

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 THROUGH THE)
ENVIRONMENTAL BUREAU CHIEF FOR AN)
ORDER DETERMINING THE RESPONSIBLE)
PARTY OR PARTIES AND ORDERING THE)
RESPONSIBLE PARTY OR PARTIES TO)
COMPLETE AND PERFORM AN ABATEMENT)
PLAN PURSUANT TO OCD RULE 19, LEA)
COUNTY, NEW MEXICO)

CASE NO. 13,061

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

2005 MAY 19 AM 9 01

May 12th, 2005

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, May 12th, 2005, 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.

* * *

I N D E X

May 12th, 2005
 Commission Hearing
 CASE NO. 13,061

	PAGE
EXHIBITS	4
APPEARANCES	6
OPENING STATEMENTS:	
By Mr. Brooks	8
By Mr. Larson	11
By Mr. Padilla	12
APPLICANT'S WITNESSES:	
<u>WILLIAM C. OLSON</u> (Bureau Chief, Groundwater Quality Bureau, New Mexico Environment Department; former Senior Hydrologist, Environmental Bureau, NMOCD)	
Direct Examination by Mr. Brooks	16
Cross-Examination by Mr. Larson	76
Cross-Examination by Mr. Padilla	85
Examination by Commissioner Bailey	102
Examination by Commissioner Chavez	105
Examination by Chairman Fesmire	115
Redirect Examination by Mr. Brooks	118
Recross-Examination by Mr. Larson	121
<u>GLENN von GONTEN</u> (Senior Hydrologist, Environmental Bureau, NMOCD)	
Direct Examination by Mr. Brooks	124
Cross-Examination by Mr. Padilla	127

(Continued...)

CHAPARRAL WITNESS:

<u>ROBERT C. LANG, IV</u> (Environmental, Health and Safety Manager, Chaparral Energy, L.L.C.)	
Direct Examination by Mr. Larson	131
Cross-Examination by Mr. Brooks	149
Examination by Commissioner Bailey	150
Examination by Commissioner Chavez	151
Further Examination by Commissioner Bailey	155
Examination by Chairman Fesmire	156

SMITH & MARRS WITNESSES:

<u>CLAY OSBORN</u> (Landowner)	
Direct Examination by Mr. Padilla	158
Cross-Examination by Mr. Brooks	182
Cross-Examination by Mr. Larson	186
Examination by Commissioner Bailey	189
Examination by Commissioner Chavez	190
 <u>RICKEY SMITH</u> (President, Smith & Marrs)	
Direct Examination by Mr. Padilla	196
Cross-Examination by Mr. Brooks	209
Examination by Commissioner Bailey	213
Examination by Commissioner Chavez	218
Examination by Chairman Fesmire	220

CLOSING STATEMENTS:

By Mr. Brooks	229
By Mr. Larson	233
By Mr. Padilla	239

REPORTER'S CERTIFICATE	246
------------------------	-----

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	72	74
Exhibit 2	63	74
Exhibit 3	21	74
Exhibit 4	22	74
Exhibit 5	23	74
Exhibit 6	24	74
Exhibit 7	25	74
Exhibit 8	26	74
Exhibit 9	26	74
Exhibit 10	27	74
Exhibit 11	27	74
Exhibit 12	28	74
Exhibit 13	31	74
Exhibit 14	33	74
Exhibit 15	35	74
Exhibit 16	35	74
Exhibit 17	36	74
Exhibit 18	37	74
Exhibit 19	38	74
Exhibit 20	36	74
Exhibit 21	37	74
Exhibit 22	41	74
Exhibit 23	41	74
Exhibit 24	41	74
Exhibit 25	42	74
Exhibit 26	(does not exist)	
Exhibit 27	(does not exist)	
Exhibit 28	44	74
Exhibit 29	44	74
Exhibit 30	46	74

(Continued...)

E X H I B I T S (Continued)

Applicant's	Identified	Admitted
Exhibit 31	48	74
Exhibit 32	-	74
Exhibit 33	53	74
Exhibit 33A	54	74
Exhibit 33B	55	74
Exhibit 33C	55	74
Exhibit 34	55	74
Exhibit 35	54, 56	74
Exhibit 36	-	74
Exhibit 37	58	74

* * *

Smith & Marrs	Identified	Admitted
Exhibit 1	234	-
Exhibit 2	234	-
Exhibit 3	166	236
Exhibit 4	238	238

* * *

A P P E A R A N C E S

FOR THE COMMISSION:

CHERYL BADA
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE DIVISION:

DAVID K. BROOKS, JR.
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR CHAPARRAL ENERGY, L.L.C.:

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.
218 Montezuma
P.O. Box 2068
Santa Fe, New Mexico 87504
By: GARY W. LARSON

FOR SMITH & MARRS:

PADILLA LAW FIRM, P.A.
1512 South St. Francis Drive
P.O. Box 2523
Santa Fe, New Mexico 87504-2523
By: ERNEST L. PADILLA

* * *

1 WHEREUPON, the following proceedings were had at
2 9:16 a.m.:

3 CHAIRMAN FESMIRE: Next item on the agenda is
4 Cause Number 13,061, the main event, I guess you could say,
5 today. It's the Application of the New Mexico Oil
6 Conservation Division through the Environmental Bureau
7 Chief for an order determining the responsible party or
8 parties and ordering the responsible party or parties to
9 complete and perform an abatement plan pursuant to OCD Rule
10 19, in Lea County, New Mexico.

11 At this time we will entertain the appearances of
12 attorneys in this case.

13 MR. BROOKS: Mr. Chairman, members of the
14 Commission, I'm David Brooks, assistant general counsel
15 with the Oil Conservation Division, appearing on behalf of
16 the Division. I have two witnesses.

17 MR. PADILLA: Mr. Chairman, members of the
18 Commission, my name is Ernest Padilla. I appear for Smith
19 & Marrs, Inc.

20 MR. LARSON: Good morning, Mr. Chairman, members
21 of the Commission. My name is Gary Larson. I'm appearing
22 on behalf of Chaparral Energy, L.L.C. I have one witness.

23 CHAIRMAN FESMIRE: Mr. Padilla, you have two
24 witnesses?

25 MR. PADILLA: I have one witness.

1 CHAIRMAN FESMIRE: One witness, okay.

2 Mr. Brooks, do you have an opening statement.

3 MR. BROOKS: I would like to make a brief one,
4 please.

5 CHAIRMAN FESMIRE: Please.

6 MR. BROOKS: Mr. Chairman, members of the
7 Commission, this is a water-pollution case. It involves an
8 abatement plan.

9 It is a very long-running case. The first action
10 by the Oil Conservation Division in this case occurred on
11 August the 2nd of 2000. And since that time, there have
12 been numerous efforts made by the Division to get an
13 abatement plan in place and do something about the
14 saltwater pollution which was discovered on the South
15 Langlie Jal Unit.

16 The operator at the time we first became involved
17 was Bristol Resources, Inc. Bristol Resources, Inc.,
18 subsequently went through a bankruptcy proceeding. The
19 properties were auctioned off by the bankruptcy court, were
20 purchased by Chaparral Oil, L.L.C.

21 Chaparral was asked by the Division to submit an
22 abatement plan. They did so, and after various
23 negotiations back and forth their abatement plan was
24 eventually approved by the Division, the Stage 1 Abatement
25 Plan, which is the investigation of the pollution. Of

1 course, the Stage 2 Abatement Plan, which would be the
2 actual remedy, has not been reached.

3 However, Chaparral did not perform under the
4 abatement plan, and after several extensions of the time
5 for filing the report of their investigation under the
6 Stage 1 Abatement Plan, Chaparral notified the Division
7 that they had sold the property again.

8 The person to whom the operatorship was
9 transferred -- There seems to be some uncertainty about to
10 whom the properties were actually transferred. Perhaps Mr.
11 Padilla's witness can clear that up, but the person to whom
12 the operatorship was transferred with the OCD was Smith &
13 Marrs, Inc.

14 Pursuant to our Rules, when a property is
15 transferred that is subject to an abatement plan, then it
16 becomes incumbent upon the transferor and the transferee to
17 file a statement with the Division designating the party
18 who will be responsible for completing the abatement plan.
19 They did so after a demand by the Division that they do so,
20 and Smith & Marrs, Inc., assumed responsibility for
21 performing the abatement plan.

22 However, they have not done so.

23 The Division commenced an enforcement proceeding
24 which came to hearing before a Division Examiner. At that
25 time, the parties entered into a settlement agreement, the

1 tenor of which was that the Division would look primarily
2 to Smith & Marrs, Inc., to perform this obligation, and if
3 Smith & Marrs, Inc., did not do so, the Division would
4 attempt to obtain enforcement action, and secondarily, if
5 that enforcement action was unsuccessful, it would then be
6 allowed to look to Chaparral, L.L.C., Chaparral Oil, L.L.C.

7 To date, enforcement actions against Smith &
8 Marrs have been unsuccessful. The Division matter was
9 brought again for an enforcement proceeding before a
10 Division Examiner, and the honorable Will Jones addressed
11 these issues in an order from which Smith & Marrs has
12 brought this *de novo* appeal.

13 We ask as the Division that the Commission enter
14 an order requiring Smith & Marrs to perform according to
15 the Stage 1 Abatement Plan and making clear that to the
16 extent that pollution from the South Langlie Jal Unit is
17 established, that Smith & Marrs proceed with a Stage 2
18 Abatement Plan to remedy that pollution.

19 We know that there have been some concerns about
20 access to the property, and I believe that the surface
21 owner, Mr. Osborn, is present here, although he did not
22 enter an appearance in the court -- in the -- at the time
23 appearances were called for, and to the extent that his
24 name is used in vain or otherwise in this proceeding, he
25 will be able to speak for himself on his position on the

1 matter.

2 It is important, I believe, however, that the
3 Commission consider that pollution of water in this state
4 is not a matter of purely private concern which the
5 Commission can leave to be negotiated between an operator
6 and a surface owner, and that the Commission has the
7 responsibility to the State of New Mexico, which is the
8 owner of the water, and to other persons who have water
9 rights in that aquifer which may be affected, to see to it
10 that somebody is held responsible and somebody is required
11 to perform an abatement plan, even though that may mean
12 that they are placed in what they may consider an untenable
13 negotiating posture with a private party.

14 Thank you very much.

15 CHAIRMAN FESMIRE: Mr. Larson, do you have an
16 opening statement, or would you like to reserve it till
17 the --

18 MR. LARSON: I would just briefly say, Mr.
19 Chairman and members of the Commission, I agree with Mr.
20 Brooks' chronology of what has gone on since 2000, which is
21 when Chaparral Energy purchased the property.

22 I would add a couple of things.

23 First, that once Chaparral's Stage 1 Abatement
24 Plan was finally approved by the Environmental Bureau, they
25 were ready, willing and able to go on the property, to

1 conduct the investigation, which included soil borings,
2 drilling monitoring wells, et cetera. They were unable to
3 reach what they considered a mutually agreeable access
4 agreement with the owner.

5 Subsequently, they put the assets of the unit up
6 for auction in Oklahoma City. One of Mr. Smith's entities
7 purchased the properties at that time.

8 As Mr. Brooks said in his prehearing statement,
9 the Division is not seeking relief from Chaparral in this
10 proceeding, but obviously Chaparral has an interest because
11 if Mr. Smith fails to perform, then the Division will be
12 looking to Chaparral to perform abatement.

13 CHAIRMAN FESMIRE: Thank you, Mr. Larson.

14 Mr. Padilla, would you like to make a statement
15 now or reserve it?

16 MR. PADILLA: Yes, Mr. Chairman.

17 I don't disagree with the recitation of facts
18 that's stated by Mr. Brooks or those of Mr. Larson. We're
19 here asking -- participating in this *de novo* hearing
20 because the Division assessed a \$197,000 penalty, civil
21 penalty, against Smith & Marrs. That kind of a penalty,
22 it's our position, is outside the jurisdiction of the
23 Commission or of the Division.

24 I have been involved in other lawsuits similar to
25 this. The District Court in the Fifth Judicial District

1 agreed with our position. We ultimately settled the case.

2 But Smith & Marrs state in the position that it
3 will not proceed simply because of the difficulty in
4 obtaining access to the surface. The conditions required
5 by the surface owner are onerous, coupled with the civil
6 penalties that have been assessed by the Division, Smith &
7 Marrs is holding back, and we're exhausting administrative
8 remedies, should the Commission also assess civil penalties
9 in this case.

10 The difficulty in accessing -- in getting access
11 to the surface is well documented in this case. Chaparral
12 has had a difficult time trying to get on, even though they
13 had an abatement and were ready and willing to proceed. We
14 will present evidence of another lawsuit that has been
15 filed by the surface owner in this case in the federal
16 district court, and we just simply feel that the Commission
17 should take into consideration and act in support of Smith
18 & Marrs to allow it to access the surface and do the
19 abatement plan.

20 I would finally add that in the settlement
21 agreement that Smith & Marrs entered into with Chaparral
22 and the Division is that both Chaparral and Smith & Marrs
23 would not -- and emphatically stated in that agreement that
24 they did not cause any pollution.

25 At that time it just seemed like it was also

1 clear under Rule 19, that the present operator would be
2 responsible for pollution that had occurred or caused by
3 someone that actually operated the South Langlie Mattix
4 Unit at one time.

5 That party is not in here, and there has been no
6 demand by the Division to compel that party to participate
7 or to otherwise clean up any pollution.

8 Furthermore, at the Division hearing, based on
9 testimony given by Mr. Olson it appeared that the plume of
10 pollution was flowing from outside, from adjoining lands.
11 So from that aspect, I think the Division has much more
12 control over that.

13 We're not contending that the abatement plan
14 should not be implemented by Smith & Marrs. They've agreed
15 to do that. But in terms of being allowed to go and
16 perform and comply with the terms of the Division's
17 requirements, Smith & Marrs is absolutely handcuffed by the
18 surface owner and by the Division on the other side.

19 The Division simply is looking to Smith & Marrs
20 as the current operator, and it's not looking at a big-
21 picture kind of thing as to who caused pollution and where
22 this pollution may be coming from and flowing to.

23 Mr. Brooks introduced something here in his
24 opening statement in terms of water rights. This Division
25 does not have the responsibility with regard to perfecting

1 water rights, as I understand Mr. Brooks' statement. I
2 think it has control over pollution caused by oil and gas
3 operations, but in terms of trying to find out whether or
4 not someone has valid water rights is something that the
5 State Engineer would do, or somebody else, but certainly
6 not the Commission or the Division.

7 So that's basically in a nutshell our position,
8 is that primarily we're here because of the \$197 penalty
9 that -- the \$197,000 penalty that was assessed against
10 Smith & Marrs. We're simply trying to exhaust
11 administrative remedies before proceeding. But I think
12 that's why we're here.

13 CHAIRMAN FESMIRE: Mr. Brooks, are you ready to
14 call your first witness?

15 MR. BROOKS: Yes. We need to swear the
16 witnesses, do we not, Mr. Chairman?

17 CHAIRMAN FESMIRE: Will the witnesses please
18 stand?

19 (Thereupon, the witnesses were sworn.)

20 MR. BROOKS: We'll call Mr. Olson.

21 You have a set of the exhibits, do you not, Mr.
22 Olson?

23 MR. OLSON: Yeah, do you have a copy of the time
24 line?

25 MR. BROOKS: Pardon me?

1 MR. OLSON: The time line? Thank you.

2 CHAIRMAN FESMIRE: Mr. Olson, for the record,
3 you've been sworn?

4 MR. OLSON: Yes, I have.

5 CHAIRMAN FESMIRE: Mr. Brooks, you may begin.

6 WILLIAM C. OLSON,
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 Q. Good morning.

12 A. Good morning.

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

14 A. My name is William C. Olson.

15 Q. And by whom are you employed, Mr. Olson?

16 A. I am currently employed by the New Mexico
17 Environment Department.

18 Q. And you are employed here in Santa Fe?

19 A. Yes, in the Santa Fe office, yes.

20 Q. And in what capacity are you employed by the
21 Environment Department?

22 A. I am currently the Bureau Chief for the
23 Groundwater Quality Bureau.

24 Q. And were you formerly employed by the Energy,
25 Minerals and Natural Resources Department?

1 A. Yes, I was.

2 Q. And you worked in the Oil Conservation Division?

3 A. I worked in the Environmental Bureau of the Oil
4 Conservation Division as the senior hydrologist.

5 Q. And when did you leave the Oil Conservation
6 Division?

7 A. In October of 2004.

8 Q. Well, I don't like to do anything to undermine
9 the credibility of my own witness, but it seems to me
10 you're a defector.

11 A. Yes.

12 (Laughter)

13 Q. (By Mr. Brooks) Went over to the dark side of
14 the force.

15 Very well. Mr. Olson, have you testified before
16 the New Mexico Oil Conservation previously?

17 A. I've testified both in front of the Division and
18 in front of the Commission.

19 Q. And have your credentials as a hydrologist been
20 made a matter of record and accepted by the Commission?

21 A. Yes, they have.

22 MR. BROOKS: Based on that, I tender Mr. Olson as
23 an expert hydrologist.

24 CHAIRMAN FESMIRE: Is there any objection from
25 the attorneys.

1 MR. PADILLA: No.

2 MR. LARSON: No objection.

3 CHAIRMAN FESMIRE: From the Commission?

4 COMMISSIONER BAILEY: No.

5 COMMISSIONER CHAVEZ: No.

6 CHAIRMAN FESMIRE: Mr. Wilson -- Mr. Olson's --
7 one word there -- credentials are accepted. He will be
8 allowed to testify as an expert witness.

9 MR. BROOKS: Very good. Thank you, Mr. Chairman.

10 Q. (By Mr. Brooks) Mr. Olson, are you familiar with
11 the South Langlie Jal Unit?

12 A. Yes, I am, I worked on this case for the Oil
13 Conservation Division from around 2000 to around -- end of
14 2004, where I left employment with the Division.

15 Q. And where is the South Langlie Jal Unit located?

16 A. It's right on the north side of the City of Jal.

17 Q. How did you first become aware of the existence
18 of a problem at the South Langlie-Jal Unit?

19 A. It first came to our attention from the Hobbs
20 field office. They were working on a spill of saltwater
21 from an injection line leak on the South Langlie Jal Unit,
22 and I believe that was in roughly the late winter or spring
23 of 1999 that they started working on that.

24 Q. Very good. Did Mr. Osborn, the surface owner,
25 did he contact the OCD at some point about this situation?

1 A. Yes, he's contacted the Division, the District
2 Office as well as the Santa Fe Office, a number of times
3 over the years, been in contact with him quite often.

4 Q. And so it was sometime in 1999, do I understand,
5 that you first became aware of this?

6 A. Yes.

7 Q. And did you begin a preliminary investigation?

8 A. I did not. The preliminary investigations were
9 carried out at that point by the Hobbs District Office,
10 until they discovered that there was groundwater
11 contamination at the site, and then it was turned over to
12 the Environmental Bureau in Santa Fe for follow-up under an
13 abatement plan, pursuant to OCD Rule 19.

14 Q. And what kind of investigation did the Division
15 make to determine if there was actually groundwater
16 pollution?

17 A. Actually, the investigations were done under OCD
18 Rule 116 for leaks and spills by the District Office, and
19 they have required them to determine the extent of
20 contamination, and that was -- Bristol Resources at that
21 time was the operator.

22 And Bristol Resources had come in and had done
23 some trenching at first, to determine -- and taking soil
24 samples to determine the extent of contamination, and then
25 also followed it up with some additional borings and

1 emplacement of a monitoring well.

2 Q. And were there samples taken from the monitoring
3 well?

4 A. Yes, there were samples taken from both soils and
5 from the monitor well.

6 Q. And did you review the results of these
7 investigations?

8 A. Yes, they came to us at the time that the case
9 was turned over to us.

10 Q. Based on your review of these investigations, did
11 you come to a conclusion about whether or not there was
12 underground water -- or groundwater contamination at this
13 site?

14 A. Yes, based upon those -- the initial monitor well
15 and the soil-sample results, we had concluded that the
16 spill was contributing to groundwater contamination at the
17 site.

18 Q. And this would have been chloride contamination,
19 primarily?

20 A. Yes, it was produced water, chloride and TDS
21 contamination of groundwater.

22 Q. Based upon that conclusion, what action did you
23 take?

24 A. At that point the Division had required an
25 abatement plan of Bristol Resources.

1 Q. Okay. I will call your attention to OCD Exhibit
2 Number 3 in the exhibit stack. That letter is actually
3 signed by Roger C. Anderson. For the record, who is Roger
4 C. Anderson?

5 A. Roger C. Anderson is the Environmental Bureau
6 Chief for the Oil Conservation Division.

7 Q. And I will state for the record that he is in
8 Hawaii, and we all wish we were with him.

9 Did you actually -- or were you instrumental in
10 preparing this letter, Mr. Olson?

11 A. Yes, I prepared this letter.

12 Q. And is this the letter whereby you demanded that
13 Bristol Resources Corporation submit an abatement plan to
14 investigate groundwater pollution in the South Langlie-Jal
15 Unit?

16 A. Yes.

17 MR. BROOKS: And I will call the Commission's
18 attention to the date of this letter, August the 2nd of
19 2000.

20 COMMISSIONER CHAVEZ: Does the "wco" at the
21 bottom of the second page of that exhibit indicate it was
22 prepared --

23 THE WITNESS: Yes, that's correct.

24 Q. (By Mr. Brooks) Soon after that, were you
25 notified of a transfer of these properties?

1 A. Yes, it came -- actually, I think -- I believe
2 Mr. Osborn had called me and told me that there was some
3 issues going on, that they were undergoing bankruptcy
4 proceedings.

5 Q. Did the Oil Conservation Division receive a copy
6 of a letter which was actually -- appears to have been a
7 letter primarily to royalty owners or interest owners,
8 indicating that there had been a change of ownership of
9 this unit?

10 A. Yes, this is a copy of a letter that we had
11 received -- I believe that Mr. Osborn had provided to us.

12 Q. And this is OCD Exhibit 4?

13 A. Yes, that's correct.

14 Q. And what does it indicate about who became the
15 owner of this unit?

16 A. It indicates that Chaparral has assumed all the
17 existing joint operating agreements, and there's been a
18 sale order approved by the court, which was effective
19 October 1st, and that Chaparral had assumed operations of
20 the properties -- of all properties previously operated by
21 Bristol.

22 MR. BROOKS: Okay. I will call the Commission's
23 attention to the fact that there are several entities named
24 in this letter, but the first paragraph states that the
25 United States Bankruptcy Court for the Southern District of

1 Texas in Corpus Christi held an auction and sold virtually
2 all of the assets owned by Bristol to Chaparral Oil, L.L.C.
3 And while there are various other entities named, I believe
4 it has been conceded throughout that the appropriate entity
5 for us to deal with in terms of the Chaparral ownership was
6 Chaparral Oil, L.L.C. I'm sure that their counsel will
7 correct me if there's any mistake about that.

8 Q. (By Mr. Brooks) Okay, now you said that Exhibit
9 4 was furnished to you by Mr. Osborn; is that correct?

10 A. Yes, that's correct.

11 Q. And would that have been very soon after the date
12 of that exhibit?

13 A. Yes, it was around the time of the date of this
14 exhibit, slightly afterwards.

15 Q. And the exhibit is dated October 9, 2000,
16 correct?

17 A. That's correct.

18 Q. Thereafter, did the Division contact Chaparral
19 about the saltwater pollution at this site?

20 A. Yes, we did. We had sent a letter to Chaparral
21 Oil, L.L.C., telling them that as the current operator they
22 were required to submit an abatement plan.

23 Q. And is that OCD Exhibit Number 5?

24 A. That is -- Yes, that's correct.

25 Q. And that is dated October 31st of 2000?

1 A. That's correct.

2 Q. Which was very soon after you received the notice
3 of Chaparral's acquisition?

4 A. That's correct.

5 Q. And again, this is signed by Robert C. Anderson.
6 Did you prepare this letter for Mr. Anderson?

7 A. Yes, I prepared this letter.

8 CHAIRMAN FESMIRE: Roger Anderson? Not Robert
9 Anderson.

10 MR. BROOKS: I'm sorry, I stand corrected.

11 Q. (By Mr. Brooks) And attached to this letter is a
12 return receipt. Was that return receipt returned to the
13 OCD by the post office?

14 A. Yes, it was.

15 Q. Did you receive a response from Chaparral by
16 e-mail?

17 A. Yes, I received a response from Bob Lang on
18 February 7th of 2001.

19 Q. And is that OCD Exhibit Number 6?

20 A. That's correct.

21 Q. The response indicated that they would give a
22 definitive response at a later date, correct?

23 A. Yes, they did confirm that they had just
24 purchased the property, and Mr. Lang stated that he hoped
25 to have an answer -- he was trying to work this through

1 with some of their management and hoped to have some type
2 of an answer by the end of February, if possible.

3 Q. And what was the next action that occurred? Who
4 was the -- who undertook action next in the matter? Did
5 they give you a further response, or did the OCD take
6 action?

7 A. No, we did not receive an abatement plan proposal
8 as we had asked, so on March 12th of 2001 we had sent a
9 notice of violation to Chaparral Oil, L.L.C., and in that
10 we stated that we had not received the Stage 1 Abatement
11 proposal as required. And we required that Chaparral
12 submit a Stage 1 investigation proposal to the OCD by March
13 26th of 2001.

14 Q. And that would have been OCD Exhibit Number 7?

15 A. Yes, that is correct.

16 Q. Now, OCD Exhibit Number 7, once again, is signed
17 by Roger C. Anderson. Again, was this letter prepared by
18 you?

19 A. Yes, it was.

20 Q. And did you receive a response from Chaparral
21 prior to March 26th of 2001?

22 A. Yes, on March 23rd of 2001 we received what they
23 had referred to as their initial abatement plan.

24 Q. And was that an acceptable Stage 1 Abatement Plan
25 to the Division?

1 A. No, it was not. On June 13th of 2001, the
2 Division sent Chaparral a notice of deficiency that stated
3 that the plan does not contain a work plan to investigate
4 the extent of contamination at the site as required by OCD
5 Rule 19.E.(3), and we asked them to submit this to us by
6 July 13th of 2001.

7 Q. I forgot to ask one of the questions I should
8 have. Is OCD Exhibit Number 8 a copy of Chaparral's
9 response wherein they submitted their, quote, initial
10 abatement plan?

11 A. Yes.

12 Q. And did you receive, or did the Division
13 receive -- to your knowledge, did the Division receive OCD
14 Exhibit Number 8 at or about its date?

15 A. Yes, I believe they received it on -- It was
16 stamped in here on March 27th of 2001.

17 Q. Very good. Now, you mentioned that OCD then sent
18 a notice of deficiency to Chaparral indicating that they
19 should submit a revised plan by July 13th of 2001. Is that
20 notice of deficiency -- Is OCD Exhibit Number 9 a true copy
21 of that notice of deficiency?

22 A. Yes, it is.

23 Q. Again, was this a letter prepared by you,
24 although it's signed by Mr. Anderson?

25 A. Yes, it was.

1 Q. Now, did Chaparral then request an extension of
2 the time to file a revised plan?

3 A. Yes, they had submitted a request for a two-week
4 extension by e-mail on July 11th of 2001.

5 Q. And did the Division grant that extension?

6 A. Yes, I had granted them an extension, again by
7 return e-mail, on July 16th of 2001.

8 Q. Now, e-mail enables us to do things a little
9 shorter than the regular mails, because you can -- it
10 prints out the original message along with a reply. Is OCD
11 Exhibit Number 10 a copy of your reply with the original
12 message attached?

13 A. That's correct.

14 Q. And based on that, Chaparral had until July 27th
15 of 2001 to submit their abatement plan, correct?

16 A. That's correct.

17 Q. Now, July 27th is not long before August the 2nd,
18 so we're just about to go into the second year that OCD is
19 beneficially dealing with this project, correct?

20 A. That's correct.

21 Q. Okay. Is OCD Exhibit Number 11 Chaparral's
22 e-mail response to your e-mail granting them the extension?

23 A. Yes, it came in the same day that I granted the
24 extension. And in that they were just letting us know some
25 of the issues they had going on trying to obtain files from

1 Bristol.

2 Q. Okay. Did OCD then subsequently submit another
3 Stage 1 Abatement Plan?

4 A. Yes, Chaparral Energy on August 22nd of 2001
5 submitted an amended Stage 1 Abatement Plan for the unit.

6 Q. Now, the demand had been that they submit it by
7 July 27th, so the submission on August the 28th was late,
8 correct?

9 A. That's correct.

10 Q. Is OCD Exhibit Number 12 a copy of the cover
11 letter that was submitted -- with which that plan was
12 submitted?

13 A. Yes, it is.

14 Q. Now, that was not the final approved plan,
15 correct?

16 A. No, that was not.

17 Q. And for that reason we are not offering that
18 original plan in evidence?

19 A. That's correct.

20 Q. Okay. Now, did the Division subsequently again
21 notify Chaparral of deficiencies in their proposed plan?

22 A. Actually, we did not notify them of deficiencies
23 on that. We -- On September 7th of 2001, we issued them a
24 letter determining that the information that they had
25 submitted for the Stage 1 Abatement Plan proposal was

1 administratively complete, and we directed them to conduct
2 public notice as required by OCD Rule 19.G.

3 Q. Now, in the parlance of abatement plans, which is
4 something that is handled both by your present employer,
5 the Environment Department, and by your previously
6 employer, the OCD, what does it mean when the agency
7 determines that a plan is administratively complete?

8 A. It just means that the elements of -- that are
9 required to review a plan, the basic elements have been
10 submitted. It does not mean that the plan is approvable at
11 that point; it means it has a minimum amount of information
12 so that the public can begin to -- as well as the Division
13 can begin to evaluate the application.

14 Q. The statement that it is administratively
15 complete does not mean that the agency has approved the
16 plan?

17 A. No, it just means that they have somehow
18 submitted the various portions for investigation and how
19 they propose to do it at that point.

20 Q. And the sequence of events -- correct me if I'm
21 wrong, but I believe the sequence of events, is it not,
22 that the agency determines the plan is administratively
23 complete. Then the operator is required to give public
24 notice of the submission of the plans so that the agency
25 can receive public comment on the adequacy of the plan,

1 correct?

2 A. That's correct. In this case, they were required
3 to issue notice in *The Albuquerque Journal*, *The Lovington*
4 *Daily Leader*, and the *Hobbs News-Sun*, as well as notify
5 those persons as identified by the Director who've
6 requested notification, and they also needed to provide
7 proof of these notices.

8 Q. Now, we're talking about abatement plans with the
9 Oil Conservation Division, we're talking about Oil
10 Conservation Rule 116; is that correct?

11 A. Rule 19.

12 Q. Rule 19, I'm sorry, I get those two confused all
13 the time. Rule 116 is release notification.

14 A. Correct.

15 Q. We're talking about OCD Rule 19. Now, under OCD
16 Rule 19, is there a procedure by which a party who is
17 required by OCD to file an abatement plan can contest their
18 status as a responsible party and obtain an administrative
19 determination whether they are or are not a responsible
20 party?

21 A. Yes, any of the actions taken during the
22 abatement plan process can be taken to a Division hearing
23 at that point --

24 Q. Yeah, now I --

25 A. -- including the initial determination of the

1 requirement of an abatement plan.

2 Q. I do not have the rule in front of me, and
3 doubtless I should, but does the rule provide that at some
4 preliminary stage it is the responsibility of the operator
5 to challenge the responsible-party determination?

6 A. Yes, I don't have it in front of me either at
7 that point.

8 Q. Very good, if we take a recess here, I will be
9 able to call the attention of the Commission to specific
10 language, because we've been over that and we satisfied
11 ourselves, did we not, that there is such a provision in
12 there?

13 A. Yes.

14 Q. Very good. Going back to the abatement plan, is
15 OCD Exhibit Number 13 a copy of the letter by which
16 Chaparral was advised the plan was administratively
17 complete?

18 A. Yes, it is.

19 Q. And the date of that is September 7th, 2001,
20 correct?

21 A. Yes.

22 Q. Did Chaparral proceed to give the required
23 notices?

24 A. Yes, they had done that and provided us proof of
25 notice as well.

1 Q. Did Chaparral ever ask that they be accorded a
2 hearing on the issue of whether or not they were a
3 responsible party?

4 A. No, they did not.

5 Q. Then what happened on January the 2nd of 2002?

6 A. On January 2nd -- this is after the public notice
7 period is complete; there is a 30-day notice period -- then
8 the company had provided us proof of notice, and that is
9 referenced in the documents here at the beginning of this
10 letter. It's listing to October 8th, 2001, correspondence,
11 the August 22nd, and March 23rd, 2001, documents submitted
12 by Chaparral.

13 And this document was the -- after the public
14 comment period was over, the Division evaluates the
15 application for the adequacy to accomplish its objectives
16 for investigation of the site.

17 Q. Okay --

18 A. In this letter we identified several deficiencies
19 in their proposals that they had provided to us at that
20 point.

21 Q. And backing up just a minute, I was going through
22 the stages of an abatement plan approval to establish how
23 the procedure worked, and I sort of went aside to establish
24 about how you determine responsible party, but you
25 testified that the procedure is determination of

1 administrative completeness, then the responsible party
2 gives public notice, then the OCD reviews the plan to
3 determine its adequacy. Now, is the purpose of that
4 chronology to enable the OCD to consider the public
5 comments in terms of its process of determining the adequacy
6 of the plan?

7 A. It is both to consider the public comments as
8 well as the evaluation of the Division.

9 Q. Right, so it applies both its expertise and any
10 input it receives from the public?

11 A. That's correct.

12 Q. Okay. So the result of that process, then, was
13 the letter that OCD sent on January 2nd, 2002, correct?

14 A. That's correct.

15 Q. And that is OCD Exhibit Number 14?

16 A. Yes.

17 Q. Now, this one is actually signed by you, correct?

18 A. Yes, that was the procedures of the Division, is
19 that the abatement plan -- the formal documents for
20 requirement of the plan and approval of the plan, as well
21 as, I believe, the administrative completeness, but the
22 regular correspondence just to evaluate the plan were
23 signed by the staff member responsible for review of that
24 site.

25 Q. And the signature appearing on the second page of

1 OCD Exhibit Number 14, is that your signature?

2 A. Yes, it is.

3 Q. Now, the determination that you made was that
4 Chaparral's Stage 1 Abatement Plan was not adequate,
5 correct?

6 A. Yes, I just noticed, identified technical
7 deficiencies in the plan, and some of them were a result of
8 public comments as well, which -- where there were some
9 additional potential source areas that were not identified
10 by Chaparral in their plan.

11 Q. And did you give Chaparral a deadline when to
12 submit a revised plan?

13 A. Yes, they were to -- we identified six
14 deficiencies, and they were to submit information to
15 correct these deficiencies, technical deficiencies, by
16 February 2nd of 2002.

17 Q. Did they do so?

18 A. They did not.

19 Q. And then did OCD send another notice of
20 violation?

21 A. Yes, on February 22nd of 2002 the Division issued
22 a notice of violation to Chaparral, stating that the OCD
23 has not received the information as required and notifying
24 them that they're in violation of OCD Rule 19.H.(4), and we
25 required that they submit by March 1st of 2002 information

1 to correct the identified deficiencies in the plan.

2 Q. Is that notice of violation OCD Exhibit Number
3 15?

4 A. Yes, it is.

5 MR. BROOKS: I apologize for failing to comply
6 with procedural prerequisite. I have copies for you
7 gentlemen, but I did not give them.

8 MR. LARSON: Thank you.

9 Q. (By Mr. Brooks) Subsequent to the -- Well, once
10 again, is OCD Exhibit Number 15, which is signed by Mr.
11 Anderson -- was that prepared by you?

12 A. Yes, it was.

13 Q. Did Chaparral then respond, submitting another or
14 revised abatement plan?

15 A. Yes, they had submitted an amended Stage 1 Plan
16 on February 28th of 2002, and this replaced their -- they
17 essentially re-wrote the plan, and this replaced the
18 original plans that were submitted in 2001.

19 Q. Now, is OCD Exhibit Number 16 -- is that the
20 cover letter with which their revised plan was furnished to
21 the Division?

22 A. Yes, this is the cover letter that accompanied
23 the actual plan.

24 Q. And was that -- I noticed that OCD Exhibit Number
25 16, my copy anyway, has a stamp, "Received March 1, 2002,

1 Environmental Bureau, Oil Conservation Division". Was that
2 received at or about that time shown in that stamp?

3 A. Yes, it was.

4 Q. Okay. Now I'm going to skip ahead here to OCD
5 Exhibit Number 20. Is OCD Exhibit Number 20 the technical
6 material for the revised plan that was submitted with OCD
7 Exhibit Number 16?

8 A. Yes, this is the amended Stage 1 plan that
9 accompanied Chaparral's February 28th, 2002, cover letter,
10 which is Exhibit 16.

11 Q. Okay. Now, the OCD was still not satisfied,
12 correct?

13 A. They had gone a long ways towards satisfying some
14 of the deficiencies, but we still had some additional
15 information that we were looking for to complete the plan
16 at that point.

17 Q. Is OCD Exhibit Number 17 the letter by which you
18 demanded that additional information?

19 A. Yes, that is the March 21st of 2002 dated letter,
20 is the OCD letter in which we identified, I believe, seven
21 additional deficiencies in the latest amended abatement
22 plan. Some of them were just information that was missing.
23 A lot of these are more clarification issues than we had
24 with the original plan.

25 Q. And I think you've already said this, but just to

1 be sure, that letter gives them a deadline of April 12th,
2 2002, to submit the additional material?

3 A. That's correct.

4 Q. And the signature on page 2 of Exhibit 17, is
5 that your signature?

6 A. Yes, it is.

7 Q. Did you receive a response?

8 A. Yes, on April 12th of 2002 the Division received
9 a supplement to the Stage 1 Abatement Plan from Chaparral
10 Energy.

11 Q. And is Exhibit 18 a copy of the letter by which
12 Chaparral forwarded that additional material?

13 A. Yes, this is the cover letter for that submittal.

14 Q. And is Exhibit Number 21 a copy of the material
15 that they submitted with Exhibit Number 18?

16 A. Yes, this is the specific information to address
17 the deficiencies in the plan.

18 Q. Now, we talk a lot about the abatement plan. We
19 have, and we're going to continue to talk more about it.
20 What documents in this record constitute the abatement plan
21 as it now exists?

22 A. At this point, the February 28th, 2002,
23 documents, which I believe are --

24 Q. Would those be Exhibits 16 and 20?

25 A. Yes, those are Exhibits 16 and 20. That's the

1 amended plan that replaced the prior documents in 2001.

2 And then the April 12th, 2002, supplemental information was
3 the second document that constitutes -- what the Division
4 considered to constitute the abatement plan.

5 Q. And that would be OCD Exhibits 18 and 21?

6 A. That's correct.

7 Q. So when you refer to the abatement plan, you're
8 referring to OCD Exhibits 16, 18, 20 and 21?

9 A. That's correct. And those documents are
10 summarized on our next exhibit, on Exhibit 19 and our
11 approval letter as well.

12 Q. Now, the abatement plan as you had it in your
13 hands after you received OCD Exhibits 18 and 21, that
14 abatement plan was approved by the Division, was it not?

15 A. Yes, at that point we felt we had an adequate
16 plan to begin an investigation of the site, and so we
17 issued an approval of the Stage 1 plan to Chaparral Energy
18 on April 25th of 2002.

19 Q. And is OCD Exhibit 19 a copy of your approval
20 letter?

21 A. Yes, it is a copy of the approval, along with
22 following conditions of approval.

23 Q. And although OCD Exhibit 19 is signed by Roger C.
24 Anderson, was that exhibit prepared by you?

25 A. Excuse me, say that again?

1 Q. OCD Exhibit 19 is signed by Roger Anderson, but
2 again, was that prepared by you?

3 A. Yes, it was.

4 Q. And at that point, was there an approved Stage 1
5 Abatement Plan in effect?

6 A. Yes, there was, as of that date.

7 Q. Now, by way of brief summary, what did that plan
8 require Chaparral to do?

9 A. The plan required Chaparral to perform an
10 investigation of areas with identified contamination at the
11 site, and there was a number of them, I believe. There was
12 -- I don't know, approximately eight or nine different
13 areas within the unit, which were identified as having
14 potential contamination.

15 And as part of the plan they were to investigate
16 the extent of soil contamination at each one of those
17 sites. I believe the way they were looking at doing it was
18 through borings. We can look at it a few different ways,
19 but they have proposed through some borings. And then they
20 were to install a groundwater monitoring well at a number
21 of those locations as well.

22 Q. Now, what is the purpose of the Stage 1 Abatement
23 Plan?

24 A. The purpose of the Stage 1 Abatement Plan is to
25 determine the nature and extent of contamination at a site.

1 Q. And after the completion of the Stage 1 Abatement
2 Plan, the Rule contemplates that the responsible party will
3 file a Stage 2 Abatement Plan, correct?

4 A. Yes, after the Stage 1 investigations are
5 completed, they identify the areas and the magnitude of
6 contamination throughout an area, and the Rule then -- Rule
7 19 then requires that the responsible parties submit a
8 Stage 2 plan as to how they propose to abate pollution at
9 the site.

10 Q. Very good. Now, the Stage 1 plan required that
11 Chaparral report the results of their study?

12 A. Yes, the OCD's approval required that they submit
13 a report on their investigations to the OCD Santa Fe office
14 by July 31st of 2002.

15 Q. Okay. Now, July 31st of 2002, July 31st is
16 pretty close to August the 2nd. We started all this
17 procedure on August the 2nd of 2000. July 31st of 2002,
18 we're just about to start into the third year of this
19 procedure, right?

20 A. That's correct.

21 Q. Did Chaparral submit their report by July 31st of
22 2002?

23 A. Actually, we had received originally a letter
24 from them on June 11th of 2002 stating that they were
25 unable to start the first phase of the abatement plan as

1 initially planned, and they discussed that they were
2 attempting some negotiations with the landowner, Mr.
3 Osborn.

4 Q. Is that letter OCD Exhibit Number 22?

5 A. Yes, it is.

6 Q. And that letter, the copy that I have has a stamp
7 on it, "Oil Conservation Division, 02 June 14". Was that
8 June 14th, the date that OCD Exhibit 22 was received by the
9 Division?

10 A. Yes, it was.

11 Q. Did you receive another letter from Chaparral on
12 or about July the 15th of 2002?

13 A. Yes, we received a letter on July 15th. It was
14 dated July 9th of 2002, and it was from Chaparral Energy.
15 In that letter they were requesting an extension of time to
16 submit the required report, and they were stating that they
17 were attempting to reach a mutually acceptable surface
18 damage agreement with the landowner, Mr. Osborn.

19 Q. Did the Division grant the requested extension?

20 A. Yes, we did, on August 5th of 2002, the OCD
21 granted an extension to submit the Stage 1 investigation
22 report and that the extension -- new extension deadline
23 became October 31st of 2002.

24 Q. And is OCD Exhibit 24 the letter by which that
25 extension was granted?

1 A. Yes, it was.

2 Q. Once again, this OCD Exhibit 24 is signed by
3 Roger C. Anderson. Was it prepared by you?

4 A. Yes, it was.

5 Q. Did Chaparral file their report on or before
6 October 31st, 2002?

7 A. No, they did not.

8 Q. Did they communicate again with the OCD on or
9 about the 7th of November, 2002?

10 A. Yes, on the 7th of November of 2002, we received
11 a letter from Chaparral stating that Rickey Smith Oil and
12 Gas Corporation is the new owner of this unit.

13 Q. And is OCD Exhibit Number 25 a copy of that
14 letter?

15 A. Yes, it is.

16 Q. And I believe you stated that that was received,
17 as the stamp indicates, on November 12th of 2002?

18 A. That's correct.

19 Q. What did the Division do next?

20 A. The Division had at that point sent them a letter
21 on December 6th of 2002, and this letter was sent to
22 Chaparral and it was referring back to this November 7th,
23 2002, correspondence and was informing them that there were
24 certain requirements for Chaparral for notifying the
25 transferee in writing of the existence of the abatement

1 plan, and it cited Rule 19.C.(2), which contains those
2 requirements for transfer of an abatement plan, and --

3 CHAIRMAN FESMIRE: Mr. Brooks, may I break in
4 here real quick?

5 MR. BROOKS: Sure.

6 CHAIRMAN FESMIRE: Are we missing some exhibits,
7 or does the --

8 MR. BROOKS: I apologize to the Commission for
9 that. Yes, OCD Exhibit Numbers -- I numbered these
10 exhibits and then subsequently made some revisions in my
11 presentation. The Division does not intend to offer the
12 exhibits that were marked Exhibits 26 and 27.

13 CHAIRMAN FESMIRE: I'm sorry, Mr. Olson, go
14 ahead.

15 THE WITNESS: Thank you. -- and as I was saying,
16 this letter notified them of the requirements for transfer
17 of an abatement plan according to Rule 19.C.(2), and we
18 informed them that while they provided us a copy of a
19 letter that was sent to Rickey Smith, they did not provide
20 a certificate or proof that the notification was received
21 by the transferee, as required by rule.

22 And we also notified them that we had not
23 received a written notice from either Chaparral or Rickey
24 Smith Oil and Gas Corporation regarding whether they have
25 agreed as to which party shall assume responsibility for

1 the abatement plan. And we require that they submit us
2 this information by December 13th of 2002.

3 Q. (By Mr. Brooks) Okay, this is OCD Exhibit Number
4 28, correct?

5 A. That's correct.

6 Q. Now, did Chaparral then furnish you with a copy
7 of a letter wherein Smith & Marrs, Inc., purports to assume
8 responsibility for this project?

9 A. Yes, and they did that in a letter from Chaparral
10 dated December 9th, 2002, and I don't know if that is part
11 of the --

12 Q. I believe that's one of the exhibits we withdrew.

13 A. There was a cover letter dated 12-9 of '02 that
14 transmitted a letter dated November 13th of 2002 from Smith
15 & Marrs to Chaparral Energy.

16 Q. Now, I guess we would have to refer to this as a
17 purported letter from Smith & Marrs, Inc., because we did
18 not receive it from Smith & Marrs, Inc., correct?

19 A. No, we received this from Chaparral.

20 Q. Okay. And of course, if Mr. Smith testifies,
21 well, he can identify or not this signature. But this was
22 a letter that was furnished to the Division that purports
23 to be a letter from Smith & Marrs, Inc., and that is OCD
24 Exhibit Number 29, correct?

25 A. That's correct.

1 Q. And that letter -- I'll just read a portion of it
2 to the Commission. The last sentence says, "Smith & Marrs
3 shall assume those responsibilities effective December 1,
4 2002, the day this corporation accepts the ownership,
5 operations and control of the unit." And it also says,
6 "Smith & Marrs...hereby agrees to be designated [the]
7 responsible party who shall assume the responsibility [for
8 the] conduct of the Stage 1 Abatement Plan and all other
9 actions required by Section 19.15.5.19 of the NMAC for the
10 above captioned unit." Did I read that correctly?

11 A. Yes, you did.

12 Q. Thank you. Did Smith & Marrs submit anything in
13 pursuance of the abatement plan in terms of a report?

14 A. No, they did not.

15 Q. Okay. Was it then determined that another notice
16 of violation should be sent?

17 A. Yes, the Division was concerned that this had
18 been going on for quite a while and we had not -- still at
19 this point had not received a report on the investigation,
20 and it was our understanding that no activities had
21 occurred at the site.

22 So on January 13th of 2003 we sent a letter to
23 both Chaparral Energy and Smith & Marrs, and it was a
24 notice of violation, and it was discussing the issues of
25 the transfer and the extensions that had previously been

1 given to Chaparral and stated that both Chaparral and Smith
2 & Marrs were in violation of OCD Rules for failure to
3 conduct the actions required in Rule 19.

4 And to correct this, the Division required that
5 both parties submit the Stage 1 investigation report by
6 February 17th of 2002. I believe that should be -- that's
7 a typo on that letter. It should have -- Since the letter
8 was in 2003, that should have been February 17th of 2003.

9 Q. One would hope so.

10 A. Yeah.

11 A. And Exhibit Number 30, is that the notice of
12 violation letter that was sent to Smith & Marrs, Inc., and
13 to Chaparral Energy, Inc.?

14 A. Yes, it is.

15 Q. This again is signed by Roger C. Anderson. Was
16 Exhibit Number 30 prepared by you?

17 A. Yes, it was.

18 Q. Did the Division receive a response?

19 A. No, we did not.

20 Q. Pursuant to that letter and the failure of the
21 parties to respond, did the Environmental Bureau instruct
22 me to file an application for a compliance order from the
23 Director of the Division?

24 A. Yes, we did. I believe we filed an application
25 in this case on March the 20th of 2003.

1 Q. Thank you. And because the official court paper
2 -- or suit papers, application and orders and so forth, are
3 a part of the file already, I have not designated those
4 exhibits and do not propose to offer additional copies into
5 evidence.

6 Did that application come on for hearing before a
7 Division Examiner?

8 A. Yes, it came for hearing and was set for hearing
9 in front of the Division. I believe it was extended once
10 or twice, and it was finally set for hearing on July the
11 15th of 2003.

12 Q. And that was set for hearing before the honorable
13 David Catanach, correct?

14 A. I believe so.

15 Q. Okay. Did a hearing actually take place on that
16 date?

17 A. No, at the hearing itself we had -- right before
18 the hearing started, had reached an agreement with both
19 Chaparral and Smith & Marrs. We sat down and discussed
20 this and reached an agreement which was -- to settle this,
21 which was acceptable to all three parties.

22 Q. All three parties being Chaparral, Inc. -- or
23 Chaparral Energy, L.L.C.; Smith & Marrs, Inc.; and the
24 Division, correct?

25 A. That's correct.

1 Q. Was Mr. Osborn present at that time?

2 A. No, he was not.

3 Q. So Mr. Osborn did not participate in any of the
4 negotiations himself in this agreement?

5 A. That's correct, he was not a party to this
6 agreement.

7 Q. Was the agreement subsequently reduced to writing
8 and executed by all parties?

9 A. Yes, it took a little while to -- going back and
10 forth, to get to a final language on the agreement.

11 Q. And is OCD Exhibit 31 a true copy of the
12 agreement that was signed by all parties?

13 A. Yes, this is a copy of the agreement. I believe
14 it was -- final signature was obtained by the Division at
15 that point on November 17th of 2003.

16 Q. I call the Commission's attention to the dates on
17 the third page by each of the signatures, and it does
18 appear that the latest date of those is the signature of
19 the Administrative Services Director for the Department on
20 behalf of the Oil Conservation Division.

21 Backing up one question, then, this hearing
22 occurred -- this hearing was scheduled to occur on July
23 15th of 2003, correct?

24 A. Yes.

25 Q. And before the agreement got signed, we were well

1 into the fourth year of this --

2 A. Yes, within the start of the fourth year.

3 Q. -- project?

4 I'll call your attention, call the Commission's
5 attention to the provision of the agreement which appears
6 in paragraph B on the second page, and I will read that
7 provision as follows: "Smith & Marrs agrees to fully
8 perform the approved Stage 1 Abatement plan as submitted by
9 Chaparral and approved by OCD, and to file the Stage 1
10 investigative Report not later than ninety...days after the
11 execution of this Agreement by the last party to execute
12 [the] same." Did I read that correctly?

13 A. Yes, you did.

14 Q. Ninety days after the last execution would have
15 been -- the last execution was on November the 17th, and
16 you have to help me count these. I used to do -- I used to
17 be a real estate lawyer at one time, and I had to determine
18 when promissory notes were due, so I have the system down,
19 but I have to count it on my fingers.

20 Thirty days from November the 17th, since it's a
21 30-day month, would be December the 17th, correct?

22 A. I believe so.

23 Q. But December is a 31-day month, so 30 days from
24 December 17th would be January the 16th, correct?

25 A. That's correct.

1 Q. And January is another 31 days, so 30 days from
2 January 16th would be February the 15th, correct?

3 A. That's correct.

4 Q. So 90 days from November the 17th, 2003, would be
5 February the 15th, 2004, correct?

6 A. That's correct.

7 Q. Did Smith & Marrs submit an investigative report
8 on or before February 15th, 2004?

9 A. No, they did not.

10 Q. What did the Division determine to do about that?

11 A. Well, pursuant to the agreement, Smith & Marrs
12 was to make a good-faith effort to negotiate an access
13 agreement with the landowner. At that point we did not
14 believe that -- we did not receive a document, and we did
15 not believe from the information that we received that
16 there had been any real -- I guess there'd been some
17 efforts, but whether it was -- to what extent, I guess,
18 it's adequate is a point of dispute here.

19 Q. Okay. Well, now, I was reading paragraph B. I
20 didn't see anything in paragraph B that made Smith & Marrs'
21 obligation to perform this Stage 1 investigation plan
22 contingent upon the agreement with the landowner.

23 A. No, it did not.

24 Q. Now, it says something in paragraph C about Smith
25 & Marrs shall make a good faith effort to obtain an access

1 agreement, then it goes on to say something else that Smith
2 & Marrs agreed to do in the event that they were unable to
3 make a good faith effort; is that correct?

4 A. That's correct.

5 Q. What was that?

6 A. In the event that they were unable to obtain an
7 access agreement -- it says, "...and institutes legal
8 proceedings to secure an injunction authorizing...access
9 for the purpose of performing the Stage 1 Abatement Plan,
10 Smith & Marrs will notify [the] OCD of such a filing of the
11 date, time and place of any hearing."

12 Q. Did Smith & Marrs ever notify the OCD of the time
13 and place of any hearing, the date, time and place of any
14 hearing?

15 A. They did not as of, I guess, the -- through the
16 spring of -- actually into the early summer of 2004.

17 Q. Now, here's one thing I want to clear up because
18 of something that appears in Smith & Marrs' prehearing
19 statement. There's some statement about -- in Smith &
20 Marrs' prehearing statement, about the -- that the OCD
21 promised to intervene in litigation between Smith & Marrs
22 and the surface owner, or words to that effect.

23 I don't see the word "intervene" anywhere in OCD
24 Exhibit Number 31. Was it your understanding that we ever
25 agreed to intervene in the sense of become a party to any

1 such litigation?

2 A. That was not my understanding. I believe we had
3 discussed, and it was reflected in the settlement
4 agreement, that we would make our best efforts to have a
5 representative available at any hearing to explain to the
6 court if necessary the nature of the proceedings that are
7 conducted by the OCD in the matter.

8 Q. Okay. Up until July 15th of '03, at least, was
9 there any notification given to us that we needed to have a
10 representative present at any hearing, at any particular
11 time and place?

12 A. No, there was not.

13 Q. Okay. Now, I asked you a while back what OCD
14 determined to do after we did not receive any investigative
15 plan by February 15th of '03, so what did OCD determine was
16 the next action that ought to be taken?

17 A. Well, we'd received a few documents that had come
18 through in those periods about some negotiations that were
19 going on. There was the letters in December of 2003 from
20 Smith & Marrs to the Osborns, and then there was a response
21 as well from Mr. Osborn to Smith & Marrs, also in December
22 of 2003.

23 Q. Yes, and several of these are exhibits which
24 we'll look at in a minute, but did the OCD determine at
25 some point that it was necessary to file an enforcement --

1 another enforcement action?

2 A. Yes, we did.

3 Q. And was that done on March 20th of '03, on or
4 about that date?

5 A. On or about that time, yes.

6 Q. Okay. And was a hearing set on OCD's application
7 to reopen this case for the purposes of enforcement?

8 A. Yes, it was.

9 Q. And what was the date of that hearing?

10 A. The date of that hearing, it came for hearing in
11 front of the OCD Examiner, William Jones, on September the
12 2nd of 2004.

13 Q. Okay. Now, you mentioned this a minute ago. Did
14 Mr. Osborn furnish to OCD copies of some correspondence
15 that he allegedly received from Smith & Marrs, Inc.?

16 A. Yes, we did.

17 Q. Okay, I call your attention to Exhibit Number 33,
18 which purports to be a letter from Smith & Marrs, Inc.,
19 dated December 23rd of 2003, addressed to Mr. and Mrs. Clay
20 Osborn. Was that furnished to the OCD by Mr. Osborn?

21 A. That one, I don't recall if that came from Mr.
22 Osborn or if it came from Smith & Marrs. I don't recall
23 which party that came from.

24 Q. Okay.

25 A. It was a letter that was received from us at

1 approximately the time that the action had occurred in
2 December.

3 Q. According to Mr. Osborn, correct?

4 A. Yes.

5 Q. And the statement "Received 12.27.03", that was
6 not put on there by the OCD, correct?

7 A. That's correct.

8 Q. That was presumably put on there by Mr. Osborn?

9 A. I believe that was put on there by Mr. Osborn,
10 actually.

11 Q. Okay. We'll call your attention to what's been
12 marked as OCD Exhibit Number 33A. Now, this appears to be
13 the same letter, correct?

14 A. Yes, we had actually received a letter from Mr.
15 Osborn, I believe it's Exhibit Number 35, the July 18th,
16 2004, letter, and it transmitted several documents that
17 they had received from Smith & Marrs.

18 Q. Okay. And Exhibit 33A, again, that is -- that
19 appears to be -- except for the received notifications
20 which were put on there, we assume, by Mr. Osborn -- except
21 for those received notifications, Exhibit Number 33 and
22 Exhibit Number 33A are identical, are they not?

23 A. 33 and 33A, yes, are the same letter with the
24 same date.

25 Q. Both are dated December 23rd, 2003?

1 A. That's correct.

2 Q. Okay. Now, Exhibit Number 33A was furnished to
3 us by -- was furnished to us, along with Exhibit Number 35,
4 by Mr. Osborn, correct?

5 A. Yes, Exhibit Number 35 was the cover letter that
6 accompanied, I believe, Exhibit 33A, 33B, 33C and Exhibit
7 34.

8 Q. Okay. Now, according to Mr. Osborn, then,
9 Exhibits 33B and 33C were attached to Exhibit 33A; is that
10 correct?

11 A. That's my understanding.

12 Q. Okay. Now, Mr. Osborn responded to Exhibit 33 by
13 writing Exhibit 34, correct?

14 A. That's correct. The original -- As I understand
15 it, there was two things that happened. At first there had
16 been the letters that had come in December, on December
17 23rd of 2003.

18 And then it's my understanding, at least from Mr.
19 Osborn and the cover letter he submitted on Exhibit 35,
20 that in July he essentially just received the same document
21 sent to him again at that point.

22 Q. Okay. Now, looking at Exhibit Number 34, Exhibit
23 Number 34 purports to be a letter from Clay Osborn to Smith
24 & Marrs, Inc., correct?

25 A. That's correct.

1 Q. Now, it shows at the bottom "cc:" to, among other
2 people, NMOCD, Santa Fe Offices, correct?

3 A. That's correct.

4 Q. Did you receive -- Exhibit Number 34 is dated
5 December 27th, 2003, correct?

6 A. Correct.

7 Q. Did you receive a copy of Exhibit Number 34 at or
8 about the time indicated, at or about its date?

9 A. I believe so. I believe so, but I don't see that
10 reflected in the file at this point.

11 Q. But it's your best recollection that you did,
12 correct?

13 A. Yes.

14 Q. Reading from Exhibit Number 34, looking at the
15 beginning of the third paragraph of the letter, it says,
16 "We would be happy to meet with you on discussion of the
17 drilling of water monitor wells, soil boreholes and...other
18 aspects of the investigation on our property and any other
19 issues we need to discuss in order to proceed. Please
20 notify us at least 48 hours in advance when you would like
21 to arrange this meeting so...I can plan my schedule
22 accordingly." Did I read that correctly?

23 A. Yes, you did.

24 Q. Okay. Now, let us look, then, at OCD Exhibit
25 Number 35. OCD Exhibit Number 35 purports to be a copy of

1 a letter from Clay Osborn to Mr. Smith -- it doesn't say
2 Smith & Marrs, it just says Mr. Smith -- dated -- not clear
3 when -- I don't believe it has -- my copy doesn't appear to
4 have -- well, yeah, it is here, I see, dated July 18th,
5 2004, correct?

6 A. That's correct.

7 Q. Now, I notice that this has a -- this Exhibit 35
8 has a stamp, "Received, Oil Conservation Division,
9 Environmental Bureau, July 21st, 2004". Did Mr. Osborn
10 send a copy of Exhibit Number 35 to the Oil Conservation
11 Division?

12 A. Yes, he did, and I think as I was saying, this
13 was accompanied by -- attached to this was Exhibits 33A, B,
14 C, and 34.

15 Q. Exhibits 33A, B, C, and also Exhibit 34?

16 A. Yes.

17 Q. But it's your best recollection that we already
18 had a copy of --

19 A. Yes.

20 Q. -- Exhibit 34, correct?

21 A. Yes.

22 Q. And Exhibits 33A, B and C, again, are the
23 correspondence that was sent -- according to Exhibit 35,
24 was sent to Mr. Osborn from Smith & Marrs in July of 2004,
25 correct?

1 A. Yes, I believe he was stating that he had
2 received another copy of the same documents with those same
3 dates from December of 2003, the same ones that he'd been
4 sent by Smith & Marrs before.

5 Q. Okay. Reading from Exhibit Number 35, Mr. Osborn
6 states, "I am in receipt of your letter that [was] mailed
7 to us July 12, 2004. This is the same letter that we
8 received on December 27, 2003 from you. Your letter is
9 still dated December 23, 2003. This time you have included
10 two releases with your letter..." etc.

11 Then he goes on to say, in the last sentence of
12 the first paragraph, "I have responded to this letter once
13 and have not heard from you until now. I am inclosing a
14 copy of my response... If you have...any questions please
15 do not hesitate to call me...to set up a meeting... We
16 look forward to meeting [with] you and discussing this
17 matter." Did I read that correctly?

18 A. Yes, you did.

19 Q. Very good. I will call your attention now to
20 what has been marked as OCD Exhibit Number 37, which
21 purports to be a copy of a letter from Smith & Marrs, Inc.,
22 to Mr. Osborn. Can you tell us how you came into
23 possession of this letter?

24 A. I believe this was sent to us by Mr. Osborn
25 again.

1 Q. Do you know at what time it was sent to you?

2 A. I don't know. It looks like it was a fax
3 received, and the fax is cut off at the top, so I --

4 Q. So you do not know when you received this --

5 A. I'm not sure.

6 Q. -- but your best recollection is, you received it
7 from Mr. Osborn?

8 A. Yes.

9 Q. Very well. Reading again from this letter, he
10 says, "I appreciate your meeting with Eddy Seay on January
11 12, 2004. As you know we have agreed to perform the Phase
12 I abatement Plan which was approved by the OCD. At this
13 time we cannot agree to any payment for the implementation
14 of this plan. Any test results will be furnished to ROCKY
15 TOP RANCH. I would hope in the future some type of
16 agreement could be reached with the companies that caused
17 damage to your ranch. As we stated in our meeting with
18 OCD, no underground damage was...the result of [operations
19 of] Smith & Marrs."

20 Then he goes on to say in the next-to-the-last
21 paragraph, "If I do not receive a response by February 25,
22 2004 I assume you are denying us permission to drill the
23 abatement wells. Thank you, for your consideration on this
24 matter and I look forward to hearing from you in the near
25 future."

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. Next, I call your attention to OCD Exhibit Number
4 36, and this is the last one, so we'll be through with all
5 these exhibits. OCD Exhibit Number 36 purports to be a
6 petition filed in the District Court of Lea County, New
7 Mexico, correct?

8 A. That's correct.

9 Q. And does it contain what appears to be an
10 official file stamp indicating the date on which that
11 petition was filed?

12 A. Yes, it does.

13 Q. And what is that date?

14 A. The date is August 31st of 2004.

15 Q. And that would have been subsequent to the date
16 of the hearing before the Division Examiner in this case;
17 is that correct?

18 A. That's correct.

19 Q. And --

20 A. It would be after we had filed for a Division
21 hearing.

22 Q. And it would have been more than six months
23 subsequent to the date on which, under the terms of the
24 settlement agreement, Smith & Marrs had agreed to file the
25 investigative report on this abatement plan, correct?

1 A. That's correct.

2 Q. And it also would have been into the fifth year
3 that the Division has been attempting to remedy this
4 pollution problem on this unit, correct?

5 A. Yes, that would be the start of year five.

6 Q. Mr. Olson, have you been furnished with any
7 information by Smith & Marrs, Mr. Osborn, or anybody, that
8 would indicate to you that Smith & Marrs has made a good
9 faith effort to negotiate an access agreement for the
10 purpose of completing this abatement plan?

11 A. I would say no. That was the rationale for our
12 filing of the case in front of the Division at that point,
13 where there had been a couple of the documents -- at least
14 one document, we were aware of a meeting that had occurred
15 back in the winter of 2003-2004, there, I guess -- probably
16 in 2004, I think, in January, and that there had been some
17 correspondence, but that was the only indication anything
18 had happened up until we had taken additional actions.

19 And then after we had filed for a hearing, we had
20 got more information that essentially they had been sent
21 the same information again with those releases to Mr.
22 Osborn, as well as then subsequently filed for the
23 permanent injunction.

24 So it didn't appear to us that there had really
25 been a lot of effort put into trying to negotiate an

1 access. But we were not party to it, so it's difficult for
2 us to say what exactly happened.

3 Q. But my question was, did Smith & Marrs ever
4 furnish you information that indicated to you that they had
5 made a good faith effort to negotiate an access agreement?

6 MR. PADILLA: Mr. Chairman, I'm going to object
7 at this point. I think Mr. Brooks is asking the witness to
8 make a legal conclusion. I think he can ask him what he
9 feels is good faith, but he's now on the verge of asking
10 what is the legal meaning of good faith, and for the record
11 I object to the question because it asks for a legal
12 conclusion.

13 MR. BROOKS: Mr. Chairman, may I address the
14 objection?

15 CHAIRMAN FESMIRE: You may.

16 MR. BROOKS: I believe my question to Mr. Olson
17 was not, Was there a good faith effort, but, Did he receive
18 any evidence that indicated to him that there had been a
19 good faith effort? And I believe this addresses what
20 evidence was furnished to the witness and not what actually
21 would or would not constitute a good faith effort.

22 CHAIRMAN FESMIRE: Okay, Mr. Olson, I'd ask that
23 you stay within the constraints of Mr. Brooks' last
24 statement.

25 THE WITNESS: Uh-huh. I guess in response to

1 your question, the information we had received about
2 negotiations at that point really had primarily just been
3 coming from Mr. Osborn, who was keeping us apprised of when
4 he received something from Smith & Marrs.

5 Q. (By Mr. Brooks) Did the evidence that you
6 receive consist of anything actually beyond the exhibits
7 that we have already reviewed?

8 A. No, it does not.

9 Q. Did you receive anything from Smith & Marrs on
10 the subject?

11 A. I can't recall if that one document came from
12 Smith & Marrs or not. It may have come from Mr. Osborn. I
13 don't recall exactly. And I couldn't really tell from a
14 review of the file what was the origin of that document.

15 Q. Did Smith & Marrs ever at any time contact you
16 and request you to have an OCD representative present at a
17 court hearing at any particular time and place?

18 A. No, they did not.

19 Q. I think that goes over the facts of this
20 abatement plan. I do want to talk a little bit about,
21 though, what actually is the concern that OCD has that is
22 causing all this, so far, fairly unproductive activity.
23 And for this purpose I'll call your attention to what has
24 been marked as OCD Exhibit Number 2.

25 Now, I recognize OCD Exhibit Number 2, being in

1 small scale and in black and white, is not a real nice
2 exhibit, but basically is this a map that shows the
3 location of the South Langlie Jal Unit?

4 A. Yes, it does. Actually, I don't know -- if the
5 Commission would like, I do have a larger version that we
6 blew up yesterday.

7 MR. BROOKS: I think that would be helpful.
8 Unfortunately, somebody seems to have made off with the
9 easel, and I don't know how we're going to make that --

10 CHAIRMAN FESMIRE: Glenn, would you come up and
11 hold this, help him hold it?

12 Q. (By Mr. Brooks) That may be a little easier to
13 see. Unfortunately, as I say, we don't have the easel.
14 There is a rectangular -- rectangular with some protrusions
15 -- area that's outlined in a bolder line than most of the
16 other lines on the map. Is that the outline of the South
17 Langlie Jal Unit?

18 A. Yes, this was what Chaparral had defined to us,
19 this line here. It comes around and down here and back up.
20 That was what they had defined to the Division as the South
21 Langlie Jal Unit.

22 Q. Now, the cross-hach type area below, presumably
23 to the south of that, is that the City of Jal?

24 A. Yes, this here is the City of Jal, and here is
25 the golf course for the City of Jal.

1 Q. Yeah, I was going to ask you, there's a country
2 club or golf course around -- not a country club, a golf
3 course around here somewhere, and you pointed out where it
4 is.

5 A. It's right here on this small square on the north
6 side of the city.

7 Q. Now, can you show on the map where you have
8 identified polluted water?

9 A. What had started this was, the monitor well was
10 put in. You see this little cross-hatched, elongated area
11 right here, it says Bristol -- it's identified as the
12 "'Bristol' Saltwater Release". That's what originally had
13 started this. There's a monitor well that's right at the
14 southern tip of that elongated cross-hatched area.

15 And then we had the soils -- the soil-sample
16 results that came in through there showed that the
17 chlorides had migrated down in that area through the soils,
18 right to the water table, and we had exceedences of the
19 Water Quality Control Commission groundwater standards for
20 chloride and TDS at that location.

21 At the same time, Mr. Osborn was -- I had been
22 out there and met with Mr. Osborn, and he showed us some
23 other areas that were going on at the site, and several of
24 those were identified by some subsequent Bristol reports as
25 well, where we had additional contamination. One is

1 identified here as the Winters "E" Battery oil release, the
2 Winters "C" Battery, as possible releases, and then the
3 Gutman abandoned battery and flare area. These areas look
4 like they've had some -- a number of spills over time.
5 There was a bunch of oily soils as well at some of these.

6 And then this well we have up at the actual
7 injection station up here, it's identified as Chaparral
8 saltwater injection facility. There have been several
9 saltwater releases up in that area. And Chaparral had
10 identified, as well, a couple other areas that I hadn't
11 personally inspected when I was out there with Mr. Osborn
12 at that time.

13 Q. Based on the materials furnished to you by --
14 Well, have you identified all the places where pollution
15 has been identified on the property?

16 A. Well, there's also -- one of the main issues that
17 came up through this is that at about the time that
18 Chaparral -- Chaparral wasn't doing that, then, excuse me,
19 Bristol was doing some of those initial investigations.
20 Mr. Osborn had contracted with a consultant to do the
21 hydrogeologic report of this area, and they had done some
22 sampling of wells throughout this area. It's not
23 designated on this map, it's in another report we have in
24 the file.

25 And they had identified -- as well as the

1 chloride and TDS contamination in the well here at this
2 release site, they identified that we had groundwater
3 contamination at the ranch wells, which is right about here
4 where this arrow roughly crosses this road here that enters
5 in from the highway, the north of the golf course. There's
6 two roads, it's the -- that are entering above the golf
7 course. The second one up is the road that leads in
8 towards Osborn's ranch house, and right about where that
9 dark arrow crosses the road is approximately the location
10 of Mr. Osborn's main house.

11 There's another house over here by the highway,
12 there's wells that -- He's got a number of wells on the
13 property. They had sampled these wells, as well as the
14 monitor well and a few other wells in the area, and it
15 identified that we did have groundwater contamination of
16 his household wells, which is still existing today.

17 I believe the initial results they showed us was
18 that they had -- back in the early to mid-1990s, they had
19 -- did not have contamination of their --

20 COMMISSIONER CHAVEZ: Is that report going to be
21 included as an exhibit, as part of the record that you're
22 testifying to right now?

23 MR. BROOKS: No, it's not our intention to offer
24 the report into evidence. It is our intention to ask Mr.
25 Olson for some opinions based on it.

1 COMMISSIONER CHAVEZ: Oh, okay.

2 THE WITNESS: It's part of the record, of the
3 files. I don't know if you can take note of that or
4 whatever, but it did identify the areas of contamination
5 out there. And we had, you know, contamination of wells.
6 It also had some interesting information on the house well
7 itself, which had been sampled over time since about 1996.
8 And back in 1996, actually, the results that they provided
9 to us showed that the water was not contaminated at the
10 ranch at that time.

11 And at about -- I believe it was roughly about
12 1998 or 1999 that it started to exceed standards, and it
13 has increased steadily over time until we received some
14 sample results. The last ones in ninety- -- actually, I
15 believe it was in, probably, the winter of 2003, that the
16 ranch well had been increasing and gone over concentrations
17 for the WQCC standards for chloride in about 1999 or 2000
18 and have now increased up to around 800 parts per million
19 of chlorides today.

20 And he's had similar problems with other wells on
21 the property which had previously been relatively good in
22 concentration, and they're now contaminated above
23 standards.

24 He'd also provided us in that last sample results
25 with a couple other residences which he might be able to

1 help us identify, but there was a couple other residences,
2 as well as golf-course-area wells, which are shown to be
3 contaminated above the standards with chloride as well.

4 MR. BROOKS: Okay, I think we can dispense with
5 Glenn's services now.

6 CHAIRMAN FESMIRE: Let the record reflect that
7 Mr. von Gonten is one damn fine easel.

8 (Laughter)

9 Q. (By Mr. Brooks) Mr. Olson, have you reviewed all
10 the results of all the investigative materials that you
11 have spoken of?

12 A. Yes, I have.

13 Q. Based on that review, your knowledge of the
14 property and your professional experience, do you have an
15 opinion as to whether or not the water contamination
16 situation which appears to exist on the South Langlie Jal
17 Unit presents an imminent hazard to human health and the
18 environment?

19 A. I believe it already has, in that it's
20 contaminated the, you know, water supply wells for the
21 ranch as well as, it appears, some adjacent residences, and
22 it's contaminated water across the golf course, and then
23 this water in this area is used for domestic purposes.

24 Q. Do you believe that there is a reasonable
25 probability that if this situation is not abated, that the

1 pollution will migrate and affect other locations and
2 areas?

3 A. I believe that's highly likely.

4 Q. And do you believe that if it does so that it is
5 likely to cause water in other locations and areas to
6 exceed standards?

7 A. Yes.

8 Q. Mr. Padilla in his opening statement said
9 something about that Mr. Olson had indicated that the plume
10 of pollution came from outside of the South Langlie Jal
11 Unit. Mr. Olson, do you actually have an opinion based
12 on -- is the material that you have now sufficient to form
13 an opinion as to exactly where this pollution comes from?

14 A. I believe it does not. That was the purpose of
15 this Stage 1 investigation, is to conclusively determine
16 the sources and the nature and extent of contamination. We
17 know in particular at one area where there was the prior
18 Bristol saltwater release, that that area had contaminated
19 to -- or had contributed to contamination at the site,
20 because we traced it through the soils right to the
21 groundwater.

22 There is some indication that there might be some
23 upgradient contamination as well, but the full extent and
24 what the true nature and extent is, is yet to be
25 determined. That is the purpose of the Stage 1 plan.

1 Q. So it is your opinion at this point that at least
2 some of the pollution emanated from this unit?

3 A. That's correct.

4 Q. And some of the pollution may have emanated from
5 another source?

6 A. That's correct. There's a lot of operations in
7 this area.

8 Q. Do you have an opinion as to what was the primary
9 source, based on what you know at this time, or is there
10 not enough information to make such an opinion?

11 A. Just my professional opinion on looking at this
12 site, the Bristol saltwater release and the injection
13 station where there's been releases in the past are
14 directly upgradient of Mr. Osborn's ranch wells. So I
15 believe it's highly likely that they are a contributor to
16 the contamination, as a source of contamination for his
17 wells.

18 Q. Now, we'll agree that a lot of this stuff
19 happened before Smith & Marrs took over, so --

20 A. That's correct.

21 Q. -- that's not an issue, correct?

22 A. That's correct.

23 Q. But it's the position of the Division, is it not,
24 under our Rules that an operator of an oil and gas property
25 is a responsible party who can be required to abate the

1 pollution emanating from that property, even though some
2 portion, or even all of that, may have originated before
3 that operator assumed operation for that property; is that
4 correct?

5 A. That's correct.

6 Q. Mr. Olson, unfortunately the predicate for these
7 exhibits is a little bit different in some instances, so I
8 may have to ask more questions than I would like to have to
9 ask you in this. But I'll first call your attention to
10 Exhibit Number 1. Exhibit Number 1 was prepared by you and
11 me, was it not?

12 A. That's correct.

13 Q. And it was prepared, frankly, for purposes of
14 this litigation, correct?

15 A. That's correct.

16 MR. BROOKS: Okay. Mr. Chairman and members of
17 the Commission, we do not offer Exhibit Number 1 as a
18 summary because it doesn't meet the requirements of the
19 rule. We do offer Exhibit Number 1 as a demonstrative aid
20 to assist the Commission in following the other exhibits,
21 and not for the truth of the matter stated.

22 If you wish me to do so, I'll let you rule on
23 each class of exhibits as I tender them, or you can wait
24 till I've tendered them all and rule collectively on all of
25 them for the purposes offered, but --

1 CHAIRMAN FESMIRE: Mr. Larson, Mr. Padilla, would
2 have any objection to admission of any of the documents
3 that we've gone over this morning?

4 MR. PADILLA: I don't have any objections.

5 MR. LARSON: I have no objections.

6 CHAIRMAN FESMIRE: Why don't you tender them en
7 *masse*?

8 MR. BROOKS: That will greatly simplify things,
9 Mr. Chairman, I'm very much obliged.

10 With that, I will offer into evidence Exhibits 1
11 through --

12 CHAIRMAN FESMIRE: -- 25?

13 MR. BROOKS: -- 25, Exhibits 28 through 32 --
14 through 33, Exhibits 33A, -B and -C, and Exhibits 34
15 through 37.

16 MR. LARSON: Mr. Chairman, can I just clarify for
17 the record? What's been marked as 1, I believe you said
18 you did not want to admit that as an exhibit? Did I hear
19 that correctly?

20 MR. BROOKS: I want to admit that as a
21 demonstrative aid.

22 MR. LARSON: Okay.

23 MR. BROOKS: The others are admitted as -- are
24 tendered as exhibits.

25 MR. LARSON: Thank you.

1 CHAIRMAN FESMIRE: Do you have any objection to
2 that, Mr. Larson?

3 MR. LARSON: No.

4 CHAIRMAN FESMIRE: Mr. Padilla?

5 MR. PADILLA: No.

6 CHAIRMAN FESMIRE: At this time we'll admit
7 Exhibit 1 as a demonstrative aid, Exhibits 2 through 25,
8 Exhibits 28 through 33, Exhibits 33A, -B, and -C, and
9 Exhibits 34 through -- what was the last one?

10 MR. BROOKS: Thirty-seven, I believe.

11 CHAIRMAN FESMIRE: -- 37, are admitted.

12 MR. BROOKS: Pass the witness.

13 CHAIRMAN FESMIRE: Okay. At this time, why don't
14 we take a 10-minute recess? It's my intention to reconvene
15 in 10 minutes and go until about 12:30, take an hour lunch
16 break, and come back about 1:30 and complete the hearing
17 after that.

18 With that, we'll take a recess until about 11:10.

19 MR. BROOKS: Thank you.

20 I'm sorry, Mr. Olson has raised -- would the
21 Commission like this to be made part of the -- the larger
22 version of Exhibit 2 to be made part of the record?

23 CHAIRMAN FESMIRE: I think we've already admitted
24 an individual copy, I don't think we need it.

25 (Thereupon, a recess was taken at 10:58 a.m.)

1 (The following proceedings had at 11:19 a.m.):

2 CHAIRMAN FESMIRE: Okay, let's go back on the
3 record in Case Number 13,061. We've just completed the
4 direct examination of Mr. William Olson. We'll now begin
5 the cross-examination. Mr. Larson, do you want to go
6 first?

7 MR. LARSON: It makes no difference to me.

8 CHAIRMAN FESMIRE: Okay, Mr. Padilla, do you have
9 a preference?

10 MR. PADILLA: No, I don't.

11 CHAIRMAN FESMIRE: Mr. Larson, why don't you
12 begin then?

13 MR. LARSON: Thank you.

14 Mr. Chairman, I would like to clarify one issue
15 that Mr. Brooks raised. I think it was in relation to
16 what's been marked as Exhibit 4. He mentioned that that
17 letter is on the letterhead of Chaparral Oil, L.L.C.

18 By way of clarification, there were several
19 Chaparral entities involved in the purchase of Bristol's
20 assets. Chaparral Oil was one. There was an entity called
21 CEI Bristol Acquisition, L.P., as well as Chaparral Energy,
22 Inc.

23 CHAIRMAN FESMIRE: Mr. Larson, do we need to have
24 this by way of clarification, or would you rather put it in
25 as testimony with your witness?

1 MR. LARSON: I can do it that way. I just -- The
2 bottom line is, Mr. Chairman, the party that is at play
3 here is Chaparral Energy, L.L.C. That's the only
4 clarification I wanted to make.

5 CHAIRMAN FESMIRE: Okay, with that clarification,
6 why don't you go ahead, and when you bring your witness up
7 explain that to us, we will certainly accept it.

8 MR. LARSON: Certainly.

9 CROSS-EXAMINATION

10 BY MR. LARSON:

11 Q. Good morning, Mr. Olson.

12 A. Good morning.

13 Q. You testified about public notice that Chaparral
14 was required to give of the Stage 1 Abatement Plan.

15 A. That's correct.

16 Q. Did that notice also include individual notice to
17 property owners within the vicinity of South Langlie Jal
18 Unit?

19 A. Yes, it did.

20 Q. Do you have a sense of the number of property
21 owners that Chaparral sent individual notice to?

22 A. I don't know. I know it's quite a few because
23 the city is right there and the notification area is quite
24 large. So I don't know the exact number, but I expect it
25 was quite a few residents through that area.

1 Q. Do you recall what the radius of property owners
2 was involved?

3 A. I believe for -- it's -- I can't remember if it's
4 a mile or a half-mile radius. It's set in the Rule. It's
5 an extensive radius, though.

6 Q. Did Bristol Resources ever submit a Stage 1 Plan?

7 A. No, they did not at that point, they had just --
8 I think after we have the requirement for the abatement
9 plan, shortly afterwards it was my understanding they went
10 into bankruptcy.

11 Q. And what was your expectation of what would be
12 included in that abatement plan? Was it to address the
13 saltwater release that Bristol had reported?

14 A. Yes, it was initially for the saltwater releases,
15 and then as we identified some other things through
16 visiting the site, site inspections, we did include some
17 other areas. But it initially started out as the area of
18 Bristol's saltwater release. It was identified on the
19 Exhibit 2.

20 Q. And can you identify the other areas that you --
21 or I should say that came to your attention in the course
22 of your investigation?

23 A. Largely it's several tank batteries through the
24 area. There was some spills adjacent to the saltwater
25 injection facility, so it's largely associated with the

1 fixed facility, as well as -- Mr. Osborn has pointed out to
2 us at various times of a number of line leaks they've had
3 across portions of the property, and not always within the
4 unit. Some of them are outside, which were potentially
5 other parties as well.

6 Q. Okay, so we have two means of identification of
7 sites here. One is the OCD's investigation, the other
8 would be information received from Mr. Osborn?

9 A. Yeah, I guess I'd kind of consider that all the
10 same thing. I consider that part of the OCD's
11 investigations of what they looked at.

12 But I think to clarify, maybe, what you're
13 getting at, it did start from just the Bristol salt release
14 at that point, and then did move out to include some of the
15 other activities. We saw the unit itself as potentially a
16 problem, and not just the area of that one release.

17 Q. Okay. And you personally went out to the unit
18 and walked the site?

19 A. Not the -- not every part of the site, but I
20 covered most of the areas that are on the west side of the
21 highway there. At that time I didn't know that the unit
22 actually covered across the other side of the highway.

23 Q. Did anybody from the Hobbs office accompany you?

24 A. Yeah, at that time I believe Donna Williams was
25 the local environmental inspector at that time, and she had

1 been there with me. I also had, in one of the visits with
2 Mr. Osborn, I believe, Jack Ford and Martyne Kieling with
3 the Environmental Bureau were also there. It's just been a
4 series of visits, I've been out there a number of times.

5 Q. I believe it is OCD Exhibit 5 which is the
6 notification letter for Chaparral that you are requiring
7 Chaparral to prepare and submit a Stage 1 Abatement Plan?

8 A. That's correct.

9 Q. And what was the Environmental Bureau's
10 expectation at that time -- this is October 31 of 2000 --
11 of what Chaparral was to include within their Stage 1
12 Abatement Plan?

13 A. Well, I think at that point we'd been aware of a
14 number of things on the property, so I think as we
15 mentioned here, it was for the unit, not just for the spill
16 itself.

17 Q. The spill being the Bristol spill that had been
18 reported?

19 A. Right. And I think even back with Bristol, they
20 had identified in some of the -- if you look at -- I know
21 it was in Exhibit 3, they identified a series of reports
22 that Bristol had done, and they had identified some other
23 areas that they were investigating as well, some of those
24 old tank batteries, I believe it's the Winters "E" and the
25 Winters "C" and one of the other -- I think the flare as

1 well.

2 So Bristol had already been looking at and
3 investigating some of that contamination, and we at that
4 point thought it prudent to include it all as the unit,
5 since it seemed to be spread around the unit.

6 Q. Okay. At that point in time, October 31 of 2000,
7 were you aware of any release caused by Chaparral Energy's
8 operations at the South Langlie Jal Unit?

9 A. No, we were not.

10 Q. I believe Mr. Brooks -- and I don't want to
11 misstate your testimony, but he asked you about the OCD's
12 interpretation of Rule 19 and the abatement plan
13 requirements. Did I understand your testimony correctly
14 that the current operator is deemed to be responsible for
15 all historical contamination at site?

16 A. That's been the approach that the Division had
17 used the entire time I was working with them. Always look
18 to the current operator, with the idea that it was a civil
19 matter between them and prior operators for -- if there was
20 some contamination maybe caused by a prior operator.

21 Q. If -- I'm going to give you a hypothetical here.
22 If there were an operator that was new to the State of New
23 Mexico and was looking at a property that potentially had
24 environmental contamination, is there anything in Rule 19
25 that would put that operator on notice that if they bought

1 the property they would be responsible for all historical
2 contamination?

3 CHAIRMAN FESMIRE: Mr. Larson, doesn't that call
4 for a legal conclusion from this witness?

5 MR. LARSON: I'm looking at him as an expert.
6 He's been qualified as an expert hydrologist. He's also
7 testified about how the Environmental Bureau interprets and
8 applies Rule 19. That's the context I'm asking the
9 question in.

10 CHAIRMAN FESMIRE: Okay, so within his experience
11 and knowledge?

12 MR. LARSON: Oh, absolutely --

13 CHAIRMAN FESMIRE: Okay.

14 MR. LARSON: -- absolutely.

15 CHAIRMAN FESMIRE: Mr. Olson, why don't you go
16 ahead and answer the question?

17 THE WITNESS: Could you maybe repeat the
18 question?

19 MR. LARSON: Okay, could you repeat it back,
20 please?

21 COURT REPORTER: "I'm going to give you a
22 hypothetical here. If there were an operator that was new
23 to the State of New Mexico and was looking at a property
24 that potentially had environmental contamination, is there
25 anything in Rule 19 that would put that operator on notice

1 that if they bought the property they would be responsible
2 for all historical contamination?"

3 THE WITNESS: I don't have the rule here in front
4 of me, but I think it really comes down to the definitions
5 of operator, and -- I think you're right, though, it's not
6 specific to say that -- who particularly is a responsible
7 party. It's just kind of a broad definition of who is
8 responsible, but it's not -- I would probably agree with
9 you. You'd probably have to look at it and probably take
10 it more as an interpretation of what that is.

11 Q. (By Mr. Larson) Okay, so would it be correct to
12 say you'd have to look beyond the language of the Rule and
13 understand the way that the Environmental Bureau has
14 interpreted and applied the Rule?

15 A. I believe that's typically -- when we've had some
16 of these discussions with other parties, they've come in
17 and say, Hey, are we responsible for some of this? And
18 we'll talk to them about it.

19 Q. Okay. And there was some discussion on direct
20 examination about possible off-site migration. Has OCD
21 required any off-site operators to submit a statement or an
22 abatement plan?

23 A. No, we were working with several parties around
24 that area as well. Texas-New Mexico Pipeline was doing
25 some remediation work in that area, and I can't recall if

1 that ended up in an abatement plan.

2 There was also some work going on at the adjacent
3 Maralo, the Jalmat battery there, and -- well, from some of
4 the work that we'd looked at that was going on through
5 there, there's kind of a redbed high over in that area, so
6 it doesn't look like there's actually protectible water,
7 but we had been working with them on a series of spills
8 over at that battery area where there'd been some problems
9 up on the hill there to the west of the South Langlie Jal
10 Unit.

11 Q. Okay. So the Maralo is off-site to the west; is
12 that correct?

13 A. Is off to the west, that's correct.

14 Q. And if there was a release, say, of produced
15 water at Maralo, could it have come over this redbed
16 formation and migrated down onto the South Langlie Jal
17 Unit?

18 A. It's possible contamination could get down and
19 hit the redbeds and move laterally, possibly, onto the
20 unit. I think that was part of what was a major concern of
21 Chaparral's when they were looking at the abatement plan,
22 because the first part of their plan, they put in for
23 installation of three wells along the west side of the unit
24 to see if they had contributions coming in from upgradient.
25 Because we admitted with them that there was a lot of

1 activities in that area and there's, you know, a
2 possibility of other sources of contamination.

3 Q. And if Chaparral had gotten to the point of
4 drilling monitoring wells at the west edge and those wells
5 indicated off-site migration, would the Environmental
6 Bureau then look at Maralo as a responsible party?

7 A. We would look at whoever was on that as
8 additional responsible parties, right.

9 Q. You're correct, I singled out Maralo just
10 because --

11 A. Right.

12 Q. -- you mentioned that.

13 You mentioned a Texas-New Mexico Pipeline
14 release?

15 A. Yes.

16 Q. Where was that in relation to the South Langlie
17 Jal Unit?

18 A. I believe that was again up on the west side,
19 maybe towards the north part, on the outside of the unit as
20 well. That was a crude oil gathering line that had a
21 release.

22 Q. So it wasn't a produced water or a saltwater
23 release?

24 A. No, it was a crude oil gathering line.

25 Q. Would it be fair to say that the possible

1 contamination that the Environmental Bureau has identified
2 in the groundwater beneath the South Langlie Jal Unit is
3 part of a larger regional contamination problem?

4 A. It's possible. I think at this point we don't
5 know what the full extent is, and that was -- you know,
6 part of the purpose of the plan was to look at, okay,
7 what's the contributions from this unit, as well as taking
8 Chaparral's approach as well, as what is coming in from
9 upgradient.

10 MR. LARSON: I'll pass the witness.

11 CHAIRMAN FESMIRE: Mr. Padilla?

12 CROSS-EXAMINATION

13 BY MR. PADILLA:

14 Q. Mr. Olson, let's look at your Exhibit Number 2.
15 I believe you testified that the saltwater release
16 identified as the Bristol saltwater release about the
17 center of this exhibit, that that may be the cause of
18 pollution on the ranch wells?

19 A. Well, I believe we know that's -- It's one area
20 we know is a source, based upon the investigation work that
21 was done to date. Bristol had done some other soils work
22 at other areas within the unit. I believe that was -- I
23 think that the Winters "E", Winters "C", and the Gutman
24 flare, where they showed that we did have contamination
25 with chlorides, as well as oil contamination, total

1 petroleum hydrocarbon contamination of the soils as well.

2 The full extent of contamination at those other
3 spots hadn't been determined down to the groundwater, so I
4 don't think we know if they're actually contributing to the
5 groundwater contamination or not. That's one of the things
6 that would be looked at as part of the Stage 1 plan.

7 Q. Have you required any abatement plans on the west
8 side, outside the exterior boundaries of the unit for the
9 possible salt releases that are identified on Exhibit 2?

10 A. I'm not sure which one is identified over here,
11 but one of those we may have at one point, and I'm thinking
12 it might be the ones that say -- I'm not exactly sure, but
13 it says "Possible Saltwater Releases", it's got three
14 arrows coming off that box there --

15 Q. Right.

16 A. -- towards -- above the Gutman flare. I believe
17 that far west one may be the site of -- I can't remember
18 the operator on that one. We had required an abatement
19 plan at one point over there for groundwater contamination
20 at that site.

21 Subsequent investigations show that the water was
22 created as part of the spill itself, because it's an area
23 of the redbed highs, and once they did some additional
24 investigations, showed that we didn't really have
25 protectible water there. So we -- I believe we had closed

1 that site out where they had cleaned up the soils, but the
2 abatement plan, I believe, was rescinded, but I'm a little
3 -- it happened a little while ago, so I don't remember the
4 exact dates of that.

5 We'd also looked at -- The tricky part is when
6 you say, has it been required to be -- to have an abatement
7 plan, the Rule for abatement plans didn't come into effect
8 until, I believe, around 1997 or so, and the Rule itself
9 contains some exceptions for activities that are ongoing
10 prior to the effective date of the abatement regulations.

11 So just because there's not an abatement
12 regulation -- or abatement plan for a specific site doesn't
13 mean there might not be some groundwater cleanup going on,
14 which would be the same -- done the same way and it's the
15 same activity, it's just not a formal abatement plan
16 because they were grandfathered in under the Rule.

17 And I can't recall if the Texas-New Mexico
18 Pipeline site was like that or not. I'm thinking that it
19 was, so it -- they were doing some groundwater cleanup work
20 there, and it may have predated the abatement regulations.

21 Q. Well, the saltwater injection facilities
22 identified inside the South Langlie Unit -- or Jal unit,
23 would also run into the same kind of pre-abatement rule,
24 grandfathered, wouldn't it?

25 A. Well, it's for the groundwater activities that

1 are ongoing prior to the effective date of the Rule. At
2 this point we have no pre-existing groundwater cleanups or
3 investigations going on here prior to the effective date of
4 the Rule.

5 Q. Well, as I understand the purpose of this
6 abatement plan, it's to see whether or not there's any
7 migration of water flowing from outside the unit, as well
8 as something -- migration of water inside the unit, right?

9 A. Well, it's to determine the nature -- we know we
10 have groundwater contamination, so it's to determine the
11 nature and extent of groundwater contamination, is the
12 purpose. Soils are part of that, as they're going through
13 the unit, but the true purpose of the Rule is to abate
14 water pollution. So that includes the investigation of the
15 nature and extent and then the remediation of any
16 associated contamination.

17 Q. I understand that's the purpose, but my question,
18 my original question, was whether you have required any
19 abatement plans west of the unit.

20 A. Like I said, I think the only one was that one --
21 I believe that might have been M&A, and I'm thinking about
22 that, was the company, but that's the only one that I
23 recall, at least from when I -- up till October of last
24 year, that was an abatement plan in that vicinity.

25 Q. From a bird's-eye view, these possible saltwater

1 releases are fairly large on the west side of the -- or
2 west of the unit, right?

3 A. That's correct.

4 Q. Can you tell us about why those are as large as
5 they appear to be on -- relatively speaking, on this
6 Exhibit Number 2?

7 A. I don't know if Chaparral had put this together
8 themselves. This wasn't sites that were identified by us.
9 I know -- And it's hard for me to tell exactly where some
10 -- for instance, I know like the -- one of the big ones
11 there to the -- that far southern hached area to the west
12 of the area, I believe, is the -- approximately where the
13 Jalmat Yates Unit is there, so that battery that Maralo had
14 operated.

15 And they had had a number of spills up on that
16 property. I was working with them on soil cleanups on a
17 number of them, and they were being rather difficult in
18 cleaning those up.

19 Q. In the abatement plan itself, at page 6,
20 identifying the -- that's Exhibit 20, second paragraph
21 of --

22 A. All right, that was page 6, you said?

23 Q. Yes, section 2.1. The first section there
24 states, "Structurally, this portion of Lea County, New
25 Mexico sits in the Delaware Basin. Triassic rocks in

1 [this] area have a regional dip of less than 1 degree to
2 the southeast."

3 Would that indicate possible migration from the
4 saltwater releases west of the unit into the affected areas
5 that you were talking about on the unit?

6 A. Well, it would depend, I guess, on what portion.
7 If you have things down towards the south end on the west
8 side, then most likely they might be a little off-gradient
9 to it. But overall, yes, I'd say things that would be
10 northwest of the site would be potential source areas.

11 Q. Okay. You don't disagree with that statement, do
12 you --

13 A. No.

14 Q. -- the regional dip is southeast?

15 A. Right, that's correct.

16 Q. Also, paragraph 2.2 further down -- let's see, I
17 think it's the last sentence, "In order to ascertain the
18 existence and concentration[s] of off-site contamination
19 migrating in from the west and northwest, Chaparral
20 proposes to install three monitoring wells..." and it
21 continues.

22 Could those wells have been placed west of the
23 unit in order to determine whether or not drainage or
24 migration was coming from the large areas as shown on
25 Exhibit 2?

1 A. I'm sorry, you mean -- you said, could they be
2 installed west of the actual unit?

3 Q. Right.

4 A. That's -- I don't see why they'd actually have to
5 be on the unit itself, if that's what you're getting at.

6 Q. Who operates the area west of the unit?

7 A. I'm not sure who the operator is over there. I
8 know Maralo has got some operations. I'm not sure if
9 that's all theirs or not, you know. I'm not aware of the
10 actual -- what the leases are over there.

11 Q. Have you ever required Maralo to do an abatement
12 plan?

13 A. No, we had -- we're doing spill remediation under
14 Rule 116 in several of their sites, and if that had been
15 found to migrate down to contaminate groundwater, it would
16 have required an abatement plan. The problem was, we were
17 having some difficulty getting Maralo to actually conduct
18 the activities that we had required.

19 Q. Did you seek a compliance order against Maralo?

20 A. At the point of when I left, I don't believe we
21 had, so...

22 Q. How long have you been dealing with Maralo?

23 A. Probably -- over about the same time frame. I
24 think some of this stuff came to my attention, probably,
25 maybe in 2000. I think when I was out there with Mr.

1 Osborn, he had -- he'd showed us the battery up there, and
2 we'd had some spills that we were working with on the
3 cleanup.

4 Typically, the way this goes on the groundwater
5 issues, it's the same way it happened with Bristol, is that
6 it starts out as a corrective action under the spill rules
7 under 116. As part of that, you're going and defining what
8 the extent of soil contamination is. And as example at
9 Bristol, as they had done the vertical extent of the
10 contamination they found groundwater contamination. The
11 vertical extents, I don't know if they've ever been fully
12 determined at the Maralo site. Not that I know of, so...

13 Q. But you haven't required Maralo to drill a
14 monitor well to see whether or not migration is actually
15 moving from the locations as shown on Exhibit 2 to the west
16 of the unit, to show migration going into the unit?

17 A. Well, no, we know that there's -- at some point
18 over there you can look at the, you know, geologic maps for
19 that area. There's a redbed high on that area, there's --
20 essentially the Osborns' area is down in a low area, then
21 it kind of gets up to a rise up in through there where
22 Maralo is up on -- at least the battery is up on that top
23 part of the hill there, and that is part of a -- you know,
24 of a -- geologically, a redbed high.

25 So the groundwater, at least that you look at for

1 the regional stuff for that area, they list that there is
2 groundwater in that area. And we did have a couple of
3 borings over on the west side from that, which did show
4 that there was not groundwater.

5 So it wasn't real clear where that boundary is in
6 there and where the groundwater stops. But if we had
7 contamination -- I think our intent was, looking at what
8 the results of this investigation was, if there was
9 contamination coming in from the west side, we would look
10 to the next operator over and require an abatement plan of
11 them. But this was a first portion of a step of actions
12 that were going on for investigating this area.

13 Q. But just from an eyeball standpoint, wouldn't you
14 agree that west of the unit would be a -- indicative that
15 some type of abatement plan be implemented west of the
16 unit?

17 A. I would say yes if there is groundwater over
18 there. That's to me a key factor. If there isn't
19 groundwater, they're not required to have an abatement
20 plan, they would be doing a soil cleanup of some sort under
21 Rule 116 for corrective actions and mitigation of the
22 surface damages, but they wouldn't necessarily be cleaning
23 it up to be protective of groundwater, which would be an
24 abatement plan.

25 So there's a couple -- there's two different

1 mechanisms for doing cleanups under the OCD Rules, and one
2 is solely for groundwater, the other one is for dealing
3 with mitigation of releases.

4 Q. But because of the structural dip you would still
5 have some kind of migration that the OCD could take
6 corrective action so as to prevent downstream pollution,
7 right?

8 A. Well, it's possible that -- I'm not saying that
9 there's not possible -- that there's not contributions
10 coming in from that side.

11 I guess what we had looked at -- the main thing
12 we'd looked at was -- with the Bristol saltwater release
13 was, if you're looking at that southeastern dip and the
14 regional hydraulic gradient, is again following that dip of
15 the redbeds to the southeast, the Bristol saltwater release
16 is directly upgradient of Mr. Osborn's wells. It's
17 actually the closest thing and is directly upgradient of
18 his water wells. That's why we focused on that for a start
19 because the most likely -- we saw that as the most likely
20 source of contamination of his water wells.

21 That's not to say that there's not other sources,
22 because it's -- you know, it's pretty much an old oilfield
23 and there's a lot of potential problems in that area.

24 Q. Do you know was the operator of the unit before
25 Bristol?

1 A. Oh, I don't recall. It may have been -- I'm not
2 sure if it was Apache or -- it was one of the larger
3 companies at that point, but I don't recall off the top of
4 my head, I guess, who that really is. I know there was an
5 operator before Bristol.

6 Q. In terms of your answers to Mr. Larson's
7 questions as to responsible parties, Apache or somebody
8 else could fit the definition of responsible party, right?

9 A. It's potential that I guess all operators could
10 be.

11 Q. From inception of drilling?

12 A. That's possible. I guess that's kind of a legal
13 matter for the Division to --

14 Q. No, I understand --

15 A. -- to determine.

16 Q. -- but I'm not asking you to give me a legal
17 conclusion, I'm just simply asking what your understanding
18 of a responsible party is. And your testimony is that it
19 was a rather broad definition; is that fair to say?

20 A. That's -- yes.

21 Q. So it's not necessarily the operator, right?

22 A. I guess you would be looking at, you know,
23 whoever potentially caused contamination. I know that's
24 what the Division would be looking at, so...

25 Q. Do you have any evidence that Smith & Marrs

1 caused any pollution in the unit?

2 A. No.

3 Q. Now, going back to Maralo, I'm just curious why,
4 in a matter of four years, or at least the same time frame,
5 why a compliance order hasn't been sought against Maralo?

6 A. Actually, we had an action going on with them on
7 the south side of Jal at that point for -- that we had
8 taken to Division hearing for contamination on a different
9 ranch on the south of Jal. We hadn't quite got to that
10 portion. Admittedly, we have kind of a small staff for
11 dealing with a lot of these things, and compliance actions
12 are very time-consuming.

13 With the idea that there might not be protectible
14 water over there, since we had some information, we were
15 looking at whether or not -- well, I guess we were looking
16 towards the Stage 1 plan that was being implemented here,
17 that was to help direct us on -- if we needed to go
18 someplace else at that point. But it's not to say that
19 there's -- there were unresolved compliance issues with
20 Maralo over to the west, and they hadn't been fully dealt
21 with.

22 It was on my plate back then, but I just never
23 quite got there, so....

24 Q. Chaparral or Bristol notified people or gave
25 notice under abatement plans pursuant to requirements of

1 the OCD. Did you receive any comments from Clay Osborn?

2 A. Yes, we've received comments from Clay Osborn,
3 the mayor of Jal, I believe the library there, which owns
4 some property, and then several other residents. I don't
5 remember all of them. But there was a number of parties
6 that submitted some comments.

7 Q. Do you recall what the comments of Clay Osborn
8 were?

9 A. I believe he had -- I don't know if I recall the
10 exact specifics. I mean, he was concerned about his water
11 and a variety of sources across the property, I believe
12 even -- probably even more than we were actually looking at
13 as part of the abatement plan at that point, because he had
14 a pretty extensive documentation of spills on his ranch,
15 and he showed us that when we were at the ranch at one
16 time. He had a whole -- kind of almost library of
17 documentation of photos over time, showing spills on the
18 ranch that he discovered.

19 Q. Do you know whether at any time Mr. Osborn
20 complained about Texas-New Mexico Pipeline Company?

21 A. I believe he did, yeah.

22 Q. Do you know whether he complained about Texaco
23 Pipeline, Inc.?

24 A. I don't recall that, but that -- he's -- I know
25 he's identified a number of the sites. I don't recall if

1 that's one of them. It may be.

2 Q. Do you know whether he has complained about Shell
3 Pipeline Company, L.P.?

4 A. I'm not aware of that.

5 Q. Do you know whether he has complained about Shell
6 Pipeline GP, L.L.C.?

7 A. I'm not aware of that either.

8 Q. Do you know whether he has complained about Shell
9 Pipeline Corporation/Shell Pipeline, L.L.C.?

10 A. I'm not aware of that.

11 Q. Were you aware of a lawsuit that he's filed in
12 the Federal Court for the District of New Mexico against
13 these companies I just asked you about?

14 A. Not really. I mean I heard, I think, second-hand
15 somewhere once that something was going on, but I've never
16 seen any of the specifics on it or talked about that.

17 Q. Have you ever investigated whether any of these
18 companies have caused pollution within the unit or within
19 his ranch?

20 A. I don't recall any outside of -- Texas-New Mexico
21 Pipeline was the one that he mentioned that I know that I'm
22 familiar with, but that's the only one that I recall.

23 Q. Are you aware that he sued Bristol Resources or
24 Bristol -- whatever that company was?

25 A. I was aware he had some kind of an action going

1 on, but I don't know what the specifics of it were.

2 Q. Was the general nature of that action for surface
3 damages?

4 A. That's what I understand, yeah.

5 Q. Do you know whether he had an action against
6 Chaparral?

7 A. I don't know if he did. I know they had
8 discussions, but I don't know if he had actually had a
9 formal action against them.

10 Q. Do you know whether Mr. Osborn and Chaparral ever
11 reached an agreement on use of the surface to conduct the
12 abatement plan that Chaparral was going to do?

13 A. Did they actually reach an agreement, is that
14 what you're -- ?

15 Q. Yes.

16 A. Not that I know of. I'd heard from -- I'd hear
17 things from both parties that they were talking about it,
18 but I never heard of an actual agreement being reached.

19 Q. Now, you've testified about what -- your
20 understanding of good faith in relation to what Smith &
21 Marrs has done, insofar as trying to work something out
22 with Mr. Osborn, right?

23 A. Correct.

24 Q. Have you ever been involved in any other
25 action where you would gain some understanding as to what a

1 good faith effort would be?

2 A. Just involved in a lot of groundwater cases, and
3 this is not the first time access has been a problem.
4 Usually it somehow resolves itself with the parties, we
5 usually allow some additional time.

6 I think that's kind of what we've been doing
7 here, we allowed a lot of additional time hoping that the
8 parties had reached some type of agreement, and it's --
9 usually something's happened in the past on that, but we're
10 not a party to those so it's difficult for me to say what
11 exactly happened at a site.

12 I'd say the same thing happens here. I don't --
13 We weren't party to any of the discussions, so we don't
14 know what was said or who meet when or said what, so...

15 Q. But have you ever been directly involved in
16 negotiations between landowners and oil companies as far as
17 surface access is concerned?

18 A. As far as surface access?

19 Q. (Nods)

20 A. No, we don't -- we're not a party to those, so I
21 would not have that knowledge.

22 Q. In one of the questions that Mr. Brooks asked
23 you, he called your attention to a provision of the
24 agreement and asked you whether or not the OCD's
25 involvement in any injunctive action was contingent -- or

1 gaining access was contingent on doing the abatement plan,
2 right? Do you recall that question?

3 A. Yeah, I recall that.

4 MR. BROOKS: I believe -- Objection, I believe
5 the matter is misstated. I don't think Counsel intends to
6 misstate it, but I believe my question was whether or not
7 the performance of the abatement plan was contingent upon
8 the obtaining of access, not the other way around.

9 Q. (By Mr. Padilla) I think that's a correct
10 characterization of the question. That's what I'm trying
11 to ask you. In effect, isn't this almost contingent,
12 though, on gaining access?

13 CHAIRMAN FESMIRE: Could you be a little more
14 specific? "This" -- ?

15 Q. (By Mr. Padilla) Okay, performance of the
16 abatement plan is pretty contingent on being able to get on
17 the surface, isn't it? Would you agree with that?

18 A. Yeah, I'd agree.

19 Q. Do you know whether Mr. Brooks has received
20 copies of litigation involving Smith & Marrs and Mr. Osborn
21 for access to the surface?

22 A. I'm not aware of any that was really -- at least
23 before October when I left. It may have happened since
24 I've left. I don't know of that, though.

25 Q. As I understand your testimony, you didn't get

1 any notice of such lawsuits, right?

2 A. I didn't, no.

3 Q. But you don't know whether other people within
4 the OCD have received notice?

5 A. No, usually -- I mean, if it happened prior to
6 October, I usually would have been given a copy. I usually
7 just put those things in the file, just so we have a record
8 of it. But I'm not aware of -- somebody else may have, but
9 I'm not aware of it.

10 MR. PADILLA: Pass the witness at this time.

11 CHAIRMAN FESMIRE: Commissioner Bailey, do you
12 have any questions?

13 COMMISSIONER BAILEY: A few, yes.

14 EXAMINATION

15 BY COMMISSIONER BAILEY:

16 Q. You gave us Exhibit 36, which was the petition
17 for an injunction. I'm assuming that that petition was
18 denied; is that correct?

19 A. I don't know, I don't have any knowledge whether
20 it was denied or not.

21 MR. BROOKS: I will represent that the Division,
22 so far as I know, has no such knowledge.

23 Q. (By Commissioner Bailey) Okay. We're not here
24 today to debate merits of the abatement plan or any -- or
25 whether or not you've done any other abatement plans in the

1 area; is that correct?

2 A. That's our intention here, is that we're just
3 looking at getting this abatement plan implemented because
4 of the threats to public health.

5 Q. And because after all, everyone did sign the
6 settlement agreement, right?

7 A. Yes, and that was the main point of our actions
8 that occurred with the enforcement action and the fine.

9 Q. You may not have been party to any surface-access
10 negotiations, but are you aware of whether or not it is a
11 practice for companies to pay surface damage for access to
12 these locations?

13 A. Yes, typically there is some type of surface
14 damages that are usually being paid. A number of folks in
15 the Land Office, as one, looks at going towards, you know,
16 a fee for -- per monitor well that goes in, and those are
17 typically paid by companies to the Land Office and through
18 whatever access agreements they work with the Land Office.

19 A number of other landowners in the area have
20 kind of followed along with the same approach and look at
21 wanting to get compensated essentially the same as the
22 State. It's kind of been a -- you know, since a lot of
23 that has happened, it's been kind of a common thing down in
24 that area for landowners to ask for a yearly fee per
25 monitor well, because they're kind of following on what --

1 you know, like the Land Office had started that as well,
2 so...

3 Q. Okay. Going through all of the letters back and
4 forth, as far as I can tell, the first indication of an
5 access issue was in Exhibit 22, dated June 11th of 2002.
6 Am I correct in that?

7 A. Could you say that again? That was in --

8 Q. Exhibit 22, dated June 11th of 2002 --

9 A. Okay.

10 Q. -- as far as I could see, that was the first
11 indication of any kind of access issue that was written to
12 the OCD.

13 A. Yes, in terms of a correspondence. I may have
14 received a -- because I talk with their environmental
15 people, usually, on a pretty regular basis, and they may
16 have told me they were expecting some problems, but this is
17 the first formal document, I believe, that actually stated
18 that.

19 Q. And this is going into the third year of
20 discussions?

21 A. Right, and I think that's largely due -- just
22 because it took us a long time to get to the point of
23 getting an abatement plan submitted and working through the
24 whole process, to get to the point where now they have to
25 actually implement it. So that might have been the reason

1 for that.

2 Q. You were out there quite a bit. Did you ever see
3 any livestock grazing?

4 A. There's livestock grazing out there.

5 Q. On this property, on this unit?

6 A. I'm not sure if it's exactly where the unit I've
7 seen -- I know Mr. Osborn has cattle out there.

8 Q. Okay. Did you see any growing crops?

9 A. Not in terms of actual -- like a farm crop, not
10 that I know of.

11 Q. Okay. And the range, would you describe it as
12 shrubby or grassy pastures?

13 A. I'd say more shrubby, you know, yeah.

14 Q. So it's pretty poor land for cattle-grazing, as
15 far as you can tell?

16 A. Yeah, it's not ideal, I guess.

17 COMMISSIONER BAILEY: That's all I have.

18 CHAIRMAN FESMIRE: Commissioner Chavez?

19 EXAMINATION

20 BY COMMISSIONER CHAVEZ:

21 Q. Yes, Mr. Olson, in the Application for *de novo*,
22 it's asking for the Commission to determine responsible
23 party or parties. Is it your opinion that the settlement
24 agreement designates who those parties are when both Smith
25 & Marrs and Chaparral Energy, L.L.C., signed it?

1 A. Yes, that was our position. I mean, that was --
2 we expected that was going to be an issue at the original
3 hearing before that settlement agreement was signed,
4 because the -- it was just -- back and forth, they're just
5 in discussions with the parties about, well, who's really
6 responsible for this? I know Chaparral never liked the
7 idea that they were responsible, because they felt they
8 didn't cause the contamination. And then it wasn't really
9 clear that Rickey Smith was going to accept responsibility
10 either. So we expected that was going to be a point of
11 contention, actually who is the responsible party at that
12 original hearing.

13 However, in -- the settlement agreement came, and
14 then Smith & Marrs at that point had accepted
15 responsibility as part of the settlement, so we thought
16 that was kind of a settled issue at that point, because
17 they had agreed to be the responsible party.

18 Q. Okay, and Chaparral becomes responsible only in
19 the case that Smith & Marrs fails to comply with the
20 settlement agreement; is that correct?

21 A. That's correct.

22 Q. Does the settlement agreement apply only to the
23 Stage 1 Abatement Plan proposal?

24 A. I don't believe that was our intention, because
25 the abatement plan is the abatement plan. It has different

1 stages to it, but it may not necessarily be written that
2 way when I look at what they -- "Smith & Marrs agrees to
3 fully perform the approved Stage 1 plan..."

4 And I guess at that point maybe it's possible
5 that it could become a point of contention again, once we
6 come to remediation when folks start looking at the costs
7 of what this is going to incur and trying to figure out how
8 to allocate those costs.

9 Q. Would the results of the Stage 1 investigation --
10 could they possibly yield that there may be others who are
11 responsible parties?

12 A. Well, I guess -- Let me back up just a second. I
13 believe a provision on the second page, provision D of the
14 settlement agreement states that "In the event that the
15 Stage 1...reveals the existence of contamination of which
16 the South Langlie Jal Unit is determined to be the probable
17 source, Smith & Marrs will submit a Stage 2 Abatement Plan
18 as is required of a responsible under OCD Rule 19..."

19 So I guess according to the agreement it appears
20 that that would cover both the Stage 1 and Stage 2, so it
21 would be before the abatement plan --

22 CHAIRMAN FESMIRE: Mr. Olson, for the record,
23 would you read the rest of that sentence from where you
24 stopped to the end of the sentence?

25 THE WITNESS: Yes, there's "OCD Rule 19", and

1 then there's a citation of "19.15.1.19 NMAC", that's in
2 parentheses, and then it continues, "...and upon approval
3 thereof will fully perform such abatement plan, including
4 any conditions imposed thereon by OCD." And "Smith & Marrs
5 reserves the right to contest any such conditions by
6 administrative process and appeals allowed therefrom, but
7 will perform the plan as finally approved."

8 CHAIRMAN FESMIRE: Okay, so in your opinion
9 what's the answer to Commissioner Chavez's question as for
10 who is responsible for doing the abatement?

11 THE WITNESS: For the entire abatement would be
12 Smith & Marrs, the Stage 1 and the cleanup of the Stage 2
13 as well.

14 Q. (By Commissioner Chavez) Okay, and Chaparral,
15 according to what I see here, Chaparral then would be
16 responsible only if Smith & Marrs fails under both of those
17 plans; is that correct? I'm sorry, under Stage 1 and Stage
18 2?

19 A. That's correct.

20 Q. So you're asking the Commission to uphold the
21 settlement agreement in this case, right?

22 A. That's correct, what was agreed to --

23 Q. Okay.

24 A. -- by the parties.

25 Q. The investigation or the process apparently, as

1 you stated, started with the Bristol release, as designated
2 on Exhibit Number 2, which has already been referenced,
3 towards the middle of the exhibit there; is that correct?
4 What's labeled as Bristol saltwater release?

5 A. That's correct.

6 Q. Now, did I understand you correctly that after
7 that release, the examination of the soil contamination
8 traced the contamination from the surface release to the
9 groundwater? Did I understand that correctly?

10 A. Yes, the soil chloride levels were mapped from
11 the surface down to the groundwater and well in -- each of
12 the concentrations in those intervals was well above the
13 groundwater standard for chloride-safe, the 250 milligrams
14 per liter.

15 And then once groundwater was encountered they
16 installed the monitor well, and the groundwater was above
17 the groundwater standard for chlorides and for total
18 dissolved solids as well.

19 Q. Okay, so in your opinion there's no doubt at
20 least that that particular contributed to groundwater
21 contamination directly under it; is that correct?

22 A. That's correct.

23 Q. Have there been any such investigations further
24 on, or is that part of the Stage 1 process around the unit?

25 A. Well, it's part of the Stage 1 process, because

1 even that spill itself wasn't fully investigated. The area
2 of the monitor well was out towards that south end of that
3 hached area that you see there.

4 And one of the things that we also had wanted
5 was, the actual source of the leak was up there at the
6 north end of that hach mark where the line actually had
7 been leaking. Obviously -- most likely, it was leaking for
8 some period of time before it actually surfaced. It was a
9 below-ground line. So we wanted some additional
10 delineation there as well.

11 And that might find that there is actually
12 potentially quite a bit more contamination there, because
13 that's actually the true source of the leak, and there
14 wasn't a good delineation right at the source.

15 So that's part of it. And the rest of it was
16 looking in other areas that we had identified that Bristol
17 had taken samples on and showed there where we had
18 contamination. And there was further investigation of
19 those sites.

20 Q. Okay. At some point, then, according to your
21 exhibits, it was determined that an abatement plan would be
22 necessary; is that right?

23 A. That's correct.

24 Q. And is there a time limit within OCD as to when a
25 clock starts, say, in doing a preliminary investigation in

1 determining whether an abatement plan is necessary?

2 A. Well, the -- I'm not sure I understand. You mean
3 in terms of when we require an abatement plan or when
4 somebody has to --

5 Q. Yeah, let's see --

6 A. -- start one?

7 Q. Well, within OCD -- I'm talking about OCD
8 procedure here --

9 A. Right.

10 Q. -- between when it's determined from initial
11 investigation -- how much time you allow from the initial
12 investigation to determine whether an abatement plan is
13 required?

14 A. There isn't a specific time for when the Division
15 needs to come and tell somebody that the abatement plan is
16 actually required. Usually it's just done on -- depending
17 on what's going on with staffing -- If we have
18 contamination, usually we kick it in fairly quickly, once
19 -- after we discover the contamination.

20 But there isn't a set time in the regulation that
21 says after -- you know, like, for example, within 30 days
22 of discovery the Division will issue you a, you know,
23 requirement for an abatement plan.

24 So there's time frames that come in the Rule
25 after the Division requires the abatement plan, then

1 there's specific time frames that are laid out within the
2 Rule for submission of the plans and responses to notices
3 of deficiencies, things like that. But not for when the
4 agency requires the abatement plan.

5 Q. Is that pretty much a judgment of the Division
6 staff, to determine whether an abatement plan will be
7 required after an initial discovery?

8 A. Well, there is some latitude, that's why I have
9 to give you kind of a qualified answer, because there is a
10 provision in the Rule, an exception, and it was put in
11 there -- the Division put that in there intentionally.

12 The exception allows for you to go and complete
13 -- and abate water pollution outside of an abatement plan
14 if you can complete the actions within one year from the
15 date of discovery that it's contaminated.

16 And that was purposely put in there as an
17 incentive in the Rule, for folks to get out there quick and
18 try to deal with the sources, clean it up. And it was kind
19 of looked at, maybe, as a bonus that if you can do that,
20 get out there and be aggressive and clean it up, you can
21 stay out of this kind of cumbersome process.

22 Because admittedly the abatement plan is kind of
23 a cumbersome, bureaucratic process in itself. It's got
24 public notice, there's a lot of steps that go along the
25 way.

1 So we do have sites where we have actually gone
2 probably a period of maybe a year, because the operator
3 thought they were going to be able to try to clean the
4 thing up, and maybe -- it's gone maybe a year before we
5 actually required an abatement plan, because they were
6 going to try to take this measure to get it cleaned up
7 quickly.

8 And then say maybe if it didn't succeed, so then
9 we had to require the abatement plan at that point.

10 Q. Okay.

11 A. So it's not a real clean answer for you.

12 Q. Okay, so it can vary depending on specific
13 circumstances --

14 A. Yes.

15 Q. -- is that right? Okay.

16 What -- Can you remember, just off the top of
17 your head, what is the time period within which an
18 abatement plan is required to be submitted after it's been
19 determined that one is necessary by the Division or the
20 operator receives a notice?

21 A. I don't have the Rule here. I believe it's 60
22 days, within the time frame that the Division requires it,
23 and I believe for good cause, I believe it can go up for
24 120 days, so...

25 Q. Okay.

1 A. But I'd have to refer to the Rule to be really
2 specific for you. That's what I recall.

3 Q. Okay. Well, that's -- I just was curious about
4 that.

5 Is the area of the abatement plan all contained
6 within the Langlie -- South Langlie Jal Unit?

7 A. For this abatement plan, it would include just
8 the -- was set up just for the unit, was what we
9 envisioned.

10 Q. So the operator is not required to do anything
11 outside of the unit boundary; is that correct? Of the
12 abatement plan?

13 A. He's not required, although on other abatement
14 plans sometimes folks have stepped outside because they
15 thought that they're chasing something, they want to prove
16 that something is coming from somebody else. It doesn't
17 limit them to that, but that's what we look at, that we're
18 addressing at the moment, because that's the area that they
19 operate within.

20 Q. Okay. To your knowledge, is Smith & Marrs still
21 operating the unit?

22 A. I am not sure, to tell you the truth. There've
23 been a lot of property sales going on these days, so I'm
24 not sure.

25 Q. To go a little further with the question I think

1 that Mr. Padilla is trying to ask here, was asking, if it
2 was discovered that there was migration into the unit that
3 was contaminated -- that became -- contamination, what type
4 of alternatives of action does the OCD have for -- would
5 the OCD have, from your knowledge, at that time?

6 A. Well, essentially the same actions would occur.
7 The Division would then go and require an abatement plan as
8 it's discovered, but it would require an abatement plan of
9 that next party as well and require them to -- same thing,
10 investigate the nature and extent, and then to remediate
11 any portions that might be due to them.

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

13 EXAMINATION

14 BY CHAIRMAN FESMIRE:

15 Q. Mr. Olson, let's talk a little bit more on that
16 subject. You said to the west of the unit there's a redbed
17 high that probably would prevent the subsurface flow of
18 groundwater onto the unit; is that what you were trying to
19 say?

20 A. Yeah, what I was trying to say is that it's not
21 real clear what groundwater we have over in that area, so
22 somewhere -- we know somewhere over there, there's kind of
23 a break where there's not groundwater, but we don't know
24 exactly where that break occurs.

25 Q. So a spill that occurred to the west of the unit

1 could possibly contribute to the contamination on the unit;
2 is that what you're telling us?

3 A. That's correct.

4 Q. But your investigations showed that the spills --
5 at least the spills that affected Mr. Osborn's wells,
6 probably occurred on the unit itself. In fact, that's what
7 you call the Bristol spill; is that correct?

8 A. That's correct.

9 Q. Why was that called the Bristol spill?

10 A. I think that was just the way that it was -- that
11 Chaparral put it forward, at least in this document.
12 Actually, the spill had occurred during Chap- -- not
13 Chaparral's, but it occurred during Bristol's operation.
14 They were the operator then, and I believe -- I thought Mr.
15 Osborn was the one who actually discovered the spill. He's
16 been quite diligent in finding spills on his property and
17 reporting them to the Division.

18 So Bristol was the one that conducted all those
19 response actions that occurred under 116 as part of the
20 spill and some of those initial investigations that had
21 occurred.

22 Q. Okay. There was -- In the September, 2004,
23 hearing, September 2nd, 2004, there was a \$197,000 fine
24 levied against Smith & Marrs; is that correct?

25 A. That's -- I believe that's -- that was the final

1 result of the Hearing Officer's report.

2 Q. Do you happen to know how that fine was
3 calculated?

4 A. No, I don't. I believe at the hearing we had
5 just listed as part of our documents that we proposed a
6 fine up to \$1000 per day. I believe that was actually done
7 by the Hearing Officer, as far as I know. It has settled
8 on the exact amount.

9 I don't think we -- I don't recall us proposing a
10 set dollar amount.

11 Q. Okay. So at \$1000 a day, this would have to have
12 occurred for a period of time exceeding six and a half
13 months; is that correct?

14 A. Yes.

15 Q. Do you believe that occurred?

16 A. Well, I believe it occurred that they did not
17 meet the terms of the settlement agreement from that
18 February 15th date on --

19 Q. -- to the September --

20 A. -- to the September date. I believe that's what
21 -- I'm guessing that's what the Hearing Officer based it
22 upon because we just, like I said, set out -- on our side,
23 just said -- we just recommended a -- you know, up to --

24 Q. Okay.

25 A. -- \$1000 a day.

1 Q. So it's your testimony that the abatement plan
2 was due on February --

3 A. -- 15th, I believe, of 2004.

4 Q. Okay. And as of September 4th of that year --
5 September 2nd of that year, you still hadn't received that
6 abatement plan; is that correct?

7 A. That's correct.

8 CHAIRMAN FESMIRE: I have no further questions.
9 Mr. Brooks, do you have any redirect?

10 MR. BROOKS: I just have one follow-up question.

11 REDIRECT EXAMINATION

12 BY MR. BROOKS:

13 Q. Looking again at Exhibit 31, Mr. -- Commissioner
14 Chavez and the Chairman both asked questions about
15 paragraph D, and it was correctly read into the record to
16 the effect that Smith & Marrs did agree to perform the
17 Stage 2 as well as the Stage 1 Abatement Plan, but I wanted
18 to clarify because of what it says in the first sentence of
19 paragraph D.

20 Would you read that first sentence of paragraph D
21 all the way through? It's about six lines long.

22 A. Okay. That's -- Yeah, the second page, D --

23 Q. Second page, bottom of the page.

24 A. And that is, "In the event that the Stage 1
25 investigation reveals the existence of contamination of

1 which the South Langlie Jal Unit is determined to be the
2 probable source, Smith & Marrs will submit a Stage 2
3 Abatement Plan as is required of a responsible party under
4 OCD Rule 19..."

5 Q. And you may omit the citation.

6 A. Okay, comma, "...and upon approval thereof will
7 fully perform such abatement plan, including any conditions
8 imposed thereon by OCD."

9 Q. Okay, and the premise of that, then, is, in the
10 event the Stage 1 investigation reveals the existence of
11 contamination of which the South Langlie Jal Unit is
12 determined to be the probable source, correct?

13 A. Yes.

14 Q. So if the Stage 1 investigation -- just
15 hypothetically, if the Stage 1 investigation unit were --
16 to the extent that it were to determine that some other
17 place, other than South Langlie Jal Unit were the probable
18 source, then Smith & Marrs would not have committed
19 themselves to abate that pollution, correct?

20 A. That's correct, and that's consistent with the
21 Division's approaches in abatement plans, as well.

22 Q. And there wouldn't be a whole lot of point, if
23 the pollution is migrating in from somewhere else, in
24 merely requiring the party on whose property it came to
25 clean it up and not requiring the source to be cleaned up,

1 because it may -- just more come in; isn't that right?

2 A. That's correct.

3 Q. Okay.

4 A. Also, I guess, just a kind of a clarification for
5 that, when you're looking at upgradient sources of
6 contamination, you typically look at -- you're only really
7 cleaning up to what's coming in from upgradient, even if
8 you -- because most likely they have some contribution, as
9 we saw, you know --

10 Q. Right.

11 A. -- so we don't know exactly what that fully is
12 yet, and so -- But they wouldn't be required to clean up
13 what's coming in from upgradient if they didn't --

14 Q. Right.

15 A. -- if that unit was not the cause of the
16 contamination.

17 Q. Actually, it is, as you stated, your opinion that
18 some of the contamination is coming from this property,
19 maybe not all of it?

20 A. Right, that's correct.

21 MR. BROOKS: Pass the witness.

22 CHAIRMAN FESMIRE: Mr. Larson, Mr. Padilla, we
23 don't generally allow re-recross, but if you have any other
24 questions that are pertinent --

25 MR. LARSON: Well, I have one pertinent question.

1 I believe it's pertinent.

2 RECROSS-EXAMINATION

3 BY MR. LARSON:

4 Q. There's been a lot of questioning about access
5 issues in relation to disputes between operators and
6 potentially responsible parties and landowners, and I
7 believe it was your testimony the OCD does not get involved
8 in those negotiations?

9 A. That's correct. Usually we're -- you know, we're
10 glad to advise somebody, and we'll typically get a question
11 from a landowner that, you know, what's going on here, kind
12 of more just knowing what's happening and why.

13 But in terms of the actual negotiations itself,
14 we have not been involved in them that I know of.

15 Q. And in your experience at the OCD Environmental
16 Bureau, did the OCD take the position that they do not have
17 the authority to compel a landowner to allow access?

18 A. I don't know that that was -- ever really came up
19 as an actual position of the Division. I don't know that
20 we -- I could say, I guess, I don't know that we've done
21 that, but I don't know if that's a formal position of the
22 Division.

23 Q. But you don't know of any instance where
24 negotiations between an operator and a landowner have
25 broken down, where the OCD intervened and told the

1 landowner, We want you to provide access to the landowner
2 [sic]?

3 A. I don't recall of a circumstance like that.

4 Q. Does the NMED have that authority, and do they
5 exercise that authority?

6 A. I'm not sure. I know they've had some problems
7 in some areas that I am not exactly sure. They may have.
8 I'm not sure. I know their UST program has had some sites
9 where they had some access problems with some adjacent
10 landowners, and I don't know how they were resolved, to
11 tell you the truth.

12 MR. LARSON: Thank you, that's all I have.

13 CHAIRMAN FESMIRE: Mr. Padilla?

14 MR. PADILLA: I have a question, but I can refine
15 it to a statement, if I can.

16 I would like the Commission, rather than me
17 asking the question -- to call to the Commission's
18 attention paragraph A of the settlement agreement, and in
19 particular direct the attention -- the Commission's
20 attention to -- a lawyer must have written this, it's a
21 long sentence. But anyway, what I'm trying to -- the point
22 I'm trying to make is that future proceedings, either party
23 could assert the -- any defenses that were available on
24 July 15th, 2003.

25 Then, I'd also call the Commission's attention to

1 the last sentence of paragraph D, which also has been read
2 here --

3 CHAIRMAN FESMIRE: B as in boy or D as in --

4 MR. PADILLA: D as in dog. "Smith & Marrs
5 reserves the right to contest any such conditions by
6 administrative process and appeals allowed therefrom, but
7 will perform the plan as finally approved."

8 Now, that contemplates abatement, the Stage 2
9 Abatement Plan, but all I'm saying is that we would have
10 the right -- or Smith & Marrs would have the right to
11 contest the -- I believe, the responsible-party issue.

12 CHAIRMAN FESMIRE: Mr. Brooks, Mr. Martin is
13 listed as your other witness, and I know for a fact that
14 he's on vacation.

15 MR. BROOKS: And we would request permission to
16 substitute Mr. von Gonten, who is actually the party who --
17 the person has taken over responsibility for this file.
18 His testimony will be extremely brief, however. At the
19 time I prepared that I was under the erroneous impression
20 that Mr. Martin was the knowledgeable party.

21 CHAIRMAN FESMIRE: Okay. Any objection to Mr.
22 von Gonten being substituted for Mr. Martin?

23 MR. LARSON: No objection.

24 MR. PADILLA: No objection.

25 CHAIRMAN FESMIRE: Commissioners?

1 COMMISSIONER CHAVEZ: No objection.

2 COMMISSIONER BAILEY: (Shakes head)

3 CHAIRMAN FESMIRE: Why don't we go ahead and
4 break for lunch, then come back at 1:30, and we'll start
5 with Mr. von Gonten.

6 (Thereupon, a recess was taken at 12:29 p.m.)

7 (The following proceedings had at 1:42 p.m.):

8 CHAIRMAN FESMIRE: Okay, let's go back on the
9 record on Cause Number 13,061. I believe, Mr. Brooks, you
10 were prepared to call your second witness?

11 MR. BROOKS: Yes, at this time the Division would
12 call Glenn von Gonten.

13 CHAIRMAN FESMIRE: Mr. von Gonten, you have been
14 sworn; is that correct?

15 MR. von GONTEN: Yes, sir.

16 MR. BROOKS: And before I begin -- I meant to do
17 this earlier, but for the record I would like to express my
18 appreciation to the Environment Department for making Mr.
19 Olson available to us today.

20 GLENN von GONTEN,
21 the witness herein, after having been first duly sworn upon
22 his oath, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BROOKS:

25 Q. Mr. von Gonten, would you state your name for the

1 record?

2 A. Glenn von Gonten.

3 Q. And would you spell that for the court reporter?

4 A. v-o-n space G-o-n-t-e-n, Glenn with two n's.

5 Q. Mr. von Gonten, by whom are you employed?

6 A. I work for the New Mexico Energy, Minerals and
7 Natural Resources Department.

8 Q. And you work with the Oil Conservation Division?

9 A. Yes, sir.

10 Q. When were you employed by the Oil Conservation
11 Division?

12 A. I believe I started the last week of January,
13 2005.

14 Q. And in what capacity?

15 A. I'm a senior hydrologist.

16 Q. So were you employed to assume the
17 responsibilities that had been previously discharged by Mr.
18 Olson?

19 A. Yes, sir.

20 Q. And you were previously employed by the
21 Environment Department; is that right?

22 A. That's correct.

23 Q. So we kind of had a like-kind exchange here.

24 Mr. von Gonten, is it correct to say that prior
25 to this week you didn't know anything about the South

1 Langlie Jal Unit?

2 A. That is correct.

3 Q. And were you informed this week that it had now
4 become your responsibility to --

5 A. I believe it was actually Thursday or Friday of
6 last week.

7 Q. Okay. Did you at my request undertake a review
8 of the file of the Environment Bureau of the Oil
9 Conservation Division with reference to the South Langlie
10 Jal Unit?

11 A. Yes, I did pull the file and review it.

12 Q. Did you also undertake to locate and review any
13 additional correspondence or materials that might have come
14 into the possession of the Oil Conservation Division since
15 Mr. Olson's departure that might have pertained to this
16 issue?

17 A. Yes, sir, I did. I reviewed the file. There
18 were -- no additional correspondence had been entered into
19 the record, and I had been -- nothing had come onto my desk
20 from my Environmental Bureau Chief.

21 Q. Okay. So you did also review what was on Mr.
22 Anderson's desk to see if --

23 A. Yes, I checked Mr. Anderson's office as well as I
24 could and found no correspondence related to this issue.

25 Q. So did you find any evidence that any kind of

1 report of compliance with this abatement plan had been
2 tendered to the Oil Conservation Division since Mr.
3 Anderson's departure?

4 A. No, sir, I did not.

5 Q. Did you find any further evidence that would bear
6 on the issue of negotiations between Mr. Osborn and Smith &
7 Marrs, Inc.? And I'm excluding from this the materials
8 that Mr. Osborn showed us yesterday.

9 A. There was nothing new, other than what is in the
10 administrative file --

11 Q. Okay.

12 A. -- pre-dated 2004 -- or August -- excuse me,
13 October of 2004.

14 MR. BROOKS: Pass the witness.

15 CHAIRMAN FESMIRE: Mr. Larson?

16 MR. LARSON: I have no questions.

17 CHAIRMAN FESMIRE: Mr. Padilla?

18 MR. PADILLA: I have a couple.

19 CROSS-EXAMINATION

20 BY MR. PADILLA:

21 Q. Mr. von Gonten, you met with Mr. Osborn
22 yesterday?

23 A. Yes, sir.

24 Q. What did you talk about?

25 A. He came in to share some files with Mr. Brooks.

1 Q. What did he show you?

2 A. Some correspondence that had gone back and forth
3 between Mr. Osborn and other parties.

4 Q. Did he tell you he had pending litigation against
5 some pipeline companies?

6 A. I don't remember him mentioning that.

7 Q. Did he volunteer that?

8 A. I don't remember him mentioning any litigation at
9 all.

10 Q. Did you mention the litigation between Smith &
11 Marrs and himself?

12 A. There might have been mention in the context of
13 this hearing today.

14 Q. What context is that?

15 A. It might have been briefly mentioned that there
16 was one. I was not actually paying that much attention to
17 that, I was actually looking at the correspondence and
18 trying to get a handle on what the issue was going to be
19 here today.

20 Q. What's your understanding of what the issue is
21 here today?

22 A. The issue here today before this Commission is
23 whether the previous decision should be affirmed and
24 continue to go ahead with the holdings that the Commission
25 and the Hearing Officer made before.

1 Q. Does the Division consider access to the surface
2 to do the abatement plan part of the issue here today?

3 A. Not with -- I'm not familiar with that issue. I
4 have not been involved with those discussions on this case.

5 Q. Would you in your position consider access to the
6 surface to do an abatement plan part and parcel of the
7 proceeding here today?

8 A. It is a part of it.

9 Q. How is that a part?

10 A. I don't believe that the investigation would
11 hinge entirely on that. There might be other issues that
12 -- of the abatement plan that could proceed without that
13 being resolved. But again, I'm not familiar with the
14 specifics of this case.

15 Q. How --

16 MR. BROOKS: Mr. Chairman, I haven't objected,
17 but I do believe that the question of how the issue of
18 access interplays with what we're here for today is really
19 a question of law for resolution by the Commission. I
20 don't mind this witness saying what he thinks about it, but
21 I believe that the point should be made that the questions
22 go to an ultimate issue.

23 CHAIRMAN FESMIRE: Mr. Padilla, do you have a
24 response?

25 MR. PADILLA: Well, yes, I think that his

1 testimony that surface access is part and parcel of being
2 able to perform the abatement plan is something that I can
3 inquire into, as far as --

4 CHAIRMAN FESMIRE: Is that not somewhat outside
5 the scope of the direct?

6 MR. PADILLA: It is, but there hasn't been an
7 objection so far.

8 CHAIRMAN FESMIRE: That's true.

9 Mr. von Gonten, I think you can testify to what
10 you know; but if you don't know, that's a perfectly
11 legitimate answer also.

12 THE WITNESS: Well then, would you restate the
13 question, sir?

14 Q. (By Mr. Padilla) I think the question I asked
15 was whether in your position you would consider being able
16 to get on the surface of the land to perform the abatement
17 plan as something that would be necessary in order to
18 implement the abatement plan?

19 A. Yes.

20 Q. Have you had any discussions with Mr. Osborn
21 prior to yesterday?

22 A. No, sir.

23 Q. And I take your testimony is that you have not
24 been involved with the unit at all?

25 A. That is correct.

1 MR. PADILLA: That's all I have.

2 CHAIRMAN FESMIRE: Commissioner Bailey?

3 COMMISSIONER BAILEY: I have no questions.

4 CHAIRMAN FESMIRE: Commissioner Chavez?

5 COMMISSIONER CHAVEZ: No questions.

6 CHAIRMAN FESMIRE: I have none.

7 Mr. Brooks, do you have any redirect?

8 MR. BROOKS: No.

9 CHAIRMAN FESMIRE: This witness may be excused.

10 THE WITNESS: Thank you.

11 MR. BROOKS: Very good. Reserving our right to
12 make any closing statement the Commission is willing to
13 tolerate after they've heard all the evidence today, the
14 Division rests.

15 CHAIRMAN FESMIRE: Okay, Mr. Larson, I believe
16 you had a witness?

17 MR. LARSON: That's correct, Mr. Chairman.

18 ROBERT C. LANG,
19 the witness herein, after having been first duly sworn upon
20 his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. LARSON:

23 Q. Sir, would you state our full name for the
24 record, please?

25 A. My name is Robert Campbell Lang the Fourth.

1 CHAIRMAN FESMIRE: And Mr. Lang, would you state
2 for the record that you have been sworn?

3 THE WITNESS: I have been sworn, yes, sir.

4 CHAIRMAN FESMIRE: Thank you. Mr. Larson?

5 Q. (By Mr. Larson) Mr. Lang, are you presently
6 employed by Chaparral Energy, L.L.C.?

7 A. I am.

8 Q. And how long have you been employed by Chaparral?

9 A. Since the 16th of January, 1998.

10 Q. And what is your job title?

11 A. I am the environmental, health and safety manager
12 for the corporation.

13 Q. And that's considered a management-level position
14 within the corporate hierarchy?

15 A. Yes, sir, it is.

16 Q. I started to make a clarification on the record
17 this morning and the Chairman interrupted me and told me
18 he'd rather hear from the witness than from an attorney. I
19 believe it's Exhibit 4, OCD Exhibit 4, you see the name
20 Chaparral Oil --

21 A. I have it.

22 Q. -- on the letterhead? Is it your understanding
23 that there were several Chaparral entities involved in the
24 purchase of the Bristol assets?

25 A. That is correct.

1 Q. And Chaparral Oil was one of those?

2 A. That is correct.

3 Q. But in terms of the operation of the South
4 Langlie Jal Unit during the period that it was owned by
5 Chaparral Energy until it was sold, the entity we're really
6 dealing with here is Chaparral Energy, L.L.C.?

7 A. That is correct.

8 Q. And that entity is a successor to Chaparral
9 Energy, Incorporated?

10 A. That is correct.

11 Q. And in your position as environmental manager,
12 was it your responsibility for compliance with
13 environmental regulations --

14 A. Yes, sir, it is.

15 Q. -- at the South Langlie Jal Unit?

16 A. Yes, sir.

17 Q. And were you responsible for preparing and
18 submitting the Stage 1 Abatement Plan?

19 A. Subject to senior management approval of what I
20 put together, but yes I was the one that wrote it.

21 Q. Okay, does it have your signature on it?

22 A. It has my signature on it.

23 Q. And we heard some testimony from Mr. Olson that
24 there was a lag period between Chaparral's receipt of the
25 October 31, 2000, letter requiring an abatement plan and

1 Chaparral actually submitting their initial plan.

2 A. That is correct.

3 Q. And did you agree with Mr. Olson's chronology in
4 terms of what transpired?

5 A. Pretty close, yes, sir.

6 Q. Can you tell us what information Chaparral had at
7 the point in time the company received the October 31,
8 2000, letter from NMOCD?

9 A. There was a waterflood north of Jal, and you
10 bought it. That's about all we had.

11 Q. Okay. Did you have any knowledge that the OCD
12 had issued a letter to Bristol requiring Bristol to prepare
13 a Stage 1 Abatement Plan?

14 A. No, I did not.

15 Q. So Bristol never informed you of that?

16 A. Never did.

17 Q. What did you do to gather information for
18 purposes of preparing your Stage 1 Abatement Plan?

19 A. We went to the attorney that was left over from
20 the Bristol bankruptcy and basically asked him, you know,
21 what's going on and where are the files? We need files on
22 this thing.

23 And you've got to picture a room about half this
24 size, full of boxes with maybe a number on it. And he
25 says, It might be in there, but you might want to call a

1 law firm in Hobbs, which we did. It took a while to get a
2 response from them, and when I did get a response, they
3 referred me to an environmental engineering firm in Dallas
4 that had done the -- what we now call the Bristol saltwater
5 release. He'd done some work on that. And that's when we
6 first started getting some information coming in.

7 Q. So coming out of the transaction, the bankruptcy
8 court, and into your -- Chaparral's role as operator of the
9 unit, you had no prior knowledge of what had gone on at the
10 South Langlie Jal Unit?

11 A. The only prior knowledge that we had was that
12 that part of Bristol had been removed from -- We were
13 negotiating to buy the company prior to the bankruptcy.
14 That portion of the corporation had been removed from the
15 sale due to litigation. It was not going to be sold. And
16 we never looked at it, it was just -- it was just a dead
17 issue.

18 It wasn't until the bankruptcy auction, about the
19 last five minutes of it, that the Jal Unit became part of
20 the package, and we had five minutes to say, Do you want
21 the whole shebang with the unit involved or not? And we
22 were told basically it was a surface cleanup of three tank
23 batters, which -- We do that all the time, no big deal. So
24 we took it.

25 But that's the first inkling of what the problems

1 were on the unit, and to us it was just a simple -- remove
2 three tank batteries, maybe dig out some contaminated soil,
3 put it back down, get something to grow, and you're home
4 free, no big deal.

5 Q. And from your perspective as being the point
6 person for the Stage 1 Abatement Plan, did you feel that
7 you were moving forward diligently to gather the
8 information and the documentation that you needed?

9 A. Yes, sir.

10 Q. And were you communicating with Mr. Olson
11 periodically on the status of your efforts?

12 A. Either by telephone or e-mail or both. We were
13 in fairly constant contact. I say "constant contact"; it
14 wasn't daily, but as soon as something important showed up
15 I'd give him a call. If I had a question, I gave him a
16 call. He was very helpful.

17 Q. And you heard Mr. Olson testify that once the
18 Environmental Bureau deemed your Stage 1 Abatement Plan to
19 be administratively complete, the public notice
20 requirements kicked in at that point?

21 A. Yes, sir.

22 Q. And I asked Mr. Olson a question about notice to
23 individual property owners. Can you give us some more
24 detail on that?

25 A. We had to hire a landman to go through the tax

1 records to see who all either lived or owned property
2 within one mile of the unit boundary. That encompasses a
3 large portion of Jal and, of course, the surrounding
4 countryside. It was in excess, if I remember correctly, of
5 500 individuals, most in that general area, some as far
6 away as California and I think Illinois or Ohio.

7 That landman and I believe three stenographers
8 took the tax records and put them on computer, because at
9 the time they were not on computer. So we had to hand
10 scribe everything from the tax records onto floppies and
11 then go check it out from there and mail, but in excess of
12 500 people.

13 Q. Now, after Chaparral completed the Stage 1
14 Abatement Plan public notice, did Mr. Olson require
15 additional information to supplement your Stage 1 plan?

16 A. Yes, sir.

17 Q. What did that request entail?

18 A. Basically, we had several requests for additional
19 information. He wanted a work plan, and basically our
20 comment was, we're not really sure what we're going to do,
21 other than put these three monitoring wells in. Well,
22 you've got to do more than that. And where are the
23 previous releases? We had to go identify those.

24 I've driven the facility, I've walked it. Mr.
25 Osborn was very gracious, drove me around, gave me a

1 history of what had happened since he -- as far back as he
2 could remember, took notes, did maps, got out and, like I
3 said, walked it. I tried to identify every place on the
4 property that possibly could have been a release point. A
5 lot of it looks like a release point, but it's blow sand.
6 It's just sand that, as the wind blows, it moves, and it'll
7 kill all the vegetation till it moves on. Several of those
8 I put down as a possible spill site, put that in the plan.

9 I'm trying to think what else. We had to go up
10 Hobbs again -- I think we went three times, all total -- to
11 run the records. A lot of the records were filed
12 alphabetically by height and shoe size. I mean, you're
13 just going through records and you're going through
14 records, and oh, here's one. We identified some other
15 release points that way.

16 What else did we do? It was a long, hard
17 scavenger hunt trying to find information to fill in the
18 gaps.

19 Q. So we're in the time frame now of early 2002,
20 after you've satisfied the public notice requirements, and
21 you're still gathering information to basically recreate
22 the history of potential releases at the South Langlie Jal
23 Unit?

24 A. That is correct.

25 Q. And at that point in time, did Chaparral perceive

1 that it would be allowed access to the Rocky Top Ranch to
2 conduct abatement activities?

3 A. When we first talked with Mr. and Mrs. Osborn,
4 myself and Mike Rossiter, who was the senior landman in
5 charge at the time, we had a good conversation. We were
6 told the history of what was going on, what he wanted done,
7 and we were -- you know, give us the information, we'll get
8 on it.

9 At that particular point in time we didn't feel
10 there was going to be any problems at all getting on the
11 property. It was just a matter of getting the abatement
12 plan approved, get that information turned in and, you
13 know, shouldn't be a big deal.

14 Q. And then in April of 2002 you received
15 notification from OCD that your plan had been finally
16 approved?

17 A. That's correct.

18 Q. And were you ready, willing and able to begin
19 abatement activities at that point?

20 A. We had engineer lined up, we had drilling company
21 lined up, everything was a go.

22 Q. And you say an engineer. Are you speaking of an
23 environmental consultant.

24 A. Environmental consulting firm.

25 Q. And what was that firm's name?

1 A. That was Whole Earth Environmental. They're out
2 of Houston, but they do a lot of work in New Mexico, they
3 have a pretty good reputation with the Commission here and
4 the field office and whatnot. They had worked for us
5 previously and done an excellent, very professional job,
6 and we were going to turn it all over to them to get it all
7 done.

8 Q. Okay, did you also have a drilling company lined
9 up to drill the monitor wells?

10 A. Atkins Drilling was lined up to do the work.

11 Q. Okay, and why wasn't that work done at that point
12 in time?

13 A. We were suddenly stymied because we were going to
14 have to get a surface damage agreement, permission to come
15 on to do the borings and do the survey work and whatnot,
16 and as I understand it -- I was involved in the meetings, I
17 was not involved in the actual negotiations -- but
18 basically the holdup was getting surface damages settled,
19 getting permission to come on to do the work, and they just
20 couldn't reach an agreement.

21 Q. So you were attending management meetings where
22 the access issue was discussed among management
23 representatives of Chaparral?

24 A. Yes, sir, I was.

25 Q. And who specifically was involved in negotiating

1 with Mr. Osborn?

2 A. From our end of it, the majority of the work was
3 Mike Rossiter, who is the senior landman for that area, Bob
4 Kelly, who's senior vice president and legal counsel for
5 the corporation. There were a couple of other junior staff
6 members in the land department and in our acquisitions
7 department that were trying to find files and things of
8 that nature involved. But those two, Mike Rossiter and Bob
9 Kelly were the two main people.

10 Q. And to your knowledge, did Mr. Rossiter and Mr.
11 Kelly make offers of monetary damage payments to Mr.
12 Osborn?

13 A. Yes, sir, they did.

14 Q. Did you offer to provide fresh water to Mr.
15 Osborn's residence?

16 A. Yes, we did.

17 Q. In what form did you offer to make fresh water
18 available?

19 A. At the time, he was trucking water. The options
20 we saw was to either tie into the existing city water
21 lines, which are back on the northeast corner of the golf
22 course --

23 Q. Sorry to interrupt, that's the City of Jal?

24 A. City of Jal. -- and extend that water line down
25 the west side of the highway until we were due east of his

1 property and then set a fire plug and went off of that with
2 two water meters, one for his house and one for the rent
3 house and, you know, extended water lines to the house.

4 The other option was to go out in front of the
5 house and drill a water well to what was commonly called
6 the 500-foot zone. That's the next deeper aquifer, the one
7 that the City of Jal uses quite a bit for their water. But
8 there was no guarantee that 500-foot zone was going to be
9 there. It's right where it starts to lap out and
10 disappear.

11 So we were looking at, you know, probably
12 \$100,000 to drill, complete and lay lines and everything
13 else, but no guarantee there's going to be a water zone
14 there when we got there.

15 So we thought the best option was to with the
16 city water, the City of Jal water.

17 Q. And what was Mr. Osborn's response to that offer?

18 A. At first I thought it was pretty positive, but
19 then we got a notification that he wanted to charge us
20 damages for the right-of-way to put the pipeline in, and
21 that didn't set well.

22 Q. Did you ever make an offer to Mr. Osborn to buy
23 the ranch?

24 A. Yes, we did.

25 Q. And what prompted that offer?

1 A. I say we did, I was told that we did. I wasn't
2 physically there when it happened.

3 We hired an appraiser to appraise the property.
4 I was told that it's not the best ranch land in the world.
5 Of course, if it's yours you think it's pretty good. I was
6 told that they thought the fair market value was in the
7 neighborhood of \$120 an acre and that we were offering
8 double if not triple that amount. Now, what the exact
9 amount was, I can't tell you.

10 Q. And what prompted Chaparral to have the appraisal
11 conducted and put together an offer?

12 A. We though the best way to get surface damages
13 settled was either buy the place, and then we'd deal with
14 ourselves to put the monitor wells in.

15 Q. Had Mr. Osborn indicated he might be willing to
16 sell the ranch?

17 A. At one time, it's my understanding he did say
18 that he would be willing to sell the ranch.

19 Q. Okay. So those negotiations, I take it, didn't
20 prove to be fruitful?

21 A. That's true.

22 Q. Did Chaparral also offer damages for drilling
23 monitoring wells on the property?

24 A. Yes, sir, we did.

25 Q. And what was Mr. Osborn's demand for damages for

1 each monitor well?

2 A. It would vary. Each time we had an agreement, he
3 wouldn't sign it, and then we had a new -- it just kept --
4 you never could pin him down long enough. But it would
5 vary anywhere from -- as I remember, about \$250 to \$300 per
6 monitoring well per month or per year. I mean, at one
7 point in time, I think the worst it got was \$300 a month
8 per well. We're looking 30, 40, 50, 60, 100 wells before
9 it was all over with. We didn't know. That gets very
10 expensive very quickly, and we just couldn't see our way
11 doing that.

12 Q. Okay, you've talked about a number of monitor
13 wells between, say, 30 and 100. How do you come to that
14 total number of wells?

15 A. We had picked out 13 sites that, quote, unquote,
16 might be a release point. We were going to have to go in
17 and put a monitoring well in there, drill a well in the
18 center of that particular site and analyze the soil about
19 every five feet as you went down. And if you found
20 chlorides or TPH or any other type of pollution, you'd
21 drill another five feet, and you'd keep on going until you
22 find five foot of good, clean soil, you could stop.

23 Based on what we were being told, we would
24 probably have to go to the aquifer, which was around 55
25 feet from surface. If you found polluted water -- and we

1 have to assume that we were going to -- then we were going
2 to move 100 feet downgradient, because we have to define
3 the plume, both laterally and vertically. We would have to
4 move 100 feet, we were going to move 100 feet downgradient,
5 because the most likely way it would go, and drill another
6 well, do the same thing all over again.

7 If that well found clean soil all the way to
8 water but contaminated water, we'd have to put a monitoring
9 well in there, go back to the original well, you have to go
10 crosswise to the gradient and put it 100 feet and drill
11 another well. If you found pollution, you'd go another 100
12 feet. So as a minimum, you're going to have three wells
13 per site.

14 But once you've finished those three, assuming
15 they're contaminated soil, you're going to have to move 100
16 feet upgradient and repeat the process, another 100 feet
17 cross-gradient again. So you're up to a fivespot there as
18 a minimum.

19 But if any of those outlying wells are polluted,
20 you repeat the process. And you keep going until you have
21 delineated the release laterally.

22 So you don't know till you get there. You're
23 just going to keep drilling and drilling and drilling, and
24 one could really be a pessimist about it and say every
25 hundred feet you're going to have a monitoring well in the

1 entire unit, and then pay those type of fees. Can't afford
2 to do that.

3 Q. So when Chaparral is looking at Mr. Osborn's
4 offer, in crunching the numbers you're using those kinds of
5 assumptions to come up with your bottom-line number of what
6 Chaparral would actually be out of pocket to pay that?

7 A. That's correct. I didn't worst-case it to the
8 absolute extent, but I didn't go in and say everything's
9 clean every time we drilled. I basically based it on a
10 fivespot.

11 Q. Did Mr. Osborn also ask for surface damages for
12 acreage that was disturbed by --

13 A. Yes.

14 Q. -- trucks coming on the property with drilling
15 rigs, that sort of stuff?

16 A. Yes, sir, he did.

17 Q. And what was his offer?

18 A. It also varied, depending on which stages of
19 negotiations you were in. There were flat fees put out,
20 there were per-acre fees put out. The flat fees were
21 \$2000, \$3000, \$4000, \$5000 a year, at one point they were
22 down to \$200 -- \$150, \$300 per acre per year, or for the
23 year that you disturbed it.

24 You never could really pin him down. When you
25 thought you had it, you had it all written out and an

1 agreement was made, fine, we're going to mail you the
2 paperwork for you to sign, you mail it, you think you're
3 there, and it would come back, No, I've got an objection, I
4 want this, I want that. And usually the numbers went up.

5 Q. So these drafts agreements you're talking about,
6 those were sent by Mr. Kelly to Mr. Osborn; is that
7 correct?

8 A. Or Mr. Rossiter. But Mr. Kelly did review them
9 and make sure that, you know, it was agreeable to him.

10 Q. So these were documents that had terms that
11 Chaparral was agreeable to --

12 A. Yes, sir.

13 Q. -- in terms of compensating Mr. Osborn for
14 surface damages?

15 A. And over the phone we thought Mr. Osborn was
16 agreeable to them also. They had what we thought was a
17 good agreement on the telephone.

18 Q. Did there come a point in time that you realized
19 you were not going to be able to enter into a written
20 agreement with Mr. Osborn?

21 A. We started getting that feeling fairly early on,
22 but we kept pressing ahead, hoping that somewhere down the
23 road -- you have to understand, you know, we can only go so
24 far.

25 Q. For the record, Mr. Lang, when you say fairly

1 early on, we're in a time frame after April, 2002, until
2 what time frame?

3 A. We're probably still in 2002.

4 Q. Did Chaparral ever consider going to court to try
5 to obtain an injunction to force Mr. Osborn to allow
6 Chaparral to come on to do --

7 A. We discussed that several times.

8 Q. And what was the upshot of that discussion?

9 A. We were of the opinion that if we did that, that
10 he would in turn file litigation, a lawsuit against us, for
11 all historical damage at the place and anything else he
12 could think of, and we were back into a bigger lawsuit for
13 hundreds if not millions of dollars for prior pollution and
14 upsetting -- you know, you -- take your pick. All sorts of
15 things were bandied about on what he'd probably sue us for.

16 Q. Would it be fair to say that because of that
17 analysis, that that was not a viable option in terms of
18 getting immediate access to the property?

19 A. We didn't think it was a viable option. We
20 thought that would be kind of shooting ourselves in the
21 foot to do. We go in with the attitude, we want to work
22 with the surface owner, we want to do what's right, but we
23 don't want to get taken, and we felt we were being taken.

24 MR. LARSON: That's all I have, Mr. Lang.

25 Pass the witness.

1 CHAIRMAN FESMIRE: Mr. Padilla?

2 MR. PADILLA: I don't have any questions for Mr.
3 Lang.

4 CHAIRMAN FESMIRE: Mr. Brooks?

5 MR. BROOKS: I'm sorry, I've forgotten your name.

6 THE WITNESS: Bob Lang.

7 MR. BROOKS: I'm not good at names. Thank you.

8 CROSS-EXAMINATION

9 BY MR. BROOKS:

10 Q. Mr. Lang, all of the testimony that you have
11 given about negotiations with the surface owner relates to
12 negotiations that Chaparral conducted with the surface
13 owners; is that correct?

14 A. Yes, sir.

15 Q. And that would have been prior to the time that
16 Chaparral transferred the property to Smith & Marrs?

17 A. That is right up to literally the day we
18 transferred --

19 Q. Which --

20 A. -- in fact, really it kind of lapped over about
21 three weeks over the day we signed the agreement.

22 Q. Then that occurred in November of 1902?

23 A. The actual agreement -- It was after that.

24 MR. LARSON: Back in ought-two, huh?

25 THE WITNESS: We reached an agreement with Mr.

1 Smith in October, and it was to be effective the first of
2 December. Mr. Olson had given us an extension to the end
3 of November to get the work done.

4 So even though we had signed with Mr. Smith to
5 sell the property, I was still trying to get onto the
6 property. I had rigs lined up, the 1st through about the
7 10th or 15th of November, but we just could not get a
8 surface-damage agreement, and we finally gave up.

9 Q. (By Mr. Brooks) But you don't have any knowledge
10 of what negotiations may have subsequently occurred between
11 the surface owner and Smith & Marrs, Inc.?

12 A. I have no knowledge of that, no.

13 MR. BROOKS: Pass the witness.

14 CHAIRMAN FESMIRE: Commissioner Bailey?

15 COMMISSIONER BAILEY: Just a couple of questions.

16 EXAMINATION

17 BY COMMISSIONER BAILEY:

18 Q. As I understand it, you had no time in which to
19 do due diligence on this property?

20 A. We had five minutes at the bankruptcy auction.
21 The way it was set up, you make a bid, your next person in
22 line has five minutes to decide whether they can raise the
23 bid or drop out of the bidding. At the end of five
24 minutes, if you don't make the decision the federal judge
25 moves you to the next person.

1 Our president of our company, when it came our
2 turn, turned to their attorney and said, What are the
3 damages, what are the problems with the South Langlie Jal
4 Unit?

5 Their attorney looked him in the eye and said,
6 There's three tank batteries to take down and move out and
7 a little bit of oil spill to remove and clean up, pick up
8 some trash, plant some grass, and you're home.

9 Q. And when Smith & Marrs was contemplating purchase
10 of the property, did they ask the same thing of you?

11 A. We gave them a full -- everything I had was
12 turned over to them as to what the problems were, previous
13 correspondence. Our people insisted that Mr. Smith and his
14 party sit down and go over the environmental record and be
15 fully informed of what the problems were. The Stage 1 plan
16 had been approved, this is what's been required. We let
17 him know we were having all sorts of trouble with the
18 landowner. We were fully open with all the problems, we
19 answered all the questions that he had.

20 COMMISSIONER BAILEY: That's all I have.

21 CHAIRMAN FESMIRE: Commissioner Chavez?

22 EXAMINATION

23 BY COMMISSIONER CHAVEZ:

24 Q. Mr. Lang, does Mr. Osborn own in fee all the
25 surface on the Langlie Jal Unit?

1 A. I believe he does. The golf course, it's my
2 understanding, is his property, but it's like a lease to
3 the City or something of that nature. It's right south of
4 his house. I believe that's part of his property. I may
5 be mistaken on that. I was led to believe that he kind of
6 gave the land to the City for a golf course.

7 Q. Okay, but to the best of your knowledge, he is
8 actually the surface owner --

9 A. Yes, sir.

10 Q. -- of the land?

11 Are the oil and gas leases also owned by him, or
12 how were the oil and gas leases set out?

13 A. I looked over that about three or four years ago,
14 ad he does have oil and gas, mineral interests under that,
15 but others also do.

16 Q. Are there federal leases involved in the unit
17 also?

18 A. That I couldn't answer for certain.

19 Q. Do your oil and gas leases allow you ingress and
20 egress for the purposes of developing the oil and gas
21 lease?

22 A. As I understand it, the way the oil and gas lease
23 was written -- we're going back into the 1940s or 1950s --
24 you had an oil and gas lease to drill, but you also had to
25 get a surface damage agreement with the landowner.

1 That agreement expired in -- I think the 1st of
2 September, 1996, if I'm remembering correctly. And Bristol
3 was in the process of trying to renegotiate that agreement.
4 Never did. They were going month to month with the
5 agreement.

6 As I understand it -- maybe it's peculiar to New
7 Mexico, I do not know, but you had to have some sort of
8 agreement with the land owner to come in to your own oil
9 and gas wells, to put in a water injection plant, to put in
10 a tank battery, and there were some bones of contention
11 over that.

12 Q. So it's -- you might not -- am I getting that
13 you're not really fully clear about what the rights for
14 ingress and egress are under your lease rights?

15 A. I did not sit down and read the oil and gas
16 lease. I've done it in the past, but this particular one,
17 quite honestly, until we sent a landman to the courthouse
18 to get copies, we didn't even have copies of the leases.

19 But it was explained to me that the agreement,
20 evidently back in the 1940s or 1950s, was that there was a
21 long-term surface-damage agreement that expired in
22 September of 1996 that all producers had to operator under.
23 That to me is a little strange. I've not run across that
24 before. I mean, I've gone out in the past and settled
25 damages, you know, for an oil and gas well. It's said and

1 done one time, and it's for the life of the well. In this
2 particular case, it doesn't appear to have been that way.

3 Q. Well, if in your belief that requirement for an
4 agreement had expired, why didn't you pursue an ingress and
5 egress without having some type of an agreement with the --

6 A. We were in the process of trying to do that also.
7 We were in the process of trying to do some sort of surface
8 agreement to use the land for a tank battery and for the
9 water injection facility. It's my understanding there was
10 an argument over the flow lines from wells to wells, that
11 that had to be incorporated into the agreement. There were
12 damages involved because there were flow lines on the
13 property.

14 It's my understanding from talking to them, when
15 the original leases went in, each well, or maybe a cluster
16 of wells, had their own tank battery. When it unitized, it
17 went to one central tank battery. And because of that,
18 they had to lay flow lines from the wellheads to that
19 central battery, and that's where that additional surface
20 agreement came into play.

21 So we had to negotiate a new type of agreement
22 just to run the day-to-day operations of the flood. Then
23 we're also going to have to negotiate a different agreement
24 or separate agreement to put in the monitoring wells to do
25 the abatement work.

1 At one time, we tried to tie the two together.
2 That didn't work. We tried to do it separately. It's been
3 a real ping-pong ball back and forth, trying to get this
4 worked out.

5 COMMISSIONER CHAVEZ: Thank you.

6 THE WITNESS: Yes, sir.

7 CHAIRMAN FESMIRE: Commissioner Bailey, I believe
8 you had another question?

9 FURTHER EXAMINATION

10 BY COMMISSIONER BAILEY:

11 Q. Yes, did you make any payments to the surface
12 owner, other than those that you tried to negotiate for
13 access for this cleanup abatement?

14 A. We have made payments to him. After we were
15 notified to do the abatement plan, we had two releases on
16 the property.

17 We went in, we dug them up down to clean soil and
18 hailed them off fairly quickly. We bought topsoil for Mr.
19 Osborn to fill in the missing material.

20 I believe that's the only two payments we've
21 made. There might have been some others I'm not aware of,
22 but it involved two releases, we went in and cleaned the
23 thing up, and we did pay for the, quote, unquote, damages
24 for those two spots.

25 COMMISSIONER BAILEY: Okay, thank you.

EXAMINATION

BY CHAIRMAN FESMIRE:

Q. Mr. Lang, you seemed to indicate -- did Mr. Osborn ever interfere with day-to-day operations, preventing access to the property?

A. We went in to start cleaning up the surface trash. And there was trash there, there were old concrete pumper unit bases, there were collapsed buildings, tubing, white goods, stoves, refrigerators. We spent about \$70,000 cleaning all that up, which he was very grateful; it should have been done.

We got involved on the Winters -- let me make sure I do this right -- the Winters "C" abandoned battery. He had that fenced off because a lot of oil had gotten out many, many years ago, and our people went in there to dig it out and we got a backhoe stuck. I mean, it's a mess. And he tried to shut us down for that, he did not want that disturbed and demanded that we get out of there. I talked to him and we worked something out and got some of the other cleanups going.

But I think there was one other time he was not going to let the pumpers and people in. I got a report from the field that he'd locked the gates and didn't want us in, but they resolved that fairly shortly also.

Q. Okay. Did that result in any decreased

1 production, or did that interfere with your production at
2 all?

3 A. If it did, it wouldn't have been more than a
4 day's production. It would be minor.

5 Q. Okay. So the interference that you're talking
6 about occurred only with respect to the environmental
7 cleanup; is that right?

8 A. Yes, sir.

9 CHAIRMAN FESMIRE: Mr. Larson, do you have any
10 redirect?

11 MR. LARSON: I don't.

12 CHAIRMAN FESMIRE: Okay. Mr. Lang, thank you
13 very much.

14 THE WITNESS: Thank you, sir.

15 CHAIRMAN FESMIRE: Mr. Larson, do you have
16 anything else?

17 MR. LARSON: I have no further witnesses and no
18 exhibits, Mr. Chairman.

19 CHAIRMAN FESMIRE: Okay. Mr. Padilla?

20 MR. PADILLA: We'll call Clay Osborn.

21 CHAIRMAN FESMIRE: Mr. Osborn, were you sworn?

22 MR. OSBORN: No, I wasn't sworn. I didn't know I
23 was going to be a witness here today.

24 CHAIRMAN FESMIRE: Well, I think you are.

25 (Thereupon, the witness was sworn.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CLAY OSBORN,

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

DIRECT EXAMINATION

BY MR. PADILLA:

Q. Mr. Osborn, please state your full name.

A. It's Clay Osborn, or Wilbur Clay Osborn, I go by Clay.

Q. Mr. Osborn, you live in Jal; is that right?

A. That's correct.

Q. And you're the surface owner on land or minerals that -- where this South Langlie Jal Unit --

A. Well, I own part of it.

Q. Okay. What part of that do you have under separate minerals where you have an actual oil and gas lease?

A. We have oil and gas lease in Sections 7 and 18.

Q. How close is that to where the ranch wells are located?

A. Well, it goes completely under our rights.

Q. Okay. And you receive royalties for the oil and gas rights that you do own?

A. My wife does, but not my relatives.

Q. Total of how much land is involved in these oil and gas leases?

1 A. Well, I'm not -- I couldn't give you the exact
2 numbers without looking at the documents.

3 Q. More or less, I'm not asking you for --

4 A. Well, I think there's 320 acres, Section 7, and
5 probably -- maybe 320 in Section 18 -- I'm not sure if it's
6 that much in 18 or not -- and some in Section 13 and 12.

7 Q. Mr. Osborn, at one time you had a lawsuit for
8 surface damages against Bristol; is that right?

9 A. That's correct.

10 Q. And then Bristol went bankrupt?

11 A. That's correct.

12 Q. And you were unable to recover; is that right?

13 A. That's correct.

14 Q. What was the nature of that lawsuit?

15 A. Well, it started out as nonpayment of royalties
16 and wound up along with -- while we were getting into this
17 lawsuit and we found out that our water was polluted, and
18 it wound up as part of that lawsuit.

19 Q. How did you find out your water was polluted?

20 A. First time I found out anything about it at all
21 was when -- the city has to test our wells two times per
22 year because of the country club and the effluent water
23 that they water they country club with, as part of their
24 agreement with the State. And the chlorides and total
25 dissolved solids were increasing at our wells dramatically

1 each test.

2 Q. When was the first time that you started
3 investigating that there was contamination on your ranch?

4 A. I started, I think, in 1999, when I started my
5 investigation.

6 Q. And you paid some consultant to find out; is
7 that --

8 A. Yes, sir --

9 Q. -- my understanding?

10 A. -- I hired a consulting firm to come in and do
11 the investigation.

12 Q. What was the conclusion of that result as to who
13 contaminated or who caused the contamination?

14 A. Well, one of the sites that you all have been
15 discussing here today was -- I think you referred to it as
16 the Bristol site, was one of those sites, the battery site
17 that he referred to a while ago, was one of those sites
18 that go all the way down to the groundwater, with not only
19 TPH -- chlorides and total dissolved solids.

20 Q. Now, west of the unit itself there are some
21 others shown on -- there are some possible saltwater
22 releases west of the unit itself, right?

23 A. That's correct.

24 Q. What conclusion did your investigation reach as
25 far as those sites were concerned?

1 A. My investigation did not go that far.

2 Q. Okay. Have you made a demand on the operator or
3 the owner of the oil and gas leases west of the unit?

4 A. We've made quite a few demands, just to be
5 ignored, and we've taken that up with the OCD too, and I
6 think they asked for some work plans.

7 Q. Did you make a demand to the OCD for operations
8 by Maralo?

9 A. We've asked them, yeah, we've called them quite a
10 few times to investigate leaks.

11 Q. Has the OCD investigated your concerns concerning
12 Maralo's operations?

13 A. They've been out there quite a few times, yes.

14 Q. Has Maralo cleaned up the place?

15 A. No, sir, they have not.

16 Q. Do you know why they haven't cleaned it up?

17 A. I guess because they didn't want to.

18 Q. Now, you heard Mr. Lang testify that Chaparral
19 made an offer to haul -- lay a pipeline from the City's
20 water supply to the ranch; is that right?

21 A. Yes, sir, they did.

22 Q. Did you refuse that offer?

23 A. I did not refuse that offer in itself; it was in
24 an agreement, and the best I can remember in that
25 agreement, they put a clause in there that the Osborns

1 would allow Chaparral to buy contaminated soils on my
2 ranch, and that's what our fight was all over about, and I
3 wouldn't sign that agreement.

4 Q. Did you separate -- did you make an offer for
5 just a straight water line out to the ranch?

6 A. We tried -- We tried so many options with them
7 that it finally just got to the point there was no need to
8 -- because every time we was going to offer something to
9 them, they didn't want to do it. And if they offered
10 something to me, it was -- we considered it as, you know,
11 something that we couldn't live with.

12 Q. How many offers did you make to Chaparral?

13 A. We talked about it quite a few times over the
14 phone about different aspects of their agreement that
15 they've sent me. How many times, right now I couldn't I
16 couldn't tell you. It may have been 50 or 60 times.

17 Q. And none of those proposals that Chaparral made
18 were acceptable to you; is that --

19 A. No, sir, they were not.

20 Q. How -- What was the highest amount for -- per
21 monitor well that Chaparral offered?

22 A. I don't remember offhand. We discussed it in
23 quite a few different ways, different options. I tried to
24 work with them the best I could to get this done without
25 totally destroying the rest of my property.

1 We -- I think at one time we were only talking
2 three monitor wells, which I knew was not going to be
3 enough monitor wells to cover all of their lease. And when
4 you're looking at that many monitor wells, you're going to
5 take up almost the rest of the property that's not
6 polluted.

7 Q. Let me ask you about the value of your ranch when
8 you consider contaminated water versus a ranch that does
9 not have contaminated water. You would agree with me that
10 a ranch that does not have contaminated water is worth
11 more, right?

12 A. That's correct.

13 Q. Why wouldn't you let somebody go on your ranch to
14 clean up the water without doing a surface damage
15 agreement?

16 A. I think that goes back to Chaparral -- or not
17 Chaparral, but Bristol. Bristol would come out there and
18 do their soil borings and what have you, which I had no
19 objection to. I think I iterated that to them, I've
20 iterated to Smith & Marrs, Go do all the soil borings you
21 need to do, we need to find out.

22 But when it comes to putting in monitor wells
23 with permanent pads -- I consider them as permanent
24 structures, because you're putting cement bases around
25 them, you've got to have roads to them, you've got to check

1 them every quarter, that there needs to be some
2 compensation. You're taking my land away from me where I
3 cannot use it. And it's not just for a day, it's going to
4 be for several years.

5 Q. What were you requesting in terms of compensation
6 for each monitor well?

7 A. We finally settled that we would look at what the
8 State charges, the State Land Office.

9 Q. What does the State Land Office charge?

10 A. They were charging \$300. They have recently gone
11 to \$500 annually per monitor well.

12 Q. And that's all you wanted?

13 A. That's what I was asking for.

14 Q. Do you mean to tell me that Chaparral was willing
15 to clean up the surface and spent in the nature of \$70,000,
16 and they wouldn't give you \$1500 or \$900 a year; is that
17 what you're saying?

18 A. I don't know where they come up with their
19 \$70,000. They come out there and picked up some trash and
20 stuff off my land that should not have been there to start
21 out with.

22 Q. But they cleaned it up, right?

23 A. Part of it, yes.

24 Q. And you'd agree with me that that costs some
25 money, right?

1 A. Yeah, it costs me money too.

2 Q. But the end of it -- the end result is that you
3 still refuse to have a city-water pipeline to your house?

4 A. If we're talking about them running a line of
5 city water to my house and me settle off on all the damages
6 that will ever happen to that ranch, that's not acceptable.
7 I did not pollute the water, I'm not responsible for
8 replacing that water, and I have a right to claim water.

9 Q. Now, you brought a lawsuit against a number of
10 pipeline companies in the federal district court, right?

11 A. That is correct, and as far as I'm concerned that
12 has nothing to do with this case today.

13 Q. Why would you say it has nothing to do with that?

14 A. Well, to start out with, it has nothing to do
15 with polluted groundwater with chloride and total dissolved
16 solids.

17 Q. What's the nature of that lawsuit in federal --

18 A. Which one now?

19 Q. The one in the federal court, what's the nature
20 of that lawsuit?

21 A. The basis of that lawsuit is oil spills and not
22 cleaning up.

23 Q. No saltwater contamination?

24 A. That's not part of -- It's all totally oil.

25 Q. Okay.

1 A. It covers large areas of my property.

2 Q. How much are you asking in that lawsuit?

3 A. I hadn't said anything. I don't know without
4 asking my attorney what the results will be. We're still
5 in the part of interrogatories right now, so I can't answer
6 all that.

7 MR. PADILLA: Let me hand out my exhibits here.

8 Q. (By Mr. Padilla) Mr. Osborn, let me hand you
9 what we have marked as Exhibit Number 3 and ask you if that
10 is a copy of the lawsuit you filed against these pipeline
11 companies, starting with Texas-New Mexico Pipeline. Mr.
12 Osborn, is that the lawsuit you filed?

13 A. I couldn't tell you that.

14 Q. You don't know?

15 A. I couldn't answer...

16 Q. You're asking for cleanup and remediation of any
17 spills on the ranch, according to this lawsuit; is that
18 fair to say?

19 A. I haven't read this lawsuit, I can't tell you.

20 Q. You haven't -- Well, let me ask you this. Are --
21 Is the Lewis law firm a law firm representing you in this
22 case?

23 A. That's correct.

24 Q. And also the law offices of Brian K. Branch?

25 A. What now?

1 Q. Brian K. Branch? Do you have two law firms
2 working on this case?

3 A. The one I deal with is Lewis. Now, if he's got
4 some other -- you know, helping him, that I don't know.
5 That's his business.

6 Q. So are you telling the Commission here that you
7 don't know what you're suing for in this lawsuit?

8 A. We were suing for the cleanup and pollution of my
9 property. We have not been able to get that done, and Mr.
10 Lewis took this case and filed it. And right now, that's
11 about all I know about it.

12 Q. You're asking for damages in this lawsuit, right?

13 A. I haven't asked for anything yet, that I know of.
14 I have not read this. You need to talk to my attorney
15 about this, not me.

16 Q. Well, the prayer for relief in this lawsuit, Mr.
17 Osborn, includes damages as set forth in this original
18 complaint, including but not limited to actual damages,
19 punitive damages, attorney's fees, pre-judgment and post-
20 judgment interest at the legal rate. So...

21 A. May I ask the Commission something right now? If
22 I'm going to be quizzed on this, can I have my attorney
23 present?

24 (Off the record)

25 CHAIRMAN FESMIRE: Mr. Osborn, counsel informs me

1 that she doesn't believe that Mr. Padilla can compel you to
2 testify, but that he can ask for a continuance and subpoena
3 you to come testify. So I'm going to leave it up to you.
4 I you don't want to answer these questions, you don't have
5 to. But be advised that he will have the opportunity to
6 subpoena you later.

7 THE WITNESS: Well, at this time, I don't think I
8 can truthfully answer his questions because I don't have
9 all the answers.

10 CHAIRMAN FESMIRE: Mr. Osborn, "I don't know" is
11 a valid answer.

12 THE WITNESS: And the only thing I can say right
13 now, he's trying to pin me down on every issue of this, and
14 I have not even had the chance to sit down and talk to my
15 attorney about all of these issues.

16 CHAIRMAN FESMIRE: That's a valid and truthful
17 answer, then give him that answer.

18 THE WITNESS: And I think that's where it's at
19 right now.

20 Q. (By Mr. Padilla) So your answer to me is that
21 you don't know; is that it?

22 A. I think that's about it. I'm not informed to the
23 point I can give you a straight answer.

24 Q. Why didn't you include other corporations or oil
25 and gas companies that have caused pollution to your ranch

1 in this lawsuit?

2 CHAIRMAN FESMIRE: Mr. Padilla, first of all, I
3 believe he's already testified that he's not familiar with
4 the legal niceties of what's in this lawsuit.

5 Second of all, the Commission is getting to the
6 point where they don't understand the relevance of the
7 questions that you're asking.

8 MR. PADILLA: Mr. Chairman, our defense here is
9 that Mr. Osborn has been very difficult to deal with as far
10 as surface damages are concerned. Part of the reason for
11 that is that we believe that Mr. Osborn has asked and has
12 sued everybody that's been on that ranch --

13 CHAIRMAN FESMIRE: Okay --

14 MR. PADILLA: -- and that is part of the duress
15 that is going on in terms of trying to get this abatement
16 plan implemented.

17 CHAIRMAN FESMIRE: Okay, Mr. Padilla, are you
18 going to claim that the damages that he's claiming in that
19 lawsuit are the same damages that he's asking for, or has
20 asked surface production companies for?

21 MR. PADILLA: No, Mr. Chairman, I'm not
22 contending that, I'm just simply saying that this is
23 another form of extortion that Mr. Osborn is exercising on
24 access to his ranch.

25 CHAIRMAN FESMIRE: Okay, I think you've made that

1 point, and delving any farther into that lawsuit is
2 probably past any relevance that it would have to this --
3 to the question before the Commission.

4 MR. PADILLA: Okay, I understand that. In terms
5 of the lawsuit, the lawsuit speaks for itself, even though
6 he may not want to testify about it.

7 CHAIRMAN FESMIRE: And he has testified that he
8 has turned that over to his lawyer, and he doesn't know
9 exactly what the contents are.

10 MR. PADILLA: Okay.

11 Q. (By Mr. Padilla) Mr. Osborn, you filed a
12 response to the petition for permanent injunction and
13 counterclaim for malicious and abusive prosecution in the
14 lawsuit of Smith & Marrs vs. Clay Osborn and Jeri Osborn,
15 right?

16 A. That's right.

17 Q. And your attorney in that case is Kelly Matt
18 Cassels, right?

19 A. That's correct.

20 Q. Are you familiar with the response that was filed
21 on your behalf in that lawsuit?

22 A. I have a copy of it here, yes.

23 Q. Okay. Attached to that response are copies of
24 oil and gas leases. Do you have that in front of you?

25 A. I don't know that I have that -- all of it here.

1 Can you give me a date on that, when that was filed?

2 Q. Well, I have here a lease that was originally
3 executed on October 9th, 1945, by --

4 A. Oh, you're talking about the old original leases.

5 Q. Right, and those are attached to the response to
6 the Smith & Marrs lawsuit against you, right?

7 A. I think -- Yes, they probably are. If I have
8 them here, they --

9 Q. Are you familiar with the countersuit that you
10 made against Smith & Marrs?

11 A. Yes, sir.

12 Q. Can you tell us about it? What is the nature of
13 that?

14 A. Well, they filed this suit two days prior to this
15 last hearing, September the 2nd. I believe they filed it
16 on the 31st. I was here the morning of the 2nd when I
17 found out that they had filed a suit.

18 Q. And --

19 A. And I think, in fact, you're the one that
20 suggested that they had filed a suit against us --

21 Q. Okay.

22 A. -- that morning.

23 Q. And you have filed a counterclaim for malicious,
24 abusive prosecution, right?

25 A. We did that, yes, sir, when he wouldn't drop his

1 suit.

2 Q. So you're still in court on this?

3 A. It's probably going to die a natural death, it's
4 been so long since anybody's done anything about it.

5 Q. Now, you've heard testimony here, Mr. Lang's
6 testimony concerning the surface damage agreement that
7 expired in 1996; is that right?

8 A. It expired prior to that, in 1995.

9 Q. In 1995?

10 A. That's right.

11 Q. And have you been trying to negotiate another
12 surface damage agreement?

13 A. That covered the waterflood station and the
14 central tank battery. We did negotiate that with them, and
15 they made payments.

16 Q. With whom?

17 A. With Chaparral.

18 Q. Under the surface damage agreement?

19 A. It was a -- I think it originally was called a
20 surface damage agreement, because the very first agreement
21 that was ever made was made when the flood -- or when the
22 unit was formed and included all the pipelines, flow lines,
23 locations, whatever. It was all covered in that one
24 agreement. That agreement was for a term of 25 years,
25 which expired in 1995, prior -- that was prior to

1 Chaparral.

2 Q. Who operated the unit up to 1995?

3 A. Several people, several different companies.

4 Q. Can you tell me --

5 A. 1995, I think Apache Corporation was operator.

6 Prior to that it was Texaco. Prior to that it was -- I'm
7 trying to think of their name. Penroc. And prior to that
8 it was Texaco again, it was Getty. And then Reserve Oil is
9 the ones that put the flood in.

10 Q. So the surface damage agreement was basically for
11 the flood project; is that fair to say?

12 A. Right, for the unit project.

13 Q. In your lawsuit, your countersuit against Smith &
14 Marrs, are you contending that surface damages are separate
15 from any rights associated with an oil and gas lease?

16 A. I think one reason we filed this is, Mr. Smith
17 has never picked up the phone and called me. He's sent me
18 two letters, the same letter, twice. There's been no
19 negotiation. And then he files to get a permanent
20 injunction against me.

21 Also, if you look in -- I don't have it here in
22 front of me, but if you'll look at that filing and some of
23 the things that he put in there, there's one particular
24 letter there, unsigned, that's got two different dates on
25 it.

1 MR. BROOKS: Mr. Chairman, objection in the sense
2 I don't have any problem with Mr. Osborn's telling his
3 story, and I don't think it would be harmful to the
4 Division's case, but it seems like the answer is not
5 responsive to the question.

6 CHAIRMAN FESMIRE: Mr. Osborn, if you'd --
7 Sustained. -- if you'd be so kind as to just answer his
8 question.

9 THE WITNESS: I mean, that's what I'm trying to
10 answer his question.

11 CHAIRMAN FESMIRE: Yeah.

12 MR. BROOKS: Perhaps it would be helpful if
13 counsel would restate his question.

14 MR. PADILLA: I'm not sure where I was. It's a
15 pretty good objection, because I lost my train of thought.

16 (Laughter)

17 Q. (By Mr. Padilla) Let me ask, under the oil and
18 gas leases, does the lessee -- the old leases, 1944 lease
19 and -- that Elydia C. Stevens Winters signed, and I think
20 that's called the golf lease in your countersuit --

21 A. Yes, the golf was terminated and signed back over
22 to her, I believe. We finally found that out.

23 Q. And then in 1947 there was another oil and gas
24 lease to Gulf Oil; is that right?

25 A. I think Gulf Oil, if I'm not mistaken, had

1 released that back, and then the next lease you have there
2 is the person that picked that lease up --

3 Q. Okay.

4 A. -- which is, I believe, Mr. Cleveland.

5 Q. So is it your contention that under the oil and
6 gas leases, a lessee does not have access to the surface to
7 explore and remove oil and gas?

8 A. No, I think they have all the right in the world
9 to get out there and explore for oil and gas under that
10 lease.

11 But when you go to a waterflood, you're bringing
12 other people's oil and gas, and on our property you've tied
13 it into a unit. And as far as we see it, they don't have
14 that right to go out there and take up the rest of our
15 property to produce somebody else's oil and gas. And
16 that's basically what they do when you put in a unit.

17 Q. But you received royalties from that production?

18 A. We received some royalties.

19 Q. You don't own all the minerals, but you own some
20 of the minerals under that --

21 A. Yes, my wife does, I don't.

22 Q. You benefit from that flood, or your wife
23 benefits from that flood, right?

24 CHAIRMAN FESMIRE: Mr. Padilla, I think --

25 THE WITNESS: Yes.

1 CHAIRMAN FESMIRE: -- he's answered that
2 question.

3 Q. (By Mr. Padilla) Have you been able to negotiate
4 an extension or a surface damage agreement with anyone
5 after 1995 for flood operations out there, operation of the
6 unit?

7 A. Yes, sir, we did an agreement with Chaparral in
8 regards to the waterflood station and central tank battery.

9 Q. And anything else beyond that, you haven't been
10 able to negotiate --

11 A. That's right.

12 Q. Do you agree with Mr. Lang's version of -- Well,
13 let me ask this: Do you disagree with any portion of Mr.
14 Lang's testimony, as far as the efforts that Chaparral
15 tried?

16 A. Yes, sir, I do.

17 Q. You disagree with him?

18 A. I disagree with quite a few points that he made.

19 Q. This lawsuit, Smith & Marrs, Inc., versus Clay
20 Osborn and Jeri Osborn, where is it, as far as you know?

21 A. As far as I know, Smith & Marrs never asked for a
22 setting, hearing, whatever you call it. Just sitting in
23 the courts, going nowhere.

24 Q. Are you doing any discovery on your claim for
25 malicious, abusive prosecution?

1 A. No, sir.

2 Q. You're not doing anything to promote that
3 lawsuit?

4 A. No, sir.

5 Q. Why did you file that?

6 A. Well, at the time, when he filed his, it was, as
7 far as we was concerned, just trying to put a bad light on
8 me in front of the Commission, to get out of their
9 obligations to what they've been ordered to do. And out on
10 that, just a lot of the stuff they put in theirs is not
11 true.

12 Q. Did you ever lock the gate on Smith & Marrs?

13 A. No, I have not. They're out there every day.
14 I've never denied them access to that property.

15 Q. As far as operation in the unit, right?

16 A. As far as operation in the unit.

17 Q. But you've told them not to put in any monitor
18 wells unless you're paid?

19 A. We need to sit down and do an agreement and come
20 up with some sort of damage, and I stated that in the last
21 hearing, that we would accept what the State Land Office
22 accepts, with those damages.

23 Q. And it's not \$10,000 a well at the beginning?

24 A. No, sir, that was made very clear at the last
25 hearing, that it was not. I don't know where you all are

1 coming up with that figure, but that's -- you know. I
2 think that was iterated to Smith & Marrs' attorneys, so
3 they've known about it at least since the hearing, the last
4 hearing that we had on September the 2nd.

5 Q. If someone offered to put a pipeline from the
6 City to your ranch house, would you agree to that?

7 A. It would depend on what other strings are
8 attached to it. If they want to lay one without strings
9 attached to it, that's fine.

10 Q. In lieu of any type of other damages, would you
11 agree to that?

12 A. Well, I don't know that anybody willingly wants
13 to come out there and lay that to me. So far, they haven't
14 been able to.

15 Q. I'm just asking you hypothetically, if
16 somebody --

17 A. Well, hypothetically, if somebody wanted to come
18 out there and lay me a water line and hook me up to the
19 City, yes, I would agree to that.

20 Q. And you would drop every objection to access for
21 the abatement plan?

22 CHAIRMAN FESMIRE: Mr. Padilla --

23 THE WITNESS: No, I would not.

24 CHAIRMAN FESMIRE: -- I can't help but feel that
25 we're trying a different case here. Why don't you keep

1 your questions to what's relevant to the question before
2 the Commission today, please?

3 MR. PADILLA: Okay.

4 Q. (By Mr. Padilla) You're willing that the
5 abatement plan proceed, right?

6 A. Yes, sir. In fact, I told Eddie Seay that works
7 for Smith & Marrs that they could go ahead and start our
8 soil borings, testing water wells that's out there,
9 whatever they wanted to do, but we need to sit down and
10 agree upon these monitor wells and get it down in writing.
11 It's one thing I've learned the hard way in the oilfield,
12 you get it in writing.

13 Q. But you want an agreement first?

14 A. They can start with their -- coring their sites,
15 getting their information. But before they put in these
16 monitor wells, I want it in writing.

17 Q. Now, in your letter of December 27th, 2003, which
18 I believe is the Division's Exhibit Number --

19 MR. BROOKS: -- 34, I believe.

20 Q. (By Mr. Padilla) -- Number 34, let me hand you a
21 copy of that. It's this one here. Did you in that letter
22 state a figure that you wanted?

23 A. What was the question again?

24 Q. Did you state a figure for the amount per monitor
25 well that you wanted?

1 A. Trying to see -- let me just -- I don't believe I
2 put a figure in this particular letter. If I did, I'm
3 overlooking it.

4 Q. Have you ever put a figure in any correspondence
5 that you have sent to Mr. Smith?

6 A. Yes, we have, my attorneys have.

7 Q. Do you have that with you?

8 A. Yes, I do.

9 Q. And what is that amount?

10 A. Started out at \$300 per year, what the State Land
11 Office charges.

12 Q. And it goes up to what?

13 A. At that time it was \$300 annually per monitor
14 well. They were no going up above that. That's what were
15 asking for, for the monitor wells.

16 Q. What else were you asking for?

17 A. That's all we asked for at that time.

18 Q. Is that -- at that time. Has that changed?

19 A. I think our letters from my attorney to Smith &
20 Marrs' attorneys were that that would get the Phase 1
21 Abatement Plan completed.

22 Then we would charge whatever the State charges
23 for future charges of the Phase 2.

24 Q. Has there been correspondence between the
25 attorneys all this time, trying to resolve this issue?

1 CHAIRMAN FESMIRE: Mr. Padilla, isn't that
2 getting into a privileged area? I'm going to object to
3 this.

4 MR. PADILLA: I'm not asking him what his
5 attorneys and he may have communicated. I'm not asking him
6 to divulge an attorney-client privilege.

7 CHAIRMAN FESMIRE: But if there were
8 communications between the attorneys, wouldn't there be
9 some sort of negotiations occurring? And wouldn't those
10 negotiations be privileged?

11 MR. PADILLA: Might be.

12 CHAIRMAN FESMIRE: Okay.

13 MR. PADILLA: Might be, but I'm just asking the
14 general question if there's been negotiations going on.

15 THE WITNESS: I think I can answer that without
16 going through my attorneys and their attorneys.

17 The last hearing -- and it is on record -- the
18 September the 2nd hearing, that was brought up in that
19 hearing, and I stated at that hearing that that's what we
20 were asking for.

21 MR. PADILLA: I don't have any further questions.

22 CHAIRMAN FESMIRE: Mr. Brooks, do you have any
23 questions of this witness?

24 MR. BROOKS: Yes, I believe I do, Mr. Chairman.
25 I have to find where I am in sequence here with the

1 exhibits.

2 CROSS-EXAMINATION

3 BY MR. BROOKS:

4 Q. Mr. Osborn, I'll show you what has been admitted
5 as Division's Exhibits 33, 33A, 33B, 33C. I'm going to ask
6 you if you recognize them.

7 A. Ask me what, now?

8 Q. Do you recognize those documents?

9 A. Yes, I do.

10 Q. Do those represent copies of correspondence that
11 were sent by Smith & Marrs to you?

12 A. Exhibit Number 33 is -- Yes, that's one. That
13 was -- I believe December 23rd was the first correspondence
14 that I received from Smith & Marrs.

15 Q. Okay, and there is a handwritten notification in
16 the upper right-hand corner of Exhibit Number 33. What
17 does that say?

18 A. That was the date that we received the letter in
19 the mail.

20 Q. And that was what date?

21 A. That was on 12-27-03.

22 Q. And did you put that on there?

23 A. Actually, my wife wrote that letter.

24 Q. Okay. Now look at 33A. Does Exhibit 33A appear
25 to be an exact copy of Exhibit 33?

1 A. Yes, sir, it does.

2 Q. And it bears the same date, December 23rd --

3 A. Yes, sir.

4 Q. -- what was it, 2002? Or was that -- No, that
5 was 2003, right?

6 A. Yes, we received this and I wrote on this that we
7 received this on the 7th and 14th.

8 Q. And so you received another copy of the same
9 correspondence seven months later?

10 A. Yes.

11 Q. And Exhibits 33B and 33C, were they attached to
12 Exhibit 33A?

13 A. Yes, sir, they came with 33A.

14 Q. Okay. And those exhibits represent forms of
15 release that they asked for you to sign, correct?

16 A. Yes, sir.

17 Q. Up until the time the suit was filed in August of
18 2004, had you received any other correspondence concerning
19 access agreement for purposes of this abatement plan from
20 Smith & Marrs, other than those documents?

21 A. No, sir, I have not.

22 Q. Did you at one time have a conversation with Mr.
23 Eddie Seay about this access issue?

24 A. Yes, sir, Eddie Seay did come by my house and
25 visit with me.

1 Q. And did he indicate to you whether or not he was
2 authorized to negotiate a surface damage agreement on
3 behalf of Smith & Marrs?

4 A. I asked Mr. Seay when he came in and wanted to
5 talk about this, if he was authorized to negotiate damages
6 with me, and he told me no, he was not.

7 Q. Has there been any other oral contact between you
8 and Smith & Marrs, up to the time the lawsuit was filed?

9 A. Has there been any what now?

10 Q. Was there any other oral or telephone contact
11 between you and a representative of Smith & Marrs about
12 access for purposes of this abatement plan, up to the time
13 that Smith & Marrs filed the lawsuit against you?

14 A. No, sir, they have not.

15 MR. BROOKS: Approach the witness?

16 CHAIRMAN FESMIRE: You may.

17 Q. (By Mr. Brooks) I will show you now what has
18 been marked Exhibit Number 34 and 35. Are those copies of
19 letters that you wrote to Smith & Marrs?

20 A. These are the -- these are two letters, yes, that
21 I did send to Smith & Marrs.

22 Q. Would you read -- I believe it's the last
23 paragraph -- Would you read the last paragraph of Exhibit
24 Number 34?

25 A. The last paragraph?

1 Q. Yes.

2 A. You want the part where we say, "We look
3 forward..."

4 Q. "We look forward...", yes. "We look forward...",
5 where it begins, "We look forward..." Would you read that?

6 A. Yes, "We look forward to meeting you and
7 discussing this matter."

8 Q. Okay, and is the last paragraph of Exhibit 37
9 similar?

10 A. It would be 35, I think.

11 MR. BROOKS: Thirty- -- Let me be sure I have the
12 correct exhibit. Approach the witness?

13 CHAIRMAN FESMIRE: You may.

14 Q. (By Mr. Brooks) Thirty-four -- yes, 35. Is the
15 last paragraph of Exhibit 35 similar to the last paragraph
16 of Exhibit 34?

17 A. It's similar to it.

18 Q. What does it say?

19 A. It says, "We still look forward to meeting you
20 and discussing this matter."

21 Q. And is that your position today, that you're
22 willing to meet with Smith & Marrs and discuss the question
23 of access for purposes --

24 A. Yes, sir, I'll be glad to sit down and discuss it
25 with him.

1 Q. You testified that there had been no hearings
2 under this lawsuit that was filed against you by Smith &
3 Marrs; is that correct?

4 A. No, sir, there have been no hearings.

5 MR. BROOKS: Thank you, pass the witness.

6 CHAIRMAN FESMIRE: Mr. Larson, do you have any
7 questions?

8 MR. LARSON: I have several, Mr. Chairman.

9 CROSS-EXAMINATION

10 BY MR. LARSON:

11 Q. Mr. Osborn, are you presently running any cattle
12 out on your ranch?

13 A. Yes, sir, I do.

14 Q. How many head are you running?

15 A. Probably right at the present time about 40 head
16 of cattle.

17 Q. And how are you watering your cattle?

18 A. Right now we've got rainwater in some of the
19 ponds. I do have some water there at the house.

20 Q. Okay, so you're capturing surface water out on
21 the ranch; is that correct?

22 A. Yes, sir.

23 Q. I believe you testified that you first learned of
24 contamination in your domestic well when the City of Jal
25 did some sampling on the well in 1999?

1 A. Yes, sir, they are required to by contract with
2 the State.

3 Q. And does the City manage the golf course?

4 A. No, the City does not manage the golf course.

5 Q. Who does manage the golf course?

6 A. The country club, Jal Country Club. It's a
7 private club.

8 Q. I see, by membership?

9 A. Membership, yes, sir.

10 Q. And does the country club contract with the City
11 to use effluent water to irrigate the golf course?

12 A. I don't know how they go about that. I know they
13 -- an ad in the paper for any objection to them using
14 effluent water to water the fairways with, and that's about
15 all that I know about their business.

16 Q. But you mentioned you do know that the State
17 requires the City to do testing?

18 A. I was told that by the City.

19 Q. Have you ever been told by the City or by the
20 country club that contamination from the golf course has
21 migrated onto your ranch property?

22 A. No, not from the country club or the City.

23 Q. I believe you mentioned that you had rejected one
24 of Chaparral's offers because Chaparral wanted to bury
25 contaminated soil on your property; did I hear you

1 correctly?

2 A. That is true.

3 Q. And how did you understand that was to happen?

4 A. Well, they just put the clause in there that we
5 -- the Osborns would allow Chaparral to bury contaminated
6 soils on our property. That's about the whole extent of
7 that one clause.

8 Q. And I'm curious what your understanding was.
9 Where was this contaminated soil to come from?

10 A. I guess from their pollution, their leaks and
11 spills. I mean, right at this time we're talking about all
12 the pollution, the leaks and spills that's out there.

13 Q. So you understood that this provision of
14 Chaparral's offer was, they were to dig up soil from one
15 part of the ranch and bury it somewhere else on your ranch?

16 A. That is correct.

17 Q. Do you think the OCD would have allowed them to
18 do that?

19 A. I don't know what their position would be on it.
20 I would doubt it very seriously, if they knew about it.
21 But I wasn't going to agree to it anyway.

22 Q. But that was your understanding of what Chaparral
23 had offered?

24 A. Yes, sir.

25 Q. Now, you mentioned you had an agreement with

1 prior operators for ingress and egress to the waterflood
2 equipment that expired in 1995; is that correct?

3 A. That was one of the original -- what they
4 considered a land-use agreement.

5 It covered the -- at that time, covered the
6 waterflood station, central tank battery and some damages
7 for lines that they were laying, injection lines and what
8 have you, and telephone poles.

9 Q. And then you mentioned that you subsequently
10 reached an agreement with Chaparral for access?

11 A. We did reach a new agreement with Chaparral on
12 that part of it.

13 Q. And was Chaparral making payments pursuant to
14 that agreement?

15 A. Yes, sir, Chaparral made all the payments.

16 Q. And in your mind, did that agreement give
17 Chaparral access to go on and conduct abatement activities?

18 A. No, sir, it did not.

19 MR. LARSON: That's all I have, thank you.

20 CHAIRMAN FESMIRE: Commissioner Bailey?

21 EXAMINATION

22 BY COMMISSIONER BAILEY:

23 Q. You mentioned Land Office rates for monitor wells
24 and agreements that we have for that type of surface entry.
25 You may even be more familiar with Land Office agreements

1 than I because that's not my area of expertise.

2 Do you have -- Can you in principal agree to the
3 same requirements that the Land Office puts on companies
4 who obtain these monitor well agreements with that agency?

5 A. Yes, ma'am. In fact, as my attorneys even stated
6 to their attorneys, we'll waive the right-of-entry permits,
7 which I believe is \$1000.

8 Q. So your bottom line is, you will do exactly what
9 the Land Office requires?

10 A. That's what we asked for back in September, yes,
11 ma'am.

12 Q. Okay.

13 A. That's exactly what we asked for.

14 COMMISSIONER BAILEY: Thank you, that's all I
15 have.

16 CHAIRMAN FESMIRE: Commissioner Chavez?

17 EXAMINATION

18 BY COMMISSIONER CHAVEZ:

19 Q. Yes, Mr. Osborn, are you familiar with the
20 abatement plan or at least the proposed locations where the
21 monitor wells are?

22 A. Three of them, I am.

23 Q. And of those three, are all three of them on
24 leases for which you benefit, you or your family benefit?

25 A. No, two of them would be. Well, I don't know, I

1 can't even say that for sure, because I would have to look
2 at the lease lines to be sure that all three of them -- all
3 three of them follow my surface, but I don't know if they
4 would be in -- You're asking me if they fall in with their
5 oil leases, I think; is that correct?

6 Q. Yes, that's the first thing I asked, yes.

7 A. Without looking at the exact documents and seeing
8 where that lease line is, I can't answer you on that one.
9 I do know there was three of them, two of them on the west
10 side, and I think one on the north.

11 Q. Well, the ones that may not be on your leasehold,
12 wouldn't they fall under separate ingress and egress
13 agreements than what you're proposing?

14 A. Well, they're still on my property, and they
15 still fall within the boundary units, of the unit there,
16 the boundary of the unit.

17 Q. Are there also any federal minerals on this --
18 under the unit?

19 A. No, sir, no federal. It's all fee.

20 Q. Okay. If Smith & Marrs commenced and completed
21 an abatement plan project without an agreement with you,
22 would they be in violation of any lease or contract
23 agreement with you?

24 A. Well, I think they would be -- if they just went
25 out there and -- they'd be trespassing, let's put it that

1 way.

2 The original lease agreement gives the operator
3 the right to drill and explore and produce the minerals
4 under my property.

5 Now, if you can consider a monitor well drilling
6 for oil and gas -- which I don't think you could, because
7 it doesn't have anything to do with that, it's not going to
8 benefit anybody but the person that has been negligent or
9 doing excess damage to the surface estate. That's what
10 that monitor well has been put in there for.

11 Q. Wouldn't the cleanup of a spill caused by a
12 leaking flow line be along the same lines as abatement of
13 water pollution?

14 A. I think what you're talking about -- if you're
15 asking me about a Stage 1 abatement, we're going to go out
16 there and find out what the extent of the damages are, and
17 then the Phase 2 would be what's it going to take to clean
18 it up? How are you going to clean it up?

19 Q. Isn't that done on a regular flow-line leak
20 anyway, to determine the extent of the -- any damage, depth
21 of penetration of any --

22 A. No, sir.

23 Q. -- fluids, and then --

24 A. Most of the time, it's not. I really don't know
25 how to answer you on that. Most flow-line leaks do not

1 have abatement plans.

2 Q. Well, they have an informal plan, don't they,
3 where the operator determines how much he needs to do to
4 clean up any possible damages from that flow-line leak?

5 A. Well, I think that would go back to the oil
6 company and their procedures. You can go around and look,
7 and a lot of companies take clean soil out of the pasture
8 and throw it over the top of it and drive off and leave it.
9 That is their procedures. There's no cleanup at all.

10 Q. But wouldn't you consider a cleanup of a flow
11 line leak to be part of the operations of developing the
12 oil and gas lease that's allowed under the lease itself?

13 A. No, sir, it's not allowed under the lease itself.
14 If it was, then we wouldn't have to have the unitization
15 act that was put in place. And under that act, if you do
16 not want to put your leases into a waterflood situation,
17 then you're forced to by that act.

18 So no, you're combining everybody -- a whole
19 bunch of different leases together as one unit. Therefore
20 it does not give you the right to take off of one --
21 somebody's land and move it over and use your land for all
22 the production facilities and everything else without
23 compensation.

24 If you want to make it fair, they'd have to stay
25 five years here and move it every five years or so until

1 the unit was depleted out.

2 Q. No, what I was getting at, Mr. Osborn, was, if
3 the operator has a flow-line leak, isn't cleaning up that
4 leak considered part of the operations under the lease?

5 A. Under a lease agreement, but not under the unit
6 agreement.

7 Q. But under the lease agreement it would be --

8 A. Under the lease agreement it would --

9 Q. -- normally --

10 A. -- it should be.

11 Q. So how --

12 A. Depends on how the lease reads.

13 Q. Okay, if it normally would allow that, why
14 wouldn't it allow cleanup of a larger leak that might have
15 even penetrated groundwater?

16 A. Because it's under a different lease. It's under
17 a unit agreement, it's not under the same original lease
18 agreement.

19 COMMISSIONER CHAVEZ: Thank you.

20 CHAIRMAN FESMIRE: I have no questions.

21 Mr. Padilla, do you have anything else?

22 MR. PADILLA: I don't have anything else.

23 CHAIRMAN FESMIRE: Mr. Osborn, thank you very
24 much.

25 THE WITNESS: May I say one thing else before we

1 quit here? I know everybody is wanting to get out of here
2 and go home. I think it would clarify a little bit.

3 Mr. Lang had made the statement that the water
4 line that they wanted to run, that I would not -- that I
5 wanted to be paid for the right of way. In fact, that line
6 was set up to be laid on county land, and not my private
7 land. It would have been laid down in the borrow ditches
8 outside of my property.

9 I don't know that he and I ever talked about the
10 amount of the wells. There was several options to talk
11 about.

12 And there was one other thing that -- The
13 bankruptcy court, when Bristol filed for bankruptcy, I have
14 one question on that. Why did the State OCD office never
15 send the courts a copy of that abatement? Because they had
16 already filed for bankruptcy when that was sent out. That
17 was one of the questions -- I just wondered why it never
18 happened, why the bankruptcy court never knew about this.

19 CHAIRMAN FESMIRE: About the abatement plan?

20 THE WITNESS: Yes, sir. And I think that's all I
21 have.

22 CHAIRMAN FESMIRE: Okay, thank you very much,
23 sir.

24 Mr. Padilla, do you have any other witnesses?

25 MR. PADILLA: Yes, I'll call Rickey Smith at this

1 time.

2 RICKEY SMITH,

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

5 DIRECT EXAMINATION

6 BY MR. PADILLA:

7 Q. Mr. Smith, please state your full name.

8 A. Rickey Smith.

9 Q. Mr. Smith, are you -- what's your capacity with
10 Smith & Marrs, Inc.?

11 A. I'm president of Smith & Marrs, Inc.

12 Q. How long have you been president of Smith &
13 Marrs, Inc.?

14 A. Approximately 16 years.

15 Q. You've been in this room all day long listening
16 to the testimony, right?

17 A. Yes, that's correct.

18 Q. Can you tell the Commission what efforts you have
19 made to reach agreement with Mr. Osborn insofar as access
20 to the surface to start and implement the abatement plan
21 that's at issue here?

22 A. Yes, I hired Eddie Seay as a consultant to do the
23 abatement plan, line up the rigs and basically complete the
24 plan, and he went to meet with Mr. Osborn to gain access to
25 the property. And to my recollection, he met with him

1 twice.

2 Q. Did you give Mr. Seay authority to negotiate?

3 A. He could not settle anything without my approval,
4 no, he could not. He had to get approval from me for
5 anything that was going to be final.

6 Q. What parameters did you give Mr. Seay in terms of
7 talking to Mr. Osborn?

8 A. Well, our position has been with the abatement
9 plan, we certainly made it known in the hearing that, for
10 the record, we did not cause any pollution. There was
11 certainly a dispute with Chaparral as far as what our
12 knowledge was when we purchased it. We certainly did see
13 the documents, but we also saw the documents that the plan
14 was to be completed prior to operations changing over.
15 That was the dispute that we had.

16 I think they realized that they even sent me a
17 letter wanting me to take over operations a month early,
18 and I could gain extra income from it. But of course then
19 we knew -- you know, the abatement plan hadn't been
20 completed, and they still had a month to get it completed.

21 So we've read everything as far as the lease goes
22 and everything, and we think that the right to do the
23 abatement plan comes under the lease. We don't believe any
24 damages are due. We do believe, as Mr. Osborn stated, if
25 we go onto the land and start the abatement plan, he will

1 sue us for trespass or whatever other, you know, items he
2 can come up with.

3 So without a release, we're definitely not
4 inclined to go on there and get a lawsuit going there.

5 We did file the lawsuit, as I think it was
6 discussed in the hearing when we originally did the deal,
7 and we did ask the State at that time if they would help
8 us, because they were very aware that the right to drill
9 these wells had been a big bone of contention between
10 everybody.

11 At that time, the State did not agree to
12 represent us, but the did agree to be -- they would try to
13 send a representative to help us, that's where that ended
14 up with them.

15 Q. There was testimony here this morning about
16 whether or not you had asked the State or the OCD to
17 participate at any hearing. Do you know, or have you given
18 any notice like that to the OCD?

19 A. I turned that part of the case over to Lee
20 Kirksey with Maddox & Holloman in Hobbs, and it was my
21 understanding that she was supposed to, and I do not know
22 one way or the other that she was supposed to inform the
23 OCD of our efforts on filing the lawsuit. But I cannot
24 tell you whether that she informed you all or that she's
25 talked to anybody about it. I don't know.

1 Q. Where is this lawsuit now, as far as you know?

2 A. My last knowledge of it, that they were waiting
3 for a hearing date. But my understanding too is that some
4 of the hearing dates have been on the docket in Lovington,
5 New Mexico for up to two years at this point in time, so I
6 don't know where it stands. I know there are some docket
7 cases are still open that far.

8 I did try to call Lee Kirksey the last three days
9 prior to coming up here, to see if we had any more
10 knowledge, and I believe Mr. Padilla did too, and evidently
11 she's either out of the office or on a trial or a case or
12 somewhere, but we have not had any correspondence from her
13 this week.

14 Q. What's your position again with respect to
15 containment of surface damages in this case?

16 A. We don't believe that we're liable for any
17 surface damages. I think it comes under the original lease
18 that requires us to do the abatement plan. I mean -- I
19 don't know whether damage schedule will come in, because
20 you're supposed to, according to the original lease, to
21 maintain -- and you have the right of ingress/egress for
22 lines, telephone lines, buildings or any other -- I'm not
23 sure of the language, but anything that's needed to protect
24 and to develop your oil and gas minerals.

25 Q. Mr. Smith, you gave me a copy of -- well, you

1 showed me your copy of the response to petition the Smith &
2 Marrs lawsuit against Mr. Osborn. Is that it there?

3 A. Yes, it is.

4 Q. Attached to that are some oil and gas leases.
5 What do they say in terms of right of access to the
6 surface?

7 CHAIRMAN FESMIRE: Mr. Padilla, it sure would be
8 easier to follow if we had copies of it.

9 MR. PADILLA: I apologize, I don't have a copy of
10 this. I can make them available following this hearing, or
11 we can take a short recess and I'll have copies.

12 CHAIRMAN FESMIRE: Is that going to be introduced
13 as an exhibit?

14 MR. PADILLA: I didn't plan to, I just wanted to
15 testify from it. But if the Commission wants a copy of
16 this response, which is a response to the lawsuit, which is
17 Exhibit, I think, 36...

18 CHAIRMAN FESMIRE: Okay.

19 (Off the record)

20 CHAIRMAN FESMIRE: Mr. Larson or Mr. Brooks, do
21 you have any objection to that one copy being introduced as
22 evidence?

23 MR. BROOKS: No, I have no objection to it being
24 put in evidence.

25 CHAIRMAN FESMIRE: Mr. Larson?

1 MR. LARSON: I don't have an objection. I assume
2 it's something that's filed of public record, so...

3 CHAIRMAN FESMIRE: Okay, go ahead and proceed,
4 Mr. Padilla.

5 THE WITNESS: Lee Kirksey got this out of the
6 Lovington court records, to my knowledge. And what we read
7 that -- how she did and myself also interpreted it, it
8 says, This agreement made the 9th day of October, 1944,
9 between Elydia C. Stevens Winters, a widow whose husband is
10 deceased, Jal, New Mexico, Lessor, whose address is Jal,
11 New Mexico, and Reese Cleveland of Midland, Texas, Lessee.
12 Lessor, in consideration of ten and no dollars in hand paid
13 of the royalties herein provided and of agreements of
14 Lessee herein contained, hereby grants, leases, and lets
15 exclusively in two leases for the purpose of investigating,
16 exploring, prospecting, drilling and mining for and
17 producing oil, gas and all other minerals, laying
18 pipelines, building roads, tanks, power stations, telephone
19 lines and other structures thereon to produce, save, take
20 care of, treat, transport and own said products and housing
21 and storage on the following described lands.

22 And we believe that, you know, in order to take
23 care of the land, that's where it comes in on this, because
24 if you do have a leak, I think that you are obligated to
25 clean it up. And I don't think that you're out there every

1 day paying surface damages if you're cleaning up your
2 leases to this extent. It's no different than what we're
3 doing.

4 And some of these drilling sites for these
5 monitor wells, according to Eddie Seay, could actually be
6 on the drilling pad itself. So it wouldn't -- on those
7 particular monitor wells, if there any, you know,
8 installed, there wouldn't be anything different than what
9 your original pad location was. You wouldn't be disturbing
10 any properties here or there or anyplace else.

11 You're also talking a small amount of land to
12 install a monitor well. So that's been our position, that
13 we just don't owe any damages. We're certainly not
14 inclined to go on, do the -- you know, the history of the
15 lawsuits that have been filed on this ranch by Mr. Osborn
16 and his family, so we didn't want to -- that's why during
17 the hearing we -- the fact that the hearing -- we certainly
18 -- everybody understood that we would probably end up in
19 the courtroom. That's why we asked you all to participate
20 in it, the very first hearing that we had.

21 CHAIRMAN FESMIRE: Okay.

22 THE WITNESS: We knew it would be a problem.

23 CHAIRMAN FESMIRE: Why don't we take a 10-minute
24 recess, during which the Commissioners will take a look at
25 that document that you're testifying from, and we'll

1 reconvene at 20 till 4:00.

2 (Thereupon, a recess was taken at 3:30 p.m.)

3 (The following proceedings had at 3:44 p.m.):

4 CHAIRMAN FESMIRE: Okay, we're going back on the
5 record in -- what's the cause number? -- 13,061. Mr.
6 Rickey Smith was testifying.

7 Mr. Padilla, you may continue.

8 Q. (By Mr. Padilla) Mr. Smith, you heard Mr. Osborn
9 testify that he was willing to have what the Land Office
10 got paid for surface damages for monitor wells, right?

11 A. Yes.

12 Q. Has that offer ever been made to you?

13 A. I believe that offer has come through the
14 attorneys, Lee Kirksey, I believe it has.

15 Q. Did you reject that offer?

16 A. Yes.

17 Q. For what reason?

18 A. Well, again, I'll go back to the lease agreement.
19 I don't think that I'm liable for any extra damages due to
20 the contents of this lease agreement. When we agreed to
21 the abatement plan, you know, certainly we had in dispute,
22 certainly, whether we were liable for any of it. We
23 thought it was to everybody's advantage to go ahead and
24 drill these 10 abatement wells. We understood the cost of
25 them and various things like that.

1 But when you start getting into drilling 10, you
2 know, then if they're talking 20, 30, 40, 50, whatever
3 number you want to put, it's going to make it cost-
4 prohibitive to even, you know, operate the lease for
5 something that we didn't do.

6 So we were willing, certainly, to avoid a long,
7 drawn-out affair on this, to limit everybody's exposure to
8 a certain amount. But there was nothing in the abatement
9 plan or in our agreement with the OCD. We didn't at that
10 time feel like we owed surface damages, nor do we now.

11 Q. In terms of -- Well, let me ask about the unit
12 itself. What kind of production are you getting out of
13 that?

14 A. I'm not sure right now. Smith & Marrs, Inc., is
15 still the operator of record. It's actually operated by
16 another company right now that is in the process of buying
17 me out, and so I don't monitor it really close anymore.
18 They actually operate it. But my best recollection is, it
19 makes about 30 barrels a day.

20 Q. In terms of the surface damages that have been
21 required potentially here, what does that do to premature
22 abandonment of this unit and leaving oil and gas in the
23 ground?

24 A. Well, I think at some point in time, you know --
25 you know, people will look at it, and whether they can

1 determine the cause of pollution, whether it's out of a
2 certain spill, which can certainly be abated, I guess, or
3 it's coming from off-lease and you have a continuous fight
4 over it, at some point it would be just plugged out,
5 because you don't want to -- in the long run it would be
6 cheaper to just plug the lease out and go on to the next
7 deal. That would be my position.

8 Q. Would that have a tendency to leave oil and gas
9 in the ground that wouldn't be otherwise produced?

10 A. Well, you know, you're certainly going to have to
11 weigh your economics out on that, and economics are very
12 difficult to run right now, because we don't -- I don't
13 know that anybody believes that we're going to stay at the
14 price we're at now. I mean, at some point in time it's not
15 going to be to anybody's advantage to produce this number
16 of wells, that number of barrels, at a lower price or when
17 costs finally catch up to the price of a barrel of oil
18 right now.

19 So there certainly is a point in time, but I
20 don't know that anybody can determine what that is right
21 now.

22 Q. Mr. Smith, have you done work for the Oil
23 Conservation Division out there in terms of plugging oil
24 and gas wells?

25 A. Yes, we have.

1 Q. Where have you drilled, or where have you plugged
2 wells?

3 A. We plugged a well just west of the Jal Unit on a
4 lease of Maralo. It was a -- I don't know if I remember
5 the name of the well or anything, but it was a well that
6 was a freshwater well that was bubbling gas, and I believe
7 what brought it to someone's attention is that kids for
8 years had gone out there and threw matches over into it and
9 got it burning. And I guess it finally come to the
10 attention of some adults and -- I don't know how long it's
11 been that way. Carroll LaVelle, which you all probably all
12 know, told me that he used to light it when he was a kid,
13 and Carroll is --

14 CHAIRMAN FESMIRE: Oh, my god.

15 THE WITNESS: -- 67 years old, you know. So we
16 did plug that. I don't know -- The State paid us, I can
17 tell you that. I know that we were asked to copy Maralo
18 for all invoices and daily reports, which was cleared by
19 Billy Prichard, which is the field representative for the
20 OCD, which we did. And I have no clue whether Maralo
21 reimbursed the State or they're still flipping coins over
22 it or anything, I don't know where that went.

23 Q. (By Mr. Padilla) What was the condition of the
24 water in that well?

25 A. The water was -- As far as, you know, we could

1 determine, the water was probably not potable because of
2 the gas contamination coming through it. We don't recall
3 that there was any hydrocarbons that we circulated out when
4 we were plugging it, but it was just a gas. And my
5 recollection is, the deepest we could get was around 550
6 feet.

7 And so, you know, I think the State determined
8 that that was as deep as it was probably ever drilled, and
9 that would be the -- probably the base of the Santa Rosa,
10 which is your lower aquifer, which is probably, in our part
11 of the world, 95 percent of what water is taken out of
12 ground that is used for city and a lot of house
13 consumption.

14 The upper aquifer, which I don't know if they're
15 referring to it as alluvium, is, you know, a shallow water
16 in that 50, 60 -- a hydrologist could probably tell you
17 more, but it's more like seep water that comes from
18 surface. And you know, that's not what most cities and
19 counties -- I know for sure that Jal has got the Santa
20 Rosa, Kermit does, Eunice does, Wink does. Other than
21 that, I'm not sure of other cities around there.

22 Q. Mr. Smith, there's been testimony here by Mr.
23 Olson, and I believe Mr. Osborn alluded also to the good
24 faith requirement under the agreement that you entered
25 into, or Smith & Marrs entered into as to trying to get on

1 the surface to do the abatement plan. Would you elaborate
2 for us what you believe is a good faith effort in terms of
3 trying to get on the surface?

4 A. I felt like it was best that I hire someone such
5 as Eddie Seay who has dealt with landowners and certainly
6 used to work for the OCD, so he's very aware of all the
7 requirements to get done, that it was best to let him talk
8 and try to get something worked out that he could bring to
9 me.

10 I didn't see any advantage -- not only are we --
11 have been very busy, and it's -- it was easier to hire him
12 to go deal than it would have been for us to deal directly.
13 Mr. Osborn was certainly welcome to come to Kermit at any
14 time and sit down, which as far as I know he never did. If
15 he ever called, it would have to be -- the secretary has
16 not informed us of that.

17 But I felt like Eddie Seay is very capable of
18 relating what we need to do and where we're going to drill
19 our wells and keep him informed.

20 Q. Where you left, in your opinion, with any other
21 opinion but to file a lawsuit for injunction?

22 A. Well, having known everything that Chaparral had
23 gone through, no, we didn't feel that there was other
24 options. You know, we could do what Chaparral had done for
25 a two- or three-year period of time, is just keep firing

1 stuff back and forth.

2 I think that's why it was put in the agreement
3 here, is that we would -- we all felt like we would end up
4 in court. That's why we tried to get the State -- we felt
5 like they had more influence helping us get access and --
6 So I think we realized from the start it would be very
7 difficult to get access to it, so...

8 MR. PADILLA: I have nothing further, pass the
9 witness.

10 CHAIRMAN FESMIRE: Mr. Brooks, do you have any
11 questions of this witness?

12 MR. BROOKS: A few. I know lawyers always say
13 "very briefly, your Honor".

14 (Off the record)

15 May I approach the witness, Mr. Chairman?

16 CHAIRMAN FESMIRE: You may.

17 CROSS-EXAMINATION

18 BY MR. BROOKS:

19 Q. Mr. Smith, I hand you what has been marked as OCD
20 Exhibits 33, 33A, 33B, 33C. With regard to Exhibit 33 I'll
21 ask you, is that a copy of the letter that you sent on or
22 about December 23rd of 2003 to Mr. Osborn?

23 A. Yes, it is.

24 Q. And Mr. Osborn or his wife has noted there that
25 we've received on December 27th, and you wouldn't disagree

1 with that, would you?

2 A. I don't have any knowledge of when they received
3 it.

4 Q. But you sent it on or about December 23rd?

5 A. That would be correct.

6 Q. Okay. Then would you look at Exhibit 33A? Does
7 that appear to be an exact copy of Exhibit 33?

8 A. Yes, it does.

9 Q. And did you send that letter a second time, Mr.
10 Smith?

11 A. Yes, I did.

12 Q. And about when did you send it?

13 A. I don't recall. I mean, they have it received
14 7-14, so I would assume a couple of days prior to that.

15 Q. You wouldn't have any basis to disagree with
16 their statement that they received it on July the 14th
17 [sic], 2004?

18 A. That's correct, I would not have any --

19 Q. And were Exhibits 33B and 33C attached when you
20 sent it in July?

21 A. Yes, it should have been.

22 Q. Okay, but those were not attached the first time
23 you sent it in December; is that correct?

24 A. No, I would assume that it was attached both
25 times. The first release was dated December 23rd, and the

1 second was dated July the 12th.

2 Q. Okay. If Mr. Osborn has testified that both
3 releases were attached the second time, but that neither
4 one was attached the first time, would you disagree with
5 that?

6 A. I would -- yes, I would disagree. You know, the
7 -- December 23rd was when I went and mailed the first
8 letter. And then he says he received it July the 14th, and
9 the release is dated July the 12th.

10 Q. Okay.

11 A. So I would think that it would have been attached
12 to the first one, but...

13 Q. Okay. During the period of time from the time in
14 November of 2003 when Exhibit 31, the settlement agreement,
15 was signed, until you filed your petition for permanent
16 injunction, which is Exhibit Number 36 -- it bears a file
17 mark of August 31st, 2004 -- during that period of time,
18 did you at any time -- did you send any other
19 correspondence to Mr. Osborn about this subject matter,
20 this abatement plan, other than Exhibits 33 and 33A?

21 A. I don't recall any other correspondence.

22 Q. And of course subsequent to the filing of your
23 petition, the negotiations have been handled by your
24 attorneys, correct?

25 A. Well, Eddie Seay would be the man that had done

1 it. I'm not sure that the attorneys did any negotiations
2 that I recall.

3 Q. But any negotiations that -- after the filing of
4 the lawsuit?

5 A. If there was any negotiation done, it would have
6 been with the attorneys.

7 Q. Okay. Now, I notice this petition is entitled
8 "Petition for Permanent Injunction". Do you know if there
9 was any effort to get a temporary injunction to obtain
10 access to the property prior to the trial on the merits of
11 the lawsuit?

12 A. Not that I recall, that -- was there a temporary
13 injunction hearing.

14 Q. Was there a temporary injunction hearing?

15 A. Not that I recall.

16 Q. Okay, did you request one?

17 A. I don't recall one, I don't recall one.

18 Q. Did you ever contact the Oil Conservation
19 Division and ask them to attend any hearing?

20 A. I turned all that over to Lee Kirksey, and
21 whether she did or not, I don't have any -- I haven't been
22 able to get ahold of her.

23 Q. Okay, you recall -- you were here in the hearing
24 room a few minutes ago when Mr. Osborn read from his letter
25 stating that he was willing to meet with you and discuss

1 this matter; is that correct?

2 A. Yes.

3 Q. Do you recall receiving those letters?

4 A. Yes.

5 Q. And did you ever contact Mr. Osborn and invite
6 him to come visit with you and discuss this matter?

7 A. I did not contact him, Eddie Seay is the only
8 representative I had that contacted --

9 Q. Okay, and you never did personally speak with Mr.
10 Osborn?

11 A. I did not.

12 MR. BROOKS: Thank you, I believe that's all my
13 questions.

14 CHAIRMAN FESMIRE: Mr. Larson?

15 MR. LARSON: I don't have any questions, Mr.
16 Chairman.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 COMMISSIONER BAILEY: A couple.

19 EXAMINATION

20 BY COMMISSIONER BAILEY:

21 Q. You were aware of the Chaparral access problems
22 when you bought the property?

23 A. When I purchased the property at the auction I
24 was not aware of the problems as far as their access goes.
25 I knew they had the abatement plan, which again -- the

1 effective date of the sale, and the period from purchase to
2 that was two months. And it was my assumption at the sale
3 that they would complete their abatement plan in those two
4 months.

5 It's not unusual on a sale for the effective date
6 to be immediate. If the sale is on January the 1st, then a
7 lot of times the effective date is January 1st, but
8 certainly no later than February 1st.

9 Q. I thought Mr. Lang testified that he had apprised
10 you of the issues connected with access.

11 A. That's not how I recall it.

12 Q. Okay. But you did sign an agreement indicating
13 that you would take over all obligations of Chaparral?

14 A. Are you talking about at a hearing here, or are
15 you talking --

16 Q. No, I'm talking about this --

17 A. -- at the sale?

18 Q. -- this agreement for the plan, Exhibit Number
19 31, settlement agreement signed by the OCD, Chaparral and
20 Smith & Marrs.

21 A. Yes.

22 Q. Yes, you did sign that --

23 A. Yes.

24 Q. -- fully aware that there were access issues?

25 A. Certainly everyone was aware of the access

1 issues.

2 Q. You've produced the oil from this property. I
3 checked this morning, and the oil was going for \$46.75 from
4 Navajo West Texas Intermediate. So assuming that you've
5 been producing 900 barrels a month at -- let's just round
6 it up to \$45 -- somewhere in the vicinity of \$41,000 per
7 month.

8 A. Okay.

9 Q. Okay. You've now contracted with another party
10 to buy the property?

11 A. That's correct.

12 Q. Did you ever intend to clean up the area?

13 A. We certainly intended to do the abatement. I
14 believe the wording in that -- I don't know that we've ever
15 agreed on the abatement 2. I mean, we reserved our rights
16 for the responsible party. We certainly have another
17 agreement with Chaparral, and it's not entered into this,
18 but it's our agreement between us, and it never mentions
19 abatement 2 in it.

20 So abatement 1 would determine where everybody
21 went from there.

22 Q. But the paragraph does say that you were
23 obligated to work through Phase 2, that you signed.

24 A. Well, with the -- with the -- because we reserve
25 the rights on that 2, but it also -- we have a separate

1 agreement that we would have to enter into with Chaparral
2 at that point.

3 Q. But you've been unwilling to pay any amount of
4 your income towards these monitor wells --

5 A. That's correct.

6 Q. -- as required by the abatement plan?

7 A. I don't know that the abatement plan ever
8 required us to pay any damages. I don't believe that it
9 does.

10 Q. It does require you to for access?

11 A. That's correct.

12 Q. Do you pay surface damages for other properties
13 in the southeastern part of the state?

14 A. We've had a lot of leases over the years, and
15 there are some properties that do have surface damage
16 agreements and some that don't. The older ones normally
17 don't, that were created in the 1940s and the early 1950s.
18 Surface damage agreements certainly come into more play,
19 probably in the late 1960s, early 1970s, and you know,
20 they're pretty standard today.

21 But we've certainly had leases that there was no
22 surface damage agreement or damages ever paid.

23 Q. But at the time this agreement was signed, it's
24 standard practice to have surface damage agreements?

25 A. I don't know that a person ever wants to give up

1 a right because something has become standard practice,
2 when the original lease agreement doesn't allow for it. So
3 that would be my position. You wouldn't put yourself in a
4 worse position.

5 Q. The lease that you refer to is silent as far as
6 responsibilities for spills and leaks; is that correct?

7 A. I guess that would be -- are you talking about
8 the lease that I read about a while ago?

9 Q. Yes.

10 A. I don't know that I agree with that. I think the
11 language that says "take care of" could certainly include
12 leaks or abatement plans, I do believe that.

13 Q. Would you finish that phrase, "take care of..."
14 what?

15 A. It says, Take care of, treat, transport and own
16 said products and housing, it's employees, the following
17 described land. Of course housing would have nothing to do
18 with oil and gas either. And you know, in order to have
19 housing on it, you're going to have to take care of that.
20 So I mean, I think it could include taking care of the land
21 around the house or the land that the pad is on or anything
22 that, you know, connects to an oil and gas property.

23 Q. The second lease behind that lease that you were
24 reading from --

25 A. Uh-huh.

1 Q. -- does have a phrase in here about liability for
2 damage to growing crops.

3 A. Can you tell me where you're talking about?

4 Q. Sure, if you'll hand it over to me. I don't have
5 a copy of it.

6 CHAIRMAN FESMIRE: Mr. Smith, why don't you go
7 ahead and sit back down? I'll bring it to you.

8 THE WITNESS: Okay.

9 Well, I guess you'd have an interpretation of
10 what growing crops -- if you consider, are we talking about
11 a corn, a wheat, a milo, are we talking about grass?

12 I don't know that this sets a damage rate
13 schedule either, so I guess that would certainly be
14 interpreted to operations of growing crops on said land, so
15 I'm not sure that I can interpret that right now.

16 COMMISSIONER BAILEY: I have no further
17 questions.

18 CHAIRMAN FESMIRE: Commissioner Chavez?

19 EXAMINATION

20 BY COMMISSIONER CHAVEZ:

21 Q. Yes, Mr. Smith, you signed the settlement
22 agreement yourself on the 3rd of November of 2003. And
23 although it wasn't signed by the Energy and Minerals
24 Department until a couple of weeks later, you still -- you
25 had signed it, and you had 90 days from that last signature

1 to submit a report.

2 Is -- If Mr. Olson's timeline of events on OCD
3 Exhibit 1 is correct, it shows that you didn't even make
4 the first written communication to Mr. Osborn until
5 December the 23rd; is that correct?

6 A. As far as a written offer, I do believe that
7 Eddie Seay had met with him prior to that, but I don't
8 recall the time frame.

9 Q. Okay. When the 90-day period for you to file a
10 Stage 1 investigative report was approaching, did you make
11 an attempt to contact the OCD or Chaparral or any other
12 parties to the agreement to tell them there might be an
13 issue about the delay in complying with what you had agreed
14 to do?

15 A. I was letting Eddie Seay handle that. Whether he
16 contacted or not, I don't know. I did not ask him. I
17 certainly didn't even think of that. But I don't know.

18 Q. Was Mr. Seay then given the responsibility for
19 putting this agreement into effect --

20 A. That's correct, that's correct.

21 Q. Did you make any effort after February the 15th
22 or in trying to -- February 15th, 2004, in trying to comply
23 with this, to contact the OCD to explain what any delays or
24 issues were with complying with the agreement?

25 A. I don't recall. I just don't know.

1 COMMISSIONER CHAVEZ: That's all I have, thanks.

2 EXAMINATION

3 BY CHAIRMAN FESMIRE:

4 Q. Mr. Smith, do you have a copy of State's Exhibit
5 31, the settlement agreement?

6 A. No, I do not.

7 CHAIRMAN FESMIRE: Mr. Brooks, would you provide
8 him one?

9 MR. BROOKS: Approach the witness?

10 CHAIRMAN FESMIRE: You may.

11 THE WITNESS: Okay.

12 Q. (By Chairman Fesmire) Mr. Smith, there is a
13 signature on this agreement for Smith & Marrs, Inc. Is
14 that your signature?

15 A. Yes, sir.

16 Q. And did you sign as president of the corporation?

17 A. Yes, I did.

18 Q. Okay. You said something that I want to clarify.
19 You said at the time -- in response to a question from
20 Commissioner Bailey. You said that you intended to honor
21 the agreement. Intended. Is that correct?

22 A. I still intend to if we can get access.

23 Q. Okay, so there is no past tense to that, you
24 intend to honor the agreement?

25 A. That's correct.

1 Q. Okay. Now, you said that at the time of the
2 purchase that you assumed that Chaparral would complete the
3 Phase 1 part of that; is that correct?

4 A. That's correct.

5 Q. Yet in this agreement, on the second page,
6 paragraph C under the "It is therefore now agreed...", it
7 says, "Smith & Marrs shall make a good faith effort to
8 negotiate an access agreement with the surface landowner(s)
9 as necessary for implementation of the Stage 1 Abatement
10 Plan."

11 It seems to me, at least at the time this
12 agreement was signed, you intended to implement this Stage
13 1 Abatement Plan, and you weren't relying on Chaparral to
14 do it; is that correct?

15 A. That's correct.

16 Q. How does that differ from what you've told us
17 about your understanding at the time of the purchase?

18 A. Well, I'm not really sure what you're asking. At
19 the time of the purchase I certainly understood the
20 abatement plan was going to be implemented prior to the
21 effective date of the sale.

22 Q. Yet that changed between then and the time that
23 you signed this document; is that correct?

24 A. Yes, and that was a negotiated settlement with
25 Chaparral --

1 Q. Okay.

2 A. -- which is another recital.

3 Q. Okay, and that's the document that we don't have;
4 is that correct?

5 A. That's correct.

6 Q. Okay. What were the conditions of that document?

7 A. I have it. Do you need to give it to him?

8 MR. PADILLA: Actually, Mr. Chairman, that
9 agreement has never been signed. We're prepared to sign
10 it. Is that what we're talking about, Mr. Larson?

11 MR. LARSON: I assume so. There was a separate
12 settlement agreement between --

13 CHAIRMAN FESMIRE: Okay.

14 MR. PADILLA: Let me clarify this. The dispute
15 at the time of the first hearing, before we entered into
16 the settlement agreement, was -- between Chaparral and
17 Smith & Marrs, was that -- it was about who was going to
18 implement the abatement plan.

19 CHAIRMAN FESMIRE: The Phase 1 Abatement Plan?

20 MR. PADILLA: The Phase 1 Abatement Plan. When
21 we came here, we agreed that the abatement plan was going
22 to be performed by Smith & Marrs.

23 CHAIRMAN FESMIRE: But that was in September,
24 2004, wasn't it?

25 MR. PADILLA: No, it was earlier. That was

1 already a done deal at that point. 2003, whenever we had
2 the first hearing here, the date shortly before the date of
3 the settlement agreement, Exhibit 31, 11-17, is when
4 Energen Minerals signed off on this agreement -- well, it
5 was November -- October, 2003. The issue of who was going
6 to do the abatement plan was resolved.

7 The dispute between, as I understand -- correct
8 me if I'm mistaken -- was that Smith & Marrs and Chaparral
9 were arguing over who was going to do the abatement plan.
10 As a result of the settlement agreement, Smith & Marrs is
11 going to do it. There's no dispute about that.

12 CHAIRMAN FESMIRE: Okay, but my point is that
13 that occurred in 11-03.

14 MR. PADILLA: Right.

15 CHAIRMAN FESMIRE: Prior to -- When did the sale
16 on the property close?

17 MR. LANG: Late October --

18 CHAIRMAN FESMIRE: Of -- ?

19 MR. LANG: -- effective -- of '03, effective 1
20 December. I want to say the 27th, I may be wrong on that
21 date, but it was the latter part of October is my
22 understanding.

23 CHAIRMAN FESMIRE: Okay.

24 MR. LARSON: That was -- Excuse me, that was '02,
25 wasn't it?

1 MR. LANG: '02, I'm sorry, '02.

2 CHAIRMAN FESMIRE: Okay. So in that roughly a
3 year, you all have negotiated and implemented another
4 agreement that -- I guess my understanding is perhaps not
5 as sharp as it should be at this time in the afternoon.

6 MR. PADILLA: The other agreement dealt with who
7 actually had -- such other things as who actually -- what
8 entity was supposed to take title to the actual oil and gas
9 property. We had other corporations, Burro Lake, Inc., and
10 other entities that in turn -- we had to correct the
11 assignment for, but it came out of Chaparral, and to Smith
12 & Marrs that was not the transferring agent, and it should
13 have been Burro Lake, and that was the subject matter, in
14 addition to the abatement plan.

15 But in terms of the settlement agreement, this
16 one essentially says everything that we need to say as to
17 responsibility.

18 CHAIRMAN FESMIRE: Okay, so at least in November
19 of '03, Smith & Marrs takes all environmental
20 responsibility for this site; is that correct?

21 COMMISSIONER CHAVEZ: '02, I think is what you --

22 CHAIRMAN FESMIRE: I'm at '03.

23 COMMISSIONER CHAVEZ: Oh, I'm sorry.

24 Q. (By Chairman Fesmire) The date of this
25 agreement?

1 A. Smith & Marrs has agreed to do the Stage 1
2 Abatement Plan, yes.

3 Q. Well, haven't they agreed to do the Stage 2
4 Abatement Plan if necessary also?

5 A. Well, I talked to him about that a little while
6 ago. My understanding was that we left the -- you know,
7 the wording is there, but we also reserve the right to
8 select the responsible party.

9 Q. Okay, that's not the way I read --

10 A. That was my interpretation --

11 Q. -- Section D.

12 A. -- I thought, when we signed it.

13 Q. Okay, to me, "Smith & Marrs reserves the right to
14 contest any such conditions...", and it's talking about
15 "...conditions imposed [thereupon] by the OCD...by
16 administrative process and appeals allowed therefrom, but
17 will perform the plan as finally approved."

18 In other words, with this document, Smith & Marrs
19 takes full responsibility for the site, doesn't it, and
20 leaves Chaparral only contingently liable for the site if
21 Smith & Marrs doesn't perform; is that correct?

22 A. Well, I thought that the -- on the -- I guess it
23 would be D where it says, "Smith & Marrs reserves the right
24 to contest any such conditions by administrative process
25 and appeals allowed therefrom, but will perform the plan as

1 finally approved."

2 Q. Right.

3 A. But I thought we were reserving rights to dispute
4 the responsible parties, is how I interpreted that.

5 Q. Okay.

6 A. Now, I certainly could be wrong.

7 Q. But --

8 A. Might not have been the intent, but that's how I
9 interpreted it.

10 Q. Okay. What it says to me is that "Smith & Marrs
11 reserves the right to contest..." the OCD -- any conditions
12 that the OCD might have put on there by administrative
13 process, but no matter what the outcome, they're going to
14 perform the Phase 2; is that not what you intended to agree
15 to?

16 A. I'm not sure that's what I intended to agree to.
17 I mean, I'm certainly willing to do the Phase 1 Abatement
18 Plan. I don't have any problem doing that.

19 But of course the Phase 2, or Stage 2, then, at
20 that time, I thought I reserved the right to look back to
21 someone else.

22 MR. BROOKS: Mr. Chairman, I don't know how you
23 as an attorney object to a question that's put to a witness
24 by the judge, but in the absence -- I do want to make the
25 point because I don't want to waive it, that in the absence

1 of a determination that the agreement is ambiguous, I don't
2 believe it would be appropriate to consider the subjective
3 intent of the signing party in terms of construing the
4 agreement.

5 Thank you.

6 MR. LARSON: With trepidation, Mr. Chairman, I
7 join the objection.

8 (Laughter)

9 CHAIRMAN FESMIRE: And I as the judge don't know
10 where to go from here.

11 (Laughter)

12 Q. (By Chairman Fesmire) Mr. Smith, let's go back
13 to the lease that you were talking about a minute ago,
14 where -- the phrase where it says take care of said
15 products. Can you find that for me again real quick?

16 A. Yes.

17 Q. Okay, would you read that for me one more time?
18 The whole phrase.

19 A. The whole phrase?

20 Q. Right.

21 A. Starting from Lessor, in consideration of...?

22 Q. Right.

23 A. ...ten dollars in hand paid of the royalties
24 herein provided and of the agreements of Lessee herein
25 contained, hereby grants, leases, and lets exclusively on

1 two leases for the purpose of investigating, exploring,
2 prospecting, drilling and mining for and producing oil, gas
3 and other minerals, laying pipelines, building roads,
4 tanks, power stations, telephone lines and other structures
5 thereon to produce, save, take care of, treat, transport
6 and own said products and housing its employees.

7 Q. Okay, let's go back to that phrase that "take
8 care of" is in the middle of: save, produce... Start
9 there.

10 A. ...take care of, treat --

11 Q. Yeah, give me those words again.

12 A. ...take care of, treat, transport and own said
13 products and housing its employees.

14 Q. Okay. My interpretation of that lease would be
15 that "take care of" means "take possession of". Is that
16 not a valid interpretation, in your opinion?

17 A. Take possession of the housing, of the land --

18 Q. No, take care of the product. Read it for me
19 again.

20 A. ...save, take care of, treat, transport and own
21 said products and housing its employees.

22 Q. Okay, start with the word before "save". What's
23 that word?

24 A. ...telephone lines and other structures thereon
25 to produce --

1 Q. Produce.

2 A. -- save, take care of --

3 Q. -- save, take care of --

4 A. -- treat, transport and own said products and
5 housing its employees.

6 Q. Okay, "said products".

7 A. Uh-huh.

8 Q. And your interpretation is, that gives you the
9 ability to come on the lease and repair -- or remediate
10 environmental spills; is that correct?

11 A. Yes.

12 CHAIRMAN FESMIRE: Okay. I have no further
13 questions.

14 Mr. Padilla, do you have any redirect?

15 MR. PADILLA: No redirect.

16 CHAIRMAN FESMIRE: Okay, thank you, Mr. Smith.
17 Do you have another witness?

18 MR. PADILLA: We rest at this time.

19 CHAIRMAN FESMIRE: Okay. I'm assuming everybody
20 wants to give a short close?

21 MR. BROOKS: Sure, yes, your Honor.

22 CHAIRMAN FESMIRE: Mr. Brooks?

23 MR. BROOKS: Well, I know it's late in the
24 afternoon, so I will try to be -- not to say anything that
25 I don't feel fairly strongly needs to be said, but five

1 years the OCD has been working on getting this cleaned up
2 now, and we would like to bring this to some kind of a
3 close.

4 Mr. Padilla has indicated that his client is here
5 primarily because of the \$197,000 civil penalty that was
6 assessed against Smith & Marrs by the Division Examiner.
7 I'm not going to go over the status of civil penalties,
8 because I believe that you, Mr. Chairman, are entirely as
9 familiar with it as I am.

10 In view of Judge Forbes's holding and the fact
11 that this is a case that -- where enforcement would have to
12 go to the 5th District -- I don't know how the 5th District
13 judges feel about internal precedent. My experience was
14 that the Dallas County -- District Court of Dallas County
15 didn't count for anything.

16 Anyway, I am not going to strongly press that a
17 large civil penalty or even any civil penalty should be
18 assessed. If the Commission chooses to assess one, as
19 counsel for the Division I will not object, but I'm not
20 going to press that point.

21 What I believe we need, in the words of the
22 Supreme Court in one of the -- Supreme Court of the United
23 States in one of the desegregation decisions, is a plan
24 that realistically promises to work now. And I believe
25 that we need a compliance order that directs Smith & Marrs

1 to perform the Phase 1 investigation plan by a date
2 certain, and I believe that it should be left up to them to
3 work a deal with the landowner.

4 And I want something -- I would like to get
5 something from the Commission that we can take to court if
6 they fail to comply, and get an enforcement and such civil
7 penalties as the court, for whatever -- on whatever basis
8 it deems appropriate, whether it be by assessment of the
9 OCD or otherwise, would choose to assess.

10 The only defense that Smith & Marrs has tendered
11 is that they can't get along with the landowner. What they
12 agreed to was to -- two things: to make a good faith effort
13 to get a surface-use agreement for this purpose and, two,
14 to bring a lawsuit if necessary.

15 What they did after agreeing in November of '03
16 to do these things was, they wrote one letter in December
17 of '03. They didn't get a satisfactory response. They
18 sent Eddie Seay out there to see Mr. Osborn. Mr. Seay
19 apparently succeeded in communicating to Mr. Osborn that he
20 didn't have authority to negotiate. I don't know what Mr.
21 Seay said, but Smith & Marrs named him as a witness in
22 their prehearing statement, and they didn't call him.

23 There was no further communication until July of
24 '04. And I want to point out something about July of '04.
25 You'll notice on this chronology, and it's reflected in the

1 case file, of which you may take notice, that the Division
2 Hearing occurred on July 15th. I'm sorry, no. The
3 Division Hearing occurred on September the 7th [sic]. The
4 Division filed its application for enforcement on July 30th
5 of '04. In other words, it was not until threatened with
6 the Division's -- that the Division would file a further
7 enforcement application that any further action was taken.

8 After that was done on July 30th -- Well, just
9 prior to the time the Division brought the -- actually came
10 up with this -- came in through with this enforcement
11 action, another -- one more letter was sent, which was the
12 same letter. No movement, same letter, re-sent.

13 Then after the Division filed its action and just
14 a few days before the Division Hearing, on August 31st,
15 then, the lawsuit was filed, but they did not seek
16 temporary injunction. They only sought a permanent
17 injunction, and you heard the testimony of Mr. Smith that
18 he knew that it might be a year or two until they got a
19 hearing on this.

20 What I believe we have here is not compliance
21 with this agreement but a minor cosmetic effort at
22 compliance with this agreement. I believe that there is no
23 showing that they could not have gotten a surface-use
24 agreement, gotten access and gotten this done if they had
25 made a good faith and serious effort.

1 And I have no opinion, I don't know any law on
2 the subject, as to whether or not an operator has a right
3 to surface access for this purpose under the terms of an
4 oil and gas lease, but I don't believe they've made a good
5 faith effort to get a judicial determination of that issue,
6 and certainly not one the Oil Conservation Division has the
7 authority to determine.

8 I agree with Mr. Padilla that the Oil
9 Conservation Division does not have the authority to
10 enforce agreements in the sense you certainly couldn't
11 award damages for breach or specific performance, but you
12 do have authority to order compliance with an abatement
13 plan. And all the OCD agreed to do in the agreement was
14 that we would, in effect, extend the date of compliance
15 until February of '04, a time which is long past.

16 Thank you.

17 CHAIRMAN FESMIRE: Mr. Larson?

18 MR. LARSON: As I said in my opening statement,
19 Mr. Chairman, members of the Commission, I'm appearing here
20 today because Chaparral has a vested interest in the
21 performance of abatement at the South Langlie Jal Unit.

22 Mr. Chairman, I appreciate and support your
23 interpretation that our liability is contingent. I
24 appreciate the opportunity to present evidence as to the
25 efforts that Chaparral took during its period of ownership

1 and operation of the South Langlie Jal Unit to try to get
2 the abatement activities on track and completed. I think
3 the Commission appreciates the burdens that they were faced
4 with. And in terms of Smith & Marrs' performance, I think
5 they've run into some of the same issues that Chaparral
6 did.

7 That's all I have, thank you.

8 CHAIRMAN FESMIRE: Mr. Padilla, are you going to
9 move for the admission of --

10 MR. PADILLA: -- Exhibits 1 and 2 --

11 CHAIRMAN FESMIRE: 1 and 2?

12 MR. PADILLA: -- and 3. And I ask the Commission
13 to take administrative notice of Exhibits 1 and 2.

14 Exhibit 1 is Senate Bill 777 for this past
15 legislative session, it's a certified copy.

16 And the other is the fiscal impact report, which
17 essentially states the purpose of the -- of what the Senate
18 Bill 777. And that goes to the jurisdiction of the
19 Commission to essentially agree with our interpretation of
20 the penalty statutes, is that the Division or the
21 Commission has only power to seek civil penalties by filing
22 a lawsuit in this case in the 5th District Court.

23 CHAIRMAN FESMIRE: Mr. Padilla, have you laid any
24 foundation for these three exhibits?

25 MR. PADILLA: No, your Honor, I'm just simply --

1 The first one, Exhibit 1, is the -- is a self-
2 authenticating document. And we are asking -- well, this
3 is a *de novo* hearing from a decision of the Division which
4 assessed \$197,000 worth of civil penalties. This is only
5 introduced on the basis of showing that the Division and
6 the Commission are trying to straighten out the statutes so
7 that they can ask for administrative agencies -- or
8 administrative penalties, by way of a hearing before the
9 Division or the Commission.

10 CHAIRMAN FESMIRE: But I mean --

11 MR. BROOKS: Mr. Chairman, the Division would
12 object to Exhibits 1 and 2, not on the grounds of
13 authenticity, because we believe them to be authentic, but
14 on the grounds of relevance, because it would be our
15 position that the Legislature's failure to amend a statute
16 is no evidence of what is the intended meaning of existing
17 law, number one.

18 And number two, there were many things in that
19 proposed statute, and any conclusion as to what particular
20 provision caused the Legislature not to enact it would be
21 entirely speculative.

22 CHAIRMAN FESMIRE: Okay, I'll sustain those
23 objections, because I agree with them.

24 Which leaves us Exhibit Number 3.

25 MR. BROOKS: We're not sure that's relevant, but

1 we don't actually object to it.

2 CHAIRMAN FESMIRE: Mr. Larson, do you have any
3 objection?

4 MR. LARSON: Ernie, what was 3?

5 MR. PADILLA: The lawsuit.

6 CHAIRMAN FESMIRE: The lawsuit.

7 MR. PADILLA: Civil lawsuit.

8 MR. LARSON: I certainly have no objection to
9 that.

10 CHAIRMAN FESMIRE: Okay, we'll go ahead and admit
11 S&M Exhibit Number 3, which is the Plaintiff's Original
12 Civil Complaint for Damages in Cause Number CIV-04-1034, in
13 the Albuquerque Federal Court.

14 What about the lease that your witness testified
15 from?

16 MR. PADILLA: Mr. Chairman, I've offered that at
17 this point, but I'd like to make copies of it and --

18 CHAIRMAN FESMIRE: Okay.

19 MR. PADILLA: -- and give it to you properly.

20 COMMISSIONER BAILEY: The lease or the entire
21 packet that --

22 CHAIRMAN FESMIRE: The entire packet.

23 MR. PADILLA: The entire packet.

24 CHAIRMAN FESMIRE: Okay. Any objection?

25 MR. BROOKS: No objection.

1 MR. LARSON: Can I look at it briefly?

2 CHAIRMAN FESMIRE: Surely.

3 COMMISSIONER CHAVEZ: Will that be Exhibit Number
4 4, then?

5 CHAIRMAN FESMIRE: 4.

6 MR. PADILLA: But to clarify, the record will
7 show that Exhibits 1 and 2 were not admitted, but 3 and 4
8 will be.

9 CHAIRMAN FESMIRE: Please.

10 MR. LARSON: Do you know if this was actually
11 filed in the 5th District?

12 CHAIRMAN FESMIRE: It's got a District Court
13 stamp on it. Oh, the lease?

14 MR. LARSON: I'm talking about the Response to
15 Petition for Permanent Injunction and Counterclaim. Is
16 that what we're talking about as Exhibit 4?

17 CHAIRMAN FESMIRE: Yes, that whole packet.

18 COMMISSIONER CHAVEZ: No, no, no, that's --

19 MR. BROOKS: Well, I'd understood only the lease
20 that was attached to it as being offered, but if the
21 response is being offered, we would not have any objection
22 to it being offered in evidence as evidence of what it is,
23 but certainly we would object to their pleading being
24 offered as evidence of the truth of the matter stated
25 therein.

1 COMMISSIONER BAILEY: There are two lease forms
2 there.

3 MR. LARSON: Okay, if I understood --

4 MR. PADILLA: It's not an endorsed copy, but if
5 the Commission requires an endorsed copy, I can get that
6 from the --

7 CHAIRMAN FESMIRE: Well, he testified from the
8 two leases.

9 MR. LARSON: I got the sense from Commissioner
10 Bailey you wanted the entire document admitted?

11 COMMISSIONER BAILEY: Both leases.

12 MR. LARSON: Oh, just both leases, okay. I have
13 no objection to that, and I certainly wouldn't have an
14 objection to this pleading. If it were file-stamped, then
15 it's a matter of public record and I'd have no basis to
16 object to it.

17 CHAIRMAN FESMIRE: Okay. So Exhibit Number 4
18 will be the two leases included in that packet?

19 MR. PADILLA: Whatever the Commission desires.
20 That's primarily what we were trying to show.

21 CHAIRMAN FESMIRE: Okay, then Exhibit Number 4,
22 which you will make copies of and give to the Commissioners
23 and the Commission Secretary, will be the two leases
24 attached to that packet.

25 MR. PADILLA: Okay, that's fine.

1 CHAIRMAN FESMIRE: Okay. After having thrown you
2 off your game, now we'll invite you to a closing argument.

3 MR. PADILLA: Maybe I'll be short.

4 CHAIRMAN FESMIRE: Okay.

5 MR. PADILLA: There's no question Smith & Marrs
6 entered into this agreement on -- which is Exhibit --

7 CHAIRMAN FESMIRE: -- 31?

8 MR. PADILLA: -- 31. The question here is
9 access. And I think you have to look -- the Commission has
10 to look at the history behind what we're trying to get on
11 this surface of the unit.

12 Consistent with his testimony at the last
13 hearing, Mr. Osborn still wants surface damages. He wants
14 a ton of surface damages and he wants them annually. And
15 we have an indefinite uncertainty as to how many wells, how
16 many monitor wells, are going to be located out there.

17 But to me, it's inconceivable how someone who
18 wants surface damages like this also does not -- impedes
19 his own ability to have the water cleaned up by having an
20 abatement plan.

21 The Stage 1 Abatement Plan requires the monitor
22 wells to find out where the pollution is coming from,
23 whether it's, in this case, from the Bristol discharge or
24 whether it's coming from west of the unit.

25 We're not trying to interject some argument here

1 that the water -- the polluted -- or the plume is coming
2 from the west, necessarily. But I think in terms of when
3 you get into abatement -- or Stage 2 Abatement Plan, I
4 think that's open to interpretation by the last sentence of
5 paragraph D of the agreement.

6 Certainly paragraph A contends that -- or
7 expresses the agreement that Chaparral and Smith & Marrs
8 both do not admit any liability with respect to any
9 contamination here. And the last sentence of paragraph D
10 would, I think, be broad enough to allow argument as to
11 responsible person.

12 Now, I'm not trying to say here that the contract
13 is ambiguous or anything like that, because we don't even
14 know now, based on the results of the Phase 1 Abatement
15 Plan results. But you know, from a lawyer's standpoint,
16 when you have a lawsuit filed, Smith & Marrs vs. Clay
17 Osborn and Jeri Osborn, and it asks for a permanent
18 injunction, one can argue a temporary restraining order,
19 we're going to go get it. Had I been at the wheel, maybe I
20 would have advised Mr. Smith to do it. I don't know what
21 is the lawyer's advice.

22 But then -- now you have the counterclaim for
23 malicious, abusive prosecution. So now you have a really
24 contested issue in the District Court. You have litigation
25 flowing both ways. And you can't really say that a

1 temporary restraining order should have been obtained in
2 two weeks or three weeks or anything like that.

3 I don't know what the docket capacity in the 5th
4 District is. I know that when we had the last lawsuit on
5 civil penalties before Judge Forbes, I think that he moved
6 it fairly fast and had a status conference. I'm not sure
7 who the judge is on this thing. But my experience as a
8 lawyer is that different judges handle their docket
9 differently, and I can't speak for diligence, if you want
10 to call it that.

11 I know that even when we're in the fast track in
12 the Federal District Court, you're still going to be a year
13 and a half, at least, from -- depending on discovery and
14 that kind of thing, a year and a half from any type of --
15 even getting close to trial.

16 So I don't -- We can argue one way or the other
17 about good faith and what constitutes good faith in this
18 case. You know, I think the Commission probably has some
19 feel for it, judging from the questions that have been
20 asked. Commissioner Bailey, for example, feels that
21 surface damages could easily be paid based on the proceeds,
22 the gross proceeds, from the field.

23 This is also a waterflood, this is also -- and
24 that also requires expenses, and we don't know what those
25 are. If we're going to go into that kind of thing, then we

1 probably -- we certainly can't look at it as being \$45,000
2 of gross income without knowing what the expenses are for
3 the field. Obviously, at \$46 oil it's more productive,
4 it's more profitable, perhaps, but we don't know what the
5 cost of the operation is.

6 Given the fact that you have a proposal of some
7 sort, according to Mr. Osborn, that \$300 per well per year
8 is something that is affordable, we also have to realize
9 that this unit is an old unit, and the history of
10 production from this unit -- and I take it based on the
11 surface damage agreement that was worked out 25 years
12 before 1995 would indicate that there's been a lot of oil
13 and gas operations here.

14 And I think the Commission has to take some
15 consideration of the past history of this field, of the
16 unit here, and the operations that have occurred in the
17 past, and the changes that have come into place, especially
18 with regard to abatement plans and environmental concerns,
19 that a company like Smith & Marrs, Inc., which is in a
20 salvage operation, now is saddled with all responsibility
21 for it. There has to be some leeway by the Commission to
22 allow some sort of fair play with respect to negotiation of
23 surface damages.

24 Now, Mr. Osborn appears very sincere, but he
25 drives a hard bargain. He wouldn't even go -- he wouldn't

1 even allow a pipeline to the house, and it's inconceivable
2 to me that he wouldn't go for that kind of a deal.

3 But it's more inconceivable to me that Chaparral
4 would want to bury -- remediate its oil or bad soil in this
5 climate of environmental concern on the ranch. That one I
6 can't believe. I don't buy that for a minute, that --
7 Chaparral's condition was that it was going to bury
8 polluted soil somewhere on the ranch. It shouldn't happen.

9 And given the care that Chaparral was giving to
10 this property by way of cleanup, it seems to me that the
11 rejection of the offer to put fresh water on the ranch by
12 way of a pipeline is absolutely ridiculous for somebody who
13 supposedly cares about pollution on the ranch.

14 And finally, I think that to stand in the way of
15 abatement 1 phase, or phase 1 abatement, in this case
16 because somebody's insisting on surface damages is equally
17 incorrect. It's illogical for somebody to not want fresh
18 water remediated. You have to get to step 1. Step 1 is
19 Phase 1. And in order to get to Phase 2, which there may
20 or may not be an argument as to who's the responsible
21 person, is that I can't for the life of me imagine that
22 somebody would, after all this time, stand in the way of
23 implementation of Stage -- Phase 1 of the abatement plan.

24 Now, if Smith and Marrs came out there and did
25 the work, then I suppose the remedy of Mr. Osborn would be

1 to sue for damages later if he felt like it, but he has
2 said, Don't do it until you pay me. That's it. And
3 there's disagreement as to whether or not any damages are
4 due Mr. Osborn.

5 So for those reasons we would ask that the
6 Commission first of all not impose any penalties, because I
7 don't think it has any jurisdiction to do that. And
8 secondly, if they want to do -- if the Commission feels
9 that a compliance order is in order, then give Smith &
10 Marrs time, certainly, in which to perform.

11 Thank you.

12 CHAIRMAN FESMIRE: Thank you, Mr. Padilla.

13 With that, the Commission will go into -- Do you
14 want to deliberate tonight?

15 COMMISSIONER BAILEY: Sure.

16 CHAIRMAN FESMIRE: The Commission will go into
17 executive session to consider the arguments of counsel and
18 the testimony that we've heard today.

19 I doubt if most of you will want to stick around,
20 but we will probably reconvene after we make the decision,
21 and most of the time folks don't stick around.

22 So with that we'll go into executive session as
23 soon as we can clear the room.

24 Thank you.

25 MR. PADILLA: Thank you.

1 (Off the record at 4:46 p.m.)

2 (The following proceedings had at 5:20 p.m.):

3 CHAIRMAN FESMIRE: Okay, let's go back on the
4 record at 5:20 p.m.

5 Let the record reflect that during the executive
6 session the Oil Conservation Commission discussed only Case
7 13,061. We've come to a decision, we've directed Counsel
8 Bada to draft an order that will reflect our decision, to
9 circulate that order to the members of the Commission and
10 to promulgate the final order at the next meeting of the
11 Oil Conservation Commission.

12 (Thereupon, these proceedings were concluded at
13 5:20 p.m.)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

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 May 16th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006