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THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

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In the Matter of:

THE APPLICATION OF
DELORES MARTINDALE

CAUSE NO. 1
DOCKET NO. 4-10

Monday, April 19, 1993

The above-entitled matter came on for hearing,
pursuant to notice to all parties in interest, at the
Centennial Building, Room 318, 1313 Sherman Street, in
Denver, Colorado.

1-35



1 BEFORE:

2 CHAIRMAN TRUMAN ANDERSON

3 COMMISSIONER ROGERS JOHNSON

4 COMMISSIONER LOGAN MACMILLAN

5 COMMISSIONER MARY C. LARSON

6 COMMISSIONER MARTIN BUYS

7 COMMISSIONER JOHN A. CAMPBELL

8
9 APPEARANCES:10 For the Applicant: JOHN M. EVANS, Esq.
11 Chancery Building, Suite 1601
12 1120 Lincoln
 Denver, Colorado 8020313 For the Protestant: STEPHEN J. SULLIVAN, Esq.
14 Welborn Dufford Brown & Tooley
 1700 Broadway, Suite 1700
 Denver, Colorado 80290-170115
16 ALSO PRESENT:

17 PATRICIA C. BEAVER, Technical Secretary

18 JULIE WREND, Assistant Attorney General

19 SUSAN MCCANNON, Acting Director
20
21
22
23
24
25

I N D E X

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2	<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Delores Martindale	36	59	60	
4	John Martindale	66	82		
5	Rick Parks	85	99		
6					
7					
8	<u>EXHIBITS:</u>	<u>OFFERED</u>	<u>ADMITTED</u>		
9	Plaintiff's				
10	1	39			
11	2	47			
12	3	55	55		
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P R O C E E D I N G S

CHAIRMAN ANDERSON: We're going to begin again here. The next matter on the agenda is Cause No. 1, Docket No. 4-10 in the Wattenberg Field in Weld County. The applicant is Delores Martindale, represented by John Evans.

This is a request to raise the bond requirements for the surface damage bond and to require that a reclamation bond be posted for the northeast quarter of Section 36, Township 4 North, Range 67 West.

This is protested by Elk Exploration, Inc., through attorney Stephen Sullivan.

We'll start by taking appearances on this.

MR. EVANS: Chairman Anderson, my name is John Evans, I represent the Martindales. On my immediate far right is John Martindale. Next to him is Mrs. Delores Martindale, and then on her left is my paralegal, Diane Booren.

CHAIRMAN ANDERSON: Mr. Sullivan?

MR. SULLIVAN: My name is Steve Sullivan, Welborn Dufford Brown & Tooley. I'm representing Elk Exploration. We've brought three witnesses; Mr. Rick Parks--all employees of Elk Exploration--Mr. Rick Parks, Mr. Colleen Nealy--Ms. Colleen Nealy, I'm sorry, and Mr. Jim Bob Byrd, who are both landmen for Elk Exploration.

Also with us is Mr. John Kennedy, he's a landman

1 who works with Elk who's got some familiarity with this
2 matter and has dealt directly in negotiations, just in case
3 any information from him is necessary, and we also have
4 Mr. Ron Jacobs, who is chief counsel for Elk who can answer
5 questions in the event you have questions concerning Elk's
6 policies.

7 CHAIRMAN ANDERSON: Okay. Before we begin, as
8 both of you know, as everyone knows, this application has
9 been made under the Commission's interim policies and
10 guidelines that was introduced several months ago, and for
11 that reason, we're taking on issues in a different way than
12 what we've been accustomed to in the past, and looking not
13 only at the possibility of raising the damage bond but also
14 imposing a reclamation bond, and these are--this is a process
15 which is somewhat new, and for that reason we're interested
16 in learning as we go along and in doing the best we can to
17 not only to serve the interests of the Martindales, but also
18 to help the Commission as we begin to work through the
19 implications of the interim rules and what may come out of
20 them in the hearings that are coming up in the next several
21 months.

22 So we have somewhat of a perverse fact, because
23 we're going to be talking about interim rules this month, and
24 then in May and July we're going to be talking about the
25 possibility of amending those rules, so we have a variety of

1 moving targets in this process.

2 Nevertheless, I think it's going to help us, help
3 the Commission, to do a better job and begin to define some
4 things.

5 I'd like to ask just from both of you to give an
6 opening statement. Mr. Evans?

7 MR. EVANS: Okay. Chairman Anderson, I just want
8 to begin with a little bit of housekeeping, and I regret that
9 I have to divert a little bit from making an opening
10 statement to take care of this housekeeping matter, but I
11 think it's one that's important.

12 Next month I'll be back here with another
13 individual surface owner. I anticipate that in June you're
14 probably going to have two or three more in front of you on
15 very similar kinds of issues. I think in terms of this
16 housekeeping matter, I think it's one that's important and
17 we need to cover it.

18 It concerns your Rule 508, and that is the filing
19 of protests. In that matter, at this time I would put before
20 you a motion to strike the protest that has been entered into
21 in this particular case, and the reason I would move to strike
22 the protest is that they are clearly in violation of Rule 508
23 in that they, to our knowledge, have not filed their
24 protest within three working days prior to the hearing, nor
25 have they provided a copy of their protest to the applicant,

1 or to the applicant's attorney, so on that basis and for that
2 reason, I move to strike their protest and request that you
3 enforce the sanctions contained in Rule 508.

4 CHAIRMAN ANDERSON: So you're saying that the
5 protest was not timely filed?

6 MR. EVANS: To our knowledge, the protest was not
7 timely filed. When we checked at the offices on Thursday
8 making another filing on another case, they could not find
9 this particular application being filed, so therefore, the
10 presumption we are going on is that the protest was not timely
11 filed, and also notice that besides the fact that the protest
12 was not timely filed and they file a written protest to the
13 Commission, a copy to the applicant. We have not received,
14 as attorneys for the applicant, have not received a copy and
15 neither has the applicant.

16 So my motion is to strike the protest.

17 MR. SULLIVAN: Mr. Chairman?

18 CHAIRMAN ANDERSON: Yes, Mr. Sullivan?

19 MR. SULLIVAN: I have a copy of the protest filed,
20 it is stamped April 13th, received by the Commission. I have
21 talked with--that is the published deadline for filing the
22 protest, and I have talked with Ms. Patricia Beaver about this
23 matter and it was filed and has been mailed to Mr. Evans.
24 I'm surprised, and I'm not sure where that's at.

25 CHAIRMAN ANDERSON: All right. So this indicates

1 that it was filed with the Commission on April 13th.

2 Tricia? The question is when the protest was
3 filed. Is the final date for filing the protest April 13th?

4 MS. BEAVER: That's correct, and it was filed that
5 afternoon.

6 CHAIRMAN ANDERSON: Okay. So the protest was
7 filed within the deadline?

8 MS. BEAVER: That's correct.

9 CHAIRMAN ANDERSON: All right. But then you
10 indicate that the rules further indicate that a copy of the
11 protest be provided to the applicant?

12 MR. EVANS: That's correct.

13 CHAIRMAN ANDERSON: And you're suggesting that
14 that didn't occur? Mr. Sullivan?

15 MR. SULLIVAN: That was mailed. We did not
16 provide it--we did not personally deliver it. It was mailed,
17 which is what has been the practice in the past and as
18 allowed by the rules. If he hasn't received it, it may
19 indicate that there might need to be a longer period of time
20 or a different methodology for doing it.

21 I don't think there can be prejudice for not
22 receiving a copy because a protest, in essence, can just be
23 a one-line statement saying we protest. In this case I don't
24 think there is any prejudice at all to their matters. We
25 have no real indication of what is in their strategy or their

1 approach and they're not losing anything.

2 MR. EVANS: Well, that's not really true here.
3 Ordinarily I would have had an opportunity to review the
4 protest and to understand the defenses that the individuals
5 are raising. I'm raising this because I think it's an
6 important procedural matter. I note that the Commission only
7 allows three days prior to the hearing for the filing of the
8 protest, and I agree with you, I think it's a serious matter
9 which the Commission may want to take up and think about
10 maybe expanding the time of protest to give the applicant
11 a little bit more time to respond to these particular
12 matters.

13 I think it is a very important point to make, and
14 that is that I have not had the time, I have not had an
15 opportunity to review the protest, that when we checked with
16 the Commission on Thursday they could not find that the
17 protest had been filed.

18 So on those matters, I think they are important.
19 I think they are procedurally important. I think they
20 indicate an importance of fairness here, which is why you
21 developed the Rule 508 to begin with.

22 COMMISSIONER LARSON: You didn't check with the
23 Commission on Friday?

24 MR. EVANS: No, we did not.

25 CHAIRMAN ANDERSON: The implication of your motion

1 then, if it were granted, would be--and you would proceed
2 with your case--but Elk would not be able to respond?

3 MR. EVANS: It is my understanding of the rule
4 that they would not be able to--that they would not be able
5 to present or rebut evidence, examine or cross-examine
6 witnesses at the hearing.

7 MR. SULLIVAN: Mr. Chairman, I think Mr. Evans is--
8 first, I think he's making a mountain out of a mole hill.
9 He knows full well, he's been through several of these before,
10 what the issues are. He also is misreading the rule. It
11 says; "Only an interested party who files a written protest--
12 which was done--and who pays such a fee--we paid the fee--
13 should be entitled to present or rebut evidence."

14 It says nothing about not allowing Elk Energy to
15 present evidence because he didn't receive a copy of the
16 protest. The reason it doesn't, in this case, or the reason
17 it doesn't period is because the protest can simply be, to
18 the Oil and Gas Commission, we protest this matter, sincerely,
19 period.

20 The logic behind this is while it's true in
21 litigation, it is not true in this case.

22 MR. EVANS: I disagree with the interpretation.
23 It says here; "Any interested party desiring to protest the
24 granting of relief". I realize this is--this must seem
25 mundane and everything, but I think it's an important point to

1 point out, and it's an issue which I think we need to
2 resolve.

3 My motion is to strike the protest.

4 MS. WREND: Well, first of all, if I may, I
5 disagree that the rule states that all you have to do is say
6 I protest. It says that you shall state the basis for the
7 protest and show the--in reasonable detail, so I don't think
8 I protest is sufficient. It presumably is to give the
9 Commission and the other party an idea of what the issues
10 are. It's a notice requirement.

11 I also--it appears that the protest was timely
12 filed and that the fee was paid in accordance with the rule,
13 and it was--I don't see here in this rule where it says the
14 rule requires personal delivery. If you have proof of
15 service--

16 MR. SULLIVAN: We did not mail it with a green
17 card, no.

18 MS. WREND: Do you have a certificate of mailing?

19 MR. SULLIVAN: We did not mail it with a
20 certificate of mailing.

21 MS. WREND: Well, I guess, then, that this one is
22 for the Commission's discretion. Notice generally is
23 jurisdictional, it's a prerequisite to you having jurisdiction
24 over a matter, and so if they don't have proof of service, of
25 having served the protest in accordance with the rule and the

1 applicants are saying they never did receive it, you may
2 wish to continue it to allow them an opportunity to review
3 what the issues are and to prepare to rebut those issues.

4 The rule also allows that if a person hasn't
5 filed a protest, then you may wish to interpret what's
6 occurred here as that having happened, they are allowed to
7 present statements and oral testimony, but they would be
8 precluded from presenting evidence and from presenting--or
9 from doing cross-examinations. It's a tough one.

10 CHAIRMAN ANDERSON: All right. Well, I'm not
11 personally interested in hearing this if we have to hear it
12 with one of the sides with their arm tied behind their back.
13 If there's concern about that issue, then I think we need to
14 continue this.

15 This is an important issue. What I hear is that
16 the protest was filed on time. Mr. Sullivan has indicated
17 that the copy of the notice was mailed. I believe him. If
18 a copy of the protest wasn't received and if that prejudices
19 your ability because you haven't been able to prepare, then
20 I think the implication is that we shouldn't hear this today.

21 I don't know if that's the result you want, but
22 that's--

23 MR. EVANS: The result I want--it's clearly not
24 the result I--the result is one that you have to make, and I
25 think that that's what we have to achieve here. Whether this

1 is continued or not, I think you have to--whether a
2 continuation is appropriate, I think you must give me at
3 least two or three minutes to talk to my clients and see what
4 they would like to do in their best interest.

5 CHAIRMAN ANDERSON: And I was speaking only for
6 myself. I'd like to hear what the other members of the
7 Commission think about this.

8 COMMISSIONER JOHNSON: I'll say that--I'm not an
9 attorney, so I don't relate to the technical issues that well.
10 I think this is a real test case here on the bonds, and that's
11 what I'm interested in, and I'd like to hear both sides so
12 that we can make a good precedence case, but I don't have the
13 benefit of the technicalities that Julie and you two
14 attorneys do.

15 So I'm in your camp, Mr. Chairman.

16 CHAIRMAN ANDERSON: Anybody else?

17 COMMISSIONER LARSON: The way I read the rule, I
18 think that it's predicated on filing with the Commission and
19 paying the fee. The second sentence from the bottom does not
20 predicate the ability to present and rebut evidence on the
21 applicant receiving a copy. So I think we can go either way
22 on it, and the rule would allow us to do that.

23 CHAIRMAN ANDERSON: Well, I guess I have two sides.
24 One is that anything that has the result that Mr. Sullivan
25 can't give it his full force, then I don't want to hear it

1 today. I don't think we can do that.

2 On the other hand, if Mr. Evans feels that his
3 failure to have an opportunity to deal with the content of
4 the protest is in the way, then that's an important fact, and
5 the implication of that is that I think we need to give
6 people time to prepare.

7 Do you want to speak to that, or would you like
8 to take a five minute recess and talk to your clients?

9 MR. EVANS: Let me take a five minute recess to
10 talk to my clients.

11 CHAIRMAN ANDERSON: All right.

12 (Whereupon, a short break was
13 then taken.)

14 CHAIRMAN ANDERSON: Mr. Evans?

15 MR. EVANS: Chairman Anderson, we have carefully
16 weighed everything here, and one factor that weighs very
17 heavily on us is the cost to the clients. I would have been
18 remiss had I not brought this to the Commission's attention
19 as a lawyer. I think it's an important factor here.

20 The most important factor, though, is the three
21 days that you should begin to examine between the time of the
22 Commission hearing and when we should be receiving notice.
23 That simply puts the applicant at a great disadvantage, and
24 I would urge you, as long as you're redoing your rules, to
25 very much consider that you also think about amending Rule 508.

1 With that, I think it's in the best interest of
2 your time today and in the best interest of my clients that
3 we go ahead and proceed.

4 CHAIRMAN ANDERSON: Okay. I appreciate that. I
5 think I agree with you. I think this is an important issue
6 and it is difficult to get this group assembled and to get
7 it focused. Having said that, though, I can't promise you
8 that we're going to get all the way down to the bottom
9 tonight, either. I don't know how long it's going to go.
10 Maybe we ought to find that out now.

11 What kind of time constraints does the Commission
12 have with--

13 COMMISSIONER LARSON: How long do we have our
14 court reporter? We can usually out last the court reporter.

15 CHAIRMAN ANDERSON: Well, there's nobody that has
16 to be somewhere right away, it's just a matter of endurance.

17 COMMISSIONER BUYS: Midnight's nice.

18 COMMISSIONER CAMPBELL: I have to leave about
19 7:30.

20 CHAIRMAN ANDERSON: All right. Well, there are
21 practical limits. Having been through hearings before that
22 go this length, what happens is that at a certain point of
23 time the already low IQs of at least some of the Commissioners
24 go down about 15 points an hour after 5 o'clock so you're
25 talking to stumps by about the 10 o'clock news.

1 So I think 7:30 quitting time no matter what is
2 probably a good reasonable goal here. If we can get done
3 before then that's good. If not, we'll stop anyway.

4 All right with everybody?

5 COMMISSIONER JOHNSON: One thing. I would just
6 like to agree with John that I think we need to try to expand
7 that time period for people to prepare, and it's in
8 everyone's benefit that way.

9 CHAIRMAN ANDERSON: Yes, it is a tight period.
10 Logan, we are going to proceed and we're going to go to
11 7:30.

12 All right. Mr. Evans?

13 MR. EVANS: Well, having gotten that over with,
14 thank you very much. My opening remarks, what I'd like to
15 do is outline for you what I think some of the basic issues
16 that we're going to be looking at today are, but in doing so,
17 I would like to also say what I think is not at issue here
18 today.

19 What is not at issue here today is the reputation
20 of Elk as a company. What is not at issue here today is the
21 reputation of the Martindales as farmers. What is at issue
22 today is simply the adequacy of the bond itself, and the--
23 which I will go through in just a second, but I think that's
24 very important to say at the outset.

25 The second thing that also is not at issue today

1 is anything that has to do with Senate Bill 230, because
2 what happens across the street is going to happen regardless
3 of what we do here today, and we'll let the politics across
4 the street go its merry way. I have learned, I have seen
5 seven versions of that 730 across the street and briefed all
6 seven, stayed up many, many nights, and I can tell you what
7 happens is I'll be glad when that thing is done.

8 But in the meantime I want to make that very, very
9 clear. I have nothing but the greatest respect for Elk as a
10 corporation. They should know that. I applaud their efforts
11 up in Weld County, particularly the sessions they've had up
12 in Evans and elsewhere to inform the public and bring people
13 in and tell them about the new rules and regulations.

14 I think that's good, but as I said, I think the
15 issue here today is simply a very, very narrow issue, and of
16 which you're going to have two. The first is it concerns
17 the damage bond itself, and simply what you're going to ask
18 is are the bonds adequate, okay, and that's a very narrow
19 issue here, are they adequate in this instance, and I don't
20 need to tell all of you already that Elk already has one
21 state-wide bond. You all know that.

22 The question is whether that one state-wide bond
23 is adequate to take care of the damages that the Martindales
24 are likely to incur. What we're going to be doing is
25 calculating potential damages, because that in essence is

1 what a bond is, okay, we're looking at potential losses.

2 In other words, regardless of how good Elk does
3 its job, we're really looking at the worst-case scenario in
4 calculating and looking at our damages, and the way we're
5 going to do that for you is we're going to present a case
6 where we're going to show you unreasonable crop loss, okay,
7 for the Martindales, and what we're going to do is we're
8 going to show you for, as the rules state, a six-month
9 growing season and a six-month reclamation period, okay.

10 Now, realize, again, we do not know when Elk is
11 intending to come on to the Martindale property. We know Elk
12 has the right of egress and ingress, and that right is
13 determined by the economics of their corporation, and you
14 all know that better than I do.

15 But what we are going to do is develop for you
16 a specific outline of what we consider unreasonable crop loss,
17 okay, and we're basically looking at a very, very narrow
18 span of time.

19 The other thing we're going to look at is land
20 damage resulting from the use of land by the--in the course
21 of the drilling operation and the land taken itself, the
22 amount of land taken out of production, which is an important
23 economic loss to the Martindales in this particular instance.

24 This is framing the first issue. Now, I also
25 want to emphasize something else. Like all of you in this

1 room, we're learning too, as we go, and I hope that next
2 month and the few months ahead I'll be much better at
3 presenting these damages and together you and I and everyone
4 in the room will begin to learn a little bit more about the
5 kinds of harm to the farmers and in the Martindale's
6 particular situation.

7 But at this particular point in time, this is
8 the direction we're going in, all right, and this is the
9 first issue; again, are the bonds adequate? It's a very
10 narrowly framed and very, very narrow first issue, but--the
11 second issue--yes?

12 COMMISSIONER JOHNSON: By land taking, you mean
13 assuming production; is that correct?

14 MR. EVANS: The actual land taken. That is the
15 drilling site, the tanks, the batteries, the gathering lines,
16 that sort of thing, that's exactly what we mean by land
17 taken, and I'm going to define that for you, and we've got
18 some wonderful diagrams, thanks to Mr. Martindale's effort,
19 to be able to show you exactly what impact that is, of land
20 taken.

21 The next area that we're going to be focusing on,
22 the issue number two, is the reclamation bond itself. This
23 issue is also very narrow, and you have framed it in your
24 interim rules as being very narrow. What you have said in
25 your interim rules is that we are looking at good and sufficient,

1 what is good and sufficient in this case, and in many respects
2 that's almost, that's very similar to the earlier question
3 that we've asked earlier in regard to the adequacy of the
4 bond.

5 What is a good and sufficient bond in this case?
6 What is good and sufficient justification for setting the
7 reclamation bond? And as you know, the new rules, all future
8 and any existing wells are what we're covering in this
9 particular instance, and what we're also looking at is
10 something that's also discretionary on your part; there's
11 nothing that mandates that you have to do this in terms of
12 the levels of amounts of money that you can set is also very
13 discretionary on your part.

14 Again, as I said, you're going to have to focus
15 and give meaning to this term good and sufficient.

16 And finally, the goal. What is the goal of the
17 reclamation, and I think that you have clearly in the end
18 of your rules when you talk about final reclamation, said
19 that the ultimate goal of reclamation is to restore to the
20 productivity level prior to operation. That's the goal of
21 reclamation, okay, that's the level of achievement that you
22 must achieve in order to successfully reclaim the property.

23 So the issue that you're going to be deciding is
24 what is a good and sufficient bond to achieve this particular
25 goal to restore that productivity level prior to operation,

1 and that in essence are the two issues narrowly drawn and
2 developed for you today, okay?

3 Now, to continue, what we're talking about here
4 is, as I said, a bond, a very unique kind of creature here.
5 Basically the bond is between the state of Colorado and the
6 drilling company. It's not between the Martindales and the
7 state of Colorado; it's not between the Martindales and Elk.
8 It's between--it's a contract between the two of you, of
9 which the Martindales are what we call third-party
10 beneficiary. It's a surety obligation, all right, it's an
11 indemnity.

12 Failure to perform is what we're focusing on here.
13 Failure--the bond is only called when there is a failure to
14 perform, and under the terms of the rules and regulations of
15 the Oil and Gas Commission, so that's the only time this bond
16 is called, is when there's a failure to perform, and again,
17 what we're looking at here is the worst-case scenario, and
18 we're calculating the total potential damages, okay.

19 So we're measuring this particular risk, and this
20 is essentially what the bond is designed to do, okay. Now,
21 I emphasize this at the outset, because I think you need to
22 get a feel of it, because we're not talking about a lawsuit
23 where we're looking at actual damages here. We're not talking
24 about something we're going to name to specific and general
25 damages, no. They'll come at a later time, sometime down the

1 road; a year from now, two years from now, three years from
2 now after Elk has done the best job that they could possibly
3 do.

4 And the Martindales, looking at their specific
5 damages, will then make an assessment, gather their costs of
6 what they've incurred in that particular time, and will; one,
7 make a claim under the damage bond; or two, make a claim
8 under the reclamation bond, depending on the type of damages
9 that have occurred.

10 But that's down the road, and that is when you get
11 out your magnifying glasses and you begin to differentiate
12 between the concept of general and specific damages, and the
13 attorney general could probably provide you a much better
14 brief on that particular issue at a later time when we begin
15 to move into making claims on the bond.

16 So right now the important thing is to realize
17 that what we're looking at here is failure to perform; that's
18 what triggers the bond, worst-case scenario, and what we're
19 doing is calculating potential damages.

20 Okay. Now we begin to get into the nitty gritty,
21 and the only thing is that on the damage bond, we are going
22 to present figures to you to show you that we've got a
23 damage bond for crop losses, okay, for \$95,783.81. Now, again,
24 that's worst-case scenario, we're looking at potential losses,
25 all right, and the second thing is the land taken. Given the

1 amount of land taken, and given the fair market value for the
2 land, that land is \$31,500 for a total of \$127,283.81.
3 That's what we're going to say the damage bond ought to be
4 set at. This is the mark for you--that we're setting the
5 damage bond, and we'll present before you a case to show you
6 why we believe those particular losses are justified for you
7 to set the damage bond at.

8 The final area that we're going to be looking at
9 is the reclamation bond. Now, this reclamation bond, this
10 reclamation area, is very unique and we're getting better at
11 it every time, and the next time I come in front of you I'm
12 probably going to have even more detail and be more specific.

13 But for right now, at this particular given time,
14 what we are looking at is basically a one-year scenario here.
15 What we're looking at is what would it take to do tillage, if
16 they have to do tillage at the site, what is the cost going
17 to do if they have to do pipeline repair, and we're going to
18 show you that on their schematic on the end of the land, there
19 are five crossings, and they have underground pipelines
20 for their irrigation system, very expensive pipeline, which
21 they have built, and for everytime that there is--and we're
22 just assuming that there may be five crossings, and as a
23 result there may be five collapses of these particular wells.

24 It may be that this turns out to be very
25 understated, but for now, given what we know at this point in

1 time, we feel, talking to the Martindales and everything else,
2 that this is a fair amount.

3 The next is laser level; this is a laser leveled
4 farm, 160 acre farm, okay, located just north of Platteville,
5 all right. Sandy loam soil, very sandy loam soil, okay, and
6 with a very, very small amount of soil base, only one inch of
7 soil base to bedrock; a water table that is very shallow,
8 okay, so this particular cost, laser leveling, okay, is
9 what they have done on at least a couple of their fields,
10 and we're going to show you that particular cost and how that
11 particular cost works out across the rest of the farm.

12 Finally, road maintenance, a very important issue,
13 okay? That comes up at \$881.52. The total reclamation bond
14 that we're right now suggesting to you is \$13,431.92.
15 All right. That's for one year. In your wisdom you may say
16 that's too low, you might want to try two years, because
17 remember, you have a six-month window, and you might be
18 talking actually two growing seasons, I don't know. That's
19 for the Commission judgment.

20 What we're presenting here is what is good and
21 sufficient, and talking with the Martindales, they feel that
22 this is good and sufficient to protect them for a six-month
23 window for drilling and then a six-month window for
24 reclamation. All right.

25 In summation, then, the damage bond, worst-case

1 scenario, reclamation bond, we're looking at what is a good
2 and sufficient bond, and finally, I think the most important
3 thing, is to end this all with, and that is that we, like
4 you, are also learning in the process working with the
5 landowners in that particular area of dealing with land which
6 is very productive and is very, very fragile.

7 CHAIRMAN ANDERSON: Why don't we go ahead. I have
8 a number of questions, but I think we'll let Mr. Sullivan
9 do his opening statement.

10 MR. SULLIVAN: Okay. They're requesting an
11 increase in the damage and reclamation bonds, as Mr. Evans
12 said, the measure of damages will become reasonable crop loss
13 and reasonable damage to the surface.

14 In this case, the interim regulations require a
15 bond for damage for the losses resulting in unreasonable
16 damage, but that is only to the extent the reclamation is not
17 performed in accordance with Commission rules, and the amount
18 doesn't exceed fair market value of the affected land.

19 Just an initial point, and we'll bring it up in
20 testimony later, is damage amount for 9 acres of land, we're
21 talking about \$10,000 an acre. That initially caused me some
22 concern, because when we do an analysis of what the actual
23 damage is using vegetable crops such as the one the
24 Martindales used, we're two orders of magnitude below that, so
25 I think you'll see some discrepancy in the damage estimates.

1 Their value even exceeds the full fair market--their request
2 exceeds the full fair market value of the land and exceeds
3 the value of the actual losses, not just the losses due to
4 unreasonable damage, which is what the law requires.

5 I think you will note, although Mr. Evans says
6 you shouldn't, that Elk's reputation in the past is not a
7 factor in this matter. I think it is because Elk has never
8 had their bond called. They have what would amount to be a
9 perfect record, and the Commission has received no complaints
10 from them, at least that's what I've been told on this.

11 So I think in determining this bond you have to
12 look at the reputation of the operator and determine what the
13 probability is that this operator will cause unreasonable
14 damages.

15 The Commission doesn't really--you haven't had a
16 chance to determine standards when a reclamation bond would
17 be required. They state that you can issue it on a
18 discretionary basis. In this case there's not just one bond
19 out there for these lands, there's a \$25,000 state-wide
20 surface damages bond, which Mr. Evans indicated. There's also
21 a \$30,000 plugging and abandonment bond which is held at least
22 until the well is--or wells, there are potentially three wells
23 on this property, at least until those three wells are
24 plugged and abandoned, and in addition, these are state
25 minerals. The state exercises, through its Land Board,

1 exercises some control over our operations, and they've been
2 involved in this case, and there's also an additional
3 \$25,000 bond there.

4 So you're already talking about \$80,000 in bonds
5 on a company that has not had any violations in the past.

6 The testimony today will show that Elk cooperates
7 with landowners, who will communicate with them, communicate
8 their concerns. In this case I feel that the existing bonds
9 are sufficient.

10 Mr. Evans talks about a worst-case scenario, but
11 I think that's all a matter of degrees. You could come up
12 with worst-case scenarios going to the complete loss of the
13 entire farm. I think what you need to balance that with
14 is the probability of what will occur in addition to--in
15 calculating that probability, looking at the past actions of
16 the company in question, and also looking at whether it's
17 necessary to impose a bond in a situation like this which
18 will cover the worst case.

19 Part of the Commission's concern is what affect
20 this will have on industry. I'm sure you've heard testimony,
21 including the all-day session you had at the Colorado State
22 History Museum in January, where bonds of this nature, if
23 required, particularly if required of good companies, would
24 throw a lot of operators out of the state, out of business.
25 I think that's something that has to be considered when you're

1 considering what is a reasonable bond, what is a reasonable
2 and sufficient bond.

3 I think--well, as far as addressing some of those
4 other points, we'll bring that up after we've been able to
5 substantiate--after they've been able to substantiate why
6 the numbers that they have up there are the accurate ones and
7 the ones you should consider.

8 CHAIRMAN ANDERSON: Okay. I'd like to ask a
9 couple of questions to help understand before we begin to
10 hear from the witnesses.

11 The damage bond, under our interim rules, damage
12 bond section says that the operator shall negotiate in good
13 faith with the surface owner pertaining to damages. In the
14 absence of an agreement between the surface owner and the
15 operator--have there been discussions that have gone on with
16 the operator and--

17 MR. EVANS: In all fairness, I have to do my
18 lawyerly thing now, and in all fairness to this Commission,
19 and to my colleague across the way, the only bond that the
20 Martindales are eligible for is for the original bond under
21 your original rules.

22 The reason for that is you've put into the rules
23 a technicality, and that is that as the rules went into
24 effect, as you know, February the 15th. The bond was applied,
25 the permit was applied for prior to February the 15th;

1 therefore, the interim rules, as far as the bond concern,
2 this bond, the interim bond, does not apply.

3 What you're going to have to do is consider the
4 bond adequacy based on your old rules in this particular
5 case. I'm doing this as a lawyerly thing because I'm under
6 an obligation by my profession to let you all know this,
7 rather than see you go down, you know, the garden path.
8 The attorney general's office may want to verify me and my
9 opinion on this, but the permit was applied for prior to
10 February 15th.

11 If you read the rules and regulations, it indicates
12 that the rules are effective on or after February 15th,
13 which indicates to me in this particular instance, that the
14 only bond that we can address here today is that the old
15 bond and your old rules. That doesn't mean it's going to be
16 a lost day for you, I can tell you that right now, because
17 many of the principles that you found under your old rules
18 are going to apply here.

19 The only thing that you're going to find under the
20 old rules is that you do not have a ceiling for fair market
21 value, that doesn't--that's the only thing that you're going
22 to find.

23 So I wanted to let you know that, because I think
24 it's a consideration to you. Now, would you rephrase your
25 question?

1 CHAIRMAN ANDERSON: Actually that answers a couple
2 of other questions. That limitation is not a problem with
3 respect to the request on the reclamation bond.

4 MR. EVANS: No, it's not.

5 CHAIRMAN ANDERSON: So the Commission then has to
6 look at this under the rules, not the interim rules, but
7 there was--I take it there have been efforts to negotiate
8 this that have been unsuccessful? The rules say that you
9 have to go through the process, there has to be an attempt
10 to negotiate, there's been a failure in those negotiations,
11 and the minerals are severed.

12 MR. EVANS: Well, this is state land on lease,
13 state land ownership.

14 CHAIRMAN ANDERSON: But then you just mentioned
15 that one of the problems--one of the concerns that I had was
16 that the interim rules do say that there is a limit on the
17 amount of damages to the fair market value, and the sum of the
18 numbers that you've put up on the board there was greater
19 than what was indicated to be the fair market value, and
20 that looked on its face like a problem to me.

21 MR. EVANS: It's not a problem to the
22 Martindales. What they are are the worst-case scenario of
23 their potential losses, and once they put their case on, I
24 think you'll begin to see why this is the worst-case scenario
25 for them, in terms of their crop losses.

1 Notice that the larger figure--maybe I should put
2 this back up here, because this particular bond here is the
3 one that's going to trigger your most keen scrutiny; that is
4 the crop losses that we're going to be able to show you,
5 \$95, 783.81, the worst-case scenario.

6 What is worst-case scenario? Worst-case scenario
7 is that Elk should appear in June of this year and drill on
8 their property, all right? That would virtually shut half
9 this farm down, more than half of this farm, okay? That's
10 essentially what we're talking about when we raise worst-case
11 scenario, and of course the amount of land taken is simply
12 the amount of acres actually physically taken, and again,
13 the word we're using is the calculations which we've
14 developed that will aid you in understanding why that
15 particular amount is there.

16 MR. SULLIVAN: Commissioner Anderson?

17 CHAIRMAN ANDERSON: Yes, Mr. Sullivan?

18 MR. SULLIVAN: I'm sorry. Two points. First, if
19 we could hold the testimony until testimony is actually given
20 I think it will speed things up a little bit. Secondly, I
21 would disagree with Mr. Evans' implication, at a minimum, I
22 guess, that the bonds will not apply to the Martindale
23 property. All three of the bonds I mentioned were given
24 under existing state law, not the interim regulations, and
25 they are applicable, such as the bond with the state Land

1 Board, the damages bond, and the plugging and abandonment
2 bond, are applicable even if the regulations have never been
3 passed, just to clarify those two points.

4 COMMISSIONER BUYS: What is the state Land Board
5 bond called?

6 MR. SULLIVAN: It's a state-wide bond, and it
7 provides for proper--I can't give you the exact words, but
8 it throws in both surface damages due to drilling activity
9 and reclamation.

10 MR. EVANS: I think you better realize something
11 about the state Land Board bond that's very important, and
12 that is that the state Land Board bond is not a bond between
13 the Martindales and the state. The bond is one between the
14 Elk Oil Company and the state, and the reason for the bond
15 is put into the state contract, okay, to indemnify the state
16 should the Martindales ever have to sue the state for the
17 damages done to them by Elk.

18 That's a very different purpose than what we have
19 here, so the state Land Board bond should never be even
20 considered in this particular instance as part of the equation
21 here, simply because what we're talking about here is a
22 full-blown lawsuit, and the amount of money in the state
23 Land Board bond is used merely to indemnify the state should
24 the Martindales be successful in their suit against the
25 state for damages done to their property by Elk.

1 That's something that we hope to avoid by this
2 entire process, so I would urge you greatly to throw that
3 state Land Board bond out of here, and unless--kill that
4 sucker right now, you know, and forget it as an issue.

5 MS. WREND: Could I ask a question?

6 CHAIRMAN ANDERSON: Sure.

7 MS. WREND: This question was presented to the
8 Land Board; have they responded to you?

9 MR. EVANS: No, they have not, and I have met with
10 individuals of the Land Board encouraging them to respond
11 and they have not responded yet, although I notice there are
12 or is at least one individual representing the state Land
13 Board in here today, and your office and I have gone around
14 on this--well, the attorney for the Land Board and I have
15 gone around on this particular issue several times discussing
16 this.

17 MR. SULLIVAN: Commissioner Anderson?

18 CHAIRMAN ANDERSON: Yes, Mr. Sullivan?

19 MR. SULLIVAN: One more point. The bonds are
20 conditioned upon complying with state and any other
21 regulations that apply, there are some Federal in this case
22 as far as environmental goes. We're not interested in
23 putting any money in the Martindales' pocket. What we're
24 interested in doing is restoring that to the same
25 productivity it had before.

1 I think the state is quite capable of enforcing
2 that. The argument that Mr. Evans makes only makes sense if
3 you assume that the state isn't going to do its job. I don't
4 think that's a basis for ignoring the existence of the bond.

5 CHAIRMAN ANDERSON: I have just one more question.
6 I guess I'm just trying to understand what you're going to
7 do. On the reclamation bond in the interim rules, what we
8 say is the Commission may, on a discretionary basis, require
9 that an operator--since this is the first time we've
10 discussed the issue, the Commission is going to be interested
11 in what facts, what circumstances are appropriate for the
12 imposition of a reclamation bond and when not. Are you going
13 to be helping us on that?

14 MR. EVANS: Absolutely. We're going to help you
15 on both questions, the damage bond and the reclamation bond.

16 CHAIRMAN ANDERSON: All right.

17 COMMISSIONER LARSON: I'm not sure I got an
18 answer to your question; are we certain that you are not going
19 to reach an agreement as to surface damages? Is that--

20 MR. EVANS: I would say, Commissioner Larson, the
21 issue on whether they reach an agreement or not, is really
22 not an important issue right now. They're before you because
23 they haven't reached an agreement, and what they are is they're
24 seeking some sort of security against the risk in the future,
25 and that's the sole issue.

1 COMMISSIONER LARSON: Right, but--

2 MR. EVANS: It may be that a year from now--

3 COMMISSIONER LARSON: We normally give a bond in
4 the absence of an agreement.

5 MR. EVANS: That's right.

6 COMMISSIONER LARSON: And I just want to make sure
7 that--I think the Commission would like to encourage private
8 agreements whenever possible, and so I just want to make sure
9 that a sufficient amount of negotiation has been attempted so
10 that we're not doing this prematurely.

11 MR. SULLIVAN: Well, that will come out in
12 testimony, the attempts that have been made.

13 MR. EVANS: With all due respect, Commissioner
14 Larson, it isn't the amount of consultation that is important,
15 it is the risk that the Martindales are facing. Under the
16 current rules, Elk could be on their property tomorrow, they
17 could be on their property next month. The consultation
18 period could continue far beyond that, but the risk is what
19 they're incurring.

20 That is the only real issue here, is the adequacy
21 of the bonds themselves and the bond process, and whether the
22 reclamation bond is good and sufficient. Those are the
23 issues, it's not consultation. Consultation is not the issue.

24 COMMISSIONER LARSON: Thank you.

25 CHAIRMAN ANDERSON: Okay. Any more questions here

1 before we begin?

2 Mr. Evans, do you want to begin with your
3 witnesses? Yes, Mr. Sullivan?

4 MR. SULLIVAN: Commissioner Anderson, as we start,
5 in view of the fact that these usually take--would it be
6 possible to limit testimony so that each side would have an
7 equal amount of time this evening?

8 CHAIRMAN ANDERSON: Well, how much--how long do
9 you think you're going to go?

10 MR. EVANS: I'm quite sure the Martindales would
11 like to sum up as quickly as possible. I would say 20
12 minutes, maybe 25 minutes apiece, depending on the amount of
13 questions that you all might have. We have a number of
14 exhibits that we'd like to bring in.

15 Again, this is an education process for both of
16 us, so I say estimating times, if this was a real trial, as
17 Commissioner Larson will tell you, probably you're looking at
18 four hour testimony here, but condensing it down to 20 minutes
19 is tough, 25 minutes, so I'll do my best to keep it within
20 a range. I too would like to finish today.

21 CHAIRMAN ANDERSON: Why don't we try, then, to get
22 done. You have two witnesses?

23 MR. EVANS: Two witnesses, that's it, the
24 Martindales.

25 CHAIRMAN ANDERSON: All right. And you have--

1 MR. SULLIVAN: Three witnesses.

2 CHAIRMAN ANDERSON: Three witnesses.

3 MR. EVANS: Perhaps what you might want to do is
4 limit them to two witnesses as well, let them choose the two
5 best.

6 CHAIRMAN ANDERSON: I think I prefer to--why don't
7 we go for 40 minutes each.

8 MR. EVANS: We'll do our best.

9 CHAIRMAN ANDERSON: All right.

10 COMMISSIONER LARSON: Everybody talk fast.

11 MR. EVANS: This is new to me and this is a tough
12 question. Maybe next time around we'll be better and faster.

13 CHAIRMAN ANDERSON: Okay. So why don't we aim at
14 being done at 7:20.

15 MR. EVANS: All right. I'll do my best to stay
16 within the time frame. With that I would like to call
17 Delores Martindale as my first witness.
18 Whereupon,

19 DELORES MARTINDALE
20 having been first duly sworn, was called as a witness herein
21 and was examined and testified on her oath as follows:

22 DIRECT EXAMINATION

23 BY MR. EVANS:

24 Q For the record, would you please state your name?

25 A Delores Martindale.



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1 Q And your address?

2 A 3581 118th Avenue, Thornton.

3 Q Okay. And also for the record, would you also
4 state the address of this farm?

5 A 18535 Weld County Road 25, Platteville.

6 Q Okay. Ms. Martindale, the first part of my
7 testimony, I'm going to begin by bringing forth a series of
8 exhibits. The first exhibit being--talking about your
9 initial contact with Elk, all right?

10 A Uh-huh.

11 Q You were contacted by Elk in October of '92; is
12 that correct?

13 A Yes.

14 Q Why don't you tell us about that contact, that
15 initial contact?

16 A We were in the shed packing miniature pumpkins, and
17 a landman came and said they wanted to drill some wells on
18 our property.

19 Q Do you remember the name of the landman?

20 A John Kennedy.

21 Q John Kennedy?

22 A Yes.

23 Q What time of day was this?

24 A Oh, about 2 p.m.

25 Q Okay. Was this the middle of the month of October?

1 Do you recall when?

2 A Close to it.

3 Q What did Mr. Kennedy say to you?

4 A That they were going to put in three wells.

5 Q Okay. Did you receive any other notice up to
6 that particular period of time that they were going to drill
7 wells on your property?

8 A I think we received a letter to that effect.

9 Q And what did that letter contain?

10 A Informing us that they were intending to put gas
11 wells.

12 Q Okay. Did that letter also contain a letter of
13 agreement, your surface agreement? Or did you receive that
14 at a later time?

15 A I can't remember.

16 Q When did you--I'll rephrase the question. Strike
17 the question. When did you receive the letter of agreement
18 from Elk Exploration? Do you remember?

19 A No, but it was around Halloween.

20 Q Around Halloween?

21 A And the reason I remember that was because we had
22 miniature pumpkins for sale.

23 Q Okay. What I'd like to do is show you what I've
24 marked Plaintiff's Exhibit 1 at this particular time, and do
25 you recognize Plaintiff's Exhibit 1?

1 A Yes.

2 Q All right. And what is it?

3 A This is a letter of agreement given to me by Elk.

4 Q Okay. How do you know it's your letter of
5 agreement?

6 A It has my name on it.

7 Q Okay. All right.

8 MR. EVANS: Since she's authenticated the letter
9 of agreement, I would move at this time to introduce the
10 letter of agreement. Let the record show I'm handing a copy
11 of the letter of agreement to opposing counsel.

12 (Whereupon, Plaintiff's
13 Exhibit No. 1 was offered in
14 evidence.)

15 CHAIRMAN ANDERSON: So this is Plaintiff's Exhibit
16 1?

17 MR. EVANS: This is Plaintiff's Exhibit 1.

18 BY MR. EVANS:

19 Q In the letter of agreement, one of the things in
20 the letter of agreement calls for--are for--for example in
21 Item 1, for \$25,000 compensation; is that correct?

22 A Twenty-five hundred.

23 Q Twenty-five hundred dollar compensation?

24 A Yes.

25 Q All right. Was that an adequate compensation to

1 you?

2 A No.

3 Q What about the additional provisions?

4 A It was great concern because this was the final
5 settlement and satisfaction for any and all detriment,
6 depreciation, injury or damage of any nature and/or
7 character caused by Elk to the value of the real estate but
8 not limited to all surface use, access, surface damages, mud
9 and reserve pit.

10 Q And that was unacceptable to you?

11 A Yes, and--

12 Q Why was that unacceptable to you?

13 A Because this released them of all liability and
14 future damages.

15 Q Okay. And No. 2, No. 2 wasn't any problem to you,
16 was it?

17 A No.

18 Q And No. 3, the additional provision, No. 3A, was
19 that a concern to you?

20 A Yes, the land out of our production.

21 Q Okay. What do you mean by land out of your
22 production?

23 A Because they would be disturbing the land, taken
24 roads, compacting the soil around it.

25 Q All right. So 3A was actually unacceptable; what

1 about 3B?

2 A Restoration shall commence as soon as possible,
3 we need that done so it doesn't interfere with our operations,
4 and restore to as near as possible, it needs to be as close
5 to the original.

6 Q Okay.

7 A And--

8 Q What about the well sites shall be shuttered and
9 ripped between 30 and 40 inches in depth? Was that
10 acceptable to you?

11 A No, just being ripped, it would be compacted and
12 it would just have like balled compacted soil.

13 Q What is the depth of your soil?

14 A As in?

15 Q The depth of your soil on your farm?

16 A The top soil?

17 Q The top soil.

18 A The top soil is very, very shallow.

19 Q Okay. What would be the impact to you of having--

20 A Well, unless you could break up the particles to
21 the original and fine, it would be unproductive.

22 Q Okay. So it would render your soil unproductive;
23 is that what you're saying?

24 A Yes.

25 Q 3C--or any more comments on 3B that you might have,

1 any more problems that you found there?

2 A The top soil is so shallow that the chance of
3 erosion is greater.

4 Q Okay. All right. So you have a high erosion
5 factor there?

6 A Yes.

7 Q Okay. All right. Any other problems with 3B?

8 A No.

9 Q Okay. What about 3C?

10 A No.

11 Q So the soil shall be moved and kept separate, that
12 was acceptable to you?

13 A Yes.

14 Q Okay. 3D; thou shalt designate and prepare
15 approximately 2.6 acres for drilling; was that acceptable
16 to you?

17 A No. That would be that much acres out of
18 production and lost.

19 Q So you thought that was too much acreage to be
20 taken; is that correct?

21 A Yes.

22 Q What about the access road, 15 feet wide?

23 A That would be--that was unacceptable.

24 Q Okay. All right. 3E; was that any problem, the
25 culvert?

1 A No.

2 Q Okay. There wasn't any problems to you; is that
3 correct?

4 A (witness shakes head)

5 Q 3F?

6 A That was a concern of mine because of the pipeline
7 could be collapsed.

8 Q The collapsing of the pipeline?

9 A Our irrigation line.

10 Q So your irrigation lines--tell us about your
11 irrigation lines.

12 A Eliminate open ditches installing irrigation
13 pipeline throughout our farm to a great extent, and virtually
14 if any part of that were damaged, we couldn't water our crops,
15 because the way it's set up, the major pipeline waters our
16 whole farm.

17 Q Okay. What about G; the surface owner agrees to
18 maintain weeds around the well heads, as well as tanks and
19 batteries and treatment facilities. Elk understands that any
20 sprays used in weed control could damage the surface owners'
21 crops; what about that?

22 A Our crops are very sensitive to any kind of
23 herbicide, and in the past there was a J Sand well there and
24 last year--I don't know the exact kind of herbicide, but it
25 was all over and we were concerned that the crops could be

1 damaged by drift.

2 Q Okay. But it says that the surface owner agrees
3 to maintain the weeds; was there a problem with that?

4 A We burn the ditches and weeds around there, and
5 we're concerned that--

6 Q Okay. So tell us a little bit about how you
7 maintain the weeds when you do have to maintain the weeds; is
8 there a cost to you?

9 A Yes.

10 Q All right.

11 A We use an herbicide that is safe around vegetables
12 and then we burn the weeds.

13 Q Burn the weeds?

14 A After they die down.

15 Q All right. The herbicide you said was costly?

16 A Yes.

17 Q Okay. H, where it says Elk shall use its
18 reasonable efforts in accordance with normal restoration
19 procedures to remove from the land all of Elk's drilling
20 and completion materials not used for operation, maintaining
21 and producing the wells; did you object to that?

22 A No.

23 Q What about the next sentence, should the surface
24 owner find any such drilling or completion materials left on
25 the land within six months after completion of the wells, the

1 surface owner may notify Elk and request materials be
2 removed; was that a problem?

3 A That needs to be removed immediately.

4 Q Okay. What about I; notification of Elk's plans
5 to recomplete or work over any of the wells shall be given
6 surface owners before entering the land; was that a problem?

7 A No.

8 Q Okay. Elk shall use all reasonable efforts to
9 coordinate any recompletion or work over of any wells with the
10 surface owner so as not to interfere with normal farming and
11 irrigation operations; was that a problem to you?

12 A No.

13 Q All right. What about J, Elk agrees to pay the
14 surface owner the sum of \$500 as payment to have the surface
15 owners' fields prepared again for planting; was that payment
16 adequate?

17 A No.

18 Q All right. Mrs. Martindale, what is your task on
19 the farm?

20 A I plan and operate the farm and manage it.

21 Q Okay. All right. Do you plan and operate the farm
22 alone?

23 A No. My family assists me.

24 Q Okay. And is there any one particular member of
25 your family that is the most helpful?

1 A Mr. Martindale.

2 Q Mr. Martindale. Okay. What is his role?

3 A He works the farm.

4 Q He works the farm for you?

5 A Uh-huh.

6 Q Okay. At this time I'd like to move on to what
7 we've marked as Plaintiff's Exhibit 2.

8 MR. EVANS: Let the record show that we've handed
9 a copy of Plaintiff's Exhibit 2 to the opposing counsel, and
10 then I'll let these go around the room.

11 BY MR. EVANS:

12 Q Would you tell us what is Plaintiff's Exhibit 2?

13 A Report of acreage and it's made to the Weld
14 County office of the crops I grow.

15 Q All right. And is this a report that you prepared
16 or is prepared for you?

17 A We prepare it, but it is documented by the ASCS
18 office.

19 Q Okay. Look on Page 2 of the report; do you see a
20 signature at the bottom of the page?

21 A Yes.

22 Q And whose signature is that?

23 A John Martindale.

24 Q And do you know John Martindale's signature?

25 A Yes.

1 Q And is that his signature?

2 A Yes.

3 Q The picture on the back of the page, what is that?
4 Is that an attachment to this particular report?

5 A Yes.

6 Q All right.

7 MR. EVANS: At this particular time, having this
8 document authenticated by Mrs. Martindale, I move to have this
9 Exhibit 2 placed into the record.

10 (Whereupon, Plaintiff's
11 Exhibit 2 was offered in
12 evidence.)

13 CHAIRMAN ANDERSON: All right. Are there going to
14 be more? Is there any objection to either 1 or 2?

15 MR. SULLIVAN: No. I think consistent with
16 Commission practices, perhaps Mr. Evans wouldn't have to
17 authenticate each one.

18 MR. EVANS: Good. Stipulate to all the--then the
19 record will show that the protestant has stipulated to all
20 the exhibits?

21 MR. SULLIVAN: So far.

22 MR. EVANS: Good. That will save us a lot of time.

23 BY MR. EVANS:

24 Q Ms. Martindale, why don't you point out for the
25 Commission your property boundaries so they can see it.

1 A (witness indicates)

2 MR. EVANS: Let the record show that she is
3 pointing to about the--

4 COMMISSIONER LARSON: The northwest section,
5 northeast, I mean.

6 BY MR. EVANS:

7 Q Let's talk about the map briefly. I can see
8 through the map there is a certain designation, like 1-A,
9 1-B; what are those?

10 A These are different fields on my farm.

11 Q Okay. And I notice that there are some notations
12 on there, like corn grown, et cetera?

13 A These are the variety of crops that I grow.

14 Q Okay.

15 A And also listed to the left here are also crops.

16 Q Okay. Would you turn to Page 1 now,
17 Mrs. Martindale, you notice the report gives a list of what
18 appears to be a list of crops; is that the list of crops that
19 you grow, and I notice it was for 1992?

20 A Yes.

21 Q All right. I notice that it also lists a certain--
22 for those of you who might not understand some of the
23 terminology, I'd just like briefly to go through some of the
24 abbreviations to be sure you all understand what the
25 abbreviations are; PUMKN is?

1 A Pumpkin.

2 Q And you've written in minature; is that correct?

3 A Yes.

4 Q Okay. ALFAL?

5 A Alfalfa.

6 Q Okay. And of course squash, pumpkin; CANTA?

7 A Cantaloupe.

8 Q Cantaloupe; TMATO?

9 A Tomato.

10 Q Okay. PEPRS?

11 A Sweet peppers.

12 Q CLFLW?

13 A Cauliflower.

14 Q And the one below it is?

15 A Broccoli.

16 Q Okay. And of course, I guess it would be SWCRN?

17 A Sweet corn.

18 Q Okay. And below that?

19 A Watermelon.

20 Q And the only other new term under there is CUCUM?

21 A Cucumbers.

22 Q Okay.

23 A And pickles.

24 Q All right. In terms of the amount of acreage

25 reported, it says corn, 3.2, and then it says field 1-A-1;

1 that shows you the field and the corn; is that correct?

2 A Yes.

3 Q And the total amount of acreage on that?

4 A Yes.

5 MR. EVANS: At this particular time, I would like
6 to introduce what's been marked as Plaintiff's Exhibit 3.

7 (Whereupon, Plaintiff's
8 Exhibit No. 3 was offered in
9 evidence.)

10 BY MR. EVANS:

11 Q Mrs. Martindale, Plaintiff's Exhibit No. 3 has on
12 Page 1 a total for crop loss, \$95,783.81; do you see that?

13 A Yes.

14 Q Okay. And then do you see land taken, \$31,500;
15 correct?

16 A Yes.

17 Q Okay. Now those--turn to Page 2, you see a chart
18 there that has unit price, yield per acres and gross acres,
19 okay?

20 A Yes.

21 Q All right. And then on Page 3, it has a list of
22 the--another list estimated acreage, gross acreage, gross
23 loss, et cetera; do you see that?

24 A Yes.

25 Q Now, these particular crops that are listed on

1 Page 2 and Page 3, they're basically identical; is that
2 correct?

3 A Yes.

4 Q Okay. Are--what are these particular crops?

5 A These are the crops I grow, among the crops I grow.

6 Q Okay. And are these the crops that you're going
7 to be growing this year?

8 A Yes.

9 Q All right. So I notice this particular list of
10 crops varies a little with the list of crops that you grew
11 last year; is that correct?

12 A Yes.

13 Q Why is that?

14 A Crop rotation and additional crops.

15 Q Okay. Now, Mrs. Martindale, I've handed you what
16 is the ASCS--what has been marked as Plaintiff's Exhibit 4,
17 the ASCS Handbook, called disasterous systems; do you
18 recognize that?

19 A Yes.

20 Q All right. Would you tell the Commission the
21 importance of this particular book?

22 A This is what the ASCS uses to calculate disaster
23 payments.

24 Q Okay. And in it, on Pages--I guess it would be
25 Pages 3, you see a list of crops, crop code, unit measurement,

1 irrigation practice, the yield for 1990, the yield for 1991,
2 et cetera; do you see that?

3 A Yes.

4 Q All right. How were you able to use this
5 particular chart to help you calculate your damages? On
6 Pages 2 and 3 of Exhibit 3?

7 A Well, they calculated the unit of measure and the
8 rate and the gross, the yield per acre and the gross acres.

9 Q Okay. So for example, take lettuce, all right,
10 if we were to look up lettuce, okay, which would be on--it's
11 listed in alphabetical order, all right, and the variety is
12 leaf lettuce, which would be on the bottom of the page; is
13 that correct?

14 A Yes.

15 Q Okay. So how did you use this table on Exhibit 4
16 to help you calculate the exhibit on Page--Exhibit 3?

17 A It's on irrigated and yield, it is 110 per
18 100 weight.

19 Q Okay.

20 A And the rate is \$15 per 100 weight.

21 Q Fifteen dollars, okay.

22 A And the yield is 110.

23 Q Hundred and ten. All right. You see on your sheet
24 on Exhibit 3, it says leaf lettuce, leaf variety, 15 pounds
25 per 100 weight, 110.6 yield per acre, that corresponds, again,

1 with Exhibit 4; is that correct?

2 A Yes.

3 Q And that says gross acres, 1,659; where did you
4 arrive at that figure?

5 A That is the income that that acre would bring me
6 for lettuce.

7 Q Okay. Now, on Page 2 and the final page, Page 3,
8 where it says lettuce, leafy variety, it says estimated
9 acreage, 8.0?

10 A Yes.

11 Q What is that number?

12 A That is the acres of lettuce that I have planted
13 right now.

14 Q Okay. And the next gross/acre is?

15 A The income, gross income from that--per acre on
16 that lettuce.

17 Q Okay. And then the gross loss to you would be?

18 A \$13,272.

19 Q Okay. Now, Mrs. Martindale, I'd like to ask you
20 about the price per acre of lettuce that the ASCS currently
21 calculates; is that a very accurate measure of price right
22 now?

23 A No. It's very, very low.

24 Q Okay.

25 A Lettuce right now is \$10 a box, and there's an

1 average of 800 boxes per acre, and that would be \$7,000 for
2 one acre, but the average in May for the last three years
3 would be about 7.50 a box, and we average about 800 boxes per
4 acre.

5 Q Now, Mrs. Martindale, to save the Commission time
6 and my time, which is fast fleeting, did you use the same
7 methodology to calculate your gross loss cost throughout the
8 entire--for all the crops listed?

9 A Yes.

10 Q And you came up with a total at the bottom of
11 147.3 acres; what is the significance of that number?

12 A That is the amount of total farmable acres on the
13 farm.

14 Q Okay. And the \$188,119.40 is what?

15 A Very conservative gross loss.

16 Q Okay. And to come up with a total of \$95,783.81
17 you did what?

18 A I would have 75 acres loss--

19 Q Okay.

20 A --due to the oil and gas drilling.

21 Q All right. Now, that 75 acres is not the actual
22 land taken, is it?

23 A No.

24 Q No. What does that 75 acres represent?

25 A Loss of production on the farm.

1 MR. EVANS: At this time I don't think I've moved
2 to introduce Exhibits 3 and 4; I move at this time to
3 introduce Exhibits 3 and 4.

4 (Whereupon, Plaintiff's
5 Exhibit No. 4 was offered
6 in evidence.)

7 CHAIRMAN ANDERSON: All right. They're admitted.
8 (Whereupon, Plaintiff's
9 Exhibits 3 and 4 were admitted
10 in evidence.)

11 MR. EVANS:

12 Q I'd like to show you what is Exhibit 5; do you
13 recognize Exhibit 5?

14 COMMISSIONER MACMILLAN: John, we'd like to ask a
15 question about Exhibit 4. I believe in the upper right-hand
16 corner of Pages 1, 2, 3 and 4, it says, CO Exhibit 1; are
17 these numbers specific for Colorado?

18 MR. EVANS: That's correct, they are. They are
19 specific to Colorado in that area.

20 COMMISSIONER MACMILLAN: They're not compiled by a
21 national service but for--

22 MR. EVANS: They're compiled by ASCS, yes,
23 Agricultural Stabilization Conservation Service, as the
24 handbook says, United States Department of Agriculture, and
25 these in particular were received by the Weld County office

1 effective as of January 28th, 1992, the effective date of
2 these particular costs, and this is how we arrived at the
3 damage figure for crop losses, and the 75 acres we'll
4 establish as soon as John gets to testify as to how the
5 well drilling operations will take 75 acres of their land
6 operation, has the potential of causing that amount of damage.

7 COMMISSIONER MACMILLAN: Thank you.

8 BY MR. EVANS:

9 Q Okay. Exhibit 5, would you tell us what Exhibit 5
10 is?

11 A This is the land value per acre.

12 Q Okay. All right. The land, the cost per acre,
13 \$2,187.57; how did you arrive at that?

14 A It was--it's the--I can't think--it's the appraisal
15 done by Cress Weideman. (phonetic spelling)

16 Q Cress Weideman, and Cress Weideman wrote you
17 this particular letter?

18 A Yes.

19 Q And you received this particular letter on
20 March 19th, 1992? Or '93? Is that correct?

21 A No, I received it in April.

22 Q March 19th, 1993?

23 A April.

24 Q It says April 19th, so you received it on April
25 19th?

1 A Yes.

2 Q Okay. All right. And you notice that the present
3 market value of your entire farm is \$350,000; is that
4 correct?

5 A Yes.

6 Q Do you agree with that?

7 A Yes.

8 Q That is the best price that you agreed with?

9 A Well, not really.

10 Q Okay. Well, tell the Commission why you don't
11 agree with that amount?

12 A Well, because of the productivity of the land
13 and the improvements that we've put on the sheds, the loading
14 dock and the irrigation.

15 Q In other words, the value of the entire farm as a
16 small business to you is greater than this amount you feel?

17 A Yes.

18 Q So the Cress Weideman amount, in your opinion,
19 is very conservative?

20 A Too low.

21 Q Okay. All right. At this time I would simply
22 conclude your testimony by having you look at what has been
23 marked as Plaintiff's Exhibit 6; would you tell us the
24 importance of Plaintiff's Exhibit 6?

25 A It's a newsletter circulated by, put out by a

1 cooperative extension for information to vegetable producers.
2 They have various cultural practices and information.

3 Q Okay.

4 A And this one particularly on Page 3, talks about
5 the crop loss due to compacted soil.

6 Q Okay. So your concern is that in addition to the
7 well operations, you're concerned about the crop loss due to
8 compaction; is that correct?

9 A Yes.

10 Q I'd like to call your attention right back to
11 Plaintiff's Exhibit 1, Mrs. Martindale, and the last page.
12 You notice on the last page there is a drawing of the well
13 and the well site; do you see that?

14 A Yes.

15 Q Okay. Mrs. Martindale, as you look at that
16 drawing, let me ask you this; where is your preference that
17 those wells go right now?

18 A Well, there's an area where there's a J Sand well,
19 and the area around it is not farmable, it's not irrigatable,
20 and it's a waste area that it has become since that well was
21 put in, and it's about--a little--around two acres, and if
22 they could angle drill these three wells I'd be happy,
23 because it wouldn't interfere with my farming operations.

24 Q Thank you.

25 MR. EVANS: I have no further questions for her

1 at this time, realizing that I have moved very fast.

2 COMMISSIONER MACMILLAN: Could you point out where
3 that well is?

4 COMMISSIONER LARSON: The J Sand well?

5 COMMISSIONER MACMILLAN: Right.

6 THE WITNESS: Right in the center there.

7 COMMISSIONER MACMILLAN: Right in this undrilled
8 spot north?

9 MR. EVANS: It's right there.

10 COMMISSIONER MACMILLAN: Oh, okay.

11 MR. EVANS: And if you take a look at the overhead
12 topography, you can also see it in the overhead of the field.

13 COMMISSIONER JOHNSON: They purchase the land and
14 the state retains the minerals; is that the case?

15 MR. EVANS: Yes, Commissioner Johnson, that's
16 exactly right.

17 CHAIRMAN ANDERSON: Okay.

18 BY MR. EVANS:

19 Q One thing I haven't asked you, Mrs. Martindale,
20 when did you purchase the land?

21 A In 1987.

22 CHAIRMAN ANDERSON: All right. Mr. Sullivan, do
23 you have any questions?

24 MR. SULLIVAN: Just a few.

25 CROSS-EXAMINATION

1 BY MR. SULLIVAN:

2 Q Mrs. Martindale, were there ever any other drafts
3 of any surface agreements discussed when you talked with
4 Elk?

5 A Yes, I think there was.

6 Q Could you harvest a crop of lettuce right now on
7 your land?

8 A In about one to two weeks, yes. The eight acres
9 I'm talking about, most of it will be ready in about a week
10 or two, it was cut in the fall and it was over winter.

11 Q And I was going to ask you how you arrived at the
12 75 acres, but I guess Mr. Martindale is going to--

13 MR. EVANS: That's correct.

14 BY MR. SULLIVAN:

15 Q I noticed on the Plaintiff's Exhibit 5, or
16 Applicant's Exhibit 5, in giving us the \$350,000 figure, they
17 list irrigation equipment, water rights and improvements,
18 including a home, a machine shed and two mobile homes; was
19 that equipment--it appears that equipment was included in this
20 evaluation; is that the case?

21 A Yes.

22 MR. SULLIVAN: That's all I have.

23 CHAIRMAN ANDERSON: Okay.

24 MR. EVANS: Just a quick question on redirect.

25 REDIRECT EXAMINATION

1 BY MR. EVANS:

2 Q The other surface agreements, were they acceptable
3 to you?

4 A No.

5 Q And why not?

6 A Because \$2,500 was inadequate, plus the clause in
7 there indemnify all future damages or liability which I was
8 concerned about our irrigation system.

9 Q Okay. And one final question about the separation
10 of the buildings and the house and everything else from the
11 land, the appraisal itself, \$350,000 appraisal, you said that
12 that was a conservative appraisal to you?

13 A Yes.

14 Q All right. And you do have what you call a small
15 business concern; is that correct?

16 A Yes.

17 Q All right. You operate as an entity; correct?

18 A Yes.

19 Q Your whole business is one entity?

20 A Yes.

21 Q Can you separate the land from these buildings and
22 still have value to you?

23 A No, because the land is good land and it's very
24 productive, and it's the income that I receive from the land,
25 which is the most important part.

1 Q All right. Is the shed and the other facilities
2 all part of your whole operation?

3 A Yes.

4 Q You can't--could you separate the shed from the
5 land itself? Could you sell us a parcel of your land, take a
6 parcel away from your land and not have your entire business
7 suffer?

8 A Oh, yes.

9 Q You could sell off a small parcel?

10 A Yes.

11 Q Okay. And which parcel could you sell off?

12 A Anything.

13 Q And you'd still have an operating business and be
14 able to make your bank note?

15 A Yes.

16 Q Okay. Now, let me ask you about your operation
17 itself; if they were to drill on your operation and take the
18 14 acres that John is going to soon talk about, is that going
19 to affect your operation losing that 14 acres?

20 A Yes, because of where it's at.

21 Q All right. It's because of where the location is?

22 A Right.

23 Q So at--

24 A Like this year in one field I have a contract for
25 90,000 pounds of minature pumpkins, and I have to fulfill that

1 contract and one well is, they want to put the pick on that,
2 and that 10 acres is totally out of production.

3 Q So the important thing is, it's not that you
4 couldn't sell off a portion of your farm and survive, it's
5 that portion that you're going to lose due to oil drilling
6 operations that you're concerned with; is that correct?

7 A Yes.

8 Q All right. And that is the portion that's going
9 to do the most harm to your land?

10 A Yes.

11 MR. EVANS: I have no further questions.

12 CHAIRMAN ANDERSON: All right. Are you ready for
13 your next witness?

14 COMMISSIONER JOHNSON: I have a question. The
15 figures that you present on the crop loss, is that the revenue
16 loss or in effect the net loss? Is that assuming that the
17 operator has to go ahead and expend all the expenses with
18 zero recovery?

19 MR. EVANS: This particular loss is just simply the
20 gross income, because it does not account for the expenditures
21 for fertilizer, water, and all the other costs that would
22 have to be subtracted from that at any given time, so what
23 you simply have here, and as I said, I will get better as we
24 go through these, I will be able to with other people, I hope,
25 other individuals, present to you cases where I will be able

1 to show you that particular cost as well.

2 CHAIRMAN ANDERSON: This number, then, is a
3 worst-case cost?

4 MR. EVANS: Worst-case cost.

5 CHAIRMAN ANDERSON: Because this assumes that
6 100 percent of the revenues and the--

7 MR. EVANS: For 75 acres, okay? What we're looking
8 at here is crop loss for 75 acres in the worst-case scenario,
9 if--and John will explain to you why.

10 COMMISSIONER BUYS: One time? One growing season?

11 MR. EVANS: One growing season. That's all we did
12 this time around.

13 CHAIRMAN ANDERSON: But to an extent that we're
14 not able to measure here if the damages were less because
15 some amount of expenditures were not incurred, then that
16 number would be less.

17 COMMISSIONER LARSON: In other words, this isn't
18 lost profits, we don't have a lost profits number.

19 MR. EVANS: This is gross loss.

20 CHAIRMAN ANDERSON: But the amount of profits lost,
21 I take it would be a function of a number of things, but at
22 least when it occurred because there are better and worst times
23 to do the drilling.

24 MR. EVANS: That's correct, and what we're looking
25 at here is the worst-case scenario. The worst-case scenario

1 being coming onto the property either at the height of
2 production or coming on at a time where the pits were--and
3 everything was in operation maybe at the beginning of
4 planting season, so there's an interesting window that could
5 occur.

6 CHAIRMAN ANDERSON: Okay. Well, we're at 6:20.
7 How long do you think we have on Mr. Martindale?

8 MR. EVANS: I think--John, I know is real fast,
9 so I think 10 minutes. Is that all right with you?

10 MR. SULLIVAN: No objection.

11 CHAIRMAN ANDERSON: All right.

12 MR. EVANS: I apologize. I know you're under
13 time restraints here, but I think it's very important to hear
14 John's testimony here.

15 CHAIRMAN ANDERSON: Okay.

16 MR. EVANS: So what I'll do is, I'll have my
17 paralegal go ahead and pass the other exhibits out. Now, I
18 apologize for these exhibits. John did these himself, and
19 I'm limited as to the amount of these, so you're going to have
20 to share some of these particular exhibits.

21 CHAIRMAN ANDERSON: We can share up here.

22 MR. EVANS: All right. Exhibits 7, 8, 9, 10, 11
23 and 12 she'll go ahead and begin passing those out, and I
24 think 13 and 14 we will not introduce in order to save some
25 time. While she's doing that I will proceed.

1 DIRECT EXAMINATION

2 BY MR. EVANS:

3 Q John, for the record why don't you state your
4 full name, address, and--5 A John Martindale, I live at 3581 East 118th Avenue,
6 in Thornton.7 CHAIRMAN ANDERSON: We just wanted to hear your
8 name and address.

9 Whereupon,

10 JOHN MARTINDALE

11 having been first duly sworn, was called as a witness herein
12 and was examined and testified on his oath as follows:

13 DIRECT EXAMINATION

14 BY MR. EVANS:

15 Q Okay. John, would you tell the Commission a little
16 bit about your background here?17 A I'm a mechanical engineer, presently employed at
18 Storage Technology in Louisville, Colorado for 18 years. My
19 job out there is the development, design and manufacturing
20 computer products.

21 Q Okay.

22 A I have a degree from Florida, and--

23 Q What kind of degree? What is your degree in?

24 A Mechanical Engineering.

25 Q Is it a BS in Mechanical Engineering?

1 A Yes.

2 Q Okay.

3 A Also took more courses, additional courses.

4 Q All right. John, would you tell us what Exhibit
5 7 is?

6 A It's a copy of the aerial plot that is in this
7 exhibit.

8 Q Which is Exhibit--let the record show he's
9 referring to Exhibit No. 2.

10 A Which I drew over.

11 Q Okay. John, let's begin on the last page and move
12 forward, since that's usually a good place to start with
13 these kinds of exhibits.

14 A All right.

15 Q It says ground loss; would you just tell us a
16 little bit about your calculations of ground loss?

17 A Ground loss, what I took was the proposal which
18 was specified as 2.6 acres, multiplied that times three, that
19 would be the three well sites, 7.8 acres. I took where the
20 sites were going to be and how they were going to get to
21 them, and they would use 2776 feet of existing roads.

22 Q How did you calculate those?

23 A I have a wheel, which most farmers have to mark
24 off their land, which measures 6.5 feet per revolution on
25 the counter.

1 Q Okay.

2 A New roads, walked it off.

3 Q Okay. New roads?

4 A Right. New roads, same way. I measured from
5 where the well site would be to an existing road, and that
6 came out to be .31 acres, allowing them 15 feet for a--

7 Q John, where did you get the initial areas to the
8 wells? Did you get that from Exhibit 1?

9 A Yes, out of their proposal.

10 Q Out of their proposal?

11 A Yes.

12 Q All right. Acres lost to new roads; is that the
13 same calculation?

14 A Yes.

15 CHAIRMAN ANDERSON: .31 acres per well?

16 THE WITNESS: That's the total, .31 acres, the
17 new roads.

18 BY MR. EVANS:

19 Q Trenching for flow line?

20 A Measured where they had to go from the well site
21 to where the proposed site for the tank batteries,
22 separators would be.

23 Q Okay. It says 25 feet?

24 A That's what I was told would be their easement for
25 their flow lines.

1 Q Who told you that? How did you find out about
2 that?

3 A In discussion with other farmers.

4 Q Okay.

5 A Basically other farmers.

6 Q In terms of how much easement?

7 A Right.

8 Q What about the trenching for egress line?

9 A Since there's going to be--when we go through this
10 on the front page, you'll see that the double line, they're
11 required 25 foot or 12 and a half foot spacing, it's going
12 to require a 50 foot easement on that.

13 Q How did you find that out?

14 A I was told that also during one of the discussions.

15 Q With other farmers that have--

16 A No, with Elk themselves.

17 Q With Elk themselves? One of the land people?

18 A Right, 50 foot easements.

19 Q Okay. So the total acres taken was--is listed
20 here as?

21 A Eleven point 91 acres.

22 Q Okay. All right. And then at the bottom it says,
23 counting existing wells, 1.7 acres and egress line?

24 A Yes.

25 Q And 7.7 acres? This comes to a total of--

1 A 14.4 acres which would be lost out of my farm
2 with the existing well and new wells.

3 Q Okay. Take a look at the next page, John, and
4 briefly tell us about the next page, and just to save time,
5 I'd like you just to go through and describe the diagram as
6 you've made it out and go through for the Commission showing
7 them the impact of the oil operation on your property.

8 A Can I stand up?

9 CHAIRMAN ANDERSON: Please do.

10 BY MR. EVANS:

11 Q Just go through the entire diagram and show the
12 impact on the farm.

13 A If you notice, we have two darkened dots, one in
14 the lower right-hand corner and one almost directly above
15 that. Those darkened dots are my two irrigation pumps. We
16 did have ditch water available to us, but due to runoff from
17 other farmers in other areas, if you use atrazine, which is
18 a ground sterilant you don't really want to use that on a
19 vegetable farm. The ditch water from another farm can run
20 into that ditch and now I've got contaminated water--I
21 shouldn't say contaminated--I've got water that was contained
22 with ground sterilant that will kill my vegetables, so we
23 use our pump water.

24 This lower block right here is our home, the one
25 immediately above it is our packing shed, and if I could have

1 you fold down the first page so that the arrows will be
2 showing, these arrows represent the grade of the land, the
3 direction of the water flow and the direction that crops are
4 planted in.

5 Now, each one of these fields on the lower line,
6 which would be in these three fields here, are the primary
7 fields that we use for our vegetables. These are laser
8 leveled with a grade of, I think, two tenths of a foot per
9 100 feet, so that means that these rows are almost 900 feet
10 long, so we're talking almost a foot of fall between one end
11 to the other.

12 The reason that is is we're not like backyard
13 farmers, if you want to call it that, city farmers. You've
14 got a 900 foot run for a row, you've got to get the water
15 through it. You can't have vegetables standing in water,
16 they'll die, they'll get diseases. The water has to go
17 through, soak, and be gone, so we have this laser leveled.

18 Q Which fields did you have laser leveled?

19 A If we go by the exhibit here, field 1, 1-F, 1-G.
20 That was in Exhibit 2, I think it was.

21 Q Which would be the lower part?

22 A The lower third. Now, if we take the next
23 transparency down, it looks like a box with two legs on it,
24 the green outline is our existing underground water
25 conservation pipe. That's a 10 inch line underground, has

1 all the control valves, so that we can do away with our open
2 ditches and minimize our water loss.

3 Now, the Federal Government wants us to be in some
4 kind of program. We elected to do the water conservation
5 program.

6 If you notice this line right here, this is a
7 12 inch underground pipeline--mine's in red, yours is in
8 green--but this line right here, this is a 12 inch underground
9 pipeline that connects the two wells together. We can take
10 almost 3,000 gallons a minute of water and direct it any
11 place on our farm. It's just like turning on your spigot.
12 We go to one valve, open it up, and we have instantaneous
13 water, we don't have to wait two hours to fill up a ditch.

14 We thought these costs were well worth it when we
15 bought the farm, go ahead and do it, get productive ground.
16 The green--excuse me, your red lines--are future proposed
17 water lines. They'll all be underground. That way we can
18 take the water and put it anywhere on the farm, in either
19 pump. We can split it up, we can take it all one direction.

20 Q John, when you say future, what do you mean future?

21 A Well, we're in a six-year program right now. This
22 particular line right here and going up, this one is in our
23 '92 practice, so it is--this much of it is in, the line going
24 up will be in sometime this coming week.

25 Q So if we came back we would--



1 A It would be a different color.

2 Q Okay. Any more pipeline going in this year,
3 John?

4 A Possibly the one at the south end of the field.
5 That will be our '93 practice.

6 Q Okay. All right.

7 A And by the way, that's about \$31,000 worth of
8 pipeline.

9 COMMISSIONER JOHNSON: On the '93 portion?

10 THE WITNESS: Pardon me?

11 COMMISSIONER JOHNSON: For the '93 portion?

12 THE WITNESS: No. The total green that you have
13 is about \$31,000 worth of underground pipeline.

14 Now, the blue is the proposed sites, access roads,
15 flow lines and egress lines. Just for information, the blue
16 dots are not the actual size of the sites of the proposed
17 wells. If you notice, right now in this area, there's
18 proposed road coming in, and this matches Exhibit 1 on the
19 back page of where they say their sites and flow lines are
20 going to be.

21 Right now, to me that is a nonpermanent road. It's
22 a road that I have in the farm when we are farming, and when
23 the farming season is over we disc it, we rip it, we plow
24 through it. Now it will be a permanent road. That's gone.
25 There's going to be more expense to try to plow around it,

1 plant around it. Those roads don't go in until the last thing,
2 until we turn on the water.

3 Likewise here; this is a four-wheeler path. All
4 we do is go down and check to see that our drain water is
5 making it out of here, out of this field. Now it's going to
6 be a permanent road.

7 If you notice, they're going to cross pipelines
8 here, here, here; (witness indicates) they'll have to come
9 around here to get their rigs in. That's my big 12 inch
10 100 psi pipeline. If they collapse this, they collapse my
11 main. The drill site is 90 feet, yes, from the pipeline
12 straight east, but to get to it, they either have to drive
13 across my field or if they follow my road like we agreed,
14 they're going to drive over the pipeline.

15 If I get this one in here, (witness indicates)
16 there will be another crossing down here.

17 BY MR. EVANS:

18 Q John, would you discuss the 75 acres--

19 A Yes.

20 Q --and where that number comes from?

21 A If we look at it this way, we'll start--it's in
22 field 1-F right now. If you notice which way the arrows go,
23 they go--the arrows point to your left, that's the field
24 that's been laser leveled. I've got a grade on that field
25 that follows to the west to the north, meaning in this area

1 right here, (witness indicates) I have a waste reserve pit,
2 they call it a forewater pit. That's where all my water that
3 runs through the field that I don't use goes in to this pit
4 so that the ground doesn't soak up.

5 I'm saying this is the worst-case scenario. I'm
6 irrigating crops and they decide to come in. They trench
7 this out, I've got nowhere for waste water to go. As I
8 explained, you can't have vegetables sitting in water; they'll
9 get diseased.

10 This field here, we laser leveled. The fall is
11 to the east taking this water also to my reserve pit. The
12 water in my 10 acres comes across, under a culvert, we fill a
13 ditch down beside the road to this reserve pit. I won't have
14 any place to take all my waste water, the plants will sit in
15 water, they'll get diseased.

16 Likewise down here, (witness indicates) this is
17 my waste water, comes down through this field in to another
18 reserve pit that I put over here, (witness indicates) which I
19 had to put in at my expense to alleviate accounting problems.
20 I wouldn't have any place for waste water to go.

21 Likewise down here, (witness indicates) I won't
22 have any place for waste water to go. I will virtually lose
23 fields 1-E, 1-F, part of 1-G--well, let's put it an easier
24 way. I'll be able to farm these two.

25 Q Which are which fields?

1 A 1-A and 1-D.

2 Q Those are the only two fields you'll have left to
3 farm, John?

4 A I'd say that I can farm and not have to worry about
5 anything dying.

6 Q Okay.

7 A Now, if we look at collapsing the pipelines, like
8 I said, there isn't enough water on that farm because of the
9 sandy loam soil, I have to water every 3 or 4 days, if we're
10 talking 90, 95 degree weather, every 3 days I have to water.
11 We collapse a pipeline and take out either one of these pumps
12 so that I can't bring part of this big pump up to combine--or
13 bring part of my little pump down here to combine with it,
14 my plants will die.

15 Now, we've got a cost in the reclamation bond over
16 here for pipeline repair. I want to point out, and if any of
17 you ever had pipeline put in, the more you get into a season,
18 the harder it is to get them to come to your property. The
19 point is to get it fixed, it's not a point of the money, it's
20 the time getting them out there.

21 In getting this next program in from here to here,
22 (witness indicates) I'm looking at 12 jobs over one month
23 before they can even consider it. That's if they don't get
24 any more bids to do. So it would be collapse a pipeline and
25 I'm out of business. That's all there is to it.

1 Q John, briefly would you talk a little bit about the
2 location of the pits and how that impacts some of the acres?
3 There's an unusual location of some of the drilling pits.

4 A One of the drilling pits was going to be over in
5 my next field. It's to the east of the drilling site. I
6 really think it's unnecessary. If you notice and go back to
7 this one, (witness indicates) and this is to scale, it's
8 right off the aerial provided by the ASCS office, this is
9 1.7 acres. I'll gladly give another acre or two to put them
10 in here and angle drill.

11 Q John, I'd like you to sit down now and take a look
12 at Exhibits--

13 CHAIRMAN ANDERSON: How are we doing on time?

14 MR. EVANS: We're getting real close.

15 CHAIRMAN ANDERSON: We have a number of exhibits
16 here.

17 MR. EVANS: I can bring all these in at one time
18 with Steve's permission here.

19 MR. SULLIVAN: Well, I'm a little worried about
20 time too. He's already 50 percent over his. I'm worried
21 that there might be some prejudice if we're not allowed to
22 put on our time, mainly because we've got three people that
23 missed a surface owners meeting in Greeley or Brighton, and
24 maybe if he has more evidence he can put it on at a later
25 date and we can take our time.

1 CHAIRMAN ANDERSON: Can you finish in the next
2 5 minutes?

3 MR. EVANS: John, do you think we can finish in
4 the next five minutes with these exhibits? I think we can,
5 maybe you could give us maybe 8 minutes?

6 CHAIRMAN ANDERSON: We're already 20 minutes over.

7 MR. EVANS: At this time you'll notice we have a
8 list of exhibits, through 12. I'm going to hand one more
9 exhibit out, Exhibit 13.

10 BY MR. EVANS:

11 Q John, take a look at Plaintiff's Exhibit 8, would
12 you please, and would you tell us what this is?

13 A These were costs that we came up with using
14 guidelines in books of costs.

15 Q Okay. All right. Let's start with looking at
16 where you got those costs from. Let's take a look at
17 Plaintiff's Exhibit 9.

18 A Okay.

19 Q Plaintiff's Exhibit 9 is called Tillage, it
20 corresponds with tillage on Plaintiff's Exhibit 8; is that
21 correct?

22 A Yes.

23 Q All right. And on the back you'll notice that it
24 has an article from the Colorado Rancher and Farmer, March
25 1993; is that correct?

1 A Yes.

2 Q Is that where you arrived at the--

3 A Yes, I did.

4 Q And the total cost you arrived at was \$327.40; is
5 that correct?

6 A Yes.

7 Q Okay. Plaintiff's Exhibit 10, Pipeline Repair,
8 this is from Empire Irrigation?

9 A Yes.

10 Q How did you arrive at that \$2,600?

11 A I asked their field person to come out to the farm
12 and give me the cost of what it would replace, what it would
13 cost to replace a section of pipe if it was collapsed.

14 Q Okay. The number is 520, on the last page it
15 has five crossings; is that the five crossings you referred
16 to earlier in your testimony about the drawing?

17 A Yes.

18 Q And the total is \$2600; is that correct?

19 A Yes.

20 Q Plaintiff's Exhibit 11, this is the laser leveling
21 bid?

22 A Yes, it is.

23 Q Okay. The last page contains a summary; 111 acres
24 at \$84.20 per acre, 9,303; is that correct?

25 A That's correct.

1 Q Okay. All right. Where does the 116 acres come
2 from?

3 A With the farm the way it is, I don't feel that we
4 could do a patch job, and by that I mean spot leveling these
5 fields. They're at the bottom end of the field on these
6 upper two wells. If you spot level them there, you're going
7 to create a flat spot. They need to have slopes for
8 drainage.

9 Q So the amount is what you feel is the laser
10 leveling necessary to restore it to the productive level; is
11 that correct?

12 A Yes.

13 Q All right. Plaintiff's Exhibit 12, road
14 maintenance, \$881?

15 A Yes.

16 Q The last page contains a summary, old roads, new
17 roads, and the sample is from Barry Construction?

18 A Yes.

19 Q I notice that that is not for your farm, it's for
20 other farms?

21 A Yes.

22 Q Why is that?

23 A This is a gentleman in the area that's used to
24 do the road maintenance.

25 Q Is this an accurate bid, you feel, for the roads?

1 A Yes, it is.

2 Q Okay. And of the \$881.52 total?

3 A Yes.

4 Q All right. For old roads and new roads, this
5 corresponds to the number that you calculated earlier and the
6 exhibit marked 7; is that correct?

7 A Yes. I might note to the Commission, I don't know
8 whether it's in their cause or anything else, but they're not
9 maintaining the roads. There's sometimes I can't even get
10 my equipment through their roads. It's not Elk, it's the
11 existing wells put in by Amoco.

12 CHAIRMAN ANDERSON: Can you finish up? There is
13 Exhibit 13.

14 MR. EVANS: Okay. That is an affidavit by
15 Jerry Alldredge.

16 MR. SULLIVAN: Just an initial consideration, we'd
17 like to have, if Jerry Alldredge is giving expert testimony,
18 it would be better to have him here rather than through an
19 affidavit because we won't have the opportunity to
20 cross-examine him.

21 MR. EVANS: I think the only thing Mr. Alldredge
22 is coming in for is for the last element of his testimony
23 where Mrs. Martindale said she relied on others for their
24 opinion as to where the best place would be to slant drill,
25 and Jerry Alldredge mentions that he thinks the Amoco, the old

1 Amoco well site would be the best place to have operations,
2 and that's the only reason to introduce his testimony at this
3 time, just to support her testimony.

4 CHAIRMAN ANDERSON: All right. Well, if there's
5 an objection I think we're going to leave it out.

6 MR. EVANS: I would say that it is hearsay
7 evidence, and we certainly can give it the appropriate weight,
8 but under the Colorado Administrative Procedures Act,
9 hearsay is, of course, admissible, and then you do give it
10 the appropriate weight.

11 MR. SULLIVAN: I don't have any objection as long
12 as the Commission recognizes that a lot of this expert
13 testimony is put on by people who are not experts in their
14 field.

15 CHAIRMAN ANDERSON: We recognize that. Do you
16 have any cross-examination for Mr. Martindale?

17 MR. SULLIVAN: About four questions.

18 CHAIRMAN ANDERSON: All right.

19 CROSS-EXAMINATION

20 BY MR. SULLIVAN:

21 Q Mr. Martindale, where did you obtain the locations
22 of the well sites and the flow lines and roads; where did you
23 obtain that?

24 A One off of these, and then--

25 Q And that's--what is--how did you receive that?

1 MR. EVANS: Let the record show he is pointing
2 to Exhibit No. 1.

3 BY MR. SULLIVAN:

4 Q So that's the initial contact with Elk?

5 A No. What I went off of was the staking.

6 Q Were you there when they staked?

7 A You bet.

8 Q Did you request the locations be moved at that
9 time?

10 A Did I request them?

11 Q Yes.

12 A As far as we could.

13 Q Did any Elk employee discuss, meet with you to
14 discuss access routes?

15 A Access?

16 Q Roads to the wells?

17 A Yes.

18 Q Where are the farm roads on your diagram?

19 A All the dark lines, or the thinner lines.

20 Q Do any of those cross over flow lines, or do those
21 cross over your irrigation lines?

22 A I guess I don't understand.

23 Q Do those roads cross over the top of your irrigation
24 lines?

25 A Do I get a chance to--

1 CHAIRMAN ANDERSON: He's just asking you questions.

2 THE WITNESS: Do my roads go over--

3 MR. EVANS: Your own irrigation lines, John.

4 THE WITNESS: Yes. Can I clarify that?

5 CHAIRMAN ANDERSON: Sure.

6 THE WITNESS: I'm only taking an 18,000 pound
7 tractor, at most, over these lines, not an 80,000 pound water
8 truck, not a 150,000 pound drilling rig.

9 BY MR. SULLIVAN:

10 Q Can you put in flow lines without damaging the
11 lands? Put in irrigation lines?

12 A Can I?

13 Q Yes.

14 A Have we attempted to, yes, we have.

15 Q Have you been successful?

16 A I haven't been happy with it, no.

17 Q You mentioned that you disc and rip the temporary
18 roads; was that sufficient to restore the land?

19 A No. You can tell where it's at. You can ask the--
20 I could have gotten a statement from the guy that plows from
21 us that says that he has to raise the plow to go through it.

22 Q Did you ask to put the well in the southeast
23 corner, the lower well, did you ask Elk to put the well next
24 to the road?

25 A Yes, I did.

1 Q And did--

2 A I would rather have the well here (witness indicates)
3 than out in the middle of my field, and then use another
4 access road to access it when there's a road already there?
5 Yes, I did ask for it to be moved.

6 MR. SULLIVAN: That's all I have.

7 CHAIRMAN ANDERSON: All right. Mr. Sullivan, do
8 you want to proceed with your witnesses? We are going to
9 wind up at 7:30. I think, unless a miracle occurs in the
10 next 40 minutes, we are not going to get to the point where
11 we get through all of your testimony and witnesses and then
12 give the Commission time to talk about it, so we'll get as
13 far as we can but I'm losing my optimism about going all the
14 way to closing.

15 MR. SULLIVAN: All right. I have three witnesses.
16 The first is Mr. Rick Parks.

17 Mr. Parks, would you please state your name and
18 address and your position with Elk Exploration?

19 CHAIRMAN ANDERSON: Just a minute.

20 Whereupon,

21 RICK PARKS

22 having been first duly sworn, was called as a witness herein
23 and was examined and testified on his oath as follows:

24 DIRECT EXAMINATION

25 BY MR. SULLIVAN:

1 Q Would you state your name and address and your
2 position with Elk Exploration?

3 A Rick Parks, I reside at 11425 Cherry Drive in
4 Thornton, Colorado. I'm the district manager for Elk
5 Exploration.

6 MR. SULLIVAN: To save possible time, we have
7 three witnesses; the district manager, Mr. Parks, and two
8 landmen. I can pass these resumes out. I'd like to qualify
9 them all as expert witnesses. We can go through the standard
10 questions, but to save time I can hand these out.

11 MR. EVANS: I would be concerned about expert
12 witnesses for what purpose and in what areas are they going
13 to be testifying about?

14 MR. SULLIVAN: For the purpose of testifying that
15 they have expertise in drilling operations and reclamation
16 operations.

17 COMMISSIONER MACMILLAN: I would suggest, John,
18 that in your cross you can bring that out on specific points.

19 MR. EVANS: I get real nervous when this happens,
20 when we're qualifying people as experts. I could have
21 qualified the Martindales as expert farmers.

22 CHAIRMAN ANDERSON: Well, why don't you hand them
23 out? I think there is going to be a question as to what
24 they're experts on. I think expert landmen and geologists
25 and engineers and so forth, with the proper qualifications can

1 be qualified, and--

2 MR. EVANS: It's very important to understand that
3 procedurally, experts are allowed to give opinions and things
4 without having the actual experiences to--so I really am
5 bothered by qualifying all of these individuals as experts.
6 Procedurally, you know, they're allowed to give opinions and
7 to testify to hypotheticals and evidence and facts not in
8 evidence. That's a real problem, as I'm sure the attorney
9 general will note and the Commission will note.

10 CHAIRMAN ANDERSON: I think your worry here is a
11 valid one, qualifying someone as an expert landman doesn't
12 necessarily mean anything about that person's ability.

13 MR. SULLIVAN: Okay. I'll go through the
14 qualifications if you'd like.

15 COMMISSIONER MACMILLAN: Chairman Anderson?

16 CHAIRMAN ANDERSON: Yes, Logan?

17 COMMISSIONER MACMILLAN: If I might point out, the
18 affidavit by Jerry Alldredge, whom I have an extreme amount
19 of personal confidence in, suggests in his final comment here
20 that there is a particular site that is optimum for slant
21 drilling, but Mr. Alldredge isn't a drilling engineer, so
22 we're going to run into this problem all the time, and let's
23 just recognize that these people are experts in their field
24 and there may or may not be some crossover here.

25 We're going to blend this stuff together, and their

1 people may not be experts in the agricultural field, at the
2 same time your guys may not be experts in the drilling field.
3 We're going to sort all that stuff out, and you're going to
4 have plenty of opportunity to shake us to make sure we
5 understand it, so don't get all worked up about it.

6 MR. EVANS: That's the attorney in me.

7 COMMISSIONER MACMILLAN: I think that's right.

8 CHAIRMAN ANDERSON: I think that we can, having
9 looked at each of these, say that they do conform with the
10 standards for qualifying as experts. The issue, of course,
11 is whether their expertise is relevant to the evidence as
12 presented, so I think we can qualify them, but I think it's
13 going to be with that caveat.

14 MR. SULLIVAN: Okay. Well, I'll try it through
15 the questions. I'll try to bring out their degree of expertise
16 in the issues at hand here.

17 MR. EVANS: I don't think it's necessary. I think
18 it's just the area that they're going to testify in.

19 CHAIRMAN ANDERSON: I think that's right. I would
20 prefer, frankly, that you get on with doing the questioning.
21 As I said, on reviewing their resumes, I don't have any
22 objection to qualifying them as experts, but I think that it
23 has--the implication has primarily to do with oil and gas
24 drilling and land operations, and I don't think that that's
25 an indication that they're experts, necessarily, in land

1 reclamation issues. That's not to say that they don't have
2 experience with it. With that sort of waiver, let's get on
3 with it.

4 DIRECT EXAMINATION (continued)

5 BY MR. SULLIVAN:

6 Q Mr. Parks, would you generally state your duties
7 as district manager for Elk Exploration?

8 A I'm responsible for the drilling, completion and
9 production on the wells we currently have in Weld County.

10 Q What's the--how many wells have you supervised in
11 that capacity?

12 A In the last seven years with my time with Elk,
13 we have drilled over 450 wells in Weld County.

14 Q What's the normal procedure that Elk goes through
15 in preparing a well site?

16 A After the initial contact letter, we like to set
17 up meetings with the surface owner. We like to have them out
18 there when we stake. At this time they can tell us where
19 they want the access roads, and we can see if we can
20 accommodate them. At this time we tell them we fence our
21 locations, would they like it a one, two, three or four-strand
22 barbwire fence.

23 At this time we tell them we will either stake
24 the ground or fence the road to keep people in. After we've
25 come to some agreement on where the access road is, if we can

1 agree to where they want it at, we'll go ahead and move in
2 and start dirt work, at which time we'll try to segregate,
3 to the best of our ability, the top soil; we'll dig our pits,
4 and that's what we do to prepare the drill site.

5 Q Do you have any specific instructions for
6 locating a drill site?

7 A That's mainly controlled, first off, by the
8 Commission. On a 40-acre spacing, as you guys know, we should
9 drill in the middle of the 40, but there is a 200 foot radius
10 window around that well head that we can move the stake to.

11 Our second concern is our geologic department
12 tells us geologically if there are faults in the area, and if
13 there are, where the best spot to drill to make sure we have
14 the best chance of getting producer is. This is coupled with
15 the fact there may be surface constraints there.

16 If there are surface constraints there, like
17 irrigation canals or ditches or existing barns, they take
18 preference over where the geological department wants us to
19 be. If the geological department does not have a preference,
20 it is at our discretion to allow the surface owner to move
21 that stake wherever they want to within that 200 foot radius.

22 Q So assuming that there are no geological constraints
23 you'd move it wherever the surface owner wanted it?

24 A That is correct.

25 Q What did you do in this particular case?

1 A My drilling foreman met with Mr. Martindale, and
2 we moved one location as close to the road as we could, that
3 is the one in the southeast, at his request. We also, I
4 believe, spotted the one northwest of the northeast where we
5 thought it would split two fields.

6 Q How much room does a drill site normally take up?

7 A Usually 2.4 to 2.6 acres, but we have built
8 smaller locations in the past.

9 Q Would you build a smaller location before you
10 damaged high-value crops if requested?

11 A I believe in some of our dealings with the
12 Martindales, we'd have agreed to something like a 1.3 acre
13 location on that.

14 Q How does the surface owner know where the drill
15 site is going to be located?

16 A There's two different ways; before we stake we
17 always request the surface owner or the tenant farmer or both
18 of them if they're there. If neither can be there, we ask
19 that sometime within the next week they go out and look at
20 the stakes; we will call them back, we will ask them what they
21 think, and usually they have an opinion of whether they want
22 to move it or not and where to, and then we meet them again
23 on the property and discuss with them, if we can, which way
24 they want to move it. And at that time we discuss access.

25 Q What sort of notice does Elk give prior to entering

1 a property?

2 A We're all required now to give a 30-day notice,
3 but you can give it as soon as 180 days. We have a drilling
4 schedule that runs all year, we fairly well know in the
5 general vicinity where we're going to be all the way through
6 the year.

7 Q When a surface owner requests you change the
8 timing of a drilling operation, what's the usual response?
9 What would be the response in this case?

10 A Once again, it all depends on when they let you
11 know. You can't--they can't tell you three days before the
12 rigs come in because usually you don't have enough time to
13 move. They can give--if they can give you two weeks, a month
14 notice and you can alter your drilling schedule so as that
15 you don't take a rig that's drilling in a given area and move
16 it 20 miles away and bring it back, usually we can work
17 around it.

18 Q Have you done that in the past?

19 A Yes.

20 Q What--in your discussions with the Martindales,
21 what have you talked about doing in this particular case?

22 A It was always our intention, and it still is, to
23 drill this farm ground, if we can, when the ground's frozen.
24 We know we have to cross a pipeline and we know we're in
25 delicate soil. If we can come in in the latter part of this

1 year, as we proposed to do the first part of this year, the
2 last part of last year, when the ground's frozen, we think
3 maybe we can do the least amount of damage.

4 Q Did you change any of the drill site locations in
5 this particular situation?

6 A I know there are at least two of them that have
7 been moved, yes.

8 Q What's your corporate policy with regard to the
9 guidelines and procedures specified by the Commission's
10 interim rules?

11 A We try our best to follow them.

12 Q Did you follow measures such as segregating the
13 top soil and ripping the surface prior to promulgation of
14 those rules?

15 A Yes. We've always segregated top soil, but the
16 ripping of the soil comes from the surface owner. It all
17 depends on what the surface owner wants, what type of soil
18 you're in. He's the one that's going to dictate to you
19 exactly how he wants it put back.

20 Q In this case, what did the Martindales request?

21 A It's my understanding that they requested that we
22 shatter rip this after we left.

23 Q And did you agree to that?

24 A Yes.

25 MR. EVANS: I'd like to raise an objection to that

1 particular question. It implies that there's hearsay here,
2 he says it's his understanding but he doesn't lay a foundation
3 as to how he learned that understanding. Is he learning
4 that from other landmen or is that his personal knowledge?
5 It's not clear that he's testifying at this particular time
6 of his personal knowledge. I think that's very important.

7 THE WITNESS: My drilling foreman reported back
8 to me after his meeting with the Martindales. I also have
9 talked to the land people about this. We all discussed this
10 shatter ripping that they requested in our office, and yes, I
11 agreed to do it. It was brought to my attention by the
12 people on the property.

13 COMMISSIONER LARSON: We'll give it the appropriate
14 weight.

15 BY MR. SULLIVAN:

16 Q With regard to Plaintiff's Exhibit 7, if we can
17 find that one again; when did you first propose these
18 locations to the Martindales, the locations of the roads and
19 drill sites? Was this the first proposal?

20 A No, I don't believe so. The drilling foreman that
21 was out there with the land people came back and told me this
22 is how they wanted the access roads to be and this is where
23 they wanted the locations to be.

24 Q So that was their request for locations?

25 A That is my understanding, yes, from my drilling

1 foreman.

2 Q Would Elk be willing to move those to minimize
3 disruption?

4 A Elk would be willing to bring the roads in from
5 the north to the south, obviously because it runs with the
6 road, and we would not cross pipelines doing that.

7 Q So there are things you could do to minimize the
8 damage to--

9 A That's correct.

10 Q If there's any damage. How long does it take for
11 a drill site to recover?

12 A Once again--

13 MR. EVANS: Objection.

14 BY MR. SULLIVAN:

15 Q Based on your experience in reclaiming well site
16 areas--I'll withdraw the original question. Based on your
17 experience as a well site geologist, since we have to play
18 this game, how long does it take for a drill site pit to go
19 back to normal productivity?

20 MR. EVANS: Objection again, same question.

21 CHAIRMAN ANDERSON: I think we're going to listen
22 to that, but I think we understand the nature of it.

23 BY MR. SULLIVAN:

24 Q Based on your experience with Elk, how long does
25 it take for a pit dug by Elk and reclaimed by Elk to recover?

1 A That all depends on what type of soil it is.
2 We've actually had some that we have put back the same year
3 and the crop has come back like it should have the year
4 after. The heavier the soil the harder it is to do, sometimes
5 it takes two years, sometimes it takes three, it all depends
6 on what the soil content is. If this is sandy loam soil,
7 one would think it would come back better than heavy clay.

8 Q So if you drill in December, there's a possibility
9 there might not be a crop loss unless they've planted over
10 the winter?

11 A There is a slight possibility, yes. We might be
12 able to get it back in time. Not knowing what time they
13 plant, I have to clarify it that way.

14 Q Has Elk ever had any complaints in the past
15 concerning reclamation procedures?

16 A I think all oil companies have had complaints. We
17 just had a recent one. I stopped and talked to Robin Pepper
18 (phonetic spelling) Friday night; he told me he had rented
19 some ground to plant potatoes in, he had been over it twice,
20 the last time he went over it he had heavy rain, he had some
21 sinking.

22 I asked him what kind of top soil he wanted, we
23 had access to heavy top soil. He requested sandy top soil
24 because he plants potatoes. Saturday we hauled top soil into
25 him and finished hauling it in to him today, hopefully he can

1 plant this week sometime. You do have problems, but you do
2 fix them when you have them.

3 Q Have you ever been contacted by the Commission
4 for improper reclamation?

5 A No.

6 Q Do you foresee any particular problems in this
7 case as far as reclaiming the sites? Is there anything
8 special that would come up? Based on your experience?

9 A We're just going to have to be certain that we
10 get the top soil shattered back like it is and make sure it's
11 segregated when we build locations.

12 MR. SULLIVAN: That's all I have of this witness.

13 CHAIRMAN ANDERSON: Tricia, are we in the dark for
14 the rest of the evening? Is there anybody out there that
15 can--

16 MS. BEAVER: We can't find anybody.

17 COMMISSIONER BUYS: I would think the building has
18 an automatic system.

19 COMMISSIONER JOHNSON: It went off right at seven.

20 MR. EVANS: Chairman Anderson, it might be
21 appropriate--cross-examination and everything else, that we
22 might want to just continue this next month. Working in the
23 dark--I know Steve has got more questions and probably would
24 like to give more detail. I've got cross-examination, and I
25 think the Martindales probably would like to have a chance to

1 do some redirect themselves. I would simply recommend that
2 we adjourn at this time. If we could get put early on the
3 agenda, or as soon as possible?

4 MR. SULLIVAN: Mr. Chairman?

5 CHAIRMAN ANDERSON: Mr. Sullivan?

6 MR. SULLIVAN: In light of the circumstances, at
7 least we gave it a shot, but I don't think, given how this
8 hearing has gone so far, that we would finish by 7:30.

9 CHAIRMAN ANDERSON: There's not the remotest chance
10 that we're going to be done by 7:30. Are you finished with
11 this witness?

12 MR. SULLIVAN: Yes.

13 CHAIRMAN ANDERSON: I think my preference would be
14 to get through the cross-examination and any redirect there
15 is because it's going to be easier to do it now.

16 MR. EVANS: I agree with that.

17 MR. SULLIVAN: I do have one more question.

18 CHAIRMAN ANDERSON: All right.

19 MR. SULLIVAN: It's in response to their proposal
20 to slant drill.

21 BY MR. SULLIVAN:

22 Q Mr. Parks, how much would it cost to slant drill
23 the three wells from the J Sand location as proposed by
24 Mr. Martindale?

25 A Well, the bids we have from the drilling contractor,

1 it's an additional 45 to \$50,000 per well.

2 Q So the total would be somewhere around 130,
3 150,000?

4 A Uh-huh.

5 Q Are these type of wells--

6 MR. SULLIVAN: That's all I have.

7 MR. EVANS: I have a few questions.

8 CHAIRMAN ANDERSON: Okay.

9 CROSS-EXAMINATION

10 BY MR. EVANS:

11 Q Mr. Parks, have you slant drilled before?

12 A Yes.

13 Q In this particular area?

14 A In this particular area?

15 Q Yes.

16 A No.

17 Q How about one mile east; have you slant drilled one
18 mile east?

19 A No. Snyder has.

20 Q Snyder has?

21 A That's correct. Snyder is currently drilling over
22 there.

23 Q And they are slant drilling?

24 A Yes.

25 Q And that's a spot farm?

1 A Yes.

2 Q Okay. So it is possible to slant a drill?

3 A Anything's possible.

4 Q You know another company that's doing it right
5 now?

6 A That's correct.

7 Q Did you bring any cost figures with you today to
8 show us what your costs for slant drilling are?

9 A Well, I can bring a contract for the last one we
10 slant drilled.

11 Q I just asked you did you bring one today?

12 A No, I did not.

13 Q All right. So you don't have any real cost
14 figures to tell us how expensive this really is, do you?

15 A Yes, I do, because I've got bids on it, but not
16 with me.

17 Q Not with you. Let me ask you about the sites,
18 okay, the amount of acres taken. I notice their contract
19 says 2.6 acres?

20 A That is correct.

21 Q That's correct. But you say 1.3 acres?

22 A Because they said 2.6 was unacceptable.

23 Q All right. Wasn't it true, isn't it true, that you
24 said 1.3 if only you'll sign the surface agreement?

25 A I did not say that, no..

1 Q Is it possible that your other land person said
2 that?

3 A I don't know. I can't answer that.

4 Q But it is possible they might have said that?

5 A I don't know if it's possible or not.

6 Q Okay.

7 MR. EVANS: I have no further questions.

8 CHAIRMAN ANDERSON: All right. Mr. Sullivan, any
9 redirect?

10 MR. SULLIVAN: No.

11 CHAIRMAN ANDERSON: Okay. All right. Any questions
12 from the Commission?

13 COMMISSIONER MACMILLAN: Yes, and I don't know
14 if--we obviously aren't going to have time, but I would like
15 to leave both parties with maybe some things to think about
16 from my perspective on this side of the table. I personally,
17 and I think the rest of the Commissioners, really are
18 interested in helping surface owners work in concert with the
19 oil and gas industry.

20 They do have the rights to come in and drill wells,
21 but they need to make good faith efforts to deal with you to
22 minimize that impact, and I think from what you've heard,
23 both before you came here and what you've heard today, is
24 Elk's a pretty square outfit. They do a pretty good job with
25 most of their operations.

1 I don't know if this process ends up frustrating
2 you a tad, I know sitting on this side it can frustrate me a
3 little bit, and the reason it frustrates me is because I
4 think we let the attorneys handle too much of the stuff, too
5 much of the questions, too much of the answers, too much of
6 the direction, and I think you guys do a fine job of
7 representing yourself when you can just sit down and talk
8 about things.

9 I don't want you all to feel that what you're
10 doing here is all superfluous, because it's not, it really is
11 important. You are the first case that's come forward with
12 things, but if the oil guys are saying they want to work with
13 you as best they can, and somebody else is suggesting to you
14 that this case needs to come in front of the Commission to
15 see how the Commission is going to respond, to get somethings
16 out in front--and John, you know what I'm talking about here--
17 and encouraging people to step forward and say let's test
18 these guys and let's see how the Commission's rules are
19 going to work, I'm not sure that that builds the spirit that
20 the Commission really is interested in building; and that is,
21 having people work together to resolve their differences.

22 You guys have a phenomenal farm, I'm really
23 impressed with the productivity that you have and the hard
24 effort that you all go to to maximize the money that comes
25 out of it, and I imagine it's also a little bit of fun; an

1 awful lot of work, but there's a great amount of appreciation
2 that comes from being able to do the kinds of things that
3 you do, and I'm plenty impressed by that.

4 But I end up coming from these guys' perspective
5 too, and I know that there's a considerable amount of pride
6 in doing a good job out in the field. The guys that sit in
7 the office and thrash around with the paper and all that kind
8 of stuff, don't have nearly the appreciation that the people
9 in the field do to know that they can get a well down, get it
10 completed, get that cash flow coming, and also know that they
11 can minimize the impact, to work with the people that are out
12 there.

13 The field folk from the oil and gas patch and the
14 field folk from your operation are guys that oftentimes can
15 be neighbors with one another, their children can go to the
16 same schools, and I don't want to get too preachy with this
17 whole thing, but--

18 COMMISSIONER BUYS: Good.

19 COMMISSIONER MACMILLAN: --but obviously I am,
20 because I think that for the last several months we as
21 individuals up here on this side have been trying to get some
22 cases in front of us where we can understand what some of the
23 key concerns are. You all have done that, and Elk, I
24 appreciate you coming forward with this thing too. It's not
25 for naught, even though it can be frustrating.

1 There is no question that everybody up here is
2 going to be taking a lot of stuff home, ultimately to come
3 back and try to work out some kind of formal arrangement
4 formula for determining what the damages are going to be;
5 the impacts that the industry may impose on you all, what
6 those values are going to be.

7 But at the same time, I think everybody needs to
8 recognize that the optimum situation is when, as Mary
9 mentioned in the very beginning, you all develop those
10 contractual relationships yourselves. That's the best high.
11 The Commission is interested in providing an inexpensive way
12 for you to mediate your disagreements. We are doing that,
13 and it's a big, big undertaking for us.

14 MR. EVANS: Commissioner MacMillan, I've got to
15 state just two things real quick. First of all, I think it
16 is--in no way has this case been brought to manipulate or to
17 suggest that we should test the bond simply because it needs
18 to be tested.

19 This case has been brought for one simple reason;
20 and that is, the Martindales do not want to sign that surface
21 damage agreement, they don't agree with it, and because they
22 don't agree with it, there is an option open to them, and that
23 is the bonding process which you've made available to them.

24 It is your rules that they are trying to completely
25 work within, the entire system. They don't want to sign a

1 contract with Elk for reasons that Mrs. Martindale has
2 indicated to you, and John has gone through, I'm sure, more
3 length as to his specific reasons why he doesn't want to sign
4 that contract, but I want to make it very, very clear that
5 in no way has this case been brought to manipulate or test
6 or suggest that this might be the test case to bring before
7 you, it's not, and they're still under oath and I'm sure they
8 can talk about that.

9 CHAIRMAN ANDERSON: No, I can assure you that--

10 COMMISSIONER LARSON: I haven't gotten that
11 impression at all.

12 MR. MARTINDALE: This is probably out of line, but
13 I wish we could take you guys out and just talk to you one-on-
14 one.

15 CHAIRMAN ANDERSON: Well, as long as you're not
16 presenting evidence, if you've got some kind of editorial that
17 you'd like to help us with--

18 MR. MARTINDALE: Well, it's just--I would just like
19 to talk to you as a person one-on-one and tell you what I've
20 got going, okay? I don't like being called a golddigger,
21 that I'm going to be lining my pockets with this. I haven't
22 asked them for one penny. All I said was that if you don't
23 do what you're supposed to, and if you do, you get all your
24 money back, but if you don't, I've got something to claim on.

25 I haven't asked to line my pocket, and I think

1 that's the issue. I'm not saying I want to get rich off this.
2 I'm not asking them for a penny. All I'm saying is if you
3 don't do what you're supposed to do, I've got an avenue to
4 go after, and I can back up everything that I say.

5 COMMISSIONER LARSON: We didn't get the
6 impression of that.

7 MR. MARTINDALE: Well, it was mentioned that I
8 was--

9 COMMISSIONER LARSON: I don't think he meant it
10 that way, and I certainly didn't take it that way.

11 CHAIRMAN ANDERSON: All right. Let's talk about
12 process here. We're going to--next month we've got a two-day
13 hearing, the first day of which is on our regular matters.
14 You mentioned this morning that there were eight matters we
15 were going to hear?

16 MS. BEAVER: Nine, plus one continued.

17 CHAIRMAN ANDERSON: And we're going to do a full
18 day hearing the second day on the interim policies. There's
19 one other case similar to this one that has been raised,
20 another client of Mr. Evans for next month.

21 MS. BEAVER: Plus we have the high-density area
22 matter, which will be a first-time matter, which you will have
23 to hear testimony on, so out of the 10 matters we've got, the
24 other one John's bringing and the high-density area are the
25 two you will hear testimony on on Monday.

1 CHAIRMAN ANDERSON: Okay. Three next month.

2 MS. BEAVER: Plus this one.

3 CHAIRMAN ANDERSON: Three plus this one?

4 MS. BEAVER: Well, no, three including this one.

5 CHAIRMAN ANDERSON: Three including this one that
6 we'll be hearing testimony on the first day?

7 MS. BEAVER: Right.

8 CHAIRMAN ANDERSON: All right. So we ought to be
9 able to finish this. All right. My apologies for not
10 getting done on this. I'm afraid that there is more time
11 that we have to spend on this. Rogers?

12 COMMISSIONER JOHNSON: Mr. Chairman, I think it
13 would be great if the two parties would get together and try
14 to work out what they can each live with in accomplishing the
15 necessary or desired drilling to minimize these expenses. If
16 they're both half-willing to do that, they can cut the cost
17 way down and the aggravation way down.

18 MRS. MARTINDALE: The thing I can't accept is the
19 indemnification agreement absolving them of all liabilities
20 future or present for damages.

21 COMMISSIONER JOHNSON: I'm not talking about a
22 final resolving necessary, but I'm saying design the roads
23 so it's good for them and yourself; design so you don't break
24 irrigation ditches, design so that you go with the road, come
25 up with the best plan to do it and then wrestle with the cost,

1 and then let's see what's left.

2 MR. MARTINDALE: I think everybody here is
3 mistaken. This plan is agreeable to us.

4 MR. PARKS: But we can't run across your irrigation
5 roads if it's going to cost you 76 acres. Let us turn it
6 north, south. We'll turn it however you want to turn it.

7 MR. EVANS: Mr. Chairman, we're getting out of
8 hand here.

9 CHAIRMAN ANDERSON: Yes, we are. This is fun
10 stuff, but I think we ought to adjourn before it happens.

11 We're going to continue this matter until the
12 next hearing. We'll give it as much priority as possible
13 to complete it, and our apologies for not completing it
14 today, and--sir, do you have a comment that's within the
15 spirit of--

16 MR. JACOBS: I think so. Ron Jacobs, vice
17 president of general counsel of Elk Exploration.
18 Commissioner Johnson, we've been trying to work out an
19 arrangement with them since August, and in the spirit of
20 cooperation, we've even, since it became apparent we were not
21 going to reach an agreement before this year's crops, we have
22 forced our drilling schedule to be changed so that these
23 wells are not drilled until the winter of this year, and still,
24 in the spirit of cooperation, if we can get together and work
25 out something in the next month, we will be more than happy

1 to do that.

2 CHAIRMAN ANDERSON: All right. We certainly, as
3 always, encourage the two parties to visit, if possible, and
4 either come to an agreement, or failing that, at least to
5 narrow your differences. If you can do that, that would be
6 appreciated, and of course, if you can come to an agreement
7 between you that doesn't involve further involvement of the
8 Commission, that's the preferred outcome, but failing that,
9 we will be back here next month.

10 MR. MARTINDALE: We've said that if they can't--

11 CHAIRMAN ANDERSON: Well, we'll continue this
12 next month.

13 This meeting is adjourned.

14 (Whereupon, the hearing was
15 adjourned at 7:30 p.m.)
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CERTIFICATE

This is to certify that the proceedings held before:

THE OIL AND GAS CONSERVATION COMMISSION


OF THE STATE OF COLORADO

IN THE MATTER OF: The Application of Delores Martindale
CAUSE NO. 1
DOCKET NO. 4-10

LOCATION: Denver, Colorado

DATE: April 19, 1993

were held as herein recorded, and that this is the original
transcript of the proceedings for the files of the Commission.



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Continued
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THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

In the Matter of:

DELORES MARTINDALE

CAUSE NO. 1

DOCKET NO. 5-4-10

Monday, May 17, 1993

The above-entitled matter came on for hearing,
pursuant to notice to all parties in interest, at the
Colorado Department of Transportation, 2nd Floor Auditorium,
4201 East Arkansas Avenue, Denver, Colorado.

RECEIVED
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COLO. OIL & GAS CONSV. COMM.

1 BEFORE:

2 CHAIRMAN TRUMAN ANDERSON

3 COMMISSIONER MARY C. LARSON

4 COMMISSIONER JOHN A. CAMPBELL

5 COMMISSIONER LOGAN MACMILLAN

6
7 ALSO PRESENT:

8 PATRICIA C. BEAVER, Technical Secretary

9 SUSAN MCCANNON, Acting Director

10 JULIE WREND, Assistant Attorney General

11 JIM KENNEY, Senior Petroleum Engineer

12 JOHN EVANS, Attorney for Applicant

13 STEPHEN SULLIVAN, Attorney for Protestant
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I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Colleen Nealy	139	147	154	154
Jim Byrd	158	180	184	187
Delores Martindale	191			
Jim Byrd (recalled)	197			
Tony Waldron	199			
<u>EXHIBITS:</u>	<u>ADMITTED</u>			
Plaintiff's				
1-12	114			
Respondent's				
1-4	180			

P R O C E E D I N G S

1
2 CHAIRMAN ANDERSON: All right. Are we ready to
3 begin? The next matter on the agenda today is Cause No. 1,
4 Docket No. 5-4-10 in the Wattenberg Field in Weld County.
5 The applicant is Delores Martindale, through attorney
6 John Evans. This is a request to raise the bond requirements
7 for the surface damage bond and require that a reclamation
8 bond be posted for the northeast quarter of Section 36,
9 Township 4 North, Range 67 west.

10 The matter is protested by Elk Exploration, Inc.,
11 through its attorney, Stephen J. Sullivan.

12 This matter was begun at the last hearing of the
13 Oil and Gas Commission in April and continued when it became
14 apparent that we weren't going to be able to finish that
15 evening.

16 Two Commissioners who were present at that hearing,
17 Commissioner Buys and Johnson are not here today and will not
18 participate, but there still is a quorum, and the Commission
19 hopes to finish this matter this afternoon.

20 We were, when we adjourned this, hearing from
21 Mr. Evans, who may or may not have one more witness this
22 afternoon.

23 Mr. Evans?

24 MR. EVANS: I have two preliminary things to get
25 out of the way, initially. First is in the nature of the

1 exhibits. I have been told that there is some confusion as
2 to the admission of all the exhibits. It is my understanding
3 that Exhibits 1 through 12 were stipulated to and that we
4 did move for the admission of those exhibits, but just to
5 make it clear on the record, I would at this time move for
6 the admission of Exhibits 1 through 12.

7 (Whereupon, Applicant's
8 Exhibits 1 through 12 were
9 offered in evidence.)

10 CHAIRMAN ANDERSON: All right. They are admitted.

11 (Whereupon, Applicant's
12 Exhibits 1 through 12 were
13 admitted in evidence.)

14 MR. EVANS: The second is that a--is a preliminary
15 matter, and that is; referring to witnesses. It was my
16 understanding that where we were as far as the witnesses were,
17 was we had--Mr. and Mrs. Martindale had presented their case,
18 and that we were in the process, I think, of reviewing or
19 hearing testimony from one of your witnesses, Steve, so I'm
20 not sure exactly where--things were kind of hectic there in
21 the dark, so I think that's where we were at, wasn't it?
22 That the witnesses--we had had our two witnesses, and I had
23 hoped we would have a witness that would be able to appear
24 as a rebuttal witness, but obviously they're not here and I
25 don't know if they will be here on time.

1 CHAIRMAN ANDERSON: Okay. So--

2 MR. EVANS: So at this time, I believe I rested
3 my case, and I believe--I think there was one witness that
4 Mr. Sullivan had on the stand, and I'm not sure we had
5 finished examining that witness.

6 MR. SULLIVAN: I had finished, and I think, John,
7 you had asked a few cross-examination questions. If you have
8 more for him, Mr. Parks is here.

9 MR. EVANS: All right. As I recall, I think I
10 asked Mr. Parks all of the questions I needed to ask at that
11 time, and I think it was just your remaining two witnesses.

12 I would, however, continue to renew my objection
13 as to their status as expert witnesses.

14 CHAIRMAN ANDERSON: And I think we had that
15 conversation last month. There was an objection to the
16 witnesses, and I think the Commission accepted their
17 qualifications understanding that their qualifications are in
18 areas that perhaps relate specifically to the conduct of oil
19 and gas operations.

20 MR. SULLIVAN: Mr. Chairman, there is one change
21 from last month. Last month we had anticipated putting on
22 Mrs. Colleen Nealy and Mr. Jim Byrd. Since that time we've
23 had the opportunity to retain an expert in soils who has had
24 a chance to at least get a preliminary look at the property.
25 He wasn't able to go on the property, there appeared to have

1 been attempts to reach the Martindales to get permission to
2 go on the property.

3 I feel that you should hear some testimony from
4 this gentleman, because he has a large amount of experience
5 in soils, and I think his testimony would be something you
6 could use both in this hearing and also in July. He's got the
7 experience that I think needs to be heard in terms of soils.

8 So what we would do is put on three witnesses, and
9 I guess, if you want to limit us on time that would be fair
10 to do, and we would budget our time accordingly.

11 CHAIRMAN ANDERSON: All right. So you would have
12 three witnesses. Let's see, how much time was--I think up
13 to an hour and a half?

14 MR. SULLIVAN: We should do it in less than that.

15 CHAIRMAN ANDERSON: I would hope it would be less
16 than that. I think that's about what Mr. Evans used last
17 time, about an hour and a half.

18 Mr. Evans, you're frowning?

19 MR. EVANS: I would object to the additional
20 witness. I think the primary purpose of a witness is that
21 they have some first-hand knowledge as to the matter upon
22 which they are going to testify to. By Mr. Sullivan's own
23 admission, this particular witness has not had an opportunity
24 to actually physically see or come on to the Martindale farm.

25 I have been available for the last month, Mr. and

1 Mrs. Martindale have been available for the last month.
2 Arrangements could have been made easily through me, and I
3 would have easily have permitted them to have come on to the
4 property and have seen the property firsthand.

5 I have no problems with inspectors or showing the
6 property. I would have--I would strenuously object to the
7 use of this witness. I do not know, as I said--the
8 indications are they do not have first-hand testimony.

9 In addition, I think procedurally here, we have
10 something kind of interesting. We presented a witness list
11 at the outset of this particular hearing in which we listed
12 three potential witnesses; Mr. and Mrs. Martindale and
13 Jerry Alldredge. They presented to us, before this
14 Commission, a list of three witnesses that they would be
15 presenting.

16 I believe that procedurally, and in a sense of all
17 fairness, that these particular witnesses be the only
18 witnesses that have an opportunity to testify in front of
19 you. I think that to do so puts us at a disadvantage.
20 Certainly we could have, if we wanted to, have found
21 additional witnesses and brought them before you today, but
22 I don't think that's the purpose.

23 I think the purpose is essentially a hearing that
24 we started a month ago, and I think we should limit our
25 witnesses to that particular hearing and be able to confine

1 our testimony to the facts that were presented by
2 Mr. and Mrs. Martindale at that time.

3 CHAIRMAN ANDERSON: Mr. Sullivan?

4 MR. SULLIVAN: Just a short response. I think
5 Mr. Evans perhaps misunderstood me. I said he wasn't able
6 to get on the land. There were several calls to the
7 Martindales, several attempts to both at the state legislature
8 and other places trying to reach them to get permission, and
9 my understanding is the calls were returned, so we might have
10 had some miscommunication there.

11 MR. MARTINDALE: No calls were returned.

12 CHAIRMAN ANDERSON: Mr. Martindale, please.

13 MR. EVANS: I--well, go ahead.

14 MR. SULLIVAN: John, I'll finish and then you can
15 respond. It sounds like there's possibly miscommunication
16 there. He does have first-hand knowledge, he did observe
17 the property, did not go on the property, but observed it
18 from the county road which adjoined the property and has
19 inspected several areas, several of the Elk drill sites, and
20 has first-hand knowledge of Elk's reclamation operations,
21 their standard procedures, which I think is very applicable
22 in this case.

23 The bonding issue, I think, should be determined
24 in part upon what Elk's reputation and what their past
25 practices have been.

1 As far as the procedural issue about this trial by
2 surprise, I agree that Mr. Evans did not know about this
3 witness. On the other hand, when he puts on his evidence as
4 the applicant, we never know what his witnesses are going to
5 be, and I think in a matter of fairness, he really shouldn't,
6 if you're going to not allow a witness, perhaps the reason
7 that he states is not quite an accurate one.

8 Normally if you want to go by the trial of
9 Civil Procedures here, present a witness list and a summary
10 of their testimony prior to the hearing for everybody. That
11 wasn't done. I don't see how this disadvantages him in any
12 way, when you compare it to a situation that we've put on
13 all these witnesses last month.

14 We've been able to get ahold of the soils expert
15 because we've had time and we've had a chance to have
16 somebody go out and take a look at the property. That's the
17 only reason that additional witness is here this month rather
18 than being here last month.

19 MR. EVANS: Just a real brief rebuttal here.
20 As Mr. Sullivan knows, any contact of my clients
21 procedurally should be done through their attorney. That was
22 not done in this instance.

23 Secondly, Elk's past practices have never been
24 raised as an issue. They were never raised as an issue by
25 us at this particular time, so I don't think that's an issue,

1 and finally, I would again point out that they have--the
2 witness involved has no first-hand knowledge about the
3 Martindale farm, and therefore, I would say that they're
4 not qualified to be a witness in this particular case, or
5 testify.

6 CHAIRMAN ANDERSON: Do the rules give us any
7 guidance on this one?

8 MS. WREND: Well, the rules of Civil Procedure
9 actually, although generally a witness needs to be a fact
10 witness and have first-hand knowledge with regard to
11 expert witnesses, first-hand knowledge is not required. You
12 can also have an expert witness testify as to his expertise
13 and can deal with hypotheticals.

14 So with regard to expert witnesses, there is a
15 variance in requiring that a witness have first-hand or
16 eyewitness information.

17 The procedural issue is one for the Commission to
18 deal with. There were--it's not only to inform the other
19 parties, but it's also having this list of witnesses for the
20 Commission allows the Commission to try to schedule the
21 hearing in an orderly fashion, and so that is one for the
22 Commission to decide.

23 CHAIRMAN ANDERSON: The second issue of had this
24 hearing not been continued until today, Elk would not have
25 had time to line up another witness. That argument does not

1 prevent us from hearing the witness, but we could, if we
2 wished, if we felt that was inappropriate, then--

3 MS. WREND: Yes.

4 COMMISSIONER LARSON: I guess I would like to hear
5 the witness, especially with respect to the practices that
6 Elk Exploration, the reclamation practices that they have
7 performed in the past, and I also submit to Mr. Evans that
8 the issue was presented, in Paragraph 4 of your petition for
9 hearing, you say, "By information and belief, we allege that
10 prior reclamations done by Elk Exploration has failed to
11 achieve the standards of reclamation as set forth by the
12 Commission."

13 With respect to the expert's first-hand knowledge
14 of the Martindale farm, I guess I would not like to hear
15 that particular testimony.

16 MR. SULLIVAN: We--well, again, he has seen the
17 property, there is first-hand knowledge you can gain by
18 viewing the property from across the fence. There is also
19 a lot of information you can gain on a property from soil
20 conservation service maps, and I feel that--and other
21 information--and I feel that he has information based upon
22 that which is, in my opinion, first-hand experience, that
23 could be given and given in testimony.

24 Again, the Commission can accept it for what it's
25 worth, and if there is a rebuttal, if he is incorrect in

1 stating the facts as to those observations, there is the
2 opportunity, at least in this case, for the Martindales to
3 cross-examine him, unlike the exhibit that was tendered
4 earlier by Mr. Evans as far as an affidavit goes where we
5 do not have a chance to cross-examine Mr. Alldredge, so I
6 think that's a more serious procedural problem.

7 MR. EVANS: As I pointed out, Mr. Alldredge's
8 affidavit was not allowed to be introduced at the hearing
9 and subsequently has not been introduced. Therefore, as far
10 as procedural disadvantages of having Mr. Alldredge here, he's
11 not present right now. He was on our witness list, he was
12 budgeted for prior to this hearing, but circumstances and his
13 schedule make it very difficult to get to these hearings,
14 he's got a lot of territory to cover.

15 I think procedurally we are placed at a disadvantage
16 here, and I really seriously object to this additional
17 witness. As the attorney general has correctly pointed out,
18 the situation is that the original hearing was budgeted on a
19 matter of time, a matter of how long it would take
20 individual witnesses to testify. We were allotted a certain
21 amount of time and they were allotted a certain amount of
22 time based on the number of witnesses.

23 I think that we should not vary from that
24 procedure and that we should, the Commission should restrict
25 their witness list specifically to that list.

1 In addition, I'm very disturbed by the fact that
2 there is some assertion that the Martindales did not return
3 the phone calls. I don't know--when they had an opportunity
4 to do so. I don't think there's any question in any of your
5 minds that the proper procedure for gaining access to the
6 Martindale farm should be through their attorney.

7 CHAIRMAN ANDERSON: All right. Anybody else have
8 an opinion on this one?

9 COMMISSIONER LARSON: Trial by ambush, that's kind
10 of what it is.

11 CHAIRMAN ANDERSON: Would it be possible to ask
12 for an executive session for some legal advice on this at
13 this stage? Can we do that? I'd like to understand better
14 what the implications are, going one way or another.

15 MS. WREND: Yes.

16 CHAIRMAN ANDERSON: All right. Can we do that?
17 This will just take about 10 minutes to confer with counsel
18 on this matter, so that means everybody needs to remove
19 themselves.

20 (Whereupon, an executive
21 session was then held.)

22 CHAIRMAN ANDERSON: During the executive session,
23 the Commission discussed with counsel the legal questions
24 surrounding whether or not the expert witness that
25 Mr. Sullivan, the soil expert witness that Mr. Sullivan wants

1 us to hear today; there are, apparently, there are no
2 problems that can't be overcome in the Commission hearing
3 this witness with respect to the fact that he did not have
4 direct experience and was not actually on the land.

5 The harder question has to do with one of fairness.
6 This Commission hoped to finish this hearing last month, but
7 it was obvious at the time that the hearing began, however,
8 that the chances were quite likely that we would not finish.
9 The fact that we did not finish gave the protestant another
10 30 days to prepare and to deal with the issues raised, and I
11 have problems getting by that in terms of the fairness to
12 the applicant.

13 While there is some discretion on this, I simply
14 feel that in order to make this as even a process as we can,
15 that we ought not hear the witness that you are prepared to
16 present today.

17 So wherever we were mechanically, Mr. Evans, I
18 guess your objection to the witness is upheld. The initial
19 stepping around here, I think indicates that it would be
20 worthwhile before we go on, because there has been a, whatever
21 it is, four or five week break in the process, that before
22 we carry on with Elk's witnesses, that we ask Mr. Evans, if
23 he can, if he's ready to do a five minute or so summary for
24 us of where we were.

25 I think all the Commission members have reviewed

1 their notes and have looked at the exhibits, and I know I
2 spent some considerable effort trying to get back and current
3 with issues, but I think it would be helpful before we
4 continue in the process, Mr. Evans, for you to remind us
5 briefly of what your arguments were and what you feel your
6 witnesses and exhibits have shown.

7 MR. EVANS: Okay. And the additional thing I
8 would point out that I understand that the Commission staff
9 has been out to the Martindale place and has filed with the
10 Commission a report on the Martindale place, so that you
11 should be aware of that, as we certainly are, and I'm sure
12 they've made that available to you, so I would just mention
13 that to you. I certainly share that they made good
14 observations.

15 CHAIRMAN ANDERSON: I should mention that we will,
16 before the end of the day, ask for comments and observations
17 from members of the staff on this matter.

18 MR. EVANS: Okay. And in that, I would begin by
19 pointing out that at the last hearing we heard basically--I
20 present that there are basically two issues that you have to
21 decide based on your new emergency rules. I pointed out that
22 the bond that we're hearing was really not based on the
23 current emergency rules, but was rather based on the old rules
24 themselves, simply because of the date of the permit that was
25 filed, so in essence, what we're really looking at is is the

1 current bond adequate.

2 What we were doing was demonstrating how we had
3 calculated potential damages, because that's essentially what
4 a bond is essentially for. You set a bond not at what your
5 current actual damages are, but what are the potential risks
6 to the individuals involved.

7 In this particular case, we had begun to show that
8 there would be unreasonable crop losses, and we had also
9 presented to you materials concerning the land damages
10 resulting in the use of the premises by the lessee, and also
11 the amount of land taken.

12 If you were to go through your exhibits, one of
13 the things we started off with first was we began with a
14 basic overview of the letter of agreement from Elk.
15 Mrs. Martindale, as you recall, made a presentation to all of
16 you and discussed the letter of agreement.

17 She pointed out she went through the letter of
18 agreement with you and pointed out sections that were
19 specifically objectionable to her and why she could not sign
20 that letter of agreement. That particular act on her part
21 is what placed her in qualification for the bond process,
22 simply because you as a Commission have permitted, through
23 your legislation and state legislation on other things, her
24 to make this application.

25 She also made a report as to the report of acreage

1 in Exhibit 2, and pointed out to all of you the acreage on
2 the farm, and Mrs. Martindale testified as to that acreage,
3 and you recall that she went down and she showed you how her
4 farm was a very unique operation in terms of the types of
5 vegetables that she does plant, very intensive cultivation.

6 She testified that she's expecting this year a
7 bumper crop of, for example, lettuce, which she noted would
8 probably fetch about \$5,000 per acre on the market, and
9 maybe more depending on the values as they've been rising.

10 Her crop is unusual in most senses because it has
11 such a high cash value to it, and we went down through and
12 you recall when we went through the acreage on the
13 Martindale farm, we went through and showed you how her farm
14 is classified by the ASCS, which is important for you
15 because you'll pick that up later on when you saw the map of
16 the farm itself and how we laid it out, so it would show you
17 what was grown where and what spots of the farm.

18 Exhibit 3 basically provided you with a bond
19 summary, and Mrs. Martindale went down through the farm and
20 she showed you the crops that she's currently growing; she
21 showed you the price per unit, the yield, and the gross
22 acreage that she was growing. She also went through the
23 estimated acreage for you in that exhibit. She also showed
24 you the gross acres and she showed you the potential gross
25 loss in terms of dollars, and in that particular exhibit,

1 and she showed you--that was Exhibit 3.

2 What Exhibit 4 did was it showed you,
3 Mrs. Martindale also testified as to how she arrived at those
4 particular costs, and she used Exhibit 4, basically, for
5 arriving at those costs, which is the ASCS handbook for
6 disaster assistance, which the Federal Government uses to
7 calculate crop losses when there's been a severe flood or
8 hail storm, or whatever, for their insurance programs.

9 Mrs. Martindale also testified that because her
10 crops are vegetables and many of the vegetables are not
11 covered by the insurance program and wouldn't be covered for
12 oil operations certainly. But this is certainly one way
13 that we calculated the damages. We wanted to show that there
14 was a rational basis for how we approached looking at each
15 one of the fields place by place.

16 The next--I believe at that point in time
17 Mr. Martindale testified and with a very unique document that
18 we developed for you, which was, I believe, Exhibit 7, and
19 one of the things Exhibit 7 did was it laid out for you in
20 detail the farming operation. Mr. Martindale began with the
21 last page of the exhibit, which was the total ground lost.
22 He related that very nicely to, I think, Exhibit 5, in that
23 he talked about the fair market value of the cost per acre,
24 where that 14.4 acres, or \$31,500 was drawn from, and that
25 was from his efforts to calculate the exact amount of ground

1 that he would anticipate being lost as a result of an oil and
2 gas operation coming on to the property.

3 The next part of the exhibit placed for you the
4 farm in terms of how it is organized, and the next sheet, the
5 next sheet then showed you the flow lines, the irrigation
6 flow. All of this is very important because it relates
7 very nicely to the next exhibit, which is the water
8 construction pipes.

9 If you notice that John Martindale testified that
10 they are close to, if not currently, very close to what they
11 call a closed irrigation system so that any damage to any one
12 element of the irrigation system will effectively shut down
13 the entire irrigation system.

14 He testified also to the fact that they did not--
15 they cannot bring water in from the ditch, the ditches have
16 too much salt in them, that they have to rely on water from
17 their deep wells, and that he also testified that one of the
18 problems that he had was when these irrigation systems are
19 broken, it can take up to two, three, four, maybe five weeks
20 to get them repaired by the appropriate people to come in and
21 fix them.

22 He also showed you in the final exhibit, the
23 existing and future operations with the proposed plot for the
24 oil and gas operations that are currently being proposed by
25 Elk; how those operations could potentially cross, I believe,

1 the irrigation system a minimum of six times--excuse me, five
2 times, potentially crosses irrigation systems at least five
3 times with the potential that each one of those five crossings
4 with the heavy equipment and everything, could potentially
5 cause a break in that irrigation system.

6 So that was his testimony, and then he went on to
7 go through Exhibits 6, 7 and 8--7, of course, was the
8 diagram. Eight was the reclamation costs that he went
9 through, and he talked about the tillage costs and where
10 that particular number was derived from; the pipeline repair,
11 laser leveling and the road maintenance costs and where they
12 were basically derived from.

13 Exhibit 9 that you had was the tillage operation
14 charges for tilling 2.6 acres for three gas and oil well
15 sites. This included deep ripping, disking, mulching and
16 leveling, and we included with that particular cost when he
17 testified the charts of how he arrived at those particular
18 costs which are based on Weld County averages for those
19 types of operations.

20 Exhibit 10, one of the things Exhibit 10 did was it
21 showed you the cost of repair of one section of the pipeline
22 and that particular, if you notice that we calculated that
23 one pipeline break from one crossing would cost an estimated
24 \$520. John testified that there would be potentially five
25 crossings for a potential of five breaks for a total of

1 \$2,600. That's how that particular amount was arrived at.

2 Exhibit 11 was testified to by John, and basically
3 this was a laser leveling cost. As you know,
4 Dee Martindale testified that her entire--that several
5 sections of her farm, not the entire farm but several sections
6 of her farm, had been what they call laser leveled. To have
7 these 116 acres relaser leveled and the problem is, once you
8 take out a certain section you have to relaser the entire
9 field again, you just can't pick up a certain portion of the
10 field, and she testified, to relaser other sections of the
11 field. So they have to go back over and relaser the entire
12 field, and she pointed out that the cost of laser leveling
13 that field was \$9,623.

14 Exhibit 12 was the last exhibit that we introduced,
15 or attempted to introduce. Actually Exhibit 13 was the last
16 one we attempted to introduce, but that was not permitted.
17 Exhibit 12 was an exhibit basically with an average estimate
18 of what road repair and maintenance costs are for old and new
19 roads based on John's calculation as to how many roads, old
20 and new roads, are going to have to be maintained. That came
21 to a total of \$881.

22 So with that, what we had done is we had presented
23 testimony that tillage--that reclamation bond repairs for
24 tillage would be roughly \$327.40; pipeline repair at \$2600,
25 that's where we got that amount; laser leveling, as you saw,

1 is \$9,623, and road maintenance at \$881; total reclamation
2 potential costs are at \$13,431.91.

3 We showed you that potential crop losses to them
4 should the--at the height of their growing season, would be
5 \$95,783.81. The cost of the land taken would be \$31,500, for
6 a total of \$127,231.91, with the farm being down.

7 John--both Dee and John testified that the farm
8 at the height of the growing season could not do without
9 water that it needed for the irrigation system and that any
10 potential break in the irrigation system would be 100 percent
11 ruin of the structure of the farm because of the closed
12 irrigation system and the method of farming they use.

13 Again, the reason for the problem is that they
14 can't take ditch water, ditch water has salinity and other
15 chemicals from upstream, so what they do is they pump out of
16 their well for that particular operation and they use this
17 closed system.

18 That's in a nutshell basically what we presented.
19 Under the reclamation bond, I would only point out that the
20 new rules cover all future and existing wells, that the
21 reclamation bond is discretionary and the test is what is
22 good and sufficient bond; that is, to restore--and this is
23 according to the Commission's own rules--to a productive
24 level prior to operations before the gas operations began, and
25 I think that, in essence, is basically where we're at.

1 CHAIRMAN ANDERSON: Thank you very much.

2 MR. SULLIVAN: I'd like to start with one comment
3 and two formal objections just for the record, since we seem
4 to be doing that now.

5 First, I'd object to Mr. Evans' statements that
6 he didn't fully represent the testimony. They went into
7 expert testimony that was not part of the original testimony,
8 and the witnesses that gave testimony for the Martindales were
9 not qualified as expert witnesses, nor probably could they
10 be qualified.

11 The second objection is to the refusal of the
12 Commission to hear a witness whose evidence would be
13 admissible under the Colorado Rules of Civil Procedure as
14 expert testimony, and probably more importantly, I see it as
15 a disappointment to me because the Commission has always
16 attempted to try to find out what the truth is; they have gone
17 on fairness, they have tried to do that. The delay in this
18 case was only as a result of Mr. Evans going well over his
19 time, far longer than he agreed to originally at last months
20 hearing.

21 We let him go on longer, we didn't object because
22 in the spirit of what this Commission has done in the past,
23 it's always been, let's try to get to the bottom of this and
24 find out what's happening, let's not worry about the rules of
25 Civil Procedure where it's going to effect trying to find out

1 the truth.

2 Commissioner Anderson, I believe in the spirit
3 of fairness too, but there never has been fairness when you
4 start talking about these trial by surprises. I have tried
5 numerous times, not in this particular case, but in other
6 cases, trying to use discovery under the Colorado Rules of
7 Civil Procedure with the Commission, and it's never been
8 allowed.

9 Fine. That's trial by surprise, but if you're
10 talking in terms of fairness, allowing our--or refusing to
11 have a witness come in front of you solely because it would be
12 unfair to someone who actually caused the delay, I don't
13 think is either equitable or fair in the spirit of this
14 Commission.

15 Lastly, I would like to, since Mr. Evans has had
16 the opportunity to summarize his testimony last month, I
17 would also like to summarize the testimony of Mr. Rick Parks,
18 who testified last month.

19 CHAIRMAN ANDERSON: Yes. I was going to ask you
20 to do that.

21 MR. SULLIVAN: Thank you. Last month we had
22 Mr. Rick Parks, who is basically the drilling supervisor for
23 Elk, the district manager for Elk Exploration. He testified
24 to the normal procedure for preparing a drill site; testified
25 that even before the interim regs came into place, that Elk

1 was following all of the technical ones, they were not
2 following the necessarily notice procedure because there's
3 some procedural issues there that they are now following.

4 He testified as to what they did when they
5 normally prepare a drill site, including contacting the
6 surface owner, meeting them at the time they state;
7 discussing the size of the drill site, discussing how they
8 wanted the rig to be laid, how they wanted it to be fenced,
9 one, two or three strands, and that they always segregated the
10 top soil and built a location.

11 He testified in normal cases that they take two
12 to three acres of land for a drill site. In this case they
13 had agreed to go down a lot smaller because the Martindales
14 requested it, even though it is an additional cost. He
15 also, in this case, asked the landowners specifically how they
16 wanted the wells to be located, and testified that he had
17 originally wanted to put the roads parallel to their
18 drainage line where they had requested that--for some reason
19 requested that they wanted them marked in Plaintiff's Exhibit
20 7, which is perpendicular to the irrigated roads.

21 Finally, he testified that they had never gone
22 on site, never been able--never had to go on a site without
23 getting the surface owners agreement, that their corporate
24 policy has always been to try to get that and use a big
25 effort.

1 He also testified as to what their reclamation
2 procedures were; they segregate the top soil, they consult
3 with the surface owner concerning any special circumstances,
4 do things which a surface owner may request, and said this
5 has been done in this case. They remove all equipment and
6 materials from the premises, replace the subsoil immediately,
7 notify the surface owner at least seven days prior to final
8 reclamation; they replace the top soil as soon as weather
9 permits, they will disc or shatter the compacted soil if
10 requested, and that they will not plant until the landowner
11 requests it, but they will plant whenever the landowner
12 requests it if they do request it.

13 He also testified that in his experience, and this
14 was objected to by Mr. Evans, that in his experience the
15 drill sites he had worked on, usually recover in one to two
16 years, and he did not foresee any particular problems in this
17 case other than the fact that the landowners were objecting
18 to them being on the property at all.

19 CHAIRMAN ANDERSON: All right. Thank you.

20 MR. SULLIVAN: My next witness is Ms. Colleen
21 Nealy.

22 CHAIRMAN ANDERSON: Pardon me. Logan?

23 COMMISSIONER MACMILLAN: I wanted to make a
24 comment for all people involved, that I had an opportunity to
25 speak with one of the witnesses for the applicant on Friday.

1 On Friday I spoke with Jerry Alldredge, and we talked about
2 the scheduling of this particular case. We didn't speak at
3 all about any of the pertinent facts of this particular case,
4 but I called him with respect to whether his membership in the
5 ad hoc reclamation committee would encourage him to
6 participate in Commission procedures as they related to the
7 interim policy stuff, and also suggested to him that his
8 presence may or may not be needed to review this specific
9 case.

10 That conversation, then, prompted Mr. Alldredge
11 to call Mr. Evans, who spoke with Ms. Beaver to schedule
12 this particular aspect for this afternoon, but I wanted to
13 make that clear to everyone. Thank you very much.

14 MR. SULLIVAN: That clears something up, then.

15 CHAIRMAN ANDERSON: All right.

16 MR. SULLIVAN: Ms. Nealy, would you please state
17 your name and position with Elk Exploration?

18 MS. NEALY: Colleen Nealy, I'm a landman.

19 MR. SULLIVAN: Would you briefly describe your
20 experience as a landman?

21 MS. NEALY: I've got approximately 10 years
22 experience in the oil and gas industry in the DJ Basin. The
23 last five years I've been employed with Elk Exploration as a
24 landman.

25 MR. SULLIVAN: Have you had the opportunity to gain

1 experience in negotiating surface owner--negotiating with
2 surface owner agreements concerning oil and gas drilling
3 operations in Weld County?

4 MS. NEALY: Yes. For the last five years that's
5 what I have been doing. I negotiate surface agreements, and
6 I also supervise those negotiations for approximately 375 to
7 400 wells that we've drilled.

8 MR. SULLIVAN: Would you describe your duties as
9 a landman for Elk Exploration?

10 MS. NEALY: Well, that's probably my primary
11 responsibility, to negotiate surface agreements, pipeline
12 rights of way.

13 MR. SULLIVAN: Would you please describe Elk's
14 normal procedures for entering into negotiations with
15 landowners?

16 MS. NEALY: We try to contact the landowner two
17 to three months before our drilling date. We set up a
18 meeting at their convenience. In the meeting we discuss the
19 access, tank locations, pipeline routes. We also discuss
20 the location of the drill site, also the area that's needed
21 for tank locations, the--

22 CHAIRMAN ANDERSON: Excuse me, Mr. Sullivan. Was
23 this witness sworn at the last hearing?

24 MR. SULLIVAN: No. Only Mr. Parks was. We did
25 present credentials, resumes, of Ms. Nealy and Mr. Byrd.

1 CHAIRMAN ANDERSON: So the qualifications of these
2 people were accepted, but they were not sworn in. That is
3 my recollection. Can we stop and do that?
4 Whereupon,

5 COLLEEN NEALY
6 having been first duly sworn, was called as a witness herein
7 and was examined and testified on her oath as follows:

8 DIRECT EXAMINATION
9 BY MR. SULLIVAN:

10 Q Have you told the truth for the last five minutes?
11 A Yes, I have.

12 COMMISSIONER LARSON: Would you repeat that last
13 question?

14 BY MR. SULLIVAN:

15 Q Ms. Nealy, would you please describe Elk's normal
16 procedures for entering into negotiations with landowners?

17 A Okay. We try to contact the landowner two to
18 three months before our drilling date. We set up a meeting
19 and meet with them at their convenience. In the meeting we
20 discuss first of all, the drilling date; time frame for our
21 drilling, the tank locations and the area that we need for
22 the tank locations, access roads and the width of those roads,
23 pipeline routes, and also the width of the right of way that
24 we need for those pipelines; approximate well location.

25 Usually I have an aerial photo of the property and

1 I discuss with them the location of the well sites using
2 that aerial.

3 Q Do you discuss things like planting schedule,
4 irrigation and reclamation concerns?

5 A Yes, I do, uh-huh. We also review the surface
6 agreement and discuss that agreement. We discuss any concerns
7 that the landowner has at that time. I then try to schedule
8 a second meeting for execution of the agreements and set up a
9 date to stake the location.

10 Q Do you normally obtain surface owners agreements?

11 A Yes. We have always been able to acquire signed
12 surface agreements.

13 Q For each of Elk's drill sites?

14 A Yes, uh-huh.

15 Q Did you personally have any contact with the
16 Martindales?

17 A Yes, I did. My first contact was--

18 MR. SULLIVAN: At this point I think we'll
19 introduce Respondent's Exhibit 1.

20 (Whereupon, Respondent's
21 Exhibit No. 1 was offered in
22 evidence.)

23 BY MR. SULLIVAN:

24 Q If you want to continue talking, I'll just pass
25 them out, to save some time.

1 A My first meeting with the Martindales was on the
2 18th of December. Prior to that, Mr. Don Kennedy, a contract
3 landman made several attempts to contact the Martindales
4 and schedule a meeting. We had scheduled two meetings which
5 they cancelled on. On December 18th, Mr. Kennedy and myself
6 met with the Martindales, and we went over, basically, what
7 I just--our normal procedures.

8 Q Did--when was the first time a representative of
9 Elk contacted the Martindales?

10 A On the 20th of October.

11 Q Were there any attempts prior to that time?

12 A Yes. The first attempt was on September 10th.

13 Q So it took over a month before you could get a
14 response from the Martindales?

15 A That's correct.

16 Q Referring to Exhibit No. 1, would you go over
17 and sort of generally, what Elk did in this particular case,
18 the chronology of the contact and the meeting with the
19 Martindales and what was discussed?

20 A Okay. On the 18th of December, we went over the
21 aerial photo, the approximate well locations, tank locations,
22 pipeline routes, road access, and they discussed with me some
23 of their concerns with their waterlines, underground
24 waterlines.

25 Q Did you discuss the location of the access roads

1 to the drill sites?

2 A Yes, we did.

3 Q Refer you to Respondent Exhibit 1, does that
4 indicate where the Martindales requested you place the access
5 roads?

6 MR. EVANS: I object. The witness has been handed
7 materials which have not been introduced into evidence nor
8 stipulated to. If he's attempting to refresh her recollection,
9 or whatever, clearly she's about to testify as to hearsay
10 evidence. The materials have not been introduced in evidence.
11 I haven't had an opportunity to review the materials, and I
12 object to the witness utilizing them at this time.

13 MR. SULLIVAN: This was attached as part of
14 Respondent's Exhibit 1, going back to the original, because
15 it's easier to read than the photocopy. Everyone of you has
16 it in front of you, including Mr. Evans.

17 MR. EVANS: I would request to be able to see the
18 exhibit, and again, I do not see why she can't be--is he
19 tempting to refresh the witness's recollection on these
20 particular issues? Precisely, what is the purpose of the
21 document?

22 MR. SULLIVAN: I'll withdraw the--

23 CHAIRMAN ANDERSON: What document are you referring
24 to here?

25 MR. SULLIVAN: The photocopy you have there,

1 Mr. Evans, go back two pages. That's what we're referring to.

2 CHAIRMAN ANDERSON: All right. And it's attached
3 to the exhibit and is part of Exhibit 1.

4 MR. EVANS: Okay.

5 CHAIRMAN ANDERSON: And that's what you're
6 pointing to?

7 MR. SULLIVAN: Yes.

8 CHAIRMAN ANDERSON: All right. Now we're clear,
9 doesn't sound like there's any grounds for objection to that.

10 Please proceed.

11 THE WITNESS: Yes, that's correct.

12 BY MR. SULLIVAN:

13 Q So the Martindales requested you put the roads
14 there?

15 A Uh-huh.

16 Q Is that the normal practice for Elk, to put those
17 roads perpendicular to the irrigated roads?

18 A No. No. We usually run our roads parallel with
19 their irrigation roads.

20 Q Is Elk planning to drill any other wells in the
21 area?

22 A We already have. We've drilled south in the same
23 section, also in the section to the east we've drilled.

24 Q Did any other landowners refuse to talk with you?

25 A No.

1 Q How many times have you guessed that you attempted
2 to consult or contact the Martindales concerning the location
3 of the roads and the drill sites and production facilities?

4 A I actually had three meetings with the
5 Martindales. There were many contacts made, like I said,
6 prior to my first meeting with the Martindales by
7 Mr. Kennedy.

8 Q Did the Martindales ever contact you concerning
9 these matters?

10 A No.

11 Q Was there an attempt by either the State Land
12 Board or the Colorado Oil and Gas Conservation Commission to
13 mediate this matter?

14 A No.

15 Q Have other surface owners ever contacted you
16 concerning reclamation matters?

17 A Yes, uh-huh.

18 Q And normally what is Elk's response?

19 A I usually set up a meeting and go out and meet
20 with them and address their concerns.

21 MR. SULLIVAN: At this time we would like to
22 introduce Exhibit No. 2.

23 (Whereupon, Respondent's
24 Exhibit No. 2 was offered in
25 evidence.)

1 BY MR. SULLIVAN:

2 Q And Ms. Nealy, if you could please explain what
3 this exhibit is?

4 A This is our inhouse drilling schedule. We had
5 scheduled--on the top there's a date right above the mineral
6 owner, there's a date right above that, and that's the date
7 the schedule was drafted. The first one is November 13th,
8 and we had scheduled the Martindales to be drilled in
9 January.

10 Q And why didn't you drill then?

11 A Because we didn't have a signed surface agreement.

12 Q Then could you explain Page No. 2?

13 A Page No. 2 is our drilling schedule drafted on
14 April 13th, and we had rescheduled the Martindales to be
15 drilled in December of this year.

16 MR. EVANS: Excuse me, I'm having a hard time
17 following Page 2, which document?

18 MR. SULLIVAN: It's the second exhibit, John.

19 CHAIRMAN ANDERSON: Let's make sure we're all on
20 the same page.

21 MR. SULLIVAN: It fell down over here.

22 CHAIRMAN ANDERSON: The page that's marked Codell
23 Project, Proposed Drilling Schedule is Page 1?

24 MR. SULLIVAN: Yes. If you'll notice that on the
25 third row down there's a date of the printout, November 13th,

1 1992, that was the date of that printout.

2 CHAIRMAN ANDERSON: Yes.

3 MR. SULLIVAN: And then Ms. Nealy is currently
4 discussing Page 2 of that, which if you go over on the second
5 line down, you'll see it's a revised date and it was revised
6 April 13th, 1993.

7 CHAIRMAN ANDERSON: All right. And where are the
8 Martindales on here?

9 THE WITNESS: On the second page, the Martindales
10 are on the first three lines.

11 CHAIRMAN ANDERSON: Okay. Thank you.

12 BY MR. SULLIVAN:

13 Q So why, again, was it that you changed the
14 drilling schedule for these three wells?

15 A Because we didn't have a signed surface agreement,
16 and it was getting late in the year. Our field personnel
17 advised us to move it down into December because we would
18 do the least amount of damage to the property.

19 Q Would you be willing to move that to some other
20 time if the surface owners requested? Is that a normal
21 practice?

22 A Yes, we would.

23 Q You mentioned some standard procedures in this
24 case; is there any reason why you would not follow those
25 procedures in this particular case?

1 A No.

2 MR. SULLIVAN: That's all I have for this witness.

3 CHAIRMAN ANDERSON: All right. Thank you.

4 Mr. Evans?

5 CROSS-EXAMINATION

6 BY MR. EVANS:

7 Q Ms. Nealy, I would like to call your attention to
8 Exhibit 1; I take it this is a report that you made to
9 RB Jacobs, is that correct?

10 A That's correct.

11 Q And who is RB Jacobs?

12 A Our corporate counsel and vice president.

13 Q Okay. Do you normally make such reports?

14 A Yes.

15 Q Is this report the type of standard procedure that
16 you would do with every surface owner?

17 A I keep my own notes. Not all of--they're not
18 always done in memo form to Mr. Jacobs.

19 Q All right. So this is the exception rather than
20 the rule; is that correct, these type of notes?

21 A I always keep my own notes.

22 Q But this type of report is the exception, not the
23 rule; is that correct?

24 A That it was sent to Mr. Jacobs?

25 Q Yes.

1 A Yes.

2 Q In this form? Okay. When did you develop this
3 report?

4 A On April 16th.

5 Q All right. Did Mr. Jacobs ask you to develop the
6 report?

7 A Yes.

8 Q So this report was developed as the result of
9 Mr. and Mrs. Martindale's complaint, wasn't it?

10 A Yes.

11 Q This report reflects your perception as to the
12 negotiating efforts?

13 A That's correct.

14 Q It's possible that the Martindales would be able
15 to write an equally different report; is that correct?

16 A I don't know. That's--

17 Q What about Page--the map, did you--this is a map
18 that you developed, on the third page?

19 A Yes, uh-huh.

20 Q Is that your handwriting?

21 A Yes, it is.

22 Q Okay. And your drawing?

23 A Yes, it is.

24 Q Did you show this--you showed this report to the
25 Martindales; is that correct?

1 A I had the actual aerial, yes.

2 Q And you showed this aerial to the Martindales?

3 A Yes. With overlays, yes, uh-huh.

4 Q Okay. And you showed this to the Martindales in
5 October when you made your first contact?

6 A That's correct.

7 Q Okay.

8 A Actually it was in--my first contact with them
9 was December.

10 Q So they didn't see this report until December; is
11 that correct? They didn't see these--

12 CHAIRMAN ANDERSON: Excuse me, we lost a
13 commissioner. We need to get him back here before you go on.
14 I'm sorry.

15 COMMISSIONER LARSON: I'm having trouble with why
16 this is relevant anyway. I think we've established that
17 there wasn't an agreement. I mean--

18 MR. EVANS: Well, I think it's relevant in that
19 I think you're seeing documents and materials that initially
20 were--on initial contacts were presented to the Martindales,
21 and I think it's to show that there is a pattern of behavior
22 here, and what it is is a pattern of behavior in which the
23 Martindales have become the exception and not the rule.

24 You have in front of you a report which is clearly
25 not the exception. You have a map which is not the normal

1 rule. In other words, because Elk knew that the Martindales
2 were going to--were objecting and were going to probably
3 make a complaint to the Commission, they created a lot of
4 materials in order to demonstrate that they are in fact
5 good guy drillers, and in fact their normal operating
6 procedures is not to be--

7 MR. SULLIVAN: Objection. The testimony is--

8 MR. EVANS: Please let me finish, and then you
9 can raise your objection. One of the things I think we're
10 testifying to is past practice. I think that is an issue
11 which you have raised, and I think that that's an important
12 issue here, and the issue is is that this is not normal
13 practices of the normal drilling operation, and with that
14 I won't pursue the issue any further, other than asking
15 questions on Exhibit 2.

16 CHAIRMAN ANDERSON: I think I understood your
17 objection here, that--well, Mr. Sullivan?

18 MR. SULLIVAN: I just want to redirect.

19 MR. EVANS: I haven't finished my questions yet.
20 I have a few more questions regarding the exhibit.

21 CHAIRMAN ANDERSON: Okay.

22 MR. JACOBS: If I might discuss with counsel for
23 one moment?

24 CHAIRMAN ANDERSON: All right. Go ahead.

25 (Whereupon, a short break

1 was then taken.)

2 MR. JACOBS: Thank you.

3 BY MR. EVANS:

4 Q In regard to Exhibit 2, did you create this
5 exhibit? Is this an exhibit which you developed?

6 A This is actually drafted up by Mr. Parks.

7 Q So this is not an exhibit that you created?

8 A This is our actual drilling schedule that we use.

9 Q This is not an exhibit which you created? You
10 didn't develop this exhibit?

11 A This is--this is our drilling schedule. I work on
12 this schedule, Mr. Parks works on this schedule and a few
13 others in the office. I do work on it myself, yes.

14 MR. EVANS: In view of the lack of authenticity,
15 I object to the introduction of this exhibit at this time.
16 This is an exhibit that she has not developed, this is an
17 exhibit which she has not--

18 CHAIRMAN ANDERSON: The problem, Mr. Evans, with
19 that argument is that if we were to accept it there would be
20 no author to this agreement. The way these agreements are
21 normally generated, as I understand it, is that they are a
22 result of input from various departments within a company,
23 and who it is that might type it, or who it is that might
24 ultimately produce it, is--

25 MR. EVANS: But she is testifying to hearsay

1 evidence in this instance, in which she has not had an
2 opportunity--she has not developed this particular exhibit
3 herself. I would object to the introduction of this
4 particular exhibit, Exhibit 2, as hearsay evidence.

5 She has not had--she has not developed this herself.
6 It's not part of her own computer program, and--

7 THE WITNESS: Yes, it is. Yes, it is.

8 MR. EVANS: She is not in charge of doing this,
9 and therefore, it is clearly hearsay and I would object to
10 its introduction at this time.

11 CHAIRMAN ANDERSON: Excuse me. Mr. Sullivan, do
12 you have anyone that can tell us that this is the actual
13 authentic drilling schedule?

14 MR. SULLIVAN: Ms. Nealy can, as she just testified.
15 She has input into it, she pulled it off the system herself.
16 If Mr. Evans wants to go into the hearsay evidence, half of
17 his exhibits are generated by people who are not here.

18 MS. WREND: May I?

19 CHAIRMAN ANDERSON: Yes.

20 MS. WREND: Is this something that's kept in the
21 ordinary course of your business?

22 THE WITNESS: Yes, it is.

23 MS. WREND: It's a business record, it's
24 acceptable.

25 CHAIRMAN ANDERSON: It clearly is. Understanding

1 how these things are kept, Mr. Evans, I don't know how we
2 could sustain your objection.

3 MR. EVANS: I would have expected defense counsel
4 to have raised that, but thank you. I appreciate that.

5 BY MR. EVANS:

6 Q The only other thing I would ask is, the date on
7 this particular report indicates, it says 13 April, 1993; is
8 that correct? Is that the correct date for the generation of
9 this document?

10 A Yes, that's correct.

11 Q So there are other types of reports that have been
12 generated prior to this date?

13 A Yes.

14 Q With other drilling schedules on it?

15 A It's the same schedule, it's just updated.

16 Q But there are other drilling schedules--there are
17 changes made in the drilling schedules; is that correct?

18 A Weekly.

19 Q There are weekly. So it's possible that this
20 drilling schedule--then it is possible that this drilling
21 schedule could be changed again; is that correct?

22 A Yes.

23 MR. EVANS: No further questions.

24 CHAIRMAN ANDERSON: All right. Mr. Sullivan?

25 MR. SULLIVAN: One redirect.



REDIRECT EXAMINATION

1

2 BY MR. SULLIVAN:

2

3 Q Ms. Nealy, is it the Elk Exploration's company
4 policy for landmen in personnel to keep notes?

3

4

5 A Yes, very good notes, on phone calls, meetings,
6 yes.

5

6

7 Q And why are those notes kept?

7

8 A In case there's any question.

8

9 Q So in case you've got a problem and you have to
10 recreate history, you would need those notes?

9

10

11 A Absolutely.

11

12 Q Is the aerial photo something which you use in the
13 normal course of business with a landowner?

12

13

14 A Yes, it is.

14

15 Q So the procedure that you followed with the
16 Martindales was Elk's standard procedure?

15

16

17 A Yes.

17

18 MR. EVANS: One quick question.

18

19

RE CROSS-EXAMINATION

20 BY MR. EVANS:

20

21 Q Do you know--you do know who Juanita Vargas is,
22 don't you?

21

22

23 A No.

23

24 Q Would it help to refresh your recollection that
25 they are a landowner that you have recently--

24

25

1 COMMISSIONER LARSON: How is this relevant to
2 this proceeding?

3 MR. EVANS: She has testified that other landowners
4 have readily signed their agreements and there has been no
5 problems. I'm introducing the testimony to show that in
6 fact there has been, that there are other landowners that
7 have objected to this particular surface damage agreement.

8 COMMISSIONER LARSON: Actually I have found all
9 this testimony as to why the Martindales didn't sign the
10 surface owner agreement not really relevant to the amount of
11 a surface and reclamation bond that is just and equitable in
12 these circumstances. I think all the parties have established
13 that they couldn't come to an agreement which they did in the
14 first two or three sentences.

15 CHAIRMAN ANDERSON: Some people have agreed to
16 this and some people haven't. I don't think that's--

17 MR. EVANS: I have no further questions.

18 CHAIRMAN ANDERSON: Ms. Nealy, you then base this
19 letter, Exhibit 1, on your notes; you went to your notes or
20 files or whatever it is and developed the chronology based
21 on your review of that?

22 THE WITNESS: That's correct.

23 CHAIRMAN ANDERSON: And I take it you didn't add
24 anything or change anything?

25 THE WITNESS: No, I didn't, no.

1 CHAIRMAN ANDERSON: All right. Mr. Sullivan?

2 I'm sorry, any other questions from the
3 Commissioners?

4 COMMISSIONER LARSON: Actually I have a question,
5 since everybody's been referring to this exhibit on the roads
6 and the flowlines and everything, I'm a little confused as to
7 where the existing roads are. I mean, there's a bunch of
8 blue lines on here.

9 MR. MARTINDALE: Can I show you?

10 COMMISSIONER LARSON: Yes, please.

11 MR. MARTINDALE: There is a correction to it since
12 last time. This center red line here--

13 CHAIRMAN ANDERSON: What exhibit are you referring
14 to?

15 MR. MARTINDALE: Seven.

16 COMMISSIONER LARSON: No, those are the pipelines.
17 The red and the green are pipelines, right?

18 MR. MARTINDALE: I just wanted to show you that
19 this is now a green line, okay, since the last hearing.

20 COMMISSIONER LARSON: Okay. But as far as
21 existing roads?

22 MR. MARTINDALE: Existing roads? Every straight
23 line.

24 COMMISSIONER LARSON: Every straight line, all of
25 these interior straight lines are existing roads?

1 MR. MARTINDALE: Right.

2 COMMISSIONER LARSON: Okay. And then the blue?

3 MR. MARTINDALE: The blue would be the additional
4 line. These--

5 COMMISSIONER LARSON: Flowlines, access--

6 MR. MARTINDALE: See this line here? That would
7 be an input road, this would be an input road and the rest
8 of them would be my existing roads. (witness indicates)

9 COMMISSIONER LARSON: Okay. And these are?

10 MR. MARTINDALE: Flowlines.

11 COMMISSIONER LARSON: Okay. Thank you.

12 MR. SULLIVAN: One correction to that. The blue
13 lines are not necessarily where Elk will put the roads.
14 That's where the Martindales requested that the--

15 COMMISSIONER LARSON: Right. I understand.

16 CHAIRMAN ANDERSON: It says proposed oil and gas
17 drilling flowlines and so forth.

18 COMMISSIONER LARSON: Right.

19 CHAIRMAN ANDERSON: Okay. Mr. Sullivan?

20 MR. SULLIVAN: I would like to call Mr. Jim Byrd
21 as my next witness.

22 CHAIRMAN ANDERSON: Do we have his resume?

23 MR. SULLIVAN: I did present it last time.

24 CHAIRMAN ANDERSON: Oh, that's right.

25 MR. SULLIVAN: Would you like to swear the witness

1 in?

2 CHAIRMAN ANDERSON: Yes.

3 Whereupon,

4 JIM BOB BYRD

5 having been first duly sworn, was called as a witness herein
6 and was examined and testified on his oath as follows:

7 CHAIRMAN ANDERSON: Give your name and address
8 for the record, please.

9 THE WITNESS: My name is Jim Bob Byrd, B-Y-R-D.
10 My address is 498 West Powers Avenue, No. 201, Littleton,
11 Colorado 80120.

12 DIRECT EXAMINATION

13 BY MR. SULLIVAN:

14 Q Mr. Byrd, would you briefly describe your
15 experience as a landman?

16 A I have been employed in the oil and gas business,
17 petroleum landman for over 10 years.

18 Q Have you previously given testimony before an
19 Oil and Gas Conservation Commission?

20 A Yes. I have been qualified as an expert witness
21 in the states of Utah and Oklahoma.

22 Q I requested--well, would you briefly describe your
23 experience in negotiating surface damage agreements for oil
24 and gas drilling operations?

25 A I have negotiated surface, oil and gas surface

1 agreements in eight different states covering approximately
2 60 wells, including the state of Colorado, Wyoming, Utah
3 and other Rocky Mountain states.

4 Q In settling for surface damages, does Elk normally
5 pay for damage to growing crops?

6 A Yes, we do.

7 Q What if a crop can't be planted?

8 A Then we go ahead and pay for whatever damages
9 that naturally accrue from such an action. I guess I don't
10 get the gist of the question here.

11 Q That answers it. How are damages for crop loss
12 calculated?

13 A Generally, recognizing the fact that obviously,
14 first of all, that we have the right to conduct operations
15 on the surface of the land as are necessary for the conduct
16 of the operations, normally what we do is we go above and
17 beyond what the legal obligation is and pay for whatever
18 crops, you know, we take out. We go to--as has been
19 previously testified to by Mr. Parks--we go to extremes to
20 insure that we do not in any way take crops out of
21 circulation unless absolutely necessary for the drilling of
22 the well.

23 Normally what we do is that we will pay for the
24 actual loss of the crop or the anticipated loss of the crop.

25 Q Have you made any estimates on the value of the

1 surface damages for Elk's proposed operations on the
2 Martindale property?

3 A Yes, I have.

4 MR. SULLIVAN: At this time I would like to
5 present Respondent's Exhibit No. 3.

6 (Whereupon, Respondent's
7 Exhibit No. 3 was offered in
8 evidence.)

9 BY MR. SULLIVAN:

10 Q Mr. Byrd, would you please just briefly explain
11 what Exhibit No. 3 is?

12 A Exhibit No. 3 is the analysis that I have prepared
13 based on the numbers that have been generated both in
14 correspondence from the Martindales previously from a prior
15 counsel prior to the time that they engaged Mr. Evans, and
16 also our calculations based upon figures derived from
17 Soil Conservation Service literature that we have obtained.

18 I believe it's the same book that Mrs. Martindale
19 have quoted from the Emergency Relief handbook or the
20 Disaster Assistance handbook. I have prepared a--this is a
21 synopsis of the chart that I have prepared over here, and I
22 would like to elucidate, if I may.

23 Basically what I've done here is that I've made
24 several assumptions in calculating the damages based upon
25 the experience that Elk has had in prior reclamation in

1 situations similar to the ones that we're experiencing here.

2 I've tried to make these assumptions to the best
3 of my ability to where they benefit the Martindales so that
4 we are looking at what would be the most conservative figure
5 that we could reasonably come up with.

6 First of all, we've assumed over the course of
7 the reclamation operations, that there will be no crop loss
8 due to weather or other acts of nature. Secondly, we've
9 also assumed that there's no crop loss due to lack of market,
10 which is something that frequently happens.

11 Thirdly, we've assumed over the life of the
12 reclamation operation, that we will be planting, that the
13 Martindales will be planting all high-value vegetable crops.
14 I've taken out of the SCS handbook the four highest value
15 vegetable crops that they list, which are head lettuce,
16 carrots, onions, and then potatoes.

17 The fourth thing, we've taken the pricing for those
18 four commodities, and we have exceeded the SCS figures, both
19 in the one and five year market analysis, and this comes from
20 published literature once again.

21 No. 5, we've also exceeded the crop yield from the
22 SCS market averages as stated in the Disaster Assistance
23 handbook. Sixthly, we've provided as a base line a net
24 income counting for their investment in order to produce the
25 revenues that they've discussed; a 25 percent return on their

1 investment on what they have to put in in order to provide
2 these particular yields.

3 And then seventh, we've provided the discount
4 factor because of the time value of money. We've given them
5 a dollar amount if they were to produce the crop two years
6 from now, it would be worth less because of inflation, and
7 we call that a discount factor.

8 COMMISSIONER LARSON: Can I ask you what the
9 basis for No. 6 is?

10 THE WITNESS: Twenty-five percent return on
11 investment is something that far exceeds the numbers that we
12 have, in our private resource, have come up with which shows
13 that if we go a high side it shows that based on their
14 investment if they get 25 percent return on their money,
15 which is exceptional, that even with those numbers that the
16 damages that they assert are excessive.

17 COMMISSIONER LARSON: Is that research in
18 Weld County or is that research generally?

19 THE WITNESS: That research was done in Weld
20 County based upon talking with other farmers.

21 COMMISSIONER LARSON: Thank you.

22 THE WITNESS: What we're providing for here
23 averages about 10 percent over the highest process listed in
24 the Disaster Assistance handbook, which are figures only for
25 1990 and 1991, I believe. Here in the yield we have

1 approximately the same types of figures, and I think the
2 numbers are fairly self-explanatory, but these numbers do
3 exceed the numbers that are stipulated in the Disaster
4 Assistance handbook.

5 In order to calculate the net profit on a per-acre
6 basis, what we do is we multiply the pricing times the yield
7 to come up with a gross figure for revenues for that
8 particular crop on a per-acre basis. As an example, \$12.07
9 per less, 275 per acre, we come up with \$3372.

10 We figure out at a 25 percent rate of return and
11 then do this for all four crops and average it, because we
12 are taking the four highest value crops. This is the number
13 that we come up with. A net profit per acre for mixed
14 vegetables of \$653.07 per year, that's what they would clear
15 for the money that they invested for those crops.

16 Now, I should also note that that number takes
17 these four high-value crops, which also in talking with
18 Soil Conservation Service people, you couldn't grow these
19 four crops consecutively over a period of 10 years, you'd
20 have to grow lower-valued crops in order to restore the
21 value of the soil, so that these four high numbers couldn't
22 be sustained over a 10 year period, and even yet, those high
23 numbers, those high yields, this is the number that we come
24 up with.

25 Now, our damage analysis makes a couple of

1 different assumptions, and I've included two numbers. The
2 reason I've included two numbers is there is some
3 correspondence from the prior counsel for the Martindales which
4 assert a damage figure of over \$500 an acre in crop value.

5 MR. EVANS: Objection. Assumes evidence not
6 presented, it's not evidence that's been presented in
7 testimony. It's testifying to hearsay at this particular
8 time and there's also no question asked, no question to
9 respond to. I really object to this.

10 MR. SULLIVAN: Mr. Byrd is testifying based upon
11 his knowledge with discussing with people who have it.

12 MR. EVANS: He's testifying to a letter that is
13 not in evidence, has not been presented; is also privileged
14 communication between attorney and client, and it's not even
15 in front of us today. It is pure nothing, unadulterated
16 hearsay, I object to it, I ask that it be stricken.

17 MR. SULLIVAN: He's testifying as an expert. The
18 attorney client privilege is absurd, the letter was sent to
19 Elk.

20 MR. EVANS: It's still hearsay, the evidence has
21 not been presented before this Commission. The letter has
22 not been presented to the Commission. He's allowed to
23 testify to all materials that have been presented in evidence,
24 he's allowed to make assumptions on all evidence presented to
25 the Commission. I haven't seen this, you know, this letter

1 has not been presented.

2 CHAIRMAN ANDERSON: What letter is this?

3 THE WITNESS: This is a letter which is in our
4 file which was sent--which was referenced in the communique
5 that Ms. Nealy presented, which is a letter that was sent, I
6 believe, on January the 18th that Mrs. Martindale asked that
7 Colleen receive from the prior counsel.

8 In that letter it was asserted that they would
9 expect that there would be crop damages of up to \$500 an
10 acre.

11 MR. SULLIVAN: If the Commission would like
12 Ms. Nealy to testify as to the contents of that letter, she--

13 MR. EVANS: She can testify about this letter all
14 she wants, it's still hearsay, unless she produces the
15 original document, it's still hearsay. She can testify--the
16 fact of the matter is is that we do not have an opportunity
17 to call the attorney who wrote the letter who made the
18 assumptions and to find out what is the basis upon which he
19 drilled the numbers. It might have been some assumptions
20 that he made, it may not have been some assumptions he made.
21 It may have been based on conversations he thought he had
22 with the Martindales, may have been based on other
23 conversations he had.

24 We don't have the letter, and--

25 COMMISSIONER LARSON: Are we arguing about the

1 second line of each of these?

2 THE WITNESS: Yes.

3 MR. SULLIVAN: Also the exception to hearsay is
4 it's admission against the interest of the Martindales.

5 CHAIRMAN ANDERSON: Say that again.

6 MR. SULLIVAN: Admission against interest,
7 exception to the hearsay rule, and if you want to see the
8 letter we can find it. Again, I hate to get taken up in the
9 technicalities, but if you would like to see the letter we
10 can--

11 MS. WREND: First of all, this is an administrative
12 hearing and hearsay is permissible. Those rules are all
13 relaxed. Secondly, even if you wanted to follow the rules
14 strictly, there is an exception to the hearsay rule where
15 there has been an admission by a party opponent against
16 interest, then that is admissible, and an attorney
17 representing the Martindales, it's the same as if the
18 Martindales made that statement. So it would be admissible.

19 MR. EVANS: The only problem with that is the
20 admission is not declaration against interest. The declaration
21 against interest would be admitting to liability on the part
22 of the Martindales to some sort of issue of liability
23 presented by the other side. This is not, clearly not a
24 declaration against interest. That's not a part of the
25 hearsay exception rule.

1 THE WITNESS: The use of the number is merely to
2 indicate that we have been more than generous in our
3 calculation of what the damage has been when considered
4 against the number that has been cited by the Martindales
5 via their attorney in the prior correspondence.

6 That is the actual only use of the number, and
7 because of the fact that we stand behind the numbers being
8 generated, if we were to take that out as a reference, I
9 think the calculation would stand by itself.

10 CHAIRMAN ANDERSON: All you're trying to do is
11 compare your number to something else. Your testimony is
12 going to stand in any case. I'm having difficulty concluding
13 that we ought not to permit this. The Commission, as you
14 know, tries to do as much as it can.

15 COMMISSIONER LARSON: I'm comparing the top line
16 against what was presented in evidence at the last hearing,
17 which is now a different calculation of what the Martindales
18 believe their crop loss to be, so I'm quite frankly, not
19 going to rely on what they said several months ago, I'm going
20 to rely on what was presented at the last hearing as to what
21 their calculation of the crop loss is going to be.

22 CHAIRMAN ANDERSON: We're interested primarily in
23 what your view is.

24 COMMISSIONER LARSON: And your view is the top
25 line?

1 THE WITNESS: My view is the top line, assuming
2 that I have bent over backwards to try to accommodate the
3 numbers--these are the most conservative figures that I can
4 come up with to give the highest possible value that I could
5 possibly calculate.

6 CHAIRMAN ANDERSON: I think we're going to permit
7 the inclusion of this, but having said that, I think the
8 Commission is primarily interested in something else.

9 THE WITNESS: What we have done here is made a
10 couple of calculations about how reclamation will take place.
11 You'll notice that we cite crop loss one and crop loss two.
12 One is for the compacted soil that's in and around the drill
13 site; the second crop loss is for the reserve pit, because
14 often we see different figures for those two particular
15 reclamation periods.

16 Our assumption here for the Martindale proposed
17 locations is that we're looking at over a 10 year period,
18 five years in which to reclaim the compacted soil. This is
19 assuming the normal Elk operation; segregate the top soil,
20 we go back in and rip and shatter the soil, the subsoil,
21 before we restore the top soil. We're looking at five years,
22 and this, once again, is a very conservative number.

23 We've had instances in the past where we have seen
24 actually no crop loss from one season to the next because we
25 conducted the operation during the wintertime when the crop

1 was not on the property, so out of an abundance of caution,
2 we give ourselves five years. Our actual experience is more
3 like two.

4 As far as the reserve pit is concerned, we're
5 looking at a 10 year life, and once again, this is an
6 overly conservative number in order to give maximum value
7 to the claim that's being made by the Martindales, we have
8 gone ahead with 10 years, and that would be 20 percent
9 reclamation for each one of those years, here it would be
10 10 percent reclamation over that 10 year life to get that
11 pit back to 100 percent productivity.

12 This is the gross income loss that's calculated
13 by adding these numbers together. Once again we talk about
14 a discount rate for the time value of money, it's 6 percent,
15 which is historically somewhere between 4 and 6 percent low
16 over the past decade.

17 So even with that we've--once again we've used the
18 most conservative numbers, and by using the most
19 conservative number, we've come up with the highest possible
20 value that we can in order to assign to the crop land for
21 each site that the Martindales are claiming the loss on.

22 When we do that, when we take this whole value
23 for 10 years, we wound up with, under the Elk methodology,
24 \$1646.88 per site, and if we were to multiply that by the
25 three sites about which we're talking, we would be slightly

1 under \$5,000 in damages that we would anticipate.

2 Whenever we talk about bonds, we're talking
3 about what I would regard, and what I have normally seen in
4 my experience over eight different states, we're talking
5 about punitive measures; you have to supply a bond when you
6 have acted--

7 MR. EVANS: Objection, that's an improper--

8 CHAIRMAN ANDERSON: I don't think we need to do
9 that.

10 DIRECT EXAMINATION (continued)

11 BY MR. SULLIVAN:

12 Q So Mr. Byrd, what you've calculated in Exhibit No.
13 3 is total damages, not just unreasonable damages?

14 A That's absolutely correct.

15 Q And if Elk conducts its operations in December,
16 or even in August after the growing season, would you expect
17 the actual damages to be less?

18 A Yes.

19 Q With regard to the acreage estimate that you
20 used in your damage analysis, did you assume the full 75
21 acres that Mr. Martindale says will be completely taken out
22 of production?

23 A No.

24 Q What acreage estimate did you use?

25 A I used the 1.3 acre site that Mr. Parks already

1 testified that he would conduct the operations on.

2 Q Would you briefly describe what bonds Elk
3 currently has in place that are applicable to these lands?

4 A There are three separate bonds that Elk currently
5 has that are applicable to these lands. I think there has
6 been prior reference made to these; there's a \$25,000 damage
7 bond, a \$30,000 plugging and abandonment bond, then plus a
8 separate \$25,000 State Land Board bond for conducting
9 operations on state minerals.

10 CHAIRMAN ANDERSON: And how much was that, excuse
11 me?

12 THE WITNESS: Twenty-five thousand.

13 BY MR. SULLIVAN:

14 Q So the total is \$80,000?

15 A Yes, sir.

16 Q And those will be in place until you complete
17 your operations on the Martindale property?

18 A Yes, sir.

19 Q The interim regulations state that the damage
20 bond shall not exceed the current fair market value of the
21 land affected; do you have any idea what the fair market
22 value of the land affected is?

23 MR. EVANS: Objection. This is clearly outside
24 his field of expertise. Granted, he's demonstrated that he's
25 an agronomist and a farmer and everything else today, but,

1 you know, a soil appraiser he is not.

2 MR. SULLIVAN: I would like to introduce Exhibit
3 No. 4.

4 (Whereupon, Respondent's
5 Exhibit No. 4 was introduced
6 in evidence.)

7 CHAIRMAN ANDERSON: What is this?

8 THE WITNESS: I believe this is a--

9 BY MR. SULLIVAN:

10 Q Mr. Byrd, would you please explain Exhibit No. 4?

11 A This is a--actually it is a advertisement for a
12 piece of property that's immediately--well, within a mile of
13 the Martindale property that's being offered by a real estate
14 firm in Weld County, and it--

15 MR. MARTINDALE: Nobody seems to take our side of
16 this.

17 CHAIRMAN ANDERSON: Mr. Martindale, that's not
18 useful.

19 MR. SULLIVAN: I would ask in the spirit of
20 following the Colorado Rules of Civil Procedure, I would ask
21 the Commission to take judicial notice of this ad.

22 MR. EVANS: Objection. This is clearly not an
23 issue for judicial notice.

24 MR. SULLIVAN: I'll withdraw that.

25 CHAIRMAN ANDERSON: All right. We're on the

1 question here of whether or not Mr. Byrd can give us
2 testimony on fair market value of agricultural land in this
3 area, and you were handing us an exhibit on that subject,
4 right?

5 MR. SULLIVAN: Yes.

6 CHAIRMAN ANDERSON: And I think we need to back
7 up and talk about whether or not--Mr. Evans objected to you
8 going in this direction because there's an objection to his
9 qualifications to provide testimony on fair market value of
10 agricultural land in this area.

11 MR. SULLIVAN: Okay.

12 BY MR. SULLIVAN:

13 Q Mr. Byrd, in your experience as a landman, have
14 you had the opportunity to gain experience in evaluation of
15 farm land for the purpose of determining damages?

16 A Yes.

17 MR. SULLIVAN: I move that Mr. Byrd--

18 MR. EVANS: Objection. Clearly he's not
19 proffered enough here to--

20 CHAIRMAN ANDERSON: We need a little more.

21 BY MR. SULLIVAN:

22 Q In how many instances have you made estimates of
23 the fair market value of land for the purpose of
24 determining oil and gas drilling damages?

25 A Over 60 specific well sites in which I have

1 negotiated surface damages, plus other instances in which I
2 negotiated surface damages as part of the lease agreement in
3 advance of the drilling operations.

4 Q And what is the normal procedure for determining
5 the fair market value of land?

6 A The normal procedure is--there are a couple of
7 different things that one can and should do; one is to look
8 to the assessed value of the property not as an exclusive
9 measure, but one should also work with other--work with
10 real estate firms who buy and sell property on a daily
11 basis in these particular areas to determine from them
12 exactly what fair market value of the property is.

13 Q And have you obtained any estimates of the value
14 of farm property--

15 MR. EVANS: I'm going to renew my objection, but in
16 the essence of time, I know the Commission can allow you to
17 respond, but he's clearly not, in this instance, a qualified
18 expert in the area to do market analysis; he's not
19 certified, he's not demonstrated that he is a certified
20 appraiser, he's is not the property owner.

21 There is an exception to the rule that the property
22 owner is clearly considered the best person to testify as to
23 the market value of the property. Therefore, I renew my
24 objection again that he is not qualified to testify to the
25 market value of this--of the Martindale's farm or even of

1 this particular farm, so I--but as I say, that's the last
2 time I'll make the objection. I've made it, and at this time
3 the Commission is certainly free to--

4 CHAIRMAN ANDERSON: Well, Mr. Byrd clearly is not
5 an expert, and by expert we mean that he is an appraiser in
6 this area or that he's in the real estate business in this
7 area.

8 MR. EVANS: I suppose, Chairman Anderson, that he
9 could testify as to his opinion in his experience as an
10 individual landman working on individual sites from his own
11 individual experience only, but any other assumptions--

12 CHAIRMAN ANDERSON: That's right. That's what
13 I'm reaching for. I think the Commission understands that
14 he's not in the real estate business, that he doesn't provide
15 evaluations, he's not a surface owner in the area, but he
16 may have some experience dealing with other owners in the
17 area, that might be of some use, which is far short of his
18 being a real estate appraiser.

19 Unless there's some reason why we can't hear him,
20 I'd like to hear him, understanding that--

21 MS. WREND: You can ask him based on his opinion
22 and experience.

23 CHAIRMAN ANDERSON: Okay. That's all I was trying
24 to define. I don't think there's any disagreement on that.
25 Obviously if he had come to us with an appraisal with a seal

1 on it, we would be upset, but we've heard that he's had
2 some experience in dealing with surface owners.

3 MR. EVANS: I don't want to drag it out, your time
4 is precious.

5 CHAIRMAN ANDERSON: All right. Mr. Sullivan?

6 BY MR. SULLIVAN:

7 Q Approximately how many acres will be affected, of
8 the Martindale's land will be affected by Elk's operations?

9 A Approximately four.

10 Q And based upon your experience and in your opinion
11 as to the value of the land, what would be the current fair
12 market value of the land affected by Elk's proposed
13 operations?

14 A The fair market value of that land in my opinion,
15 would be somewhere between 8 and \$10,000.

16 Q And that's less than the existing bond?

17 A Yes.

18 MR. EVANS: The question is--I'm not clear as to
19 the response.

20 CHAIRMAN ANDERSON: That was for the four acres, so
21 it was 2,000 or \$2500 per acre?

22 THE WITNESS: That's correct.

23 BY MR. SULLIVAN:

24 Q Mr. Byrd, did you personally attempt to make any
25 phone calls to the Martindales?

1 A Yes, I did.

2 Q Just for the record, when were those phone calls
3 made?

4 A The first phone call was made on May the 7th at
5 approximately 5:30 in the afternoon. Mr. Rick Parks was in
6 the office at the time I attempted to make that phone call.

7 MR. EVANS: Objection. What's the relevance of
8 this line of questioning?

9 CHAIRMAN ANDERSON: I guess we'll find out here.

10 MR. SULLIVAN: The voracity of the applicant's
11 witnesses.

12 MR. EVANS: Regarding what issue?

13 MR. SULLIVAN: Regarding the claim that no contact
14 had been attempted.

15 MR. EVANS: I don't think that's ever been raised
16 as an issue by the applicants.

17 CHAIRMAN ANDERSON: There's been a whole lot of
18 implications of--

19 MR. EVANS: They've raised it as issues. We've
20 never raised those issues.

21 CHAIRMAN ANDERSON: We've heard a lot of bad--a
22 lot of implications about voracity here. If that's where
23 we're going, I think we want to hear it.

24 MR. EVANS: I don't think it's relevant. It's not
25 relevant to any issue here. I mean the issue is clearly and

1 simply the damages, the bond and reclamation bond; who
2 contacted who--the fact of the matter is, the Martindales
3 didn't sign the agreement. Now, if this was May 7th, 1993,
4 then the contact should have been made through their
5 attorney. If this is May 1992, then I would say that they
6 clearly could have made contact.

7 I don't think it's relevant as to whether they
8 were contacted or not. They clearly didn't sign the
9 agreement. The only issue here is the bonds.

10 MR. SULLIVAN: In deference to Commissioner Larson,
11 I'll just withdraw the question.

12 CHAIRMAN ANDERSON: All right.

13 COMMISSIONER LARSON: I've got a question. I've
14 got Exhibit 4 and I've got Applicant's Exhibit 5, and they
15 are both appraisals from Kreps Wiedeman autioneers.

16 MR. SULLIVAN: Yes. Respondent's Exhibit 4 are
17 for different lands, they're for adjacent lands.

18 COMMISSIONER LARSON: Okay.

19 MR. EVANS: I would object to the characterization
20 of adjacent, the testimony has been they're a mile apart,
21 that's not adjacent.

22 COMMISSIONER LARSON: Okay. Thank you.

23 CHAIRMAN ANDERSON: Are you going to introduce
24 this Exhibit 4?

25 MR. SULLIVAN: I move that the exhibits that I've

1 presented be admitted into evidence.

2 (Whereupon, Respondent's
3 Exhibits 1 through 4 were
4 offered in evidence.)

5 MR. EVANS: I object to the introduction of
6 Exhibit 4. It's hearsay, no exception applies in this
7 instance, it doesn't apply to this particular instance, it's
8 on a farm that's over a mile away. There's no similar
9 similarities that have been established by the witness; they
10 have not established that this is irrigated ground, they have
11 not established that this is not prime pasture land, they
12 have not established that this is in fact the same type of
13 crops that are grown, they have not established that there is
14 the same amount of improvements that have been done. There
15 are so many disparities between this exhibit, it doesn't even
16 come close to--

17 CHAIRMAN ANDERSON: Mr. Sullivan, I have to say the
18 fact that it's a mile away means to me that it isn't going
19 to have much affect, unless I'm mistaken.

20 MR. SULLIVAN: Well, you wouldn't let us enter any
21 testimony concerning the similarities of soil. I would ask
22 that you let the document speak for itself.

23 CHAIRMAN ANDERSON: All right, that it's--

24 MR. SULLIVAN: It is irrigated land.

25 CHAIRMAN ANDERSON: This is irrigated land, and--

1 MR. SULLIVAN: Same soil, good productive farm.

2 CHAIRMAN ANDERSON: And is it 45--

3 MR. SULLIVAN: Forty-five acres.

4 CHAIRMAN ANDERSON: Forty-five acres. All right.

5 MR. EVANS: There is--

6 CHAIRMAN ANDERSON: Well, I think--

7 MR. EVANS: My objection stands.

8 CHAIRMAN ANDERSON: Well, I think we can accept
9 it understanding for what it is. I have, personally, some
10 reservations about it because of its distance away from the
11 Martindales, but it's--given that, I think it's acceptable
12 information. All right.

13 (Whereupon, Respondent's
14 Exhibits 1 through 4 were
15 admitted in evidence.)

16 MR. SULLIVAN: Those are all the questions I have
17 for Mr. Byrd.

18 CHAIRMAN ANDERSON: All right. Mr. Evans?

19 MR. EVANS: In the interest of time, I have just
20 a few questions and I will try to be succinct and right to
21 the point.

22 CHAIRMAN ANDERSON: All right.

23 CROSS-EXAMINATION

24 BY MR. EVANS:

25 Q Mr. Byrd, on the assumptions that you made, these

1 assumptions are upon which you based your entire calculations;
2 is that correct?

3 A Yes.

4 Q Okay. No crop losses due to weather or other
5 acts of nature; what is the basis of that assumption?

6 A We're assuming there is not any hail storms,
7 there's never any cold weather, and that it's perfect; that
8 you will have yield for all 10 of those years.

9 Q Okay. So that assumes, in this instance, that
10 no crop loss is due to lack of market, okay? Now, the
11 market, I've noticed that you listed lettuce, onions, carrots
12 and potatoes; is that correct?

13 A Yes, sir.

14 Q Did you--you were in court--I mean, you were in
15 the hearing earlier when Mr. Martindale testified--or
16 Mrs. Martindale testified as to her crops?

17 A That's correct.

18 Q Okay. And you were in court--I mean, you were in
19 the hearing and you were aware that she testified that she
20 had additional--in addition she grew such things as sweet corn?

21 A Yes.

22 Q Minature pumpkins?

23 A Yes.

24 Q Winter squash?

25 A That's correct.

1 Q Large pumpkins?

2 A Uh-huh.

3 Q Peppers, sweet?

4 A Uh-huh.

5 CHAIRMAN ANDERSON: I don't think we need to go
6 through the whole list.

7 BY MR. EVANS:

8 Q This is not the complete list, is it?

9 A No, but those are the four highest-value crops
10 of that entire list. If we were to calculate the value of an
11 actual crop of--

12 Q But this is not the entire list, is it?

13 A No, but if we were to calculate that list it would
14 be less.

15 Q Now, you say this is the highest-value crops?

16 A According to the Soil Conservation Service.

17 Q And who did you talk to at the Soil Conservation
18 Service?

19 A I read the Disaster Assistance handbook that
20 Mrs. Martindale used.

21 Q So you're an expert in interpreting the Disaster
22 handbook from the Soil Conservation Service?

23 A No, but I can read.

24 Q All right. Take a look at the affect of this
25 assumption; that is, the commodity pricing one to five year

1 market analysis, all right. Do you have first-hand knowledge
2 as to how the Soil Conservation Service developed its market
3 analysis?

4 A No.

5 Q On the crop yielding, exceeding Soil Conservation
6 market analysis averages, are you familiar with how they
7 develop their averages?

8 A No, I'm not, other than what's stated in the book.

9 Q Please, I just asked the question, yes or no will
10 be fine. The income on--

11 MR. SULLIVAN: One objection; as long as the
12 Respondent is responding to the question, he doesn't have to
13 answer in a strict yes or no. He can clarify his answers.

14 CHAIRMAN ANDERSON: I think that's right. We're
15 not restricted to yeses and nos here.

16 THE WITNESS: The methodology, at least to Items
17 4 and 5, are stipulated in the handbook and they're compiled
18 from the actual figures that the Soil Conservation Service--

19 MR. EVANS: I hadn't asked a question yet. May I?

20 CHAIRMAN ANDERSON: Go ahead.

21 BY MR. EVANS:

22 Q Did you take into, in your assumptions, the fact
23 that Mrs. Martindale plants her lettuce crop in the fall?

24 A Excuse me?

25 Q Did you take into your assumptions that

1 Mrs. Martindale plants in the fall?

2 A No, I did not.

3 Q Okay. So it is likely that these assumptions are
4 not, then--it is likely that these assumptions are not based
5 on any crops that she will have in the fields in the fall,
6 and therefore this is really not totally reflective of
7 Mrs. Martindale's farm, is it?

8 A To the extent this is an economic analysis, this
9 is very, very beneficial to Mrs. Martindale.

10 Q Beneficial to Mrs. Martindale?

11 A Because these crops are higher value than the
12 crops that she's actually planting.

13 MR. EVANS: I have no further questions.

14 CHAIRMAN ANDERSON: The point of your question was
15 that this is a model and that it does not actually reflect
16 the timing or the patterns of her planting.

17 MR. EVANS: Well, it also--yeah, and it doesn't
18 reflect Mrs. Martindale's actual farming operations.

19 COMMISSIONER LARSON: We understand that.

20 MR. EVANS: Okay. I have no further questions.

21 CHAIRMAN ANDERSON: Okay. Mr. Sullivan, any
22 redirect?

23 MR. SULLIVAN: Just one.

24 REDIRECT EXAMINATION

25 BY MR. SULLIVAN:

1 Q Mr. Byrd, in your estimates in response to
2 Mr. Evans' last question, you assume that the full annual
3 crop would be destroyed, rather than making the assumption
4 there would not be any crop in place in December when the
5 well is scheduled to be drilled?

6 A That's correct.

7 COMMISSIONER LARSON: Can I ask, what is the
8 number of acres that will be destroyed? What was your
9 assumption?

10 THE WITNESS: Four, three times 1.3.

11 COMMISSIONER CAMPBELL: Per well?

12 THE WITNESS: No, total.

13 COMMISSIONER LARSON: Total for all three locations?

14 MR. SULLIVAN: John, we would like to leave our
15 exhibit up, please, there may be further questions.

16 MR. EVANS: I just wanted to point something out
17 here, if you don't mind.

18 CHAIRMAN ANDERSON: Would you leave it up, if
19 you're going to point out something we're not going to be
20 able to see it.

21 MR. SULLIVAN: You can leave yours on the chair
22 back there, I guess.

23 THE WITNESS: Three drill sites, 1.3 acres a piece,
24 which is 3.9, I rounded it up to four.

25 CHAIRMAN ANDERSON: And that 1.3 acres was drawn

1 from Mr. Parks' testimony earlier?

2 THE WITNESS: Mr. Parks' testimony.

3 COMMISSIONER LARSON: And that is the aerial
4 extent of the production?

5 THE WITNESS: No. That is the actual drill site,
6 the production area will be much smaller.

7 COMMISSIONER LARSON: Okay.

8 CHAIRMAN ANDERSON: What about roads?

9 THE WITNESS: Well, inclusive of the roads, once
10 again we get into the discussion about what is reasonably
11 necessary, the road that's reasonably necessary to get to the
12 well head.

13 CHAIRMAN ANDERSON: So the four acres is
14 exclusive of roads?

15 THE WITNESS: Would exlude roads, but if we were
16 to add roads back in, it would be a little less than half an
17 acre, if you were to even include the tank batteries, so the
18 maximum figure would be 4.4 acres.

19 COMMISSIONER LARSON: And how about for flowlines?

20 THE WITNESS: Flowlines would not--are minimal,
21 and normally we will go immediately along the roads to
22 minimize the potential damage involved there also.

23 CHAIRMAN ANDERSON: Mr. Evans?

24 MR. EVANS: I have just two questions, and they
25 concern the total number of acres.

RECROSS-EXAMINATION

1
2 BY MR. EVANS:

3 Q Mr. Byrd, I'd like to show you what we've marked
4 as Plaintiff's Exhibit 1, which is the original letter of
5 agreement; do you see the--on Exhibit 1, do you see No. 3-D?
6 What is the number of acres there?

7 A Twenty-six.

8 Q Twenty-six, or 2.6 acres? Twenty-six acres?

9 A It doesn't--I mean, that--okay. Apparently it
10 means 2.6, but that wasn't the--

11 Q The number of acres, the access roads to be
12 approximately 15 feet wide; is that what that says?

13 A That's at the initial--at the time of the initial
14 conversations.

15 Q Okay. And the other question I have is when you
16 dig your flowlines, what is the usual procedure for digging
17 your flowlines?

18 A I would have to defer that question to Mr. Parks,
19 who's the--

20 Q So you've got no basis for knowing what kind of
21 damage the flowlines would do to a crop, do you?

22 A Only to the extent that I know where the flowline
23 is located.

24 Q But you have no basis for understanding the damage
25 the flowlines do to the soil, do you?

1 A No.

2 MR. EVANS: I have no further questions.

3 CHAIRMAN ANDERSON: All right. Thank you. Any
4 questions from the Commission of this witness? All right.
5 Thank you.

6 COMMISSIONER CAMPBELL: One quick question.

7 CHAIRMAN ANDERSON: Okay.

8 COMMISSIONER CAMPBELL: This letter of agreement
9 that we have, that's been modified several times now?

10 THE WITNESS: That was the initial letter of
11 agreement.

12 CHAIRMAN ANDERSON: That was the initial proposed
13 letter. This was an unaccepted proposal from Elk to the
14 Martindales.

15 MRS. MARTINDALE: This was the final one.

16 MR. EVANS: Let the record show that
17 Mrs. Martindale answered in response to that question.

18 MR. SULLIVAN: Perhaps, if you'd like, Mr. Parks
19 is still here, he could get up and repeat his testimony from
20 last month where the initial acreage estimate was 2.6 and
21 they agreed to reduce it to 1.3 upon discussions with the
22 Martindales.

23 COMMISSIONER CAMPBELL: And how about the
24 compensation value? He says the land is worth 8 to \$10,000,
25 but this one allows for 7500.

1 THE WITNESS: That's if we totally destroy the
2 full four acres, but we're going to reclaim the property, in
3 which case we're only actually willing to pay for what it is
4 that they lose, which is the value of the land during the
5 period it's being reclaimed, which is how we arrived at that
6 number.

7 CHAIRMAN ANDERSON: All right. Further questions?
8 Mr. Sullivan?

9 MR. SULLIVAN: That's it. I would again request
10 that you at least ask questions of the soil expert that is
11 here, even if I'm not allowed to present testimony. He may
12 be able to shed some light on it in general since you've
13 got the opportunity. You've already ruled on that, and I
14 won't raise it again.

15 CHAIRMAN ANDERSON: All right. Well, I think
16 there are a couple more things here I'd like to do, one of
17 which is to have a report from the members of the staff of
18 the Commission who have looked at this.

19 This might be a good time to take a 10 minute or
20 so break. We'll reconvene here again at 10 minutes til 4
21 and we'll hear from staff.

22 (Whereupon, a short break was
23 then taken.)

24 CHAIRMAN ANDERSON: Back on the record.

25 This morning, prior to the Martindale matter, the

1 members of the Commission did hear an application from Amoco
2 for the dismissal of two applications from Billy Ray and
3 Louise Clary, and that request for denial of application was
4 approved with prejudice.

5 There was, unfortunately, some confusion about
6 the timing of the hearing. The Clarys arrived subsequent to
7 that hearing, however, as the Amoco and the Clarys know, this
8 matter has been heard a number of times and the grounds on
9 which the dismissal was made, I think, had to do with the
10 failure over a period of time by the Clarys to provide
11 information that was requested by the Commission and the
12 failure on the part of the Clarys to provide information to
13 Amoco that would allow for the resolution of the matter.

14 I'm quite confident that the presence or absence
15 of the Clarys this morning would not have changed the outcome
16 of the Commission's decision to dismiss both of these
17 matters with prejudice. I apologize to the Clarys for the
18 confusion on the schedule, but I can assure them that the
19 outcome would not have been any different whether they had
20 been here or not.

21 The process has been lengthy and time consuming,
22 and I think the Commission believes that it had to be brought
23 to an end. So Mr. and Mrs. Clary, my apologies, but I have
24 to tell you that we're going to be continuing for the
25 remainder of the day on the Martindale matter, and I don't

1 believe we're going to have further opportunity to discuss
2 the applications. I'm sorry.

3 All right. Back to--we have finished--both sides--
4 I think both sides heard that we're losing a Commissioner
5 at 5 o'clock, and that means that I want five minutes or less
6 from each of you on rebuttal witnesses, unless you're
7 prepared to continue this again. If we want to get done
8 tonight, talk fast or we're going to continue again.

9 Mr. Evans?

10 MR. EVANS: Mr. Chairman, I would like to call as
11 my rebuttal witness Mrs. Martindale.

12 DIRECT EXAMINATION

13 BY MR. EVANS:

14 Q Mrs. Martindale, I would like to call to your
15 attention Plaintiff's Exhibit 3 that we introduced at the
16 prior hearing. I would like to show you a copy of Plaintiff's
17 Exhibit 3 which has been admitted. Mrs. Martindale, I would
18 also like to call your attention to the diagram here of crops
19 that was presented, and I would like you to just go through
20 it very briefly, take a few minutes to go through it and
21 talk about why this differs from your costs.

22 Let's start first with potatoes; why is this
23 different?

24 A I don't grow potatoes.

25 Q Okay. And they're not in your rotation either?

1 A No.

2 Q Okay. Carrots?

3 A I don't really grow carrots, maybe one or two
4 rows, so that's irrelevant.

5 Q All right. Onions?

6 A Just very few.

7 Q How many rows of onions do you grow?

8 A Probably about two acres.

9 Q About two acres or so. Okay. And lettuce?

10 A Probably about nine acres.

11 Q Is this a correct price for lettuce?

12 A No, because lettuce is sold by the box.

13 Q Okay.

14 A And lettuce is very volatile because of California
15 weather. As it is right now, it's very high, it was up to
16 \$40 a box, an average 700 cartons per acre, high is 1,000
17 cartons to an acre.

18 Q All right. What is it--down here where it says
19 yield, what is going to be your yield this year for lettuce?

20 A Seven hundred cartons an acre.

21 Q Is this a correct figure, then?

22 A Way low.

23 Q Okay. How low? What is this 750 CWT per acre?

24 A That's 275, 100 weight per acre, but lettuce isn't
25 sold that way.

1 Q And how is it sold?

2 A By the carton, 24 heads in a carton.

3 Q Okay. Do you sell your lettuce wholesale or retail?

4 A The lettuce I'll do wholesale. The other things
5 I do retail.

6 Q All right. Is there a difference? On your list
7 you're talking about--the other crops on this particular
8 list, Exhibit 3, are sold retail; is that correct?

9 A Yes, which is at least two times more than the
10 wholesale anywhere.

11 Q Okay. What about this acreage estimate in onions;
12 is that correct?

13 A I don't sell onions that way because I bunch
14 onions, put three in a bunch and I don't sell them by the
15 hundred weight. I sell mostly by the piece.

16 Q Okay. What about carrots?

17 A Not sold that way either.

18 Q And then again, your testimony is that you don't
19 really sell carrots, do you?

20 A No.

21 Q And you don't grow potatoes; is that correct?

22 A Right.

23 Q All right. So your estimate, if this is the price
24 for their damage estimate, then this figure here is--

25 A Extremely low.

1 Q Extremely low.

2 MR. EVANS: I have no further questions.

3 CHAIRMAN ANDERSON: Mrs. Martindale, do you have
4 a number, in running your business, as to what a reasonable
5 expectation for net profit per acre is?

6 THE WITNESS: Well, like the minature pumpkins--

7 CHAIRMAN ANDERSON: An average figure.

8 THE WITNESS: Probably about--average, about
9 1200 an acre.

10 CHAIRMAN ANDERSON: Mr. Sullivan, do you have any
11 questions?

12 MR. SULLIVAN: No.

13 CHAIRMAN ANDERSON: Okay.

14 COMMISSIONER LARSON: I have some questions.

15 CHAIRMAN ANDERSON: All right.

16 COMMISSIONER LARSON: I thought that you told us
17 that it was an average was 1277 an acre, but that was gross
18 income?

19 THE WITNESS: What's that?

20 COMMISSIONER LARSON: The average on Exhibit 3;
21 the gross loss is \$1,277.12, but that was gross, that wasn't
22 a net profit, a net income number. Am I incorrect?

23 THE WITNESS: What was that again?

24 COMMISSIONER LARSON: The number on this exhibit
25 of your gross loss is \$1,277, and--

1 CHAIRMAN ANDERSON: What exhibit are you talking
2 about?

3 COMMISSIONER LARSON: Exhibit 3. Is that--that's
4 the gross number not a net number; is that correct?

5 THE WITNESS: That would be a net number.

6 COMMISSIONER LARSON: That's the net profit per
7 acre?

8 THE WITNESS: Depending on the crops.

9 COMMISSIONER LARSON: No, I understand that, it's
10 an average.

11 THE WITNESS: Right, because some of those would
12 be--like this lettuce would be 5 to 7,000 for one acre right
13 now.

14 COMMISSIONER LARSON: Okay. So the 1277
15 represents your cost in planting and all that?

16 THE WITNESS: Right. Like lettuce, it was as high
17 as \$40 a carton two weeks ago.

18 COMMISSIONER LARSON: No, I just wanted to make
19 sure I understood what the number was. Also, I'm very
20 curious, why did you ask the flowlines to be put in
21 perpendicular to the drainage? Mr. Martindale?

22 MR. MARTINDALE: I'm glad you asked that. This
23 big field here, (indicates) we divide east west.

24 CHAIRMAN ANDERSON: You're pointing at Exhibit
25 what?

1 MR. MARTINDALE: Seven. We call this the 47 acre
2 field, 48 acre field. We divide it east west across here,
3 (indicates) with a temporary road. We pull drain ditches
4 and bring them across, okay? This is why we said we don't
5 want you to take out productive land this way and come across,
6 because that's where we pull a road, we use that as a road
7 anyway.

8 COMMISSIONER LARSON: Okay. So you're not using
9 that for growing crops right now anyway?

10 MR. MARTINDALE: Right. We drive across that;
11 same way here, we drive down this one. This side here, we
12 asked them to put it as close to the road, the existing road
13 as they could.

14 COMMISSIONER LARSON: Okay.

15 CHAIRMAN ANDERSON: All right.

16 COMMISSIONER LARSON: One last question. Do you
17 know what the fair market value of your farm land would be?
18 I don't want a number that represents the house and all the
19 improvements, I would just like a--I didn't see that anywhere.

20 MR. MARTINDALE: That would be like asking you to
21 sell your house without the driveway.

22 COMMISSIONER LARSON: Well, I know, but--

23 MR. MARTINDALE: It's all included.

24 COMMISSIONER LARSON: All I'm asking is did your
25 appraiser also give you a number that did not include the



1 value of your home and your shed and all of that stuff?

2 MR. MARTINDALE: (shakes head)

3 COMMISSIONER LARSON: Okay.

4 CHAIRMAN ANDERSON: Mr. Sullivan, do you want to
5 present a rebuttal witness here?

6 MR. SULLIVAN: Well, with the questions about
7 Mr. Byrd's exhibit, we would like to present Mr. Byrd.

8 CHAIRMAN ANDERSON: All right. Five minutes or
9 less, please.

10 DIRECT EXAMINATION

11 BY MR. SULLIVAN:

12 Q Mr. Byrd, again for the record, why did you choose
13 the four crops that you chose in your analysis?

14 A The reason I chose those four crops is because
15 according to the ASCS Disaster Assistance handbook, those are
16 the four highest-value crops that are grown in Weld County.

17 Q And that ASCS Disaster Assistance handbook was
18 the source purported to be for the numbers the Plaintiff
19 used and is in Plaintiff's Exhibit No. 4?

20 A It is.

21 Q How did you obtain the prices for those particular
22 products?

23 A By using the Exhibit 4 that they had used to come
24 up with those numbers that stipulated both the yield and a
25 rate, and it listed the crops by counterweight and it listed

1 the production by counterweight per acre.

2 Q And again, when is the well scheduled to be drilled?

3 A The well is scheduled to be drilled in December,
4 but it will also depend upon what is most convenient for
5 the Martindales.

6 Q So you would assume that there would not be as
7 much crop loss if you drilled in December because it would
8 perhaps be nine acres, I guess, is what the Martindales
9 planted last year, there might be nine acres of lettuce
10 planted?

11 A That's potentially true, but to the extent that
12 we possibly can, we'll move our operations out of that nine
13 acres, and we've got three sites covering four acres in
14 three different parts of the quarter section. I don't
15 anticipate that we would be in the lettuce with all three of
16 those; the point being, using the four highest value crops
17 that we look at sweet corn and some of the other crops that
18 are used, the actual nets out of those are going to be
19 substantially less than the numbers that we used.

20 MR. SULLIVAN: That's all I have.

21 CHAIRMAN ANDERSON: Okay. Thank you. Questions
22 from the Commission? All right. We want to be out of here
23 in an hour, but there are two members--one member of staff,
24 perhaps two, who have spoken with the Martindales and who
25 have looked at this, Mr. Waldron and Mr. Kenney.

1 Mr. Waldron, did you prepare a verbal or written
2 report on this matter?

3 MR. WALDRON: Yes, I did.

4 CHAIRMAN ANDERSON: We would like to hear that.
5 I think we probably ought to swear Mr. Waldron in. Well,
6 please identify yourself.

7 MR. WALDRON: I'm Tony Waldron, I'm a reclamation
8 specialist for the Oil and Gas Conservation Commission.
9 Whereupon,

10 TONY WALDRON
11 having been first duly sworn, was called as a witness herein
12 and was examined and testified on his oath as follows:

13 CHAIRMAN ANDERSON: Thank you.

14 THE WITNESS: Yes, I did go out and speak with
15 both the Martindales and Colleen Nealy from Elk Exploration.
16 I took a look at the site and wrote up a report of my
17 findings, which I faxed a copy to you. I had about 10
18 copies but they have disappeared, but I have one here. I
19 think John has one and I think Steve has one too.

20 Basically what I did was I went out, checked out
21 the site, looked over the property to verify what type of
22 farm land it was and verify they were raising these high-value
23 vegetable crops.

24 I talked to Elk Exploration about their attempts
25 to come to some sort of reasonable surface damage agreement,

1 then I wrote up this memo, and my feeling initially was that
2 I thought they could probably come to some sort of
3 agreement. It seems like maybe money was one of the hangups,
4 but there was some language that was unacceptable to the
5 Martindales in there, and I don't know what the Commission's
6 abilities are with respect to the language in the surface
7 agreements, so I noted that in my report.

8 There was a well that's out there on the site now,
9 as indicated in past testimony, and apparently there's some
10 land adjacent to that well that has never been productive
11 since that well was put in. I couldn't really tell that for
12 sure because there weren't any crops growing at the time I
13 did my inspection, and I'd have to revisit the site when there
14 are crops growing to make a determination about that.

15 The Martindales indicated there was some problems
16 there, and they suspected that was because perhaps drill mud
17 or something was dumped on the surface. They purchased the
18 land after the well was completed, so I couldn't really make
19 a determination about that at all, but you should just go
20 ahead and go through the reports.

21 My conclusions are that I thought they could
22 arrive at some reasonable agreement. Now, the other thing I
23 did--obviously that doesn't seem to be happening, but the
24 other thing I did is I went ahead and did a reclamation bond
25 estimate for the sites, and that's another sheet of paper I

1 have here.

2 I believe that's what the Martindales requested
3 is reclamation bond, or damage bond, so I went ahead and
4 worked up these reclamation cost estimates. I used the
5 Means Construction book to gather some of the figures, and I
6 put my assumptions in there assuming this 41 by 100 pit;
7 300 cubic yards of mud and cuttings to be removed. I did not
8 calculate the cost of pumping out water, backfilling the pits,
9 and you can see the figures that I came up with there.

10 I should point out there's an initial disturbance
11 to production and final reclamation at the bottom half of
12 this, so I guess if you just want to go through it; remove
13 the drilling fluid and backfill the pit, 41 by 100 pit,
14 300 cubic yards of mud and cuttings times three pits, 900
15 cubic yards, I'm assuming a five-mile round trip--I thought
16 that's about how far it was up to the dump near Greeley
17 there, so that was \$5400 to remove the mud; backfill the pit,
18 1,185 cubic yards times the three pits, 3,555 cubic yards,
19 50¢ a yard, \$1700.

20 Laser level land, I had to make an assumption
21 about the cost of doing this. You've heard some testimony
22 that you can't just level out one area in relation to a field
23 that's been laser leveled. I'm not sure about that, and I
24 would have to investigate that further.

25 Let's just assume that it's four acres of all

1 three sites, 1.3 acres per site as we've heard; 200 bucks
2 an acre is what I figured I had received from a gentleman
3 from the SCS in Greeley, \$800 for that; deep rip, \$100 an
4 acre times four acres, \$400. Soil amendments, \$30 an acre
5 times four is 120 bucks, for a total of \$8,420. That's an
6 initial disturbance and reclamation bond, and that's--I
7 guess the way to think about this is that if Elk went out
8 there, drilled the wells and just left everything open and
9 walked off the site, this is some of the costs that we'd
10 be incurring to clean it up.

11 The final reclamation is a rough estimate as well,
12 but that's considering they have roads removed, and I'm
13 thinking that you'd have to have four inches of roadbase
14 applied. It's a pretty good amount of money just to get the
15 roads out of there; 1350 feet times 15 feet in width, 6729
16 cubic yards, 239 a yard to remove, \$16,000; regrade, \$180;
17 facility removal, the estimation of removing the tank alone
18 is \$2,000, that was from the Means Construction Manual, and
19 regrade those sites, \$120.

20 You may just want to go ahead and ignore the
21 abandonment of the holes, that was just the fill, abandonment
22 fluid, but apparently there's an abandonment bond in place
23 already, so we can just ignore that, I think, so it would
24 be about \$18,300.

25 COMMISSIONER LARSON: Which roads are you talking

1 about? Are you talking about the roads, only the new roads
2 that Elk has to put in?

3 THE WITNESS: That's right. So that's a
4 reclamation bond estimate that I worked up at Susan's
5 request. And then there's one more thing I'd like to discuss,
6 and this is--I don't want to refute all these figures
7 today that everybody's brought up and they have all their
8 own sources, but I gathered some figures from the CSU
9 interprice budget book put out by an economics professor
10 in the Economics Department of CSU, and this came out in
11 1990 but it's for 1988 and '89 crops, and they gather more or
12 less actual data and plug it into these interprice budgets,
13 they hand these out and you can plug in current values for
14 say, fuel, seed, pesticide, land payments, whatever, and
15 then you can come up with a budget of your own.

16 This is used by lending institutions and the like,
17 so I think it's a pretty valid document. I picked out, just
18 kind of randomly, some crops, they don't have vegetable crops
19 in that, so the highest dollar crop--beets may be higher,
20 actually, but I know the Martindales don't raise beets;
21 onions, 1989 values we're using here, I guess--well, let me
22 go through the assumptions.

23 This is projected long-term crop loss calculation,
24 this is how much land will be taken out of production, and
25 seven-tenths of an acre is what I figured; 30 year life of a

1 well, and I'm utilizing this crop interprice budget, so the
2 formula used to calculate cost would be net return, which
3 is a figure that you can get out of here times seven-tenths
4 of an acre times 30 years. Then you see the crops listed
5 there, that's net return in 1989 per acre and take it times
6 30 year loss and you can see that it does add up considerably
7 on some crops, some crops it doesn't seem to add up to much
8 at all, you know, irrigated wheat being one.

9 Now, these net returns do change quite a bit from
10 year to year. 1988 for onions was \$2200 net return per acre;
11 1989 was \$1400 net return per acre. So I think this is just
12 something to try and let you know that there are, for one
13 thing, other sources out there that we can rely on, and it
14 indicates that there is some long-term crop loss.

15 Do you have any questions?

16 CHAIRMAN ANDERSON: I just want to make sure, on
17 the crop losses, then, for 1989 was anywhere from \$55 an
18 acre for wheat to \$1400 for onions?

19 THE WITNESS: That's right. That's net return to
20 the producer in northern Colorado per acre in that year, so
21 what I tried to demonstrate here is that there is some land,
22 some land that's taken out of production permanently; the
23 roads, the well site, tank battery, et cetera, and I
24 calculated that out myself to be 7¢ an acre, and I just
25 wanted to demonstrate that there is some long-term productivity

1 loss.

2 With respect to that, that does not account at
3 all for the drill site, which is 1.3 acres, that's an
4 initial four acre disturbance that you might have some
5 production loss, like clearing a crop, for instance, or the
6 compaction may take two or three years to get back to full
7 production. This doesn't really take into account that this
8 is just land that will be completely out of production as a
9 result of the well sites, the three well sites.

10 CHAIRMAN ANDERSON: So do you think this shows
11 different levels of losses, potential crop losses on different
12 crops based on 1989?

13 THE WITNESS: That's right, and the reason it's
14 1989 is because they take actual values and actual returns
15 and use it to calculate that budget for that year, but you
16 can then use that to predict your cost to raise an acre of
17 onions or potatoes or beets or whatever.

18 CHAIRMAN ANDERSON: We've heard various numbers
19 and stuff of how many years we should use in setting crop
20 losses, anywhere from one year to 30. Is there a--

21 THE WITNESS: Well, okay. Let me back up here a
22 little bit. This is for just the roads and the well site
23 that is out of production after the wells are drilled, after
24 the pits are backfilled, after all that's releveled, after
25 that's in production. This is long term of what's going to

1 be out of production, which I think is about seven-tenths of
2 an acre on this particular site. It will vary with different
3 sites, and that's why I'm using the 30 years on this. I think
4 the wells will be in production maybe 30 years, or even 20
5 years, it would be easy to calculate off 20 years as well.

6 CHAIRMAN ANDERSON: So if there were four acres
7 used--

8 THE WITNESS: Well, I don't think you would want
9 to use four acres for long term. What he indicated was that
10 a four acre disturbance, you're going to have crop loss the
11 first year, it's going to take a little time to rework it to
12 good crop condition, but by Elk's experience by year five,
13 it's basically back up to 100 percent production, I guess, is
14 what they think. I don't know if that's true or not, but
15 that's what they're saying. You kind of have to take a face
16 value on that.

17 I have observed some sites where it's obvious that
18 there is production loss that first year due to the amount
19 of litter that was on the ground; it was in a corn field and
20 you could see the drill site, it was very clear that there
21 wasn't as much forage production in that drill site as there
22 was in the adjacent undisturbed area.

23 Certainly there is crop loss the first year and
24 it should come up the year after that, if the reclamation is
25 conducted properly, and that's the key.

1 I think that this projected long-term crop loss
2 thing is just something I wanted to point out that, you know,
3 there are some real losses suffered and it's just something
4 to keep in mind, but it's not the initial disturbance, and
5 I think that's what we're here to talk about, really. I
6 just wanted to let you know that there's other figures
7 besides this Disaster Relief thing from the SCS.

8 MR. SULLIVAN: Informational question?

9 CHAIRMAN ANDERSON: Certainly.

10 MR. SULLIVAN: On the reclamation cost estimate,
11 is that--on the roads removed, is that the final reclamation,
12 1350 times 15 times 4 inches? Is that 6749 cubic yards or
13 cubic feet?

14 THE WITNESS: Cubic yards.

15 MR. SULLIVAN: You've already--

16 THE WITNESS: I've already reduced that down.

17 CHAIRMAN ANDERSON: All right. Can we--I want to
18 talk about the procedure from here. I'm worried about losing
19 a Commissioner in 45 minutes. What I would like to do, if
20 it isn't too informal, is to get the Commissioners talking
21 and asking questions and trying to begin to develop some
22 clarity and some standards both on the damage bond and the
23 reclamation bond, and that, I'm afraid, is going to involve
24 getting fairly informal, but I'd like to have the
25 Commissioners do most of the questioning and most of the

1 talking here, but I want to invite participation from both
2 sides as appropriate, but in the interest of being out of
3 here by five if we can, if that means playing 20 questions
4 and asking people for information and talking among ourselves
5 then that's what I'd like to do at this stage, if that's
6 all right.

7 MR. EVANS: Would it be appropriate for the
8 Commission to go off the record at this point, then?

9 MS. WREND: Not as long as they're going to
10 continue to get information.

11 CHAIRMAN ANDERSON: There are two issues; one is
12 the damage bond, and the other, of course, is the
13 reclamation bond. On the matter of the damage bond, my
14 understanding of the rules going in here is that we have to
15 have a failure to agree, which we clearly have; we have to
16 have had prior attempts to agree.

17 The issue, then, is what level of damages are
18 appropriate. I think what I heard from the applicant is a
19 level of damages which is at the list of possible damages,
20 it's not actual damages because we don't know what the actual
21 damages are going to be but it's the worst possible damages.

22 MR. EVANS: Worst-case scenario, that's correct.

23 CHAIRMAN ANDERSON: It's what I almost want to
24 call nightmare damages.

25 MR. EVANS: That's right.

1 CHAIRMAN ANDERSON: So one standard is nightmare
2 damages, and if that's the standard, however, which yields
3 on the damage bond a large number, there are a couple problems
4 with that from my perspective.

5 Problem number one is that it--a decision by the
6 Commission to permit damage bonds at the nightmare level is
7 a policy decision by the Commission to stop drilling in
8 Weld County, because I think that if you set that standard,
9 if the Commission were to require in this and presumably
10 other instances, to require damage bonds of that magnitude,
11 it would have the practical force of stopping drilling, which
12 would have a number of other problems.

13 In any case, my understanding is that the
14 Commission should be setting damage bonds not at our worst
15 fears, and not even necessarily at what the actual damages
16 are, but what an unreasonable damages are. Well, that's fine,
17 but what's unreasonable damages, and that's, of course, why
18 we've had this whole set of difficulties in defining it, but
19 my inclination at this stage is to look at the damages and
20 try to define, try to understand what the numbers are here,
21 to understand what--not what actual damages--not what
22 nightmare damages are and not what--we want to understand
23 what actual damages might be, but we're really providing a
24 damage bond for, if I understand the rules, is for
25 unreasonable damages, and unreasonable damages would be those

1 damages--there are certain damages that are going to be
2 incurred by virtue of the assertion of the mineral owner's
3 right to go on the property on the surface and begin to
4 extract minerals.

5 So if that's the case, what are those damages
6 which either are clearly outside those bounds or should be
7 outside those bounds if the operator behaves or comports
8 itself in a reasonable way, trying to take into account the
9 needs and problems of the surface owner, and much of the
10 activity on the surface, I think, directly incidental to
11 operations probably is incurred reasonably in the process of
12 drilling the wells and completing and producing them.

13 I think that some kind of protection for crop
14 losses is appropriate, but what I'm hoping for here is if
15 we could begin to talk about some of these things,
16 specifically and get some--the current rules say, I think,
17 that in the absence of the agreement, you come in to the
18 Commission, and on irrigated lands the Commission will set a
19 bond of no less than \$5,000.

20 Is that what the rule says?

21 MS. WREND: Yes.

22 CHAIRMAN ANDERSON: So a starting point is
23 \$5,000 per well?

24 COMMISSIONER LARSON: Yes, or a blanket bond.

25 CHAIRMAN ANDERSON: Or a blanket bond when there is

1 a blanket bond in place.

2 COMMISSIONER LARSON: That covers--where's our
3 printout?

4 CHAIRMAN ANDERSON: Elk operates, they operate on
5 510 wells in the state of Colorado or even in this area.

6 So the Commission could decide that it feels that
7 the blanket bond is adequate based on the notion that there
8 haven't been that many calls on the blanket bond in the past,
9 and until that occurs, the Commission could decide, I
10 suppose, that with this many wells that that's a pretty small
11 number and that additional production in the form of specific
12 bonds might be appropriate. And if it does it could set it
13 at \$5,000 or some other point.

14 COMMISSIONER CAMPBELL: Basically we've got two
15 limits; we've got the nightmare limit on one hand and the
16 bond that's in place now as the lower limit, so what's in
17 between? Where do we want to go?

18 CHAIRMAN ANDERSON: The Commission at this stage
19 can say there's a blanket bond in place that hasn't been
20 called, \$5,000, and that's--the Commission could set \$5,000
21 a piece or some other number. If it's some other number, we
22 have to have--

23 COMMISSIONER LARSON: I kind of don't like the
24 idea of having individual bonds on each property. I think
25 it's kind of an administrative nightmare, and I think raising

1 the blanket bond not only would benefit, like the
2 Martindales who have asked for an individual bond, but other
3 people as well. I'm not saying what the damages should be,
4 but starting at the back end, I would rather just see us
5 deal with the blanket bond, perhaps raise it, rather than
6 go with individual bonds.

7 CHAIRMAN ANDERSON: But can we do that here?

8 COMMISSIONER CAMPBELL: Who sets that \$25,000?
9 Do we do that?

10 CHAIRMAN ANDERSON: Yes.

11 COMMISSIONER LARSON: We can raise it, I would
12 think.

13 CHAIRMAN ANDERSON: Well, but can we do it for a
14 specific operator in a specific case?

15 MRS. MARTINDALE: May I ask a question?

16 CHAIRMAN ANDERSON: I prefer you do it through
17 your counsel.

18 COMMISSIONER CAMPBELL: We'd have to do it for
19 everybody, raise it for everybody.

20 COMMISSIONER LARSON: Well, it would benefit
21 everybody.

22 COMMISSIONER CAMPBELL: But everybody would have
23 to pay, not just Elk.

24 CHAIRMAN ANDERSON: The problem here for me is--
25 and I have a problem with blanket bonds at \$25,000 for

1 operators that have hundreds of wells in the state, not only
2 for damages but for plugging. That just seems to me that
3 that's a problem, but in this context in this hearing, I
4 don't know if we can be--

5 MR. EVANS: The rules say that it is provided that
6 the owner, in lieu of such bond, may file with the direct
7 good and sufficient bond in the sum of not less than \$30,000
8 covering all wells drilled or to be drilled in the state of
9 Colorado.

10 So the bond, it appears--you're right, the
11 maximum cap of the bond right now is at \$30,000.

12 COMMISSIONER LARSON: Are you reading 304?

13 MR. EVANS: Yes, 304.

14 COMMISSIONER LARSON: That's the plugging and
15 abandonment bond. We need the 304 B bond, which is 25.

16 MR. EVANS: Twenty-five thousand.

17 COMMISSIONER LARSON: Or a blanket bond in the
18 principle sum of not less than \$25,000.

19 MR. EVANS: That's right.

20 MR. SULLIVAN: One additional point on this.

21 Normally wells are--I call it collateralized; there's
22 equipment on the well, including the casing in the hole, and
23 Mr. MacMillan, you may correct me on this because my
24 economics aren't that good as far as producing wells, but it's
25 my understanding that usually the equipment on the well is

1 sufficient to cover some of the plugging and abandoning,
2 probably all of the cost of plugging and abandoning the well.

3 COMMISSIONER MACMILLAN: I don't know that for a
4 fact, but I think that's probably accurate.

5 MR. SULLIVAN: In which case you're not just
6 looking at the \$25,000 bond, you're also looking at all the
7 equipment on that well, which you can't pull the casing, so
8 there is an additional, for each of those 510 wells or so,
9 there is an amount of equipment on there which the Commission
10 could use that as take it, sell it for the value.

11 COMMISSIONER LARSON: For surface and
12 reclamation?

13 MR. SULLIVAN: For plugging and abandonment.

14 COMMISSIONER LARSON: But they're two separate
15 bonds, plugging and abandonment bond is separate from the--

16 MR. SULLIVAN: The idea I'm thinking is that the
17 value of that equipment, if they're in violation, perhaps
18 there's one way to take the value of that equipment as a
19 penalty and use that money to do the reclamation or the
20 plugging and abandonment.

21 MS. WREND: I don't think the Commission has the
22 authority to foreclose on your equipment.

23 MR. SULLIVAN: They do not, but you don't think
24 they can regulate that?

25 MS. WREND: And I don't think they want to get

1 into that business either.

2 CHAIRMAN ANDERSON: Susan, did you have a comment?

3 MS. MCCANNON: Well, I was just going to address
4 this issue of salvage credit based on equipment at the site
5 or in the hole. We don't have the authority to take
6 possession of that equipment right now, and even if we did
7 take possession of that type of equipment, it wouldn't always
8 be to the Commission's benefit; you have to go on site with
9 equipment to pull the tubing, remove it, then you have to be
10 able to liquidate it somehow, get money out of it, and
11 then you have to be able--after you've done all that, you
12 can theoretically take that money and plug and reclaim the
13 site, but it's not, it's not a good way to bond.

14 COMMISSIONER LARSON: It's not very liquid.

15 CHAIRMAN ANDERSON: Mr. Kenney?

16 MR. KENNEY: Jim Kenney with the Commission staff.
17 Part of the issue here is that if that equipment is on
18 location there are folks who specialize in salvaging wells,
19 so in many cases the Commission doesn't have to even make a
20 claim on bond even though an operator has defaulted and the
21 well is being salvaged by a different entity that deals
22 with the bankrupt operator or with the county for back taxes,
23 et cetera.

24 COMMISSIONER MACMILLAN: While you're up, one of the
25 questions in my mind is relating back to the question of do

1 we have sufficient bonds to--with the blanket coverage--to
2 handle the potential liability that exists for any particular
3 operator or whole series of operators, and I do think that
4 it's relevant to get some idea from you, Jim, I believe
5 you're the appropriate one, on what procedures have gone on
6 in the past; has anybody filed, or has the state needed to
7 go in and claim any of the bonds that have existed from any
8 of the operators, and if so, what's that procedure been like?

9 MR. KENNEY: Well, the staff does have the
10 ability to make claims on bond, it doesn't necessarily have
11 to do it through the Commission hearing with a show-cause
12 case.

13 We've made a number of claims over the years and
14 probably will continue to do so on the plugging bonds, and
15 we also use that plugging bond amount to insure that the
16 surface is restored. We have had a number of cases where
17 the operator has had to post a surface damage bond due to
18 the lack of agreement or lack of participation in the mineral
19 rights.

20 To my knowledge of nine years, I've only made one
21 claim on a surface bond and that was in Adams County for a
22 now defunct operator, so we've had very little need at this
23 point to make a claim on a surface damage bond, although
24 we have made claims on plugging bonds.

25 We have encountered some problems in the past when

1 we've had an operator that has had a significant number of
2 uneconomic wells with surface equipment removed prior to
3 going bankrupt that have presented some problems to the
4 staff in terms of getting them properly plugged and
5 abandoned and the surface restored for the bond amount in
6 place. Rocky Mountain Production stands out in my mind, a
7 company that had roughly 50 wells that were noneconomic and
8 there was a very minimal amount of equipment to offset the
9 costs.

10 We've had some problems with those in the past,
11 either through working with plugging contractors, now we
12 have our ERF and we've managed to address those types of
13 problems. I do think there is an issue that should be
14 discussed at some point at some level, probably not here,
15 about operators that have 500, 600, 700 wells in the state,
16 what the proper bonding amounts should be.

17 If we had a company like that go defunct, we're
18 not sure that we could cover the bond amount. An operator
19 that had that significant amount of wells is probably going
20 to be able to sell most of them through the value of the
21 well, and that's something that should be thought about,
22 because an operator may be bankrupt, but the property may
23 very well be producible; another operator comes in, purchases
24 it and takes over the operations.

25 CHAIRMAN ANDERSON: Okay.

1 MR. KENNEY: Any other questions?

2 COMMISSIONER MACMILLAN: To follow up, if you
3 don't mind, Mr. Chairman; how applicable is the experience
4 of needing to reclaim the plugging bond, to actually plug
5 wells, to the questions that are in front of us now, which
6 are the damage bond and the reclamation. Do you think that
7 there's a correlation between these two which are new and are
8 the subject of this discussion now, and the plugging bond
9 which has been in place for a number of years?

10 MR. KENNEY: Well, there's always been a question
11 in my mind about the relationship between those bonds,
12 because we have utilized plugging bonds to also do surface
13 restorations and plugging and abandoning wells. The way
14 Rule 319 was written, indicates to the staff that that was
15 appropriate.

16 My viewpoint, and it may just be an opinion, is
17 that the surface damage bonds went in place to act as a
18 supplement to the plugging bond; in other words, if we
19 utilize the plugging bond on a well and discovered that we
20 had insufficient funds to also do a surface restoration, we
21 would have to make a claim on that also.

22 COMMISSIONER MACMILLAN: From my perspective, the
23 surface and damage bonds need to be available for use earlier
24 than the plugging. If the reclamation of the drill site
25 isn't done properly, we need to have the opportunity to go

1 after those bonds and get the surface reclaimed as soon as
2 possible, and let's hope that that's well before the well is
3 at an uneconomic state.

4 My concern is, is if there's enough correlation
5 between the experience you have had with the plugging bond
6 and these two new bonds, that gives me some confidence that
7 we'll be able to work out the differences. If your perspective
8 is no, they're significantly different, then we've got a
9 longer period to go and we're pretty low on the education
10 and need to get up in a hurry so that they do work.

11 MR. SULLIVAN: I just have a question. Part of
12 our arguments are based on the record of Elk; they've never
13 had a bond called, they've never had complaints, although
14 I would like to follow up on the lady that Mr. Evans
15 mentioned. To what extent is the reputation of a company
16 going to play on a bond matter? Are you going to set the
17 bond the same for a company that has a perfect record as
18 one that has had repeated violations?

19 CHAIRMAN ANDERSON: I think that's been one of
20 the struggles for me in trying to think this out on the damage
21 bond and the reclamation bond as well. I'm concerned that
22 we have a number of operators, particularly in Weld County,
23 that are operators of hundreds of wells with modest state-
24 wide bonds that would not be sufficient if any of those
25 companies were to explode for whatever reason.

1 My view of the history of the oil and gas
2 business in the last 20 or so years since I've been in it
3 is that companies do explode, but I don't think the
4 Commission is going to be able to develop explosion
5 standards, or pre-explosion standards of that set of oil and
6 gas companies that are now operating in the state, which
7 ones are going to fail and which ones are not, which ones
8 are going to leave us holding the bag on plugging and which
9 one is not, because I don't think we're capable of making
10 those judgments because the kinds of hearings we'd have to
11 have on the financial condition and the moral condition of
12 the management of those companies is something that we
13 couldn't do, so a good handle is going to be the number of
14 wells that people operate.

15 It may well be that you start that as a handle and
16 then to the extent that you've got violations, fines,
17 measurable actions that the Commission has taken, you may
18 be able to have notches to which you require.

19 MR. EVANS: I really think there is also another
20 factor that you must take into consideration, and that is
21 that in Colorado you have very unique land which varies in
22 value throughout the entire state, and I think that that's
23 something that you need to keep in mind in terms of your
24 flexibility on the bonding issue.

25 What we have presented to you is a very

1 exceptional case, it's an unusual case. In fact the
2 Martindales, first as you know, they didn't sign the surface
3 damage agreement which clearly makes them eligible for a
4 bond, but more than that, they have a very unique farming
5 operation there with a very intensive and very highly
6 profitable type of operation. That makes them very different.

7 So in the sense that you're talking about one
8 state-wide damage bond, that's true, and I think you need to
9 consider one state-wide damage bond, but in also doing that,
10 you also need to consider the very uniqueness of a
11 particular person coming in front of you, the type of farming
12 operation they have.

13 For example, a \$50,000 state-wide damage bond
14 is certainly going to mean more to a cattle rancher who has
15 no farming operations whatsoever and merely has grazing
16 operations and any cattle losses that he may have as a result
17 of oil and gas operation, but in a farming operation, such as
18 the Martindales, and the Martindales are not alone, some of
19 their neighbors are just as good farmers as they are, are
20 going to have very significant losses in terms of what they
21 will face.

22 That's why I think it's really important for the
23 Commission to look at setting the bond also on an individual
24 basis, to develop in their formula some mechanism where they
25 could factor in the individual type of land, the high

1 production value of the land as well. There has to be some
2 flexibility for that, that element.

3 COMMISSIONER LARSON: So you're in favor of an
4 individual bond per well site?

5 MR. EVANS: I think it's really going to have to
6 come down to that, and I don't find it as administratively
7 as tough as you might think it might be.

8 COMMISSIONER LARSON: Can I ask Elk which you
9 would favor; raising the blanket bond or individual bonds
10 per well site?

11 MR. SULLIVAN: I hear what you're saying and what
12 Dr. Campbell is saying about how if you raise the blanket
13 bond that's going to affect more wells. That, to me, makes
14 more sense. I also heard the testimony last January where
15 they said if you're going to be raising it to the levels of
16 people affiliated with portions that the surface owner has
17 said you'd wipe out 70 percent of the operators in the state
18 of Colorado.

19 The other issue that I think--I think you do have
20 to consider uniqueness. This situation is unique in that
21 Elk doesn't have a surface damage agreement. For every other
22 well that Elk has, they've already paid, totally paid
23 damages to the surface owner for the surface damages, loss
24 of crops, reclamation, that whole thing, and they've also
25 reclaimed those sites as far as the drill sites, so there's

1 producing sites left.

2 COMMISSIONER LARSON: So you would be in favor of
3 the individual bond on something like that?

4 MR. SULLIVAN: Well, I feel--the point I'm trying
5 to get to is--no, in favor of the state wide, because it
6 would be less money and affect more wells, but you've already
7 got damages paid for 509 of those 510 wells, so I think
8 that's the uniqueness of the situation.

9 COMMISSIONER LARSON: Okay.

10 CHAIRMAN ANDERSON: All right. Well, I think
11 we're doing this in the context of a specific application.
12 I'm not--I don't know that I--I don't know that we can, in
13 that context, change the blanket bonds. I'm uncomfortable,
14 as I think other members of the Commission are, on the level
15 of our blanket bonds and the standards by which they're set,
16 but in this particular case, we--well, let's ask some
17 questions here. Maybe we can--do we think that we can deal
18 with the application here within existing bonds?

19 COMMISSIONER LARSON: Well, we have to know what
20 the amounts are.

21 CHAIRMAN ANDERSON: Well, for the existing blanket
22 bonds.

23 COMMISSIONER LARSON: We probably would have to
24 know what we value their particular losses at.

25 CHAIRMAN ANDERSON: What we think the damages are

1 and what--the damages issue, ignoring the reclamation issue
2 for the moment--what we think the reasonable number for
3 damages is, am I right?

4 COMMISSIONER LARSON: Right.

5 CHAIRMAN ANDERSON: So maybe until we deal with
6 that, we don't know--

7 COMMISSIONER LARSON: We should deal with that.

8 CHAIRMAN ANDERSON: All right. Well, let's talk
9 about that, then.

10 COMMISSIONER LARSON: Should we do the reclamation
11 bond first, since that seems to be--

12 CHAIRMAN ANDERSON: All right.

13 MS. WREND: Do you want to close the record now
14 or do you want to still keep it open to gather more
15 information?

16 CHAIRMAN ANDERSON: I'd like to be able to ask
17 questions.

18 MS. WREND: Okay.

19 CHAIRMAN ANDERSON: I was just doing damages
20 because we were talking about damages.

21 COMMISSIONER LARSON: Okay. That's fine.

22 CHAIRMAN ANDERSON: We've got to have some measure
23 in this case. We've seen--

24 COMMISSIONER LARSON: It seems like you've got the
25 initial crop loss, and I'm still not quite clear where they're

1 going to be drilling, whether you will have planted. I mean,
2 knowing that they're going to drill, you're probably not
3 going to plant; is that correct, during the time that you
4 would normally plant?

5 MRS. MARTINDALE: Well, like lettuce we plant in
6 September.

7 COMMISSIONER LARSON: Okay. But in any case,
8 there's not going to be--you have notice that they're going
9 to be drilling so you wouldn't go out and plant crops in
10 those areas knowing that they're going to come on the land
11 and rip those out; right? So we can look at net losses.

12 MRS. MARTINDALE: We don't plant--depends on the
13 crop we have in, if we get out early enough to put the
14 lettuce in, like pumpkins, they won't come out--we won't be
15 done until November. September and October is my busiest,
16 and cauliflower and stuff, we're still harvesting that in
17 October and November.

18 CHAIRMAN ANDERSON: My reaction to this is that
19 you're going to have to set some reasonable standards that
20 make reasonable assumptions. We simply don't know when or
21 which crops, those decisions may be affected by market and
22 the weather between now and whenever the well is drilled. It
23 seems to me that the best we can do is to come up with
24 reasonable numbers that are a reasonable reflection of what
25 can occur, understanding that they may or may not match

1 exactly what actually occurs, because otherwise we're never
2 going to get there, and I think there is a disposition here
3 to provide some recognition to crop losses. I think I'm
4 right on that.

5 COMMISSIONER LARSON: Right, and it seems like
6 there's two factors, the areal extent, and we've got four
7 acres. I'm a little confused, there's an 11.9 acres in
8 your exhibit and then there's also 75 acres, so we've got a
9 broad range of--

10 CHAIRMAN ANDERSON: Well, let's determine that.
11 The amount of acreage that's associated with the drill site
12 is--yes?

13 MR. SULLIVAN: Could Mr. Jacobs, the vice president
14 of Elk, restate what Elk's policy is as far as when they're
15 going to drill and what they would stipulate to on the record
16 for the acreage that they're going to be using? That may
17 help you in this particular case. Would that be of some
18 help?

19 CHAIRMAN ANDERSON: No, I don't think so.

20 COMMISSIONER LARSON: Is it four acres? Is it
21 the same as the testimony that you--

22 MR. JACOBS: I'm not in the record, so I'm not
23 sure I can respond.

24 MR. BYRD: I can respond. It's four acres on three
25 drill sites that we have some flexibility to accommodate what

1 their plans are. We're certainly not going to drill in the
2 middle of their lettuce field while they have it planted.

3 COMMISSIONER LARSON: Right.

4 MR. BYRD: But they're not going to keep it lettuce
5 year round, we don't think. We have some flexibility to move
6 these locations. All we ask is the opportunity to work with
7 them in order to do that, and we're going to minimize that
8 damage, because our experience has been if we have that
9 flexibility we can potentially eliminate that damage, can't
10 guarantee it, but--

11 CHAIRMAN ANDERSON: Mr. Evans?

12 MR. EVANS: I think we're getting confused
13 between actual damages and the bond. Actual damages are--
14 they're using best reclamation and using the very best
15 practices possible to minimize their damages. What we're
16 looking at--and I keep getting back to this worst-case
17 scenario, and there is--I think you do have to take in the
18 risk factor, maybe you won't go to the absolute nightmare,
19 maybe you'll go 80 percent of the nightmare, maybe go 70
20 percent of the nightmare, but nevertheless, you have to look
21 at the risk the Martindales are being asked to assume, and
22 that is essentially what you're doing, you're doing a risk
23 assessment; what is the risk, how much are we going to set
24 the bond for that particular risk?

25 The 75 acres that we talked about is the likelihood

1 of losing in production as a result of them coming on during
2 the growing season and just one of their irrigation tiles
3 breaking and the irrigation system failing, and as we pointed
4 out, it can take three or four weeks to get that fixed, and
5 in that particular time, 75 acres will be lost.

6 COMMISSIONER MACMILLAN: Here's the problem,
7 though, John. Excuse me, Mr. Chairman?

8 CHAIRMAN ANDERSON: Yes?

9 COMMISSIONER MACMILLAN: They're trying to say
10 we'll drill whenever the activity is minimal on the land. If
11 you'll just tell us when most of the stuff is out of the
12 field, that's when they would hope to drill, which then takes
13 all of the 75 acres and reduces it to 20 percent production,
14 when lettuce is planted in September, and winter's over and
15 comes up in the spring, and that's quite honestly, the
16 biggest frustration I've seen in this whole thing, is they
17 haven't been able to sit down and discuss with you when would
18 be the optimum time for a particular location in the field.

19 I believe I'm correct in saying they'd like to
20 do that, and I think it's in your best interest to talk with
21 them about your crop rotation and what you feel your
22 schedule is for the next 12 months, and say here's the
23 rotation of the crops right here, maybe you can drill this
24 well in this two-month window; if you can drill it and get
25 that site cleaned up, get it leveled and then move on to the

1 next one. I believe that's what they're asking.

2 MR. MARTINDALE: Can I respond?

3 COMMISSIONER MACMILLAN: Sure, I hope you do.

4 MR. MARTINDALE: What we had here was the latest
5 Elk proposal, you saw that, that was 2.67 acres per site,
6 that's what this is based on. We went out and staked the
7 sites to minimize the amount of frustration the sites would
8 cause us. Now, they just got through saying they could move
9 them. We don't want them moved, but they're going to put
10 them where they want. They said they were going to put the
11 roads where they want, all bets are off if they're going
12 to up and move everything now.

13 COMMISSIONER MACMILLAN: I think their point has
14 come across to me that they will move them at your request.

15 MR. MARTINDALE: But they do it in the wintertime,
16 I don't plant for another four months, I don't know what my
17 crops are going to do, I don't turn on my pumps until April,
18 do I know that they've crushed a pipeline? I don't know
19 that. When I plant my crops, turn on my pump and I don't
20 have any water, now I lose my crops.

21 COMMISSIONER MACMILLAN: Yeah, but there may be
22 an opportunity for you to turn your pumps on after they've
23 completed their operations just to test to see how the lines
24 are, and particularly during a non-intense agricultural
25 period, like the fall or winter or early spring; there's an

1 opportunity for you to test that and then prepare for your
2 optimum growing season for that particular plot of ground;
3 is that correct, or do I still need some education here?

4 MR. MARTINDALE: Well, there's a couple things.
5 If you come up in our area, you can see they put in a
6 20 inch pipeline, that is probably not Elk, okay? They're
7 running a 20 inch pipeline from where we are out to--it is
8 sunk. Now, the farmer can't get the water through there,
9 he's got onions there, onions on one side and spinach on the
10 other; go look at it, they're not growing. That's what I
11 expect a pit to do, the trenchlines, is to sink, to settle.

12 I can't get water through them. I won't know
13 what damage has happened until afterwards, until it's all
14 over and said and done. Now, you heard last month the
15 fieldmen say that they had to bring in more top soil to a
16 guy, he's already got his crop in, what are you doing to do,
17 bring in dump trucks and dump it all over and have to relevel
18 the ground and try to plant? We don't know that until it's
19 all over.

20 If those pit areas settle at a 90 by 120 foot
21 hole, two of them, and I've got one of these at the top end
22 of my field, I've lost that whole bottom end of the field,
23 I can't get anything to it.

24 MR. SULLIVAN: We've got a witness back there who
25 will--

1 MR. MARTINDALE: The other thing was that we've
2 heard people say about claims against the bond; once you sign
3 the surface agreement you waive that. It's probably why you
4 haven't seen them, I mean, a guy that grows field corn,
5 \$128 an acre profit, and he turns around and you offer him
6 \$2500 a site, why he's going to snap that up.

7 CHAIRMAN ANDERSON: Mr. Jacobs, did you--

8 MR. JACOBS: Mr. Chairman, if I may. Ron Jacobs,
9 vice president and general counsel of Elk Exploration. I've
10 heard a lot of assertions here. All I want to say is that
11 we have bent over backwards to deal with these folks, and
12 we're still willing to. We've done it in between sessions,
13 tried to get together with them again, and there's a lot of
14 saber rattling about what will happen, and they've been
15 invited to talk to everybody who we've drilled on in the past,
16 they've been invited to meet us out in their fields so we
17 can bring this down from global issues into microissues that
18 we can deal with.

19 We have asked them to visit with us at our other
20 operations, let's talk about it, we've drilled on irrigated
21 crop land, we've drilled on laser level land with beets on
22 it, we've drilled on land with underground sprinklers. We can
23 deal with these problems if we know what we're dealing with.

24 If they would come to the table in good faith
25 and sit down we can manage all this, and, you know, it's just

1 been very, very difficult dealing with people that just flat
2 don't want wells so they're naturally resistant, and I
3 understand the resistance, but if they'll come to the table
4 and come to grips with this issue, we can deal with it.

5 There's no need for a million dollar bond,
6 \$100,000 bond, or any additional bonds, there's no need for
7 additional damage bonds. We talked about bringing top soil
8 in to somebody, that's part of the reclamation process; you
9 do it on the front end. If it doesn't work, you come back
10 and do it right. We brought 22 dumploads of new top soil
11 prior to planting because he gave us notice, said there was
12 a problem and we dealt with it.

13 I don't know how much cleaner our hands can be
14 coming to the table on this issue.

15 CHAIRMAN ANDERSON: Do you think that at this
16 stage if the Commission were to recess and ask that you try
17 to resolve this with the Martindales that there's any chance
18 of success?

19 MR. JACOBS: I would say we're more than willing
20 to try, but it takes two to dance.

21 CHAIRMAN ANDERSON: Mr. Evans?

22 MR. EVANS: I think we've already dealt with the
23 issues of the surface damage agreement. There are some serious
24 problems with that surface damage agreement, including the
25 waivers that are contained in it. There is a lot at stake.

1 MR. JACOBS: Mr. Chairman, the agreement says
2 prior to commencement we will use our best efforts to deal
3 with them to locate the tank battery, we'll level the land,
4 we can use laser leveling if need to be there, the contour
5 will be back to the same contour, the top soil will be
6 removed and kept separate; we'll prepare approximately 2.6
7 acres, which we've now agreed, or would have agreed across
8 the table to make 1.3 acres, the roads will be 15 feet wide,
9 we'll put in culverts, we agree to be responsible to damage
10 to any subsurface improvement directly caused by us; we'll
11 give them notification before entering the lands on rework.
12 What more could they want besides big profits?

13 CHAIRMAN ANDERSON: Well, I recall strenuous
14 objection to the provision that once this is done they had
15 admitted that any further damages, any further claims were
16 given up. I don't remember where it was now, but I remember
17 Mrs. Martindale saying that there was a real problem with
18 signing an agreement that waived future claims and waived--

19 COMMISSIONER LARSON: I have a real problem with
20 renegotiating a contract between these parties. I think both
21 parties have an absolutely reasonable basis and they cannot
22 reach agreement, and I don't think we can force parties to
23 contract. I mean, that's an essential element of a contract,
24 is that of their own free will they have mutual agreement
25 and they can't, and both of them have tried. I just--I don't

1 like--I'm uncomfortable with revisiting this, and our
2 statute allows us to set a bond and I think that's what we
3 should focus on.

4 CHAIRMAN ANDERSON: Okay. Let me ask a question
5 here. Commissioner MacMillan, when are we going to lose you?

6 COMMISSIONER MACMILLAN: At quarter after five,
7 absolute the last time.

8 COMMISSIONER LARSON: What are--can we look at
9 our options? I don't think I can make a decision in three and
10 a half minutes, I mean 18 and a half minutes.

11 CHAIRMAN ANDERSON: Can people continue tomorrow?

12 COMMISSIONER LARSON: I can.

13 COMMISSIONER MACMILLAN: For how long?

14 CHAIRMAN ANDERSON: I don't know. The morning.

15 COMMISSIONER MACMILLAN: Well, if we can't set a
16 time, then I can't meet tomorrow. If we can set a time period
17 that we will resolve this issue, I'll attempt to rearrange
18 my schedule so that I can meet for several hours.

19 CHAIRMAN ANDERSON: Well, let me ask the parties;
20 can we continue this until tomorrow morning?

21 COMMISSIONER LARSON: Are we going to close the
22 record, or are we going to do it--I mean, do we need--

23 CHAIRMAN ANDERSON: Well, what do you think?
24 Close the record and then--

25 COMMISSIONER LARSON: What are our options, Julie?

1 MS. WREND: Close the record tonight, and then
2 you can either decide to deliberate in which case the only
3 questions you need to ask are questions are for clarification
4 and make a decision, or if you still feel like you need
5 additional information, reopen it in the morning.

6 CHAIRMAN ANDERSON: But if we--

7 MR. EVANS: May I make a recommendation?

8 CHAIRMAN ANDERSON: Yes.

9 MR. EVANS: Mrs. Martindale, if we do meet
10 tomorrow, would like to meet early so she can get back in to
11 the fields, she's setting plants out and this is a real
12 important time for her.

13 CHAIRMAN ANDERSON: Well, it may be that we're
14 far enough along here that we can just close the record and
15 talk among ourselves.

16 COMMISSIONER LARSON: I think it's a lot of policy
17 issues, really.

18 CHAIRMAN ANDERSON: The problem is this is new
19 ground for us. I don't want to be forced to do all this in
20 the next 16 minutes.

21 COMMISSIONER LARSON: Legislature had a hard time
22 with it.

23 MR. EVANS: All we have to do is introduce our
24 bill early.

25 CHAIRMAN ANDERSON: Perhaps that's the proper

1 conclusion here. We'll close the record, which has the
2 result, as I understand it, then, that the Commission can
3 talk among themselves. It can only rely on what information
4 has already been provided to it and what we can tell each
5 other that we know is true. What are we going to be able
6 to ask? We can ask for factual--what can we ask for?

7 MS. WREND: At this--if you're going into
8 deliberations, then the record is closed, and then really the
9 only questions you can ask are clarifying questions,
10 questions that clarify evidence or facts that are already in
11 the record. You also have the option of reopening the
12 record if you feel you need to get more information.

13 CHAIRMAN ANDERSON: I think we've probably got
14 enough information. It's a matter of having us be able to
15 sort it through in an orderly way. This is just significant
16 enough, I don't want to have to be bound by a time schedule.
17 The consequence of that is that we probably don't need
18 Mrs. Martindale here in the morning, but we do need you.

19 MR. EVANS: Right.

20 CHAIRMAN ANDERSON: Is that all right with you,
21 Mr. Sullivan?

22 MR. SULLIVAN: I think so. I just want to make a
23 comment that there are certain members from Elk who cannot
24 make it tomorrow morning, but if you're closing the record--

25 CHAIRMAN ANDERSON: We're going to close the

1 record, and the problem here is that we not only have factual
2 issues that we have to deal with, but I think the
3 Commissioners just want to talk about this some more and try
4 to lay some tracks that they're comfortable with in an area
5 that's new to us. I just don't want to do it under a time
6 pressure, but I think you're the only one, Mr. Evans, if we
7 have questions on factual matters that we can't dig out of
8 our notes or we can't remember, would be helpful, but I
9 think we'll be able to proceed without the witnesses.

10 All right.

11 MR. WALDRON: Mr. Chairman, I might just point out
12 that I made a fairly serious error on this final reclamation
13 estimate, and I'd just like to point that out.

14 CHAIRMAN ANDERSON: All right.

15 MR. WALDRON: There's 6,749, I said cubic yards,
16 that should have been cubic feet and it reduces that sum
17 considerably.

18 CHAIRMAN ANDERSON: Where are you again?

19 COMMISSIONER LARSON: Do you need a calculator?

20 MR. WALDRON: \$537 would be the cost.

21 COMMISSIONER LARSON: Under roads removed?

22 MR. WALDRON: Right.

23 COMMISSIONER LARSON: Okay.

24 COMMISSIONER CAMPBELL: And the figure again is
25 what?

1 MR. WALDRON: Five thirty-seven.

2 COMMISSIONER LARSON: Instead of 16,000?

3 MR. WALDRON: Well, sure. I did this hastily,
4 and I forgot to--

5 COMMISSIONER LARSON: That makes a big difference.

6 MR. WALDRON: It does make a big difference in
7 the final reclamation cost, then, 3,737 would be the final
8 cost, then.

9 CHAIRMAN ANDERSON: How much?

10 MR. WALDRON: 3,737.

11 COMMISSIONER LARSON: It's 19,200 less 900 because
12 we took out abandoning three holes, and now we're taking an
13 additional--

14 MR. BYRD: It's 2837.

15 COMMISSIONER LARSON: Thank you.

16 CHAIRMAN ANDERSON: All right. I think that's--

17 MR. EVANS: What's the final numbers here? I want
18 to make sure that I've got this correct.

19 CHAIRMAN ANDERSON: I have 2,837, having deleted
20 the \$900 for the abandoned three holes that was done before,
21 and having changed the 16,000, the \$16,000 to \$537 because
22 there was an error in the computation of the number of cubic
23 yards. The actual number of cubic yards is what?

24 MR. EVANS: Two hundred twenty-five cubic yards?

25 MR. WALDRON: That's right.

1 CHAIRMAN ANDERSON: All right.

2 MR. WALDRON: I went through the top part of it,
3 and I believe that is still correct.

4 CHAIRMAN ANDERSON: Okay.

5 MR. MARTINDALE: You don't put on there about
6 putting top soil back. You take out the roadbase but you
7 don't put top soil back.

8 CHAIRMAN ANDERSON: All right. So at that stage
9 we're going to do two things; we're going to close the
10 record on this matter, we're going to continue it until
11 tomorrow morning, at which time the Commissioners are going
12 to talk among themselves and decide. Now the question is
13 what time are we going to begin? Without Mrs. Martindale,
14 I guess that means that we could begin at a reasonable hour.
15 8:30 is when we normally begin. Does that work for
16 everybody?

17 COMMISSIONER LARSON: Where?

18 CHAIRMAN ANDERSON: Here? Trisha, we've reserved
19 the room here?

20 MS. BEAVER: I've told them we weren't going to
21 be here. I don't know if they've--

22 CHAIRMAN ANDERSON: Shall we just meet in the
23 Commission offices, then?

24 COMMISSIONER LARSON: I would prefer that because
25 it's closer to the office.

1 MS. BEAVER: That"s okay.

2 CHAIRMAN ANDERSON: Is the room fixable?

3 MS. BEAVER: Oh, sure.

4 CHAIRMAN ANDERSON: Okay. We will begin at
5 8:30, and we will be out of there at what time? What time
6 do you need to be out?

7 COMMISSIONER MACMILLAN: Ten thirty. Unless we
8 want to start earlier, that's fine by me.

9 CHAIRMAN ANDERSON: All right. Well, my preference
10 is if we go until 10:30--was that what you said--that we
11 begin a half hour earlier.

12 MR. EVANS: So we're going to begin at 10:30
13 tomorrow?

14 COMMISSIONER LARSON: No, we're going to start at
15 8. Start at 8, stop at 10:30?

16 CHAIRMAN ANDERSON: All right. Eight o'clock
17 tomorrow morning we will continue this, and we will be
18 done no later than 10:30, in the Commission's offices at
19 15th and Logan.

20 (Whereupon, the hearing was
21 concluded.)
22
23
24
25

CERTIFICATE

This is to certify that the attached proceedings before:

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

In the Matter of: DELORES MARTINDALE

Date: MAY 17, 1993

Location: DENVER, COLORADO

were held as herein appears, and that this is the
original transcript thereof for the file of the file.

Lynn Frost
Official Reporter

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