is one page, 8, which is one page, and 13, which is four pages.

EXAMINER CATANACH: Mr. Anderson, do you have copies of those exhibits for Mr. Kellahin?

THE WITNESS: No. I'm sorry, I've been working out of my duffle bag for three days, and I don't.

MR. KELLAHIN: It's not a problem, Mr.

Examiner. Mr. Anderson told me that he was short copies. I have no objection to introducing those. If you can set them aside for me, I'll come by tomorrow and get a set.

EXAMINER CATANACH: Thank you, Mr. Kellahin. Exhibits 2, 3, 4, 5, 6, 7, 8 and 13 will be admitted as evidence at this time.

THE WITNESS: Shall I leave these up here?

EXAMINER CATANACH: Just leave them with us here.

THE WITNESS: I believe that's all I have unless you all have some questions.

EXAMINATION

BY EXAMINER CATANACH:

Q. As I understand your position, Mr. Anderson, it is your position that you should be allowed to participate in the well without paying costs that have been incurred thus far?

A. Yes, sir.

Q. And future costs?

A. Oh, no. I mean --

Q. You believe you're subject to future costs?

A. Oh, absolutely. And I offered the same to

Consolidated.

MR. WOOD: And that's in writing.

THE WITNESS: And I offered to prepay them also.

Q. (BY EXAMINER CATANACH) The only dispute is then to costs already incurred?

A. Costs incurred by Richmond, right.

Q. By Richmond?

A. Right.

Q. Not incurred by Consolidated?

A. No.

Q. You're willing to pay those?

A. Oh, absolutely.

EXAMINATION

BY MR. CARROLL:

Q. Mr. Anderson, the legal memorandum you mentioned earlier today, that is Exhibit 13, I take it?

A. Yes, sir, that's right.

MR. CARROLL: That's all I have.

EXAMINER CATANACH: Mr. Kellahin?

EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Anderson, does your written statement, Exhibit 10, include your discussion and reasoning why you propose that you should not have to pay for those costs that Richmond expended for the wells?

A. I think that's 13.

MR. CARROLL: That's Exhibit 13.

Q. (BY MR. KELLAHIN) 13, whatever the Exhibit number is?

A. Yes, it does.

Q. You have put in writing your argument?

A. A lot of them. I would like to be able to file an additional response after the hearing based on what I've heard today, if that's possible, but yes, it does.

MR. KELLAHIN: I'm not going to quiz you on it if you've got a written statement giving us direction on how you have reached your position, and that's what I'd like to examine.

We need to discuss how to proceed from here. It's up to the examiner. Typically, he'll ask both parties to prepare draft orders and/or any additional supplemental memos that he wants or that you might like to file. And it's up to his pleasure as to how he wants to proceed.

EXAMINER CATANACH: Would both parties like to submit briefs again? Mr. Kellahin, you in response to what he has filed?

MR. KELLAHIN: Yes, sir. I've not read it. I don't know what he said.

EXAMINER CATANACH: And, Mr. Anderson, you want to supplement your brief?

THE WITNESS: Yes, sir, I'd like to.

MR. CARROLL: Maybe it would be better for both parties after each side has examined the exhibits to file post-hearing statements and then replies to each other as opposed to other statements, or is that getting too cumbersome?

EXAMINER CATANACH: I think one is sufficient.

MR. CARROLL: Okay.

EXAMINER CATANACH: It appears to be pretty clear what the focal issue is in this case.

MR. KELLAHIN: We've discussed it all day, and I think I understand Mr. Anderson's position. He and I disagree. I'd like to read exactly how he's phrased it, but I don't think I need anything else in order to provide a short statement and then a suggested order and let you deal with the case.

EXAMINER CATANACH: Draft orders also, if you would submit a draft order. Time frames, gentlemen?

MR. KELLAHIN: At your pleasure. I can do it in ten days.

MR. ANDERSON: That's fine.

EXAMINER CATANACH: Okay. We'll say have the briefs and the draft orders in within ten days.

MR. KELLAHIN: All right, sir.

EXAMINER CATANACH: And the confidential issue, we need to settle that tomorrow?

MR. KELLAHIN: Yes, sir. It's running late, and Mr. Wood can get back to his office tomorrow. He and I will discuss which of us contacts McElvain. We will contact McElvain about the farmout agreement.

EXAMINER CATANACH: Right.

MR. KELLAHIN: Mr. Wood will contact his supervisors with regards to the confidential purchase agreement with Richmond and advise me if I may withdraw the confidentiality provisions that apply to Exhibit 16 and the testimony related to that.

EXAMINER CATANACH: Okay.

MR. KELLAHIN: I believe that's all I was asked.

EXAMINER CATANACH: So you will let us know tomorrow as to the nature of that?

MR. KELLAHIN: I'll give you a progress report. Tomorrow may be too short to talk to

Richmond, but hopefully early next week we can clear that hurdle, and apart from that, it's of record between us, and we can draft orders accordingly.

EXAMINER CATANACH: And you're still in possession of that exhibit?

MR. KELLAHIN: No, sir. We returned it to you, and you now have the only copy.

MR. CARROLL: We have it.

EXAMINER CATANACH: I'm going to leave it with you, and you do what you want with it.

MR. KELLAHIN: We can either take a few minutes and get a copy for Mr. Anderson to take with him, or I will get it tomorrow when I get his stuff, and I'll just fax him a copy, whatever you'd like to do.

THE WITNESS: Either one is okay.

MR. KELLAHIN: I want to go home. I'll do it tomorrow.

EXAMINER CATANACH: What else?

MR. KELLAHIN: Unless you have some specific things for us to address, I'm well aware of your concerns in discussions today, and we'll present our position, and Mr. Anderson will do that. Then you can decide.

EXAMINER CATANACH: Okay. I suppose we'll have all the information we need when we get the supplemental information. So we'll proceed at that point. And at this time we'll take the case under advisement.

MR. ANDERSON: And you guys are going to check on the farm-in?

MR. KELLAHIN: Yes.

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Deborah O'Bine, Certified Shorthand Reporter and Notary Public, HEREBY CERTIFY that I caused my notes to be transcribed under my personal supervision, and that the foregoing transcript is a true and accurate record of the proceedings of said hearing.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL, May 4, 1994.

Deborah O'Bine

DEBORAH O'BINE
CCR No. 63

OFFICIAL SEAL
Deborah O'Bine
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: Sept. 19, 1994

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 10555, 10556, 10557 heard by me on April 14 1994.

__________, Examiner
Oil Conservation Division