

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)

APPLICATION OF BURLINGTON RESOURCES OIL)
AND GAS COMPANY FOR COMPULSORY POOLING,)
SAN JUAN COUNTY, NEW MEXICO)

CASE NO. 12,276

APPLICATION OF BURLINGTON RESOURCES OIL)
AND GAS COMPANY FOR COMPULSORY POOLING,)
SAN JUAN COUNTY, NEW MEXICO)

CASE NO. 12,277

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

January 20th, 2000

Santa Fe, New Mexico

00 FEB - 7 PM 4:46

OIL CONSERVATION DIV.

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, January 20th, 2000, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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January 20th, 2000
 Examiner Hearing
 CASE NOS. 12,276 and 12,277 (Consolidated)

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A P P E A R A N C E S

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TRUST, WILLIAM C. BRIGGS, HERBERT R. BRIGGS, MARCIA BERGER,
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By: J. SCOTT HALL

* * *

1 WHEREUPON, the following proceedings were had at
2 4:40 p.m.:

3 EXAMINER ASHLEY: This hearing will come to
4 order, and the Division calls Case 12,276.

5 MR. CARROLL: Application of Burlington Resources
6 Oil and Gas Company for compulsory pooling, San Juan
7 County, New Mexico.

8 EXAMINER ASHLEY: Call for appearances.

9 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
10 the Santa Fe law firm of Kellahin and Kellahin, appearing
11 on behalf of the Applicant, Burlington Resources Oil and
12 Gas Company.

13 We would ask, Mr. Examiner, that for purposes of
14 presentation and taking testimony this afternoon, that you
15 consolidate this case with the next case, which is 12,277.
16 They're different wells, but they involve the same subject
17 matter.

18 EXAMINER ASHLEY: Call for additional
19 appearances.

20 MR. HALL: Mr. Examiner, Scott Hall with the
21 Miller Stratvert Torgerson law firm, Santa Fe, entering
22 appearances today for Energen Resources Corporation,
23 Westport Oil and Gas Company, Carolyn Nielsen Sedberry, C.
24 Fred Luthy, Jr., Cyrene L. Inman, the F.A. and H.B.
25 Cronican Revocable Trust, William C. Briggs, Herbert R.

1 Briggs, Marcia Berger, WWR Enterprises.

2 EXAMINER ASHLEY: Do you object to having Cases
3 12,267 and 12,277 consolidated for the purposes of the
4 testimony?

5 MR. HALL: We do not.

6 EXAMINER ASHLEY: Okay, at this time the Division
7 calls Case 12,277.

8 MR. CARROLL: Application of Burlington Resources
9 Oil and Gas Company for compulsory pooling, San Juan
10 County, New Mexico.

11 EXAMINER ASHLEY: Any additional appearances?
12 Mr. Kellahin?

13 MR. KELLAHIN: Thank you, Mr. Examiner. I have
14 two witnesses to be sworn.

15 EXAMINER ASHLEY: Will the witnesses please --
16 Oh, and Mr. Hall?

17 MR. HALL: I have one.

18 EXAMINER ASHLEY: Okay, will the witnesses please
19 rise to be sworn in?

20 (Thereupon, the witnesses were sworn.)

21 EXAMINER ASHLEY: Mr. Kellahin?

22 MR. KELLAHIN: Thank you, Mr. Examiner.

23 Let me see if I can give you a concise
24 introduction of where we are with these two cases.

25 The compulsory pooling cases that you have before

1 you in 12,276 is the Brookhaven Com 8 and 8A well. They're
2 in the west half of the section, Section 36. There is to
3 be a Mesaverde well in the northwest quarter, and a
4 Mesaverde infill well in the southwest quarter. In
5 addition, those wells are proposed to be dual completions
6 with the Chacra. And so the Well 8A is going to be in the
7 southwest quarter and the Well Number 8 would be in the
8 northwest quarter for the Chacra spacing unit. They're
9 each on 160 acres.

10 In Case 12,277, Burlington is seeking a
11 compulsory pooling order for the east half of Section 16,
12 and we'll show you where these are in a minute, but this is
13 for a Mesaverde alone. This is a single completion. And
14 so the Brookhaven Com B Well 3B is the stand-alone
15 Mesaverde, and the Com 8 wells are the dual completions
16 that are proposed.

17 We are back before you attempting to obtain a
18 compulsory pooling order over a group of owners that I have
19 characterized as the GLA-46 Group. There is an old
20 contract farmout operating agreement that dates from 1951,
21 and there's a dispute between Burlington and the GLA-46
22 Group. A portion of that interest is now held by Energen
23 and others, collectively represented by Mr. Hall.

24 Burlington takes the position that the old
25 November, 1951, agreement no longer has well obligations

1 attached to it, and therefore any new wells have to be
2 agreed upon in terms of cost, allocation and recovery of
3 money spent.

4 The GLA-46 Group takes the position that that
5 contract or agreement is still in effect. And so what you
6 have is Burlington saying the contract is not in effect,
7 Energen and the GLA-46 Group saying it is. And when these
8 new wells were proposed, Burlington proposed them under a
9 new operating agreement, using current costs.

10 Energen has disputed that, and they contend they
11 get the opportunity to elect to participate under the old
12 46 agreements from 1951, which are very favorable to
13 Energen in that Energen's interest is a carried interest.
14 Let me see if I can describe this in a simple way.

15 Burlington and Energen are each successors to
16 earlier companies that originally executed this stuff.
17 There was a San Juan Producing Company, later became El
18 Paso and now Burlington, that is the operator. Under this
19 agreement, Burlington now makes all decision on proposing
20 wells and drilling them and operating them, and there is no
21 election made by the working interest owners under that old
22 contract.

23 Energen succeeded to the interests of Brookhaven
24 Oil Company, and it went through a succession of owners.
25 But when you look at some of this, Brookhaven is the

1 original party. And what they did is, they split their
2 acreage position where El Paso, now Burlington, has 50
3 percent, Brookhaven, now the GLA-46 Group, has 50 percent.

4 And under the terms of the well-cost issue it was
5 arranged this way. Originally there was a cap on the
6 costs, \$45,000 for a Mesaverde well. That represented
7 current prices back in 1951. Burlington would pay for the
8 total costs of that well, including the casing.

9 Then in order to recover their costs, they were
10 allowed to do that out of a portion of Brookhaven's
11 interest. Brookhaven has 50 percent, 50 percent was split
12 in half. So 25 percent of production revenues went
13 straight to Brookhaven cost free. The other 25 percent was
14 the burden shared in that production, that 25-percent
15 production, then, was used by which Burlington recouped 50
16 percent of the costs, which would have been Brookhaven's
17 share, subject to the cost ceiling of \$45,000.

18 So Energen now in that position wants to argue
19 that they keep 25 percent of the production until payout,
20 and their interest increases to 50 percent, and they want
21 to contend that despite new well costs now costing \$427,000
22 for the dual wells and \$386,000 for the single, that the
23 price cap stays.

24 And there's a contract dispute. It needs to be
25 litigated. Mr. Carroll is aware of that. We brought this

1 issue back to the Commission, or the Division, the first
2 time back in 1997, when Burlington was doing the Marcotte
3 and the Scott wells, which were the two deep gas wells in
4 the San Juan Basin on 640 gas spacing. And Mr. Hall and I
5 had this argument before Mr. Catanach and Mr. Carroll. And
6 in Order Number R-10,877 and Order R-10,878, the Division
7 found concerning the contract dispute.

8 It said it's the Division's position that the
9 interpretation of the agreement should be deferred to the
10 courts and that Burlington's compulsory pooling case
11 against Total -- It was Total Minatome at that time; the
12 current interest holder is now Energen. In order to
13 consolidate all the interests within the proposed spacing
14 unit, the interests of Total should be pooled by this
15 order.

16 The Division analyzed that result by saying that
17 if Burlington's interpretation of the contract -- which
18 was, it no longer applied -- is determined by the courts to
19 be incorrect, then the GLA-46 Group can and may and has
20 made a voluntary election under the contract, and
21 Burlington is stuck with that result, and they're simply
22 dropped out of the compulsory pooling order, which is how
23 those orders are now phrased. It only force pools
24 uncommitted interest owners, and if Energen is successful
25 in court litigating the validity of the contract, then that

1 will prevail over any force pooling.

2 Burlington argued successfully before the
3 Division that if they are correct and there is no contract,
4 then they need to have the option of having a force pooling
5 order in place.

6 And so the risk is on Burlington, not on Energen
7 and not on the Division. If Burlington drills these wells
8 and guesses wrong, they're going to spend \$427,000, and
9 they're going to do so with a cost limitation that Energen
10 gets to enjoy, which currently has a cap -- If you look at
11 some of those contracts, there's an escalator; it went from
12 \$45,000 to \$90,000 back in 1974, I think.

13 So that's the problem. And we're here today to
14 show you that we can't reach an agreement, we've talked
15 about this issue among the companies. Energen takes one
16 position, Burlington another. It's not within your
17 jurisdiction to resolve the contract dispute.

18 And so what we're asking to go forward with is a
19 rather simple force pooling case. It shows the parties
20 can't agree, we'll show you the costs, we have an engineer
21 to talk about what we think is the appropriate risk to
22 decide upon in entering the order, then we go home.

23 On the other hand, we can sit here for the next
24 four or five or six hours, and we can talk and debate and
25 argue over whether any of these contract documents come

1 into evidence. And frankly, I would like you to do what
2 you did back in September of 1997, and that is to simply
3 say it's a contract dispute, we're not going to resolve it,
4 let's issue a pooling order here, and you people go to the
5 courthouse and figure it out.

6 So that's what we need to decide, how you want to
7 handle the presentation today.

8 We're prepared to go forward with a landman that
9 has a paper trail to show you the proposals. I'm not
10 prepared to engage in a discussion with experts over what
11 these contracts mean or what happened. I don't think
12 that's the place to do it here. I have an engineering
13 witness that will talk to you about the costs of the wells
14 and what he thinks the risks are attached to that, and then
15 we'll go home.

16 So that's my proposal.

17 MR. CARROLL: Before you make your statement, Mr.
18 Hall, I've got a few questions of Mr. Kellahin.

19 Are there any other working interest owners to be
20 pooled, other than the interests covered by the JOA
21 agreement?

22 MR. KELLAHIN: Mr. Carroll, when the Application
23 was filed, there is Cross Timbers, and there is a lady
24 whose name escapes me. I can find it here pretty quick.
25 Cheryl Potenziani, I think is her name. The first two

1 people on that notice list, Cross Timbers, and the lady in
2 Albuquerque.

3 EXAMINER ASHLEY: These two aren't subject to the
4 GLA?

5 MR. KELLAHIN: No, they're not. What they did
6 is, they would be subject to compulsory pooling. At the
7 time we filed the Application we believed and are hopeful
8 that here very shortly we will have all the signed
9 documents by which their interests would be voluntarily
10 committed to a new operating agreement.

11 They have both indicated favorable reactions by
12 signing an AFE. But my understanding yesterday is, we
13 don't have signed operating agreements back in place and
14 all the details nailed down.

15 If that occurs, then the parties to be subject to
16 the force pooling will be the GLA-46 Group that is
17 asserting that the contract is still valid, so that's where
18 we are.

19 MR. CARROLL: Another question is, yeah, I think
20 the courts could --

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

22 MR. CARROLL: What?

23 MR. KELLAHIN: These two people are part of the
24 GLA-46 group, except they have -- they're not represented
25 by Mr. Hall, and so they would have the opportunity to

1 argue under the old contract. They have chosen not to do
2 that, so that's the category they're in.

3 MR. CARROLL: Well, the Division sees -- Really,
4 it looks like the only problem is the risk penalty. I
5 mean, if Burlington is right and this group of people
6 forgoes paying their costs up front, then they're going to
7 be subject to a risk penalty that they wouldn't otherwise
8 have been. So your solution would be, they should both
9 fight it in court and pay their costs up front in order to
10 avoid a risk penalty?

11 MR. KELLAHIN: No, sir. What I'm suggesting is,
12 they could make a dual election, if you will. They could
13 elect to participate under the contract and then have a
14 qualifier saying, in the event we lose that position, which
15 we don't think we will, we want to elect to participate
16 under a force pooling order.

17 So I would propose they would have language in
18 the order to give them the election so they have the
19 comfort of avoiding the penalty by electing now.

20 MR. CARROLL: Would Burlington be willing to
21 front the costs, then, carry them until it is determined by
22 the courts whether --

23 MR. KELLAHIN: Well, our expectation is, we would
24 recover -- If the elect to participate, then they would pay
25 their share of those costs on a monthly basis, I think. In

1 the event they are right, then we're going to owe them some
2 money back. So we would not carry them without payment.
3 Do you see what I'm saying?

4 MR. CARROLL: Uh-huh.

5 MR. KELLAHIN: They would be subject to a refund,
6 but they would avoid the penalty.

7 Now, they could choose not to participate at all
8 and write all the cards on the contract argument, and so we
9 would recover out of production, then, the costs advanced
10 for carrying them, plus the penalty. And if we lose that,
11 then we have to write them a check.

12 MR. CARROLL: All right. And what's your
13 argument in court as to why this GLA contract doesn't
14 apply?

15 MR. KELLAHIN: I'm sorry?

16 MR. CARROLL: What's your argument in court, why
17 the GLA contract does not apply?

18 MR. KELLAHIN: Simply stated, there is a
19 provision under Article 4 of the agreement which says that
20 after San Juan has drilled and completed four Mesaverde
21 wells within a 12-month period until a total of 18
22 Mesaverde wells are drilled, once that happens, we contend
23 that discharges the drilling obligation. And so after
24 that, then, costs for wells are well-specific, and we would
25 need an agreement, then, on what those costs are.

1 The practice has been between these entities that
2 since about 1974 on at least 13 different occasions, the
3 agreement has been reached voluntarily by the companies,
4 where they acknowledge that the old caps on price were not
5 appropriate to current well costs. And so for the next
6 year's drilling program, they agree that these new wells
7 would not be subject to the cost limitations, and it
8 proceeds from there.

9 We're now at the point where Energen is taking
10 the position that they don't want to talk about new costs,
11 won't agree to them, and they want to hold us to the old
12 price ceilings plus the recoupment means of getting your
13 money back through production.

14 And so it's a contract dispute.

15 MR. CARROLL: And what's the current cost cap?
16 \$90,000?

17 MR. KELLAHIN: \$90,000 for a Mesaverde well.

18 MR. CARROLL: All right.

19 MR. KELLAHIN: And the end result is, we simply
20 can't drill them, can't drill them with that cost
21 limitation. And so the wells are either not going to be
22 drilled, or we're going to take the risk that we're right
23 on this contract, and we're going to drill them for current
24 costs with the hope and expectation that they're going to
25 pay their share of current costs, and we stand the risk of

1 losing that.

2 EXAMINER ASHLEY: Mr. Hall, would you like to
3 make an opening statement?

4 MR. HALL: Yes, Mr. Examiner, thank you.

5 Mr. Kellahin is correct to a degree. This is, in
6 a certain sense, an ordinary pooling case. But he is also
7 correct that there is a contract issue embedded in this
8 case, and it's a contract issue which you, the Examiner,
9 must consider before you exercise your considerable police
10 powers under the Division statutes to pool the property
11 interests.

12 Now, there's been allusions to the earlier case
13 between Energen -- or, sorry, Burlington and Total Minatome
14 in 1997. That case was Case Number 11,809, I believe, and
15 the same issue involving GLA-46 appeared in that case.

16 Mr. Kellahin neglected to mention to you,
17 however, that although there was an order issued by the
18 Division pooling GLA-46 interests, that order was appealed
19 to the Commission. And while it was pending on appeal, the
20 well that was the initial subject of that order came in as
21 a dry hole, unfortunately for all.

22 So rather than waste energy and time and
23 resources on pursuing that appeal further, it was dropped.
24 So that case is not a legitimate precedent for you to
25 consider in this case.

1 It is true that there's a contract issue at stake
2 here, and you must consider it. It's a very precondition
3 to the exercise of pooling powers under the pooling
4 statute, 70-2-17 C. That's the statute invoked by
5 Burlington.

6 The Division must make a finding, an express
7 finding, based on evidence that the lands that are the
8 subject of the proceeding have not been voluntarily
9 committed to the well. So I think that casts the issue
10 fairly concisely for you.

11 Now, now that issue is framed, how do you decide
12 this case? What evidence should you look at? Should you
13 go in and simply consider that there is disagreement
14 between the parties whether the contract applies or not? I
15 submit to you that you cannot do that. If you go into this
16 case and write an order presuming that the contract does
17 not apply simply because there is disagreement and it's a
18 matter that must be deferred to the courts, that, I would
19 submit to you, is an abdication of your duty as a Hearing
20 Examiner, to consider that voluntary commitment order.

21 For you to presume that simply because there is
22 disagreement and it is a contract issue to be deferred to
23 the courts is, in effect, an improper adjudication by a
24 Hearing Examiner of a contract term. You would, in effect,
25 be re-writing substantive contract rights negotiated at

1 arm's length between parties nearly 50 years ago and which
2 have been followed consistently in the drilling of scores
3 of wells ever since.

4 So what do you do? How do you decide this case?
5 Let me suggest to you that you do this when you listen to
6 the evidence in this case. Burlington has asserted to you
7 that after the 18th well, the 18th Mesaverde well, was
8 drilled, GLA-46 was kaput, no longer applied. That's what
9 Mr. Kellahin says.

10 That 18th well, I think the evidence will show,
11 was drilled in about 1956, so what you should do when you
12 consider the evidence is look at the practice of the
13 parties under GLA-46 from year one, 1951, to year 1956, and
14 on into the 1990s. How did they treat GLA-46? Did they
15 apply it to the drilling of subsequent wells? Did they
16 apply it to more wells than just the 18th well, which they
17 say extinguished any obligations under GLA-46?

18 Look at the interpretations of the operator over
19 time under GLA-46. We're going to present you with
20 voluminous documentation showing how at the start San Juan
21 and El Paso and Meridian and now Burlington all regarded
22 GLA-46 as giving it exclusive control of the acreage that
23 it affected. We'll show you documents that say that
24 nonoperators have no right to propose a well at all. We
25 would be prohibited from coming before the Division,

1 according to their own interpretation, proposing a well or
2 initiating a compulsory pooling proceeding. We simply
3 could not do it. Their own interpretation of contract.

4 You look at all of those instances, all of those
5 documents, the conduct of the parties over the years, and
6 that gives you significant guidance upon which you can base
7 a decision that GLA-46 has been followed and adhered to by
8 the parties over time. And once you're satisfied that
9 that's the case, I think that will prevent you from
10 entering a finding that these lands are not voluntarily
11 committed to those wells.

12 And on the basis of that evidence in the record,
13 I think you'll find you'll have to enter dismissing the
14 case, or denying the relief that Burlington seeks.

15 Thank you, Mr. Examiner.

16 EXAMINER ASHLEY: Okay.

17 MR. CARROLL: Mr. Hall, so it's your client's
18 position that the most you're at risk for is \$45,000, and
19 that's recovered out of 50 percent of your share of
20 production?

21 MR. HALL: That's been the construction for a
22 long time, yes.

23 MR. CARROLL: And when was the last time a well
24 was drilled that your clients only paid that amount?

25 MR. HALL: I think as the evidence will show,

1 subject to correction, the most recent well would have been
2 about 1990 or 1992, when Meridian abided by the original
3 GLA-46 terms.

4 MR. CARROLL: And have your clients considered
5 the argument just advanced by Mr. Kellahin that the
6 economics of that old agreement would prevent these wells
7 from being drilled?

8 MR. HALL: Well, we would have to accept that
9 argument without any evidence. I don't know, we may have
10 to elicit some cross-examination on that very point. I'm
11 skeptical, frankly. The interest covered by GLA-46 is not
12 25 percent in the entire proration unit. It's just in the
13 acreage within the proration unit subject to GLA-46. The
14 entire proration unit is not subject to GLA-46, so it's,
15 frankly, a smaller percentage.

16 Bear in mind, Mr. Carroll, that we heard these
17 same arguments before when the Marcotte well was drilled,
18 but that did not slow down the drilling of that -- what was
19 probably a \$5 or \$6 million well.

20 MR. CARROLL: I think this has come up before. I
21 don't know if it was in that Marcotte case or not, but part
22 of that statute regarding pooling, 70-2-17, I'm looking at
23 subparagraph -- or paragraph E.

24 MR. HALL: Yes, that --

25 MR. CARROLL: I'd like both counsel to consider

1 this, maybe, in their proposed orders or what happens. It
2 says whenever it appears that the owners in any pool have
3 agreed upon a plan for the development or operation of such
4 pool -- I guess we're looking at the Mesaverde Pool -- the
5 Division, upon hearing after notice, may subsequently
6 modify any such plan to the extent necessary to prevent
7 waste.

8 MR. KELLAHIN: That was utilized, Mr. Carroll, in
9 the Burlington-Doyle Hartman case, if I'm not mistaken,
10 where Mr. Hartman was claiming there was an old operating
11 agreement that limited you from drilling an infill well in
12 the Mesaverde, and Burlington force-pooled him for the
13 infill well, and you overrode the old agreement because it
14 was not consistent with the plan of development approved
15 for the pool by the Division. So that's the case you're
16 thinking of.

17 MR. CARROLL: Mr. Hall, it looks like -- maybe
18 you can convince me otherwise -- that even if this
19 agreement is in effect, it looks like the Legislature gave
20 the Division the power to alter a contract to prevent
21 waste. I mean, can your parties agree that you're going to
22 drill 12 wells every 40 acres? We wouldn't allow that, and
23 that would be rewriting your contract.

24 MR. HALL: We're not asking for the blessing of
25 any contract that would violate the Division's rules or

1 regulations.

2 And I'd also point out that I think any relief
3 under subsection B is beyond the scope of this hearing as
4 pleaded. It simply has not been invoked by Burlington
5 before now. As the pleadings are cast now, we're limited
6 to subsection C. They have not asked you for that relief.

7 The case Mr. Kellahin was referring to, where the
8 same issue has come up, is whether or not there was a pre-
9 existing commitment of lands. It's Case Number 11,434.
10 Refer you to Order Number R-10,545. It was a Meridian
11 application in San Juan County. And I'd ask that the
12 Examiner take administrative notice of the record and the
13 order in that case.

14 EXAMINER ASHLEY: What was the order number again
15 on that, Mr. Hall?

16 MR. HALL: R-10,545.

17 MR. CARROLL: And that was the Hartman --

18 MR. HALL: Yes.

19 MR. CARROLL: -- case?

20 MR. KELLAHIN: Yeah, that's the Hartman.

21 MR. HALL: Hartman --

22 MR. KELLAHIN: Yeah, it was really -- I called it
23 Burlington, but it was done under Meridian.

24 EXAMINER ASHLEY: Case 11,434?

25 MR. HALL: Yes.

1 EXAMINER ASHLEY: The Division will take
2 administrative notice of Case 11,434 issued in Order
3 R-10,544.

4 MR. HALL: 10,545.

5 EXAMINER ASHLEY: 10,545?

6 MR. HALL: Correct.

7 EXAMINER ASHLEY: Okay, thank you.

8 MR. HALL: 1996.

9 MR. KELLAHIN: Well, the issue is, are we going
10 to sit here and argue over whether subsection E is within
11 your bag of things to do? I propose that it is. I think
12 it's a waste of time to walk away and refile a pleading to
13 assert that you can, if there is an agreement, set aside
14 that agreement. We think it's simpler than that. I'm
15 happy to rely on it, because I think it's the right thing
16 to do.

17 But looking at subsection C, there is no
18 agreement between Energen and Burlington on these new well
19 costs, and that's the difference. They say there's a
20 contract, we say there's not. There, in fact, is, by
21 admission, no agreement. So we think we're entitled to a
22 force-pooling order.

23 EXAMINER ASHLEY: Okay, Mr. Kellahin?

24 MR. KELLAHIN: Sir?

25 EXAMINER ASHLEY: Are you ready to go?

1 MR. KELLAHIN: If you'll tell me what you want me
2 to present. Are we going to need the contract stuff or
3 not?

4 MR. CARROLL: Well, we're going to defer ruling
5 on the issues raised, but we will take evidence today.

6 MR. HALL: If I may make a brief comment about
7 that before we see -- I think the reason that Burlington
8 has not imposed subsection E of 70-2-17 is that it's
9 consistent with the position that a contract does not
10 exist. So for you to exercise your authority under
11 subsection E necessarily presumes a contract would be in
12 place. So that's why they have not pleaded --

13 MR. CARROLL: Well, I think the parties agree in
14 the interest of economy, all the witnesses are here to hear
15 the testimony today.

16 MR. KELLAHIN: Yeah.

17 MR. CARROLL: Because the issues aren't going to
18 change.

19 MR. KELLAHIN: Well, they're not going to change,
20 and I disagree with his argument about not pleading
21 subsection E. If there is an agreement, I lose that issue,
22 and you override it as a matter of Division policy, I still
23 win. So I think it's inherently incorporated in your
24 decision-making process, and I think it's a waste of
25 everybody's time to suggest that I have to continue and

1 come back in three weeks to add an E to the pleading.

2 We're here, we ought to take the witness's
3 testimony and move forward.

4 MR. CARROLL: Is there any objection to that?

5 MR. HALL: Not to proceeding. I think, to
6 respond to Mr. Kellahin's comments, there's a due-process
7 problem embedded in the assertion that you may have the
8 authority to invoke subsection E in the context of this
9 case.

10 MR. KELLAHIN: Well, I'll formally move at this
11 time, Mr. Examiner, that you allow my pleadings to be
12 amended at this time to include arguments considered under
13 the provisions of 70-2-17 E.

14 MR. CARROLL: Objection?

15 MR. HALL: I object. We weren't fully prepared
16 to address that, but we will do our best.

17 MR. CARROLL: Well, we'll defer ruling on that.
18 Proceed with the witnesses.

19 MR. KELLAHIN: All right, we call Shannon
20 Nichols.

21 MR. HALL: I move we invoke the no-coat rule.

22 EXAMINER ASHLEY: Sounds good. Everybody please
23 remove their coat.

24 MR. KELLAHIN: Mr. Examiner, I have distributed
25 two exhibit books. One is marked for the 12,276 case,

1 which is the Brookhaven Com 8 and 8A wells, and the exhibit
2 booklet for Case 12,277 is the 3B. I propose to start with
3 the 12,276 book, and they're identical in all areas except
4 the correspondence and proposals as to each well are unique
5 in each book. So Burlington's well proposal for the 8 well
6 will be in this booklet we're talking about. The well
7 proposal for the B3 is going to be in the 12,277 book.

8 Other than those minor differences, the
9 information is the same. So we'll see if we can --

10 EXAMINER ASHLEY: Okay.

11 MR. KELLAHIN: -- not confuse you.

12 SHANNON NICHOLS,

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

15 DIRECTLY EXAMINATION

16 BY MR. KELLAHIN:

17 Q. Mr. Nichols, for the record, please state your
18 name and occupation.

19 A. My name is Shannon Nichols. I am employed as a
20 petroleum landman with Burlington Resources Oil and Gas
21 Company in Farmington.

22 Q. Were you the landman responsible for proposing
23 the subject wells, which are the Brookhaven Com Well 8 and
24 8A, to the various interest owners in the spacing unit?

25 A. Yes, sir, I was responsible for proposing those

1 wells.

2 Q. Okay. And when we get to the Brookhaven Com B
3 well, the 3B well --

4 A. That well was actually proposed by a fellow
5 landman employed by Burlington by the name of James
6 Strickler.

7 Q. All right. Have you reviewed Mr. Strickler's
8 correspondence and communications --

9 A. Yes, I have.

10 Q. -- with the company? And you have examined the
11 interest owner distribution and can speak knowledgeably
12 about the parties that have interest in all these spacing
13 units?

14 A. Yes, I can.

15 Q. In addition, are you familiar with the spacing
16 requirements for these wells and the proposed spacing units
17 and where they are located?

18 A. Yes, I am.

19 MR. KELLAHIN: We tender Mr. Nichols as an expert
20 petroleum landman.

21 EXAMINER ASHLEY: Mr. Nichols is so qualified.

22 Q. (By Mr. Kellahin) Let me have you turn to
23 Exhibit 1 of Case 12,276 and identify the information
24 behind Exhibit 1.

25 A. The information behind Exhibit 1 is simply the

1 Application that Mr. Kellahin had submitted, along with the
2 certification notices, and there is included in that
3 certification a list of all the owners in the Brookhaven 8
4 and 8A wells.

5 In addition to that, there are certified mailing
6 receipts for all parties at the very back of Exhibit 1.

7 Q. All right. Let's turn through the pages and find
8 Exhibit A, which is a tabulation of interest owners. Do
9 you find that?

10 A. I have found that.

11 Q. All right, sir. When we exclude Burlington's
12 interest from the spacing unit, do these percentages, to
13 the best of your knowledge, and the individuals listed, to
14 the best of your knowledge, are they accurate and true as
15 to their interests in the Mesaverde and in the Chacra,
16 within the proposed spacing unit for the Brookhaven Com
17 Well Number 8?

18 A. Yes, they are.

19 Q. And is that also true for the 8A?

20 A. That is also correct. The only difference I
21 might see right there is on the 8A, I believe. The Chacra
22 interest may vary from what's shown as Exhibit A there.
23 We've got that information at a further point in the book.

24 Q. Okay. So for notification purposes, have I sent
25 notice to all the proper parties?

1 A. Yes, sir, you have.

2 Q. Okay. Let's turn to Exhibit 2 and locate the
3 Examiner as to where these wells are.

4 A. The first map that you'll find in Exhibit 2 is
5 just a map of basically the San Juan Basin. You can see
6 that pretty much in the center of the map there is a well
7 spot with an arrow, and the Brookhaven Com 8 and 8A wells
8 are located in that Township 27 North, Range 8 West,
9 Section 36.

10 Q. It looks to be located just north of the City of
11 Aztec in the next township?

12 A. That, Mr. Kellahin, I believe is the Brookhaven
13 Com 3B well that you're looking at.

14 Q. I'm sorry, I've got these reversed. The 8 and 8B
15 are down south, and they're on the county line between San
16 Juan County and Rio Arriba?

17 A. That is correct.

18 Q. All right. Let's locate the Brookhaven Com 3B.

19 A. The 3B, if you go up to the left, upper left
20 portion of the map and you spot the City of Aztec, you will
21 find the well spot for the Brookhaven Com 3B arrowed in,
22 basically just above the City of Aztec location.

23 Q. All right, sir. Let's turn now to the second
24 display and look more specifically at the area included
25 within Section 36 and the adjoining sections.

1 A. The second map there is just simply a nine-
2 section offset map. We're centered on, again, 27 North, 8
3 West, Section 36. The Mesaverde wells, both the 8 and the
4 8A, are going to be west-half units. The 8 Chacra portion
5 will be spaced as the northwest quarter, and the 8A Chacra
6 portion will be spaced as the southwest quarter.

7 Q. And the color code indicates the other types of
8 well in the area?

9 A. That is correct, color code and symbol.

10 Q. All right, let's turn more specifically to the
11 chronology of events. If you'll turn with me behind
12 Exhibit Tab Number 3, did you prepare this summary?

13 A. Yes, I did.

14 Q. And have you summarized your various contacts
15 with the interest owners, the working interest owners in
16 the spacing units proposed for these wells?

17 A. All written correspondence is included in this
18 chronology.

19 Q. And you have commenced with the date at which
20 Burlington proposes to these interest owners that they sign
21 an operating agreement, and you have included an AFE which
22 represents well costs current as of that date?

23 A. That is correct.

24 Q. All right. So that we see how you've organized
25 the exhibit book, behind the tabulation, then, is the

1 supporting documentation for each of these entries; is that
2 not true?

3 A. That is correct.

4 Q. All right. Let's start with the first
5 correspondence, the July 30th, 1998. What are you doing
6 here?

7 A. The July 30th, 1998, letter was simply our
8 election ballot letter and -- along with the joint
9 operating agreement and AFE submittal proposing the
10 Brookhaven Com 8 as a Mesaverde-Chacra dual completion.

11 Q. All right, what's the next entry?

12 A. The next entry is August 4th, 1998. Cheryl
13 Potenziani elects to participate in the proposed well and
14 signs the joint operating agreement, dated July 29th, 1998.

15 Q. Okay. Is her interest fully committed, then, in
16 the spacing unit, based upon this, or is there something
17 else that needs to happen?

18 A. At that point in time, her interest is fully
19 committed.

20 Q. All right, this is under the July, 1998,
21 proposal, then?

22 A. That is correct.

23 Q. Okay. So she commits her interest under that
24 proposal?

25 A. Yes.

1 Q. On August 14th, what do you do?

2 A. On August 14th of 1998, NationsBank -- The date
3 of the letter is August 14th. NationsBank, as agent for
4 eight working interest owners, elects to be carried in the
5 proposed well under the terms of GLA-46 agreement dated
6 11-27-51.

7 Q. All right, this is the agreement I referred to in
8 my opening remarks?

9 A. Yes, it is.

10 Q. Did I correctly summarize the cost-carrying
11 provisions of that 1951 agreement?

12 A. Those are correctly characterized.

13 Q. All right. And so this is part of the GLA-46
14 group that is attempting to elect under the old agreement?

15 A. That is correct.

16 Q. What happens then?

17 A. August 24th, 1998, Total Minatome, as predecessor
18 to Energen, elects to participate in the proposed well
19 under the terms of GLA-46 agreement dated 11-27-51.

20 Q. All right, they're doing the same thing
21 NationsBank did?

22 A. Yes.

23 Q. What happens on August 26th?

24 A. August 26th, 1998, Cross Timbers Oil Company
25 elects to participate unconditionally in the proposed well

1 and also returns executed signature pages to the joint
2 operating agreement dated July 29, 1998.

3 Q. At this point, then, you do not have unanimous
4 working interest owner commitment to the proposal made on
5 July 30th, 1998?

6 A. That is correct.

7 Q. What then do you do?

8 A. By letter dated September 18th, 1998, we
9 submitted a letter to all working interest owners, with the
10 exception of Cross Timbers and Cheryl Potenziani, that
11 Burlington's position that GLA-46 does not apply to this
12 well.

13 In our letter of same date, we proposed two
14 participation options under which we would be willing to
15 drill the proposed well, if all parties elect under an
16 option provided.

17 Q. All right, let's turn to the September 18th
18 letter and see what those options were, Mr. Nichols.

19 A. Okay.

20 Q. We have two years of correspondence in here. I
21 need to look for the September 18th, 1998, letter, right?

22 A. Yes, and it should be in chronological order.

23 Q. Okay, I've found it. What are you proposing?

24 A. Option 1 under this second-request type of
25 letter, or additional options, is, enter into the modern

1 form JOA and either participate or nonconsent under the
2 terms of the JOA.

3 Option 2 was that Burlington will voluntarily
4 carry your drilling, completing and equipping costs in the
5 referenced well. Upon doing so, we will be allowed to
6 recoup 100 percent of its costs associated with the carried
7 interest, with recoupment occurring from 100 percent of the
8 revenue stream associated with the carried interest. Upon
9 payout, each party will revert to its full participation
10 interest. Further, we propose under that agreement a
11 drilling rate, overhead rate, of \$4063.77 per month and a
12 producing well rate of \$474.13 per month, with an
13 expenditure limit without partner approval for \$25,000.

14 Q. This is for the Brookhaven Com 8 well?

15 A. That is correct.

16 Q. Is there a similar chronology or a history of
17 proposals for the infill well, the 8A?

18 A. No, there is not substantial correspondence of
19 this nature of the Brookhaven Com 8. We were hoping to
20 drill this initial well in the section. At this point in
21 time, we were still hoping to get voluntary participation.
22 We were going to, of course, evaluate that initial well and
23 then look at the 8A, the infill well.

24 Q. All right, so at this point we're dealing with
25 just the parent or the original well in the --

1 A. That is correct, we're dealing solely with one
2 well at this point in time.

3 Q. You're offering to carry these interest owners
4 and to recover out of 100 percent of the production those
5 costs attributed to their interest?

6 A. That's correct.

7 Q. There is no penalty or fee or an interest
8 associated with that recoupment?

9 A. There is no penalty involved in that. It's
10 simply 100 percent payout.

11 Q. Okay. What happens then, after that?

12 A. Going back to the chronology of events, by letter
13 dated November 16th, 1998, Energen Resources as successor
14 in title to Total Minatome elects to participate under
15 Option 2 as provided in Burlington's September 18th, 1998,
16 letter. Energen's letter further conditions their election
17 to reflect that the terms of GLA-46 are still in effect.

18 Q. What happens on January 5th of 1999?

19 A. January 5th, 1999, NationsBank as agent for eight
20 working interest owners elects to participate under Option
21 2 as provided in Burlington's September 18th, 1998, letter.

22 Q. Okay, at this point, then, did you have full
23 agreement on the working interest owners as to a course of
24 performance under these new proposals?

25 A. At this point in time we still had -- We did not

1 have unanimous participation under either option.

2 Q. All right, so what happens? We get to May 18th
3 of 1999, right?

4 A. May 18th of 1999, Burlington mails out a new
5 joint operating agreement dated February 1, 1999, to all
6 GLA-46 working interest owners and covering all lands
7 included in GLA-46.

8 Q. Okay. By August 25th, what's happening?

9 A. By August 25th, we still had not received
10 unanimous participation to either participate in the well
11 under current JOA or Option 2 as provided in our September
12 18th letter, so we issued a letter again dated August 25,
13 1999, that we were withdrawing our offer to drill and
14 complete the Brookhaven Com 8 under the participation
15 options provided for in our September 18th, 1998, letter.

16 Q. All right. On September 15th, then, you
17 repropose this well under new terms and conditions?

18 A. That is -- The well was repropose on September
19 15th using the same AFE as originally submitted in July --
20 under letter dated July 30th, 1998. The difference at this
21 point in time is being that the joint operating agreement
22 that was submitted with our election letter and AFE was the
23 joint operating agreement dated February 1, 1999, which we
24 originally provided May 18th of 1999.

25 Q. All right, so what's the change?

1 A. The change -- The original joint operating
2 agreement was limited just to the proration unit covered by
3 the Brookhaven Com 8 well. This second proposal, dated
4 September 15th, 1999, the joint operating agreement which
5 we sent under that letter covered all lands under the old
6 GLA-46 contract.

7 Q. Okay. Also on this same date you now propose the
8 infill well, which was originally numbered the 9, and it
9 was later changed to 8A to reflect it was infill?

10 A. That is correct.

11 Q. Okay. What happens after that?

12 A. By letter dated September 27th, 1999, Cheryl
13 Potenziani elects to participate unconditionally in the
14 proposed Brookhaven Com 8 and Brookhaven Com 9.

15 Q. She made that election how? By executing the
16 AFE?

17 A. She executed our -- Actually, all she executed
18 was the ballot letter saying she would participate in the
19 drilling and completing of the well.

20 Q. All right. What happens then?

21 A. October 11th, 1999, Energen Resources elects to
22 participate in the Brookhaven Com 8 and Brookhaven Com 9
23 under the terms of GLA-46 agreement dated 11-27-51.

24 Q. Okay, please continue.

25 A. October 13th, 1999, Burlington mails a letter to

1 Energen acknowledging the receipt of Energen's letter 11th,
2 1999, and advising Energen that it remains Burlington's
3 assertion that GLA-46 does not govern the drilling of
4 additional wells on the subject acreage.

5 October 14th, 1999, Westport Oil and Gas, this is
6 the first entry we'll see to Westport Oil and Gas at this
7 time. My understanding of the transaction of Westport
8 coming into title was that Energen made an assignment of a
9 portion of their interest under these lands and assigned
10 that to Westport Oil and Gas. That being cleared up,
11 Westport Oil and Gas elects to participate in the
12 Brookhaven Com 8, Brookhaven Com 9, under the terms of
13 GLA-46 agreement dated 11-27-51.

14 Q. Okay.

15 A. October 19th, 1999, Cross Timbers Oil Company, as
16 agent for Merchant Resources Number 1 Limited Partnership,
17 elects to participate unconditionally in the Brookhaven Com
18 8 and Brookhaven Com 9.

19 October 26th, 1999, Burlington advises all
20 working interest owners in the Brookhaven Com 9 that the
21 Well name has been changed from the Brookhaven Com 9 to the
22 Brookhaven Com 8A.

23 And also on October 26th of 1999, by letter date,
24 Bank of America, as agent for eight working interest
25 owners, elects to be carried in the Brookhaven Com 8A under

1 the terms of GLA-46 agreement dated 11-27-51.

2 Q. At this point then, as of today's hearing, we
3 have a stalemate between you and the GLA-46 Group with
4 regards to agreeing to current well costs and how to recoup
5 those costs?

6 A. That is correct.

7 Q. And you have not been able to resolve that?

8 A. We have not been able to resolve it. We had a
9 meeting between our management and the management of
10 Energen Resources in Burlington's office. I don't have the
11 exact date. Rich might have it. But at that meeting, at
12 the high-level management meeting, we did try to again hash
13 out something that was workable for both parties. Again,
14 we did not have success. And both parties, at that point
15 in time, with the exception of some follow-ups and
16 basically both companies saying our position hasn't
17 changed, there's been no further correspondence since those
18 particular meetings and their follow-ups.

19 Q. When I look at Exhibit Tab 4, what is contained
20 behind Exhibit Tab 4?

21 A. Exhibit Tab 4, this was included, I believe, in
22 the joint operating agreement that we submitted under
23 letter dated September 15th, 1999.

24 What this does is, it identifies the proration
25 unit for the Brookhaven Com 8, and it identifies the

1 interests in the Mesaverde completion and also in the
2 Chacra completion and further gives a participation option.
3 Burlington, of course, is participating. Cross Timbers,
4 Cheryl Potenziani, had elected to participate, and the
5 balance of the parties have elected under the terms of
6 GLA-46.

7 Q. Have you enclosed a copy of the proposed
8 operating agreement that you were proposing to apply to the
9 spacing unit?

10 A. Yes, sir, I have. Let me make one further note.
11 Behind the two pages on the Brookhaven Com 8, we have the
12 same thing for the Brookhaven Com 8A. The Mesaverde
13 interests are identical. We did have a difference in the
14 interest in the Chacra due to one being the southwest
15 quarter and the other being spaced solely on the northwest
16 quarter.

17 Following those two items is a complete copy of
18 our operating agreement, dated February 1, 1999.

19 Q. Okay. There's a portion of the operating
20 agreement I would like to direct your attention to, because
21 it deals with the mechanics of how you handle cost
22 allocation and revenue apportionment for a dual completion,
23 right?

24 A. Yes, sir. Actually, it's just -- refers to cost
25 allocation.

1 Q. It's a cost allocation?

2 A. Yes, sir.

3 Q. Could you find that for us?

4 A. Yes, it is. If you'll turn in your joint
5 operating agreement to page 9A and 9B, at the bottom of
6 page 9A you'll find a formula for allocation of costs for
7 drilling and completing dual wells, and we're basically --
8 How we treat this is that we are going to the base of the
9 Mesaverde as the estimated TD. The Chacra formation lies
10 above the Mesaverde. So drilling costs from the surface to
11 the base of the Chacra under our language here would be
12 shared equally by the two parties.

13 Q. So the shallow-zone owners split half those costs
14 with the deep owners?

15 A. That is correct.

16 Q. And then below the shallow zone, what happens?

17 A. Below the shallow zone, any additional costs of
18 drilling or testing or completing are borne solely by the
19 owners in that deeper formation.

20 Q. Has Burlington utilized this cost-allocation
21 method for dual wells in other areas?

22 A. Yes.

23 Q. Other agree- -- This is sort of a standard --

24 A. This is Burlington's standard cost-allocation
25 language.

1 Q. All right. Let's turn to an additional provision
2 on this topic. If you'll turn with me to page 14 of the
3 operating agreement, is there an additional item that needs
4 to be referenced to the Examiner?

5 A. Yes, sir, there is. On Article XV, Division F,
6 we talk there about multiple completed formations in a well
7 will be treated as a dual well until such time the
8 formations are commingled. At such time the formations are
9 commingled, all future costs and expenses will be adjusted
10 pursuant to the allocation formula approved by and in
11 compliance with New Mexico Oil Conservation Division Rules
12 and Regulations.

13 We feel that that should also be incorporated
14 here, for allocation of overhead costs.

15 Q. Is it your recommendation that these two
16 provisions we've just described be included in any
17 compulsory pooling order issued which involves these
18 Chacra-Mesaverde duals?

19 A. Yes, it is my recommendation.

20 Q. This operating agreement obviously covers a great
21 many other properties.

22 A. Yes, it does.

23 Q. Who signed off on this agreement, generally? Do
24 you have Amoco's participation under this new contract?

25 A. Yes, we do have Amoco's participation under this

1 contract, and we also have George Umbach, and I believe
2 there's one more party -- possibly not.

3 Q. As to the original GLA-46 contract area, that
4 acreage, and subject to other acreage additions to the
5 contract area, was Amoco ever in the position to argue that
6 it could take advantage of the GLA-46 agreements, or are
7 they outside of that agreement?

8 A. No, Amoco -- Next to Burlington, Amoco owns the
9 second largest ownership position in GLA-46. It's been
10 their recognition, and the new operating agreement was done
11 somewhat at the request of Amoco, that this thing, this
12 whole contract, was holding up development. They
13 recognized the fact that we could not economically develop
14 these lands under the owners' terms that we agreed to back
15 in 1951. Amoco was the driving factor in bringing to bear
16 this new operating agreement.

17 Q. So they were in a position to assert the price
18 limitations and the recoupment provisions of the old 1951
19 agreement?

20 A. Absolutely.

21 Q. And they chose to execute a new agreement?

22 A. Yes, sir, they did.

23 Q. And were you in a similar position to not be able
24 to develop the properties without a new agreement?

25 A. We would have been in the same onerous economic

1 conditions with Amoco as we are with these parties here
2 today.

3 Q. Let's turn to show me the provisions or the
4 exhibit portion of the book that contains the AFEs for this
5 population of wells, the 8 and the 8A. Where do I find
6 those?

7 A. Those would be found behind Exhibit Number 5.

8 Q. All right, show me how to read one of these to
9 figure out how I get the total prices of the dual wells.

10 A. The dual wells, as you'll see here, we've got --
11 What we'll have here are drilling completion and facilities
12 for this dual Chacra-Mesaverde well.

13 Q. You have to sum some of these totals to get to
14 the total cost, right?

15 A. We do have to sum some of those totals. You'll
16 find two AFEs attached for the Brookhaven Com 8. The first
17 one is an AFE in the amount of \$190,015, and the second one
18 is for the Mesaverde completion. The first AFE is for the
19 Chacra completion. The second AFE for the Brookhaven 8, in
20 the amount of \$237,615, for the Mesaverde completion.

21 Q. You've used the cost allocation method you have
22 shown us in the operating agreement to come forward with
23 the cost split here, I guess?

24 A. Yeah, I did not write these AFEs, but that is my
25 understanding.

1 Q. That's the method?

2 A. Yes.

3 Q. And so to get the total well cost for a completed
4 well, I need to add the \$190,000 to the \$237,000?

5 A. That is correct.

6 Q. All right. The same thing in here, you've got
7 AFEs for the infill well?

8 A. Uh-huh. Yeah, the Brookhaven Com 8A is the same
9 AFE.

10 Q. Okay, and those were the AFEs that were
11 circulated to all the working interest owners?

12 A. That is correct.

13 Q. Under your well proposal?

14 A. Yes.

15 Q. All right. Let's leave that exhibit book, and
16 let me turn your attention to Mr. Strickler's well. It's
17 in the Case Book 12,277; it's going to be the Brookhaven
18 Com B well, 3B, and it's the stand-alone Mesaverde well.
19 Let's turn to Exhibit Tab 2, and let's look at the layout
20 of the section, the adjoining sections in the wells.
21 Where's the 3B well proposed for?

22 A. The 3B well is proposed as an east-half well in
23 Section 16 of Township 31 North, Range 11 West.

24 Q. And when we look at the San Juan Basin locator
25 map, this is the one that's north of Aztec and slightly

1 west of the Marcotte well?

2 A. That is correct.

3 Q. Find in the exhibit book the tabulation of
4 interest owners. Exhibit A, attached to the notice of
5 hearing, which is the third page in Exhibit 1, does this
6 correctly reflect the working interests, with the exception
7 of Burlington?

8 A. Yes, it does.

9 Q. Let's use this as our index for a moment. As we
10 are here before the Examiner today, do you have agreement
11 with any of the parties or groups listed here?

12 A. To my knowledge, we do not have agreement with
13 any of the parties referenced herein, with the possible
14 exception -- and let me check my chronology -- of --

15 Q. -- Cheryl Potenziani?

16 A. Yes, Potenziani. Yes, Ms. Potenziani has elected
17 to participate in the proposed well.

18 Q. It's your belief that the others listed on the
19 exhibit have taken the Energen position of asserting
20 participation pursuant to the cost limitations and the
21 carry provisions of the November, 1991 [sic], agreement?

22 A. Yes, that is correct, November, 1951, agreement.

23 Q. All right, let's go to Exhibit 3, now, and start
24 with the chronology of events for the 3B well, starting
25 with the proposal of December 14th, 1998.

1 A. At this -- Under letter dated December 14th,
2 1998, Mr. James Strickler originally proposed the drilling
3 and completing of the Brookhaven Com B Number 3B as a
4 Mesaverde new drill.

5 Q. And he's using Mesaverde new drill costs in his
6 letter, if you turn to the letter, which is the second
7 page, he's got a total AFE cost of \$386,488?

8 A. That is correct.

9 Q. Start with the next entry. What's happened on
10 December 28th of 1998?

11 A. By letter dated December 28th, 1998, Burlington
12 receives Cheryl Potenziani's election ballot to participate
13 in the proposed well.

14 Q. All right, please continue.

15 A. January 15th, 199, Burlington receives Energen
16 election ballot to participate in the proposed well under
17 the terms of GLA-46. We advise that GLA-46 does not govern
18 the drilling of additional wells.

19 May 18th, 1999, Burlington mails out the new
20 operating agreement dated February 1, 1999, to all GLA-46
21 working interest owners.

22 By letter dated September 15th, 1999, Burlington
23 mails a second request letter with the election ballot once
24 again proposing the Brookhaven Com B Number 3B as a
25 Mesaverde new drill to all working interest owners in the

1 proposed well. Attached to the proposal letter is
2 Burlington's AFE and new joint operating agreement, dated
3 February 1, 1999, covering the proposed proration unit of
4 the well.

5 September 30th, 1999, Burlington receives Cheryl
6 Potenziani's election to participate in the proposed well.

7 October 11th, 1999, Burlington receives Energen's
8 letter electing to join in the drilling of the Brookhaven
9 Com 8, 8A and 9 and 3 -- Com 3B, subject to the terms of
10 the operating agreement dated 11-27-51, as amended.

11 October 13th, 1999, Burlington mails a letter to
12 Energen acknowledging receipt of their letter of October
13 11th, 1999. We advise under this letter that we don't
14 think that GLA applies to the drilling of additional wells.

15 October 18th, 1999, Burlington receives a letter
16 dated October 14th from Westport Oil and Gas, indicating
17 that they were in receipt of the AFEs covering the
18 Brookhaven 8, 9 and Brookhaven Com B 3B wells, and that
19 they would participate under the terms of GLA-46.

20 October 26th, 1999, NationsBank as agent for
21 eight working interest owners elects to be carried in the
22 proposed well under the terms of GLA-46 agreement dated
23 11-27-51.

24 Q. Mr. Strickler, with his proposal for the B3 is at
25 the same point as you are with your Com 8 and 8A wells?

1 A. Yes, Mr. Strickler is at the same point. And
2 from this point forward, I took over this particular
3 geographic area, and these became my responsibility.

4 Q. Okay. Based upon your review of the chronology
5 and the documents in the correspondence file that deals
6 with this period, are you satisfied that the parties are at
7 an impasse concerning their ability to agree to utilize
8 current well costs for these wells?

9 A. I am satisfied that we're at an impasse.

10 Q. And that you've exhausted reasonable
11 opportunities to reach a compromise or an agreement and
12 have not been able to do so?

13 A. Yes, we -- That is correct.

14 Q. Other than that ownership information and
15 correspondence that's unique to this proposal, is the
16 operating and your recommendations for provisions out of
17 the operating agreement to be incorporated in a pooling
18 order, the same recommendations as you just made?

19 A. Yes, sir, they are.

20 Q. Behind Exhibit Tab 5, what do we find in this
21 portion of the exhibit?

22 A. We find under this portion of the exhibit
23 Burlington's AFE in the amount of \$386,488. Again, same
24 format as provided for in the Brookhaven 8 and 8A wells.

25 Q. Do you have a recommendation to the Division for

1 overhead rates to charge on a monthly basis for a drilling
2 well and a producing well?

3 A. We would like to, as found in our joint operating
4 agreement that we had proposed, we have provided for a
5 producing overhead rate of \$450. We would like the
6 Division to enter under the pooling order to utilize the
7 same \$450-per-well overhead rate.

8 Q. That's the producing well rate, \$450? What's the
9 drilling well rate?

10 A. The drilling overhead rate is \$4500 per month,
11 and again we would like the pooling order to reflect the
12 same.

13 Q. How do those rates compare to the tabulation of
14 rates by Ernst and Whinney?

15 A. Those rates, the Ernst and Young survey --

16 Q. Yeah.

17 A. -- for depths of -- for wells of this particular
18 depth, I know -- I think both wells' estimated TD is around
19 5600 feet. For the Colorado Plateau Basin and Range, from
20 Ernst and Young survey, wells that are from 5001 feet to
21 10,000 feet, average drilling overhead is \$5000, median
22 drilling overhead is \$5000, producing well overhead
23 averaged \$575 and median is \$478. So we are under, it
24 appears, current industry use.

25 MR. KELLAHIN: That concludes my examination of

1 Mr. Nichols. We move the introduction of his Exhibit 1
2 through 5 in both exhibit books.

3 EXAMINER ASHLEY: Exhibits 1 through 5 in both
4 exhibit books --

5 THE WITNESS: Mr. Kellahin, I --

6 MR. KELLAHIN: Sir?

7 THE WITNESS: May I correct myself? I was
8 referring --

9 MR. KELLAHIN: Please.

10 THE WITNESS: -- incorrectly when I was
11 referencing the Ernst and Young surveys to oil well
12 overhead rates. If I may provide gas overhead rates?

13 Again, from 5001 to 10,000 feet, average drilling
14 overhead is \$5326, median is \$5000, average producing is
15 \$481 and median producing is \$477. So if I could clarify
16 that, again reiterate that we are under average.

17 EXAMINER ASHLEY: Exhibits 1 through 5 from Case
18 12,277 and 1 through 5 in Case 12,276 will be admitted as
19 evidence at this time.

20 Mr. Hall?

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q. Mr. Nichols, at the outset it would be helpful to
24 all of us if we had a clear understanding what Burlington's
25 position is in these two cases. And to do that, Let me

1 refer you to the two Applications that have been filed in
2 each of the cases.

3 If you have those available to you, Mr. Examiner,
4 I didn't bring extra copies.

5 MR. KELLAHIN: The Applications are included in
6 the exhibit book, Mr. Hall, behind Exhibit Tab Number 1.
7 So we might utilize that, if you want to.

8 Q. (By Mr. Hall) Okay. Why don't we take the
9 application from 12,276, that case --

10 A. Okay.

11 Q. -- and if you would refer to the second page of
12 that, the one that has the numbered paragraph 2 there.

13 The representation to the Division was, "By
14 Letter Agreement dated May 24, 1952 this proposed spacing
15 unit was included within acreage subject to a November 27,
16 1951 farmout/operating agreements between Brookhaven Oil
17 Company and San Juan Production Company (collectively the
18 'GLA-46 Agreement') which set forth a drilling obligation
19 for 18 Mesaverde wells to be drilled within the contract
20 area."

21 Now, the next paragraph says, paragraph 3 there,
22 "This drilling obligation has been satisfied."

23 Let me see if I correctly understand Burlington's
24 position, is that Burlington only had an obligation to
25 drill 18 Mesaverde wells --

1 A. Yes.

2 Q. -- correct?

3 And that drilling obligation was satisfied when?

4 A. I don't have the exact date that the 18th well
5 was drilled.

6 Q. In a motion to quash filed with the Division in
7 this case by counsel, it was represented that the 18th well
8 may have been drilled around 1956. Does that sound about
9 right?

10 A. That sounds -- The neighborhood sounds correct.

11 Q. Yeah. If you look at paragraph 4 of the
12 pleading, it says, "Thereafter and only by unanimous
13 agreement made on an individual well basis, did the parties
14 decide to make any future well subject to the GLA-46
15 Agreement." Do you see that?

16 Can you elaborate on that? What does that mean
17 to you?

18 A. My interpretation of that is simply that from
19 this point forward, any wells that were drilled after the
20 initial drilling obligation was satisfied was done so by
21 mutual benefit of San Juan and Brookhaven Oil Company, and
22 that absent their mutual agreement to drill these wells,
23 neither party was under any obligation to do so.

24 Q. Well, was the unanimous agreement the paragraph
25 refers to some sort of an agreement to modify GLA-46, or

1 was it the case, alternatively, at that time that GLA-46
2 simply didn't apply to the 18th well?

3 A. I don't think the intent of any of the amendments
4 was ever to acknowledge that GLA-46 terminated. It was
5 simply that these wells continue to be drilled under GLA-
6 46, the basic provisions of GLA-46, if all parties could
7 reach unanimous agreement to the amendments. And if they
8 could do so, they could drill the wells under GLA-46. If
9 they couldn't do so, no development might have occurred.
10 So I don't think there was ever any intent to terminate the
11 GLA-46 itself.

12 Q. Okay, so it's Burlington's position in this case
13 today that GLA-46 does continue to apply, then?

14 A. It's our contention that if we and the other
15 parties of GLA-46 can reach consent under well costs and
16 things of that nature, that development could occur under
17 GLA-46, that there would be nothing that would prevent that
18 if we could all agree on an equitable sharing of costs and
19 overhead rates and things of that nature.

20 So it's not my contention right here to say that
21 GLA-46 does not apply.

22 Q. That it's not your contention --

23 A. That it is not my contention. If we have
24 unanimous consent of both parties, then we could further
25 develop under the terms of GLA-46 as amended.

1 MR. HALL: All right.

2 MR. KELLAHIN: Mr. Carroll, I'm going to object
3 to the cross-examination at this point. Mr. Hall has
4 passed out an exhibit book that contains a number of
5 documents apparently with regards to this contract-dispute
6 issue. It's my position that this is not the forum or the
7 jurisdiction to litigate that issue, and we would object.

8 MR. CARROLL: Response?

9 MR. HALL: The Exhibit A I've handed out is
10 marked Energen's Exhibit A. It consists of documents
11 produced by Burlington pursuant to a voluntary agreement of
12 counsel. All of them, I believe you'll find, have Bates
13 numbers on the bottom right-hand corner. There shouldn't
14 be any problem authenticating these documents, or counsel
15 can simply stipulate that that is their production source.

16 I believe we've already addressed whether or not
17 these documents of this type are relevant to the issues in
18 this proceeding in our opening statements. I don't have
19 much more to add on that, but -- other than to say that
20 these documents will help you, the Examiner, to determine
21 what the practice was under GLA-46, whether what was
22 adhered to, whether there was unanimous consent, as Mr.
23 Nichols says, to drill additional wells, et cetera. All of
24 those questions are probative of the main issue of whether
25 or not these lands were voluntarily committed to these

1 wells. That's why we'd like the opportunity to examine him
2 on them.

3 MR. KELLAHIN: Here's the difficulty with Mr.
4 Hall's strategy, Mr. Carroll. One, the cross-examination
5 of this witness with these documents is not appropriate.
6 He is certainly not an expert on GLA-46 documents. He's
7 not in a position to render legal opinions.

8 The other issue is, you've deferred till now, and
9 now's the time to decide, are we going to engage in
10 reviewing all these contract documents? And if so, for
11 what purpose? It's our position the parties can't agree.
12 They admit they can't agree on current price, they want to
13 assert the old contract. We say the contract doesn't
14 apply, and the courthouse is where we do this, not here.

15 MR. HALL: For you to enter a finding either way
16 that the lands are or are not committed to the wells, the
17 finding must be based on substantial evidence in the
18 record. That's what all of these are probative of, so we
19 are entitled to examine him on it.

20 MR. CARROLL: All these documents were produced
21 by Burlington?

22 MR. KELLAHIN: In response -- You may remember
23 the chronology, Mr. Carroll. Back on November 16th you
24 issued a letter in which you --

25 MR. CARROLL: Well, my question is --

1 MR. KELLAHIN: Yeah.

2 MR. CARROLL: -- were they produced by
3 Burlington?

4 MR. KELLAHIN: Sure, I did -- You know, the issue
5 was whether the motion to quash would go to the Commission
6 and go on, and in response to that I voluntarily produced
7 some 1800 pages of documents, and I assume these are them,
8 that's where I got them, I produced for them.

9 But my question is that under the pooling
10 statute, you already have evidence that's uncontested that
11 the parties can't agree on these current costs. The
12 underlying issue which he wants you to decide is whether
13 this contract still applies, and I think we're going where
14 you're not supposed to be.

15 MR. CARROLL: Well, the parties can't agree
16 whether they're agreed, is where we're at; isn't that
17 correct?

18 MR. KELLAHIN: So he wants you to substitute the
19 court's judgement and decide if there's still a binding
20 agreement, based upon 50 years of documents.

21 MR. HALL: That is not why we appear here. I
22 think these arguments that this is a matter to be deferred
23 to the courts are really fallacious, because the Division
24 has a mandatory statutory duty to make that finding, that
25 the lands are or are not voluntarily committed to the

1 wells. You cannot defer that duty to the court.

2 So you are obliged to take evidence on that
3 issue, which is a precondition to the entry of any order,
4 no matter which way you rule. That's why we're entitled to
5 look at these documents.

6 MR. CARROLL: How long will we be looking at
7 these documents, Mr. Hall?

8 MR. HALL: Well, I'm not going to lie to you,
9 it's going to take a while.

10 MR. KELLAHIN: well, then he ought not to do it
11 by cross-examining this witness with these documents. If
12 he wants to admit them, admit them, and you guys can read
13 them tomorrow or next week.

14 MR. CARROLL: You'll stipulate to the admission
15 of these documents?

16 MR. KELLAHIN: I don't think they're relevant, I
17 don't think they're necessary, but that's how he's going to
18 get them in the record over my objection as to relevancy.
19 You can deny that objection, and introduce them and sit
20 there and read them, if you want.

21 MR. CARROLL: We'll admit these documents into
22 evidence.

23 Where are we going with cross-examining this
24 witness over these documents?

25 MR. HALL: Mr. Carroll, I'll do everything I can

1 to expedite it.

2 MR. CARROLL: I mean, do they speak for
3 themselves? I mean, do we have to --

4 MR. HALL: To an extent they do. I've taken
5 pains to highlight specific language which I think speaks
6 for itself.

7 MR. CARROLL: Yeah, I saw that, I really
8 appreciate it.

9 MR. HALL: Burlington has made representations in
10 its pleadings and through its witnesses now about its
11 positions, and we can compare those positions to their own
12 documents, which you may or may not find are admissions
13 against interest. And again, they're directly probative of
14 that threshold issue --

15 MR. CARROLL: So how many admissions against
16 interest are contained in these documents?

17 MR. HALL: Well, I think, as we say, they'll have
18 to speak for themselves. I have not tabulated each of --

19 MR. KELLAHIN: Well, Mr. Carroll, that's the
20 rules of evidence. The documents speak for themselves,
21 they're introduced, there's no point quibbling with Mr.
22 Nichols about what he thinks or might not think about 45
23 years of documents.

24 MR. CARROLL: How long have you been employed
25 with Burlington?

1 THE WITNESS: I've been employed with Burlington
2 for about 10 years, two years of that being employed in the
3 Farmington office.

4 MR. CARROLL: And Mr. Hall, you think he has
5 personal knowledge of -- Was he involved in any of these
6 communications, negotiations?

7 MR. HALL: I won't be asking him questions about
8 that specifically, but Mr. Nichols, through his testimony,
9 and through pleadings of counsel, has outlined certain
10 issues which are on the table now, and I think I can
11 juxtapose the evidence contained in these documents against
12 those stated positions and see which is correct.

13 We've already seen a little bit of change in
14 position already with respect to whether or not GLA-46
15 continues to exist. I think it's their position now,
16 they've clarified, that yes, GLA-46 does exist. We've
17 gotten that far with it. Let's see how much further we can
18 go with their --

19 MR. CARROLL: Okay, we'll hear some of it.

20 MR. KELLAHIN: Am I understanding that he's going
21 to be able to cross-examiner Mr. Nichols about documents
22 for which Mr. Nichols had no involvement? Are we going to
23 play questions with the witness to get him to --

24 MR. CARROLL: I think Mr. Nichols testified as to
25 Burlington's position on the agreement. I just -- We're

1 going to hear some questions regarding some conflicting
2 evidence to that position, I believe.

3 MR. KELLAHIN: Well, you know, he asked what
4 Burlington's position was. Mr. Nichols stated it. If this
5 is rebuttal evidence against his testimony, the way you do
6 it is introducing these documents and reading them for
7 yourself. That's how you do it.

8 MR. HALL: You have the flexibility under Rule
9 1204 to allow it.

10 MR. CARROLL: Yeah, we're going to hear it.

11 Q. (By Mr. Hall) Mr. Nichols, if you would, take
12 what's been marked as Energen Exhibit A, and if you would
13 flip to Tab 22, please, sir, let me ask you initially, do
14 you have that in front of you? Let me check.

15 A. January 14th, 1975.

16 Q. Yeah, we're together. We've talked about the
17 18-well drilling obligation earlier. Can you tell the
18 Hearing Examiner exactly how many wells have been drilled
19 under GLA-46?

20 A. No, I cannot.

21 Q. Okay, let's look at what's been marked as Exhibit
22 A-22. Would it appear to you that this is a memo for an
23 exhibit which shows all acreage subject to the Brookhaven
24 GLA-46 --

25 MR. KELLAHIN: I'm going to object to the

1 question. There's no foundation that this witness has
2 knowledge of what acreage and what wells are involved in
3 the GLA-46 agreements. He's not qualified to render
4 opinions about this.

5 MR. CARROLL: If he has knowledge, he can answer.

6 THE WITNESS: Your question, Mr. Hall?

7 Q. (By Mr. Hall) Mr. Nichols, would it appear that
8 Exhibit A-22 is a memorandum dated January 14th, 1975,
9 covering an exhibit which shows all the acreage and wells
10 and locations by formation that would be subject to
11 GLA-46 as of that date, anyway?

12 A. Yes, it would appear that this January 14th memo
13 does contain an Exhibit 1 and an Exhibit 2. Whether or not
14 those are accurate, I have no knowledge of the accuracy or
15 completeness of them.

16 Q. Would it be safe to say that approximately 100
17 wells have been drilled under GLA-46? Very round number, I
18 realize, but is that your understanding, more or less?

19 A. I don't know what the total well count is. I
20 don't see it in either one of the exhibits that you've
21 presented with -- in front of me right here, so I really
22 don't have -- I don't have any idea how many wells.

23 Q. All right. Burlington doesn't plan on presenting
24 any other evidence today with respect to acreage covered by
25 GLA-46 or number of wells drilled under GLA-46?

1 A. No, sir, I have no further plans to present
2 anything of that nature.

3 Q. All right. Let's look at Exhibit A-47, please,
4 sir. Now, earlier you testified that additional wells were
5 drilled under GLA-46. I understand you don't have
6 knowledge of the specific number. But if you'll look at
7 the documentation under Tab 47, your Exhibit A, it appears
8 to be Amendment Number 24 to GLA-46, dated September 2,
9 1987, is it not?

10 A. Yes, it does.

11 Q. Earlier, you said that additional wells were
12 drilled after the 18th initial well, only on the unanimous
13 of all parties to do so. You need to state verbally --

14 A. Yes, that is correct.

15 Q. All right. If you'll look at the second page
16 that has Bates stamp number 719, would it appear that
17 Meridian at the time negotiated with Amoco Production
18 Company and the Potenziani Family Partnership for the
19 drilling of an additional well under GLA-46?

20 A. Yes, I agree that this amendment does do that.

21 Q. All right. And what they amended, among other
22 things, if you'll look at the second page again, at
23 subparagraph (b), it provided that 200 percent of costs of
24 completing the well would be paid by the parties, correct?

25 A. Yes.

1 Q. Now, let's turn the next tab, Tab 48 -- I'm
2 sorry, let me refer you back again to 47. The last page of
3 that, Bates Number 720, there's an execution by Amoco,
4 correct?

5 A. Yes, sir, that is correct.

6 Q. So that's Amoco's modification --

7 A. Yes, sir.

8 Q. -- under Amendment 24?

9 Now, let's look at Tab 48, if you would. The
10 same letter again, is it not?

11 A. Yes, it is.

12 Q. And you look at the last page of that, Bates
13 Number 723, it appears to be an execution on behalf of the
14 Potenziani Family Partnership, correct?

15 A. Yes, sir.

16 Q. And you look at the middle page, Bates Number
17 722, subparagraph (b) there, you'll see that the cost
18 provision says 100 percent?

19 A. Yes, I see that.

20 Q. Do you agree with that?

21 A. Yes, I -- Yeah, I --

22 Q. So it's not accurate, is it, that in each case
23 you had unanimous agreement on all provisions for drilling
24 of additional wells after the 18th well? That would show?

25 A. No, that to me does not show that. To me that

1 shows that Potenziani has made a counter and that although
2 we don't recognize it here, that I would make the
3 recognition that El Paso agreed to the proposed counter and
4 carried forward.

5 So again, I think that this is unanimous-consent
6 participation. That's my opinion on it.

7 Q. You don't know whether this counter at 100
8 percent of cost was accepted by Meridian or not; is that
9 what you're saying?

10 A. No, I do not know that personally. I don't see
11 anything accepting or denying the marked-through changes.

12 Q. Would you happen to know whether the subject well
13 was drilled, the Atlantic D Com E 6R?

14 A. I do believe that that well was probably drilled,
15 and probably by 100 percent recoupment. Obviously, this
16 well probably cost more than \$90,000, so probably it was an
17 amendment.

18 Q. All right.

19 A. Yeah.

20 Q. Let me ask you about some additional issues that
21 have been raised by application and some of your direct
22 testimony. If you'll look back at the Application you had
23 before you before --

24 A. On 12,276?

25 Q. Yes, sir.

1 A. Okay.

2 Q. Third page of that, at numbered paragraph 9, do
3 you see that?

4 A. Yes, sir.

5 Q. It says, paraphrasing, Burlington advised the
6 GLA-46 Group, including Energen, that GLA-46 agreement did
7 not apply to this new well proposal. Is that an accurate
8 statement of --

9 A. No, the letter did state that, yes, sir.

10 Q. All right. If you turn to your Exhibit A, Tab
11 64, that's that letter?

12 A. Yes.

13 Q. In fact, this is one of your original --

14 A. Okay.

15 Q. There you say it is Burlington's -- I don't mean
16 to say "you". Yes, it is you, Shannon Nichols wrote this.
17 You say, "It is Burlington's position that the provisions
18 of GLA-46 do not apply to this well inasmuch as the
19 drilling obligations, terms and conditions of GLA-46 were
20 satisfied with the drilling of the initial eighteen (18)
21 wells on GLA-46 lands as set out in the agreement."

22 Now, to your knowledge, is that the first time
23 that specific position was articulated to any of the GLA-46
24 interest owners, that GLA-46 did not apply after the 18
25 wells?

1 A. I don't have personal knowledge that that is the
2 first time that was specifically articulated in that
3 format.

4 Q. Let's turn to Tab 68 under Exhibit A.

5 A. Okay.

6 Q. It's a letter from Mr. Strickler dated May 18,
7 1999, to GLA-46 working interest owners. I assume you're
8 probably familiar with this letter?

9 A. Yes, I am.

10 Q. It transmits a new joint operating agreement. If
11 you'll look at the second sentence there [sic], it says,
12 "...which is intended to replace the original Farmout
13 Agreement Contract dated November 27, 1951..." Do you see
14 that language there?

15 A. Yes, uh-huh.

16 Q. So would it be accurate to say that as of May 18,
17 1999, anyway, it was Burlington's position that, as you
18 said, GLA-46 was in effect and you were seeking its
19 replacement?

20 A. Yeah, that was the intent of this proposal, it's
21 my understanding that --

22 Q. All right. And you look further down on that
23 same exhibit, the next to last sentence of the second
24 paragraph, it says, "Burlington is unwilling to accommodate
25 the non-operators under the original earning provision due

1 to simple economics." Do you see that there?

2 A. Yes, I do.

3 Q. Is that the first time that position was stated
4 by Burlington to any of the GLA-46 interest owners?

5 A. I don't know personally that that was the first
6 time that's been communicated.

7 Q. All right. But in this case, anyway, you're
8 saying that you couldn't abide by GLA-46 because economics
9 wouldn't allow you to do that?

10 A. That's what that sentence says.

11 Q. And you're somewhat familiar with the terms of
12 GLA-46, you've read it?

13 A. Yes, I've read it.

14 Q. The farmout agreement and operating agreement?

15 A. Yes, sir, yeah.

16 Q. Have you read the force majeure provision in that
17 agreement?

18 A. I'm sure I've read it. The specifics of it, I
19 couldn't speak with you on right now, but I'm sure I have
20 read it as part of my readings on it.

21 Q. There's no provision in the force majeure article
22 which states that change in economic conditions is a force
23 majeure event, is there?

24 A. I -- Again, Scott, I don't know.

25 Q. Let's turn the tab to Tab 69, Exhibit A. It's a

1 letter dated August 25th, 1999, authored by you. And this
2 is the withdrawal of the initial well proposal for the
3 Brookhaven Com 8, correct?

4 A. Yes, sir, that's correct.

5 Q. And if you look at the third paragraph there it
6 says, "In the near future, Burlington is planning to mail
7 another Joint Operating Agreement covering the proration
8 unit for this well and other lands previously subject to
9 GLA-46."

10 A. Yes, I see that.

11 Q. Let me make sure I understand what Burlington's
12 position was, on that date anyway. Were you saying that
13 the lands were no longer subject to GLA-46?

14 A. For new drilling operations, yes, that is a
15 correct statement, that we don't feel that GLA-46 any
16 longer had applicability on new-drill proposals. That is
17 the intent of that statement.

18 Q. All right. To your knowledge, was this the first
19 time this particular position was articulated to the GLA-46
20 interest owners?

21 A. I do not have specific knowledge that that was
22 communicated prior to that, so I don't know.

23 Q. All right, let's turn to Tab 70 there, quickly.
24 It's a letter dated September 9, 1999, by Jim Strickler to
25 Rich Corcoran at Energen. And if you look at the last

1 sentence of the first full paragraph there it says,
2 "Burlington is also prepared to make you a cash offer to
3 purchase your GLA interest as another alternative."

4 A. I see that.

5 Q. So as of September 9, 1999, anyway, Burlington
6 regarded the GLA-46 as existing as to some lands, and it
7 had some value for a purchase, did it not?

8 A. The way I interpret that particular sentence is
9 that you have a group of leases subject to the old GLA-46.
10 My interpretation of that sentence is simply stating that
11 those lands and leases that were subject to the original
12 GLA-46, Burlington is willing to entertain making an offer
13 of that interest. I don't interpret that any further than
14 that.

15 Q. Okay. Would you know whether the GLA interests
16 Burlington was suggesting be purchased by it were those
17 outlined in Exhibit 22, the acreage and the formation list?

18 A. Mr. Strickler did not consult me before making
19 his offer, so again I don't have personal knowledge of what
20 James's proposal solicitations did or did not include. I
21 don't know, again, if it was all-inclusive or if it was a
22 portion of those.

23 Q. Okay. Now, let's get a better understanding of
24 Burlington's construction and understanding of GLA-46.
25 Would you turn to Tab 51, Exhibit A? It looks like an

1 internal Meridian memorandum dated July 26th, 1989, from
2 Tom Hawkins to Tommy Nusz. If you look down there at the
3 bottom, numbered paragraph 2, it says, "EPPC..." I assume
4 that's El Paso Production Company?

5 A. That's correct.

6 Q. "...carries Amoco, et al., and recoups drilling
7 cost, as limited below, out of 1/2 of each parties' [sic]
8 net working interest. Production from one well shall not
9 be used to repay drilling costs of another well."

10 Is that consistent with your understanding of how
11 GLA-46 worked?

12 A. Under the stringent terms of GLA-46, that is my
13 understanding.

14 Q. All right. Then if you'd turn the page there,
15 following the numbered paragraphs there is an unnumbered
16 paragraph and it says, "The Agreement gives EPPC control of
17 the acreage because the other parties have no way to
18 propose and force wells to be drilled."

19 Now, is that consistent with your understanding
20 of the operation of GLA-46?

21 A. Yes, sir, that is. The original agreement, that
22 is consistent with the original agreement.

23 Q. All right. So under any acreage where GLA-46
24 would apply --

25 A. Uh-huh --

1 Q. -- Energen, for instance, would not have
2 ownership of the executive rights? In other words, Energen
3 cannot propose that it drill and operate a well, only El
4 Paso/Meridian/Burlington could?

5 A. That is my understanding, yes.

6 Q. Does that continue to be Burlington's position
7 today, that it has the exclusive ownership of the operating
8 and executive rights on the GLA-46 acreage?

9 A. Certainly with -- absent other agreements, such
10 as our new proposed JOA, which would open these lands up to
11 any party making a proposal, if you continue to refer to
12 the strict interpretation of GLA-46 then, yes, Burlington
13 is the only party that can serve as operator.

14 Q. Let's turn to Tab 54 in your Exhibit A. It
15 appears to be a contract brief dated June 15, 1995, Jim
16 P. -- Jim Parmenter?

17 A. Permenter, that is correct, uh-huh.

18 Q. And if you look in the upper left-hand corner
19 there, it refers to the instrument GLA-46, and then what
20 does it say for "Status"?

21 A. It says "Active".

22 Q. All right. Then if you look under the heading --
23 this is in the center there -- "Rights Granted", it says
24 "Pursuant to Operating Agreement of 11-27-51:" first entry
25 is, "EPNG was obligated to fully develop acreage in the

1 Mesaverde formation." That was Meridian's position,
2 correct, as of 1990?

3 A. That was Mr. Permenter's review of the actual
4 contract itself. Again, that's Mr. Permenter's -- simply
5 his review of the contract and his written summary of that
6 contract.

7 Q. All right. And do I have my time frame right?
8 Was it Meridian at the time?

9 A. 1990 was Meridian, that is correct.

10 Q. All right. The next entry there, it says "EPNG
11 has authority to drill all wells without consent of other
12 parties." Do you see that there?

13 A. Yes, I do.

14 Q. And that was Meridian's position at the time, and
15 from what I understand of your testimony here tonight, it
16 continues to be Burlington's position?

17 A. Yeah, our position has not changed under the
18 strict interpretation of that contract. If you go back and
19 read it, that is provided in the contract.

20 Q. Okay. Let's go to Tab 60, if you would, please,
21 sir.

22 A. Okay.

23 MR. HALL: For the record, Mr. Examiner, I would
24 note that this is not a document produced by Burlington to
25 me. It's one of the documents that came forward in

1 connection with the Marcotte 2 well in 1996 -- 1997,
2 rather. Just so the record is clear on that. I don't
3 think there's going to be any dispute about its
4 authenticity.

5 Q. (By Mr. Hall) Mr. Nichols, look at that exhibit.
6 It appears to be a letter dated May 22, 1997, authored by
7 Mr. Strickler, to Total Minatome Corporation, correct?

8 A. Yes.

9 Q. If you look at that first full paragraph after
10 the numbered paragraph 2, it says, "Historically, it is
11 clear that the November 27, 1951, farmout/operating
12 agreement, known as GLA-46, covered the Pictured Cliffs and
13 Mesaverde formations." Do you see that there?

14 A. Yes, I do.

15 Q. You don't disagree with that?

16 A. No, I don't dispute the original contract.

17 Q. All right. Then it goes on to say, skip a
18 sentence, "This agreement was never intended to cover deep
19 gas exploration as indicated by past experience."

20 A. Okay.

21 Q. Do you agree with that?

22 A. I have never delved into the matter that Mr.
23 Strickler has as far as its applicability on deep rights,
24 so I would be reluctant to offer an opinion on whether it
25 covered any depths.

1 Q. All right. Well, as you say, you've examined the
2 terms of GLA-46. Isn't it accurate to say that where
3 drilling to a formation outside the Mesaverde is
4 contemplated and the costs of drilling to that new
5 formation have not been addressed, then the parties are to
6 negotiate those costs?

7 A. I concur that obviously the shallower producing
8 horizons have been covered in cost agreements through the
9 years. How they intended, or if it was contemplated under
10 the original agreement, to cover deep gas, I have no idea
11 if the -- what the thinking of the parties were at that
12 time.

13 Q. Is it accurate to say that El Paso/Meridian/
14 Burlington, as the operator under GLA-46, had an obligation
15 under the contract itself to try to negotiate costs for
16 those non-Mesaverde formations, shallow or deep?

17 A. To my knowledge, Burlington did not have an
18 obligation to make any negotiations as to other horizons
19 that were not covered in the agreement, to my knowledge.

20 Q. Let me make sure I understand what your position
21 is, then. So GLA-46 wa applied to Mesaverde formation
22 only?

23 A. No, my position, I think, in response to your
24 question was, was it contemplated in the agreement that for
25 any deep gas that may have been contemplated under the

1 agreement -- and I'm trying to rephrase your question,
2 correct me if I'm wrong, Mr. Hall -- that Burlington was
3 under an obligation to go to the non-operators under that
4 agreement and attempt to negotiate deep-gas costs.

5 To my knowledge, the agreement does not include
6 that provision. To my knowledge, it does not.

7 Q. All right. Well, let's -- If we don't consider
8 the deep gas --

9 A. Okay.

10 Q. -- as was involved with the Marcotte --

11 A. Okay.

12 Q. -- and Scott wells, say a shallower formation or
13 a Dakota formation, isn't it accurate to say in those cases
14 where drilling to those non-Mesaverde formations was
15 contemplated, the operator had an obligation under the
16 GLA-46 contract to get together with the parties and try to
17 negotiate well costs?

18 A. Again, Mr. Hall, unless it was specifically
19 contemplated in the old agreement, and unless the costs
20 were set out, I'm not sure that Burlington or San Juan or
21 any of our predecessors-in-title had an obligation to make
22 a negotiation. I don't know that. I've never specifically
23 seen that in anything that I've read in the contract file.

24 Q. Okay. Let's turn back to Tab 58.

25 A. Okay.

1 Q. And after we just saw Mr. Strickler's
2 representation that GLA-46 was never intended to apply to
3 deep rights, let's look at Exhibit A-58. It appears to be
4 a letter from Michael Cunningham, dated January 14, 1997.
5 First of all, let me ask you, do you know Mr. Cunningham?

6 A. Yes, sir, I do.

7 Q. He's who everybody calls "Cutter", right?

8 A. Yes, sir.

9 Q. And he does title work for Burlington?

10 A. That is correct.

11 Q. And on January 14, 1997, if you look at the last
12 sentence of the first paragraph, would it appear that
13 Burlington was advised that GLA-46 covers all depths?

14 A. Mr. Cunningham's second sentence, the first
15 paragraph, does state that.

16 Q. All right. So that's inconsistent with what Mr.
17 Strickler said later, as evidenced by Exhibit 60, when he
18 communicated to Total Minatome, GLA-46 owner?

19 A. No, I disagree with your contention there. I
20 think that if the agreement was intended to contemplate
21 deep gas, then the agreement would have specifically
22 referenced some cost obligations under that. So I can't
23 argue with Mr. Strickler's sentence there that it was never
24 intended.

25 Now, to take that back to Mr. Cunningham's

1 interpretation that there's no depth limitations, I don't
2 you can apply Cutter's sentence to Mr. Strickler's
3 sentence. At least I certainly would not, in my review of
4 those two sentences. I think whether or not there were
5 vertical limits on the operating agreement, and whether or
6 not that operating agreement specifically contemplated deep
7 gas, I think, are two different issues. And I don't -- I
8 think that both sentences in Mr. Cunningham's letter -- his
9 sentence.

10 And I also -- My personal opinion is that Mr.
11 Strickler's highlighted sentence in May 22, 1997, is
12 correct. That's my personal opinion of that letter.

13 Q. All right, fair enough. Look further on down in
14 Mr. Cunningham's letter. He says, "...Burlington has
15 complete control over the development of the acreage, but
16 most provide and then recoup the working interest owners'
17 percentage of costs for all operations." Do you agree that
18 that is the proper operation of GLA-46?

19 A. I agree with Mr. Cunningham's review of GLA-46.

20 Q. Okay. Let's look at Tab 57. And again, Mr.
21 Examiner, this document does not have a Bates stamp number.
22 It's not included among those produced to my by Mr.
23 Kellahin. But it is a Meridian document.

24 It appears to be a letter dated October 23, 1992,
25 from John Zent, of Meridian, to the GLA-46 parties, right?

1 A. Yes, sir.

2 Q. All right. And if you look at the second
3 sentence of the first paragraph it says, "Meridian will
4 drill this well..." referring to the Scott 1R. "Meridian
5 will drill this pursuant to the terms and conditions of
6 that certain Joint Operating agreement dated November 27,
7 1951."

8 And that same paragraph goes on to explain how
9 recoupment of the maximum well costs of \$45,000 from 50
10 percent revenue stream is accomplished.

11 Do you agree that that was the proper operation
12 of GLA-46, Meridian's position as of 1992, anyway?

13 A. Mr. Zent, at the time he proposed this letter,
14 stated that he would be willing to drill that, the Scott
15 1R, under the terms of the 11-27-51 agreement, if he could
16 amend it to allow for adequate cost recovery.

17 Q. I see.

18 A. So again, it's not inconsistent that by unanimous
19 agreement the parties agreed to drill another well.

20 Q. So it appears in that case, from a review of this
21 document, that once again Meridian offered the GLA-46
22 parties a couple of options. One, they could sign a new
23 JOA for the Scott 1R, first option.

24 Would execution of the new JOA effectively
25 release and replace GLA-46 as to a drilling unit?

1 A. Mr. Hall, are you still referring to the --

2 Q. Exhibit 57.

3 A. Under the Option A, participate in and pay for
4 the costs of drilling at the test well, is there -- I'm not
5 following you.

6 Q. Yeah, I'm sorry. If you look at the first page
7 there, that second paragraph that says execute a new JOA.

8 A. Okay, I follow you now.

9 Q. Yeah. And --

10 A. My interpretation of that would be that, yes, if
11 these parties entered into a new joint operating agreement,
12 that more than likely -- Again, I'm purely speculating
13 here, because I have not seen that particular joint
14 operating agreement. But my assumption would be that Mr.
15 Zent would have put some supersede language in his -- So
16 I -- again, speculation.

17 Q. All right. Then the alternative option, again on
18 the first page there, is that -- amend the November 27,
19 1951, operating agreement to allow Meridian a vehicle to
20 recoup 100 percent of actual drilling costs, according to
21 the AFE?

22 A. Okay.

23 Q. And that was the other option?

24 A. Yes, okay.

25 Q. Whoever this was sent to, it looks like they said

1 "Do not execute" their right?

2 A. Yes, that is noted on the letter I've got right
3 here.

4 Q. Let me refer you to Exhibit A-1, under Tab 1
5 there. That's the farmout and operating agreement. That
6 is GLA-46, right?

7 A. Just a moment.

8 Q. Okay.

9 A. Yes, that does appear to be the original farmout
10 agreement.

11 Q. All right. And if you turn to page 1 of Exhibit
12 B, that's the operating agreement itself?

13 A. I'm sorry?

14 Q. If you page to -- I'm sorry, turn to page 1 of
15 Exhibit "B", the operating agreement itself. Are you with
16 me there? It's --

17 A. Page 1 of Exhibit 1?

18 Q. Exhibit "B" is part of Exhibit 1.

19 A. Oh, okay, let me find that. Okay, yes, I agree
20 that that is the operating agreement.

21 Q. Look at numbered paragraph 1 at the bottom of the
22 page there. As you have previously testified here today,
23 it looks like that provision provides for the transfer and
24 assignment of San Juan's operating rights to -- I'm sorry,
25 Brookhaven transfers its operating rights to San Juan,

1 correct?

2 A. I agree with that.

3 Q. And that's consistent with your earlier testimony
4 that you believe Burlington to be the owner of exclusive
5 operating rights for the GLA-46 acreage?

6 A. Yeah, under the -- Yes, that is correct.

7 Q. Then keep on turning pages, paragraph 4 there --

8 A. Okay.

9 Q. -- that's the drilling obligation we've been
10 talking about.

11 A. Okay.

12 Q. Turn to page 4, a continuation of that same
13 paragraph 4.b., the drilling obligation, I will paraphrase.
14 I think we've discussed, the language speaks for itself,
15 but it says after the 18 wells or whatever the drilling
16 obligation is has been satisfied, the operator "shall
17 reassign or relinquish the undrilled locations or the
18 rights to all formations undrilled or non-producing on
19 those locations." Do you see that there?

20 A. Yes, I do.

21 Q. Has Burlington released any of the drilling
22 locations under GLA-46?

23 A. To my knowledge, no, we have not. But that's
24 again, just my own take.

25 Q. All right. And if you continue on, turn to page

1 5 there, look at paragraph 4.f., again, it's a reiteration
2 of the release and relinquishment obligation, correct?

3 A. Yeah, it's very -- It's similar language.

4 Q. Okay. And if you turn to page 7, if you look at
5 paragraph 5.d.1. there, and that's --

6 A. Okay.

7 Q. -- we've discussed in part tonight, that
8 addresses the well-cost issue, and it was the initial
9 provision for recoupment of Mesaverde --

10 A. Okay.

11 Q. -- of, at that time, \$45,000?

12 A. Yes.

13 Q. And there's no dispute that that was later
14 amended to increase the number to \$90,000, correct?

15 A. That is correct.

16 Q. If you look at paragraph 5.d.2. on page 8 of that
17 exhibit it says, "IN the event any well be drilled upon
18 said acreage to a greater or lesser depth than a Mesa Verde
19 well, the drilling costs (except casing to be furnished by
20 San Juan) to be paid out of production by Brookhaven shall
21 be determined proportionately with the parties agreeing
22 upon a maximum cost comparable to the maximum of a Mesa
23 Verde well, as defined in Section 5d1 above."

24 A. Okay.

25 Q. So that's somewhat at issue in this proceeding,

1 correct?

2 A. I'm sorry?

3 Q. That particular paragraph is at issue, the well-
4 cost issue, correct?

5 A. Yes, that is one of the concerns that we have, is
6 the --

7 Q. All right.

8 A. -- the actual cost.

9 Q. Now, in the case of the Brookhaven wells proposed
10 by Burlington in 1998 and 1999, to your knowledge, did
11 Burlington ever attempt to renegotiate the costs according
12 to paragraph 5.d.2. and as it incorporates paragraph
13 5.d.1.?

14 A. I'm not sure that the paragraph that's labeled as
15 number 2 on page 8 for the Mesaverde side, I don't know
16 that it's applicable. Did we make an attempt to negotiate
17 actual costs for the Chacra? Absolutely, the same as we
18 did as the Mesaverde. As we clearly identified under two
19 options, we certainly made an attempt to negotiate well
20 costs.

21 Q. It is not in dispute, is it, that the agreed well
22 cost for Mesaverde wells under GLA-46 contract is \$90,000
23 now?

24 A. No, I don't dispute that that was the last
25 amendment encompassing the entire contract. I don't

1 dispute that. Other wells have been drilled under
2 different circumstances, certainly, but as far as an actual
3 amendment to the contract, I don't dispute that.

4 Q. All right. Let's refer now to, in Exhibit A, Tab
5 50, and that appears to be a letter dated December 7, 1987,
6 by Tom Hawkins, senior landman for Meridian at the time, to
7 working interest owners, and it says regarding farmout
8 agreement and operating agreement, the GLA-46 agreement.

9 A. Okay.

10 Q. And would it appear that this letter sought the
11 amendment of GLA-46 to provide for gas balancing?

12 A. Yes.

13 Q. And I don't think it's disputed that the GLA-46
14 was amended and all parties agreed to incorporate the gas
15 balancing agreement. Do you dispute that?

16 A. No, I don't dispute that.

17 Q. All right. Under that letter it shows in Exhibit
18 "E", the gas balancing agreement itself. To your
19 knowledge, does this appear to be what everybody agreed to?

20 A. Yeah, from memory, that certainly looks to be the
21 same agreement.

22 Q. Okay. Look at the last page, last paragraph of
23 the gas balancing agreement amendment.

24 A. Okay.

25 Q. It says there, "This agreement shall remain in

1 force and effect as long as the operating agreement is in
2 effect."

3 Q. Okay.

4 Q. Would that mean to you that as long as GLA-46 is
5 in effect and applies to the subject lands, then gas
6 balancing applies?

7 A. Yes, that's how I would interpret that.

8 Q. So Burlington as operator of all that acreage
9 could effect gas balancing among the interest owners?

10 A. Yes, that is my interpretation of that.

11 Q. That is, unless the undrilled locations are no
12 longer subject to GLA-46. Would that be accurate?

13 A. Yeah, I think if we entered into alternative
14 agreements for undrilled locations, then yes, that would be
15 accurate.

16 Now, if we made amendments -- if we agreed by
17 unanimous consent to drill the wells under agreed-upon
18 costs and we amended it, then my interpretation would be
19 that this gas balancing agreement would apply to any
20 amended location that we drilled, if there was a new
21 operating agreement that covered -- For instance, if we had
22 success and we submitted a brand-new JOA and along with
23 that JOA we submitted a gas balancing agreement, I think
24 that the gas balancing agreement that would be associated
25 with the new JOA would be the one that's in effect.

1 Q. Okay. There's no dispute that under the GLA-46
2 acreage, anyway, there are some undrilled Dakota locations,
3 Pictured Cliffs locations, perhaps some Fruitland Coal
4 locations?

5 A. I don't pick well locations, so I'm at a loss to
6 speak with certainty. But I think as evidenced right here,
7 there are some locations that are developable.

8 Q. Okay. Is it Burlington's position that those
9 undrilled and undeveloped locations are subject to gas
10 balancing under the amendment to GLA-46?

11 A. I would be hesitant to offer an opinion on that.

12 Q. Okay. If Burlington succeeds in obtaining the
13 relief it requests under the two Applications, its
14 compulsory pooling of the lands, the gas balancing
15 agreement under GLA-46 would not apply, correct?

16 A. Again, Mr. Hall, I think that's an interpretation
17 for Burlington's legal counsel, and I would offer no
18 opinion on that.

19 MR. HALL: That concludes my cross, Mr. Examiner.

20 EXAMINER ASHLEY: Mr. Kellahin?

21 MR. KELLAHIN: A couple of points, Mr. Examiner.

22 REDIRECT EXAMINATION

23 BY MR. KELLAHIN:

24 Q. Mr. Nichols, would you turn with me to document
25 51?

1 A. Okay.

2 Q. Would you turn to the second page?

3 A. Okay.

4 Q. Mr. Hall was discussing with you the first full
5 paragraph below the Number 4. Do you see that?

6 A. Yes, sir.

7 Q. He omitted drawing your attention to the last
8 sentence. Would you read the last sentence?

9 A. The last sentence, "This is what was done on the
10 Scott -- "

11 Q. No, sir -- Yeah, right.

12 A. "This is what was done on the Scott wells.
13 Unfortunately, each time we wish to drill a well, we have
14 to amend the Agreement."

15 Q. Would you turn with me to document 54?

16 A. Okay.

17 Q. Mr. Hall discussed with you some of the items on
18 the first page. If you'll turn to the third page, there is
19 a list of amendments.

20 A. Okay.

21 Q. Starting with Amendment 13 in 1973.

22 A. Okay.

23 Q. It says "Subject of Amendment". The subject of
24 those amendments is to change the costs or the carrying
25 portions of the original 1951 agreement?

1 A. That is correct.

2 Q. Does Burlington intend to drill these proposed
3 wells, subject to the \$90,000 price-ceiling cap and the
4 carry provisions of the 1951 agreement?

5 A. Absolutely not.

6 MR. KELLAHIN: No further questions.

7 EXAMINER ASHLEY: Mr. Hall, do you have anything
8 else?

9 RECROSS-EXAMINATION

10 BY MR. HALL:

11 Q. Let me ask you about your Exhibit 3 for Case
12 12,276.

13 A. Okay.

14 Q. It's your chronology of events.

15 A. Yes.

16 Q. And it says -- Well, it states actions of Cross
17 Timbers Oil Company, August of 1998, it says they elected
18 to participate unconditionally and signed a new JOA.

19 A. Uh-huh.

20 Q. So as I understand your earlier testimony, as to
21 Cross Timbers anyway, for this well anyway, GLA-46 is
22 released?

23 A. Note that the joint operating agreement that's
24 referred to in that particular entry, August 26, 1998, is
25 that Cross Timbers executed the signature page to the joint

1 operating agreement dated July 29th, 1998.

2 Subsequently, we withdrew that proposal and
3 repropose the wells under a new joint operating agreement.
4 Under our subsequent proposal, Cross Timbers has signed the
5 AFE as agent for Merchant Resources. And the operating
6 agreement -- The last I understood from Mr. George Cox at
7 Cross Timbers was that the operating agreement had been
8 forwarded to Merchant for their review and possible
9 execution.

10 So -- and again, I'm -- Mr. Kellahin and I had a
11 discussion yesterday whether or not, absent a joint
12 operating agreement, even though they are in the well and
13 are going to pay actual costs, that I will let Mr. Kellahin
14 work out as far as whether or not they're subject to the
15 pooling order if issued.

16 Q. Whether the Merchant Resources, LP, interest --
17 Is that what you're speaking of?

18 A. I'm sorry?

19 Q. The question is whether or not the Merchant
20 Resources is subject to the JOA?

21 A. Well, not subject to the JOA, but they've agreed
22 to participate in the well. Now the question is, absent
23 their execution of the JOA, are they going to be subject to
24 a pooling provision? Mr. Kellahin was going to work that
25 out. I do not know the answer to that.

1 Q. I understand what you mean. Anyway, with respect
2 to the Cross Timbers interest -- and then you also
3 indicated that Amoco had participated under your JOA,
4 correct?

5 A. They have signed the new joint operating
6 agreement, yes.

7 Q. All right. Can you tell us about the
8 negotiations that were had with each of those parties that
9 led up to the execution?

10 A. I can't speak to the blanket joint operating
11 agreement. Mr. Strickler proposed that, handled all the
12 negotiations on that. I can tell you that the joint
13 operating agreement which I originally submitted with the
14 Brookhaven Com 8, Cross Timbers' execution of that was not
15 subject to any conditional letters of acceptance. Let me
16 verify that by their election here.

17 If you can turn back several pages, back to Cross
18 Timbers, we've enclosed a copy of the signature page where
19 they signed the joint operating agreement that was
20 originally included in our proposal, and there are no
21 conditional -- nothing to note that they were signing this
22 conditionally, as pretty much standard industry practice.
23 So my assumption, again, based on that and based from
24 memory, was, they did not make any amendments to the joint
25 operating agreement we proposed.

1 Q. All right. Did either Amoco or Cross Timbers
2 receive any other consideration or other concessions in
3 exchange for executing the JOA on the GLA-46 acreage?

4 A. On this proposal that I had first-hand knowledge
5 of, absolutely not. Second-hand knowledge, I've heard Mr.
6 Strickler state very strongly, as probably Rich has in
7 Burlington's meeting, that Amoco was not compensated in any
8 format by Burlington for execution. They want development
9 to occur on these lands, that's what they want. They don't
10 want them sitting down here in force pooling proceedings
11 all the time.

12 Q. So it's your testimony, as far as you know, there
13 was no acreage exchange?

14 A. Absolutely not.

15 Q. Amoco was not allowed to operate under acreage
16 with the GLA-46 acreage?

17 A. Amoco -- The blanket joint operating agreement
18 that Amoco signed would allow them to propose and operate.
19 It's a typical 1982 form JOA which would allow other
20 parties to propose operations.

21 Q. All right.

22 A. They were not compensated in any format for their
23 signature, they want development out here.

24 Q. And as you've testified earlier, they would not
25 have had the right to do that under GLA-46 because

1 Burlington had exclusive control of operating rights?

2 A. Under GLA-46, that is correct, yeah.

3 MR. HALL: Okay. Nothing further, Mr. Examiner.

4 EXAMINER ASHLEY: Mr. Kellahin?

5 MR. KELLAHIN: No, sir.

6 EXAMINATION

7 BY EXAMINER ASHLEY:

8 Q. I have to refresh my memory here. In Exhibit 3
9 of 12,276, at one point Burlington's offer was to just
10 recover their expenses without any penalty; is that
11 correct?

12 A. Yes, sir. Under letter dated September 18th of
13 1998, Burlington did provide two options under which we
14 would be willing to drill that. One of the options -- and
15 again, the -- "Enter into a modern form Joint Operating
16 Agreement and either participate or non-consent..."

17 The second option would have been, "Burlington
18 will voluntarily carry your drilling, completing and
19 equipping costs in the referenced well..." subject to
20 simple 100-percent payout out of 100 percent of the carried
21 interest revenue stream.

22 Q. Okay, now -- So help me out here. Where does
23 that offer stand?

24 A. By letter dated -- Oh, let me find it, just a
25 moment here. By letter dated August 25th, 1999 --

1 Q. All right.

2 A. -- Burlington advised all owners, nonoperating
3 owners, in the proposed drilling unit that -- if you're
4 looking at that letter, in the second paragraph, I've -- it
5 was bolded: "As such, this letter is to advise that
6 Burlington hereby withdraws its offer to drill and complete
7 the referenced well under the participation options
8 outlined in our letter dated September 18th, 1998."

9 So at that point in time, we withdrew all
10 proposals that were outstanding on the Brookhaven Com 8.

11 Q. And that's why you're here today?

12 A. Yes, sir. If we could have -- If the folks in
13 the oil patch would have participated and paid their way,
14 we would not be here today. We would have drilled the well
15 under the options in the September 18th, 1998, letter. But
16 we cannot economically develop these projects to the
17 benefit of our nonoperators.

18 EXAMINER ASHLEY: I have nothing further. You
19 may be excused.

20 And let's take a break.

21 (Off the record)

22 EXAMINER ASHLEY: We'll recess for 30 minutes and
23 come back at approximately 7:35.

24 (Thereupon, a recess was taken at 7:03 p.m.)

25 (The following proceedings had at 7:38 p.m.)

1 EXAMINER ASHLEY: This hearing will now come to
2 order.

3 Mr. Kellahin?

4 MR. KELLAHIN: Yes, sir, call Mr. Ralph Nelms.

5 Mr. Examiner, we are referring to the Exhibit Tab
6 6 in each of the books. The information is identical, so
7 we'll simply select one of the books.

8 RALPH L. NELMS,

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

11 DIRECT EXAMINATION

12 BY MR. KELLAHIN:

13 Q. Mr. Nelms, for the record, sir, would you please
14 state your name and occupation?

15 A. My name is Ralph Nelms, senior reservoir
16 engineer, Burlington Resources, Farmington, New Mexico.

17 Q. As part of your employment responsibilities as a
18 petroleum engineer for Burlington, have you made an
19 examination and economic analysis of the potential
20 consequences of drilling this Mesaverde well and the other
21 wells involved in this case under various assumptions and
22 scenarios?

23 A. I have, and the results of those findings are
24 shown in the exhibit books under Exhibit 6 in the very
25 back.

1 Q. That economic analysis that you prepared for
2 these wells, is that the type of analysis that you would
3 customarily perform for your company for other similar
4 wells?

5 A. That is correct.

6 Q. This is not unique just to this case, is it?

7 A. No, it is not.

8 Q. As a result of your efforts, were you able to
9 assimilate sufficient information to come to reasonable
10 engineering conclusions that have substantial probability
11 of being accurate?

12 A. I was.

13 MR. KELLAHIN: We tender Mr. Nelms as an expert
14 petroleum engineer.

15 EXAMINER ASHLEY: Mr. Nelms is so qualified.

16 Q. (By Mr. Kellahin) As part of your study, Mr.
17 Nelms, do you have a recommendation to the Examiner as to
18 the appropriate risk factor penalty to be applied for each
19 of the wells in these two cases?

20 A. I do, and my recommendation is the maximum
21 allowable penalty which the Division can assign, and that
22 is 200-percent penalty.

23 Q. As part of your analysis, did you address the
24 question as to whether or not if subject to the limitations
25 set forth in the carrying provisions and the cost ceilings

1 in the November, 1951, GLA-46 agreements, what would be the
2 consequence of doing that? You have come to a conclusion,
3 have you not?

4 A. Yes. Certainly that the economics associated
5 with drilling under the conditions of GLA-46 would not
6 allow us to proceed with the drilling of these wells. It
7 would be uneconomic.

8 Q. Let's turn to the last entries in the exhibit
9 book, Exhibit 6, and look at the two spreadsheets. There's
10 a two-page spreadsheet and the first spreadsheet. It says
11 a summary of findings for the Brookhaven 8, 8A, the B3B
12 well, economic evaluations. This is your work product, is
13 it not?

14 A. Correct.

15 Q. In order to arrive at these conclusions, were you
16 able to, within reasonable engineering judgments, assess
17 what you thought to be the appropriate costs of the wells?

18 A. I was.

19 Q. Were you able to determine in your expectations
20 as an engineer what might be the recovery from these wells?

21 A. I was.

22 Q. As part of your analysis, were you able to
23 conclude that these were marginal wells?

24 A. The 8, the Brookhaven 8 and 8A, are in an area
25 where the wells are marginal. The Brookhaven 3 B3 is in a

1 more prolific area with higher reserves.

2 Q. You took all those variables into consideration
3 when you ran your economic analysis?

4 A. Correct.

5 Q. Let's look at the first spreadsheet. This is all
6 your work, right?

7 A. Correct.

8 Q. On the top of the spreadsheet we have numbered
9 some of the columns, and they start with number 1 and they
10 proceed from left to right, to column 9.

11 I want to deal just with the row that deals with
12 the Brookhaven B 3B well, the top row, and we will deal
13 with each of the columns, and then the Examiner can see the
14 same methodology that's applied for the Brookhaven 8A and
15 the 8 well. So let's use the 1 as a type example.

16 In column 1 for the Brookhaven B 3B well, there
17 is a dollar amount associated with that column. It says
18 \$386,000. What does that represent?

19 A. That is the total capital investment to drill and
20 complete the Brookhaven 3 -- B3B well, drilling and
21 completion cost.

22 Q. When we look at this spreadsheet, you have
23 divided it so that the upper portion refers to the analyzed
24 profit that Burlington would realize under various
25 assumptions, true?

1 A. Correct.

2 Q. The bottom part of the spreadsheet reflects what
3 would be the advantages and disadvantages to the GLA-46
4 group, right?

5 A. Correct, that is their cash flow from the wells
6 based on their working interest in the wells.

7 Q. In order to look at profit, you have a 10-percent
8 discount, and you've got some after-tax factors in here,
9 true?

10 A. Correct, these are after-tax values.

11 Q. All right. If we look at the \$386,000 investment
12 and we look over at column 2, and you're dealing with 100
13 percent of the working interest, the net-revenue interest,
14 the total potential profit for all working interest owners
15 for this well, after they recover the costs of the well, is
16 what amount?

17 A. That would be \$312,000.

18 Q. Okay. If Burlington, in column 3, makes its
19 investment for its percentage and is not subject to having
20 to carry any of the GLA-46 investment, and they participate
21 in a conventional way, what is the potential profit to
22 Burlington?

23 A. The investment would be \$196,000 for Burlington's
24 50.9-percent working interest. That \$196,000 investment
25 would generate a profit of \$158,000.

1 Q. So you have to link 3 and 4 together, and 4
2 represents the profit?

3 A. For Burlington's share of their working-interest
4 investment in the well.

5 Q. And that would be done under a modern sharing
6 arrangement from a joint operating agreement where each
7 working interest owner pays their share, and Burlington has
8 to pay only its share and carries no other interest?

9 A. That's correct.

10 Q. If you're required to drill and produce this well
11 under the GLA-46 1951 agreement, do you have a column that
12 reflects the consequence to Burlington?

13 A. That would be shown as column 6.

14 Q. And what does it show?

15 A. It shows that under the GLA-46, if we carried the
16 GLA-46 interest owners, we would only generate a profit of
17 \$53,000 on our investment of \$386,000.

18 Q. So under a modern arrangement you would have
19 \$158,000, under the 1951 agreement you only get \$53,000
20 profit?

21 A. That's correct.

22 Q. Correspondingly, go down to the GLA-46 entry for
23 column 6 and tell me what happens, first of all, in column
24 5 with their investment. What investment are they making?

25 A. If they're carried, they have zero investment,

1 zero dollars investment.

2 Q. In exchange for that carried interest, using the
3 payback provisions under column 6 for the old contract,
4 what is GLA-46's profit?

5 A. They would realize a profit of \$259,000 on an
6 investment of zero dollars, being carried fully in the
7 well.

8 Q. Is this an economic scenario where Burlington
9 will be able to drill these wells and carry these interest
10 owners?

11 A. No, that's why we've not done this to this point
12 in time.

13 Q. Okay. If the Division enters a compulsory
14 pooling order and Burlington is required to pay the total
15 cost of the well, what level of penalty allows Burlington
16 to approximate a position it would be in, had it not been
17 required to carry these interest owners under the old
18 contract?

19 A. That penalty would be the maximum of 200 percent.

20 Q. And what number does that generate?

21 A. That would generate a profit to Burlington of
22 \$227,000 on the investment of \$386,000.

23 Q. In your opinion, is that fair and reasonable?

24 A. The \$227,000 is closer to where our profit should
25 be, based upon the risk we're taking to drill the well.

1 Q. Okay. Let's turn the page. You had an opinion
2 associated with this risk factor penalty?

3 A. Correct.

4 Q. Describe for me which of the spreadsheets I
5 should look at to see your analysis of your opinion as to
6 risk.

7 A. The very last spreadsheet shows the rate of
8 return on investment, and what it shows is that if
9 Burlington did not have any additional partners in the
10 well, they could realize a 43-percent return on their
11 investment. And if Burlington paid its working interest
12 share of the well and the GLA-46 partners also paid their
13 working interest share of the well, we could realize a 43-
14 percent return on investment. But if we carried the GLA-46
15 owners, we would only realize a 15-percent return on
16 investment.

17 Q. That's under the 1951 agreement provisions, your
18 return on investment is only 15 percent?

19 A. That's correct.

20 Q. Would you do a deal with that kind of return on
21 investment --

22 A. No.

23 Q. -- rate of return?

24 A. No.

25 Q. To balance the opportunities so that you could go

1 forward with the additional recovery to be achieved by this
2 type of activity, what level of penalty is appropriate?

3 A. The maximum penalty of 200 percent allows us to
4 recover a 40.4-percent return on our investment, which is
5 close to the 43-percent that we would realize if we
6 participated with our working interest share, the GLA-46
7 owners participated with their working interest share and
8 we did not have to carry them. So the 200 percent is the
9 closest return on investment we could realize if we did not
10 have to carry them.

11 Q. Let's go to the spreadsheet that's at the top of
12 this page, the economic evaluation that shows payout in
13 terms of years. Do you see that?

14 A. Correct.

15 Q. Analyze that spreadsheet for me.

16 A. Basically what that spreadsheet shows is that if
17 we develop the well 100 percent, without any partners, we
18 could pay out our investment in 2.5 years. And if we
19 participated in the well with our working interest share
20 and did not have to carry the GLA partners, we would
21 realize a payout on our investment in 2.5 years. But if we
22 had to carry the GLA partners, it would take us eight years
23 to pay out our investment of \$386,000.

24 Q. Is Burlington in a position where it can carry
25 the GLA-46 owners under these payout conditions to achieve

1 payout in more than eight years?

2 A. We're not.

3 MR. KELLAHIN: That concludes my examination of
4 Mr. Nelms. We move the introduction of his Exhibit 6..

5 MR. HALL: Let me raise one point. I'm not sure
6 we established for the record his area of expertise, in
7 case I completely missed it. Is it anything other than
8 petroleum engineering? I just don't think it was
9 established as a matter of record.

10 MR. KELLAHIN: I am sorry, it's late in the day
11 and I've forgotten what I've done. Did I tender him as an
12 expert?

13 EXAMINER ASHLEY: Yes, you did.

14 MR. KELLAHIN: I thought I did.

15 EXAMINER ASHLEY: As a reservoir engineer.

16 MR. KELLAHIN: His expertise as a reservoir
17 engineer is to do economic analyses like this.

18 EXAMINER ASHLEY: right.

19 MR. HALL: I have no objection to the exhibit.

20 EXAMINER ASHLEY: Okay, Exhibit 6 will be
21 admitted at this time.

22 Mr. Hall?

23 CROSS-EXAMINATION

24 BY MR. HALL:

25 Q. Mr. Nelms, what is the purpose of the risk

1 penalty assessment?

2 A. As I understand it, it's to compensate the
3 company carrying interest for their risk.

4 Q. It has nothing to do with augmenting the
5 operator's rate of return on investment, does it?

6 A. I think to the degree in which the risk reflects
7 the need for that higher return, it does. The higher the
8 risk, the higher the return should be.

9 Q. What is the basis of the risk in this case?

10 A. There are several types of risk. First, drilling
11 a well in itself implies risk. Statistically on the
12 Mesaverde wells that we've drilled, we have downhole
13 drilling problems with about 20 percent of the wells that
14 we drill in this area. About 10 percent of the wells, we
15 see significant increases in drilling costs, due to being
16 stuck or cement problems.

17 So the fact of drilling the well itself has an
18 element of risk.

19 Q. Is there any extraordinary risk associated with
20 what are infill Mesaverde wells in this case?

21 A. There is no more extraordinary risk, other than
22 statistically what we see when we drill wells in infill,
23 which is approximately 10 to 20 percent of the wells have
24 problems.

25 Q. All right. Are you prepared to offer any sort of

1 evidence with respect to the proximity of Mesaverde and
2 Chacra production in the immediate vicinity of these wells?

3 A. The initial analysis that was done for the AFE, I
4 believe, did present some information on what the
5 production capability was of the offset wells. I do have
6 that original prognosis.

7 Q. Is that contained within an existing exhibit?

8 A. No, it is not. This was the original AFE and the
9 original drilling package that was completed on the
10 Brookhaven 8 well.

11 MR. HALL: May I approach the witness?

12 EXAMINER ASHLEY: That's fine.

13 MR. HALL: May I have this?

14 THE WITNESS: Sure. That's my only copy, so I
15 won't be able to talk to it. But when we do packages on
16 wells, we look at the production from the offset wells.

17 Basically on the Brookhaven 8 and 8A, we'd
18 estimated reserves in the Mesaverde formation to be
19 approximately 680 million standard cubic feet. We
20 estimated reserves in the Chacra to be approximately 480
21 million standard cubic feet.

22 So the Brookhaven 8 and 8A, the combined reserves
23 for both formations was approximately 1.06 billion standard
24 cubic feet of gas, which is not a very high reserve well,
25 considering the other areas on the Basin. If it was not

1 for the Chacra reserves at 683 million standard cubic feet,
2 the Dakota would be essentially uneconomic to drill.

3 So Mesaverde stand-alone in this area would be
4 uneconomic. It requires the addition of the Chacra to make
5 it economic.

6 Q. With respect to the Brookhaven Com Number 8, the
7 materials you've given me, it's a memorandum dated July 16,
8 1998, internal memorandum from Burlington. It appears to
9 say a 90-percent probability of success is assumed for the
10 Brookhaven Com 8. Is that still your position?

11 A. That would reflect the 10-percent to 20-percent
12 risk that I was stating that we incur drilling wells.

13 Q. Dryhole costs you reflect here are \$119,000.
14 Does that sound right?

15 A. That sounds reasonable.

16 Q. Does Burlington intend on putting on any
17 additional geologic evidence, or are you it?

18 A. We did not bring any geological evidence, no. We
19 felt the economic evidence spoke for itself.

20 Q. There is no doubt, is there, that these wells are
21 assured of encountering the Chacra and Mesaverde in each of
22 the three locations?

23 A. The geologic risk is low.

24 Q. All right.

25 A. The economic risk is high. We will find

1 reservoir. There may be some pressure depletion. We won't
2 know till we get there. But the geologic risk is low since
3 these are infill development wells.

4 Q. Is any of the pressure depletion reflected in the
5 bottomhole pressures for the initial wells in the proration
6 units?

7 A. We have seen some reduction in pressures in some
8 of the wells we've drilled. I can't give you specifics in
9 this area, I didn't bring any background information.

10 That is the document that the GLA partners should
11 have received when we initially submitted the AFE to them.
12 The AFE is there, the cost breakdown is there. And those
13 costs are also shown in the exhibit books, as far as the
14 breakdowns go. That would be -- It looks they're in
15 Exhibit 5. Those are the same costs that are in that
16 document.

17 That's the \$427,000 total investment. I think it
18 was \$190,000 for drilling and \$237,000 for completion.

19 Q. Mr. Nelms, with the materials you've handed me
20 there's included a couple of well-location plats for the --

21 A. -- Mesaverde and the Chacra.

22 Q. -- subject wells?

23 A. Correct.

24 Q. I wonder, does this material reflect the daily
25 producing rates and the cumulative production for the

1 offsetting wells to the proposed wells?

2 A. They did as of July 14th, 1998, as was stated --

3 Q. I wonder if you could read into the record what
4 those figures are for the wells surrounding the proposed
5 wells?

6 A. I'll just do the closest three wells.

7 Q. That's fine.

8 A. Section 36, the Brookhaven Com 7A was drilled in
9 January, 1997. As of July 14th, 1998, that well was
10 producing at a rate of 411 MCF a day. It accumulated 150
11 million standard cubic feet. The estimated ultimate
12 recoverable reserves from the Chacra were approximately
13 2064 million standard cubic feet.

14 North of the proposed location for the Brookhaven
15 8 is the Hammond 92 well, drilled in January, 1980. As of
16 July 14th, 1998, that well was producing at a rate of 64
17 MCF a day with a cumulative production of 597 million.

18 The next closest well would be the Federal E 1.
19 That would be in the southwest quarter of Section 25, 27
20 North, 8 West. It was currently only producing at a rate
21 of 1 MCF a day. Cumulative production is 543 million.

22 Those were the closest wells in the Chacra.

23 Q. And for the record, these are the closest
24 locations to the Brookhaven 8 and 8A?

25 A. They were as of July 14th, 1998. There may be

1 some recent drills and development in that area that I'm
2 not aware of.

3 Q. Okay. How about the Brookhaven Com B 3B? What
4 are the production figures for those offsets?

5 A. In the Brookhaven Com 7A, this well is located in
6 the southeast quarter of 36, 27 North, 8 West. The well
7 was making at that point in time 241 MCF a day, cumulative
8 production 158 million, estimated ultimate recoverable
9 would be 2498 million standard cubic feet or about 2.5 B's.

10 The well directly to the north is the Hammond
11 41A. As of July 14th, 1998, that well was producing at a
12 rate of approximately 133 MCF per day. Cumulative
13 production is 1.09 B's.

14 And the Federal E 1 was basically shut in, in the
15 Mesaverde. It totaled 818 million, and it looked like it
16 had expired. It was not producing economically at that
17 time.

18 Q. All right. What is the minimum economic
19 criterion for the drilling of each of these three proposed
20 wells?

21 A. Define "minimum economic criteria".

22 Q. What is Burlington's criteria on deciding whether
23 or not to proceed with the drilling of the three wells?

24 A. I don't feel comfortable basically exposing what
25 our internal decisions are on what we determine for

1 decision points on rate of return on investment. I think
2 that's confidential information.

3 We -- Definitely 15 percent is not enough for us
4 to move forward.

5 Q. All right. What's industry average? Do you have
6 an opinion on that?

7 A. It varies.

8 Q. In the San Juan Basin?

9 A. Each operator has their own numbers that they
10 deal with.

11 Q. Burlington's is a little bit higher than the
12 other operators in the San Juan Basin?

13 A. We have some opportunities to achieve returns on
14 investments that are significantly higher than 15 percent,
15 and we'll pursue those before we pursue this type of an
16 investment.

17 Q. What is the rate of return that's acceptable to
18 Burlington on their actual well cost?

19 A. I guess -- Define "acceptable". Greater than
20 zero? It has to be -- We make our decisions based on what
21 we can do with our money, investing in other wells.

22 Q. Do you know if Burlington or yourself ever
23 attempted to place a value on the acquisition of the
24 operating rights under GLA-46?

25 A. I've never seen any work done on that. I have no

1 idea if that has ever been done or not.

2 Q. Do you know the last time El Paso, Meridian or
3 Burlington may have carried, as you say, an interest owner
4 under the GLA-46 cost provisions?

5 A. Based on the previous conversations I heard,
6 sometime in the 1990s.

7 Q. All right.

8 A. But that is not based on anything I've read, that
9 was just overhearing conversations at today's meeting.

10 Q. Now, who told you that?

11 A. That is what I heard on the previous discussions
12 here today.

13 Q. Did you run your rate of returns if you carried
14 at actual well cost for these three wells?

15 A. I ran my rate of returns at the AFE costs, what
16 the AFE costs were originally projected to be.

17 Q. And is that different from actual cost?

18 A. Today -- These economics were based on actual
19 costs in July of 1998. Today these cost would be higher
20 than this.

21 Q. All right. And did you calculate rate of return
22 on actual versus GLA-46 carried interest terms?

23 A. For the GLA-46, I used GLA-46. For the other
24 penalties, I used the AFE total costs.

25 Q. All right, Mr. Nelms, what is the rate of return

1 on actual cost with the risk penalty applied? Is it your
2 29.1 percent shown on your last page?

3 A. That would be correct, that basically at zero
4 percent penalty Burlington would realize a 29-percent
5 return on its investment, if we carried the working
6 interest and we only realized a penalty of zero percent.
7 Our return on it would be 29 percent.

8 Q. All right. And if you recovered 100 percent of
9 costs, actual costs?

10 A. Yes.

11 Q. I believe you were present when you heard the
12 earlier testimony on Burlington's proposal for, say, the
13 Brookhaven Com 8 made on September 18, 1998, and it was
14 proposed that Burlington recoup only 100 percent of the
15 actual costs, without a risk penalty. Do you recall that
16 testimony?

17 A. I remember that. I do.

18 Q. Was that an economically feasible well for
19 Burlington to propose?

20 A. I can't address the economics at that time,
21 whoever made -- I did not make that decision. Someone made
22 that decision other than myself.

23 Q. Burlington wouldn't have proposed an uneconomic
24 well, would it, at that 100-percent cost-recovery figure?

25 A. It probably was not uneconomic. It may not have

1 met the guidelines for funding, which is another question.

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

3 EXAMINER ASHLEY: Mr. Kellahin, there was a
4 document that Mr. Hall and Mr. Nelms referred to. It's
5 not --

6 MR. KELLAHIN: It wasn't intended to be an
7 exhibit. If you choose to have it, I'm happy to copy it
8 and include it.

9 EXAMINER ASHLEY: Yeah, I would like for that to
10 be copied and included as an exhibit.

11 MR. KELLAHIN: We will mark it for the record as
12 Burlington Exhibit 7, and we'll do that after the hearing.

13 EXAMINER ASHLEY: Okay, we'll accept that as on
14 the record.

15 EXAMINATION

16 BY EXAMINER ASHLEY:

17 Q. Mr. Nelms, regarding the 8 and 8A, is it likely
18 that you're going to encounter Chacra and Mesaverde
19 production?

20 A. We -- There's a strong possibility that we will
21 encounter production in the Chacra and Mesaverde, since
22 these are both infill wells.

23 Q. As a Mesaverde stand-alone, they would not be
24 economical by Burlington's standards?

25 A. If we had a Mesaverde well that we had reserves

1 of 680 million, that would be very close to being
2 marginally economic.

3 Q. Are the majority of the wells in the area of the
4 8 and 8A -- Are they downhole commingling, dual production?

5 A. I can't address that question, I don't have the
6 data to address that question.

7 Q. Okay. You talked about the economic risk being
8 high. Is that in regards to being completed as just a
9 Mesaverde well?

10 A. Certainly there's more risk there, because the
11 reserves are more marginal, that if there is a pressure-
12 depletion issue, there will be less gas there to recover,
13 as opposed to an area where you had reserves in excess of
14 one B or almost two B's, then your risk is much lower. But
15 because this Mesaverde reservoir is lower EUR, there's more
16 risk here.

17 EXAMINER ASHLEY: Okay. I have nothing further.

18 Mr. Hall, Mr. Kellahin?

19 MR. KELLAHIN: That concludes my presentation,
20 Mr. Examiner.

21 EXAMINER ASHLEY: Thank you.

22 THE WITNESS: Thank you.

23 EXAMINER ASHLEY: Mr. Hall?

24 MR. HALL: Mr. Examiner, at this time we would
25 call Mr. Rich Corcoran to the stand.

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

4 DIRECT EXAMINATION

5 BY MR. HALL:

6 Q. For the record, please state your name.

7 A. I'm Rich Corcoran.

8 Q. Mr. Corcoran, where do you live and by whom are
9 you employed?

10 A. I'm employed by Energen Resources in Farmington,
11 New Mexico, as a district landman.

12 Q. And are you familiar with the lands that are the
13 subject of Burlington's pooling applications?

14 A. I am.

15 Q. And are you familiar with the GLA-46 agreement in
16 the surrounding materials?

17 A. I have become familiar with it.

18 Q. And have you previously testified before the
19 Examiner and had your credentials accepted as a matter of
20 record?

21 A. Yes, I have.

22 MR. HALL: Mr. Examiner, at this time we would
23 offer Mr. Corcoran as an expert petroleum landman.

24 EXAMINER ASHLEY: Mr. Corcoran is so qualified.

25 MR. HALL: Mr. Examiner, in order to expedite the

1 proceedings tonight, I would note the earlier ruling
2 allowing the introduction of Energen's Exhibit A and all
3 the materials contained under Tabs 1 through 75 [sic]
4 therein. As we've discussed, documents do speak for
5 themselves. It was my original intent to have Mr. Corcoran
6 examined on most of them, but I think in view of the
7 earlier ruling I can dispatch with that and just highlight
8 some of the more salient documents, if that's agreeable
9 procedure to you.

10 EXAMINER ASHLEY: That's fine.

11 Q. (By Mr. Hall) Mr. Corcoran, referring to Energen
12 Exhibit A-1, you are familiar, as you said, with the terms
13 of the GLA-46 agreement, are you not?

14 A. That's correct.

15 Q. Let's look at a couple of provisions in that
16 agreement. I believe you were present for the testimony of
17 Mr. Nichols with respect to the issue of the applicability
18 of well costs for Mesaverde wells. Originally they were
19 \$45,000, and they have been amended to \$90,000 in
20 subsequent years; is that correct?

21 A. That is correct, and I was present.

22 Q. And you also heard his testimony with respect to
23 the applicability of the cost provision where drilling to
24 intervals other than the Mesaverde is contemplated?

25 A. Yes.

1 Q. Tell me from your review of the GLA-46 documents
2 and your understanding of the practice of El Paso,
3 Meridian, Burlington, Energen over the years, with respect
4 to predecessors, how was that specific issue handled, if
5 GLA 46 -- if drilling was contemplated to a formation other
6 than Mesaverde under GLA-46, how did the parties deal with
7 that?

8 A. What they did is, they then got together and
9 determined the appropriate terms, the appropriate costs,
10 drilling costs, for those -- for the other formations, the
11 target formations.

12 Q. All right. If you would look at pages 7 and 8 of
13 the operating agreement, the paragraphs 5.d. under Exhibit
14 A-1.

15 A. Yes.

16 Q. There it sets out the well costs for a Mesaverde
17 well, \$45,000 initially. Then if you refer to paragraph
18 5.d.2. on page 8 --

19 A. Yes.

20 Q. -- where drilling to another non-Mesaverde
21 formation was contemplated, what guidance does that
22 provision give to the parties for negotiating the well
23 cost?

24 A. It specifically states that it "...shall be
25 determined proportionately with the parties agreeing upon a

1 maximum cost comparable to the maximum cost of a Mesa Verde
2 well..."

3 Q. All right. Based on your experience as a
4 petroleum landman, would it be true to say that
5 operatorship itself, under almost any situation, would have
6 value --

7 A. Yes.

8 Q. -- to a party?

9 A. Absolutely.

10 Q. And in your opinion, does operatorship under
11 GLA-46 have value?

12 A. Yes.

13 Q. And is that part of the consideration San Juan
14 Production originally received when it negotiated GLA-46 in
15 1951?

16 A. That's correct.

17 Q. And that component of value would continue to
18 have value today, to the operator, correct?

19 A. Yes, it does.

20 Q. Let's turn, if you would to Tab 11 under Exhibit

21 A. If you look at that, it appears to be a letter from El
22 Paso Natural Gas Company, dated September 27, 1962, to Mr.
23 Thomas B. Scott. Who was Mr. Scott?

24 A. Mr. Scott was the president of Brookhaven Oil
25 Company, our predecessor.

1 Q. So Brookhaven was predecessor under GLA-46 to the
2 Energen interest today?

3 A. That's correct.

4 Q. And if you look at the second sentence of the
5 first paragraph, they were talking about drilling a Dakota
6 development well, correct?

7 A. That's what they were talking about, that's
8 right.

9 Q. And does that language say, "...we will have to
10 reach an agreement on the allocation of costs as required
11 by Section 5-d (2) of Operating Agreement dated November
12 27, 1951"?

13 A. That's correct, that's exactly what it says.

14 Q. Would you understand this to mean that El Paso
15 undertook an effort to negotiate with Brookhaven costs for
16 non-Mesaverde wells?

17 A. Yes, that's my interpretation.

18 Q. All right. Let's look at Exhibit 18. It's an
19 internal memorandum at El Paso, dated October 11, 1974, and
20 it refers to communications with Mr. Scott by El Paso, does
21 it not?

22 A. Yes, sir, that's what they're referring to in the
23 letter.

24 Q. Why don't you look at that last paragraph?
25 Apparently Mr. Scott called and was very upset that the

1 wells were not being drilled this year. And "this year" is
2 1974, correct?

3 A. At that time, that's correct.

4 Q. You've heard the earlier testimony here today
5 that stated that there was no obligation to drill beyond
6 the 18th Mesaverde well under GLA-46; did you hear that
7 testimony?

8 A. I heard that.

9 Q. And here when you get to a memorandum in 1974,
10 they're still talking about drilling obligations under
11 GLA-46, are they not?

12 A. They are.

13 Q. Look at the last sentence of that memorandum.
14 What does that say?

15 A. He also stated that he would like to see the
16 remaining undrilled blocks he owns an interest in drilled.

17 Q. Now, is that consistent with your understanding
18 of GLA-46, that the operator has an obligation to drill all
19 drilling blocks?

20 A. Yes.

21 Q. Mr. Corcoran, have you undertaken a review of the
22 acreage covered by GLA-46?

23 A. I have.

24 Q. You know its areal extent?

25 A. Yes, I do.

1 Q. And have you reviewed the situation on all that
2 acreage to determine whether all of the drilling blocks
3 available have been drilled?

4 A. I have reviewed that.

5 Q. All right. Look at Exhibit B. Can you identify
6 that, please, sir?

7 A. Sure, this is a list of undrilled locations,
8 excluding the three, excluding the three proposed wells
9 that we're discussing today. Undrilled locations in the
10 GLA-46 acreage.

11 Q. And approximately how many locations are under --

12 A. Twenty-some-odd.

13 Q. Mr. Corcoran, what are Exhibits C and D?

14 A. If I may, you know, I just sat here and counted
15 the undrilled locations, and there's more than 30. There's
16 actually in excess of 30 on this sheet, and this is not an
17 exhaustive list.

18 Q. All right. So they are undrilled locations,
19 according to Exhibit B, in the Fruitland Coal, Mesaverde,
20 Dakota and Pictured Cliffs in the acreage you've described?

21 A. That's correct.

22 Q. All right. Let's look at Exhibits C and D, if
23 you would explain those to the Hearing Examiner, please,
24 sir.

25 A. Exhibits C and D are maps depicting where Energen

1 owns acreage governed by the GLA-46. It further depicts
2 the existing producing horizons and spacing units for those
3 horizons on that acreage. And as you study it, you can
4 determine quickly, for example, in 31 North, 10 West, on
5 Exhibit C, there are a number of spacing units not
6 accounted for, there are a number of zones that have not
7 been drilled. And the offsets have been. And that list
8 that coincides with this is a list of those spacing units
9 that have not been drilled.

10 The same is true for Exhibit D. We just split
11 the map into two segments to talk about them easier.

12 Q. All right, so Exhibits C and D are a graphic
13 depiction of the undrilled locations summarized on your
14 Exhibit B?

15 A. That's correct.

16 Q. Mr. Corcoran, to your knowledge has Burlington or
17 its predecessors ever offered to release those undrilled
18 locations to you as contemplated by GLA-46?

19 A. Not to my knowledge.

20 Q. So would it be the case that Burlington continues
21 to own the operating rights in all those undrilled
22 locations?

23 A. They do.

24 Q. And you've heard the earlier testimony with
25 respect to the gas balancing agreement applicability, did

1 you not?

2 A. Yes, I did.

3 Q. Is it your opinion that the gas balancing
4 provisions would continue to apply to those undrilled
5 acreage locations as well?

6 A. It is.

7 Q. Let's turn to Exhibit 19 under Exhibit A, please,
8 sir. Do you have that in front of you? It appears to be a
9 letter from Mr. Scott to El Paso dated November 7, 1974.

10 A. Okay.

11 Q. And if you look at that language in the last
12 sentence of the third paragraph there, the highlighted
13 portion says, "...we'll just go back to the original
14 contract." And then up at the top there, there's a
15 reference to GLA-46. Is it safe to assume that we're
16 talking about going back to GLA-46 as the original
17 contract?

18 A. That's right, and the terms governing it on
19 the -- originally.

20 Q. All right. And the following sentence says,
21 "There are about twenty Pictured Cliffs wells that can be
22 drilled in the above townships wherein Brookhaven has an
23 interest."

24 A. That's what it says.

25 Q. Would it be your conclusion that Mr. Scott took

1 the position that El Paso had an ongoing drilling
2 obligation under GLA-46, as of November, 1974?

3 A. Yes, they continued to add to that obligation.

4 Q. Let's turn to Exhibit 23 real quickly. Do you
5 have that in front of you?

6 A. I do.

7 Q. That's a letter dated February 25, 1975, from Mr.
8 Scott, Brookhaven Oil Company, to El Paso Natural Gas
9 Company. Have you reviewed that letter?

10 A. I have.

11 Q. And what is your understanding of the thrust of
12 that letter?

13 A. That they were changing the terms of maximum
14 amount of drilling costs from \$45,000 to \$90,000 for a
15 Mesaverde well.

16 Q. All right. Does it appear, if you will look at
17 the highlighted language in the mid-paragraph, second
18 paragraph, would it be reasonable to conclude that in
19 exchange for increasing the well cost for Mesaverde wells
20 to \$90,000, that Mr. Scott was seeking an obligation from
21 El Paso to drill additional Mesaverde wells?

22 A. Yes, that's -- Although mine is not highlighted,
23 yes, that's what that reads.

24 Q. All right. And would that be the same if you
25 look at the third paragraph there? There was a similar

1 accommodation for the drilling of additional Pictured
2 Cliffs wells?

3 A. Correct, wherein they -- in exchange for drilling
4 additional wells they agreed to increase the drilling costs
5 from the \$16,500 to \$33,000 per well.

6 Q. And the letter references "Section 5 - d - 1" of
7 GLA-46. Is it reasonable to conclude that the parties were
8 engaged in arm's length negotiation for increased well
9 costs for non-Mesaverde-formation wells?

10 A. Yes.

11 Q. If you will turn to Tab 29, El Paso internal
12 memorandum dated March 4, 1976 --

13 A. Okay.

14 Q. -- have you got that there?

15 A. Yes.

16 Q. You would agree with me that there is no dispute
17 that GLA-46 has been amended a number of times, at least 24
18 or 25 times?

19 A. Right.

20 Q. And this memo, Exhibit 29, that discusses a
21 further amendment to GLA-46, does it not?

22 A. Yes, it's one of the many amendments.

23 Q. And in order to obtain an amendment, El Paso is
24 discussing consideration, correct?

25 A. Right, the consideration in my reading of this

1 was their agreement to commit to drill an additional 10 PC
2 wells before the end of that particular year.

3 Q. All right. Now, let's look at Exhibit 35. Can
4 you turn to that tab, please?

5 A. Okay, I'm there.

6 Q. This is another internal memorandum, El Paso,
7 dated May 20, 1976?

8 A. Yes.

9 Q. And it is a discussion of El Paso's understanding
10 of the operation of GLA-46, is it not?

11 A. Yes, it is.

12 Q. And it says, "The Farmout Agreement provides that
13 in the event a well is completed in a formation for which a
14 recovery amount is not provided for, then the parties
15 thereto shall agree upon a maximum cost to be recovered
16 comparable to the maximum cost of a Mesaverde well." Do
17 you see that language?

18 A. Yes, I do.

19 Q. And that is consistent with your earlier
20 testimony about your understanding of how the terms of
21 GLA-46 work?

22 A. Yeah.

23 Q. That's what the express language --

24 A. Almost -- It's not verbatim, but it's close.

25 Q. So would it be reasonable to conclude that El

1 Paso or the operator had an obligation under the contract
2 to negotiate well costs?

3 A. As I understand it, yes.

4 Q. And if we look at, quickly, Exhibits 37, 38 and
5 39, you can refer to the upper right-hand corners of those,
6 and they say GLA-46, Amendment 20, 21, et cetera --

7 A. Yes.

8 Q. Do you see that there?

9 A. Correct. Yes, I see it.

10 Q. Those would appear to be the amendments to GLA-46
11 themselves, done over time between the parties, correct?

12 A. Yes.

13 Q. And in each case, in each of those exhibits, at
14 the numbered paragraph 1, it again talks about
15 consideration. What was the consideration for the
16 amendments given in those cases?

17 A. In each of those cases it's for drilling certain
18 wells, which are later described on the second -- on the
19 next page, during a given period of time in exchange for
20 that, that being the consideration to Brookhaven.

21 Q. All right. Now let's look quickly at the exhibit
22 under Tab 40, internal Memorandum, El Paso, March 16, 1977.

23 A. Yes.

24 Q. Again, it discusses the drilling of 10 Mesaverde
25 "infield" wells, as it's called there?

1 A. Yes, it does.

2 Q. What does the last sentence of that memorandum
3 say?

4 A. It says, "Their share of the total costs of the
5 Mesaverde well is limited to their share of a total cost of
6 \$90,000.00 per Mesaverde Well as provided in the Farmout
7 Agreement as amended."

8 Q. All right. So would it be reasonable to conclude
9 from this that, El Paso's understanding as of 1977, anyway,
10 that the \$90,000 cost provision for Mesaverde wells still
11 apply?

12 A. That's correct.

13 Q. And at this point, 1977, we are well beyond the
14 drilling of the 18th Mesaverde well in 1956, correct?

15 A. Yes, we are.

16 Q. And again, there were additional amendments to
17 GLA-46, correct? Look at Exhibit 41.

18 A. Yes.

19 Q. Again, that's an amendment dated January 13,
20 1978, amendment 23?

21 A. Okay, yes.

22 Q. And it again discusses consideration, does it
23 not?

24 A. Yes, it does, in the same fashion.

25 Q. In this particular case, as in probably more in

1 this example, the agreement was for that well that the
2 parties would pay 100 percent of actual well costs --

3 A. Yes.

4 Q. -- for those two wells?

5 A. They deviated at that point, that's correct.

6 Q. All right. Then let's look at Exhibit 43. It's
7 a letter dated August 7, 1979, from Lear Petroleum
8 Corporation to El Paso. First of all, who was Lear in the
9 sequence of events?

10 A. Lear was a successor to Brookhaven.

11 Q. All right. What does it appear the purpose of
12 this letter to be?

13 A. Lear is advising El Paso that -- in the last line
14 they state, they desire "to continue to pay our share of
15 all drilling costs out of production pursuant to the
16 amendatory letter dated April 3, 1975," indicating what
17 that amount was.

18 Q. So they were reverting to a previous arrangement
19 under GLA-46?

20 A. To the \$90,000 that's correct.

21 Q. Yeah. And if you look at Exhibit 46, it's a
22 letter from Lear, Don W. Moore, to El Paso, July 25, 1985.
23 And again, he reiterates that same position, does he not?

24 A. I'm sorry, I'm --

25 Q. Too far ahead of you?

1 A. Yeah, give me the --

2 Q. It's Exhibit 46.

3 A. Okay, mine is different, I'm looking at a letter
4 from [sic] Mr. Poage.

5 Q. Yes.

6 A. Okay, wherein he's clearing up a misunderstanding
7 or something that wasn't clear between himself and Lear
8 Petroleum.

9 Q. All right.

10 A. And they're talking about in that well only they
11 were willing to pay.

12 Q. All right. He's saying otherwise GLA-46 applies?

13 A. That's correct.

14 Q. Let's look, if you would, quickly, at Exhibit 49.

15 A. Okay.

16 Q. Does that appear to be GLA-46 Amendment Number
17 25?

18 A. It does.

19 Q. And how did that particular amendment operate?

20 A. Let's see. They went to actual well cost.

21 Q. And that's for three Fruitland Coal wells?

22 A. That's correct. Amoco agreed to actual well
23 costs.

24 Q. And you've heard the earlier testimony with
25 respect to the amendment of GLA-46 to provide for gas

1 balancing?

2 A. Yes.

3 Q. Let's look at Exhibit 52 real quick. What does
4 that appear to be?

5 A. It's a contract summary sheet, indicating that
6 all the parties have approved the gas balancing agreement.

7 Q. All right. It's all parties under GLA-46?

8 A. That's right, under that, yes. It is pertaining
9 to the GLA-46.

10 Q. Now, let's look at -- turn -- skipping to Exhibit
11 56. Now we're in the 1990s. Exhibit 56 is a letter from
12 Meridian, dated October 20th, 1992, and it address three
13 wells that were proposed in the 1990s, does it not?

14 A. Yes.

15 Q. Talking about the Atlantic Com "A" Number 7, on
16 page 1 there, and then if you turn to page 2 of that
17 exhibit it continues to discuss the Atlantic Com "A" Number
18 7, and there's a reference to "Governing Agreements". Do
19 you see that?

20 A. I do.

21 Q. What agreements are identified as the governing
22 agreements?

23 A. It states, "Originally drilled and operated under
24 Farmout dated November 27, 1951," which is our GLA-46.

25 Q. All right.

1 A. As well has a JOA dated November 1st, 1976,
2 between El Paso and G.T. McAlpin, and then a 12.5-percent
3 working interest still subject to the GLA-46.

4 Q. And then similarly with respect to the Atlantic
5 Com "A" 7A further on down that same page?

6 A. Yes.

7 Q. Turn the page again, it identifies "Governing
8 Agreements".

9 A. Okay, they are the same.

10 Q. Including GLA-46?

11 A. Yes.

12 Q. And then it discusses the Atlantic Com "A" 7R at
13 the bottom of page 3.

14 A. Okay.

15 Q. If you turn the page you see division of interest
16 after payout for what are the GLA-46 interest owners,
17 talking about here today, correct?

18 A. Yes.

19 Q. And that letter, in the bold language at the
20 bottom of page 4, discusses the operation of the payout
21 provisions under GLA-46?

22 A. It does, and it -- It indicates that it was not
23 agreeable to the working interest owners, so Meridian
24 proceeded to drill the well under the two governing
25 agreements and carried a total of 24.68 percent nonconsent.

1 Q. If you look on page 5 it, as you say, addresses
2 the governing agreements?

3 A. Yes.

4 Q. And that's where it says that the well was
5 drilled under both a JOA and GLA-46?

6 A. That's correct.

7 Q. You heard testimony earlier today with respect to
8 Burlington's position that wells were drilled under GLA-46
9 beyond the 18 initial Mesaverde wells, only where they had
10 100-percent unanimous agreement from all the parties in
11 their operating agreement. Did you hear that testimony?

12 A. I did.

13 Q. And this particular letter is inconsistent with
14 Burlington's position, is it not?

15 A. That's right, it's inconsistent.

16 Q. Again, let's skip to Exhibit 59, if you would.
17 Exhibit 59 is a letter from Burlington dated April 1, 1997,
18 to Total Minatome. Total is Energen's immediate
19 predecessor in interest, correct?

20 A. That is right.

21 Q. And what is this letter regarding?

22 A. Let's see.

23 Q. Well, let me ask it this way --

24 A. Well, they're going to exchange certain
25 proprietary geology and seismic.

1 Q. Was Burlington seeking an amendment to GLA-46 by
2 this letter?

3 A. Yes.

4 Q. And did it offer some consideration to Total --

5 A. It did --

6 Q. -- to amend?

7 A. As I started to say, yes, it did, and that was
8 certain seismic and geology they had, in exchange for the
9 amendment of GLA-46.

10 Q. And was it contemplated that the entirety of
11 GLA-46 would be amended, all the acreage under GLA-46?

12 A. It looks to me like it was Section 8 of the GLA,
13 then later on I guess it does go on and say Total agrees to
14 amend the operating agreement, dated such-and-such, by
15 deleting that particular paragraph, and the accounting
16 procedures, et cetera.

17 Q. All right.

18 A. So yes, the whole thing.

19 Q. So as of April, 1997, is it reasonable to
20 conclude that it was Burlington's position that GLA-46 was
21 still applicable to the lands at that time?

22 A. Based on the fact that they were continuously
23 referring back to it and amending it over and over again,
24 yes, they must have understood it to still be valid.

25 Q. So is it also reasonable to conclude that

1 Burlington was seeking a release of GLA-46?

2 A. By -- Yeah, later it can be demonstrated by their
3 asking them to sign new operating agreements.

4 Q. And again, if you'll refer to the exhibit under
5 Tab 63, do you have that in front of you?

6 A. I do.

7 Q. What was the purpose of that letter, as you
8 understand it?

9 A. Let's see, it's to Total from Mr. Strickler,
10 requesting support for a deep Penn test and support in the
11 manner of amending GLA-46 again.

12 Q. Uh-huh. And to your knowledge, did Total accept
13 either of those proposals to amend GLA-46?

14 A. Not to my knowledge.

15 Q. But it was true, is it not, as reflected by the
16 exhibits, that consideration was offered to Total to do so?

17 A. Yes.

18 Q. Now, let's look at Exhibit 64. It's a letter
19 dated September 18, 1998, by Mr. Nichols here, to the
20 GLA-46 interest owners, is it not?

21 A. Yes, it is.

22 Q. And there's a reference there, it states
23 Burlington's "...position that the provisions of GLA-46 do
24 not apply to this well..." and it's speaking of the
25 Brookhaven Com 8?

1 A. Okay, correct.

2 Q. "...do not apply to this well inasmuch as the
3 drilling obligations, terms and conditions of GLA-46 were
4 satisfied with the drilling of the initial 18 wells on
5 GLA-46 lands as set out in the agreement."

6 A. That's what it states.

7 Q. Yeah. To your knowledge, is that the first the
8 first time Burlington, Meridian or El Paso ever articulated
9 that particular position, that they had only an 18-well
10 drilling operation?

11 A. Yes, from my involvement.

12 Q. And again, that was a well proposal that provided
13 for two options, correct?

14 A. Yes.

15 Q. And option 2 was what, briefly?

16 A. It was that Burlington recoups 100 percent of
17 their cost out of 100 percent of the revenue stream, and it
18 also provided for changing drilling and producing well
19 rates.

20 Q. All right. Now, did you accept that option 2 on
21 behalf of Energen?

22 A. Yes, I did.

23 Q. Why did you do that?

24 A. We wanted to support that particular drill, that
25 well, that proposal.

1 Q. Now, your execution on the acceptance is on page
2 2 there, correct?

3 A. Yes.

4 Q. Okay, and you've made it subject to another
5 letter of acceptance, correct?

6 A. Yes.

7 Q. What did you indicate in that other letter?

8 A. That other letter, I indicated that -- you know,
9 that we wanted to go ahead and support this, however I
10 didn't want them to -- I wanted for the one well only.

11 Q. All right. And that other letter is, in fact,
12 under Tab 65, is it not?

13 A. It is. I misstated the date here, and -- I said
14 dated November 18th. My letter actually was dated November
15 16th.

16 Q. All right. What position did you take in that
17 letter with respect to the applicability of GLA-46?

18 A. That it was, in fact, this -- We specifically
19 stated that it was -- it would continue to apply to all
20 future wells.

21 Q. All right. And to save time, that is how you
22 exercised the election on behalf of Energen to participate
23 in all of the wells that are proposed by Burlington here
24 today, correct?

25 A. All the other ones, no. All the other ones, I

1 chose to join them under the terms of GLA-46.

2 This one, we chose to join them under the terms
3 that they offered here.

4 Q. All right. And what happened to this particular
5 proposal that you accepted, 100 percent cost?

6 A. We went ahead and approved their option 2, and
7 they later decided to rescind that and not drill that well
8 at that time?

9 Q. Do you know why?

10 A. Today, I was -- I heard Shannon testify that
11 there were -- he did not have 100-percent joinder.

12 Q. I see, although they had drilled wells in the
13 past under GLA-46 without 100-percent joinder, under
14 standard operating agreements?

15 A. Right, as was stated in that letter by John Zent
16 earlier, indicating that they took 24 or 26 percent
17 nonconsent.

18 Q. All right.

19 A. Or carried them, I'm not sure which.

20 Q. Now, the letter of withdrawal of that one well
21 you did elect to participate in, that's under Tab 69, is it
22 not? Letter dated August 25, 1999?

23 A. Yes.

24 Q. That's where they withdrew the proposal you
25 accepted --

1 A. That's correct.

2 Q. -- one well?

3 A. That is correct.

4 Q. You look at that letter, the last paragraph,
5 there's a reference to lands previously subject to GLA-46.
6 Do you see that there?

7 A. Yes, I do.

8 Q. To your knowledge, is that the first time
9 Burlington has adopted the position that GLA-46 previously
10 applied to lands?

11 A. That's the first time I saw it worded in that
12 fashion.

13 Q. All right. And if you turn to the next exhibit,
14 under Tab 70 -- do you have that there? -- what is that?

15 A. Let's see, it's a proposed operating agreement
16 dated February 1st, 1999, for eight well proposals.

17 Q. And it involved GLA-46 lands, correct?

18 A. Yes, it did.

19 Q. If you looked at the last sentence of the first
20 full paragraph there, did it indicate Burlington was
21 prepared to make a cash offer to purchase the GLA interest?

22 A. It did, it so stated.

23 Q. Yeah. So as of September 9, 1999, anyway,
24 Burlington thought GLA applied to the lands?

25 A. Yes.

1 Q. And they had some value?

2 A. Correct.

3 Q. And was willing to purchase it from you?

4 A. That's correct.

5 Q. We discussed the three drilling proposals for the
6 Brookhaven 8, 8A and B3B wells here?

7 A. Yes.

8 Q. You've indicated previously that you elected to
9 participate, as you said, under GLA-46?

10 A. Correct.

11 Q. How did Burlington react to that?

12 A. That those terms were not something they wanted
13 to drill the wells under.

14 Q. All right. Let's look at the document under Tab
15 73. Can you identify that, please, sir?

16 A. It's a response to those well proposals wherein
17 we just indicated that GLA-46 still applied until it was
18 changed, and we needed to abide by it.

19 Q. All right. Each of the occasions where you were
20 involved, where Burlington sought to have Energen execute
21 its joint operating agreements, what was the practical
22 effect of that request, to execute those joint operating
23 agreements?

24 A. The way I saw that was, if, in fact, we executed
25 a new operating agreement, we forfeited whatever rights we

1 did have or whatever value GLA-46 actually had to us.

2 Q. So you were being asked to release and give up
3 substantive contract rights under GLA-46?

4 A. That is correct.

5 Q. Now, back to the terms of GLA-46 again. In your
6 opinion, your understanding of the operation of those
7 terms, did Burlington have an obligation, a contractual
8 obligation, to negotiate well costs for wells outside the
9 Mesaverde?

10 A. It was my understanding that if it wasn't
11 specifically stated, that the parties were to arrive at a
12 reasonable cost between them.

13 Q. All right. And in your opinion, did Burlington
14 make a good-faith effort to try to negotiate those well
15 costs under the contract obligation?

16 A. I didn't see any kind of exchange of value
17 offered to us.

18 Q. Was Energen offered consideration such as was
19 offered to Mr. Scott and Lear Petroleum in the earlier
20 exhibits we discussed?

21 A. I didn't see it. The only thing I saw was that
22 they were willing to drill a well or a second well or a
23 third well, or whatever the particular proposal was, but
24 not several wells within a given period of time, or
25 whatever other consideration.

1 Q. You didn't receive a commitment to, say, a 10- or
2 12-well drilling obligation?

3 A. That's what I'm trying to say, that's correct.

4 MR. HALL: I'm almost finished, Mr. Examiner.

5 Q. (By Mr. Hall) Let's refer back to Exhibit 32,
6 and that letter discusses the drilling and equipping of the
7 San Juan 32-9 Community 94 Pictured Cliffs well, does it
8 not?

9 A. Yes, it does.

10 Q. And was that well also a dual-completion well?

11 A. It looks -- Yes, it looks as though it was.

12 Q. And this is a letter from Mr. Scott to El Paso,
13 1976, and at that time is it accurate to say that El Paso
14 and Brookhaven didn't have an agreement for the allocation
15 of costs for a non-Mesaverde dual-completion like that?

16 A. That's what I understand this to be addressing.

17 Q. So how did they handle that in that instance?

18 A. Well, they talk about it in the last paragraph
19 down there. What they did was, they combined the Tertiary
20 Sands well, and they charged them \$16,500.

21 Q. Now, is that \$16,500 amount the amount that was
22 agreed to under one of the GLA-46 amendments for Pictured
23 Cliffs wells?

24 A. It was.

25 Q. That's the agreed figure?

1 A. Right.

2 Q. What did they do for the Tertiary Sands?

3 A. They were going to charge them 100 percent, as I
4 recall, of that as well. Let's see. Let's see if it's in
5 here.

6 Q. All right.

7 A. Yes, that's what they did.

8 Q. And El Paso responded to Mr. Scott's inquiry
9 about how to handle those unaddressed costs in their letter
10 of May 3, 1976, under Tab 33.

11 And does that letter say, in substance, that yes,
12 that's what we did, we billed you at the agreed rate for
13 the Pictured Cliffs, \$16,500?

14 A. Yes, in the last --

15 Q. -- billed you for actual costs for the
16 Tertiary --

17 A. Right, the last sentence, correct.

18 Q. And then if you turn to Tab 34, that is an
19 amendment to GLA-46, Amendment 19, is it not?

20 A. Yes, it is.

21 Q. And it's dated May 20, 1976?

22 A. Okay, correct.

23 Q. And that's where they formalized their
24 understanding about how to handle the cost for dual
25 completions?

1 A. Yes.

2 Q. And in this circumstance, Burlington has made no
3 similar effort to negotiate the costs of their proposed
4 dual completions with you in accordance with the terms of
5 GLA-46 --

6 A. No --

7 Q. -- is that correct?

8 A. -- not in the same manner as this, no, they have
9 not.

10 Q. All right. Mr. Corcoran, is it your position
11 that Energen's interests are voluntarily committed to the
12 wells proposed by Burlington?

13 A. Yes, it is.

14 MR. HALL: That concludes my direct of Mr.
15 Corcoran.

16 I'm sorry, let me move the admission of Exhibits
17 B, C and D, Mr Examiner.

18 Q. (By Mr. Hall) Mr. Corcoran, were Exhibits B, C
19 and D prepared by you or under your direction and control?

20 A. They were.

21 MR. HALL: So moved, Mr. Examiner.

22 EXAMINER ASHLEY: Exhibits B, C and D will be
23 admitted as evidence at this time.

24 Mr. Kellahin?

25 MR. KELLAHIN: Thank you, Mr. Examiner.

CROSS-EXAMINATION

BY MR. KELLAHIN:

Q. Mr. Corcoran, when did you first become employed by Energen?

A. Two and a half years ago.

Q. And that caused you to move back to Farmington with Energen, or were you there already?

A. I was there already.

Q. When you became involved with Energen in your employment, when did you first become aware of the existence of the GLA-46 agreement?

A. Not until after Energen had acquired Total Minatome, which was effective the 1st of January, 1998, but I wasn't even aware of it -- we didn't -- We did not finalize it until October or November of that year.

So after the first letters that were penned by Burlington concerning these wells -- they were penned in July or thereabouts, and those were actually directed to Total Minatome, and we received them subsequently.

Q. All right. So in late summer or early fall of 1998, as a result of correspondence from Burlington, you became aware of the existence of the GLA-46 agreement?

A. That's correct.

Q. In your experience as a petroleum landman, have you ever seen another agreement like the GLA-46 agreement?

1 A. Not exactly. There's several, however, as I'm
2 sure aware, there are several GLA out there, and each of
3 them are unique.

4 Q. Does Energen have any objection to the estimated
5 well costs that Burlington has proposed for the Brookhaven
6 Com 8 well, which is \$427,630?

7 A. We do not object to that dollar amount. However,
8 we're not willing to join at that rate.

9 Q. All right. My question is, though, there is no
10 quibble by Energen as to the fact that \$427,000 for a dual
11 Chacra-Mesaverde well is a fair and reasonable estimate,
12 based upon current costs of such wells?

13 A. Correct.

14 Q. For the 8A well, a similar cost for that well of
15 \$427,000 is fair and reasonable?

16 A. Yes, no problem.

17 Q. When we look at the B3 well, which is the single
18 Mesaverde, Burlington's estimate of \$386,000 is also fair
19 and reasonable in current market conditions?

20 A. It is.

21 Q. Okay. If we apply the 1951 price ceiling as
22 amended --

23 A. Yes.

24 Q. -- where a total cost of a Mesaverde well, by
25 which reimbursement is to be calculated, that ceiling is

1 \$90,000?

2 A. That's correct.

3 Q. Is that \$90,000 ceiling a fair and reasonable
4 ceiling in today's pricing where wells of this type cost in
5 excess of \$386,000?

6 A. No, it's not.

7 Q. It's not. And Energen would, if they were in
8 Burlington's position, not drill these wells, right?

9 MR. HALL: I'm going to object --

10 THE WITNESS: I don't know --

11 MR. HALL: -- it calls for speculation.

12 THE WITNESS: Okay, I'm not sure, you know --

13 MR. HALL: Just a minute --

14 THE WITNESS: Oh, I'm sorry.

15 MR. HALL: -- let the Examiner rule on the
16 objection.

17 MR. KELLAHIN: What's the objection?

18 MR. HALL: Speculation.

19 MR. KELLAHIN: Speculation by a company? I'm
20 asking him if he's in Burlington's position whether they
21 would drill the wells. I think it's a fair question.

22 MR. HALL: It's hypothetical. There's not the
23 facts presented to the Hearing Examiner.

24 EXAMINER ASHLEY: I'll allow the question.

25 THE WITNESS: I'm not sure. You know, there's a

1 number of things we'd have to study before I could answer
2 that question.

3 Q. (By Mr. Kellahin) That's an extremely severe
4 limitation on an operator, is it not, in today's situation,
5 Mr. Corcoran?

6 A. That's a -- It's something that they're going to
7 have to work with, yes.

8 Q. And it's so severe that you believe Burlington
9 when they tell you they're not going to drill these wells
10 subject to that limitation, right?

11 A. I don't know that that's true. I look at the
12 economics that were talked about earlier, and I think they
13 could -- a 29-percent return on their investment is not too
14 bad.

15 Q. How does the GLA-46 acreage have any value to
16 Energen if Burlington is unwilling to drill the well
17 subject to this limitation?

18 A. We need to be -- It's an asset that our firm is
19 not willing to just give away.

20 Q. Well, the asset is going to sit on the shelf
21 undeveloped unless there's some resolution of this issue --

22 A. Yes.

23 Q. -- is that not true?

24 A. That is correct.

25 Q. Let's see how the parties resolved that in the

1 past. Let's turn back to some of the exhibits that you
2 have presented. Let's look at Number 19.

3 A. Okay.

4 Q. That's a letter of November 7th, 1974?

5 A. Yes.

6 Q. I'm going to look at a part of that letter that
7 Mr. Hall did not highlight. I'm going to look at the first
8 sentence of the second paragraph. Am I reading this
9 correctly when I say it says, "Toward the latter part of
10 last year, I saw Mr. Ben Howell and told him that the
11 limited costs which you would be able to charge for
12 drilling wells was about 1/2 of the present actual costs."
13 Right?

14 A. That's what that says.

15 Q. And what he's speaking about is the original
16 contract limitation of \$45,000, right?

17 A. Yes.

18 Q. And at his insistence, then, and with the
19 agreement of El Paso, there is an amendment by which the
20 costs are escalated to \$90,000 as a ceiling, which
21 represents the time in 1974 when that would have
22 represented reasonable fair cost, right?

23 A. Okay.

24 Q. That's what they did, right?

25 A. Yes.

1 Q. And they made that effective 1-1-75, right?

2 A. (No response)

3 Q. And as you look at the various amendments to this
4 various agreement, starting back as early as, I think,
5 1973, on repeated occasions, in order to have an agreement
6 as to cost to get these wells drilled, the parties agreed
7 to use current costs at that time. Is that not true?

8 A. No, Mr. Kellahin, I don't think it is.

9 Q. No?

10 A. I think they limited it to \$90,000 over and over
11 again, is the way I was reading that, unless I'm
12 misconstruing it.

13 Q. All right. The subsequent amendments that you
14 saw --

15 A. Yes.

16 Q. -- amendments 23, 24 and 25, those kind of
17 things?

18 A. Yes, they were limiting it to \$90,000 but, you
19 know, that they could recoup it out of 100 percent of the
20 revenues instead of 50 percent.

21 Q. All right. So part of the arrangement, then, was
22 to change the recoupment provision --

23 A. Correct.

24 Q. -- so instead of getting it out of 25 percent,
25 they could have it out of --

1 A. -- 50 --

2 Q. -- 50 percent of the Brookhaven interest?

3 Okay, let's go back to the 1951 agreement. It's
4 in Exhibit 1. And I want to look at the attachment which
5 is Exhibit "B"; it's the operating agreement.

6 A. Okay.

7 Q. Are you with me?

8 A. Yes.

9 Q. Let's turn through that and get to page 4.

10 A. Okay.

11 Q. All right?

12 A. Yes.

13 Q. I'm looking at that portion of 4b. that says the
14 drilling obligations on San Juan --

15 A. Yes.

16 Q. -- are going to continue on an annual basis
17 "until a total of 18 Mesaverde wells have been drilled or
18 shall reassign or relinquish the undrilled locations" and
19 the rights to all formations undrilled -- et cetera, et
20 cetera.

21 A. Yes.

22 Q. Okay?

23 A. Uh-huh.

24 Q. What does that mean to you?

25 A. It means what it says, 18 wells.

1 Q. Okay. If that drilling obligation is satisfied,
2 okay?, by that provision --

3 A. Yes.

4 Q. -- then when we look at all the acreage that you
5 say has not been developed --

6 A. Right.

7 Q. -- on these exhibits --

8 A. Correct.

9 Q. -- and not reassigned --

10 A. Right.

11 Q. -- to Energen, Brookhaven or any of the parties
12 in that position --

13 A. Uh-huh.

14 Q. -- wouldn't that cause you to reasonably conclude
15 that the parties in Burlington's position satisfied the
16 drilling obligation?

17 A. No, because each time they amended it, they added
18 a number of wells that they agreed to drill.

19 Q. If you turn to page 5, the bottom sentence in
20 that paragraph --

21 A. Yes.

22 Q. -- it says, "If San Juan has failed to comply
23 with the drilling obligations of this Operating Agreement,
24 then San Juan shall execute and deliver to Brookhaven a
25 release of this Operating Agreement as to such tracts..."

1 A. Yes.

2 Q. All right?

3 A. Yes.

4 Q. In examining all the documents, did you find any
5 instance in which San Juan delivered a reassignment back to
6 Brookhaven?

7 A. I have not.

8 Q. Did you find any occurrence where Brookhaven
9 demanded a reassignment?

10 A. I did not.

11 Q. Did you find any occasion where any of
12 Brookhaven's predecessors demanded a reassignment?

13 A. No.

14 Q. Has Energen demanded a reassignment?

15 A. They have not.

16 Q. Could that cause you to reasonably conclude that
17 the drilling obligations are satisfied?

18 A. No, what it causes me to conclude is that they
19 simply haven't made that demand yet.

20 Q. And after 45 years --

21 A. Yes.

22 Q. -- nobody in your company's position made that
23 demand?

24 A. We've had this all of a year.

25 Q. In 1973 and 1974, they're amending the agreement

1 to provide for current costs, and the ceiling goes up to
2 \$90,000; is that the way I understand it?

3 A. Yes, that's correct.

4 Q. Turn with me to Exhibit 64. It's the September
5 18th, 1998, letter from Burlington to the interest owners.
6 It's the one that you signed on behalf of Energen.

7 A. Yes.

8 Q. Okay. At this point in time, Burlington is
9 offering the opportunity to the interest owners to either
10 sign a new operating agreement, or option 2 is, they'll pay
11 for the costs of the well, recoup out of 100 percent of the
12 revenues the cost, and then everybody is happy. All right?

13 A. Yes.

14 Q. And you signed off?

15 A. Yes, we did.

16 Q. If you're asserting the limitations of the 1951
17 agreement --

18 A. Uh-huh.

19 Q. -- why did you propose to accept option 2?

20 A. Because we wanted to support them on a one-well
21 basis, to try and begin working with them to develop these
22 properties. We'd like to see them developed also.

23 Q. Okay. And as a consequence, you recognize that
24 the limitations of the 1951 agreement was going to be such
25 that the well wasn't going to get drilled?

1 A. It could be detrimental. However, when we did do
2 this, they chose not to drill it for whatever reasons.

3 Q. Well, and you heard the reasons from Mr. Nichols.
4 He said he couldn't get everyone else to agree to the
5 change and so they went back to square one?

6 A. Okay. But we stood ready, willing and were
7 prepared to do that.

8 Q. Okay. Would that be true of all remaining
9 spacing units in which the GLA acreage might be included?

10 A. I'm not --

11 MR. HALL: Again, I'm going to object. It calls
12 for speculation once again, Mr. Examiner.

13 THE WITNESS: Yeah, I can't answer that question,
14 I can't speak for my company.

15 Q. (By Mr. Kellahin) Okay. Well, it appears that
16 we're at an impasse, doesn't it, Mr. Corcoran?

17 A. Yes.

18 Q. Burlington and Energen can't agree on the cost of
19 the well, and the wells are not going to get drilled, are
20 they?

21 A. I hope there's some middle ground.

22 Q. I hope so too. You've been working on it since
23 what? October, September --

24 A. Not real --

25 Q. -- of 1999?

1 A. Let's see. Yeah, that's correct, that's about
2 the time we started looking at this in earnest, or sometime
3 shortly before that.

4 Q. Okay. And Mr. Nichols says that upper management
5 for both Energen and Burlington have met on this topic, and
6 above your level and above his there has not been an
7 agreement, right?

8 A. Yeah, it's unfortunate.

9 MR. KELLAHIN: No further questions.

10 EXAMINER ASHLEY: Mr. Hall?

11 MR. HALL: Briefly, Mr. Examiner.

12 REDIRECT EXAMINATION

13 BY MR. HALL:

14 Q. Mr. Corcoran, the many amendments by Mr. Scott
15 and Lear, GLA-46, that Mr. Kellahin asked you about on
16 cross-examination --

17 A. Yes.

18 Q. -- none of those, none of those operated as a
19 release of GLA-46, did they?

20 A. No, they did not.

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

22 EXAMINER ASHLEY: I have nothing further, thank
23 you.

24 THE WITNESS: Thanks.

25 MR. HALL: Mr. Examiner, to close, two letters

1 were sent to you -- I don't know that you've received them
2 -- Janet Cunningham, who is a landman with Bank of America.
3 They administer the Dacresa Group, former shareholders of
4 the Dacresa Corporation, Carolyn Nelson Sedberry, et al.,
5 who I've entered an appearance for here today.

6 Ms. Cunningham has provided you with a letter in
7 opposition to Burlington's Application, as has Kent S.
8 Davis, Senior Landman for Westport Oil and Gas Company,
9 Inc.

10 I provide you with copies of those, and I ask
11 that they be included in the record in this case.

12 EXAMINER ASHLEY: I have this one...

13 MR. KELLAHIN: Mr. Examiner, I object to letters
14 to be considered by you where the parties that sign these
15 letters don't care enough about the issue to come here and
16 testify on behalf of their position. I'm not able to rebut
17 or examine these people, so we would ask that you not
18 consider them.

19 EXAMINER ASHLEY: Mr. Hall, you represent
20 Westport Oil and Gas; is that correct?

21 MR. HALL: Yes.

22 EXAMINER ASHLEY: What about the letter from Bank
23 of America? Is that the group that you represent as well?

24 MR. HALL: Yes, it is.

25 You have the discretion to consider them.

1 EXAMINER ASHLEY: Both of these letters were
2 addressed to me. I've already received one in the
3 original, so we'll make these a part of the record.

4 MR. HALL: Mr. Examiner, I would propose in lieu
5 of further closing statements we provide you with a
6 memorandum on the facts and the law we view as applicable
7 in this case, provide you with draft orders and go home.

8 MR. KELLAHIN: I would like one procedural matter
9 -- renew my motion to ask to amend the pleadings to assert
10 relief under 70-2-17 E, which would provide an opportunity
11 for you to consider, then, whether or not you will issue a
12 force pooling order and modify this agreement, if you think
13 it is still in effect, in order that these wells may be
14 drilled.

15 Without either finding these properties are not
16 subject to the contract, or by utilizing subparagraph E,
17 these wells are not going to get drilled.

18 EXAMINER ASHLEY: I would object, Mr. Examiner.
19 I think, one, you're estopped to try to amend at this
20 point, given the position they've taken with respect to the
21 applicability or not of GLA-46.

22 Secondly, amending at this time presents, I
23 think, a substantial due-process question. Had we known in
24 advance, I think we would have prepared a completely
25 different case, had a completely different set of proof for

1 you to consider. It's not proper to amend at this point in
2 time on that basis.

3 We would object.

4 MR. CARROLL: Okay, we're going to defer ruling
5 on that issue. We'd like you to address it in your written
6 statements.

7 MR. KELLAHIN: All right, sir.

8 EXAMINER ASHLEY: And we'll continue the case for
9 two weeks.

10 MR. KELLAHIN: Say again? You want to continue
11 this? For what reason? I can --

12 MR. CARROLL: -- amending the Application.

13 MR. KELLAHIN: All right, we'll do it that way.

14 EXAMINER ASHLEY: Okay.

15 MR. KELLAHIN: Do you have a time frame for
16 submitting orders? I could get an order in --

17 MR. HALL: Monday.

18 MR. KELLAHIN: -- two weeks, or --

19 EXAMINER ASHLEY: Monday?

20 MR. HALL: Yeah, and a memorandum.

21 MR. KELLAHIN: Some of us are going to Hobbs and
22 fight with Mr. Hartman and the Jalmat there.

23 MR. HALL: I didn't know.

24 MR. KELLAHIN: Yeah, I need to spread myself
25 towards the Jalmat.

1 EXAMINER ASHLEY: The 1st?

2 MR. KELLAHIN: We can do it by the next hearing.

3 MR. HALL: Sure, that's fine.

4 EXAMINER ASHLEY: That will be --

5 MR. KELLAHIN: We're going to continue the case

6 anyway --

7 MR. CARROLL: February 3rd.

8 MR. KELLAHIN: -- for two weeks, so that puts

9 us -- what? February 2nd, is it?

10 MR. CARROLL: Yeah, February 2nd.

11 MR. KELLAHIN: Okay, February 2nd.

12 MS. MCGRAW: 3rd.

13 MR. KELLAHIN: Ma'am?

14 EXAMINER ASHLEY: The 3rd.

15 MR. KELLAHIN: February 3rd is the hearing date.

16 So we'll get you -- or at least I can get you a proposed

17 order by then.

18 EXAMINER ASHLEY: Okay.

19 MR. KELLAHIN: Is that all right?

20 MR. CARROLL: By the 2nd, so we have it by the

21 3rd.

22 MR. KELLAHIN: Yes, sir.

23 EXAMINER ASHLEY: Is there anything further in

24 this case at this time?

25 MR. HALL: No, sir. Thank you very much.

1 EXAMINER ASHLEY: We'll continue this for two
2 weeks.

3 Thank you, and this hearing is adjourned.

4 (Thereupon, these proceedings were concluded at
5 9:28 p.m.)

6 * * *

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12 I do hereby certify that the foregoing
13 a complete record of the proceedings in
the Examiner hearing of Case No. 12276, 12277
14 heard by me on 1-20 19 2000
15 Mark Ashley, Examiner.
Oil Conservation Division
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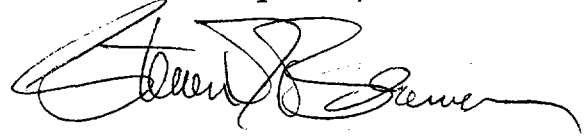
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL February 2nd, 2000.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002