

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING TEMPO ENERGY, INC., PETERSON)
PETROLEUM COMPANY AND/OR JOE D. PETERSON)
TO PLUG ONE WELL AND ORDERING FORFEITURE)
OF APPLICABLE FINANCIAL ASSURANCE IN)
EVENT OF OPERATOR'S NONCOMPLIANCE,)
LEA COUNTY, NEW MEXICO)

CASE NO. 13,711

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

October 12th, 2006

Santa Fe, New Mexico

2006 OCT 16 PM 3 53

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, October 12th, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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October 12th, 2006
 Examiner Hearing
 CASE NO. 13,711

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A P P E A R A N C E S

FOR THE DIVISION:

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By: ANN M. CONWAY

* * *

1 WHEREUPON, the following proceedings were had at
2 8:56 a.m.:

3 EXAMINER EZEANYIM: Let's go back onto the
4 record.

5 At this point, on page 2, I call Case Number
6 13,711. This case was readvertised, and I'm going to read
7 everything because this is important.

8 This is the Application of the New Mexico Oil
9 Conservation Division for an order requiring Tempo Energy,
10 Inc., Peterson Petroleum Company and/or Joe D. Peterson to
11 plug one well and ordering forfeiture of applicable
12 financial assurance in event of operator's noncompliance,
13 Lea County, New Mexico.

14 At this point I call for appearances.

15 MR. BROOKS: Mr. Examiner, I'm David Brooks with
16 the Oil Conservation Division, appearing for the Division.
17 I have one witness by telephone.

18 EXAMINER EZEANYIM: Any other appearances?

19 MS. CONWAY: Yes, Mr. Examiner, my name is Ann
20 Conway, I'm with the law firm of Miller Stratvert, and I'm
21 here today on behalf of Travelers Indemnity Company, and I
22 have one witness by telephone.

23 EXAMINER EZEANYIM: Okay, that's why I had the
24 telephone with us. We don't know whether standing or
25 sitting.

1 At this point we -- that the witnesses be sworn
2 in. You know, I don't know how we do that.

3 MR. BROOKS: Are the witnesses here by -- are the
4 witnesses on the phone?

5 EXAMINER EZEANYIM: Yeah, I mean, they have to
6 be, you know -- you know, should be --

7 MR. BROOKS: Yeah. Do you have them on the line
8 now?

9 EXAMINER EZEANYIM: No, I --

10 MR. BROOKS: Okay, well, we'll need to contact
11 them.

12 EXAMINER EZEANYIM: Okay, how do you do that?

13 MR. BROOKS: Well, the Hobbs District Office --
14 contact the Hobbs District Office for Gary, and --

15 MS. O'CONNOR: Can you just swear them in as they
16 come up? Would that be -- or as they naturally call them?
17 Would that be the appropriate --

18 EXAMINER EZEANYIM: Well, I don't -- but that's
19 very important. I don't know if -- that's why they're --
20 you know, the first time, and then don't have to worry
21 about it.

22 MR. BROOKS: Yeah, you can swear them in just
23 before their testimony.

24 EXAMINER EZEANYIM: Okay. Okay, we do that.
25 Okay, now, if that is the case, you know, we deal with that

1 later.

2 Do we -- I call for opening statements. Do you
3 have any opening statements?

4 MR. BROOKS: Very briefly, your Honor. This is a
5 plugging case. It's different from most plugging cases
6 because there is a dispute about who is the operator. All
7 of the OCD records show that Tempo Energy is the operator.
8 The counsel for Tempo Energy's bonding company is here on
9 behalf of the bonding company to adopt the position that
10 Tempo Energy did not drill or operate that well and that
11 its name was fraudulently placed on the documents, as I
12 understand their contention. So that is what the case is
13 about.

14 EXAMINER EZEANYIM: Thank you.

15 Ms. Conway?

16 MS. CONWAY: Yes, Mr. Examiner, Mr. Brooks is
17 correct, we do deny all of the claims in the amended
18 Application -- or Application. This is a case where Joe
19 Peterson, doing business as Peterson Petroleum Company, who
20 is a respondent who apparently is not making an appearance
21 today -- I don't know that he's been able to be located --
22 but this is a case where he has fraudulently altered
23 documents submitted to the OCD.

24 And in our prehearing statement we've attached
25 three affidavits, two by the former owners of Tempo, and it

1 was acquired by Mr. Pannell, who is the third witness that
2 we will call. We have also submitted his affidavit.

3 And I don't know if at this time I move those
4 exhibits or whether they're already part of the record.
5 They're attached as exhibits to our prehearing statement.

6 EXAMINER EZEANYIM: If it was attached, I don't
7 have any exhibit. Do you have them ready with you? Do you
8 want to incorporate what you have already as your exhibits?
9 Is that what you want?

10 MS. CONWAY: Yes, and that -- Yes, I don't have
11 anything additional to what I've already submitted.

12 EXAMINER EZEANYIM: Okay, we already have that.

13 MS. CONWAY: Okay.

14 MR. BROOKS: Well, Mr. Examiner, my understanding
15 is that they haven't been tendered in evidence, but I want
16 to be sure that -- I assume they'll be tendered in evidence
17 in the case-in-chief, that that is the counsel's intention;
18 is that correct?

19 MS. O'CONNOR: Or do you prefer to go through
20 them and were you asking for them to be tendered now?

21 MS. CONWAY: I'm asking for them to be
22 tendered --

23 MS. O'CONNOR: Now.

24 MS. CONWAY: -- at this point, and then --

25 MS. O'CONNOR: Yes.

1 MS. CONWAY: -- and then we can address them.

2 EXAMINER EZEANYIM: Okay. Any objection?

3 MR. BROOKS: Yes, Mr. Examiner, we're going to
4 object to these exhibits -- to these affidavits to the
5 extent that they're offered as proof of the matter stated
6 on the grounds they're hearsay.

7 (Off the record)

8 EXAMINER EZEANYIM: Well, as I always say, I'm
9 not an attorney, so I don't have to handle the legal
10 issues. But I've been advised to first off deny the
11 admission of these exhibits until -- until, you know, the
12 opportunity to cross-examine --

13 (Off the record)

14 EXAMINER EZEANYIM: -- on the affidavit. On the
15 affidavit, I'm sorry.

16 MS. CONWAY: Your Honor, if I may, I certainly
17 can question Mr. Pannell as to the contents of his
18 affidavit. But as to the other deponents, their affidavits
19 are not hearsay, they're based upon personal knowledge, and
20 that's set forth in the affidavits. They would clearly be
21 admissible.

22 MR. BROOKS: Mr. Examiner, I disagree. An
23 affidavit is simply an out-of-court statement offered for
24 the proof of the matter stated. This case has been
25 continued numerous times, the respondent has had plenty of

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24 (Off the record)

25 EXAMINER EZEANYIM: So I think my attorney has

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1 opportunity to bring their witnesses here, and if they
2 couldn't -- for some reason they couldn't come here, there
3 is a provision in extraordinary circumstances for the
4 Division to authorize the taking of depositions. It hasn't
5 been done, and I believe the affidavits are not admissible.

6 Thank you, your honor.

7 MS. CONWAY: Your Honor, Mr. Brooks has never
8 objected to these affidavits until today. This is the
9 first notice we've had of it. Affidavits are routinely
10 submitted in support of motions for summary judgment under
11 the Rules of Civil Procedure. These are admissible.
12 They're not out-of-court statements, they're sworn
13 statements under oath based upon personal knowledge of the
14 affiants.

15 EXAMINER EZEANYIM: Okay, at this point I'm not
16 saying I'm not going to admit them, but let's go through
17 the hearing process and then admit them as we have the
18 opportunity to cross-examine, at that point. It's like I
19 said, I'm just -- you know, I think we could -- I know most
20 of this will be, you know, touched upon as we go on through
21 this process, so at that point we either decide whether to
22 accept it or not.

23 MR. BROOKS: Okay.

24 (Off the record)

25 EXAMINER EZEANYIM: So I think my attorney has

1 just advised that what I said is correct, we'll wait until
2 we go through each of these exhibits and then decide at
3 that time whether to admit them --

4 MR. BROOKS: Thank you.

5 EXAMINER EZEANYIM: -- or not. And -- Are you
6 through with your pre-statement?

7 MS. CONWAY: Well, your Honor, I would just like
8 to reiterate.

9 First of all, Tempo Energy, Inc., never owned or
10 had any interest in the well in question, never operated
11 the well. Tempo Energy never allowed anyone to use its
12 surety bond to drill any well in the San -- is it
13 pronounced Simon area? Simon? Simon?

14 EXAMINER EZEANYIM: Simon State Number --

15 MS. CONWAY: Okay.

16 MR. BROOKS: San Simon or San Simon, depending on
17 which language you want to articulate.

18 MS. CONWAY: I've heard both.

19 Joe Peterson doing business as Peterson Petroleum
20 Company mistakenly or fraudulently obtained and used
21 Tempo's bond information for drilling the wells in New
22 Mexico.

23 All correspondence concerning the San Simon well
24 has either Tempo's hand- -- Tempo's name handwritten on it,
25 with no initials. Peterson's signature is the only

1 signature on any correspondence with the OCD concerning San
2 Simon well, it was never -- none of the correspondence was
3 signed by anyone on behalf of Tempo Energy.

4 And we've also submitted -- will be submitting
5 evidence that Phillips Petroleum, who was the designated
6 transporter of the oil recovered from the well, has no
7 records showing Tempo as an owner of the well.

8 Thank you.

9 MR. BROOKS: Mr. Examiner, we'd like to call Gary
10 Wink, and you'll need to contact him at the Hobbs District
11 Office by telephone.

12 EXAMINER EZEANYIM: Okay.

13 (Off the record)

14 EXAMINER EZEANYIM: Hi, Gary?

15 MR. WINK: Uh-huh.

16 EXAMINER EZEANYIM: This is Richard Ezeanyim, the
17 Hearing Examiner this morning in Santa Fe. I understand
18 you're a witness for OCD this morning?

19 MR. WINK: Yes, sir.

20 EXAMINER EZEANYIM: Okay, may I -- First of all,
21 let me ask you to stand so that you can be sworn in, so
22 that all the testimony you are going to give today is true
23 and nothing but the truth.

24 (Thereupon, the witness was sworn.)

25 MR. BROOKS: Mr. Examiner, before I examine the

1 witness, I want to tender certain exhibits here, of which I
2 will ask the Examiner to take administrative notice, as
3 they are documents from the files and records of the Oil
4 Conservation Division, which under the Rules you can take
5 administrative notice.

6 The first is OCD Exhibit 1, which is a printout
7 from the inactive well list. It's maintained in the
8 computer by the Oil Conservation Division for -- It shows
9 the -- Tempo Energy, Inc., the San Simon State Number 6 as
10 being the only well, and the date of last production is 8
11 of 1987.

12 OCD Exhibit Number 2 is a copy of all the
13 documents -- is a set of copies of all the documents in the
14 well file for the San Simon State Well Number 6.

15 Exhibit Number 3 is a copy of a letter from
16 myself to Tempo Energy, Peterson Petroleum, Joe D.
17 Peterson, and Traveler's Insurance Company, advising them
18 of this case. And attached are copies of the receipts for
19 certified mail and of the return receipt from Travelers
20 Indemnity, which was the only one we received. The other
21 mailings are shown copies of the return mail envelopes
22 where these were returned to the Oil Conservation Division.

23 OCD Exhibit Number 4 is a copy of a blanket --
24 \$50,000 blanket plugging bond issued by Travelers Indemnity
25 Company on behalf of the Oil Conservation Division.

1 Exhibit Number 5 is -- I will have the witness
2 identify Exhibit Number 5.

3 Exhibit Number 6 is a copy of notice of
4 publication, showing that notice of this proceeding was
5 published in the *Lovington Leader* on September 16th, 2006.

6 Before proceeding -- well, no, let me go ahead --
7 May I approach the bench --

8 EXAMINER EZEANYIM: Yeah.

9 MR. BROOKS: -- so I can speak into the
10 microphone?

11 EXAMINER EZEANYIM: Go ahead.

12 MR. BROOKS: Thank you.

13 GARY W. WINK (Present by telephone),
14 the witness herein, after having been first duly sworn upon
15 his oath, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q. Mr. Wink, good morning.

19 A. Good morning.

20 Q. Mr. Wink, are you familiar with the Tempo Energy
21 San Simon Number 6 well, API Number 30-025-29839?

22 A. Yes, I am.

23 Q. Mr. Wink, have you examined the well file that is
24 -- that the OCD maintains on this well?

25 A. Yes, sir.

1 Q. Now, since we don't have you here at present, I
2 can't have you verify that the well file is the same as the
3 exhibit introduced in evidence, so I'll need to ask you a
4 couple of questions to establish what you, in fact,
5 examined.

6 Does the Oil Conservation Division maintain
7 online copies of all the documents that have been filed for
8 each well in New Mexico?

9 A. Yes.

10 Q. And can any person at the OCD or any person who
11 accesses the system through the Internet, by entering the
12 information to identify a particular well, call up images
13 of all the documents that are on file?

14 A. Yes, they can.

15 Q. And whoever accessed that well file from any
16 computer, they would get the same documents, correct?

17 A. Yes, sir.

18 Q. And is that what you did to examine the well file
19 in this case?

20 A. Yes, sir.

21 Q. Okay. Now Mr. Wink, who do the documents on file
22 show to be the operator of the San Simon State Number 6
23 well?

24 A. Tempo Energy, Incorporated.

25 Q. Okay. Mr. Wink, is there anything in the file to

1 show that the San Simon State Number 6 well has ever been
2 placed in approved temporary abandonment status with the
3 Oil Conservation Division?

4 A. No.

5 Q. Okay. Mr. Wink, did you or someone acting under
6 your direction prepare a plugging procedure for the San
7 Simon State Well Number 6?

8 A. Yes, we did.

9 Q. And I have a copy of it which I have marked as
10 OCD Exhibit Number 5, but because we're dealing by
11 telephone I will have to -- Do you have that plugging
12 procedure in front of you?

13 A. Yes, sir.

14 Q. Okay. Now this plugging procedure is a form,
15 correct?

16 A. Yes, C-103.

17 Q. Right. And in the block number 13 there are
18 listed various items that are part of the plugging
19 procedure, correct?

20 A. Correct.

21 Q. Would you read the first three of those items to
22 us, for purposes of identifying the document?

23 A. Move in, rig up, set cast iron bridge plug at
24 3840 feet, is number one.

25 Number two is, spot 25 sacks cement on cast-iron

1 bridge plug.

2 Number three, cast-iron --

3 Q. Does it --

4 A. Well, they're saying circulate the hole with mud-
5 laden fluid.

6 Q. I was going to say, I thought that was circulate.

7 A. Yeah.

8 MR. BROOKS: Okay, Mr. Examiner -- Well, let me
9 ask you further.

10 Q. (By Mr. Brooks) Is this a -- if the well, the
11 San Simon Well Number 6, were plugged in accordance with
12 this procedure would it in your opinion be properly
13 plugged?

14 A. Yes, sir.

15 Q. In accordance with OCD Rules and Regulations?

16 A. Yes, sir.

17 MR. BROOKS: Okay. Mr. Examiner, with that we
18 will tender OCD Exhibit Number 5. If it's necessary to
19 have the witness read the entire document for the purposes
20 of identification we can do that, but we'll tender it based
21 on his reading of a portion of it.

22 EXAMINER EZEANYIM: Any objection?

23 MS. CONWAY: No.

24 MR. BROOKS: Okay --

25 EXAMINER EZEANYIM: At this point I need to admit

1 that exhibit.

2 MR. BROOKS: Well, yeah, I will also tender OCD
3 Exhibits 1, 2, 3, 4 -- 1, 2, 3, 4 and 6, based on their
4 being true copies of documents in the Oil Conservation
5 Division's files.

6 EXAMINER EZEANYIM: 1, 2, 3, 4 and 6?

7 MR. BROOKS: Yes, sir.

8 EXAMINER EZEANYIM: Any objection?

9 MS. CONWAY: No, Mr. Examiner.

10 EXAMINER EZEANYIM: Okay, at this point OCD
11 Exhibits 1, 2, 3, 4 and 6 will be admitted into evidence.

12 Q. (By Mr. Brooks) Okay, just one more question,
13 Mr. Wink. Is there anything in the well file to indicate
14 that the San Simon 6 Well Number -- that the San Simon Well
15 Number 6 has been plugged?

16 A. No, sir.

17 Q. Thank you. I'll pass the witness.

18 Oh, no, sorry. I need to ask you, have you made
19 an effort to locate Joe D. Peterson whose name is -- who is
20 the person who signed some of the documents in the well
21 file?

22 A. Yes, I've looked all over the place, and that
23 Fairmont 15 -- Court 15 address. He wasn't there. And I
24 went by there, but nobody answered the door. I think
25 that's where the return receipt came from.

1 Q. Yes, sir.

2 A. And then I've talked to Maxie Brown who works
3 with me here, and he says that he's seen Joe in Lovington a
4 month ago, but that's all I could find.

5 Q. Now you know who Joe Peterson is, correct?

6 A. Yes, sir.

7 Q. But you don't know where he is?

8 A. No, sir.

9 MR. BROOKS: Okay, thank you. I'll pass the
10 witness.

11 EXAMINER EZEANYIM: Ms. Conway?

12 MS. CONWAY: I have no questions of this witness,
13 Mr. Examiner.

14 EXAMINER EZEANYIM: Do you have any questions?

15 MS. O'CONNOR: No.

16 EXAMINER EZEANYIM: Okay --

17 MS. O'CONNOR: Actually I do have one question.

18 EXAMINER EZEANYIM: Okay, go ahead.

19 EXAMINATION

20 BY MS. O'CONNOR:

21 Q. Mr. Wink, this is Cheryl O'Connor. How do you
22 know Joe Peterson?

23 A. Well, through dealing with him on -- He had a
24 company at one time, I'm not sure if he still does, of his.
25 I've just dealt with sending him notices and talking to him

1 about this in the past.

2 Q. So you've spoken to him regarding this well
3 before?

4 A. Yes, ma'am. It's been --

5 Q. And --

6 A. -- it's been five or six years ago, I imagine.

7 Q. And what was your understanding as to the
8 relationship that he had with this well?

9 A. Well, I just assumed that he was working for
10 Tempo Energy and performing the work for them.

11 Q. Has he worked for Tempo Energy, to your
12 knowledge, for any other purposes? On any other wells?

13 A. Not to my knowledge.

14 MS. O'CONNOR: Thank you.

15 EXAMINER EZEANYIM: Thank you.

16 EXAMINATION

17 BY EXAMINER EZEANYIM:

18 Q. Hello, Mr. Wink?

19 A. Uh-huh.

20 Q. Yeah, did this well ever produce anything?

21 A. Did what?

22 Q. This well in question, did it produce anything at
23 all since it was drilled in 1987?

24 A. Well, I'd have to look, Richard. I'm sure it
25 has.

1 Q. Okay, because my next question is that if it has,
2 who reported the production to the OCD? No matter, you
3 know, where you -- in the district, Form C-104A,
4 authorization to transport, somebody has to be given that
5 authority to transport production from this well. Are we
6 assuming that this well is a dry hole? It doesn't look so.
7 I think this well produced something. And if it produced
8 something, who transported production and who reported that
9 production to OCD?

10 A. Well, I could have told you that, Richard, if I'd
11 known that in advance, you needed to know that. I can look
12 it up here. It ought to be on these records.

13 MR. BROOKS: Mr. Examiner, I can answer that
14 question. It wouldn't be admissible evidence, I don't
15 think, but --

16 MS. O'CONNOR: How difficult, Mr. Wink, would it
17 be for you access the information? Hello?

18 EXAMINER EZEANYIM: Hello, Mr. Wink?

19 THE WITNESS: Yes.

20 EXAMINER EZEANYIM: Yeah, my attorney is asking
21 you a question, Ms. O'Connor. Did you hear what she said?

22 THE WITNESS: No, I couldn't hear.

23 (Laughter)

24 EXAMINER EZEANYIM: Okay, I'm sorry.

25 MS. O'CONNOR: Mr. Wink, how difficult is it for

1 you to access the information regarding the production?

2 THE WITNESS: Well, you can do the same thing I
3 can here, like --

4 MS. O'CONNOR: Not without a computer.

5 THE WITNESS: If I could get this thing to --
6 It's not acting just right. Just a second, I can -- I can
7 pull it up, like I say, if I can get this thing to work
8 right.

9 EXAMINER EZEANYIM: Okay.

10 THE WITNESS: Well, right now it's showing me an
11 error, so -- I can ask, and it shouldn't take me five
12 minutes.

13 MS. O'CONNOR: Do you want to go forward and then
14 call him back?

15 EXAMINER EZEANYIM: Yeah, I want to go forward
16 and call him back, yes.

17 MS. CONWAY: And in that event, I might have any
18 questions.

19 EXAMINER EZEANYIM: Okay, let me finish before
20 you --

21 Q. (By Examiner Ezeanyim) Okay, Gary, this is what
22 I need, I think this is what I will need. I want to know,
23 if there's anywhere we can find it, whether this well
24 produced anything when it was drilled, and who transported
25 that production, and who reported it to OCD, and when was

1 the last production? I know, you know, our Rule says one
2 year plus --

3 A. I'll look at it.

4 Q. -- 90 days, but this well has been there since
5 1987. That was the last time it produced, according to the
6 exhibit here.

7 If I can get those three answers, that would be
8 very good.

9 Did you hear what I said?

10 A. Are you talking to me?

11 (Laughter)

12 Q. (By Examiner Ezeanyim) Yeah, I'm -- Let me
13 repeat what I said. I'm talking to --

14 A. Are you listening?

15 Q. Yeah, okay, I'm sorry, I know you were on your
16 computer, but this is what I wanted you to see if you can
17 get for me.

18 A. It hasn't ever produced anything.

19 Q. It has not produced anything at all. Right?

20 A. Right.

21 Q. Okay, so it was a dry hole anyway, drilled.

22 A. It's standing full of water, so I don't know
23 about a dry hole. Yeah, there's no casing head or nothing
24 on it, it's just open casing, open at ground level.

25 Q. Okay, so what I'm hearing is that the well never

1 produced anything?

2 A. No.

3 Q. So the contention that there's no record that,
4 you know, somebody transported -- Okay. So it didn't
5 produce, therefore no transport.

6 And no Form C-104 was issued to anybody?

7 A. No C-104s what?

8 Q. No Form C-104 ever issued to anybody? Nobody
9 issued because it didn't produce anything?

10 A. Well, if I can get this thing to...

11 MR. BROOKS: Mr. Examiner, there was a C-104 and
12 it is in evidence in the well file.

13 EXAMINER EZEANYIM: In the well file? Okay.

14 MR. BROOKS: Yes, it's part of Exhibit 2.

15 EXAMINER EZEANYIM: Okay, and who is the --

16 MR. BROOKS: Phillips is the transporter shown on
17 the C-104.

18 (Off the record)

19 MS. O'CONNOR: Oh, here's page 1, it's just
20 backwards. It's right there.

21 EXAMINER EZEANYIM: Okay, and it's Tempo Energy?
22 Yeah, okay. Yeah, I see that.

23 Yeah, we see a Form C-104 that was submitted, and
24 -- but it didn't produce anything, so -- Of course, you
25 could issue a Form C-104 and it didn't produce anything.

1 So therefore the question of when was it produced last is
2 moot.

3 And I know your statement, you say that both Joe
4 D. Peterson and Peterson Petroleum Company were notified of
5 this hearing, and there was no response from them, any of
6 them? I'm asking maybe your witness.

7 MR. BROOKS: As indicated by Exhibit Number 3,
8 while notices were sent to Tempo Energy and to Peterson at
9 several addresses for Peterson --

10 EXAMINER EZEANYIM: Yeah.

11 MR. BROOKS: -- none of these notices were in
12 fact delivered, but were returned to OCD as shown by the
13 return mail. The only notice that was delivered was to
14 Travelers. Of course Tempo obviously has actual notice
15 because I'm sure they're in communication with their
16 surety, but --

17 EXAMINER EZEANYIM: Okay.

18 MR. BROOKS: -- Peterson has received notice by
19 publication --

20 EXAMINER EZEANYIM: Okay, thank you.

21 MR. BROOKS: -- as indicated by Exhibit 6.

22 EXAMINER EZEANYIM: Before you -- let me ask just
23 one more question before I pass on that.

24 Q. (By Examiner Ezeanyim) Mr. Wink?

25 A. Uh-huh.

1 Q. Can you hear me? Okay. Let me ask this. Has
2 Peterson or Peterson Petroleum Company ever operated
3 anything in New Mexico? Are they -- Do they have an OGRID
4 number? Have they ever operated anything in New Mexico?
5 Peterson -- Joe D. Peterson or Peterson Petroleum Company?
6 Do you know?

7 A. Tempo Energy?

8 Q. No, Peterson.

9 A. Well, I think he -- I'd have to look up Advance
10 Downhole --

11 Q. Okay.

12 A. -- I believe he was part of that.

13 EXAMINER EZEANYIM: Okay.

14 (Off the record)

15 EXAMINER EZEANYIM: Ms. Conway?

16 MS. CONWAY: Yes, Mr. Examiner, I would like to
17 call --

18 EXAMINER EZEANYIM: No, on this witness.

19 MS. CONWAY: Oh.

20 EXAMINER EZEANYIM: Do you have anything for this
21 witness?

22 MS. CONWAY: No, I'm sorry, no further questions.

23 EXAMINER EZEANYIM: Do you have anything for Mr.
24 Wink?

25 MR. BROOKS: Nothing further, your Honor.

1 EXAMINER EZEANYIM: Okay, Mr. Wink, you may be
2 excused at this time. We may call you back, if required,
3 so you stand by, please.

4 THE WITNESS: I'll have a copy of everything I
5 have if you do.

6 EXAMINER EZEANYIM: Okay, very good. That will
7 be nice.

8 THE WITNESS: Same thing I do, Richard.

9 EXAMINER EZEANYIM: Okay, thank you, Mr. Wink.
10 Ms. Conway?

11 MR. BROOKS: Yes, the Division has completed --
12 that does complete the Division's case --

13 EXAMINER EZEANYIM: Okay.

14 MR. BROOKS: -- thank you.

15 MS. CONWAY: Thank you, Mr. Examiner. I would
16 like to call Mr. Frank Pannell by telephone.

17 EXAMINER EZEANYIM: Okay.

18 (Off the record)

19 EXAMINER EZEANYIM: Yeah, he -- Gary?

20 THE WITNESS: Uh-huh.

21 EXAMINER EZEANYIM: Okay, you can hang up so that
22 we can call somebody else. If we need you, we call you
23 back. Just stay in your office so we can call you back,
24 and then maybe you can give us all that information.

25 THE WITNESS: Okay, I've got it all in front of me

1 right now.

2 EXAMINER EZEANYIM: Okay, thank you. You have it
3 in front of you?

4 THE WITNESS: Yeah.

5 Q. (By Examiner Ezeanyim) Okay, let me -- What do
6 you have? Tell me.

7 A. From page 1 through everything?

8 Q. Well, okay, I know -- This is in relation to my
9 question, did this well produce anything, and if so who
10 reported the production to OCD? When was the last
11 production from this well? And those are the three things
12 I think I'm needing from you.

13 A. Yeah, it doesn't -- Only thing they have is, they
14 have a C-104 --

15 Q. Yeah.

16 A. -- and --

17 Q. But they didn't transport anything?

18 A. They just turned in their C-104 for their
19 initials --

20 Q. Yeah.

21 A. -- and they were making -- that it was --
22 potentialized at eight barrels a day.

23 Q. Of oil?

24 A. Uh-huh, eight barrels of oil a day. And they say
25 in here 25 MCF.

1 Q. 25?

2 A. 25 MCF gas, 26 barrels of water.

3 Q. Oh.

4 A. But it was never -- showed production in the --
5 production module here.

6 Q. Nothing -- Okay. Did you report it -- Who
7 reported this production?

8 A. Who what?

9 Q. Who reported this production, the eight barrels
10 of oil a day, 25 MCF of gas and 26 barrels of water?

11 A. Joe Peterson.

12 Q. Okay.

13 A. He's listed as a consultant/agent here for Tempo
14 Energy.

15 Q. Oh, okay. Okay, he's an agent for somebody?

16 A. For Tempo Energy.

17 Q. Oh, okay.

18 FURTHER EXAMINATION

19 BY MS. O'CONNOR:

20 Q. Mr. Wink? Mr. Wink?

21 A. Uh-huh.

22 Q. You have the C-104 in front of you?

23 A. Uh-huh.

24 Q. And up in Section 1 where the operator is listed,
25 it has Tempo Energy, Inc./Peterson Petroleum Company,

1 correct?

2 EXAMINER EZEANYIM: Yeah.

3 THE WITNESS: Right.

4 Q. (By Ms. O'Connor) And the copy that has been
5 presented has Peterson Petroleum Company marked out, lined
6 out.

7 A. Yes, ma'am.

8 Q. Do you know how that came to be lined out?

9 A. No, I don't.

10 Q. Do you know if it was lined out at the time that
11 it was presented to the OCD?

12 A. No. That one that says 1987?

13 Q. We're looking at the C-104 that's signed --

14 EXAMINER EZEANYIM: Yeah, 19-- --

15 Q. (By Ms. O'Connor) -- it says approved --

16 EXAMINER EZEANYIM: -- 1987.

17 Q. (By Ms. O'Connor) -- in 1987, yes.

18 A. No, I don't know.

19 Q. Okay. Is it possible that the OCD lined out the
20 Peterson Petroleum Company?

21 A. I have no idea --

22 (Laughter)

23 EXAMINER EZEANYIM: You --

24 THE WITNESS: -- here in 1987.

25 (Laughter)

1 EXAMINER EZEANYIM: Okay, okay.

2 THE WITNESS: There's several of them marked out,
3 I believe.

4 EXAMINER EZEANYIM: Yeah. Okay, now one more
5 question.

6 FURTHER EXAMINATION

7 BY EXAMINER EZEANYIM:

8 Q. I asked you, I think you said -- I said, has
9 Peterson or Joe D. Peterson or Peterson Petroleum Company
10 ever operated as an operator in New Mexico? Is there any
11 way -- Did you find something like that?

12 A. As a what?

13 Q. Did they operate any wells in New Mexico, Joe D.
14 Peterson or Peterson Petroleum Company, have they operated
15 anything in New Mexico? I mean, is --

16 A. Peterson or Tempo Energy?

17 Q. No, Peterson.

18 A. I don't know, Richard. Like I say, I think he
19 was part of Advance Downhole at one time.

20 Q. Okay, very good. Now, if they have operated
21 anything in New Mexico they will have the OGRID number as
22 an operator, right?

23 A. Right.

24 EXAMINER EZEANYIM: Okay, good. That's all I
25 needed to know. Okay, thanks, Gary.

1 THE WITNESS: Uh-huh.

2 EXAMINER EZEANYIM: If you -- now we can call
3 another witness, but I think until that -- if we need some
4 clarifications, please stand by, we might call you again.

5 THE WITNESS: Okay.

6 EXAMINER EZEANYIM: Ms. Conway?

7 MS. CONWAY: Thank you, Mr. Examiner. This is
8 the number --

9 EXAMINER EZEANYIM: Okay.

10 MS. CONWAY: -- for Mr. Pannell.

11 (Off the record)

12 MR. PANSELL: This is Frank.

13 MS. CONWAY: Frank, this is Ann Conway, and we
14 have you on a speaker phone. We're at the hearing before
15 the OCD on the Tempo Energy/Joe Peterson matter.

16 MR. PANSELL: Right.

17 MS. CONWAY: And we're before the Hearing
18 Examiner, court reporter, and we would like to place you
19 under oath.

20 MR. PANSELL: Okay.

21 EXAMINER EZEANYIM: Mr. Pannell -- Is that
22 correct, Pannell? My name is Richard Ezeanyim and I'm the
23 Hearing Examiner today in Santa Fe. You are going to
24 testify over the telephone, however we want you to stand up
25 to be sworn, to indicate that all the testimony you are

1 going to give today is the truth and nothing but the truth.

2 MR. PANNELL: Yes, it is, yes. I'm hard of
3 hearing, so I'm really --

4 EXAMINER EZEANYIM: Yeah, okay, yeah, you will be
5 sworn by the court reporter right now, so you should stand
6 and then listen.

7 (Thereupon, the witness was sworn.)

8 EXAMINER EZEANYIM: You may proceed.

9 MS. CONWAY: Thank you.

10 FRANK PANNELL (Present by telephone),
11 the witness herein, after having been first duly sworn upon
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. CONWAY:

15 Q. Mr. Pannell, what is your current association
16 with Tempo Energy, Inc.?

17 A. I'm the vice president and actually co-owner of
18 it. We -- I became an owner of Tempo Energy in 1995 when
19 we brought it out of Chapter VII bankruptcy.

20 Q. Mr. Pannell, did you receive correspondence from
21 the New Mexico OCD with respect to the San Simon Number 6
22 well?

23 A. Yes, I did, I -- you know, we received
24 correspondence from them several times.

25 Q. And could you explain to the Hearing Examiner

1 what you did in connection with receiving correspondence
2 from the OCD?

3 A. Yes, every time we received correspondence on
4 this particular well, or anything to do with Joe Peterson,
5 for that matter, it -- we would, you know, tell them that
6 we didn't have anything to do with the well and never had
7 -- we did not drill the well, we -- you know, I'm familiar
8 with all the wells that Tempo drilled, because I was one of
9 their largest investors prior to them taking bankruptcy,
10 and I know they never did drill a well with Joe Peterson.
11 They did not participate in it in any way, they didn't --
12 you know, they just -- I think they were used in this case.

13 MR. BROOKS: Uh- --

14 THE WITNESS: -- he used to consult --

15 MR. BROOKS: -- Mr. Examiner --

16 THE WITNESS: -- as I stated in my --

17 MR. BROOKS: Mr. Examiner, may I take the witness
18 on voir dire to explore his knowledge about these matters
19 he's testifying conclusively --

20 EXAMINER EZEANYIM: Okay, that's -- that's very
21 good.

22 THE WITNESS: If he's talking to me, I can't hear
23 him.

24 VOIR DIRE EXAMINATION

25 BY MR. BROOKS:

1 Q. Yes, Mr. Pannell, this is David Brooks, I'm the
2 attorney representing the Oil Conservation Division.

3 A. Yes, sir.

4 Q. Mr. Pannell, how long have you been an executive
5 with Tempo Energy?

6 A. Since 1995, we brought it out of bankruptcy.

7 Q. Okay. And what is the source of your knowledge
8 that you've testified to concerning the operations of Tempo
9 prior to 1995?

10 A. I was involved in every well they drilled,
11 basically.

12 Q. In what way?

13 A. As an investor.

14 Q. And how do you know that they didn't have
15 operations? Since you were not working with the -- working
16 for the company at that time, how do you know that they
17 might not have had other operations that you weren't aware
18 of?

19 A. Because I was very close with the two gentlemen
20 that ran Tempo, Tom Garber and Earl Douglas. I think Mr.
21 -- And I've talked to Mr. Garber yesterday and, you know,
22 told him I was -- about this thing here, and he -- you
23 know, he flatly stated that, you know, that --

24 MR. BROOKS: Okay, I'm going to -- Mr. Examiner,
25 I'm going to object to what Mr. Garber stated.

1 THE WITNESS: Okay, you can call Mr. Garber.

2 MR. BROOKS: Okay, very good. I have no
3 objection to the witness testifying to what Tempo has done
4 since 1995, and I have no objection to his testifying as to
5 what he knows about what they did prior to that, and I
6 leave it to the Examiner to determine whether his knowledge
7 is sufficient to -- that his testimony may be taken as
8 evidence of the facts.

9 EXAMINER EZEANYIM: Okay, yeah, at this point I
10 will ask Ms. Conway to examine your witness on his
11 expert- -- you know, in the field of oil production so that
12 we know whether he's qualified to be a witness in this
13 case.

14 MS. CONWAY: Yes, Mr. Examiner.

15 DIRECT EXAMINATION (Resumed)

16 BY MS. CONWAY:

17 Q. Mr. Pannell, how long have you been involved with
18 investment in Tempo Energy?

19 A. Since 1983 or -4, somewhere along in there. I'd
20 have to really go back and look at the records to tell you
21 exact, but it's in that particular time period.

22 Q. And I believe you testified that you were
23 familiar with all of the Tempo Energy, Inc., operations
24 from the time in which you began investment?

25 A. Yes.

1 Q. I believe Mr. Brooks asked you, but just to be
2 clear, would there have been other activities by Tempo
3 Energy, Inc., that you would not have been aware of?

4 A. No, I don't think so. I have known Tempo since
5 they were Cola Petroleum, which is a predecessor to Tempo
6 and also a predecessor to --

7 EXAMINER EZEANYIM: I guess -- I guess what you
8 are trying to say is -- you are trying to examine and try
9 to see if Ms. [sic] Frank Pannell is qualified to testify,
10 so that's what I'm looking for, before we go ahead with the
11 testimony.

12 THE WITNESS: I'm sorry, I can't -- can't hear
13 what he's saying.

14 Q. (By Ms. Conway) Yes, Mr. Pannell, could you
15 provide the Hearing Examiner with your background in the
16 oil and gas business?

17 A. Oil and gas business? Yes, in 1963 I started
18 driving a blender truck for what was then Cardinal Chemical
19 Company. I used to be a blender operator. I was -- you
20 know, that was my start.

21 Later I became a product manager for Adras
22 Bradford Company -- well, actually, in the meantime I
23 worked for B.J. Treating Company, which is an oil and gas
24 -- you know, oilfield treating. And then after that I was
25 a pipe salesman for Adras Bradford Company, which -- for

1 oil wells.

2 After that, I owned my own pipe business for
3 about, oh, 12 to 15 years, and then after -- and that's
4 when I started investing in the oil industry with actually
5 Tom Garber.

6 Q. And who is Mr. Garber?

7 A. Beg pardon?

8 Q. And who is Mr. Garber?

9 A. Mr. Garber was president of Tempo Energy until it
10 went into bankruptcy.

11 Q. And when did it go into bankruptcy?

12 A. I believe in 1993 or '94. I'd have to look at
13 the records to be exact, I'm not real sure of my figures
14 there.

15 Q. And who is --

16 EXAMINER EZEANYIM: Could you ask him his
17 educational background here?

18 THE WITNESS: Beg pardon?

19 EXAMINER EZEANYIM: Just a moment.

20 (Off the record)

21 EXAMINER EZEANYIM: Mr. Pannell, we are trying to
22 qualify you as -- with your knowledge of Tempo Energy since
23 1995, that's what we're trying to do here. We appreciate
24 your attorney to be able to communicate that information to
25 you so we know where we go from there.

1 THE WITNESS: You're trying to do what?

2 EXAMINER EZEANYIM: We are trying to qualify you
3 as a --

4 THE WITNESS: Okay.

5 EXAMINER EZEANYIM: -- as a witness for Tempo
6 Energy.

7 THE WITNESS: I see.

8 EXAMINER EZEANYIM: We wanted to know what your
9 experiences have been and whether you are actually
10 qualified to be testifying at this hearing today.

11 THE WITNESS: Well, since 1995 I've actually --
12 you know, run Tempo Energy, basically.

13 EXAMINER EZEANYIM: Yeah, well actually -- your
14 attorney to take it over from there.

15 THE WITNESS: I'm sorry, I've got -- I can't hear
16 you.

17 (Off the record)

18 THE WITNESS: Am I supposed to be saying
19 something?

20 MS. CONWAY: No, Mr. Pannell.

21 EXAMINER EZEANYIM: Just a moment.

22 THE WITNESS: Okay, sorry.

23 (Off the record)

24 EXAMINER EZEANYIM: Okay, go ahead.

25 Q. (By Ms. Conway) Mr. Pannell --

1 A. Yes.

2 Q. -- who is Mr. Earl Douglas?

3 A. Earl Douglas was the vice president of Tempo
4 Energy and the financial officer when it went bankrupt.

5 Q. So were Tom Garber and Earl Douglas the
6 principals for Tempo Energy, Inc., before it went into
7 bankruptcy?

8 A. Yes, they were.

9 Q. And these are the individuals that you mentioned
10 earlier that you worked closely with as an investor for
11 Tempo Energy, Inc.?

12 A. Yes, ma'am.

13 Q. And for what period of time?

14 A. From 1982 until -- until they went bankrupt.

15 Q. All right, thank you. Mr. Pannell, has Tempo
16 Energy, Inc., ever had an address in New Mexico?

17 A. No, ma'am. We've never had an office or -- to my
18 knowledge we've never had an agent there, other than my
19 pumper who is -- you know, represents -- is an agent of the
20 State of New Mexico.

21 Q. Was Mr. Peterson ever an agent of Tempo Energy,
22 Inc.?

23 A. He was a consultant, yes, as I understand -- I
24 know he drilled some wells for Tempo back in -- early
25 1980s, and -- until about 1985, yes.

1 Q. And were any of those wells in New Mexico?

2 A. Yeah, they would have been in Texas and New
3 Mexico, for that matter.

4 Q. All right, with respect to the San Simon State
5 Number 6 well, was Mr. Peterson involved as a consultant
6 for Tempo on that well?

7 A. No, he was not. Tempo had nothing to do with the
8 San Simon State. That's when Joe Peterson went out on his
9 own, and I have personal knowledge of -- as Mr. Brooks
10 stated a while ago, I -- you know, I didn't see the bills
11 personally, but I've, you know, talked to the President of
12 Capstar and several other people in researching this thing,
13 and he did not pay Capstar, he didn't -- in fact, he didn't
14 pay any of his bills, I don't believe, best I can find. I
15 can't find anybody he paid.

16 MR. BROOKS: Mr. Examiner, again we object to
17 anything that he says based on what someone else told him.

18 THE WITNESS: I can give you phone numbers of all
19 those folks.

20 (Off the record)

21 EXAMINER EZEANYIM: Mr. Brooks, as you know, I
22 needed to hear all the evidence here, so the objection will
23 be overruled so I can understand what's happened here.

24 MR. BROOKS: Note our exception.

25 Q. (By Ms. Conway) Mr. Pannell, could you go a

1 little more slowly through, for the Hearing Examiner, your
2 investigation as to any connection that Mr. Peterson might
3 have had with the San -- with Tempo during the period --
4 Well, let me back up.

5 A. Okay.

6 Q. Could you go through the investigation that you
7 performed when you received notice from the OCD that there
8 was a problem with the San Simon State Number 6 well?

9 A. Yes, ma'am. What I did is, when they first
10 notified us, we researched our records, all of Tempo's
11 records which we are in custody of, to see if there was
12 ever a San Simon State. And I talked with Tom Garber and
13 Earl Douglas at that time, and they -- you know, they met
14 with Joe Peterson as well. They didn't -- said Tempo's got
15 anything to do with it --

16 MR. BROOKS: Again, Mr. Examiner, I have no
17 objection to what their records -- what they found in their
18 records, but I do continue to object to the hearsay.

19 THE WITNESS: The records that I went through was
20 OCD's --

21 EXAMINER EZEANYIM: Just -- Just a moment here.
22 I will overrule the objection, but I will limit it to what
23 you know, not hearsay, please.

24 THE WITNESS: Okay, I understand.

25 Okay, so what I know is, I went through all the

1 records of the OCD to pull up sheets on the well, the San
2 Simon, that was drilled, and they were in my report there.
3 Every report I found is, he started putting -- you know,
4 like -- give you an idea -- I don't have it in front of me,
5 but it -- there was one inclination report where the
6 inclination of the well, you know, deviation of the well --
7 and it's a certified document that was signed by the
8 president of Capstar Drilling, in front of a notary.

9 And then that particular document, as well as
10 every other document, with the exception of one, had -- had
11 Peterson Oil Company scratched out and Tempo Energy, Inc.,
12 penciled in. And then later, he started -- later, the
13 documents started showing Tempo Energy, Inc./Peterson
14 Energy, and then they would pencil out the Peterson Energy.

15 Every document I found in the OCD files showed
16 Peterson, Joe Peterson, a Hobbs address, as the originator
17 of this thing.

18 Q. (By Ms. Conway) And again, Mr. Pannell, has
19 Tempo Energy, Inc., ever had a New Mexico address?

20 A. No, we never have. The OGRID for this well,
21 which, as OCD's well aware of -- our OGRID number is
22 totally different from the OGRID number of this well. An
23 OGRID is what you're assigned as an operator for your
24 operating number. Every well you operate is under that
25 number.

1 Q. All right --

2 A. I think you're aware of that also.

3 Q. -- Mr. Pannell, did you prepare an affidavit in
4 connection with this matter?

5 A. Yes, I sent the OCD a letter about two years ago,
6 the one that they're talking about here. I'd have to -- I
7 don't know the exact date of it --

8 Q. I have --

9 A. -- sent the OCD a letter summing up all this
10 information to -- this was --

11 Q. Yes, Mr. Pannell --

12 A. Yes.

13 Q. -- did you sign an affidavit and have it
14 notarized and sent to me for submission in this matter?

15 A. I believe I did, yes.

16 MS. CONWAY: Mr. Examiner, I would like to tender
17 Travelers Indemnity Exhibit A, which is an affidavit of
18 Frank Pannell.

19 EXAMINER EZEANYIM: Any objection?

20 MR. BROOKS: Is this -- Ms. Conway -- May I
21 approach?

22 EXAMINER EZEANYIM: Yeah, you may.

23 MR. BROOKS: Ms. Conway, is this affidavit that
24 you're tendering, is this a copy of the one that you just
25 attached to your prehearing statement?

1 MS. CONWAY: It's identical except that this is
2 the original, signed and notarized.

3 MR. BROOKS: Okay. Mr. Examiner, I would object
4 to those portions that are not based on personal knowledge,
5 and I have no objection to paragraphs 1, 2 and 3 of the
6 affidavit. I have no objection to paragraph 4 insofar as
7 it's based on the witness's personal knowledge, which would
8 be since 1995, or his examination of the records of the
9 company. That would go for 4, 5 and 6. Paragraph 7 speaks
10 in the present tense so I have no objection to that, and no
11 objection to any of the rest of the affidavit.

12 EXAMINER EZEANYIM: Okay --

13 MS. CONWAY: I'm sorry, Mr. Brooks, so what would
14 that leave that you do have an objection to?

15 MR. BROOKS: I object to paragraph 4, 5 and 6
16 insofar as they are based on anything other than what has
17 happened since 1995 or what it appears from the records --
18 files and records of the company, of which the witness is
19 in possession. Thank you.

20 MS. CONWAY: And Mr. Examiner, I would just
21 respond that Mr. Pannell has testified that he is familiar
22 with Tempo's operations beginning in 1982.

23 EXAMINER EZEANYIM: Yes, at this point I will
24 take administrative notice of 4, 5 and 6. However, I'm
25 going to admit Exhibit Number A -- is that -- you marked

1 Exhibit A? Is that what you marked? --

2 MS. CONWAY: Yes, Mr. Examiner.

3 EXAMINER EZEANYIM: -- into evidence. We're
4 going to admit Exhibit A into evidence, with administrative
5 notice of number 4, 5 and 6.

6 MS. CONWAY: Mr. Examiner, may I use your copy
7 for just a moment?

8 EXAMINER EZEANYIM: Okay, sure. Make sure you
9 give it back.

10 MS. CONWAY: I will, thank you.

11 Q. (By Ms. Conway) Mr. Pannell --

12 A. Yes.

13 Q. -- attached to your affidavit which has been
14 admitted by the Examiner as Exhibit A is your
15 correspondence dated March 26th, 2004. Is that the
16 correspondence that you mentioned earlier?

17 A. Yes. To the OCD?

18 Q. Yes.

19 A. Yes, it is.

20 Q. All right. In your letter to the OCD dated March
21 26th, 2004, you indicated that on the well location and
22 acreage dedication plot in the name of Peterson Petroleum,
23 a certified document, the typed name of Peterson Petroleum
24 is marked through and Tempo Energy, Inc., is handwritten
25 beside it, no initial of change by anyone. Is that

1 something you reviewed personally?

2 A. I did not review the document other than on the
3 OCD site --

4 Q. Right.

5 A. -- the document I pulled up on their site and
6 took a copy of.

7 Q. But where the name Peterson is marked through,
8 were there any initials approving that change to the
9 document?

10 A. No, ma'am, there was no markings on it
11 whatsoever.

12 Q. You also note in paragraph number 2) that on the
13 application to drill under the Tempo Energy, Inc./Peterson
14 Petroleum Company (with the latter lined out with no
15 initials), the mailing address is listed as P.O. Box 5509,
16 Hobbs, New Mexico, 88241-5509. And I believe you've
17 already testified that Tempo Energy has never had an office
18 in the State of New Mexico?

19 A. That's correct.

20 Q. And would all correspondence have originated from
21 Midland, Texas?

22 A. Yes, ma'am, it would have.

23 Q. And was this document submitted by Joe Peterson?

24 A. I can't tell you who submitted the -- which
25 document are we talking about? The one that the OCD has?

1 Q. Right.

2 A. Yes, I believe he has signed that document, or
3 someone has, yeah. All our documents that I saw were
4 either signed by him or submitted by him, as far as I could
5 tell.

6 And he later started -- I just noticed on their
7 documents that he had later started signing everything as
8 agent, then, you know.

9 Q. And was he an agent of Tempo Energy, Inc.?

10 A. Not at that time -- To my knowledge, not at that
11 time, let's put it that way, yeah.

12 And I can give you Mr. Garber's number. He'll
13 tell you real quick that he wasn't.

14 Q. All right. Well, we have an affidavit from Mr.
15 Garber that I will seek to be admitted after your
16 testimony.

17 A. Oh, okay. And if you'd like Mr. Brazeal's phone
18 number, I can get that for you. He's the owner of Capstar
19 Drilling.

20 Q. And what did you learn from Capstar Drilling?

21 A. Capstar -- just the fact that he was not paid and
22 that he knew the well was Peterson Oil Company.

23 MR. BROOKS: Mr. Examiner, again object to
24 hearsay.

25 THE WITNESS: And there again, I'll get you that

STEVEN T. BRENNER, CCR
(505) 989-9317

25 Jim Brazeal I can give you that, he's the owner of Capstar

STEVEN T. BRENNER, CCR
(505) 989-9317

1 number if you'd like.

2 EXAMINER EZEANYIM: Mr. -- I'm going to overrule.
3 Mr. Pannell, please, we don't want to admit any hearsay
4 into this case. We want you to tell us what you know
5 personally.

6 Q. (By Ms. Conway) Okay, Mr. Pannell, you mentioned
7 before that Tempo only operates -- that Tempo operates on a
8 separate grid number than --

9 A. OGRID number.

10 Q. OGRID number, I'm sorry. In your affidavit you
11 indicated that that would be New Mexico OGRID Number 22223.
12 Does that refresh your recollection?

13 A. Yes, ma'am.

14 Q. And if the well listed in this case, the San
15 Simon Well Number 6, is OGRID 22212, would that --

16 A. Yes, that sounds correct. My son is going to get
17 the papers for me right now. Yeah, that sounds correct.

18 Q. And that would not be a well --

19 A. That's not our OGRID, no.

20 Q. Okay.

21 A. In other words, if we drill -- if we want to
22 drill a well right now, it would be under our OGRID. Or if
23 we operate a well, it's under our OGRID.

24 And if you would like the home phone number of
25 Jim Brazeal I can give you that, he's the owner of Capstar

1 Drilling.

2 Q. That's all right, Mr. Pannell, I think we have
3 enough evidence today.

4 A. I've got his home phone, his lake phone and his
5 cell phone.

6 EXAMINER EZEANYIM: It's not necessary.

7 MS. CONWAY: All right, thank you, Mr. Pannell.
8 I don't have any further questions of you at this time.
9 Mr. Brooks may have some questions, and the Examiner or his
10 attorney may also have questions.

11 THE WITNESS: Okay.

12 EXAMINER EZEANYIM: Mr. Brooks?

13 CROSS-EXAMINATION

14 BY MR. BROOKS:

15 Q. Good morning, Mr. Pannell.

16 A. Good morning, whoever I'm talking to.

17 Q. This is David Brooks, I'm --

18 A. Okay, David.

19 Q. -- attorney for the Oil Conservation Division.

20 A. Uh-huh.

21 Q. I asked you a moment ago how long you had been an
22 executive at Tempo, and would you refresh my recollection
23 on that? I forget quickly.

24 A. Roughly, I'm going to say since 1995. I can't
25 remember the exact date we brought it out of bankruptcy,

1 but at that point I became an executive, yes.

2 Q. And before 1995, Tempo Energy, did you testify,
3 went through a bankruptcy proceeding?

4 A. Yeah, we were in Chapter VII, and we bought out
5 all the -- all the people that had debt to the company were
6 given stock, and I bought everyone out of their stock.

7 Q. Yeah. Now were you an owner of Tempo prior to
8 1995?

9 A. No, I was not.

10 Q. Were you an officer of Tempo --

11 A. No, I was not.

12 Q. -- prior to 1995?

13 A. No.

14 Q. Were you engaged in the management of Tempo prior
15 to 19- --

16 A. No, I was not.

17 Q. I'm sorry?

18 A. No.

19 Q. Now Mr. Pannell --

20 A. Yeah.

21 Q. -- I'm sorry, I may call you Mr. Panel, I knew of
22 someone named Frank Panel when I was an attorney --

23 A. My dad went by Panel, I go by Pannell.

24 Q. Ah, well now, I thought you might be related. I
25 was in the same law firm with Mr. Panel for a short time.

1 A. No, my dad was not a lawyer, no.

2 Q. Oh, well --

3 A. Yeah, he was a --

4 Q. Then it's a different Frank Panel.

5 A. You're helping to set me up for a joke here, and
6 I did not make it. Go ahead.

7 Q. Okay, that's a digression. Okay, Mr. Panel --

8 A. Yeah.

9 Q. -- when did you first hear about, or learn about,
10 the San Simon State Number 6 well?

11 A. I -- I'd -- that I -- I'm going to have to say
12 sometime in late 1990s, maybe early 2000, we got our first
13 letter on it.

14 Q. So you did not -- Back in 1985, I believe, when
15 this well was --

16 A. I knew when the well was drilled.

17 MS. O'CONNOR: Eighty- --

18 Q. (By Mr. Brooks) Oh, you knew what -- that's
19 what I asked you --

20 A. I knew who Joe Peterson was at that time, sure.
21 I've been investing with Cola -- it was Cola Petroleum -- I
22 mean, it was Cola, then Jubilee Energy, then it turned into
23 Tempo Energy. I'd invested back starting with Jubilee, and
24 I actually sold them pipe back when they were Cola, so...

25 Q. Okay, so then are you testifying that you had

1 personal knowledge of the San Simon State Well Number 6 at
2 the time --

3 A. I knew --

4 Q. -- it was drilled?

5 A. -- that Joe drilled it, yes, I did.

6 Q. And did -- were you involved in the drilling of
7 that well at all?

8 A. No, I was not, I would not sell him pipe.

9 Q. And you didn't invest or participate in that
10 well?

11 A. Not with Joe Peterson, no.

12 Q. Okay.

13 A. He approached me to sell him pipe for that well
14 and to take an interest, and I declined both.

15 Q. Okay. Now you said you bought the company after
16 the bankruptcy?

17 A. Yes, I did.

18 Q. Now these forms, I -- this is something -- the
19 forms that are in the OCD's file --

20 A. Yes.

21 Q. -- on the San Simon State Well Number 6 --

22 A. Yes.

23 Q. -- did you testify -- did I correctly understand
24 you to testify that at some time and place you have seen
25 copies of some of these forms in which the lining out --

1 A. Yes, what I --

2 Q. -- was not done? I'm sorry, I --

3 A. I looked at their site and pulled them up on the
4 Internet and made copies.

5 Q. But let me finish my question.

6 A. Oh, okay, I'm sorry.

7 Q. Did you see copies that did not have Peterson
8 Petroleum Company lined out on them?

9 A. Not on the Internet, no.

10 Q. Did you at some time and in some place see such
11 copies?

12 A. No.

13 Q. Okay, then I misunderstood your testimony. I
14 wanted to clarify that. So you have never seen copies of
15 the documents that are in the OCD's well file for the San
16 Simon State Number 6 that were in any way different from
17 the copies that are on the Internet?

18 A. No, I have not. In other words, the copies that
19 I submitted with my letter are the copies I made off the
20 Internet.

21 Q. Okay, thank you. Oh, well, one other question I
22 had for you --

23 A. Sure.

24 Q. -- you know where this well is located, then --

25 A. I have no idea. I know it's in New Mexico.

1 Q. Okay, then you don't know --

2 A. -- never seen --

3 Q. -- in what section or town- --

4 A. -- don't even know where it's at.

5 Q. Okay. Do you know that -- Are you familiar with
6 a farmout that was made between V-F Petroleum and Peterson
7 at one time --

8 A. No, I do not.

9 Q. Okay, and so if there was a letter filed with --
10 if there was a letter sent to V-F that said something about
11 Tempo acting as a document agent for V-F, you wouldn't have
12 any knowledge of that?

13 A. I would not have any --

14 Q. I mean, not for V-F, for Peterson.

15 A. No --

16 Q. You wouldn't have any knowledge --

17 A. -- files, let me --

18 Q. -- whether or not --

19 A. -- put it that way.

20 Q. -- whether or not there was such a letter? Thank
21 you.

22 A. Right. I have no idea of that, no.

23 MR. BROOKS: Thank you. That concludes my --
24 Pass the witness.

25 EXAMINER EZEANYIM: Thank you, Mr. Brooks.

1 Ms. Conway?

2 REDIRECT EXAMINATION

3 BY MS. CONWAY:

4 Q. Mr. Pannell, just a little follow-up. You
5 indicated in answer to Mr. Brooks' question that Joe
6 Peterson had approached you about investing in the San
7 Simon Number 6 well?

8 A. Yes.

9 Q. And you declined that?

10 A. Yes. He also wanted me to furnish them pipe and
11 equipment, which I refused to do. He didn't pay his bills.
12 In other words, he -- I knew -- I've known Joe Peterson for
13 many years. I know him personally, but it -- I just
14 wouldn't deal with him, then or now.

15 MS. CONWAY: All right. That's all the questions
16 I have, Mr. Pannell.

17 THE WITNESS: Okay.

18 MS. CONWAY: There may be questions from the
19 Hearing Examiner or his --

20 THE WITNESS: All right.

21 MS. CONWAY: -- attorney.

22 EXAMINER EZEANYIM: Do you have any questions?

23 MS. O'CONNOR: I do.

24 EXAMINATION

25 BY MS. O'CONNOR:

1 Q. Mr. Pannell --

2 A. Yes.

3 Q. -- who owned Tempo in 1987?

4 A. Was I with Tempo in 1987?

5 Q. No, who owned Tempo in 19- --

6 A. Oh, who owned Tempo? Tom Garber and Earl

7 Douglas.

8 Q. And have you spoken to them about the San Simon
9 Number 6?

10 A. Yes, ma'am, I have.

11 Q. Did you -- did you ever attempt to find out if in
12 1987 when Mr. Peterson approached you about purchasing an
13 ownership interest in the San --

14 A. He approached me probably in about 1986, but --

15 Q. Okay, in 1986?

16 A. Yes.

17 Q. Did you ever talk to the owners of Tempo at that
18 point in time, in 1986, about San Simon?

19 A. No, ma'am, I did not. You know, he was not
20 connected with them, or I -- if they would have done the
21 well, I would have invested.

22 MS. O'CONNOR: I have no further questions.

23 EXAMINATION

24 BY EXAMINER EZEANYIM:

25 Q. Okay. Mr. Pannell, this is Richard again, the

1 Hearing Examiner. I have some questions I'm going to ask
2 to try to clarify what you've been saying all along.

3 A. Okay.

4 Q. I want you to be very, very clear with me. What
5 is the relationship between Tempo Energy and Peterson
6 Petroleum Company, or Joe D. Peterson for that matter?
7 What do you think is the relationship between these two?

8 A. The only relationship between the two at the
9 time, prior to 1985 or maybe even up to 1985, would have
10 been he was a consultant for Tempo. In other words, you
11 know, where you go out and hire a consultant to drill a
12 well for you --

13 Q. Okay.

14 A. -- sit and watch the well, actually sit on the
15 well and take care of drilling operations.

16 Q. Okay, so at that time the well was drilled,
17 Peterson Petroleum Company was acting as an agent or a
18 consultant for Tempo Energy, right?

19 A. That -- as I understand, that's correct. For the
20 wells that Tempo drilled, yes.

21 Q. Okay. Now this is a critical question. How
22 did -- you know, how did Peterson Petroleum Company or Joe
23 D. Peterson -- because I use them synonymously -- how did
24 they obtain information fraudulently for -- you know, like
25 the bond information, how did they get it from you?

1 A. How did what?

2 Q. How did Peterson Petroleum Company -- you know,
3 because the pre-hearing statement said that Joe D. Peterson
4 or Peterson Petroleum company obtained the bond information
5 from Tempo Energy and used it to drill the well. How did
6 that happen?

7 A. I have no idea. Are you asking me how he got the
8 information about the bond?

9 Q. Yes, bond information.

10 A. I have no personal knowledge of that. I --
11 unless at some time -- you know, this is speculation on my
12 part, let me say this up front --

13 Q. Is it possible, since you -- my first question
14 that Peterson is acting as a consultant or an agent, that
15 you willingly gave him that information to be able to drill
16 the well at that point?

17 A. To drill his well, or to drill our well?

18 Q. To drill this well, the well in question. I'm
19 talking about San Simon --

20 A. Okay, the well in question, I don't think so, no,
21 sir.

22 Q. How did he get that information?

23 A. That I couldn't tell you, I really don't know.
24 The only thing I can think of is that when he was
25 consulting for me he'd be an officer and he would help fill

1 out and file the forms for drilling the wells they did
2 drill.

3 Q. Okay.

4 A. And he had access to the information, I'm sure.
5 But I don't know that for a fact. You could call Mr.
6 Garber, probably, and he can clear that up for you.

7 Q. Okay. Now let me remind you, these records --
8 I've been looking at records. The records show that
9 neither Joe D. Peterson nor Peterson Petroleum Company ever
10 operated any well in New Mexico, they have never operated
11 any well in New Mexico. And as you know, before you become
12 an operator you have to have what we call a Social Security
13 number, and that is the OGRID number.

14 A. Yes, sir.

15 Q. So I tried to find if any of these, Joe D.
16 Peterson or Peterson Petroleum Company, have ever operated
17 any well and couldn't find any. I wanted to point that out
18 to you, if it makes any sense to you. They have no OGRID
19 number, and they're not listed as operator in the database
20 in -- anywhere in New Mexico.

21 A. Right. I assume -- I can hear parts of what
22 you're saying, and parts of -- I missed part of it. You're
23 kind like a cell phone here, but that's just me and my
24 hearing.

25 I assume you're saying that --

1 Q. They never operated any wells in New Mexico,
2 Peterson Petroleum Company? That's what I'm saying.

3 A. That they haven't, or we haven't?

4 Q. Joe Peterson haven't. You do, you --

5 A. -- OGRID number in New Mexico.

6 Q. What? What did you say?

7 A. Tempo Energy has an OGRID number, yes.

8 Q. Yeah, yeah, you have an OGRID, yeah, I know that.

9 A. But the OGRID number that this well was drilled
10 under was not ours, no.

11 Q. Okay, let me go back to the OGRID number, because
12 I wanted -- that question I'm going to ask you. The OGRID
13 number is a number assigned to any operator.

14 A. Yes.

15 Q. However, sometimes an operator may have two OGRID
16 numbers.

17 A. That I don't know.

18 Q. Oh, yeah, we do, because I think as of July 10th,
19 1991, you know, you could have -- sometimes you have this
20 bond, the blanket bond --

21 A. Yes.

22 Q. -- the way I understand it, and you can drill
23 thousands of wells there. But in 1991 I think they made a
24 point that -- they called it -- I don't know what they
25 called -- let me see, they called it canceled as to future

1 liability. I'll tell you why. They don't want you to put
2 any wells in those OGRID numbers.

3 So that operator will be assigned a second OGRID
4 number so that if any well is drilled, then the well will
5 be assigned to that second OGRID number, because the system
6 will not allow them to go to the original OGRID number.

7 A. Right.

8 Q. So the point I'm making is that a company could
9 have two OGRID numbers. Your contention here today is that
10 the OGRID number of 22212, that San Simon was drilled, it's
11 not the OGRID number that -- you know. But if I'm looking
12 at the records it still says Tempo Energy, because of the
13 -- what I just explained to you. That's why you have two
14 OGRID numbers in New Mexico.

15 A. Oh, I see. You know, that I couldn't argue one
16 way or the other, I have no personal knowledge of. I just
17 the only OGRID number we've ever operated under is the one
18 we have now.

19 Q. Okay, thank you for that. And as your attorney
20 argued, before you can operate a well in New Mexico you
21 have to have a financial assurance.

22 A. Yes.

23 Q. You must have that, because you can't drill that
24 well -- you can't even be issued that OGRID number if you
25 don't post your financial assurance, so -- And that's why I

1 was asking you previously how Peterson stole your blanket
2 bond to drill this well.

3 A. Right.

4 Q. Remember now, you told me that they are acting as
5 consultants or agents for Tempo Energy and exploring these
6 issues to see what happened here.

7 A. Yeah, there again I, you know, have no personal
8 knowledge of what he did, how he did it, or even who he
9 would have contacted to get this other OGRID number.

10 Q. Uh-huh, okay. And again, in one of the exhibits
11 submitted by the Applicant here, it's from a C-103. That
12 is a sundry notice. This is a request to plug and abandon
13 the well, and I can see Tempo Energy on that document.
14 This was September 24, 1990. But that work was not done.
15 It's one of the documents that I have here.

16 A. Right. Yeah, I have a copy of where he -- this
17 Guy Baber --

18 Q. Yeah.

19 A. -- submitted a plug-and-abandon --

20 Q. Yeah.

21 A. -- and if you'll notice, it was from an address
22 in New Mexico --

23 Q. Okay.

24 A. -- it was not from Texas.

25 And of course they don't want me to talk about

1 Mr. Baber, but I did talk to Mr. Baber, I ran him down
2 and -- you know, but I was trying to find out, you know,
3 just what happened.

4 Q. Okay.

5 A. And you folks can contact Mr. Baber and he'll
6 tell you, I think, the same thing he told me.

7 Q. Okay, very good.

8 A. Let's see, I'm looking for that. Yeah that was
9 filed September of 1990, yes --

10 Q. Yeah. Yeah --

11 A. -- OGRID --

12 Q. -- yeah, that's what I'm looking for. Okay,
13 that's good, thank you for that.

14 Okay, this well was drilled in 1987 --

15 A. What?

16 Q. -- but -- This well was drilled in 1987, right?
17 The well was drilled in 1987?

18 A. 1987?

19 Q. Yes.

20 A. As I understand it, yes --

21 Q. Yes --

22 A. -- for sure show that --

23 Q. -- yeah, but during the cross-examination by Mr.
24 Brooks you said that Mr. Peterson approached you in 1986
25 concerning that well --

1 A. He was trying to --

2 Q. -- been drilled -- What?

3 A. He was trying to raise money. You know, before
4 you drill a well, you try to raise money for it and try to
5 line things up. He was working on it in 1986, I believe.
6 To my memory, it was around 1986 time that he was trying to
7 get me to invest. That's before he started drilling.

8 Q. Uh-huh.

9 A. I don't even remember when he started drilling,
10 to be honest with you. Let's see --

11 Q. Okay.

12 A. I'd have to look at it here, refresh my memory.

13 Q. So he intended to drill that well in 1987 but
14 approached you in 1986 to say what? What --

15 A. 1986, yes, I'm almost positive when he approached
16 me was in 1986, yes. It could have been early eighty- --
17 you know -- well, it would have had to be in 1996 -- '86,
18 because it -- yeah, that's when you normally get people up
19 to drill, at the end of the year, 1986, you know --

20 Q. Uh-huh.

21 A. -- when people kind of rearrange their finances
22 for taxes and that sort of thing.

23 Q. Yeah. Mr. Pannell, as you know, I'm an engineer,
24 I'm not a lawyer, and that's why sometimes I make mistake
25 in legal issues. But I don't know how -- You said you

1 don't have any address in Hobbs, New Mexico. That's not
2 really -- you have a lot of wells that you operate in New
3 Mexico under that OGRID number, 22223 --

4 A. Yeah, our OGRID, yes.

5 Q. Okay, yeah, that's OGRID. Okay.

6 Now, the point you made that since you don't have
7 any address in New Mexico, how does it explain -- or how
8 does it help me make a decision in this case? We could
9 contact you in Midland or Odessa or Houston or wherever,
10 wherever you are, we can contact. The fact that you don't
11 have an address in New Mexico, how does that help in this
12 case?

13 A. How does it help in this case? All the papers
14 filed for this well came out of New Mexico, as far as I can
15 tell. The application -- I'm sitting here looking at the
16 OCD report that I copied off the Internet. It's the
17 application for permit to drill, deepen or plug back --

18 Q. Yeah.

19 A. -- filed 1-15-87 --

20 Q. Yeah.

21 A. -- and it shows an address in Hobbs, New Mexico.
22 That's where it's being filed, to drill, deepen or plug
23 back. It's being filed by -- in New Mexico.

24 Q. Oh, yeah, I understand that. And --

25 A. You -- Yeah, beg pardon?

1 Q. Yeah, I understand that you have filed in New
2 Mexico, and as I understand it from my first question,
3 Peterson is acting on your behalf, and I presume they live
4 in New Mexico, I mean Hobbs, New Mexico.

5 A. Right --

6 Q. They could use that --

7 A. -- New Mexico.

8 Q. -- they could -- they could use that address,
9 acting on your behalf, and use that address.

10 A. If you've been filing this for Tempo Energy, it
11 -- all the paperwork would have -- should have been coming
12 back to Midland, Texas, to their home office.

13 Q. This well was drilled since 1987. A lot of
14 things must have happened. You know, we continue to
15 streamline our processes here. In 1987 none of these --
16 you know, anybody can send that information to Hobbs --

17 A. Yes.

18 Q. -- or to an agent, I don't know. You might be
19 right, right now we may have to send it to Hobbs, whereas
20 -- you know, where you have your headquarters. But in
21 1987, it's a long time ago, about 15, 20 years ago, so it
22 may -- it may have gone to your agent at that time.

23 Remember that I pointed out to you that there is
24 no record that Peterson, Joe D. Peterson or Peterson
25 Petroleum Company has ever operated any well here as an

1 agent or a client, as you are aware, you know, that might
2 -- responsibility of getting all the information and
3 communicating it to you. I don't know, I'm asking you.

4 A. You're asking me if --

5 Q. Yeah, I'm asking you, is it possible that this
6 information was sent to Hobbs --

7 A. No, I --

8 Q. -- New Mexico --

9 A. -- you know --

10 Q. -- and then transmitted to you by your agent,
11 Peterson Petroleum Company?

12 A. Let me say this. Knowing how Tempo Energy
13 operated back then, you know, being an investor, I know
14 they originated all correspondence out of that Midland
15 office. That's the number-one give-away on this thing to
16 me, is that --

17 Q. Yeah.

18 A. -- this thing was filed out of New Mexico --

19 Q. Okay, and --

20 A. -- paperwork hasn't come back to --

21 Q. Yeah, yeah, as you --

22 A. -- just one other thing to --

23 Q. Okay, go ahead.

24 A. -- you can have these folks -- they have the
25 records -- to look and see, you know, when this land was

1 filed, you know, when it was -- if they filed with the
2 clerk's office in whatever county it's in, and they're
3 going to show who the investors are in that well, and I bet
4 you won't find Tempo Energy in there anywhere. It's going
5 to show Joe Peterson and whoever his investors are, on the
6 lease record itself, and that's something they can check.

7 Q. Well, as far as you know, Peterson Petroleum
8 Company is a drilling company, right?

9 A. Beg pardon?

10 Q. Peterson Petroleum Company is a drilling company?

11 A. Is a drilling company?

12 Q. Yeah, it's a drilling company, right?

13 A. Capstar?

14 Q. No, no, not Capstar, I'm talking about Joe D.
15 Peterson or Peterson Petroleum Company, they are a drilling
16 company?

17 A. -- Petroleum Company?

18 Q. Yeah, a drilling company, yeah.

19 A. Yeah, I don't know if they were a drilling
20 company or not. It was just an individual, as far as I
21 know, Joe Peterson.

22 Q. Yeah, but Joe Peterson and Peterson Petroleum
23 Company, these are the same thing? Are they different
24 companies?

25 A. He has a brother that has a drilling company,

1 used to have a drilling company, I believe.

2 Q. I believe they -- I believe they drilled some
3 wells for you in Texas as well?

4 A. -- for me, no, but it would have been probably
5 for Tom Garber. Peterson Drilling Company years ago
6 drilled some of the wells, some of the original wells Tempo
7 Energy drilled.

8 Q. Uh-huh.

9 A. Capstar drilled probably 90 percent of them.

10 Q. Okay.

11 A. But I would suggest, you know, that if you talk
12 to Mr. Brazeal at Capstar, he would -- he could tell you
13 real quick who drilled this well.

14 Q. And I understand it in your testimony that you
15 only got involved in this well in 1995 when you bought it
16 over, when you bought --

17 A. That was --

18 Q. -- Tempo?

19 A. -- nineteen- -- yes --

20 Q. 1995 and --

21 A. -- didn't get involved in that well then, only
22 wells we got involved in were the ones that Tempo was
23 operating.

24 Q. Yeah.

25 A. Tempo never did operate that well.

1 Q. Yeah, so how do you know what happened before
2 1995?

3 A. I was very close with the principals of Tempo,
4 and prior to that Jubilee Energy, and prior to that Cola,
5 which is the same people, Tom Garber and Earl Douglas, as
6 they, you know, kind of stepped through the phases there.
7 But I've known them for many years, I'm very familiar with
8 their operations. I invested in just about every well they
9 drilled. I can't think of a single well that I did not
10 invest in with them.

11 Q. Yeah, I understand that. Since you're not
12 involved with these companies until 1995, how do you know
13 that Tempo didn't drill that well?

14 A. How do I -- didn't drill that well?

15 Q. Yeah, how did you know that, since you --

16 A. Because I know Joe Peterson drilled it. You
17 know, he tried to get me to invest, that's what I'm telling
18 you --

19 Q. Yeah, I know Joe --

20 A. -- in 1986 he -- I knew Joe Peterson was going to
21 drill a well.

22 Q. Yeah, I know Joe Peterson drilled it, but he may
23 be drilling it for his client?

24 A. He wasn't drilling it for Tempo, because Tempo
25 would have actually been the investor if that had been the

1 case.

2 Q. Could you tell me why, then, they don't have any
3 bond posted for that well and they don't have any OGRID
4 number in New Mexico if they drilled that well under their
5 name?

6 A. Why they don't what?

7 Q. I say, could you tell me why, then, they didn't
8 have any OGRID number in New Mexico and they don't have any
9 bond posted for drilling that well?

10 A. I need a --

11 Q. What do you say?

12 A. You're asking me who -- who --

13 Q. Yeah, why Peterson didn't have a bond posted?

14 A. -- tell you that. I don't know how he drilled
15 the thing, to be honest with you. I really don't -- I
16 don't -- I don't see how you got -- how it fell through the
17 cracks.

18 Q. Okay.

19 A. I think somebody fell down on the job. But I
20 think if someone would go back and just trace the lease on
21 this well, I think they'll find it -- Mr. Peterson.

22 Q. One more last question that I wanted to ask. You
23 know, when this well was drilled, nobody thinks that
24 something today will happen. Then how do you think that at
25 any point in time we see Tempo Energy in most of these

1 documents? I mean, why is Tempo Energy in these documents,
2 even though we don't know that a date like today will
3 happen?

4 Why is your -- I mean, even if you've pencilled
5 out or typed in or something, how did your name come in
6 there if you don't have any interest at all or if you
7 didn't contract Peterson Drilling Company to drill that
8 well? How did your name come in there? Are you saying
9 fraudulently Mr. Peterson stole your identity to drill the
10 well? Is that what your -- is that your contention today?

11 A. That is my -- that's -- but I think he
12 fraudulently did this, and I think you can ask Mr. Garber
13 that. If he had Mr. Garber's permission, he could have
14 used their number.

15 Q. You know, in law I think --

16 A. -- if he had had a letter of permission, for that
17 matter. Beg pardon?

18 Q. In law I understand that -- I'm not a lawyer --
19 in law I understand to prove fraud is really difficult, but
20 I don't know --

21 A. Yeah, I don't know either. I don't understand
22 how he ever drilled this myself, but it -- especially under
23 Tempo's number. Back then I would not have even had any
24 inkling of all this being necessary, because I was not in
25 this end of it.

1 But Mr. Garber will be very familiar with that,
2 and I think he can tell you real quick if Joe Peterson had
3 permission to use his number.

4 Q. Yeah, could you tell me -- could you tell me
5 briefly how you think that Mr. Peterson fraudulently, you
6 know, drilled that well, obtained your bond information
7 from Travelers --

8 A. Are you asking me --

9 Q. -- to drill that well?

10 A. -- how I think he did it?

11 Q. What?

12 A. Are you asking me how I think he did it?

13 Q. Oh, he did it?

14 A. No, I'm -- I'm -- I'm trying to figure out what
15 you're trying to -- asking me, I --

16 Q. Well, yeah, how do you know that he fraudulently
17 did that? I mean, I want you to tell me --

18 A. -- had some -- of thinking he could do it. I
19 mean, you know, there's no other conclusion for me. It had
20 to be fraudulent if he did not have permission. How else
21 would he have gotten all this information?

22 How else would he have gotten -- you know, just
23 the mere fact, after I've gathered all this data and looked
24 at it and saw where he had scratched through Tempo --
25 through his -- Peterson Petroleum Company on just about

1 every document -- he missed a couple of them, I notice --
2 but once he scratched it out, to me that's -- something's
3 wrong right there.

4 And we're talking certified documents, yeah, I
5 mean something that's been notarized. And OCD accepted
6 that without any initial on it or anything, so something
7 tells me he submitted it, and then they said, Oh, no it's
8 got to be under Tempo, so they scratched it to Peterson.

9 EXAMINER EZEANYIM: Okay, thank you very much,
10 Mr. Pannell. That's all my questions.

11 Does anybody have any questions for him anymore?

12 MR. BROOKS: I guess maybe I ought to ask him
13 one.

14 MS. CONWAY: And I have one too.

15 MR. BROOKS: Okay, which order do you want to go
16 in?

17 EXAMINER EZEANYIM: Go ahead. Go ahead, Mr.
18 Brooks.

19 FURTHER EXAMINATION

20 BY MR. BROOKS:

21 Q. Okay. Mr. Pannell, you mentioned something about
22 examining the lease records?

23 A. Yes, you know, lawyers are capable of doing this,
24 you pull up a record on the lease filed with the county.

25 Q. But you haven't done that, have you?

1 A. -- you can do it --

2 Q. Pardon me?

3 A. I said here you can do it, you all are capable
4 lawyers.

5 Q. Yeah, but you have not done this?

6 A. No, I have not. I'm suggesting you do that.

7 Q. You have not examined either the records of
8 the --

9 A. No, I have not, I'm suggesting you folks do --

10 Q. -- of the county -- you have not -- but let --
11 Let me ask my question and make this absolutely clear. You
12 have not examined any records in the county clerk's office
13 in Lovington?

14 A. Concerning this case.

15 Q. Concerning this matter.

16 A. No.

17 Q. And you have not examined any records in the
18 State Land Office in Santa Fe concerning this matter?

19 A. No, I have not.

20 MR. BROOKS: Thank you.

21 EXAMINER EZEANYIM: Thank you, Mr. Brooks.

22 Ms. Conway?

23 FURTHER EXAMINATION

24 BY MS. CONWAY:

25 Q. Mr. Pannell, this is Ann Conway again.

1 A. Yes, ma'am.

2 Q. I just wanted to go back and clarify. I believe
3 you testified that Mr. Peterson worked as a consultant for
4 Tempo Energy through 1985; is that correct?

5 A. To the best of my knowledge, that's correct.

6 Q. And this well was drilled in 1987?

7 A. Yes, ma'am.

8 Q. And one other question. Did you say that while
9 he was a -- while Mr. Peterson was a consultant to Tempo
10 Energy, Inc., he would have had access to the information,
11 including the information regarding their bond?

12 A. Yes, I think he would have, yes. In my opinion
13 he did, yes.

14 Mr. Garber would probably say the same thing, but
15 I don't know.

16 MS. CONWAY: All right. Thank you very much, Mr.
17 Pannell.

18 THE WITNESS: Thank you.

19 FURTHER EXAMINATION

20 BY EXAMINER EZEANYIM:

21 Q. Thank you, Mr. Pannell. Let me follow up on that
22 question. Is Mr. D. Peterson, Joe D. Peterson, an employee
23 of Tempo Energy at any point in time?

24 A. No. Are you saying Peterson?

25 Q. Yeah, was he at any point in time an employee --

1 A. No --

2 Q. -- of Tempo?

3 A. -- he was not.

4 Q. What?

5 A. I'm saying no, he was not.

6 Q. He wasn't. He wasn't, okay.

7 Okay, now your attorney says that he drilled your
8 well in 1985 and it couldn't happen in 1987, but he drilled
9 that well in 1987?

10 A. Yes.

11 Q. And your recollection, you didn't know whether
12 you contracted him to do that -- to drill that well for you
13 in 1987?

14 A. No, I -- he was -- Number one, Tempo Energy
15 didn't -- that was not a Tempo Energy well, best of my
16 knowledge, it was a Joe Peterson well. And he did not
17 contract to drill it for Tempo, no.

18 Q. Okay.

19 A. -- the well. Beg pardon?

20 Q. Yeah, I heard what you said.

21 A. Beg pardon?

22 Q. I said I heard what you said.

23 A. Oh, okay.

24 EXAMINER EZEANYIM: Yeah, okay. Okay, thank you
25 very much.

1 THE WITNESS: Thank you, sir. Goodbye.

2 EXAMINER EZEANYIM: Any closing --

3 MR. BROOKS: Just a brief closing statement.

4 MS. CONWAY: Your Honor, I had two other exhibits
5 I'd like to tender for admission.

6 EXAMINER EZEANYIM: Okay.

7 MS. CONWAY: The first is an affidavit by Tom
8 Garber, which was also attached to our prehearing
9 statement.

10 EXAMINER EZEANYIM: Who is Tom Garber?

11 MS. CONWAY: Tom Garber is the individual that
12 Mr. Pannell identified. He was the former president of
13 Tempo Energy, Inc., from its inception until the early
14 1990s.

15 EXAMINER EZEANYIM: Is the affidavit hearsay or
16 from his personal knowledge?

17 MS. CONWAY: Yes.

18 EXAMINER EZEANYIM: From personal knowledge?

19 MS. CONWAY: Yes.

20 EXAMINER EZEANYIM: Okay, what do you want me to
21 do with that?

22 MS. CONWAY: Well, I just -- the information
23 contained in here states that Tempo did not own, drill or
24 operate or have any interest in the San Simon State Number
25 6 well, never had an address in New Mexico.

1 Joe Peterson was an independent contractor that
2 worked as a drilling consultant, he was never an employee
3 of Tempo's. Peterson was never authorized to drill a well
4 in the San Simon area using any surety bond secured by
5 Tempo, and Peterson was never given any indication,
6 implicit or explicit, that he was authorized to use a
7 surety bond secured by Tempo to dig a well in the San Simon
8 area.

9 And I would like to offer this as Exhibit B.
10 This is the original.

11 And I would like to offer as Exhibit C the
12 affidavit of Earl Douglas, who was essentially Mr. Garber's
13 partner, co-owner of Tempo Energy, Inc., from its inception
14 in the early 1990s. And this document also indicates,
15 again, that Joe Peterson was an independent contractor, he
16 was never an employee, he was never authorized to drill a
17 well using any surety bond secured by Tempo.

18 So I would offer Respondent's Exhibits B and C at
19 this time.

20 EXAMINER EZEANYIM: Have you made this available
21 to opposing counsel?

22 MS. CONWAY: Yes, Mr. Examiner.

23 EXAMINER EZEANYIM: Any objections?

24 MR. BROOKS: Yes, Mr. Examiner, we believe
25 they're hearsay, we believe that the credibility of these

1 witnesses is absolutely critical to this case, and if they
2 wanted to prove their case based on their testimony, they
3 should have brought them here to testify. Thank you.

4 (Off the record)

5 EXAMINER EZEANYIM: According to the advice of
6 counsel -- because I don't know how to deal with this, I'm
7 very glad that she's here -- what I think, Ms. Conway, is,
8 we may have to continue this case and see whether you can
9 bring in these people personally here, for them to come and
10 testify really under oath and tell us what they know from
11 their personal knowledge. Is it hearsay? You know, from
12 personal knowledge? Then we can put it in the record and
13 consider it in the adjudication of this case.

14 So is there a reason why they are not here, or
15 would you -- I don't know whether -- want this case to be
16 continued for you to bring them in.

17 MS. CONWAY: Mr. Examiner, the only reason that I
18 brought their testimony by way of affidavit is because I
19 believe it is -- it is -- I had no idea that Mr. Brooks
20 objected to this means of presenting the evidence until
21 this time. I thought that this would expedite the hearing.

22 If the Examiner has time this morning, I can
23 probably during the recess make both Mr. Garber and Mr.
24 Douglas available for testimony by hearing. They're
25 retired and they're very -- they're more than willing to

1 help in this matter.

2 EXAMINER EZEANYIM: Yeah, but before even you
3 call them, I need to, you know, ask the Applicant whether
4 he intends to continue the case, because it -- you know,
5 the case was set for today and we prepared for the case to
6 be heard today. So I expected them to be here if they are
7 really interested in this case, because the object of
8 objection here is, whatever you submit in this might be
9 hearsay. We want them to say from personal knowledge, This
10 is what I know about this well. And that's why the
11 objection has been put forward.

12 So my question to the Applicant is, do we have to
13 continue this case or can we, you know, conclude it today?

14 MS. CONWAY: We are -- I would ask Mr. Brooks
15 what portion of these affidavits he believes is not based
16 upon personal knowledge, because I believe it's all based
17 on personal knowledge.

18 MR. BROOKS: Mr. Examiner, responding first to
19 counsel, we're not taking issue with the affidavits being
20 based on personal knowledge. Our point is that affidavits
21 are out-of-court statements and therefore are not
22 admissible for the truth of the matter stated.

23 However -- and our position would be that it
24 would not -- we would not want to continue this case. We
25 would take the position that you can make a decision based

1 on the evidence that was admitted. If you make a decision
2 adverse to Tempo, they can always file for a *de novo*
3 appeal, and they can present whatever evidence they feel is
4 necessary to the Commission. However, we understand this
5 matter -- I would also point out that they did not name
6 these people as witnesses who would appear in this case in
7 their prehearing statement.

8 However, this is a matter I realize is in your
9 Honor's discretion. We will abide by your decision.

10 MS. CONWAY: And just a final note. We did list
11 these as exhibits to our prehearing statement, and there
12 was no objection to them as exhibits.

13 MR. BROOKS: That is correct. These affidavits
14 were listed in the prehearing statement as exhibits. It is
15 our impression that there is no rule that requires that
16 objections to exhibits be tendered in advance of hearing.

17 EXAMINER EZEANYIM: Ms. Conway?

18 MS. CONWAY: I have nothing further, Mr.
19 Examiner.

20 EXAMINER EZEANYIM: Okay, in the light of what I
21 just heard, I think since these two people, Mr. Garber and
22 Mr. Douglas, were not listed as potential witnesses --
23 reason why we should continue this case.

24 But if they were listed as witnesses and couldn't
25 appear for some extenuating circumstances, and that's why

1 we -- when we might say, Okay, we continue the case. But
2 as you heard, Applicant doesn't want to continue the case.

3 And I think I've heard enough to be able to make
4 a decision in this case. So continuing it would be wasting
5 resources, wasting your time and the time of everybody.

6 And I think as Mr. Brooks says, whatever, you
7 know, the ruling goes, anybody else can take it to the
8 Commission. And that's how we do processing here. Anybody
9 has the right to appeal whenever a decision is rendered at
10 the Division level. We have the Commission level. When a
11 ruling is issued at this level, any adverse party affected
12 by this decision might appeal to the Commission for relief.

13 And as my attorney has advised me, we can't even
14 call these two people today because they were not on the
15 list of witnesses. They might have been in the package
16 that's -- you know, the -- you know, exhibit packet, but
17 they're not listed as witnesses. If they had been listed
18 as witness -- like I mentioned previously, we could either
19 call them or maybe, you know, reschedule for them to
20 appear.

21 So based on those issues, I don't think these two
22 exhibits will be admitted into evidence at this point. But
23 that doesn't really necessarily affect my decision.

24 MR. BROOKS: Ready for closing statements, your
25 Honor?

1 EXAMINER EZEANYIM: Yeah, I'm ready at this
2 point.

3 MR. BROOKS: Okay, very briefly then, this is a
4 unique situation. I don't know of the Oil Conservation
5 Division ever facing this before.

6 The company who's listed as operator of record
7 denies that they ever had any connection whatever with this
8 well. That may be true. The evidence presented before you
9 is somewhat less than decisive, however. There are two
10 possible inferences you can draw, I think, from the
11 evidence.

12 One is that, as the respondents suggest, Mr.
13 Peterson drilled this well for his own account and used
14 Tempo's name so he wouldn't have to file a bond with the
15 OCD. That's what they say, and that's one possibility.

16 The other possibility that the record leaves open
17 is that Mr. Garber and Mr. Douglas, who did not come here
18 to testify today, were doing something on the side that
19 they didn't tell their colleague and friend, Mr. Pannell,
20 about, and that they were involved in, which was not
21 anything wrong because they were running the company, they
22 could do whatever they wanted, but you kind of wouldn't
23 expect them to be real anxious to tell him about it at this
24 point, since it would have saddled the company with a
25 liability that he might not have told Mr. Pannell about at

1 the time Mr. Pannell bought the company.

2 So these are the inferences that you can draw.
3 We would like you to order Tempo and their surety to plug
4 this well. If, however, you believe that is inappropriate
5 then as an alternative we would like you to order Mr.
6 Peterson and Peterson Petroleum, who have no surety, to
7 plug this well.

8 We do have some information that Mr. Peterson has
9 been through bankruptcy, but of course if he has defrauded
10 the OCD, then that would not be a dischargeable debt. So
11 we still want to have the order against him in any case.

12 Thank you.

13 EXAMINER EZEANYIM: Thank you, Mr. Brooks.

14 Ms. Conway?

15 MS. CONWAY: Yes, Mr. Examiner, I believe that
16 the only evidence and reasonable inferences to be drawn
17 from the evidence is that Mr. Peterson either
18 fraudulently -- I don't know -- well, fraudulently used
19 Tempo Energy's bond number. Tempo Energy had no
20 involvement in the investment, ownership, operation, any
21 interest, no interest whatsoever in this well.

22 Mr. Pannell has testified. Mr. Pannell is a very
23 candid, credible, knowledgeable witness concerning all of
24 the events in relation to Tempo's involvement with Mr.
25 Peterson, which ended in 1985, two years prior to the

1 drilling of this well.

2 Mr. Pannell testified that Mr. Peterson
3 approached him to invest in this well in 1986, and he
4 declined, he would not do business with Peterson.

5 Several of the comments from Mr. Pannell, based
6 upon his personal knowledge and acquaintance with Mr.
7 Peterson, indicates that Mr. Peterson was just simply not a
8 person that you wanted to do business with, and that's
9 clearly borne out by his conduct in this case.

10 These documents weren't prepared by anyone with
11 Tempo Energy, Inc. They weren't authorized, they weren't
12 filed from Tempo Energy, Inc.'s office.

13 On the other hand, Mr. Peterson did have access
14 prior to the time he left in 1985 to the information that
15 would have been provided to the OCD.

16 I believe Exhibit Number 4, which is the blanket
17 bond, was procured in 1985, which was the year that Mr.
18 Peterson left Tempo Energy, Inc., so he would have had
19 access to this information, and he simply wanted to avoid
20 his obligation, his financial obligation to procure a
21 surety bond. He drilled a well with Tempo Energy's
22 unauthor- -- with the unauthorized use of Tempo Energy's
23 bond.

24 And for that reason we do believe that Mr.
25 Peterson is the appropriate party to be required to plug

1 this bond [sic], and that Tempo Energy and its surety be
2 dismissed from this proceeding.

3 Thank you.

4 EXAMINER EZEANYIM: Thank you, Ms. Conway. Are
5 there any more comments?

6 MR. BROOKS: Just that this return correspondence
7 should be in the case file.

8 EXAMINER EZEANYIM: Okay.

9 MR. BROOKS: I had borrowed it to make my proof
10 of --

11 EXAMINER EZEANYIM: Oh, okay.

12 MR. BROOKS: -- service. Thank you.

13 EXAMINER EZEANYIM: Anything, Ms. Conway?

14 MS. CONWAY: No, thank you.

15 (Off the record)

16 EXAMINER EZEANYIM: Okay, at the beginning there
17 was a motion to dismiss and -- that was filed by Ms.
18 Conway, and it wasn't pursued. And I didn't think you --
19 did you get a motion to dismiss?

20 MR. BROOKS: I did receive the motion. As you
21 say, it was not pursued. However, the motion to dismiss, I
22 believe, raises the same issues that are before you on the
23 merits.

24 EXAMINER EZEANYIM: Okay.

25 MS. CONWAY: Mr. Examiner, we never received a

1 response to the motion to dismiss, and so it was my
2 understanding we were proceeding today with a hearing on
3 the merits.

4 EXAMINER EZEANYIM: At this point, since we've
5 heard the case, is it also necessary to have a response to
6 motion to dismiss? But because even if you have a response
7 to that, my ruling on that would have been that I would
8 defer, you know, the motion to dismiss until I've heard all
9 of the evidence right here.

10 Since I've heard the evidence, is that also -- is
11 it now necessary to respond to that motion to dismiss?

12 MS. CONWAY: No, Mr. Examiner.

13 EXAMINER EZEANYIM: Okay, thank you for that.

14 Anyway, my attorney was asking me, do I want to
15 make a decision now?

16 No, we don't make a decision once the hearing is
17 concluded, because there is a lot of information here I
18 need to assimilate through and then go through them one by
19 one, so we don't make decision, so that you know one way or
20 the other what I'm thinking.

21 Even myself, I don't know how I'm going to rule.
22 Even if I knew, I wouldn't tell you.

23 So therefore at that point, Case Number 13,711
24 will be taken under advisement.

25 Thank you all.

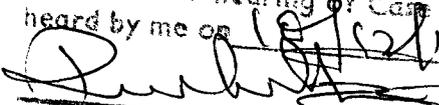
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MR. BROOKS: Thank you, your Honor.

MS. CONWAY: Thank you.

(Thereupon, these proceedings were concluded at
10:45 a.m.)

* * *

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 137-11
heard by me on 10/20/11

_____, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 15th, 2006.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006