

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

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

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR AN ORDER )  
REQUIRING SABA ENERGY OF TEXAS, INC., TO )  
PROPERLY PLUG SIX WELLS, IMPOSING CIVIL )  
PENALTIES IN THE EVENT OF FAILURE TO )  
COMPLY, AUTHORIZING THE DIVISION TO PLUG )  
SAID WELLS IN DEFAULT OF COMPLIANCE BY )  
OPERATOR, AND ORDERING A FORFEITURE OF )  
APPLICABLE SECURITY, IF ANY, LEA COUNTY, )  
NEW MEXICO )

CASE NO. 13,163

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR AN ORDER )  
REQUIRING SABA ENERGY, INC., TO BRING )  
SIX WELLS INTO COMPLIANCE WITH )  
19.15.4.201 NMAC, ASSESSING CIVIL )  
PENALTIES AND AUTHORIZING THE DIVISION )  
TO PLUG SAID WELLS AND FORFEIT THE )  
APPLICABLE SECURITY IN DEFAULT OF )  
COMPLIANCE BY THE OPERATOR, LEA COUNTY, )  
NEW MEXICO )

CASE NO. 13,163  
(Amended)

2004 JUL 27  
Filed  
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ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
FRANK T. CHAVEZ, COMMISSIONER

July 15th 2004  
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, July 15th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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Commission Hearing  
CASE NO. 13,163

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## A P P E A R A N C E S

## FOR THE COMMISSION:

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## FOR THE DIVISION:

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## FOR HARTONS AND DUNCANS:

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By: MICHAEL A. SHORT

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 11:57 a.m.:

3           CHAIRMAN FESMIRE: The next item on the docket is  
4 Case 13,163, the Application of the New Mexico Oil  
5 Conservation Division for an order requiring Saba Energy of  
6 Texas, Inc., to properly plug six wells, imposing civil  
7 penalties in the event of failure to comply, authorizing  
8 the Division to plug said wells in default of compliance by  
9 operator, and ordering a forfeiture of applicable security,  
10 if any, in Lea County, New Mexico.

11           Yesterday, I was informed that Saba Energy's  
12 attorney had withdrawn. Is there a representative of Saba  
13 Energy present today?

14           (No response)

15           CHAIRMAN FESMIRE: That being the case, I believe  
16 Ms. MacQuesten is prepared to go ahead with her case, but  
17 before we start I think we're going to break for lunch and  
18 reconvene at one o'clock to begin that case.

19           Is there a motion to that effect?

20           COMMISSIONER CHAVEZ: I move we break for lunch.

21           COMMISSIONER BAILEY: I second.

22           CHAIRMAN FESMIRE: We'll accept that motion and  
23 break for lunch until one o'clock.

24           (Thereupon, a recess was taken at 11:56 a.m.)

25           (The following proceedings had at 1:00 p.m.)

1           CHAIRMAN FESMIRE: We're going to reconvene the  
2 Thursday, July 15th, meeting of the New Mexico Oil  
3 Conservation Commission. For the record, it's one o'clock,  
4 and the case before the Commission now is Cause Number  
5 13,163, the Application of the New Mexico Oil Conservation  
6 Division for an order requiring Saba Energy of Texas, Inc.,  
7 to properly plug six wells, imposing civil penalties in the  
8 event of failure to comply, authorizing the Division to  
9 plug said wells in default of compliance by operator, and  
10 ordering a forfeiture of applicable security, if any.

11           This is related to another order in this case --  
12 application in this case, it's the Application of the New  
13 Mexico Oil Conservation Division for an order requiring  
14 Saba Energy, Inc., to bring six wells into compliance with  
15 19.15.4.201 NMAC, assessing civil penalties and authorizing  
16 the Division to plug said wells and forfeit the applicable  
17 security in default of compliance by the operator. These  
18 wells are located in Lea County, New Mexico.

19           We'll call for appearances at this time.

20           MS. MacQUESTEN: Gail MacQuesten appearing for  
21 the Oil Conservation Division.

22           MR. SHORT: Michael Short appearing for the  
23 Hartons and the Duncans, who are the mineral owners of the  
24 Harton Number 1 well. And let the record reflect I'm only  
25 appearing for purposes for that one well out of the six

1 that are noticed.

2 CHAIRMAN FESMIRE: Ms. MacQuesten, are you  
3 prepared to begin your case at this time?

4 MS. MacQUESTEN: Yes, Mr. Chairman, but I would  
5 like some instruction from the Commission. We do have two  
6 applications on the docket, and I'd like to explain that.  
7 The operator filed for *de novo* review, and that was the  
8 initial Application before the Commission.

9 I then filed an amended application, that's the  
10 second one. The reason I filed an amended application was  
11 to clarify certain matters, because if the Commission had  
12 looked at the original Application before the Division and  
13 the order that was issued by the Division, they would see  
14 that they don't match, because this case evolved through  
15 its presentation. So I filed an amended application to  
16 basically bring the Commission up to date on the issues  
17 that it would be hearing.

18 CHAIRMAN FESMIRE: Okay.

19 MS. MacQUESTEN: Now, because Saba has not  
20 appeared in this case, I'm not sure how you would like us  
21 to proceed. I have several options. One would be to ask  
22 the Commission to accept into evidence in this case the  
23 record that was made before the Division and ask you to  
24 rule on that basis. If the Commission wishes us to go  
25 forward and present our case *de novo*, we're certainly

1 prepared to do that. I have an exhibit packet for the  
2 Commission, and I have Chris Williams, who would be  
3 available to testify by telephone.

4 CHAIRMAN FESMIRE: Okay.

5 MS. MacQUESTEN: We can proceed either way.

6 CHAIRMAN FESMIRE: Okay. For the record, Saba's  
7 attorney, old attorney, has notified you that they've  
8 withdrawn?

9 MS. MacQUESTEN: Yes, I received a copy of the  
10 notice of withdrawal that was sent to the Commission.

11 CHAIRMAN FESMIRE: Okay, and what was the  
12 effective date of that withdrawal? Do you remember?

13 MS. MacQUESTEN: I thought I had that.

14 CHAIRMAN FESMIRE: I've probably got it.

15 MS. MacQUESTEN: It was dated the 13th of July,  
16 and it read, "James Bruce hereby withdraws from this  
17 matter."

18 CHAIRMAN FESMIRE: Okay, and James Bruce was the  
19 attorney of record in this case?

20 MS. MacQUESTEN: Yes, he appeared for Saba at the  
21 Division level.

22 CHAIRMAN FESMIRE: Has anyone else made their  
23 appearance in this case for Saba, or notified you that they  
24 intend to?

25 MS. MacQUESTEN: I have not received anything.

1           CHAIRMAN FESMIRE: I believe, David, that we  
2 ought to proceed *de novo* in this and establish a record.

3           MR. BROOKS: I think that that is true. I  
4 believe it probably would be in the discretion of the  
5 Commission to allow the Division record to be admitted in  
6 evidence as a record, although the Statutes do not speak to  
7 that issue, and I do believe that the Division has the  
8 burden of proof in this proceeding, even though the  
9 Appellant has not appeared.

10           CHAIRMAN FESMIRE: Okay. So with the  
11 Commission's permission we'll accept the record in the  
12 lower proceeding and then allow the State -- the Oil  
13 Conservation Division, to proceed with their case.

14           MS. MacQUESTEN: Would you like me, then, to  
15 treat this as a true *de novo* and begin the case again?

16           CHAIRMAN FESMIRE: Please.

17           MS. MacQUESTEN: All right. In that case, I  
18 would like to give the Commission copies of an exhibit  
19 packet I've prepared. Now, this duplicates in many  
20 respects the exhibit packet that was presented below, but  
21 it does have some new material, and I thought it might be  
22 more convenient for the Commission to have it in the form  
23 of a packet.

24           And because this case has a somewhat convoluted  
25 history, I would ask for permission to give a brief opening

1 statement explaining how we got to this point in the case.

2 CHAIRMAN FESMIRE: Please.

3 COMMISSIONER CHAVEZ: Could I ask a question,  
4 though, on this -- Dave, maybe you can advise now. When a  
5 case is heard *de novo*, does the application have to be  
6 identical, or is a slight amendment -- be okay the way this  
7 is done?

8 MR. BROOKS: I don't know any reason why the  
9 Applicant cannot amend an application after a *de novo* case  
10 is filed, and I do not -- I'm not fully advised as to  
11 exactly at what time this amendment was filed, but our  
12 rules don't place any constraints on the right to amend an  
13 application, and I -- assuming that that amendment was  
14 served on the Respondent, which of course the Commission  
15 can clarify if there's any concern about that, then it  
16 would have been for the Respondent to object to surprise in  
17 terms of anything in the amendment, and if they have not  
18 done so, then the application will be made.

19 COMMISSIONER CHAVEZ: Okay, thank you.

20 CHAIRMAN FESMIRE: Does that answer your  
21 question?

22 COMMISSIONER CHAVEZ: Sure does, thank you.

23 CHAIRMAN FESMIRE: Ms. MacQuesten, if you'll  
24 proceed, please?

25 MS. MacQUESTEN: Thank you. In this case the

1 Division seeks to bring six wells into compliance with Rule  
2 201. The original application in this case was filed 10  
3 months ago in September of 2003, shortly after I started  
4 with the Division.

5 Originally the Division thought that this was an  
6 orphan well case with no operator available to bring the  
7 wells into compliance. We thought that because these are  
8 the only six active wells operated by Saba, we had received  
9 no response from Saba to several letters, and according to  
10 the PRC website Saba was no longer doing business in New  
11 Mexico.

12 And in fact, when we filed the application and  
13 mailed notice of the first hearing, which was scheduled for  
14 October 9th, to the addresses in the OCD records, the  
15 letters were returned "addressee unknown".

16 The Division asked for a continuance until  
17 November 7th, 2003, to try additional addresses. We used  
18 addresses from the Tax Department, Public Regulation  
19 Commission website and web search engines. This time we  
20 received a response from Saba, from a California address.

21 The response took the form of a motion from Saba  
22 seeking a three-month continuance. The continuance was  
23 based on information they had that four of the wells were  
24 subject to lawsuits over the lease. Saba stated that these  
25 wells were capable of production, and they did not want to

1 plug them pending the outcome of the lawsuit.

2 They also pointed out that two of the wells, the  
3 San Simon wells, were on a state lease that had expired,  
4 and Saba didn't know if the new leaseholder wanted to use  
5 those wells.

6 They were granted that three-month continuance,  
7 and at the hearing scheduled for February 19th, 2004, Saba  
8 appeared. Saba said that they had not checked to see  
9 whether they could plug or TA any of the wells, they hadn't  
10 checked to see if any of these other parties were  
11 interested in the wells, and the Hearing Examiner ordered  
12 the Division attorney to contact the parties to the lawsuit  
13 to see if they were interested in the wells and to check  
14 with the new state leaseholder to see if that party was  
15 interested in the wells.

16 The case was continued until April 1st, to give  
17 those parties the opportunity to show cause why the order  
18 should not be entered requiring the wells to be brought  
19 into compliance.

20 The attorneys for the Plaintiffs in the lawsuit,  
21 and that's Mr. Short here, requested that two of the wells,  
22 the Harton State Number 1 and the Fern Guye, be placed on  
23 temporary abandonment status, rather than be plugged.

24 The letter that we received from Mr. Short did  
25 not indicate anything about the other two wells that were

1 subject to the lawsuit, and we heard nothing from the new  
2 State leaseholder about any interest in their wells.

3 At that point the Division asked that the wells  
4 be either plugged or put on temporary abandonment status.  
5 And we asked that if they were put on temporary abandonment  
6 status, that Saba post single well bonds and clean the  
7 sites. One of the sites had leaks and spills.

8 We requested additional bonding for three  
9 reasons.

10 Testimony from Chris Williams was that the  
11 \$50,000 blanket bond that Saba had in place probably would  
12 only suffice to cover plugging two of the wells, so we were  
13 concerned that the State would be left to plug the  
14 remaining wells; Saba had already shown by its actions that  
15 it was capable of leaving the state without taking care of  
16 its responsibilities; and we had no assurance that we had a  
17 new operator to take over responsibilities. After all, Mr.  
18 Short had expressed interest in only two of the wells, and  
19 there were four other wells to be plugged.

20 The order from the Division Examiner gave the  
21 Division essentially what it asked for. It instructed Saba  
22 to plug two of the wells, the wells on the State lease,  
23 because no one had expressed an interest in those wells.  
24 As to the other wells, the Division Examiner told Saba to  
25 either plug the wells or place them on temporary

1 abandonment status, and required that if the wells were  
2 placed on temporary abandonment status, that bonds be  
3 posted.

4 The order also imposed a penalty of \$1000 per  
5 well per day if Saba failed to comply by the deadline,  
6 which was June 1st.

7 Now we are here before you on *de novo* review. We  
8 now know that this is not an orphan well case, that an  
9 operator does exist. We are here to ask for an order  
10 requiring that operator to bring the wells into compliance  
11 by either plugging or by placing the wells on temporary  
12 abandonment status, and if they are placed on temporary  
13 abandonment status we ask the Commission to impose  
14 additional bonding and cleanup of the sites.

15 One of the reasons I filed the amended  
16 Application was to have the opportunity to ask the  
17 Commission to impose an additional penalty in this case.  
18 I'm not sure that that issue is valid at this point,  
19 because I doubt seriously that we would be able to find  
20 Saba in order to impose any penalty, but I had hoped that  
21 if Saba appeared that we could discuss the possibility of  
22 imposing a penalty in addition to the one imposed by the  
23 Division Examiner in this case, because it is clear it's  
24 not an orphan well case.

25 They had been on notice since October of 2003

1 that work needed to be done on these wells, and they have  
2 not done anything to date. To date we have received no  
3 information that any work has been conducted on the wells,  
4 no bond -- no additional bonds have been posted, no stay  
5 was requested in this case.

6 CHAIRMAN FESMIRE: Ms. MacQuesten, has any  
7 suggestion of bankruptcy been filed or is there any  
8 indication that Saba is being liquidated or --

9 MS. MacQUESTEN: I don't know the answer to those  
10 questions, I'm not aware of that. I don't know if Mr.  
11 Short has any information on that.

12 MR. SHORT: I don't know. Saba Energy of Texas  
13 is one of the Defendants in the case, but it is our  
14 understanding that that entity was acquired by Greka, A.M.  
15 And Greka, A.M. -- and there's another Greka that was a  
16 public company and that has since been taken private,  
17 within the last year, by the president of that company. If  
18 you can take a public company private, it would seem to me  
19 that there's probably some money somewhere.

20 Now, I'm not saying that there won't be debt  
21 associated with it; I'm sure that there is. But I will  
22 also say that Greka, A.M., has been the true owner of this  
23 property since the late 1990s, not Saba Energy of Texas,  
24 and they've made no steps whatsoever to qualify themselves  
25 as the true operator. They are the ones who had the

1 employees out there. Saba Energy of Texas hasn't operated  
2 these wells. It's been a name-only operation.

3 I don't know what activities the State can take  
4 against the true owner of that property, but it seems to me  
5 that you might have some action against the true owner of  
6 the property for failing to follow proper procedure after  
7 they acquired this interest and did qualify.

8 CHAIRMAN FESMIRE: Who is the owner of record on  
9 the --

10 MR. SHORT: The owner of record is --

11 CHAIRMAN FESMIRE: -- county records?

12 MR. SHORT: -- Greka, A.M. And I'm sorry, I did  
13 not think about bringing the documents, you know, here  
14 today for that purpose. But we certainly have certified  
15 copies of those instruments that are recorded in Lea  
16 County.

17 CHAIRMAN FESMIRE: Okay, how do you spell that?

18 MR. SHORT: G-r-e-k-a, A.M. -- capital A, capital  
19 M -- Corporation.

20 CHAIRMAN FESMIRE: But it's a --

21 MR. SHORT: It's a subsidiary company of, I  
22 think, Greka, what used to be the public company.

23 CHAIRMAN FESMIRE: And you're telling me that  
24 four out of the six leases, four out of the six wells, have  
25 some economic value and they're located in New Mexico?

1 MR. SHORT: I can't tell you that. What I can  
2 tell you is, the only well of these six that are involved  
3 in the litigation that we're involved in, in front of Judge  
4 Clingman, is the Harton State Number 1 well.

5 CHAIRMAN FESMIRE: Okay.

6 MR. SHORT: Even the Fern Guye well, which we  
7 asked for it to be just placed on temporary, we believe  
8 that there are recoverable reserves there, but it's not a  
9 part of the lawsuit, so I'm not going to come before the  
10 Commission and ask the Commission to do anything except for  
11 what I know -- you know, as far as what we have, you know,  
12 engineering proof on --

13 CHAIRMAN FESMIRE: Okay.

14 MR. SHORT: -- as far as that one well.

15 CHAIRMAN FESMIRE: At least one well out of the  
16 six appears to have economic value that the State could act  
17 against.

18 MR. SHORT: Well, the real issue there is the  
19 ownership now. So the answer is, yes, some -- There is a  
20 well there that has real economic value, and whoever the  
21 new operator is, or is to become, assuming it is not going  
22 to be Greka or Saba, then at some point in the future when  
23 the ownership of that wellbore and the leasehold is  
24 determined, there would be a very viable lease there for  
25 the State to look to, at least with respect to that one

1 property.

2 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten,  
3 proceed. I'm sorry.

4 MS. MacQUESTEN: I understand the Commission has  
5 already taken administrative notice of the file below; is  
6 that correct?

7 CHAIRMAN FESMIRE: Yes.

8 MS. MacQUESTEN: All right. I have prepared a  
9 packet of exhibits for the Commission. I would ask the  
10 Commission to take administrative notice of Exhibits 1 and  
11 2 in that packet. Those are documents from the PRC  
12 website, and they show that the corporate status of Saba  
13 Energy of Texas, Inc., has been revoked since June 20th of  
14 2003.

15 I would also ask the Commission to take  
16 administrative notice from the file below of Exhibit Number  
17 3. This is the entry of appearance and request for  
18 continuance filed by Saba in this case, dated October 31st,  
19 2003. I was introducing this for the purpose of showing  
20 that they've known since at least this time that there were  
21 problems with these wells and that the Division was asking  
22 for them to be brought into compliance.

23 I would also ask that the Commission take  
24 administrative notice from the file below of Exhibit Number  
25 4. This is the letter from attorney Michael Short on

1 behalf of the Plaintiffs in the lawsuit requesting that two  
2 of the wells be placed on temporary abandonment status,  
3 rather than having them be plugged.

4 I would ask the Commission to accept Exhibit  
5 Number 5. This is an affidavit from OCD employee Jane  
6 Prouty with a printout of the ONGARD production data for  
7 all six of the wells, and it shows that they have had no  
8 activity for at least one year, plus 90 days, as required  
9 by Rule 201.

10 The affidavit also has as its second exhibit a  
11 printout of information from our RBDMS system, showing that  
12 these six wells are the only wells listed as active for  
13 Saba. There was one other Saba well, and that one wasn't  
14 plugged.

15 I would also ask the Commission to accept Exhibit  
16 Number 6. This is an affidavit from Dorothy Phillips with  
17 a copy of the applicable \$50,000 blanket plugging bond  
18 showing the financial assurances that are in place now by  
19 Saba.

20 Her affidavit also indicates that no additional  
21 financial assurances have been posted by Saba after the  
22 entry of the Division's order.

23 At this time I would like to call the Division's  
24 only witness, Chris Williams, and he will be testifying by  
25 telephone.

1           COMMISSIONER CHAVEZ: While we're doing that,  
2 does this entry for appearance by Saba indicate that they  
3 are assuming responsibility for operatorship of these  
4 wells? Is that the way you're interpreting that, and want  
5 us to interpret this?

6           MS. MacQUESTEN: Originally, I had wanted you to  
7 include this in the packet simply to show that they have  
8 been aware since -- I believe it's October 31st of last  
9 year -- that the OCD considered them in violation of the  
10 Rule. I was presenting that as background information for  
11 asking for a penalty to be imposed from that time period  
12 forward.

13           But you're correct, it's also an indication that  
14 they do seem to accept responsibility for these wells, and  
15 they did, in fact, appear before the Division Hearing  
16 Examiner and did not argue that they were not the  
17 responsible party.

18           CHAIRMAN FESMIRE: Okay. Greka is the owner on  
19 the county records, but there's been no change in the  
20 operatorship on our records; is that correct?

21           MS. MacQUESTEN: That's correct.

22           CHAIRMAN FESMIRE: So Saba is still the operator,  
23 and they have a valid plugging bond in place.

24           MS. MacQUESTEN: That's true. Now you'll see as  
25 we go through some of the exhibits in this case from the

1 well files that there was a point in time in which Greka's  
2 name started appearing on the well files. But that was due  
3 to a misunderstanding. The official operator of record is,  
4 and has always been in the eyes of the OCD, Saba Energy of  
5 Texas, Inc., and Saba is the entity that holds the bond in  
6 this case.

7 If you don't mind, I'll move over closer to the  
8 phone so Mr. Williams can hear me.

9 MR. WILLIAMS: This is Chris.

10 MS. MacQUESTEN: Chris, this is Gail  
11 MacQuesten --

12 MR. WILLIAMS: Uh-huh.

13 MS. MacQUESTEN: -- and we're in front of the  
14 Commission --

15 MR. WILLIAMS: Uh-huh.

16 MS. MacQUESTEN: -- and I'd like to have you  
17 sworn in as a witness in the Saba case.

18 MR. WILLIAMS: I'm sorry, I couldn't hear you.

19 MS. MacQUESTEN: Chris we're before the  
20 Commission on the case involving Saba Energy of Texas, Inc.  
21 Can you hear me?

22 MR. WILLIAMS: Yeah.

23 MS. MacQUESTEN: All right, I'd like to have  
24 Chris sworn in as a witness, please.

25 (Thereupon, the witness was sworn.)

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CHRIS J. WILLIAMS,

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

DIRECT EXAMINATION

BY MS. MacQUESTEN:

Q. Would you please state your name for the record?

A. Chris Williams.

Q. And what is your title?

A. District Supervisor.

Q. Who do you work for?

A. New Mexico Oil Conservation Division.

Q. Where is your district located?

A. In Hobbs, New Mexico.

Q. Does your district include Lea County?

A. Yes, it does.

Q. Do your duties as District Supervisor include making recommendations regarding when wells should be plugged and abandoned?

A. Yes.

Q. Would you please give a brief outline of your relevant education and work experience?

A. I have a bachelor's degree in petroleum land management, I have 28 years of experience in the oilfield, I have a thousand hours of engineering training for Shell Oil Company.

1 Q. Have you testified previously before the New  
2 Mexico Oil Conservation Division?

3 A. Yes, I have.

4 Q. And were you accepted by the Division as an  
5 expert well inspector?

6 A. Yes.

7 MS. MacQUESTEN: I would tender Mr. Williams as  
8 an expert well inspector.

9 CHAIRMAN FESMIRE: Any objection?

10 COMMISSIONER BAILEY: No objection.

11 CHAIRMAN FESMIRE: He's so accepted.

12 Q. (By Ms. MacQuesten) Mr. Williams, do you have in  
13 front of you Exhibits 7 through -- let's see. I'm not sure  
14 I have the complete list here, but do you have a stack of  
15 exhibits in front of you that was sent by overnight mail?

16 A. Yes, I do.

17 Q. And that starts with Exhibit Number 7?

18 A. Let me make sure. My first is Exhibit 8. The  
19 summary is considered Exhibit 7.

20 Q. That's right, do you have a copy of that summary?

21 A. I do.

22 Q. All right. And let me back up and ask you if you  
23 have reviewed the Division well files for each of the six  
24 wells identified in the Application filed in this case?

25 A. Yes, I have.

1 Q. And that's the Harton State Number 1, the Morris  
2 Number 1, the Fern Guye Number 1, the Saba State Number 1,  
3 the San Simon 5 State Number 1 and the San Simon 5 State  
4 Number 2?

5 A. Yes, I have.

6 Q. All right. And is Exhibit Number 7 a summary of  
7 exhibits culled from those well files?

8 A. Yes, they are.

9 Q. All right, and these are not the complete well  
10 files in most cases, that's --

11 A. That's correct.

12 Q. Right, these are just exhibits that are necessary  
13 for us in this action?

14 A. Yes.

15 Q. Now, behind that summary you should find small  
16 stacks that are connected with paper clips. Do you see  
17 those?

18 A. Yes, I do.

19 Q. And does each stack represent documents that were  
20 culled from the well file on a particular well?

21 A. Yes, they are.

22 Q. All right. Let's start with Exhibit Number 8,  
23 and is Exhibit Number 8 selected well file documents from  
24 the San Simon 5 State Number 2?

25 A. Yes, they are.

1 Q. All right, let's use Exhibit Number 8 for the San  
2 Simon 5 State Number 2 as an example, and after I go  
3 through that stack of documents I'll ask you some general  
4 questions about the remaining wells. Is that all right?

5 A. Fine.

6 Q. Okay. I'd like to have you look at Exhibit 8A --

7 A. Okay.

8 Q. -- and that is a Form C-104?

9 A. Yes, it is.

10 Q. Does this exhibit show Saba Energy of Texas as  
11 the operator of this well?

12 A. Yes, it does.

13 Q. And was this a change from a prior operator?

14 A. Yes.

15 Q. When was that change approved?

16 A. December 8th, 1995.

17 Q. All right. And if you could turn to the next  
18 exhibit in that packet, it's Exhibit 8B. This is a Form  
19 C-103, and who filed this form?

20 A. This was filed by Saba Energy, and it was  
21 approved December of 2001, I think. It's hard for me to  
22 read the date on it.

23 Q. All right. And now is that an approval by the  
24 OCD or a submission date by Saba?

25 A. Well, that's a submission date, submitted by

1 Saba, 12-19-01.

2 Q. Okay, and what is the subject matter of this  
3 form?

4 A. This is an intent to perform a mechanical integ-  
5 -- or a pressure test on the San Simon 5 State Well Number  
6 2.

7 Q. All right. And was that temporary abandonment of  
8 this well ever approved by the Division?

9 A. No.

10 Q. So this well has not been placed on temporary  
11 abandonment status?

12 A. Correct.

13 Q. All right, I'd like you to turn to Exhibit 8C,  
14 and this is another Form 103. Where's the operator on this  
15 Exhibit?

16 A. The operator is -- the name of the operator says  
17 Greka Energy, and we have handwritten in "Saba Energy of  
18 Texas" because we've never received a C-104 operator change  
19 from Saba to Greka.

20 Q. So as far as the OCD is concerned, the operator  
21 is still Saba Energy of Texas?

22 A. Correct.

23 Q. All right. Have you reviewed the Division's list  
24 of New Mexico operators?

25 A. Yes,

1 Q. Does Greka Energy appear on that list?

2 A. No, they don't.

3 Q. Does Saba still appear?

4 A. Yes, Saba does appear.

5 Q. Are they the official operator of record of all  
6 six wells at issue in this case?

7 A. Yes, they are.

8 Q. Now, this Exhibit 8C shows a notice of intention  
9 to plug and abandon; is that right?

10 A. Correct.

11 Q. Is there a subsequent report in the file  
12 indicating that this well was plugged and abandoned?

13 A. No.

14 Q. All right. So as far as the Division is aware,  
15 this well is neither on temporary abandonment status nor  
16 plugged and abandoned?

17 A. That's correct.

18 Q. All right. Rather than go through the well-file  
19 information for the remaining wells in detail, I'd like to  
20 draw your attention to that summary sheet again, Exhibit  
21 Number 7.

22 A. Okay.

23 Q. Now, you did not prepare that summary yourself,  
24 but have you had an opportunity to review it?

25 A. Yes, I have.

1 Q. And is it a true and accurate summary of the  
2 exhibits that are included in Exhibits 8 through 13?

3 A. Yes, it is.

4 Q. Let me ask you a few general questions about  
5 those packets for the remaining wells. In each packet is  
6 there documentation showing Saba as the operator of record  
7 for the well?

8 A. Yes, there is.

9 Q. In any of those packets, was there a subsequent  
10 filing showing any other operator after Saba?

11 A. No.

12 Q. Were there other packets that contained  
13 information about Greka as the operator?

14 A. No.

15 Q. Okay. If there were any, would it be the same  
16 sort of circumstance that we saw in the first example?

17 A. Correct.

18 Q. All right. I want to ask you about the Harton  
19 State well that's Exhibit Number 6. Now, Exhibit Number 6  
20 consists of only one document; is that right?

21 A. Exhibit 6 or Exhibit 13?

22 Q. Oh, gosh, I'm using the old numbers from the  
23 first hearing. Chris, you got me, it's Number 13.

24 A. Okay, yeah, that's -- The first of this is an APD  
25 for re-entry into the Harton State. It's perforated in the

1 Cisco.

2 Q. Okay, and does that document show Saba as the  
3 operator?

4 A. Yes, it does.

5 Q. Now, you've checked this file. Was there a C-104  
6 in the file indicating a previous operator or change of  
7 operator?

8 A. No.

9 Q. All right. Had there -- Obviously this was a  
10 situation where Saba was re-entering the well. Was there a  
11 prior operator in this well?

12 A. I believe there was.

13 Q. Was it a dryhole situation?

14 A. I think it was uneconomical to produce at the  
15 time.

16 Q. Okay, so Saba came in and produced it?

17 A. Right. Well, they -- This is just the APD.

18 Q. Okay.

19 A. And I believe there was a completion report on  
20 this well, and the completion report, I think, showed they  
21 had perforated the Cisco and had a test of 186 barrels of  
22 oil and -- I can't remember the amount of water.

23 Q. Okay. Mr. Williams, has the Division approved  
24 temporary abandonment status for any of these six wells?

25 A. No.

1 Q. Do the well files indicate that any of these six  
2 wells are currently plugged?

3 A. No.

4 Q. Did you attempt to contact Saba about the need to  
5 plug these wells?

6 A. Yes, we did.

7 Q. All right. I'd like you to take a look at  
8 Exhibit 14. Are these copies of the letters sent by your  
9 district requesting Saba to come into compliance?

10 A. Yes, they are.

11 Q. And there are four letters in this packet?

12 A. Yes.

13 Q. Were these sent to the most recent address listed  
14 by Saba on its filings?

15 A. Yes.

16 Q. Was there an address listed for Greka?

17 A. No, there wasn't.

18 Q. Okay. The first letter in this packet appears to  
19 be dated September 8th of 2000. It was sent certified  
20 mail. Did you receive a signature card back?

21 A. Yes.

22 Q. And is that a part of the Exhibit Number 14?

23 A. Yes, it is.

24 Q. All right. And then the following letters, there  
25 are three other letters, they were sent by regular mail to

1 the same address from which you'd received a return  
2 receipt?

3 A. I believe by regular mail.

4 Q. Right, and you used the same address you used on  
5 the first letter?

6 A. Right.

7 Q. Okay. One of those was returned?

8 A. Uh-huh.

9 Q. And two of them were not returned?

10 A. Right.

11 Q. Has the District Office had any other contact  
12 with Saba regarding these wells?

13 A. We haven't had any direct contact with Saba. We  
14 had a problem with the Harton State well. It pressured up  
15 and blew fluid out of one of the tanks, it blew through in  
16 the tank and blew fluid out. And we got hold of an  
17 attorney in New York, and that was the last contact, but he  
18 represented Greka.

19 Q. When did this happen, approximately?

20 A. Oh, approximately about six or seven months ago.

21 Q. Was the problem with the well overpressuring  
22 resolved?

23 A. Right, we went out and shut all the valves in on  
24 it.

25 Q. Is there cleanup left to be done at that site?

1 A. Yes, there is.

2 Q. And what kind of cleanup would be required?

3 A. Once the well is plugged, the tank battery has to  
4 be removed and the fluids taken out of the tanks and all  
5 the equipment removed off site.

6 Q. Are there any pits associated with these six  
7 wells?

8 A. I believe there is two.

9 Q. And what kind of condition are those pits in?

10 A. They've never been remediated.

11 Q. I'd like you to take a look at what's been marked  
12 as OCD Exhibit Number 15. Are these the well-plugging  
13 procedures for the six wells?

14 A. Yes.

15 Q. Were these well-plugging procedures prepared by  
16 you or at your direction?

17 A. At my direction.

18 Q. Do you review the well-plugging procedures that  
19 are proposed by your staff?

20 A. Yes, I do.

21 Q. Do you agree with these plugging procedures?

22 A. Yes.

23 Q. If the wells are plugged in accordance with  
24 Exhibit 15, in your professional opinion will the wells be  
25 properly plugged and abandoned in accordance with the

1 Statutes of the State of New Mexico and the Rules of the  
2 Oil Conservation Division now in effect?

3 A. Yes, they will.

4 Q. Are you aware that the two San Simon wells are on  
5 an expired State lease?

6 A. Yes, I am.

7 Q. And that the State has leased to another  
8 operator?

9 A. Yes.

10 Q. Have you received a change-of-operator request  
11 for those wells?

12 A. No.

13 Q. Have you received a change-of-operator request  
14 for any of the other four wells?

15 A. No.

16 Q. Do you make arrangements for plugging when the  
17 State has to plug wells?

18 A. Yes, I do.

19 Q. Are you familiar with how much the State pays  
20 when it contracts with a company to plug a well?

21 A. Approximately, yes.

22 Q. Okay, how much does it cost per foot of well to  
23 plug a well?

24 A. About \$3.50 a foot.

25 Q. Have you done a rough estimate of how much it

1 would cost to plug the six wells in this case?

2 A. It would cost -- it would range from -- anywhere  
3 from about \$200,000 to \$240,000.

4 Q. So I take it a \$50,000 blanket bond would not be  
5 sufficient?

6 A. No, it wouldn't.

7 Q. Would the \$50,000 blanket bond be sufficient to  
8 cover the two Sam Simon wells on that expired state lease?

9 A. If everything went perfectly.

10 Q. In your district, do you ever require additional  
11 bonding on inactive wells?

12 A. Yes.

13 Q. What circumstances would --

14 A. When we have a change of operator and there is --  
15 when we change to a new operator and there's inactive wells  
16 that are in existence, we require an extra bond be put up  
17 for those inactive wells.

18 Q. Why do you do that?

19 A. Because usually the bonding in place is not  
20 enough to cover a plug and abandonment of a well if the  
21 operator should choose not to.

22 Q. Do you know approximately how many wells in your  
23 district have additional single well bonds in place? And  
24 by "additional" I mean there's also a blanket bond covering  
25 those wells?

1 A. I would guess about 500 or 600.

2 Q. Since October 31st of 2003, when Saba first  
3 responded to the Application filed in this case, are you  
4 aware of any action Saba has taken to bring these six wells  
5 into compliance with Rule 201?

6 A. No.

7 Q. Have they filed any paperwork regarding plugging?

8 A. No.

9 Q. Any paperwork regarding placing the wells on  
10 temporary abandonment status?

11 A. No.

12 Q. To place the well on temporary abandonment  
13 status, they would have to perform a mechanical integrity  
14 test; is that right?

15 A. Correct.

16 Q. Do you have any indication that that has been  
17 done on any of these wells?

18 A. No.

19 Q. Have you received any inquiries from Saba about  
20 how to go about plugging or TA'ing a well?

21 A. No.

22 MS. MacQUESTEN: All right, I would offer  
23 Exhibits 1 through 15 into evidence in this case.

24 CHAIRMAN FESMIRE: Objection?

25 COMMISSIONER BAILEY: No objection.

1 COMMISSIONER CHAVEZ: No objection.

2 CHAIRMAN FESMIRE: They're so admitted.

3 MS. MacQUESTEN: I have no more questions of Mr.  
4 Williams on direct.

5 EXAMINATION

6 BY CHAIRMAN FESMIRE:

7 Q. Mr. Williams --

8 A. Yes.

9 Q. -- this is Mark Fesmire. You indicated that the  
10 Harton State well had pressured up and blown fluid out the  
11 tank?

12 A. Yes.

13 Q. How much oil and water are on location out there;  
14 do you know?

15 A. No, we don't know.

16 Q. Are the tanks full?

17 A. No, I think they're about half full.

18 Q. Why did they -- Why did we have a release there  
19 then, if they're only half full?

20 A. Well, it's possible -- what it probably did, it  
21 went past the separator and blew through the feed patch of  
22 the tank.

23 Q. Okay.

24 A. A lot of the feed patches don't seal pressure.

25 Q. Now, that well -- the last time the correct forms

1 were filed, that well was producing economically, wasn't  
2 it?

3 A. Yes, it was.

4 Q. Do you have any idea what it produces?

5 A. No, because the only thing we have on it is, it  
6 tested as -- like I said, in the 104 I looked at, was 186  
7 barrels of oil, and -- I can't remember, about the  
8 equivalent amount of water, I think.

9 Q. And do you remember when that was?

10 A. Right after -- I can pull it up on the computer  
11 real fast.

12 Q. No, that's okay, we'll...

13 Do you know of any of the other of these six  
14 wells that indicate that they may be producing  
15 economically?

16 A. No.

17 Q. Is that the only one you think is --

18 A. It's the only one I think it's possible right now  
19 that could be produced economically. the other wells might  
20 be, if they went in and reworked them completely.

21 EXAMINATION

22 BY COMMISSIONER BAILEY:

23 Q. So there is potential for the Saba State Number 1  
24 and the Morris Number 1?

25 A. It's hard to say, because I don't have the logs

1 on them, and it's also hard to say -- it depends -- The  
2 zone that they're in now appears to be uneconomical, but  
3 there may be other zones above them or below them that will  
4 be economical.

5 FURTHER EXAMINATION

6 BY CHAIRMAN FESMIRE:

7 Q. Do you have the production records in front of  
8 you by any chance?

9 A. No, I don't.

10 Q. The Fern Guye Number 1, the last time it reported  
11 production was -- looks like November of 1999, and during  
12 the month it made 28 barrels of oil and 22 MCF.

13 A. Okay.

14 Q. Do you think that's an economic well?

15 A. No.

16 Q. The Harton State Number 1, the last time  
17 production was reported on that well was November of 2001,  
18 but it looks like more typically production was reported in  
19 July of 2001. It made 1442 barrels and it looks like 1700  
20 MCF.

21 A. That well would be economical.

22 Q. That's economical?

23 The Morris Number 1, it looks like the last time  
24 it reported production was in October of 2001. It made 67  
25 barrels and 134 MCF.

1 A. For the month?

2 Q. For the month.

3 A. That would probably be borderline economical.

4 Q. Okay, the Saba State Number 1, it looks like in  
5 October of 2000 it made 497 barrels and no gas. Could  
6 somebody make money at that?

7 A. Yes, at today's prices.

8 Q. And the Sam Simon 5 State Number 1 was making --  
9 it looks like November of 1999 it made about 100 MCF, no  
10 oil and no water.

11 A. That one probably would not be economical.

12 Q. And the San Simon State 5 Number 2, it looks like  
13 in August of 1988 made 55 MCF.

14 A. Yeah.

15 Q. Okay. So basically we have one well that has  
16 some value, one well that might be marginal, and four wells  
17 that are basically plugging candidates; is that correct?

18 A. Correct.

19 CHAIRMAN FESMIRE: Commissioner Bailey?

20 COMMISSIONER BAILEY: No, thank you.

21 EXAMINATION

22 BY COMMISSIONER CHAVEZ:

23 Q. Mr. Williams, this is Frank Chavez.

24 A. Yeah, Frank.

25 Q. From the condition of the well sites at this

1 time, have the inspectors in your office inspected them to  
2 determine that their condition hasn't changed since the  
3 Application has been filed?

4 A. Yes, they haven't changed.

5 Q. Okay, given the amount of liquids and storage on  
6 lease and the condition of the tanks and separation  
7 equipment, treaters, things like that, do you estimate  
8 there's a potential for some releases out there?

9 A. Yes. One of the tanks out there, the reason is  
10 it's got holes in it. And right now it appears they're  
11 above ground, but I don't know what's underneath the tank.  
12 It may be leaking underneath.

13 Q. Okay, is the wellhead and the other wellhead  
14 equipment, or surface production equipment, in such  
15 condition that they also -- does that have potential for  
16 perhaps leaking from the wellhead?

17 A. Yes.

18 Q. Has your environmental staff looked at what it  
19 might take to close the pits on those sites and do site  
20 remediation for final plug and abandonment? I notice  
21 that's not in your --

22 A. Right, it's --

23 Q. -- plugging operations.

24 A. -- in all the locations, but as far as making a  
25 formal, you know, plan to remediate those sites, they have

1 not.

2 Q. Okay, based on your experience, I'm trying to get  
3 an estimate. For the plugging operations that you  
4 estimated, is that just for the well plugging, or does that  
5 include any site remediation?

6 A. No, that is just -- just the well plugging, it  
7 doesn't include site remediation.

8 Q. In looking at the plugging operations, I notice  
9 that although the cement tops are not circulated on some of  
10 this casing, there's no -- there weren't any steps to do  
11 any perforating and squeezing. Is that the way you looked  
12 at these applica- -- at your plugging procedure also?

13 A. I guess I don't -- you mean -- Are you talking  
14 about -- Normally, if we cut casing and pull casing, we put  
15 a stud plug in as we move up. We usually perforate it at  
16 the bottom, we always -- or try to -- we perforate the  
17 bottom of the surface casing and squeeze out 50 there, and  
18 we've perforated all the bottoms of all the casing strings  
19 all the way out since we --

20 Q. Okay, is it generally your procedure there in the  
21 Hobbs District to --

22 A. -- to perforate, yes.

23 Q. Okay, or to pull a casing?

24 A. If we can. These plugging procedures are the  
25 best-case scenario --

1 Q. Okay.

2 A. -- so that we could recover some salvage from the  
3 well and reduce our plugging costs.

4 Q. Okay, along with the salvageable or potentially  
5 salvageable casing, is the surface equipment -- is some of  
6 that potentially salvageable also?

7 A. It's salvageable as far as maybe junk price for  
8 steel. But for the most part it's usually not salvageable,  
9 other than just junk.

10 COMMISSIONER CHAVEZ: Okay, that's all I have.

11 CHAIRMAN FESMIRE: Mr. Williams, there's another  
12 attorney here. His name is Michael Short. He represent  
13 Hartons and the Duncans --

14 THE WITNESS: Okay.

15 CHAIRMAN FESMIRE: -- and he may have some  
16 questions for you. Mr. Short?

17 EXAMINATION

18 BY MR. SHORT:

19 Q. Mr. Williams, Mike Short.

20 Have you personally gone out to the Harton well  
21 site?

22 A. I have not personally gone to the Harton well  
23 site, no.

24 Q. Okay. Are any of the pits that you're talking  
25 about on that site?

1           A.    I believe there's one by the tank battery that  
2 needs to be remediated.

3           Q.    Okay.  It's our understanding -- and we have some  
4 photographs -- that the equipment there at the Harton State  
5 Number 1 is in fairly good condition, but you haven't  
6 personally viewed it?

7           A.    No, my field inspector, Billy Prichard, was out  
8 there, and so were my environmental people, and it does  
9 appear that a couple of tanks have holes in them.  That's  
10 what has us concerned.

11          Q.    Okay.  With respect to a -- I guess taking into  
12 account your experience and training, if you would assume  
13 with me that the Harton State Number 1 well was capable of  
14 being returned to production at around 50 barrels a day and  
15 1.5 to 2 million cubic feet of gas a month, do you think it  
16 would be economically prudent to plug that well?

17          A.    No.

18          Q.    Do you think it would be committing waste, in  
19 fact, if we plugged that well?

20          A.    Yes.

21          Q.    Do you understand that there is a lawsuit by the  
22 Hartons and the Duncans against Greka regarding the  
23 ownership of this well?

24          A.    Yes, I do.

25          Q.    Okay.  And are you aware that Greka, in fact, is

1 the record owner of the property?

2 A. Am I aware of that? No.

3 Q. You are not aware of that?

4 A. No.

5 Q. Okay. When was the last mechanical integrity  
6 test done on this particular well, on the Harton State  
7 Number 1?

8 A. I can't tell you without looking through the well  
9 file again.

10 Q. Okay. But if we got a new operator in and the  
11 new operator was willing to post bonds necessary, this is a  
12 well that you wouldn't recommend -- if it were, in fact,  
13 capable of producing as I represented, it is not one that  
14 you would recommend to be plugged?

15 A. No.

16 MR. SHORT: That's all the questions.

17 CHAIRMAN FESMIRE: Ms. MacQuesten, any redirect?

18 REDIRECT EXAMINATION

19 BY MS. MacQUESTEN:

20 Q. Mr. Williams, I don't think I asked you before,  
21 and I'm not even sure what your answer is going to be, but  
22 could you tell us if there's any groundwater that would be  
23 in danger from any of these wells?

24 A. Yeah, but the depth I can't tell you for each  
25 well without looking it up.

1 Q. Okay, that was not an immediate concern for you  
2 then?

3 A. Oh, yeah, that's a concern. That's one of the  
4 reasons why we're concerned about the pits that are left  
5 and the tanks that are leaking.

6 Q. Okay. Would it be important to you -- If the  
7 Commission decided to allow the Harton Number 1 to remain  
8 unplugged, would it be important to you that a mechanical  
9 integrity test be performed to make sure that groundwater  
10 would be protected?

11 A. Yes.

12 MS. MacQUESTEN: All right, thank you.

13 COMMISSIONER CHAVEZ: I have just one question.

14 FURTHER EXAMINATION

15 BY COMMISSIONER CHAVEZ:

16 Q. Chris, on the Harton State Number 1, if the OCD  
17 went ahead and plugged that well, given the plugging  
18 procedure that you have outlined, how difficult would it be  
19 to re-enter that well, to re-establish production?

20 A. No more difficult than we do all the time. I  
21 mean, we drill out a lot of plugged wells here.

22 COMMISSIONER CHAVEZ: Okay, thank you.

23 CHAIRMAN FESMIRE: Any further questions of this  
24 witness?

25 MS. MacQUESTEN: No, thank you.

1           CHAIRMAN FESMIRE: Mr. Williams, thank you very  
2 much, we appreciate it. Enjoy your weekend.

3           Ms. MacQuesten, do you have any further  
4 witnesses?

5           MS. MacQUESTEN: No, I don't. I can't recall if  
6 I moved to admit the exhibits in this case.

7           MR. BROOKS: I believe you did.

8           MS. MacQUESTEN: All right, then our presentation  
9 is concluded.

10          CHAIRMAN FESMIRE: Okay, Mr. Short, do you have a  
11 case for the Commission?

12          MR. SHORT: Just a statement, if I could. Again,  
13 on behalf of the Hartons and the Duncans, we filed this  
14 lawsuit back in 2001. It's had a tortured procedural  
15 history with numerous lawyers coming in and out of it, as I  
16 think this Commission is finding out is sort of the norm.

17                 We currently are set for trial on December the  
18 7th of this year in front of Judge Clingman. And again,  
19 Judge Clingman has had this case twice. This is the second  
20 time. He had this very case at the very beginning, and  
21 then another judge wound up getting the case on some  
22 procedural matters and actually on motions of Saba --  
23 excuse me, Saba and Greka, to consolidate, and it was  
24 simply to delay. And that was granted. Then it was  
25 subsequently reversed, and it's back in front of Judge

1 Clingman.

2 And Judge Clingman had a hearing on April the  
3 14th of this year, I believe, and he signed a minute order  
4 at that time, and he made it very clear to all counsel that  
5 there would be no more continuances, there would be no more  
6 gamesmanship and that we were going to trial on December  
7 7th. I think that date may have been picked for a reason.

8 CHAIRMAN FESMIRE: Is this in Hobbs?

9 MR. SHORT: It is going to be in Lovington. And  
10 so he admonished all counsel at the time, do not miss a  
11 deadline and don't play games, and don't be back in front  
12 of me until it's time. So, your Honor, we will be back in  
13 front of him in a week and a half for the last set of  
14 lawyers asking to be removed. Again, if they're allowed to  
15 do so, I think, based on Judge Clingman's prior statements  
16 and comments, and certainly our motion opposing it, that  
17 this case will be going to trial, regardless whether Saba's  
18 got counsel or not, just as today went forward, whether  
19 they show up with counsel or not.

20 CHAIRMAN FESMIRE: Okay.

21 MR. SHORT: So I would ask the court on behalf of  
22 the Hartons, this is a well that has a lot of economic  
23 viability for these people, they would certainly ask this  
24 Commission to, at least with respect to this well, leave it  
25 at a temporarily abandoned situation until we can get this

1 trial resolved.

2 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, you had  
3 something to say?

4 MS. MacQUESTEN: If I may, I'd like to comment on  
5 what options are available in a case where a well has the  
6 potential to be viable.

7 COMMISSIONER BAILEY: But I'd first ask Mr. Short  
8 a question.

9 MS. MacQUESTEN: Sure.

10 COMMISSIONER BAILEY: What arrangements do you  
11 have with the current recognized lessee of record for that  
12 State land?

13 MR. SHORT: The State land? None. This is -- I  
14 believe they call it the Harton State, but this is mineral  
15 fee lands. They call it the Harton State, but it is -- all  
16 of the ownership is fee ownership; it doesn't belong to the  
17 State. I don't know why they named it the Harton State.  
18 Maybe because the Saba State was drilled immediately before  
19 it or right after it. It's right below. It's in the same  
20 section, but the north half of the section is where this  
21 well is located. And it is all fee ownership there;  
22 there's no state ownership there. And the Saba State is in  
23 the bottom half of that section.

24 COMMISSIONER BAILEY: Which is state-owned?

25 MR. SHORT: Which is state-owned.

1           COMMISSIONER CHAVEZ: I have a question for Mr.  
2 Short also. The only document I think we have from you is  
3 this that you submitted previously --

4           MR. SHORT: Yes, sir.

5           COMMISSIONER CHAVEZ: -- and on this one, though,  
6 you're also appearing for the purposes of the Fern Guye  
7 Number 1. Now, you're dropping that one?

8           MR. SHORT: Well, they would like to have that as  
9 a saltwater disposal well, but it's not involved in the  
10 litigation. Mr. Harton owns the surface there, and that's  
11 why I did write and ask for both of those, if -- once we  
12 return the Harton State Number 1 to production, we would  
13 like to lay a line over to the Fern Guye and use it as a  
14 saltwater injection well. And that was the reason for  
15 that.

16           But as far as productive capability of that well,  
17 I think it really is probably more of a candidate as a  
18 disposal well, as opposed to being a productive well.

19           COMMISSIONER CHAVEZ: But at this point you're  
20 not -- Well, what's your position on the Fern Guye?

21           MR. SHORT: I would renew that, but I can't tell  
22 this Commission -- I would renew my request on behalf of  
23 the Hartons that they would like to keep it temporarily  
24 abandoned so that we could use the -- utilize that  
25 wellbore. But again, I can't tell you that that well is

1 productive.

2 CHAIRMAN FESMIRE: Who is the lessor of the Fern  
3 Guye; do you know?

4 MR. SHORT: It again is Greka, Saba, the same  
5 people.

6 CHAIRMAN FESMIRE: They're the lessees. Who owns  
7 the lease.

8 MR. SHORT: Pardon me, it is Mr. Harton, Michael  
9 Harton, and he owns, I think, the surface and a third or  
10 more of the minerals. So he doesn't own all of the  
11 minerals in the --

12 CHAIRMAN FESMIRE: Okay, so he's --

13 MR. SHORT: -- but he does own the surface.

14 CHAIRMAN FESMIRE: Okay, so he's basically one-  
15 third lessor in the Fern Guye?

16 MR. SHORT: Correct.

17 CHAIRMAN FESMIRE: He's 100-percent --

18 MR. SHORT: -- surface.

19 CHAIRMAN FESMIRE: -- surface, and 100-percent of  
20 the royalty interest in the Harton State?

21 MR. SHORT: No, sir, he's 50 percent. He owns  
22 100 percent of the executive rights --

23 CHAIRMAN FESMIRE: Okay.

24 MR. SHORT: -- but he has 50 percent of the  
25 mineral estate, and then the Duncans, the heirs of Gloria

1 Duncan, own the other one-half of the minerals.

2 CHAIRMAN FESMIRE: Okay. We know that two of the  
3 wells are on State leases, the San Simon wells --

4 MR. SHORT: Yes, sir.

5 CHAIRMAN FESMIRE: -- and the Fern Guye is 30  
6 percent Harton. Who owns the other 70 percent?

7 MR. SHORT: I do not know because we don't  
8 represent them.

9 CHAIRMAN FESMIRE: Okay.

10 MR. SHORT: Since it's not involved in the  
11 lawsuit, I haven't paid as much attention to the ownership  
12 of that well, because it's not anything that we're going to  
13 be introducing at our trial. The only reason I brought it  
14 before the Commission was -- is that it could be a useful  
15 well, as far as the economic viability of the Harton State  
16 well, once it gets returned to production.

17 CHAIRMAN FESMIRE: Okay. I have a question. I  
18 think you heard Commissioner Chavez allude to it. Granted  
19 that looks like a viable well, but we have no idea how long  
20 it's going to take to get this resolved, we have no idea  
21 how it's going to come out. In the meantime, we've got a  
22 potential problem out there in that wellbore. What would  
23 you suggest we do about it?

24 MR. SHORT: Since it's got economic viability, I  
25 would ask if you're going to be plugging wells you could go

1 plug the ones that have no value left to them and leave the  
2 ones that have economic value to be at the very tail end of  
3 that process.

4 I would hope that this case will be resolved  
5 before Christmas of this year. If this case is resolved by  
6 that time, the chances in my mind of Greka posting a seven-  
7 figure bond to appeal this case is little or none. So I  
8 think that there's a chance that this case will be over  
9 very soon and that we will be able to get a viable operator  
10 in immediately after the first of the year. That's what  
11 our hope is.

12 CHAIRMAN FESMIRE: Ms. MacQuesten, you was about  
13 to -- you were about to outline some of our options.

14 MS. MacQUESTEN: Well, I first wanted to address  
15 the issue of where the questions of economic viability or  
16 other beneficial use fit into a 201 enforcement action. If  
17 you look at Rule 201, it says that a well must be plugged  
18 or TA'd within 90 days of one of three circumstances. Not  
19 all three circumstances have to happen; there's an "or"  
20 between each circumstance, so only one has to apply.

21 In this case the circumstance we're looking at is  
22 a well that has been inactive for a period of 12 months or  
23 more, and there's no doubt that that is the case for all  
24 six of these wells.

25 There is nothing in the Rule that says that the

1 well does not have to be plugged or TA'd if there is the  
2 potential that it can be economically viable, or if there  
3 is the potential that it can be used for some other  
4 beneficial purpose. The Rule is silent.

5 And I think there's a good reason for that. One  
6 reason is practical. It would be very difficult for the  
7 OCD to prove that there is no potential use out there for a  
8 well.

9 There are other reasons in addition, and that  
10 goes to our authority. We have no authority on our own to  
11 produce a well. We do not own the wellbore and cannot  
12 transfer it to another entity for their use. And we don't  
13 even have the authority to put a well on temporary  
14 abandonment status ourselves, because we don't have the  
15 authority to conduct a mechanical integrity test. We have  
16 to look to the operator to do that. And that is one of the  
17 main things that has to happen before a well acquires the  
18 temporary abandonment status.

19 So frankly, we don't have the authority to do  
20 anything at all except require the operator to bring the  
21 well into compliance or take it upon ourselves to plug the  
22 well.

23 It's not that we're insensitive to the question  
24 of what to do with a well that's potentially economically  
25 viable or useful for some other purpose; it's just that our

1 options as a Division are limited.

2 The way the Rule is set up is, the operator gets  
3 to choose how to bring the well into compliance, to produce  
4 it, to plug it, to TA it, and lets the marketplace take  
5 care of that scenario.

6 Unfortunately, we have situations like the one  
7 before us today where it appears that the marketplace is  
8 going to fail, that no one is able to step up to the plate  
9 and take care of this well.

10 And unfortunately, we are not able to step up to  
11 the plate and take care of it either.

12 If we do not have action from an operator, we  
13 need to plug the well. It's not that we want to plug a  
14 well that has potential use or is potentially economically  
15 viable, but we do have other concerns, such as  
16 environmental concerns for a well that may allow  
17 hydrocarbons or waters containing minerals to migrate into  
18 another zone.

19 For that reason, we hate to just let a well sit  
20 there inactive, waiting for litigation to conclude, because  
21 it may take years, and what we need is that mechanical  
22 integrity test to make sure that nothing wrong is going to  
23 happen while we wait. We don't mind waiting, but we do  
24 mind having the potential harm.

25 One suggestion I would like to make -- and I

1 talked to Mr. Short about this briefly before the hearing.  
2 I don't know if this is a practical solution or not, but I  
3 want to throw it out to the Commission.

4           Would it be possible to issue an order requiring  
5 the Hartons to seek relief from the Court for permission to  
6 conduct a mechanical integrity test on this well within a  
7 certain amount of time, say six months? If we could be  
8 assured that a mechanical integrity test was done, the well  
9 was safe and it wouldn't create harm, then we certainly  
10 don't mind waiting on plugging.

11           So that would be my suggestion for that  
12 particular well.

13           COMMISSIONER BAILEY: But that would not address  
14 surface cleanup, reclamation, removal of leaking tanks,  
15 would it?

16           MS. MacQUESTEN: It wouldn't. And unless the  
17 order could be phrased to allow the Court to have the  
18 Hartons or any other interested party come in and clean it  
19 up, unfortunately it looks like this is a situation where  
20 unless there are other interested parties who want to come  
21 and take over some of these wells, the State may very be  
22 faced with using the reclamation fund.

23           MR. SHORT: Let me suggest that if the Commission  
24 were to give, say, six months to bring the well in  
25 compliance, in whatever facet that requires, including

1 surface, okay? -- if that is a part of the order today, in  
2 other words, that we're not going to order this well be  
3 plugged now, we're going to give the Hartons six months,  
4 someone, you know, whoever it is, the operator or the  
5 Hartons, six months to bring this well into compliance and  
6 give proof to the Commission, what we could possibly do in  
7 that situation, number one, it gives us time. It will  
8 certainly get us past the trial date, because that's going  
9 to be a little over four and a half months. But even  
10 between that period of time, what we may be able to do,  
11 faced with such an order, is, we may be able to use that to  
12 get the Court to appoint an interim receiver.

13 And an interim receiver could come in, do the  
14 work, do the cleanup, get the test. And it would be paid  
15 an operator -- you know, an operating fee for having done  
16 so. All the bills would get paid. And then the portion of  
17 the money that would otherwise go to the lessee portion,  
18 the portion that is in dispute, that could be placed into  
19 the registry of the Court.

20 And I will represent to the Commission that if  
21 that is what you -- what the Court -- what this Commission  
22 will do, that we will proceed along one of those lines,  
23 that we will do what we can to cooperate, to try to bring  
24 this into compliance within that time frame, or come back  
25 to the Commission and say, we've got a judgment now, and

1 give us a little more time, because we've got a new  
2 operator. And you all could put whatever bond requirements  
3 you want on the new operator.

4 CHAIRMAN FESMIRE: Mr. Short, I would suggest  
5 that you go to the Court and ask that a receiver be  
6 appointed operator, and that the operator file the proper  
7 paperwork to bring themselves under the jurisdiction of the  
8 Commission so that we could do something like that.

9 But I don't think today we can do that, simply  
10 because there is no receiver --

11 MR. SHORT: Right, there is no -- and there is no  
12 other operator, is what I'm saying. We would have to use  
13 the threat of this well being plugged as a basis for having  
14 Saba removed as operator, and bring a new, qualified  
15 operator in.

16 CHAIRMAN FESMIRE: So I think basically what  
17 you're saying is that we need to draft an order, just like  
18 Ms. MacQuesten suggests, and get that order in place so  
19 that you can go to the Court down in Lovington and say,  
20 Look what's going to happen to the major value of this  
21 asset if we don't act now, and get that receiver appointed,  
22 get them to file a change of operator, get a court order  
23 allowing them to operate, file that with us, and then you  
24 all do what it takes to temporarily abandon that well.

25 MR. SHORT: And again, it's simply --

1 understanding the State's needs and the concerns for  
2 protecting the groundwater, for protecting against  
3 pollution and having the unanswered question with respect  
4 to this well, as well as the other wells.

5           Again, whatever fashion it takes, all I'm asking  
6 for is, give us six months' time frame so that I can, you  
7 know, utilize -- whatever the Commission is going to do, it  
8 will give us time to get the proper things in place,  
9 hopefully to save that and bring this well back into  
10 compliance, even if it's on a temporary basis with the new  
11 operator, if it's temporary -- even if it's a temporary  
12 operator.

13           CHAIRMAN FESMIRE: Ms. MacQuesten, if we were to  
14 issue the order that you're requesting today, which is that  
15 they either properly TA these wells, P-and-A them, what  
16 sort of a time frame are we looking at?

17           MS. MacQUESTEN: I would not oppose an order that  
18 said that the wells have to be -- Well, perhaps we could  
19 craft an order that had one deadline for five of the wells  
20 and another deadline for that Harton State well, or any  
21 other wells that you're concerned about -- have the ones  
22 that need to be brought into compliance, brought into  
23 compliance within, say, 30 days.

24           For the wells that you wish to leave open for a  
25 period of time to see if something can be worked out, I

1 wouldn't oppose an order that gave six months, or whatever  
2 you believe would be appropriate, for the well to be  
3 brought into compliance before the Division took action to  
4 plug the well.

5           And I should point out as a practical matter,  
6 even if an order were issued tomorrow saying plug or TA the  
7 well in 30 days, it would be unlikely that that would get  
8 on a plugging list for many months.

9           CHAIRMAN FESMIRE: What do our customary orders  
10 say?

11           MS. MacQUESTEN: As I recall -- and Mr. Brooks  
12 can correct me if I get it wrong -- usually the orders on a  
13 case like this will tell the operator to bring the well  
14 into compliance within, say, 30 days, as far as plugging  
15 the wellbore.

16           MR. BROOKS: I was just checking the Rule on  
17 that, and the Rule simply says that a plugging order will  
18 order the operator to plug by a date certain. It does not  
19 say how long, so that would leave it to the discretion of  
20 the Commission to fix what date certain they want to allow.  
21 Thirty days -- between 30 and 60 days has been customary in  
22 the past.

23           CHAIRMAN FESMIRE: Mr. Short, how long would it  
24 take you on an emergency basis to go to the Court in Lea  
25 County and get a receiver appointed and give that receiver

1 -- It takes us a day to do the paperwork to change the  
2 operator.

3 MR. SHORT: I could tell you that I could have a  
4 motion filed, you know, next week.

5 But part of my concern is -- again, one of the  
6 motions that we're going to be hearing in front of the  
7 Court in two weeks -- and I would try and get this on at  
8 the same time, but the problem is that -- is their counsel  
9 again. They haven't been paid in six months, they're  
10 pulling out of the case. So you're going to have a  
11 defendant there, a corporation, without legal counsel. And  
12 that may make it, you know, an interminable amount of time  
13 as to --

14 CHAIRMAN FESMIRE: Well, that's all the more  
15 reason for the Court to appoint a receiver to represent the  
16 interests of the State.

17 MR. SHORT: I agree, and that's the -- that would  
18 be part of the reason for moving forward and having this  
19 done. And I will represent to the Commission that I can  
20 have a motion for the appointment of a receiver done, you  
21 know, within -- next week. That's assuming I get a copy of  
22 your order.

23 COMMISSIONER CHAVEZ: If the Hartons filed a  
24 C-104, assuming operatorship of this well, and filed a  
25 plugging bond, what would preclude the OCD from approving

1 that C-104?

2 CHAIRMAN FESMIRE: They don't own it.

3 COMMISSIONER CHAVEZ: Is it ownership or  
4 operatorship that's the issue?

5 MR. SHORT: Yeah, the legal ownership of the  
6 mineral estate is what's at issue.

7 COMMISSIONER CHAVEZ: Okay, maybe I misunderstood  
8 you. I thought that you had said that the ownership was --

9 MR. SHORT: In the Harton well, the Hartons own  
10 50 percent and the Duncans own the other 50 percent, and we  
11 represent both.

12 So Greka is the owner of the working interest,  
13 okay? But their leasehold rights expired because of the  
14 nonproduction.

15 MR. BROOKS: So the issue is the viability of the  
16 lease?

17 MR. SHORT: Correct. Right, yeah, one of the  
18 issues in the case is that there was a 60-day rework  
19 clause, and they let 97 days lapse before they tried to  
20 bring the well back on line. That's too late, you've lost  
21 your lease.

22 COMMISSIONER CHAVEZ: So it's not really the  
23 ownership issue, it's the issue that -- whether or not the  
24 lease is valid and who has control of the operatorship?

25 MR. SHORT: Right, I apologize, Mr. Chavez. Yes,

1 when I say the ownership, that was what I was meaning, was  
2 the ownership of the entire mineral estate, the fee estate,  
3 and we say it's merged back, that the lease no longer  
4 exists, that Greka A.M. and the other working interest  
5 owners no longer have any interest in the lease, and it is  
6 solely owned by the owners of the minerals. But that's a  
7 contested issue -- going to be a contested issue at trial.

8 MR. BROOKS: Yeah, I think it would be correct to  
9 characterize that as an ownership issue.

10 MR. SHORT: Yes.

11 CHAIRMAN FESMIRE: Yeah.

12 COMMISSIONER CHAVEZ: Okay, what I think -- Ms.  
13 MacQuesten, in your Application you talk about penalties,  
14 assessing penalties. Do you have a particular formula, or  
15 how would you propose that the Commission look at assessing  
16 penalties for Saba's noncompliance?

17 MS. MacQUESTEN: I'm not sure, because when I  
18 found out that Saba wasn't going to appear, my heart sort  
19 of went out of it. The original order from the Division  
20 Hearing level imposed a penalty of \$1000 per day per well  
21 for every day of noncompliance after that -- I think it was  
22 a June 30 deadline.

23 The reason I filed -- One of the reasons I filed  
24 the amended Application was that I felt that at that point  
25 Saba has proven that they knew the problem existed and they

1 had demonstrated that they were not going to do anything  
2 about it, so I wanted to go after them for penalties from  
3 at least October 31st to the present, or to the date the  
4 hearing order would kick in with the additional penalties.

5 At this point I'm not sure it's even worthwhile  
6 going after them. I'm not sure there's anyone out there to  
7 get a penalty on, but for purposes of issuing an order, I  
8 would suggest --

9 CHAIRMAN FESMIRE: Well, if we can get a penalty  
10 and get a judgment against them, the value of this well  
11 would appear to be sufficient to cover the judgment, and  
12 the judgment could then be used to plug and clean this  
13 stuff up. I realize that's a lot of if's.

14 MR. BROOKS: A lot of if's, especially since the  
15 testimony in this case would tend to indicate that Saba  
16 does not own any interest in this well.

17 MR. SHORT: Right, that would be -- that's our --  
18 that would be our claim.

19 MS. MacQUESTEN: I do agree with you, though, it  
20 would be a good idea to put some sort of penalty in the  
21 Order, just in case we can get a penalty from Saba.

22 CHAIRMAN FESMIRE: Something tells me it's just  
23 going to become an unsecured case -- I mean an unsecured  
24 claim in a case.

25 COMMISSIONER CHAVEZ: Well, along those lines

1 too, if Greka is an owner, although our documentation  
2 indicates, you know, Saba is operator of record for our  
3 purposes, they appear as Saba without denying operatorship  
4 of these wells, does Greka also in this point, because they  
5 didn't, perhaps, assume operatorship, have a violation  
6 before the OCD also in some way?

7 MS. MacQUESTEN: It's possible, although it  
8 wouldn't be before the Commission today because that wasn't  
9 made part of the Application, and we didn't --

10 COMMISSIONER CHAVEZ: I understand that --

11 MS. MacQUESTEN: -- Mr. Greka --

12 COMMISSIONER CHAVEZ: -- the question was brought  
13 up, Mr. Short, he's assuming that Greka would be the  
14 operator. And if his contention was right, then they  
15 actually would have been in violation for not filing C-104s  
16 and a bond; wouldn't that be correct?

17 MS. MacQUESTEN: Yes.

18 CHAIRMAN FESMIRE: My inclination would be to go  
19 ahead and draft the order that you're asking for, to assess  
20 penalties equal to the administrative penalties that  
21 they've been notified of, give enough time, at least on the  
22 one well, for Mr. Short's client to get a receiver  
23 appointed and proceed from there. Because if Mr. Short can  
24 get a receiver appointed, that receiver will not be  
25 responsible for that penalty. That penalty will still

1 assess to Saba or whatever Saba is now.

2 But if there is economic value in that well and  
3 you can convince the Court in Lovington that there is, I  
4 believe that with our order in hand it would be very easy  
5 to get a receiver appointed, especially if a penalty is  
6 accruing at the time you go to the hearing.

7 Commissioner Bailey, do you have any thoughts on  
8 that?

9 COMMISSIONER BAILEY: My concern are the  
10 environmental consequences, as long as those wells are left  
11 over, as long as those tanks are still leaking, as long as  
12 those pits are still there. That's where my concern is,  
13 that we need to get that cleaned up as quickly as possible,  
14 and if that could be tied into any kind of order allowing  
15 the additional time for the Harton well, then I would like  
16 to see that.

17 Otherwise, I'm making the assumption the other  
18 five wells will be P-and-A'd as soon as possible and  
19 cleaned up.

20 CHAIRMAN FESMIRE: With the exception of the Fern  
21 Guye well, I don't see any reason to slow down on any of  
22 them, of those five, except with the possible exception of  
23 the Fern Guye. And if you all aren't adamant enough about  
24 it to pursue that, our order ought to include just as  
25 quickly as possible on the first five, and the only slack I

1 would cut Mr. Short's client would be, perhaps do that one  
2 last, remembering that that's the one where we've had the  
3 spill.

4 COMMISSIONER BAILEY: Uh-huh.

5 CHAIRMAN FESMIRE: We've got to do something  
6 about that as quickly as possible.

7 COMMISSIONER CHAVEZ: I agree, and if there's a  
8 receiver appointed, I was wondering if in some ways could  
9 the OCD make an appearance in some way or otherwise  
10 influence the release potential on that well be eliminated  
11 as one of the first things that receiver does?

12 MR. SHORT: I would invite Ms. MacQuesten or Mr.  
13 Williams, either one, to appear at the hearing. It will  
14 certainly be an evidentiary hearing, and that is certainly  
15 fine with us.

16 And to address your concern, if the Court were to  
17 go ahead and grant an order appointing a receiver, then I  
18 would assume it would be a requirement for any bond, any  
19 new change of operatorship from this Commission that those  
20 issues be addressed as part of the approval process. I  
21 would assume that might be the case. Maybe I'm wrong.  
22 Would you all not be, in fact, in a position to do that,  
23 with the local District Office, Mr. Williams, being able to  
24 say, you know, you're going to have to address this, this  
25 or this, or you're going to be in violation?

1           Again, the leaky tanks, things of that nature --  
2           In other words, for a new operator to be approved and come  
3           in, it seems to me that those issues that Bailey was  
4           addressing would be, could be, should be addressed at that  
5           time. Am I wrong?

6           COMMISSIONER CHAVEZ: Sounds good to me.

7           CHAIRMAN FESMIRE: So I think what we need to do  
8           is draft an order proceeding immediately and offer you, you  
9           know, perhaps testimony in your application for  
10          receivership.

11          But I don't see any reason to -- in our order, to  
12          deviate from what Ms. MacQuesten suggested, because it's  
13          basically up -- you know, we need to issue that order, we  
14          need to get that taken care of, and if that asset can be  
15          salvaged it's up to your client.

16          MR. SHORT: And I fully understand that, and I  
17          appreciate it. And I appreciate you all giving us at least  
18          the additional time on the Harton well, and we will -- the  
19          minute we receive that order -- I won't be waiting on  
20          drafting the motion, but understanding that the order will  
21          be coming I will have it ready and it will be on file next  
22          week if I receive your order next week.

23          MR. BROOKS: Let me address the mechanics of  
24          this, Mr. Chairman and honorable Commissioners. The usual  
25          procedure of the Oil Conservation Commission has been

1 either to take a case under advisement and make a decision  
2 at the next regular meeting, or it can make a decision and  
3 direct counsel to -- Commission counsel to prepare an order  
4 to be adopted at the next regular meeting.

5           Because under the Open Meetings Act, the sense  
6 I'm getting from the Commissioners is that the  
7 Commissioners wish to -- and let me say one other thing, if  
8 the Commission- -- since this is an adjudicatory case, if  
9 the Commissioners have any desire to discuss this subject  
10 in executive session, they can go into executive session if  
11 they wish to do so, but that's entirely up to the  
12 Commission.

13           But the sense I'm getting from the Commission is  
14 that they would like to get this over, out at some time  
15 prior to the next regular session of the Commission. The  
16 Commission, of course, can set a special meeting and it  
17 would only be necessary for a majority or a quorum of the  
18 Commissioners to be present, or a Commissioner could be  
19 present by telephone, and the Chairman could sign the order  
20 for the Commission, but it would have to be done at a  
21 meeting. Personally, I would hope it would be sometime  
22 next week and not this week, because we've had kind of a  
23 rough week here at the Commission this week, but that's  
24 entirely, again, in the discretion of the Commission.

25           If you do wish to get this order entered prior to

1 the next meeting, though, we'll need to set a meeting of  
2 the Commission, which we can set now, and direct the  
3 administrative assistant to give notice of and -- so we  
4 have a special meeting at which this order can be adopted.

5 CHAIRMAN FESMIRE: Do you think a special meeting  
6 is necessary, or can we do this next -- on the August  
7 meeting?

8 COMMISSIONER BAILEY: Well, if we went until next  
9 month to do again, that's going to delay getting the  
10 receivership taken care of.

11 MR. SHORT: Well, let me ask you, do you have a  
12 proposed order? I mean, it's like this morning when I was  
13 here, there was going to be a proposed or something that  
14 you discussed at the last meeting, and this is going to be  
15 adopted at the next one.

16 CHAIRMAN FESMIRE: That would be our normal  
17 procedure.

18 MR. SHORT: So I would ask here, is there going  
19 to be like a proposed order that would be adopted at the  
20 next meeting? And if you've got the proposed order, that  
21 may in and of itself be enough for me to move for my  
22 receivership.

23 CHAIRMAN FESMIRE: I think we could do that  
24 within two weeks.

25 MR. BROOKS: It could certainly be done within

1 two weeks. It could be done -- I think I could have an  
2 order ready on this by Tuesday or Wednesday of next week  
3 without straining.

4 CHAIRMAN FESMIRE: Since we've strained him  
5 several hours past his quitting time lately, I think -- by  
6 way of deliberation, I think we ought to proceed with the  
7 order that the Division has requested, implementing fines  
8 -- I mean penalties, at the rate that the administrative  
9 order put out and that we ought to seek the relief -- I  
10 mean go ahead and adopt the relief that you've requested.  
11 And Mr. Short, you can use that to try to get a receiver  
12 appointed on the one well with value.

13 It would really hurt my feelings to plug a well  
14 that's making 50 barrels a day, and I would like to avoid  
15 that. But if we at the same time have to protect the  
16 environment and -- we can go as far as we can go to -- you  
17 know, to preserve that asset. But I think our order needs  
18 to say bring it into compliance or plug it.

19 MR. SHORT: With the exception of you're still  
20 going to give six months, at least with respect to the  
21 Harton well?

22 CHAIRMAN FESMIRE: Would that be okay?

23 COMMISSIONER BAILEY: I think we can.

24 COMMISSIONER CHAVEZ: It has to be a date  
25 certain?

1 MR. BROOKS: I has to be a date certain in order  
2 to forfeit the bond, yes.

3 COMMISSIONER CHAVEZ: December 31st, would  
4 that --

5 CHAIRMAN FESMIRE: Would that be acceptable?

6 COMMISSIONER BAILEY: That's great for --

7 MR. SHORT: -- for that one well.

8 CHAIRMAN FESMIRE: -- for that one well. The  
9 others I'm going to assume are not worth preserving.

10 MR. SHORT: Okay.

11 CHAIRMAN FESMIRE: And we would ask that Mr.  
12 Brooks draft a proposed order to that effect, and by the  
13 middle of next week we will circulate it to the  
14 Commissioners and upon approval by all of the  
15 Commissioners, we will send a copy to Mr. Short.

16 MR. BROOKS: Okay. now, do -- My concern here is  
17 that the Commission cannot adopt an order except at  
18 meetings.

19 CHAIRMAN FESMIRE: We're not going to adopt it,  
20 we're going to send him a copy of the proposed order.

21 MR. BROOKS: Okay, so that will be just in effect  
22 a draft order --

23 CHAIRMAN FESMIRE: Right.

24 MR. BROOKS: -- but not an order that anyone has  
25 signed?

1           CHAIRMAN FESMIRE: Right.

2           MR. BROOKS: Okay. I need to get clear on what  
3 the terms of the order are going to be. My understanding  
4 is that this will be an alternative directive to Saba that  
5 they will plug or temporarily abandon or restore to  
6 production --

7           CHAIRMAN FESMIRE: -- bring into compliance.

8           MR. BROOKS: Yeah. The period of time to do so  
9 will be 12-31-04 for the Harton well. For the other wells  
10 it will be what period of time?

11          CHAIRMAN FESMIRE: What do you suggest, Ms.  
12 MacQuesten?

13          COMMISSIONER BAILEY: Thirty days.

14          MS. MacQUESTEN: Thirty days or sixty days would  
15 be --

16          MR. BROOKS: Thirty days from the date of the  
17 entry of the order?

18          CHAIRMAN FESMIRE: Yes.

19          MR. SHORT: Could we put the Fern Guye,  
20 seriously, as a second well for 12-31? And if we can't get  
21 it up and going -- I would think that the new operator, the  
22 new receiver, would probably at least want to have that  
23 option explored, and what we could do is, we could tell you  
24 beforehand that if that's not going to happen, then you  
25 could put it back off. Or if you put it on the 30-day list

1 then maybe we could tell you that we do want to use it, we  
2 are going to do something with it, we'll go run a TA test  
3 on it and do something along those lines.

4 COMMISSIONER CHAVEZ: With the receiver, Mr.  
5 Short, you could have both wells TA'd very, very shortly,  
6 and as Ms. MacQuesten pointed out, chances of getting a  
7 contract to plug those wells, we're looking at a longer  
8 period --

9 MR. SHORT: Okay --

10 COMMISSIONER CHAVEZ: -- of time anyway, so --

11 MR. SHORT: -- that's fine. Just -- We'll just  
12 leave the one well.

13 COMMISSIONER CHAVEZ: Well, actually, we can work  
14 that out with the receiver also as a potential disposal  
15 well at -- as a second priority.

16 MR. SHORT: Just ask you --

17 COMMISSIONER CHAVEZ: Yeah.

18 MR. SHORT: -- for a hearing.

19 MR. BROOKS: Okay, so more questions, then. What  
20 was finally resolved to be the penalties that will be  
21 assessed in this order in the event of noncompliance?

22 CHAIRMAN FESMIRE: A thousand dollars from June  
23 1st, a thousand dollars per day, per well, from June 1st --

24 MS. MacQUESTEN: June 1st, I believe, was the  
25 date in the original order.

1 CHAIRMAN FESMIRE: -- to the date of compliance.

2 MR. BROOKS: From 6-1 of '04 to date of  
3 compliance. Okay, now -- Are you verifying that date, Ms.  
4 MacQuesten?

5 MS. MacQUESTEN: Right, I was going to see if I  
6 have a copy of the --

7 MR. BROOKS: I believe we have copies in our  
8 briefing books.

9 MS. MacQUESTEN: It was June 1st. If I could  
10 make a suggestion, though, if the intent is to come up with  
11 a penalty that we could then enforce in District Court  
12 against Saba, it would be preferable to have a flat penalty  
13 amount. If we go with an equation of how many dollars per  
14 day, per well, I'd have to come back to you to get a firm  
15 amount that we could then take to District Court.

16 If we set a firm amount now, I won't have to come  
17 back for another hearing before the Commission to get that.  
18 So it might be a better course to figure on a flat penalty  
19 amount.

20 CHAIRMAN FESMIRE: Ms. MacQuesten, I'm going to  
21 have to take a 15-minute break. We can talk about that  
22 when we get back, okay?

23 MS. MacQUESTEN: Okay.

24 (Thereupon, a recess was taken at 2:32 p.m.)

25 (The following proceedings had at 3:10 p.m.)

1           CHAIRMAN FESMIRE: We're back in session. We  
2 were discussing what would be in the order.

3           MR. BROOKS: Yes, we were talking about the  
4 amount of penalty that would be assessed for noncompliance.

5           CHAIRMAN FESMIRE: And you requested a figure  
6 specific, rather than one based on --

7           MS. MacQUESTEN: Right, it would put us in a  
8 better position to go to District Court and ask for  
9 enforcement of that now.

10          CHAIRMAN FESMIRE: My suggestion would be perhaps  
11 \$1000 a day up to today. We know for sure they're not  
12 going to go into compliance through today.

13          Frank, did you have a suggestion?

14          COMMISSIONER CHAVEZ: That would be fine, that  
15 would work.

16          COMMISSIONER BAILEY: That would be fine. What  
17 is that, 30 plus 15 is 45 -- \$47,000 per well up till  
18 today?

19          MS. MacQUESTEN: Are you doing it per well or  
20 \$1000 per day total?

21          CHAIRMAN FESMIRE: Well, the order was per well,  
22 wasn't it?

23          MS. MacQUESTEN: It was per well, the original  
24 Division Order.

25          CHAIRMAN FESMIRE: Is there any reason to cut

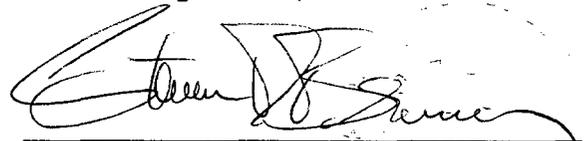
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO )  
 ) ss.  
 COUNTY OF SANTA FE )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL July 21st, 2004.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006