

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

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

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING 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
de novo

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
WILLIAM C. OLSON, COMMISSIONER

March 16th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Friday, March 16th, 2007, 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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A P P E A R A N C E S

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By: J. SCOTT HALL

* * *

1 WHEREUPON, the following proceedings were had at
2 9:07 a.m.:

3 CHAIRMAN FESMIRE: Next before the Commission
4 today is Case Number 13,711, the *de novo* application of the
5 New Mexico Oil Conservation Division for an order requiring
6 Tempo Energy, Inc., and Peterson Petroleum Company and/or
7 Joe D. Peterson to plug one well and an order forfeiting
8 the applicable financial assurance in the event of
9 operator's nonconsent [*sic*]. We will take that case up
10 probably last this morning. It was continued from the
11 February 8th, 2007, Commission meeting.

12 (Off the record at 9:08 a.m.)

13 (The following proceedings had at 9:17 a.m.)

14 CHAIRMAN FESMIRE: The next matter before the
15 Commission today is Case Number 13,711, the *de novo*
16 Application of the New Mexico Oil Conservation Division for
17 an order requiring Tempo Energy, Inc., Peterson Petroleum
18 Company and/or Joe D. Peterson to plug one well and
19 ordering forfeiture of the applicable financial assurance
20 in the event of operator's noncompliance in Lea County, New
21 Mexico.

22 Are there attorneys representing the parties in
23 this case?

24 MR. BROOKS: Mr. Chairman, honorable
25 Commissioners, I'm David Brooks, assistant general counsel

1 for the Energy, Minerals and Natural Resources Department,
2 appearing for the Division.

3 MR. HALL: Mr. Examiner, Commissioners, Scott
4 Hall, Miller Stratvert law firm, appearing on behalf of
5 Tempo Energy, Incorporated, and Travelers Indemnity
6 Company.

7 CHAIRMAN FESMIRE: Mr. Hall, I assume Travelers
8 is the one holding the bond on this?

9 MR. HALL: Yes, correct.

10 CHAIRMAN FESMIRE: Mr. Brooks, do you have an
11 opening statement?

12 MR. BROOKS: Yes, sir. I'll be suitably brief,
13 but I believe that this is a very unprecedented type of
14 case for the Oil Conservation Division. It started out as
15 a plugging case and developed that the company whose name
16 appears in all the Oil Conservation Division documents
17 denies that they are the one who drilled this well or that
18 they have any interest in this well, and contends that
19 their name and their bond were improperly used by another
20 person to drill this well.

21 So we have -- you notice it's brought against
22 both Tempo Energy, which is the operator of record, and
23 Peterson Petroleum and Joe D. Peterson. Peterson
24 Petroleum's name appears on some of the documents, but it's
25 scratched out, and Joe D. Peterson is the individual who

1 signed all the documents relating to this well.

2 In the event that the -- Well, first of all, we
3 are asking the Commission to order Tempo Energy, the
4 operator of record, and their surety, to plug this well, as
5 we normally do. However, if the Commission accepts their
6 argument that Mr. Peterson, and not -- or his company, and
7 not Tempo, is responsible for this well, then we would ask
8 -- in the alternative, ask the Commission to direct
9 Peterson to plug this well.

10 The Division has not been able to locate Mr.
11 Peterson, and he has been through a bankruptcy. We believe
12 that probably would not discharge his indebtedness to --
13 because it's an environmental liability, but we don't
14 really have much hope of collecting from him. However, we
15 would still like to establish that in case he ever writes a
16 book or something.

17 So our first cause is that we contend that Tempo
18 should be held responsible.

19 We are going to present documentary evidence. No
20 one with the Oil Conservation Division has any personal
21 knowledge of the history of this well. They know its
22 current status, but no one has any personal knowledge.

23 We will call Chris Williams to testify to the
24 current status of the well and to the efforts to locate Mr.
25 Peterson and to answer any questions the Commission may

1 have. Otherwise, we will present simply a documentary
2 case.

3 Thank you.

4 CHAIRMAN FESMIRE: Mr. Hall, would you like to
5 make your statement, or would you reserve it?

6 MR. HALL: Brief comments, Mr. Chairman, on
7 behalf of Tempo Energy, Inc., and Travelers.

8 We will present you proof today within the
9 context of the Division's authorizing statutes for
10 financial assurance and well plugging and the implementing
11 regulations adopted pursuant thereto, including the
12 Division's compliance and enforcement regulations, that
13 Tempo Energy, Inc., is not the owner, operator or
14 responsible party that drilled this well.

15 The burden will be on the Division to establish
16 that Tempo Energy meets those definitions. We will present
17 witnesses who will establish that they cannot, and by
18 extension neither can be liability established for their
19 surety, Travelers Indemnity Company.

20 Now we had listed three witnesses, one of whom
21 was appearing by telephone today, and by agreement with Mr.
22 Brooks, we have today located Mr. Jim Brazeal who actually
23 drilled this well, and we will offer his testimony by
24 telephone as well today, and he will establish, I hope to
25 your satisfaction, that he drilled the well for Peterson,

1 Peterson Petroleum Company.

2 And based on that, in conformance with the
3 Division's Application, we would ask you to dismiss the
4 Application with respect to Tempo Energy and Travelers
5 Indemnity and order enforcement against Joe D. Peterson or
6 Peterson Petroleum Company.

7 CHAIRMAN FESMIRE: Thank you.

8 Mr. Brooks, your first witness?

9 MR. BROOKS: Okay, I'm going to present some
10 documents, if it please the Commission, prior to calling my
11 witness. I would like to -- Do the Commissioners all have
12 copies of the exhibits that were filed with the prehearing
13 statements? I have several sets here that I can furnish
14 you, if you do not, but --

15 CHAIRMAN FESMIRE: I'll need another set.

16 MR. BROOKS: Okay.

17 First I will call your attention, Commissioners,
18 to what has been marked as OCD Exhibit Number 1, and this
19 is a copy of a document that is generated from the Oil
20 Conservation Division's computer system that lists the
21 wells that a particular operator has and shows the date of
22 last production. I would ask that this document -- I would
23 submit this document as a copy of a document in the OCD's
24 files.

25 You will note that it shows Tempo Energy, Inc.,

1 as the operator. It shows one well being inactive -- that
2 is the San Simon State Well Number 6 -- and shows the date
3 of last production as being August of 1987. Also shows
4 under notes that an intent to P-and-A was approved on 10-3
5 of 1990.

6 Next exhibit I will offer is what has been -- I
7 will call your attention to what has been marked as OCD
8 Exhibit Number 2. OCD Exhibit Number 2 is a collection of
9 copies of all of the documents that appear in the Oil
10 Conservation Division's well file with relation to the San
11 Simon State Well Number 6.

12 There are a number of matters concerning the name
13 of the operator, which I'm sure Mr. Hall will point out to
14 you, but I will represent to the Commission -- and you can
15 inquire of Mr. Williams when we call him about this also --
16 that the strikeouts that appear on some of these documents
17 are the way they appear on the originals in the Oil
18 Conservation Division files. And so far as we know, no one
19 with the Oil Conservation Division made those
20 modifications, although of course we can't prove the
21 negative on that very well.

22 I will next offer OCD Exhibit Number 3, which is
23 a copy of an oil and gas lease covering the land where this
24 particular well is located -- it's a lease from the State
25 of New Mexico to HNG Oil Company -- and represent that this

1 is a true copy from the records of the State Land Office.

2 Similarly, OCD Exhibit Number 4 is a copy of an
3 assignment of this lease from HNG Oil Company to HNG Oil
4 Company and Northern Natural Gas Company. It's dated
5 September 1st, 1977, and again is a copy from the records
6 of the New Mexico State Land Office.

7 I don't think there's any reason to -- Well,
8 let's see here. I don't believe OCD Exhibit Number 5 has
9 any relevance, because I believe the Application for permit
10 to drill was filed on this in 1-13 of '87, and this OCD
11 Exhibit Number 5 is an internal assignment, apparently,
12 that was part of the Enron re-organization, but it is dated
13 October 29th, 1987, which was after the well was drilled.
14 It again is a copy from the Land Office records.

15 OCD Exhibit Number 6 is being offered -- is a
16 proof of notice. It is being offered. We don't,
17 obviously, need to prove notice to Tempo Energy and
18 Travelers Indemnity Company because those parties have
19 appeared in this proceeding. However, we offer this
20 Exhibit Number 6 to prove that notice was attempted to Mr.
21 Peterson, and the notifications to Mr. Peterson were
22 returned.

23 OCD Exhibits Numbers 7, 8, 9, 10 and 11 and 12,
24 we are -- these are some documents that have to do with the
25 land in question, and they are not authenticated, but I

1 understand from my discussion with Mr. Hall prior to the
2 beginning of this proceeding that they will be accepted by
3 agreement; is that correct?

4 MR. HALL: Yes, sir.

5 MR. BROOKS: Okay, these documents, I will
6 represent to the Commission, come from the files of HNG Oil
7 Company and -- actually from the files of EOG -- I'm sorry,
8 from the files of EOG. HNG's name is on them, but they
9 come from the files of EOG, which is the successor to
10 Enron. And they do have to do with the title to the lands
11 in question. And they're a little bit complicated.

12 I believe they are not collectively decisive in
13 any way as to the ownership of the land at any time, but
14 the Exhibit Number 7 is a farmout from HNG Oil Company to
15 Joe D. Peterson. It's dated January 16th, 1985, and it
16 does include the unit on which this well is located.

17 OCD Exhibit Number 8 is an amendment to that
18 farmout, which is dated April 3rd, 1985. And we don't
19 think there's anything of importance in that exhibit,
20 actually, but for tracing purposes.

21 OCD Exhibit Number 9 is a copy of that amendment
22 with another signature on it.

23 OCD Exhibit Number 10 is where it gets
24 complicated. OCD Exhibit Number 10 is a request signed by
25 Joe D. Peterson for approval of a re-assignment of that

1 farmout -- or rather of an assignment of that farmout, to
2 V-F Petroleum. It's dated April 23rd, 1985, which was
3 prior to the time that this well was drilled.

4 And the interesting thing about this is that this
5 document is not actually an assignment, as I'm sure Mr.
6 Hall will point out, it's a request for consent to an
7 assignment. However, we would offer this as evidence that
8 in fact Peterson had dispossessed himself of title under
9 this farmout at some time prior to the time this well was
10 drilled. So in our view, that negates the inference that
11 would otherwise be drawn from OCD Exhibit Number 7, to the
12 effect that Peterson had title to this tract at the time
13 the well was drilled. Granted, none of this is totally
14 decisive evidence, but it's what we've been able to
15 discover.

16 So basically the OCD Exhibit Number 10, in our
17 view, would suggest that the actual title, or right to
18 drill this well, would have been owned by V-F Petroleum,
19 Inc., at the time that this well was drilled.

20 The next exhibit we would offer is OCD Exhibit
21 Number 11. OCD Exhibit Number 11 does not relate to the
22 particular unit -- No, I'm sorry, I'm getting ahead of
23 myself. OCD Exhibit Number 11 is simply a copy of OCD
24 Exhibit Number 10 with an additional signature.

25 OCD Exhibit Number 12 does not relate to the

1 particular unit on which this well is located. OCD Exhibit
2 Number 12 relates to the southeast quarter of the northwest
3 quarter of Section Number 4, and this particular well is
4 located in the southeast quarter of the northeast quarter
5 of Section Number 4, so it does not apply to the -- it has
6 no application to the land on which this well was located.

7 However, it does apply to another quarter quarter
8 section located in the same unit -- or in the same section,
9 I'm sorry, which is Section 4, 22 South, 35 East, as you
10 can see by comparing the description on Exhibit Number 12
11 with the descriptions in Exhibit Number 2.

12 And we want to call the attention of the
13 Commission to the statement appearing in -- well, first of
14 all to explain what OCD Exhibit Number 12 is, it is another
15 request for consent.

16 It does not purport to actually assign but is
17 again a request for consent, which is some evidence, we
18 believe, of an assignment, from V-F Petroleum, in whom
19 we've established presumed title, we believe, by previous
20 exhibits, to Peterson of this particular unit to which it
21 relates, which again, as I say, is not the unit where this
22 well is located. But it contains the statement in that
23 letter, Peterson will contract with Tempo Energy, Inc., for
24 permitting and other administrative purposes.

25 Finally, we offer OCD Exhibit Number 13, which is

1 a copy of the \$50,000 blanket plugging bond posted by Tempo
2 Energy, Inc., and written by Travelers Indemnity Company as
3 surety.

4 On the basis that -- We would offer OCD Exhibits
5 Numbers 1 and 2 -- 1, 2 and -- well, I'm sorry. We would
6 offer OCD Exhibits Numbers 1 through 13 on the basis that
7 was explained in response to each one as I stated the basis
8 for admissibility as I believe it to exist as to each one,
9 except the ones that were by agreement. So at this time I
10 will submit OCD Exhibits 1 through 13.

11 CHAIRMAN FESMIRE: Mr. Hall, do you have an
12 objection to that?

13 MR. HALL: Point of clarification on one of the
14 exhibits. Otherwise, no objection.

15 If I might address Mr. Brooks testimony?

16 CHAIRMAN FESMIRE: Go ahead.

17 MR. HALL: If we turn back to Exhibit 7, the
18 first page of the farmout agreement, I believe we can
19 stipulate that this well is located in the southeast
20 quarter, northeast quarter of Section 4. There's no
21 dispute about that. If you look at the very first
22 paragraph of the farmout agreement, Mr. Brooks indicated
23 that this farmout agreement applied to the southeast
24 quarter, northeast quarter.

25 There's a reference in the first page of the

1 farmout that the farmout applies to the lands described in
2 Exhibit A. If you turn to the Exhibit A, you'll see what's
3 happened here. The HNG farmout to Mr. Peterson established
4 a checkerboard pattern of 40s. The southeast quarter,
5 northeast quarter, was not included in the lands under the
6 farmout. So I believe it's inapplicable.

7 CHAIRMAN FESMIRE: Mr. Brooks?

8 MR. BROOKS: Give me one second to look at this.

9 Okay, I believe that the Commission can read this
10 for themselves. And I was not offering any testimony, I
11 was simply attempting to describe what these exhibits say.

12 But if you will look at Exhibit Number 8 which
13 amends the farmout it says, Amending Exhibit A under
14 description to read, Township 22 South, Range 35 East,
15 Section 4, Lots 2 and 4, the northwest quarter and the
16 southeast quarter of each quarter.

17 And I believe the well in question is in the
18 southeast of the northeast, which would be encompassed
19 within the description of the amendment.

20 CHAIRMAN FESMIRE: Mr. Hall, do you maintain your
21 objection or --

22 MR. HALL: We do, provided Mr. Brooks could
23 establish specific assignments for that acreage, we would
24 continue to maintain that objection.

25 MR. BROOKS: Well, I thought these documents were

1 being offered by agreement. I would concede that these
2 documents are what they are in that they're not
3 authenticated. Their relevance is for the Commission to
4 judge.

5 MR. HALL: We stipulate to their admission.

6 CHAIRMAN FESMIRE: Okay. The OCD Exhibits 1
7 through 13 will be admitted. Mr. Hall, Mr. Brooks, your
8 comments on Exhibits 7 and 8 are noted, and the documents
9 will stand for themselves in the record.

10 Mr. Brooks?

11 MR. BROOKS: At this time, we would call -- we
12 would request the Commission to call Chris Williams by
13 telephone.

14 (Off the record)

15 MR. WILLIAMS: Hello?

16 CHAIRMAN FESMIRE: Chris?

17 MR. WILLIAMS: Yeah.

18 CHAIRMAN FESMIRE: Hey, can you hear me?

19 MR. WILLIAMS: Yeah.

20 CHAIRMAN FESMIRE: This is Mark.

21 MR. WILLIAMS: Yes.

22 CHAIRMAN FESMIRE: We're at the hearing David was
23 talking to you about --

24 MR. WILLIAMS: Okay.

25 CHAIRMAN FESMIRE: -- and you know the drill.

1 Are you someplace where you're comfortable?

2 MR. WILLIAMS: Yeah.

3 CHAIRMAN FESMIRE: Okay. David, why don't you go
4 ahead.

5 MR. BROOKS: We need to get him sworn, your
6 Honor.

7 CHAIRMAN FESMIRE: Okay, Chris, would you raise
8 your right hand?

9 (Thereupon, the witness was sworn.)

10 MR. BROOKS: Mr. Chairman, may I approach so that
11 I can speak into the microphone?

12 CHAIRMAN FESMIRE: You may.

13 MR. BROOKS: Good morning, Mr. Williams.

14 MR. WILLIAMS: Morning.

15 MR. BROOKS: Can you hear me?

16 MR. WILLIAMS: Yes.

17 CHRIS WILLIAMS (Present by telephone),
18 the witness herein, after having been first duly sworn upon
19 his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BROOKS:

22 Q. Mr. Williams, would you state your name for the
23 record, please?

24 A. Yeah, Chris Williams.

25 Q. And by whom are you employed?

1 A. State of New Mexico, Oil Conservation Division.

2 Q. In what capacity?

3 A. District Supervisor in District 1.

4 Q. As District Supervisor in District 1, are you
5 responsible for overseeing the operation of wells in Lea
6 County, New Mexico?

7 A. Yes, I am.

8 Q. Are you familiar with the San Simon State Well
9 Number 6?

10 A. Yes, I am.

11 Q. And can you state according to the OCD's records
12 who is the operator of that well?

13 A. According to the records that we have, the
14 operator is Tempo Energy, Incorporated.

15 Q. And Mr. Williams, you are aware that many of the
16 documents in that file are signed by an individual who
17 appears to be Joe D. Peterson?

18 A. Yes, I am.

19 Q. Do you know who Mr. Peterson is?

20 A. I don't know him personally. I just know about
21 him.

22 Q. Was he or is he a long-time resident of Lea
23 County, New Mexico?

24 A. Yes, he was.

25 Q. And have you and your staff undertaken to attempt

1 to find Mr. Peterson for the purposes of this proceeding?

2 A. Yes, we have.

3 Q. Have you had any success?

4 A. No, we have not.

5 Q. Mr. Williams, I asked you if you were familiar
6 with the San Simon State Well Number 6. Is that well
7 inactive?

8 A. Yes.

9 Q. And has it been inactive for more than one year?

10 A. Yes.

11 Q. And does that well need to be plugged?

12 A. Yes, it does.

13 MR. BROOKS: I believe that is all the questions
14 I have for Mr. Williams, and I called him primarily to
15 enable the Commissioners to ask any questions they may
16 have.

17 CHAIRMAN FESMIRE: Mr. Hall?

18 MR. HALL: If I might approach the microphone,
19 Mr. Chairman?

20 CHAIRMAN FESMIRE: You may, sir.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q. Good morning, Mr. Williams. This is Scott Hall,
24 representing Tempo Energy and Travelers Indemnity Company.
25 Can you hear me okay?

1 A. You're going to have to speak up a little bit,
2 Scott.

3 Q. All right. Can you hear me okay, Chris?

4 A. Yeah.

5 Q. Okay. Mr. Williams, have you reviewed the well
6 file for the San Simon Number 6 well?

7 A. Yes, I have.

8 Q. Have you seen this well on the Division's
9 inactive well list?

10 A. Yes.

11 Q. Could you explain to us how the Division went
12 about attaching this particular OGRID number to the San
13 Simon State Number 6 well?

14 A. On the initial -- the initial drilling permit, we
15 normally attach the OGRID at that point in time, and it's
16 attached after we check and see if there's a bond in place.
17 And if the bond is in place, then we give the operator an
18 OGRID number if they're a new operator --

19 Q. All right.

20 A. -- a new well, we go in and we attach a new pool
21 name and a new property code.

22 Q. Correct me if I'm wrong, but did the OGRID
23 numbering system exist at the time this well was drilled?

24 A. No, it did not.

25 Q. So can you explain, then, how this OGRID number

1 became attached -- became associated with this well?

2 A. No, I can't.

3 Q. Okay.

4 A. I'm assuming that a computer generated it.

5 Q. Would that have been a function of the Santa Fe
6 office, do you believe?

7 A. It would have been a function of the -- yeah, the
8 ONGARD system --

9 Q. All right.

10 A. -- or the work of ONGARD.

11 Q. Having reviewed the well file exhibits, are we in
12 agreement that they appear to have been altered?

13 A. Yes, they have been.

14 Q. Do you know anything about that alteration?

15 A. No, other than we had no bond in place, as near
16 as I could tell, for Joe D. Peterson. And most everything
17 he signed, he signed in here as agent or consultant, so we
18 had -- I guess they assumed that he was not the operator.

19 Q. Do you know who would have been responsible at
20 the time of the approval of the initial APD for this well?

21 A. According to the wells files, it appears that
22 Tempo Energy --

23 Q. I'm sorry, I misspoke. Do you know who would
24 have been responsible among the Division staff for
25 approving the APD?

1 A. Oh, okay. That would have been, at the time,
2 Jerry Sexton --

3 Q. All right.

4 A. -- or Paul Kautz.

5 Q. Do you agree that having reviewed all of the well
6 file -- the records in the well file for the San Simon
7 State Number 6, that they all reflect a Hobbs, New Mexico,
8 address?

9 A. Yes, they do.

10 Q. Do you know how it came to be that the Division's
11 records got changed to reflect a Midland address?

12 A. No, I do not. Normally what happens is, the
13 operator sends us a change of address and then we input it
14 into the system.

15 Q. And there was no change of address submitted for
16 this well, was there?

17 A. I don't know if there was or wasn't. I'm just
18 assuming, if it's changed addresses, that there was one.

19 Q. All right. Mr. Williams, you're aware of the
20 Division's authority generally to identify the ownership of
21 wells and leases?

22 A. Generally what happens is, once they file an APD
23 with us, and if they're a new operator we assign them an
24 OGRID at that point. If they're an old operator they'll
25 have an OGRID, plus they'll either have a blanket bond or

1 an individual well bond on the well. And that's pretty
2 much how we, you know, figure out -- or assign the
3 operators at that point.

4 Q. Now in connection with this proceeding, could you
5 explain to the Commission the due diligence that was done
6 by the Division to ascertain the ownership of the San Simon
7 State Number 6 well?

8 A. The due diligence, you mean -- Primarily we
9 accept what is written on a piece of paper to us, you know,
10 a special -- an APD, that this is the correct person
11 drilling the well, or people or a company, and we check to
12 see if there's a bond in place for that company.

13 Q. For purposes of this hearing, were you asked to
14 investigate who the owner of the underlying oil and gas
15 lease was?

16 A. No, we were not.

17 Q. Also in connection with these plugging cases
18 generally that the Division brings now, does the Division
19 have a protocol for determining who is an owner, operator
20 or responsible party?

21 A. Primarily what we do is look at whoever is on the
22 permit or -- you know, from either a change of operator or
23 APD, and then we check and see which one has -- see who has
24 a bond in place for this particular well, or wells.

25 Q. Do you go beyond that if there is a question

1 about the responsible party?

2 A. Sometimes we have.

3 Q. Was that done in this case?

4 A. On Tempo energy, I'm trying -- to be really
5 honest, I'm trying to remember. It was right after I said
6 that I realized that we had gone to the courthouse and
7 looked at some, but I don't know -- or tried to find some,
8 but I don't know if this was one of them.

9 Q. All right. Is it correct to say that the
10 Division has made no determination that Joe Peterson is not
11 an owner, operator or responsible party in this case?

12 A. As far as, you know, we were concerned, we're
13 assuming it was Tempo Energy.

14 Q. But the Division has not eliminated Joe D.
15 Peterson as --

16 A. Right.

17 Q. -- a responsible party; is that accurate?

18 MR. BROOKS: I'm going to object to that
19 question, because I'm not sure what Mr. Hall means by
20 "eliminated".

21 CHAIRMAN FESMIRE: Mr. Hall, would you define
22 "eliminated" for us, for the record?

23 MR. HALL: Well, it's consistent with the
24 Division's prehearing statement that the agency is seeking
25 relief not only against Tempo Energy but Joe D. Peterson.

1 So the question gets to whether the Division, the District
2 Office, has made a determination that Joe Peterson is
3 eliminated. And I believe the answer is no.

4 MR. BROOKS: Well, I think he's certainly free to
5 ask Mr. Williams any questions about what investigation has
6 been made and what the results of that have been, and I
7 think that the question calls for something of a conclusion
8 on the ultimate issue that Mr. Williams, if he's made it or
9 hasn't made it, could only have made it on the basis of
10 evidence, so perhaps we should get out the underlying
11 evidence.

12 CHAIRMAN FESMIRE: I'll overrule the objection.

13 Q. (By Mr. Hall) Mr. Williams, what evidence does
14 the Division have that Tempo Energy ever conducted any
15 physical activity on the San Simon Number 6 well?

16 A. The only thing we have is the paperwork that was
17 filed in this office.

18 Q. Other than that, was Tempo Energy ever observed
19 out on the field, drilling or operating this well?

20 A. That I don't know.

21 Q. Do you know who the lease owner is for the
22 underlying oil and gas lease for this well?

23 A. No, we don't.

24 Q. Was any effort made to check with the lease owner
25 to see if they want to utilize the wellbore?

1 A. No, because it is not part of our function.

2 Q. So it would be correct to say that the Division
3 made no demand on the oil and gas leaseholder?

4 A. No, we have not.

5 Q. Do you agree that this oil and gas lease is a
6 State of New Mexico oil and gas lease?

7 A. Yes, the San Simon State, yes.

8 Q. Okay. Did the Division check with the State Land
9 Office to see what disposition should be made of the
10 wellbore?

11 A. I do not know. I don't know if we have or
12 haven't.

13 Q. Isn't it true, Mr. Williams, that if the
14 Commission determines that Tempo Energy is not an owner,
15 operator or responsible party, it would still have recourse
16 against Mr. Peterson?

17 A. That's a legal question that I can't answer.

18 Q. Okay. Wouldn't the Division still have access to
19 reclamation funds to plug this well?

20 A. Yes, we would have access to them, yes.

21 MR. HALL: Nothing further, Mr. Chairman.

22 CHAIRMAN FESMIRE: Mr. Brooks?

23 MR. BROOKS: Nothing further from the witness.

24 CHAIRMAN FESMIRE: Okay. Chris, thank you very
25 much, sorry to bother you.

1 COMMISSIONER BAILEY: Can't we have --

2 THE WITNESS: Okay.

3 CHAIRMAN FESMIRE: Oh, wait a minute, wait a
4 minute, I'm sorry. This is not a trial. Commissioner
5 Bailey would like to ask you a question.

6 EXAMINATION

7 BY COMMISSIONER BAILEY:

8 Q. Good morning, Mr. Williams.

9 A. Good morning.

10 Q. This is San Simon Number 6. Are there other San
11 Simon wells in that Section 4?

12 A. I don't know. I could check.

13 Q. Would you, please?

14 A. I'm sorry, I can't hear you, Jami.

15 Q. Would you please?

16 A. Yes, I will.

17 Q. Can you hear me better now?

18 A. Yeah.

19 Q. Okay.

20 A. That's better.

21 Q. According to the papers that I've seen, there are
22 quite a few San Simon wells in that Section 4.

23 A. Okay.

24 Q. And as the Number 6, who determines the name of a
25 well? The operator or the OCD?

1 A. Normally it's the operator, but we have a say in
2 whether we think it's a name that's viable for that
3 particular area.

4 Q. So since this is the Number 6, can we make an
5 assumption that there was 1 through 5 somewhere also?

6 A. Yes, possibly. But I can check real quick. I've
7 got the system up, so...

8 Q. Great.

9 A. Okay, 4-22-35, it's actually showing no wells in
10 Section 4 or Township 22 or 35, Range 35.

11 Q. No producing wells?

12 A. Right.

13 Q. But wells would have been drilled that may not be
14 showing up on the system you're looking at right now?

15 A. Right, right. If they -- They may have been
16 dropped when it -- you know, if they were way before the
17 ONGARD system.

18 Q. Okay, pre- --

19 A. Pre-ONGARD.

20 Q. -- 1994.

21 A. Right.

22 Q. Okay. There are documents for the previous wells
23 that were drilled in that section. Can you pull them up on
24 OCD online?

25 A. Well, possibly. Right now I'm in RBDMS, and it

1 is showing absolutely nothing in that section. Let me make
2 sure that they have the right range on this.

3 Q. We're talking Section 4 of 22 South, 35 East.

4 A. That's correct, and it's showing -- Let me click
5 it again. No, it's showing nothing. API -- bring it up.

6 Let me see if I can run it on GIS and see if
7 there's anything else showing up in there plugged or
8 anything.

9 Okay, actually we're showing only one well in
10 that section on GIS that's been spotted.

11 Q. As an active well?

12 A. Right.

13 Q. Okay, but --

14 A. We're not showing any other wells, either plugged
15 or anything else in here either.

16 Q. Then that means that the only documents
17 indicating the other wells that were drilled in that
18 section are contained in the Land Office lease file?

19 A. Probably so.

20 Q. Which do indicate that Tempo had Joe Peterson --
21 or Mr. Peterson as their agent for more than just this one
22 well.

23 A. Okay.

24 Q. And in fact, there were a minimum of five other
25 wells that were drilled with Tempo as the operator and Mr.

1 Peterson acting as their agent.

2 A. Okay, I have to take your word for it because
3 it's not showing up on RBDMS.

4 Q. Okay, but you're -- you can't get to OCD online
5 for those previous wells either?

6 A. I can try it. Okay. Well, I just went into
7 online and put in that section, township and range, and the
8 only thing it's bringing up is that Well Number 6.

9 Q. Then that means all of that other information is
10 only found --

11 A. Right.

12 Q. -- in the Land Office --

13 A. Land Office --

14 Q. -- lease file?

15 A. Right, lease records.

16 COMMISSIONER BAILEY: Interesting. Okay. Well
17 then, apparently I have no other questions for you.

18 THE WITNESS: Okay.

19 CHAIRMAN FESMIRE: Commissioner Olson?

20 COMMISSIONER OLSON: I have no questions.

21 EXAMINATION

22 BY CHAIRMAN FESMIRE:

23 Q. Chris, have you ever dealt with anybody else from
24 Tempo?

25 A. No.

1 Q. Have you dealt with Mr. Peterson as a
2 representative from Tempo?

3 A. No.

4 CHAIRMAN FESMIRE: Okay, I have no further
5 questions.

6 Mr. Brooks, any rebuttal on the Commissioners'
7 questions?

8 MR. BROOKS: No further questions of the witness.
9 I have one other exhibit I want to offer.

10 CHAIRMAN FESMIRE: Okay. From Mr. Williams'
11 testimony?

12 MR. BROOKS: No, it has to do with notice.

13 CHAIRMAN FESMIRE: Okay. Chris, thank you very
14 much.

15 THE WITNESS: Okay.

16 CHAIRMAN FESMIRE: This time I really mean it.

17 THE WITNESS: All right.

18 CHAIRMAN FESMIRE: Talk to you later.

19 THE WITNESS: Bye.

20 CHAIRMAN FESMIRE: Bye.

21 MR. BROOKS: Okay, the other exhibit I realize
22 that I need to make my case against Mr. Peterson as well, I
23 don't think it's of any value, but I would want to make
24 sure we get it accordingly documented.

25 Accordingly, I will offer Exhibit Number 14,

1 which is a copy of the affidavit of publication at the time
2 of the Division Hearing, which I believe establishes
3 jurisdiction against Mr. Peterson, although all the mail we
4 sent to him was returned.

5 So I will tender Exhibit Number 14. I only have
6 one copy. I neglected to put it in the exhibit package.

7 CHAIRMAN FESMIRE: Mr. Hall, I'm assuming you
8 have no objection to that?

9 MR. HALL: No objection.

10 MR. BROOKS: That -- Well, I'm assuming you're
11 admitting it.

12 CHAIRMAN FESMIRE: Yes.

13 MR. BROOKS: Okay, then that concludes the
14 Division's case.

15 CHAIRMAN FESMIRE: Mr. Hall?

16 MR. HALL: At this time, Mr. Chairman, we would
17 call Frank Pannell to the stand.

18 CHAIRMAN FESMIRE: Mr. Pannell?

19 MR. PANNELL: Is this where I sit or where --

20 MR. HALL: Sit right --

21 MR. PANNELL: Over here? Good, I'll be able to
22 hear.

23 I left my hearing aid on the dresser at home.
24 Works real well.

25 (Thereupon, the witness was sworn.)

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FRANK PANNELL,

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

DIRECT EXAMINATION

BY MR. HALL:

Q. For the record, please state your name.

A. My name is Frank Pannell.

Q. Would you spell that for the court reporter, please?

A. P-a-n-n-e-l-l.

Q. All right --

A. Frank, of course, F-r-a-n-k.

Q. Mr. Pannell, where do you live?

A. Midland, Texas.

Q. And how are you employed?

A. I'm actually vice president of Tempo Energy. I'm co-owner of it, actually, yes.

Q. All right. Could you tell the Commissioners the time periods you have been associated with Tempo Energy?

A. Basically, I was associated with Tempo when they were drilling these early wells back in the early 1980s. I invested in just about every well they ever drilled, including the dry ones.

And then when they took bankruptcy in the early 1990s, they were in bankruptcy proceedings for a couple of

1 years, then they went through total bankruptcy, and I
2 bought everyone out of the company in 1993, or whatever
3 year it was, to gain 100 percent of the stock of Tempo
4 Energy.

5 Q. If you would --

6 A. I'm very familiar with their operations, by the
7 way. Excuse me, go ahead.

8 Q. All right. Mr. Pannell, how long have you been
9 vice president of Tempo Energy?

10 A. Since 1993.

11 Q. All right. If you would turn to that set of
12 exhibits, what we've marked as Exhibit Number 8.

13 A. Number 8?

14 Q. Yes, sir. Would you identify that, please? Do
15 you have that in front of you?

16 A. I'm getting close. Okay, Number 8 is -- yes,
17 that's the bankruptcy filing in the US court, yes, district
18 court.

19 Q. All right. Is that styled, Disclosure Statement
20 to Accompany Plan of Reorganization in re: Tempo Energy,
21 Inc.?

22 A. Yes.

23 Q. And if you look at the date stamp in the upper-
24 right-hand corner, is that stamped June 15, 1993?

25 A. That's correct, yes.

1 Q. And does this plan of reorganization include an
2 inventory of the properties that you bought out of the
3 Tempo Energy bankruptcy estate?

4 A. Yes, sir, the properties at Tempo we'd have an
5 interest in or were operating were included in the
6 bankruptcy assets. And that was, I think, some 28
7 properties either operated, they own parts of, or -- and
8 operated all of, or most of.

9 Q. If you will turn to page 4 of that Exhibit 8,
10 does that appear to be an index for the document?

11 A. Yes.

12 Q. And if you'd look up there for pages -- some
13 entries for page 6 --

14 A. Yes.

15 Q. -- does that -- if you go to page 6, is this a
16 list of wells in which Tempo owns an interest?

17 A. Right, yes, sir.

18 Q. And then if you turn to page 7, does it list
19 wells in Lea County, New Mexico?

20 A. Yes, it does.

21 Q. And among those wells, is the San Simon State
22 Number 6 listed?

23 A. No, sir.

24 Q. If you could go on to page 8, does that show a
25 list of wells operated by Tempo?

1 A. At that time, yes.

2 Q. Yes. And at the bottom of page 8, does that show
3 a list of wells operated by Tempo in Lea County, New
4 Mexico?

5 A. Yes, it does.

6 Q. And again, is the San Simon State Number 6 shown
7 on that list?

8 A. No, it's not.

9 Q. Now, is Exhibit 8 a document maintained by Tempo
10 in the regular course of its business?

11 A. Yes, it is.

12 MR. HALL: At this point, Mr. Chairman, we'd move
13 the admission of Tempo Energy Exhibit 8.

14 MR. BROOKS: No objection.

15 CHAIRMAN FESMIRE: Exhibit 8 is so admitted.

16 Q. (By Mr. Hall) Mr. Pannell, if you would turn
17 back to our exhibit packet, Exhibits 1 through 7 -- and Mr.
18 Chairman, these are duplicates of the Division's exhibit;
19 it is the well-file exhibits.

20 A. Yeah, these look like all the exhibits. I
21 actually answered Mr. Williams' letter originally, and I've
22 even got the original writing on the thing where I did all
23 the research on this myself, wrote them a letter, copied
24 all these documents, sent them to them and noted, you know,
25 all the delineations of signature.

1 And they even had a notarized document they had
2 done this to without any notarization. Normally on a
3 notarized document, to my understanding, you would --
4 someone would have to initial it to --

5 Q. Let me ask you a question about those documents.

6 A. All right.

7 Q. Each of those documents that came from the OCD's
8 well files --

9 A. Yes.

10 Q. -- do each of them show a Hobbs, New Mexico,
11 address?

12 A. Yes, they do.

13 Q. Now to your knowledge, did Tempo ever have a
14 Hobbs address?

15 A. No, we never did. We've never had a Hobbs. We
16 always had a Midland, Texas, address since the early 1980s.

17 Q. Including the time before you became vice
18 president --

19 A. Exactly, yes, sir.

20 Q. -- of Tempo? You know that?

21 A. (Nods)

22 Q. Let's look at Exhibit 7 of our exhibits. That's
23 the C-103. Does that appear to be a plugging plan for the
24 well?

25 A. Yes, it does, actually, and I -- in the course of

1 -- if it's okay if I tell them, this Guy Baber that signed
2 this thing, I called -- I've looked up on the Internet,
3 found his name and number in Hobbs. He's like an 80-year-
4 old man --

5 MR. BROOKS: Mr. Chairman, I would object to the
6 witness testifying as to anything Mr. Baber said to him.

7 THE WITNESS: He said Joe Peterson ought to be --

8 CHAIRMAN FESMIRE: Wait a minute.

9 THE WITNESS: But other than that --

10 MR. HALL: Let me ask the witness a question, Mr.
11 Chairman.

12 CHAIRMAN FESMIRE: Yeah, why don't you rephrase
13 the question.

14 Q. (By Mr. Hall) Mr. Pannell, if you would look at
15 Exhibit 7, was -- to your knowledge, was Guy Baber an
16 authorized agent for Tempo Energy?

17 A. No, he was not, never had heard of him.

18 Q. Do you know -- Isn't Guy Baber associated with
19 Pronghorn?

20 A. I have no idea. I don't know who Pronghorn is,
21 to be honest with you.

22 Q. All right. And if you look back at Exhibits 1
23 through 6, in each of those instances where the documents
24 were signed by Joe D. Peterson, do you know whether at any
25 point in time Joe D. Peterson had authorization to sign any

1 of those documents on behalf of Tempo?

2 A. To my knowledge he did not, no. He had no
3 authorization whatsoever. He wasn't even working for Tempo
4 at that time.

5 Q. All right. Did you investigate whether Joe
6 Peterson was ever authorized to utilize Tempo Energy's
7 bond?

8 A. Yes, I did, I -- to the point that I, you know,
9 asked Mr. Garber and Mr. Douglas, who were officers of
10 Tempo.

11 MR. BROOKS: Again, Mr. Chairman, I'm going to
12 object to his testifying to anything someone told him.

13 CHAIRMAN FESMIRE: Sustained.

14 THE WITNESS: You can call Mr. Garber, he will
15 tell you the same thing.

16 Q. (By Mr. Hall) Mr. Pannell, from your
17 investigation did you conclude that Mr. Peterson was not
18 authorized to --

19 A. I did --

20 Q. -- use the bond?

21 A. -- he had no authorization whatsoever.

22 Q. All right --

23 MR. BROOKS: Okay, I would object on the grounds
24 that if his investigation merely consisted of talking to
25 anyone, then his conclusions based on his objection is

1 simply an indirect way of admitting hearsay.

2 THE WITNESS: I also looked at all the corporate
3 records --

4 CHAIRMAN FESMIRE: Wait a minute. Why don't you
5 go ahead and take the witness on voir dire and establish
6 whether or not --

7 MR. BROOKS: Okay.

8 VOIR DIRE EXAMINATION

9 BY MR. BROOKS:

10 Q. I'm sorry, what was your name?

11 A. Frank Pannell.

12 Q. Mr. -- I should remember that. Mr. Pannell, what
13 did you -- of what did your investigation consist?

14 A. Joe Peterson? I went --

15 Q. Your -- Yeah, your --

16 A. I --

17 Q. -- investigation of Mr. Peterson's authority.

18 A. Okay, I went through the corporate records to see
19 if there had been any corporate authorization for -- I have
20 all the original corporate records for Tempo Energy --

21 Q. Right.

22 A. -- from day one, you know, from when they were
23 first started to when we reorganized, and I went through
24 all the records there to see if he had any authorization
25 legally through the board to do anything, and he did not.

1 Q. Anything else, other than your --

2 A. That's --

3 Q. -- conversations?

4 A. That's it.

5 MR. BROOKS: Again, Mr. Chairman, I would object.
6 These matters could be placed of record, and I think we're
7 doing this by hearsay.

8 CHAIRMAN FESMIRE: Okay, Mr. Brooks, insofar as
9 his knowledge of that authority comes from the corporate
10 records and he is a corporate officer, I'll overrule your
11 objection.

12 MR. BROOKS: Yes, sir.

13 DIRECT EXAMINATION (Resumed)

14 BY MR. HALL:

15 Q. Mr. Pannell, have you thoroughly reviewed the
16 records that Tempo Energy kept in the regular course of
17 business to confirm that they did not contain any evidence
18 of agency or any other authority for Joe Peterson to act on
19 behalf of Tempo Energy?

20 A. Yes, I have.

21 Q. And was there any evidence --

22 A. There was --

23 Q. -- of any such authority?

24 A. -- no evidence whatsoever he had any authority,
25 no.

1 Q. Did you investigate whether Tempo ever received
2 any production proceeds or other benefits from the San
3 Simon State Number 6 well?

4 A. The records we have do not reflect any income
5 whatsoever, no.

6 Q. All right. In fact, do they indicate any --

7 A. Any connection at all, no.

8 Q. -- existence of the San Simon --

9 A. No sir.

10 Q. -- State 6 well at all?

11 A. No, sir.

12 MR. HALL: That concludes my direct of this
13 witness, Mr. Chairman.

14 We'd move the admission of Exhibits 1 through 8.
15 1 through 7 are duplications of the Division's exhibits,
16 the well file.

17 And Exhibit 8 is the bankruptcy plan of
18 reorganization. I believe it's already --

19 CHAIRMAN FESMIRE: Okay. Mr. Brooks, any
20 objection?

21 MR. BROOKS: No objection to the exhibits.

22 CHAIRMAN FESMIRE: Okay, the Exhibits 1 through 8
23 are admitted.

24 Mr. Brooks, did you have a cross of this witness?

25 MR. BROOKS: I do.

CROSS-EXAMINATION

BY MR. BROOKS:

Q. Mr. Pannell, what exactly was your role in the management of Tempo Energy prior to -- when was it, 199- --

A. 1993, I had no management responsibility whatsoever.

Q. So there were other people who were managing --

A. Yes.

Q. -- the business and affairs of --

A. Yes.

Q. -- Tempo Energy on a day-to-day basis?

A. Yes.

Q. Who were those individuals?

A. Tom Garber, and to some extent the -- I tried to say his name a while ago. What was it? Earl Douglas. The two officers of the company.

Q. And you were not a corporate officer --

A. No, I was not.

Q. -- prior to 1993?

A. No, sir.

Q. Mr. Pannell, one of your -- this is merely stated as background and not me testifying, though I'm going to ask you a question about it, but one of your attorneys said something to me at one time to the effect that Mr. Peterson at one time acted as a consultant for Tempo Energy. Do you

1 have knowledge of that?

2 MR. HALL: Object to that. That is direct
3 hearsay. He's going to ask him to respond to an out-of-
4 court statement. Direct hearsay.

5 MR. BROOKS: I asked did he have any knowledge of
6 that.

7 MR. HALL: Of the statement?

8 MR. BROOKS: No, what I'm -- I'll clarify. I
9 meant, did he have any knowledge of Mr. Peterson having
10 been employed as a consultant for Tempo Energy at some
11 point in time.

12 CHAIRMAN FESMIRE: As long as the question is
13 phrased that way, I'll overrule --

14 MR. BROOKS: Okay.

15 CHAIRMAN FESMIRE: -- the objection.

16 Q. (By Mr. Brooks) Then that's the question --

17 A. Okay.

18 Q. -- Mr. Pannell.

19 A. Yes, to my knowledge Joe Peterson was used as a
20 consultant on the well site. He had to call Tom Garber for
21 every decision. He couldn't do anything on his own.

22 Q. Okay, do you --

23 A. I do know that.

24 Q. -- have any knowledge as to the exact time frames
25 within which Mr. Peterson was so employed?

1 A. Vaguely 1982 to '84, '85. And Mr. Garber could
2 probably tell you better than that.

3 MR. BROOKS: Were you aware -- Okay, I think
4 that's all -- as far as I'll ask the witness about that. I
5 believe that's all my questions.

6 CHAIRMAN FESMIRE: Redirect?

7 MR. HALL: No, sir.

8 CHAIRMAN FESMIRE: Commissioner Bailey?

9 EXAMINATION

10 BY COMMISSIONER BAILEY:

11 Q. When you went through the corporate records, did
12 you notice any approved APDs for San Simon wells, other
13 than San Simon Number 6?

14 A. No, ma'am. No, I did not. I can tell you that
15 since I've been associated with Tempo that we've had some
16 letters from OCD about them. And we've written OCD back,
17 and apparently they -- somebody got ahold of -- whoever,
18 Joe Peterson or somebody, got them plugged. But we knew
19 that they were out there, apparently. I did not know about
20 them personally, no.

21 Q. But --

22 A. We got correspondence from the OCD about wells
23 and --

24 Q. About other San Simon wells that were plugged?

25 A. Yes, ma'am.

1 Q. But you have not seen the approved APDs or any
2 of the well reports for those --

3 A. No ma'am.

4 Q. -- particular wells?

5 A. No, every time we get a letter on it, I'd
6 immediately call the Commission and tell them, you know,
7 this is not us. We don't have these, it's not our -- it's
8 just not us, we don't know anything about these wells. And
9 to my knowledge, Tempo had nothing to do with the wells
10 from day one.

11 COMMISSIONER BAILEY: That's all I had.

12 CHAIRMAN FESMIRE: Commissioner Olson?

13 COMMISSIONER OLSON: No questions.

14 THE WITNESS: Is that it?

15 CHAIRMAN FESMIRE: Hang on, let me ask.

16 THE WITNESS: Oh, I'm sorry.

17 EXAMINATION

18 BY CHAIRMAN FESMIRE:

19 Q. Mr. Pannell, this is a -- Exhibit Number 8 --

20 A. Okay.

21 Q. -- the petition in bankruptcy, the disclosure
22 plan --

23 A. Yes, sir.

24 Q. -- it starts out, In re: Tempo Energy --

25 A. Uh-huh.

1 Q. -- but then we get some documents that apparently
2 are from a different bankruptcy that's in re: Joe
3 Peterson --

4 A. Beg pardon?

5 Q. -- Peterson.

6 A. Well, I think that's documented -- Excuse me, go
7 ahead.

8 MR. HALL: Mr. Chairman, I believe you're looking
9 at an exhibit to that title report. That's a separate
10 document.

11 CHAIRMAN FESMIRE: Oh, okay, okay. Okay, that's
12 Exhibit -- Okay, I'm sorry. So Mr. Peterson declared
13 bankruptcy about the same time?

14 MR. HALL: It appears so.

15 THE WITNESS: He -- didn't he declare bankruptcy
16 back in -- When did he declare bankruptcy?

17 CHAIRMAN FESMIRE: Well, it's --

18 MR. HALL: We'll get to that.

19 THE WITNESS: Okay.

20 CHAIRMAN FESMIRE: -- 1991.

21 Q. (By Chairman Fesmire) So if I understand this
22 correctly, Tempo declared bankruptcy, filed a plan of
23 reorganization, that failed and they converted to a
24 liquidation plan; is that --

25 A. Yes, sir.

1 Q. -- is that correct? And that's when you acquired
2 your interest, sometime in 1992?

3 A. Yes, sir. Actually what I did -- if it's
4 relevant or not, I bought out one of the debtors and then
5 got a position in the liquidation and then bought out
6 everyone else.

7 Q. Okay. You used the phrase that Mr. Peterson
8 wasn't working for Tempo at that time. I'm assuming that
9 Mr. Peterson had a pretty significant history of working
10 for Tempo prior to that?

11 A. Prior to 1985, he had sat on most wells for Tom
12 Garber. Tom was an engineer and liked to use, you know,
13 someone he could direct to do, you know, whatever needed to
14 be done on the well. And this Joe Peterson guy, all he was
15 capable of doing, basically, was following someone else's
16 direction at this.

17 Q. Okay, you say all he was capable of doing. Why
18 do you say that?

19 A. Well, when I say that, he's -- he's not the
20 brightest rock on the road.

21 Q. Okay. Do you know when he last worked for Tempo?

22 A. I do not, no, sir. I do know it hasn't been
23 since I've been associated with -- you know, since '85,
24 basically.

25 CHAIRMAN FESMIRE: Okay, I have no other

1 questions.

2 Any redirect from the Commissioners' questions?

3 MR. HALL: That completes our examination of this
4 witness.

5 CHAIRMAN FESMIRE: Okay.

6 MR. BROOKS: One follow-up question, if I may,
7 Mr. Chairman, on Ms. Bailey's question.

8 MR. HALL: I don't object.

9 CHAIRMAN FESMIRE: Okay.

10 FURTHER EXAMINATION

11 BY MR. BROOKS:

12 Q. Ms. Bailey asked you if you had -- if in your
13 examination of the corporate records you had seen any APDs,
14 applications for permits to drill --

15 A. Drill, yes.

16 Q. -- that would have been signed by Mr. Peterson.
17 Did your examination of the corporate records -- did that
18 include applications for permits to drill?

19 A. Yeah, we do -- we have a file for applications to
20 drill, and no, they do not include any signatures by Mr.
21 Peterson.

22 MR. BROOKS: Okay, thank you.

23 MR. HALL: Thank you, Mr. Pannell, you may step
24 down.

25 THE WITNESS: Do you need this?

1 MR. HALL: Just leave those right there, that
2 would be fine.

3 THE WITNESS: Okay.

4 MR. HALL: The next witness we'd like to call,
5 Mr. Chairman, is Tom Garber, and I have his telephone
6 number.

7 CHAIRMAN FESMIRE: Okay. Is he waiting for us?

8 MR. HALL: Yes, sir.

9 CHAIRMAN FESMIRE: That's good. Why don't you go
10 ahead and introduce us?

11 MR. GARBER: Hello.

12 MR. HALL: Mr. Garber, Scott Hall speaking.

13 MR. GARBER: Yes, sir.

14 MR. HALL: I have you on the speaker phone before
15 the New Mexico Oil Conservation Commission --

16 MR. GARBER: Okay.

17 MR. HALL: -- and we will be asking you some
18 questions today, as well as the Commissioners --

19 MR. GARBER: Okay.

20 MR. HALL: First we will have you sworn in by the
21 court reporter.

22 MR. GARBER: Okay.

23 CHAIRMAN FESMIRE: Mr. Garber, would you raise
24 your right hand, please?

25 MR. GARBER: Yes, sir, I have done.

1 (Thereupon, the witness was sworn.)

2 THOMAS B. GARBER (Present by telephone),
3 the witness herein, after having been first duly sworn upon
4 his oath, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Garber, would you state your name for the
8 record, please?

9 A. Thomas B. Garber, G-a-r-b-e-r.

10 Q. Where do you live, Mr. Garber?

11 A. Midland, Texas.

12 Q. How are you employed?

13 A. No, I'm retired.

14 Q. Are you a petroleum engineer?

15 A. Yes, I am. I do some consulting work, but I'm
16 not a full-time employee.

17 Q. All right. Have you previously testified before
18 the Oil Conservation Division or the Oil Conservation
19 Commission in New Mexico?

20 A. Yes, several times.

21 Q. What is your association with Tempo Energy,
22 Incorporated?

23 A. I was formerly president and a partner owner.
24 Mr. Earl Douglas, vice president, and myself were the
25 primary stockholders in the company, and I was the

1 president and chairman, and Mr. Douglas was the vice
2 president.

3 Q. Over what period of time were you associated with
4 Tempo?

5 A. Well, from its inception until the early 1990s,
6 and it was -- I think Tempo was started in the late --
7 early 1980s, or 1981, '2, '3, something, I think. We
8 finally dissolved the company in 1991 or '92.

9 Q. All right. And Mr. Pannell acquired Tempo's
10 assets out of bankruptcy; is that correct?

11 A. That is correct, yes.

12 Q. Are you familiar with Tempo's well operations and
13 ownership interests in New Mexico?

14 A. Very much so. I was involved in every well that
15 was drilled and supervised every well that was drilled as a
16 petroleum engineer.

17 Q. All right. To your knowledge, did Tempo ever own
18 or operate a lease in Section 4 of Township 22 South, Range
19 35 East, in Lea County, known as the San Simon lease?

20 A. No, Tempo had some production just -- we had
21 two -- well, we actually had four wells just south of that
22 area on an ARCO farmout and on a Phillips farmout, but we
23 didn't have anything on the San Simon acreage.

24 Q. All right. Do you have any knowledge of the San
25 Simon lease or the San Simon Number 6 well?

1 A. Well, I didn't until just recently when I was
2 advised -- I had heard some hearsay a while back that Joe
3 Peterson had drilled a well in there on the San Simon, but
4 it was only hearsay information. I didn't know anything
5 about it until I received the information that was
6 forwarded for me to review.

7 Q. Did Tempo Energy ever receive any production
8 proceeds or any other benefits from the San Simon State
9 Number 6 well?

10 A. No, we had no financial interest, no interest of
11 any kind in that well. We didn't pay any of the bills,
12 didn't receive any of the interest. In fact, we had no
13 knowledge of the well until long past when it was drilled.

14 Q. Did Tempo Energy own or operate the San Simon 6
15 Number [sic] well?

16 A. No, we never had an interest, never operated it,
17 never had anything to do with the well.

18 Q. Did Tempo Energy conduct any activity on the San
19 Simon lease?

20 A. No, none whatsoever.

21 Q. Do you know Joe Peterson?

22 A. Yes, I know Joe Peterson. Joe did some work for
23 us as a helper on some wells that we drilled earlier in New
24 Mexico.

25 Q. Was Joe Peterson ever authorized to act as agent

1 for Tempo on the San Simon well?

2 A. No, he was never authorized for an agent -- or
3 for Tempo in any capacity at any time.

4 Q. Was Joe Peterson ever authorized to use Tempo's
5 bond for the San Simon well?

6 A. No, he was never authorized to use Tempo's bond.
7 In fact, we had no knowledge of the fact that apparently he
8 did use our bond.

9 Q. Mr. Garber, I had sent to you earlier a packet of
10 exhibits that I have introduced into evidence at this
11 hearing. Do you have those before you?

12 A. Yes, sir, I do.

13 Q. If you'll look at Exhibits 1 through 6, I'll
14 represent to you that those are copies of the well file for
15 the San Simon State Number 6 well from the Oil Conservation
16 Division's online well file.

17 A. Yes, sir, I have those.

18 Q. Do you see the signature on there by Mr.
19 Peterson?

20 A. Yes, I do.

21 Q. Was Mr. Peterson ever authorized to sign these
22 state forms using Tempo's name?

23 A. No, he was not.

24 Q. Would you turn to Exhibit 7? It is the C-103
25 plugging plan.

1 A. Say again, which one was that?

2 Q. Exhibit Number 7.

3 A. What is it?

4 A. Form C-103, dated 9-24-90.

5 MR. HALL: It's an Oil Conservation Division
6 form. It's marked as Exhibit Number 7 at the bottom.

7 THE WITNESS: When these were duplicated they
8 didn't come out too well where it was marked on the bottom.
9 Which -- what is it exactly?

10 MR. HALL: If you'll look at the date, it's dated
11 September 24, 1990, and it's signed by Guy Baber.

12 THE WITNESS: Oh, yes, I have that. I don't know
13 any Guy Baber.

14 Q. (By Mr. Hall) Was Guy Baber authorized to sign
15 this form on behalf of Tempo Energy, Incorporated?

16 A. Not by Tempo. In fact, we never knew the person,
17 never even heard of him.

18 MR. HALL: All right, I have no further
19 questions, Mr. Chairman.

20 CHAIRMAN FESMIRE: Mr. Garber, at this time
21 you'll be cross-examined by the Commission's attorney, Mr.
22 David Brooks.

23 Mr. Brooks?

24 THE WITNESS: Okay, go ahead.

25 MR. BROOKS: May I approach?

1 CHAIRMAN FESMIRE: You may, sir.

2 CROSS-EXAMINATION

3 BY MR. BROOKS:

4 Q. What was your capacity with Tempo at the time in
5 1987?

6 A. I was -- Tempo was active at that time, and I was
7 president and an engineer.

8 Q. And you mentioned a Mr. Douglas. What was his
9 capacity with Tempo?

10 A. He was the accountant and vice president.

11 Q. There is a statement in a document that has been
12 admitted to evidence in this proceeding that does not
13 relate to this particular well, so I don't want to
14 misrepresent it. It relates to another quarter section in
15 the same section as this well, however. And this statement
16 says -- if I can find it here, just a minute.

17 A. Is that the HNG -- or I mean the V-F Petroleum
18 letter regarding --

19 Q. Yes, sir.

20 A. -- regarding Joe Peterson's use or negotiations
21 with Tempo?

22 Q. Yes, sir, thank you.

23 A. Okay, that is not true, he had no authorization.
24 In fact, we were unaware of that completely, we had no
25 knowledge of that. He had no authorization to make that

1 statement, but apparently he had conceived the idea to use
2 the Tempo bond and to fortify his position. Apparently he
3 told V-F Petroleum that he had the right to --

4 Q. Well --

5 A. -- contract with Tempo.

6 Q. -- the specific statement -- and for some reason
7 I'm not finding the document, but generally in the
8 statement it says that Tempo Energy, Inc., will handle
9 administration and permitting for this well. And did Tempo
10 ever allow Joe Peterson or anyone -- did Tempo ever enter
11 into any agreement with Joe Peterson or with anyone else to
12 do permitting and administration for a well that someone
13 else was operating?

14 A. No, we did not. You know, that's not standard
15 procedure. We were very active ourselves, and we did all
16 of our permitting. We didn't have an address in New
17 Mexico, all of our business was handled out of Midland. We
18 did all of our permitting, filed all of our forms with the
19 Commission and appeared before the Commission when it was
20 necessary ourselves.

21 Q. Okay, the exact statement is, Peterson will
22 contract with Tempo Energy, Inc., for permitting and other
23 administrative purposes. And you're saying that that's not
24 true?

25 A. That's not true, no, sir. No way is that true.

1 Q. Okay, when did you first become aware that that
2 statement had been made?

3 A. When I became aware of this statement?

4 Q. Yes, sir.

5 A. Yesterday when I received the document from Mr.
6 Scott Hall.

7 MR. BROOKS: Okay, thank you. That's all I have.

8 THE WITNESS: Okay.

9 CHAIRMAN FESMIRE: At this time, Mr. Garber, the
10 Commissioners will get a chance to question you.

11 THE WITNESS: Okay.

12 CHAIRMAN FESMIRE: Commissioner Bailey, do you
13 have any questions of this witness?

14 COMMISSIONER BAILEY: No, I don't.

15 CHAIRMAN FESMIRE: Commissioner Olson?

16 COMMISSIONER OLSON: No questions.

17 CHAIRMAN FESMIRE: And Mr. Garber, I have no
18 questions.

19 Mr. Hall, do you have any redirect?

20 MR. HALL: No, Mr. Chairman.

21 CHAIRMAN FESMIRE: Okay. Mr. Garber, thank you
22 very much for your time.

23 THE WITNESS: Do I need to stand by, or shall
24 I -- am I free to go?

25 CHAIRMAN FESMIRE: I think we're done.

1 THE WITNESS: Okay, thank you very much.

2 CHAIRMAN FESMIRE: You bet, sir.

3 THE WITNESS: All right, 'bye.

4 CHAIRMAN FESMIRE: Mr. Hall?

5 MR. HALL: Mr. Chairman, we have one additional
6 witness to call by telephone, Mr. James Brazeal. Here's
7 his phone number for you here. He's not listed on our
8 prehearing statement, but Mr. Brooks and I have agreed that
9 he may be involved.

10 CHAIRMAN FESMIRE: Okay. Counsel Bada, do we --

11 MS. BADA: It's okay.

12 (Off the record)

13 MR. BRAZEAL: Hello?

14 MR. HALL: Mr. Brazeal, can you hear me? This is
15 Scott Hall calling.

16 MR. BRAZEAL: Yes.

17 MR. HALL: Mr. Brazeal, I have you on the speaker
18 phone before the New Mexico Oil Conservation Commission.
19 We'd like to ask you a few questions about a pending matter
20 involving Tempo Energy. First we need to have you sworn.
21 Would you stand by just a moment, please, sir?

22 CHAIRMAN FESMIRE: Mr. Brazeal, are you someplace
23 where you can raise your right hand?

24 MR. BRAZEAL: Yes, I am.

25 CHAIRMAN FESMIRE: Would you do so, please, sir?

1 (Thereupon, the witness was sworn.)

2 JAMES L. BRAZEAL,

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

5 DIRECT EXAMINATION

6 BY MR. HALL:

7 Q. For the record, state your full name.

8 A. James Laurid Brazeal, B-r-a-z-e-a-l.

9 Q. Mr. Brazeal, where do you live?

10 A. 70 Cedar Grove Trail, Van Alstyne, Texas.

11 Q. All right. Mr. Brazeal, were you involved with
12 Capstar Drilling?

13 A. Yes, I was the -- one of the original -- I was
14 the original founder of Capstar Drilling.

15 Q. And did Capstar Drilling operate in eastern --
16 southeastern New Mexico?

17 A. Yes.

18 Q. Did Capstar Drilling drill wells for Tempo
19 Energy, Inc.?

20 A. Yes, we did.

21 Q. Did Capstar Drilling drill wells for Peterson
22 Petroleum Company, Joe Peterson?

23 A. Yes.

24 Q. Are you familiar with the San Simon lease,
25 located in the vicinity of Section 4, Township 22 South,

1 Range 35 East, in Lea County?

2 A. I'm familiar with the name of San Simon. I do
3 not remember the legal description of where it was located.

4 Q. Do you recall drilling a well or a number of
5 wells on a San Simon lease in the 1980s?

6 A. Yes.

7 Q. Who did you drill those wells for?

8 A. I know that I drilled one of them for Peterson
9 Oil and Gas, and I'm not sure exactly what their legal name
10 was.

11 Q. Do you recall specifically the San Simon State
12 Well Number 6?

13 A. I recall that there was a well that I drilled,
14 that Capstar Drilling had a financial interest in and was
15 the drilling contractor. I don't remember the well number,
16 but it was the San Simon.

17 Q. Was Peterson Petroleum Company the operator of
18 that well?

19 A. I'm sorry, I didn't hear that question.

20 Q. Was Peterson Petroleum Company the operator of
21 the San Simon well?

22 A. Yes, it was.

23 MR. HALL: I have no further questions, Mr.
24 Chairman.

25 CHAIRMAN FESMIRE: Mr. Brazeal, at this time

1 you'll be cross-examined by Mr. David Brooks, the attorney
2 for the Oil Conservation Commission -- Division, I'm sorry.

3 MR. BROOKS: May I approach?

4 CHAIRMAN FESMIRE: You may, sir.

5 CROSS-EXAMINATION

6 BY MR. BROOKS:

7 Q. Mr. Brazeal?

8 A. Yes.

9 Q. If I understood your testimony correctly with
10 regard to the well that Capstar had an interest in, you
11 don't remember which well that was specifically?

12 A. No, I do not. It was the San Simon well, and --
13 but I do not remember the well number.

14 Q. And you said there were several San Simon wells,
15 correct?

16 A. Not to my knowledge, no.

17 Q. Oh, you don't know of but one?

18 A. You know, this has happened a number of years
19 ago, and I have not refreshed by looking at any files.

20 I know that there was one that was San Simon
21 wells, which I had the -- I drilled for Peterson Oil, and
22 they agreed that -- we took a financial interest in that
23 well.

24 Q. Okay. Well, I want to clarify your testimony.
25 Was there only one well that you drilled -- only one San

1 Simon well that you drilled for Peterson, or only one that
2 Capstar had an interest in?

3 A. I believe there was only one that I had -- Well,
4 I'm sure there was only one I had an interest in, and I'm
5 not sure whether we drilled additional ones beyond that.

6 Q. And if you -- did you drill any wells in that
7 immediate vicinity for anyone else, that you recall?

8 A. I can't answer that, because I don't know where
9 the -- I don't know the legal description of where the well
10 was located.

11 Q. Okay. Now assuming that the well that you had an
12 interest in was the San Simon Number 6 -- which you don't
13 really remember whether it was or not, correct?

14 A. I don't remember if it was Well Number 6 or not.
15 I know that I had an interest in the San Simon well.

16 Q. Okay, and you don't remember whether it's Number
17 6 or some other number?

18 A. No, I do not remember the number of the well.

19 Q. Okay. And assuming, though, that it was the
20 Number 6, would you have had any knowledge about the
21 filings that may or may not have been made with the Oil
22 Conservation Division with regard to that well?

23 A. I did not see those, except I would have -- being
24 the drilling contractor, I would have seen the drilling
25 permit.

1 Q. But you didn't have anything to do with the
2 filing of the documents with the OCD?

3 A. No, I did not have anything to do with the
4 filing. As the contractor, I was required to have a copy
5 of the actual issued drilling permit.

6 Q. If -- Do you recall seeing that drilling permit
7 specifically?

8 A. Personally, no, but I know that we would -- by
9 law we were required to have it on site at the drill site,
10 and we would have complied with that.

11 Q. Okay. So if Peterson had had a contract with
12 someone else with regard to the way in which those well-
13 permitting documents were filed, you wouldn't have had any
14 knowledge of that, correct?

15 A. No.

16 MR. BROOKS: Thank you. No further questions.

17 CHAIRMAN FESMIRE: Mr. Hall, do you have any
18 redirect?

19 MR. HALL: No, sir.

20 CHAIRMAN FESMIRE: At this time, Mr. Brazeal,
21 we're going to -- the Commissioners get the opportunity to
22 question you.

23 The first will be Commissioner Bailey.

24 COMMISSIONER BAILEY: I have no questions.

25 CHAIRMAN FESMIRE: Commissioner Olson?

EXAMINATION

BY COMMISSIONER OLSON:

Q. Mr. Brazeal, I just have a question. We have an exhibit here that is part of Tempo's evidence in front of us. It's Exhibit Number 3, and it's an inclination report that you had signed for the San Simon State Number 6. And I guess I just noticed that it was on a Railroad Commission of Texas form. Why would you be submitting a report on this to the Railroad Commission in Texas?

A. I don't believe that New Mexico had a form available at the time, and that was the form we used to relay the information.

Q. So you used the Railroad Commission form, but it was submitted to the OCD?

A. That is correct.

COMMISSIONER OLSON: Okay, thank you.

EXAMINATION

BY CHAIRMAN FESMIRE:

Q. Mr. Brazeal, my name is Mark Fesmire. I'm on the Commission also.

Did you do any drilling for Tempo Energy out there at this same time?

A. Over the years I did some drilling for Tempo Energy.

Q. Okay.

1 A. I don't -- when you say at the same time, I don't
2 -- I don't know what the context of that would be.

3 Q. About the same time that the San Simon well was
4 drilled. It would be '87.

5 A. If you were to refresh me as to what -- the date
6 when the San Simon well was drilled, I might be able to
7 better answer that.

8 Q. Okay, I think it was permitted in January of '87,
9 and the completion report was in September of '87. It
10 looks like most of the work was done in August.

11 A. I don't believe at that point in time that we had
12 done any drilling in that year for Tempo Energy. We did
13 some drilling for them in 1984.

14 CHAIRMAN FESMIRE: Okay. I have no further
15 questions.

16 Mr. Hall, do you have any other questions?

17 MR. HALL: No, sir.

18 CHAIRMAN FESMIRE: Mr. Brazeal, thank you very
19 much for your time.

20 THE WITNESS: All right.

21 CHAIRMAN FESMIRE: Appreciate it.

22 THE WITNESS: Thank you.

23 CHAIRMAN FESMIRE: 'Bye.

24 Mr. Hall?

25 MR. HALL: At this point, Mr. Chairman, we would

1 call Jim Bruce to the stand.

2 CHAIRMAN FESMIRE: We're going to get to talk to
3 Mr. Bruce under oath.

4 MR. HALL: Here's your opportunity.

5 (Laughter)

6 CHAIRMAN FESMIRE: Is relevance going to be a
7 factor?

8 (Laughter)

9 (Thereupon, the witness was sworn.)

10 JAMES G. BRUCE,
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 MR. HALL:

15 Q. For the record, state your name.

16 A. James Bruce.

17 Q. Mr. Bruce, where do you live and how are you
18 employed?

19 A. I live in Santa Fe, New Mexico, and I am an
20 attorney.

21 Q. And do you have particular expertise in oil and
22 gas title examination?

23 A. Yes, I've been examining title to real property,
24 oil and gas properties, and writing title opinions since
25 '82 or '83.

1 Q. And would you briefly explain to the Commission
2 the methodology you use to examine title to oil and gas
3 interests?

4 A. Of course in New Mexico you've got three
5 different types of lands -- well, more than that, you've
6 got Indian, federal, state and fee. So when somebody asks
7 me to examine title, one of the first things I do -- or
8 actually the first thing to do is, I either go to check the
9 federal BLM tract books or, more often, I check the Land
10 Office's website, because I get a quick idea of whether the
11 land is federal, state or fee, and then I know where to
12 begin.

13 And of course if it's federal land, you've got to
14 examine both the BLM's records and the county records.
15 Same thing with the state, you have to examine the
16 Commissioner's records and the county records, and if it
17 was fee land you'd only go to the county records.

18 Q. Now is that title examination method accepted and
19 relied on by the oil and gas industry and oil and gas
20 attorneys?

21 A. Yes.

22 Q. And will your testimony be useful to the
23 Commission for purposes of establishing whether Tempo
24 Energy, Incorporated, or Joe Peterson had an ownership
25 interest of record in the acreage that's the subject matter

1 of this proceeding?

2 A. I think it will.

3 Q. Are you also familiar with the Oil Conservation
4 Division's Rules and Regulations?

5 A. Yes.

6 Q. How many years have you been practicing before
7 the Commission and the Division?

8 A. I think my first case was either in late 1982 or
9 early 1983, before the Division.

10 Q. Approximately how many title opinions have you
11 rendered during your career?

12 A. I can't give an exact number. I do know that
13 since I have been a sole practitioner, which was February
14 -- starting February, 1997, I've prepared over 500 title
15 opinions.

16 MR. HALL: All right. At this point, Mr.
17 Chairman, we offer Mr. Bruce and his testimony, both as a
18 fact witness and as an attorney with expertise in oil and
19 gas title examination.

20 CHAIRMAN FESMIRE: Mr. Brooks.

21 MR. BROOKS: I have absolutely no objections to
22 Mr. Bruce's qualifications.

23 CHAIRMAN FESMIRE: As the expert?

24 MR. BROOKS: As an expert.

25 CHAIRMAN FESMIRE: But what about the facts?

1 (Laughter)

2 MR. BROOKS: Well, his knowledge of the facts
3 will have to stand on his own testimony.

4 CHAIRMAN FESMIRE: Mr. Bruce will be so accepted.

5 Q. (By Mr. Hall) Mr. Bruce, did you prepare a title
6 report at my request on the southeast quarter, northeast
7 quarter of Section 4, Township 22 South, Range 35 East in
8 Lea County?

9 A. Yes.

10 Q. And is that title report labeled as Exhibit 9?

11 A. Yes.

12 Q. Would you explain to the Commission the procedure
13 you utilized to generate this report?

14 A. As I said, I first went to -- on this particular
15 one I didn't know what type of land it was -- I first went
16 to the Commissioner's website -- or actually I went to the
17 New Mexico Tech website and connected to the Land Office,
18 and determined that this was a State of New Mexico lease,
19 which was issued in 1977.

20 On or about January 20th, I did go over to the
21 Land Office and went to the records division and looked at
22 the oil and gas tract book and the file for Lease LG4234,
23 which covers all of Section 4, and examined that. That was
24 pretty -- the only documents of record in the Land Office's
25 file, insofar as title is concerned, show that the lease

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1 interest", or "record title ownership"?

2 A. Well, I think there's two meanings, and it
3 depends on whether you're dealing -- who you're dealing
4 with. Certainly with respect to federal leases and state
5 leases, there is such a thing as a record title owner,
6 whether or not that person owns any working interest, or
7 any interest, any other type of interest in the lease.

8 But when the lease is first issued, for instance,
9 I go bid on certain -- for my clients I go bid on state
10 leases at the Land Office monthly lease sales, and if that
11 lease is issued to me, I am the record title owner of that
12 lease, and at that point I own 100 percent of what's called
13 record title, and also 100 percent of the working interest,
14 and I can assign all or any portion of that.

15 Now, insofar as the Land Office and the federal
16 government, they have record title owners who they look to
17 for various purposes. Commonly, especially when you're
18 looking at the county records, a lot of people will say,
19 Well, who's the record title owner, and who owns it of
20 record in the county? And that's a little different from
21 what's meant by the state and federal record title
22 ownership.

23 Q. All right. Based on your examination of title,
24 did you determine whether Tempo Energy, Incorporated, was
25 the owner of an interest of record?

1 A. They owned nothing in the southeast quarter,
2 northeast quarter of Section 4 or, for that matter, in any
3 of Section 4, in either the Land Office records or the Lea
4 County records.

5 Q. Now is any Tempo Energy interest entitled to
6 recognition?

7 A. I don't believe so.

8 Q. All right. Did Joe Peterson or Peterson
9 Petroleum Company appear of record at all?

10 A. Yes, Joe Peterson appeared of record. And let me
11 start by saying, when I looked at the records -- as I said,
12 in the state records there were the well reports that
13 Commissioner Bailey talked about. It used to be common up
14 until 12 or 15 years ago to file -- to see well reports in
15 the Land Office records.

16 But in the Land Office, just looking at title to
17 the oil and gas lease, the only title was the various
18 assignments that vested in EOG Resources, Inc.

19 In the county records -- and just to give you an
20 idea, what I did was, I did not go to the county clerk and
21 check the grantor-grantee indexes. What I did is, I went
22 to Elliott and Waldron Title and Abstract Company in
23 Lovington, and I looked at the tract book index, and also
24 their miscellaneous records. And I started with the
25 beginning of the records and went through -- I did the

1 examination in January. Their books were current as of
2 December 1, 2007. And --

3 CHAIRMAN FESMIRE: 2006?

4 THE WITNESS: That is a typo on that, it should
5 be 2006, that's correct.

6 I went to their tract books. You pull out the
7 tract books, and the company -- and it lists the grantor-
8 grantee recording data, the book and page of the
9 instrument, and then if a specific subdivision is affected,
10 southeast quarter, northeast quarter in this instance, or
11 southwest quarter it lists that -- and I started and I went
12 through the entire time.

13 There wasn't -- there weren't many instruments
14 preceding the mid-1970s, because I don't think there had
15 been much in the way of discovery from this section, and so
16 there were some old oil and gas leases, state oil and gas
17 leases that had been released, and maybe a couple of
18 assignments. But I did start from the beginning just to
19 see -- just to make sure whether Tempo showed up at any
20 point in time in my examination.

21 And I went through -- I actually went through the
22 tract book about three times, because specifically I was
23 looking for the southeast quarter, northeast quarter of
24 Section 4, and I went through all instruments that might --
25 that cover that particular 40 acres. I also went down the

1 grantor-grantee indexes twice to specifically look for Joe
2 Peterson and Peterson Petroleum and Tempo Energy. And one
3 oddity about this is, there is no assignment. Despite this
4 farmout agreement that -- I forget what number Commission
5 exhibit it is --

6 MR. BROOKS: I believe it's 7.

7 THE WITNESS: -- there is no assignment from HNG
8 or its successors to Joe Peterson under that farmout
9 agreement, insofar as I could tell, on any acreage in
10 Section 4.

11 However, there were subsequent assignments, there
12 were these San Simon Well Numbers 1 through 5, and I didn't
13 specifically go through each one. There were assignments
14 from Joe Peterson to various entities, you know, one of
15 them being V-F Petroleum, and a number of other people.

16 But there were never any assignments from either
17 HNG or its successors or Joe Peterson into Tempo Energy on
18 any lands in Section 4.

19 Q. (By Mr. Hall) Let's turn to your title report,
20 Exhibit 9, and if you would refer to the attachment to that
21 Exhibit A, what is that?

22 A. This was an instrument that came out of the tract
23 index at Elliott and Waldron, and it pertained to the
24 bankruptcy of Joe Peterson, and I guess his wife, Beverly
25 Peterson. I don't know if that's specifically stated in

1 here. And this was the only instrument under which Joe
2 Peterson or Peterson Petroleum potentially ever claimed
3 some type of title as to the San Simon State Well Number 6.

4 Q. If you look at the first page of that Exhibit A,
5 does it appear to be an affidavit of the bankruptcy
6 trustee?

7 A. Actually, the first -- I believe the first page
8 of Exhibit A is an affidavit from the Petersons' attorney.
9 And attached to that is the trustee's notice of
10 abandonment, which is the bankruptcy trustee.

11 Q. All right. And in the second page of the
12 bankruptcy trustee's notice it refers to a Schedule A?

13 A. Yes.

14 Q. Schedule A, real property. And as you read that
15 first paragraph it says, Except as directed below, list all
16 real property in which the debtor has any legal, equitable,
17 or future interest.

18 And you turn to the next page, it refers to the
19 SS Number 6. Do you see that?

20 A. Yes.

21 Q. Is there also a reference to the State of New
22 Mexico Oil and Gas Lease Number?

23 A. Yes, LG4234, and then it lists Unit H, which
24 would be the southeast northeast of Section 4 of 22-35.

25 Q. Is it reasonable to conclude that the reference

1 is to the San Simon State Number 6 well?

2 A. That's what I interpret it to mean.

3 Q. Are you generally familiar -- Based on your
4 experience, are you generally familiar with the operation
5 of farmout agreements?

6 A. Yes, generally. I don't draft them much, but I
7 see them all the time.

8 Q. All right. Do you have the OCD's Exhibit 7 right
9 there in front of you?

10 A. Yes, I do.

11 Q. If you turn to -- We're talking about the farmout
12 agreement dated January 16, 1985, now. If you turn to the
13 third page of that, Article VII --

14 A. Yes.

15 Q. -- is that what you call an earning well
16 provision?

17 A. That's how it's generally referred to.

18 Q. Or an earned acreage provision?

19 A. Correct.

20 Q. Briefly explain how those operate.

21 A. Well, generally -- and before I looked at this,
22 I've always interpreted -- the general agreement is that a
23 farmout is an agreement to assign to someone if they do
24 certain acts. And if certain wells are drilled, then
25 acreage, depending on the Division's well spacing, is

1 earned upon either drilling the well -- in this case it had
2 to have been capable of producing in commercial quantities
3 before they would earn it.

4 Q. All right. And based on your examination of
5 documents of record, you saw no indication of an assignment
6 of the 40 acres in the southeast of the northeast of
7 Section 4, pursuant to this particular provision; is that
8 right?

9 A. Correct.

10 Q. Let's turn now to Article XIV, Abandonment.

11 A. Yes.

12 Q. Presuming, if you would, that there were an
13 assignment, how do these provisions work with respect to
14 the retention of liabilities?

15 A. Really, it's subject to the language of whatever
16 the parties agree on, as far as retention of liabilities.
17 And this is actually one of the earlier ones I've seen.
18 Exxon does them all the -- I think most of the larger
19 companies do them all the time now, where if a well is
20 drilled and it's either not productive or it ceases
21 production and the farmor is entitled to a reassignment,
22 the farmor has the option to say no, I don't want it, in
23 case there is some liability, primarily plugging or
24 environmental liability.

25 And here again, if there was abandonment, the

1 farmee had to give notice, and the farmor had the right to
2 take over a well if the well was going to be abandoned.

3 Or secondly under this provision, if the farmee
4 no longer wanted the acreage I think they could tender a
5 reassignment to the farmor, even if no well had been
6 drilled, or -- assuming the acreage had been earned.

7 Q. All right. Would the farmee retain all
8 liabilities until the reassignment of that?

9 A. Until reassignment. This one specifically says
10 at the bottom that -- Where does it say that? They're
11 responsible for all obligations which have accrued under
12 the terms of said lease up to the time of surrender or
13 assignment. So the way I interpreted that was that
14 whenever -- assuming it had been reassigned or surrendered
15 at that point, the farmee would no longer be liable, except
16 for maybe some well costs or something that had accrued
17 beforehand.

18 Q. All right. And again referring back to the first
19 page of the farmout agreement, is the farmee Joe D.
20 Peterson?

21 A. Yes.

22 Q. Mr. Bruce, do you have an opinion whether Tempo
23 Energy, Incorporated, could meet the definition of owner or
24 operator or responsible party within the meaning of the
25 Division's Rules for the San Simon State Well Number 6?

1 A. My opinion is that -- not with respect to the San
2 Simon Number 6.

3 MR. HALL: That concludes my direct examination
4 of Mr. Bruce.

5 CHAIRMAN FESMIRE: Mr. Brooks?

6 CROSS-EXAMINATION

7 BY MR. BROOKS:

8 Q. Good morning, Mr. Bruce. I've waited a long time
9 for this.

10 (Laughter)

11 Q. (By Mr. Brooks) No, actually my father used to
12 have a saying -- and I'm sure it was a quote from somebody,
13 I'm not sure from whom -- but he used to say, Great minds
14 run in the same channel. Have you ever heard that saying?

15 A. No, I haven't.

16 Q. Well, assuming it to be true, would it then --
17 based on that assumption, would it surprise you that your
18 title researches came to the same conclusions as mine?

19 A. I'd be glad to know that.

20 Q. You did not find any assignment from EOG pursuant
21 to this farmout?

22 A. There were -- Correct. There were no assignments
23 either in the Land Office records or in the Lea County
24 records assigning any interest to Joe Peterson or any of --
25 or directly to V-F Petroleum. I noticed you had that other

1 instrument, and --

2 Q. Yeah, that was the next question I was going to
3 ask you. Calling your attention to the instrument that has
4 been marked Exhibits 10 and 11, and it's on the OCD exhibit
5 list, which was the letter from Joe D. Peterson to HNG Oil
6 Company and InterNorth, would it appear from that that
7 actually the person who would have had a right under this
8 farmout agreement as to this quarter quarter section in
9 1987 would be -- would have been V-F Petroleum?

10 A. I did look at that letter, which Mr. Hall faxed
11 to me a day and a half ago, and that's what it would
12 appear. My only caveat on that is, apparently, from what I
13 saw on the other San Simon wells in Section 4, Mr. Peterson
14 always kept -- or usually kept a small interest, and I
15 think that's reflected in this bankruptcy filing, where he
16 had, you know, 10 or 12 or 3 percent of a well.

17 Q. But there actually isn't -- other than the
18 bankruptcy, what was asserted by the bankruptcy trustee,
19 there actually isn't any evidence that Mr. Peterson owned
20 any interest in the particular quarter quarter where this
21 well is located?

22 A. Well, for this 40 acres that's the only
23 instrument I saw whereby any title was transferred, up
24 until about seven or eight years ago when EOG -- I can't
25 remember who they assigned it to, but they assigned some

1 interest in that 40 acres to, like Santa Fe Energy
2 Resources or --

3 Q. But not to Peterson or Tempo?

4 A. Not to Peterson, not to Tempo, and not to V-F
5 Petroleum.

6 Q. Okay. Now you answered a question about the term
7 "operator".

8 Excuse me for the delay. May I approach the
9 witness?

10 CHAIRMAN FESMIRE: You may.

11 Q. (By Mr. Brooks) I'll show you what I will
12 represent to you -- represent as being a page from the OCD
13 Rulebook and call your attention to Section 7.0.(5) --

14 A. Correct.

15 Q. -- of the OCD Rules, and ask you to read that
16 into the record, please.

17 A. It says, Operator shall mean a person who, duly
18 authorized, is in charge of the development of a lease or
19 the operation of a producing property or who is in charge
20 of a facilities operation or management.

21 Q. Okay. Mr. Bruce, it would not be necessary,
22 would it, that an instrument by which a person would be
23 authorized to act on behalf of the owner of a lease or to
24 be in charge of a well or facility on behalf of the owner
25 be filed of record in the county records?

1 A. No, you are correct. I mean, operating
2 agreements and items like that are not always recorded in
3 the county records.

4 Q. And when you said there was no basis for Tempo to
5 be operator of this well, you were limiting that to your
6 examination of county records, correct?

7 A. Yes, I was limiting that to my examination of the
8 county and state records, and also on the basis of Tempo's
9 witnesses here.

10 Q. Okay, so you are not purporting to apply any
11 legal expertise other than specifically the examination of
12 the records in making that conclusion?

13 A. That's correct, and I think what I was looking
14 at, in particular, on this -- and this is before I
15 listened to the witnesses today -- was, the person who duly
16 authorized -- and that gets back to the county records, I
17 couldn't see where in the county records Tempo was duly
18 authorized to conduct these operations. And for instance,
19 there were no powers of attorney in the county records from
20 Tempo to Mr. Peterson or to Mr. Baber.

21 Q. But you will agree with me that those type of
22 documents, insofar as they apply to authorization to
23 conduct operations as opposed to ownership of working
24 interest, would not necessarily be of record?

25 A. That's entirely possible, correct.

1 MR. BROOKS: That's all.

2 CHAIRMAN FESMIRE: Mr. Hall, redirect?

3 MR. HALL: No redirect.

4 CHAIRMAN FESMIRE: Commissioner Bailey?

5 EXAMINATION

6 BY COMMISSIONER BAILEY:

7 Q. In your examination of the State Land Office
8 Lease in question, thank you for putting it in order.

9 (Laughter)

10 Q. It is unusually neat.

11 But did you notice that there were other OCD
12 reports filed for San Simon wells, other than Number 6?

13 A. Yes, I did. I don't remember them specifically,
14 and I didn't take notes on them. But yes, I saw -- They
15 were primarily completion reports on other San Simon wells.

16 Q. Right. Did you notice that the name that was
17 given on most of those papers were for Tempo and signed by
18 Mr. Peterson as consultant?

19 A. I noticed that, and that's why I thought it
20 extremely important to look at the county records, since
21 there was -- other than those completion reports, there was
22 nothing in the Land Office records regarding an ownership
23 by Peterson or Tempo.

24 Q. Right. But because they're absent doesn't mean
25 that there was not a document or an authorization in place,

1 right?

2 A. That is correct, I just haven't seen one.

3 Q. But the other wells that were drilled, the other
4 San Simon wells that were drilled, from your title
5 examination you can't tell if that listing of wells was for
6 full interest or three or five percent like you noted in
7 your earlier testimony? You said it was common practice to
8 assign --

9 A. Oh, I did not do a complete rundown of title. I
10 think if I had looked at all the title in this section, it
11 probably would have cost in excess of \$12,000 or so to look
12 at.

13 But what I did do is, after noting the
14 instruments from the tract books and from the title
15 companies' miscellaneous records, I did look at each
16 instrument to see if there were any instruments in Section
17 4 by which Tempo had acquired an interest. And although I
18 did not go through each instrument, where Peterson did
19 appear to have title, which is on other acreage, like in
20 the San Simon Well Number 2, even though there was no
21 assignment into him, there were various assignments from
22 him to other entities.

23 Q. Okay, so we could make an assumption that of all
24 these other San Simon wells that were completed in the name
25 of Tempo and signed by Mr. Peterson as agent for them were

1 retained by Tempo?

2 A. Tempo didn't have any title whatsoever.

3 Q. That you have found in the records, but there
4 were wells completed in their name, right?

5 A. Well, that, I suppose, gets back to the testimony
6 of Mr. Pannell and the other Tempo witnesses. You know, I
7 did not look at the Division's -- I did look at the
8 Division's file on the San Simon Well Number 6, and I of
9 course saw Tempo's name in there. But I think that
10 question is more directed to Mr. Pannell.

11 COMMISSIONER BAILEY: That's all I have, thank
12 you.

13 CHAIRMAN FESMIRE: Commissioner Olson?

14 COMMISSIONER OLSON: I have no questions.

15 EXAMINATION

16 BY CHAIRMAN FESMIRE:

17 Q. Mr. Bruce, if I understand this chain that you've
18 constructed correctly, Mr. Peterson drilled this well,
19 purportedly on Tempo's behalf, on a lease that he owned, or
20 that he had a farmout on?

21 A. He had a farmout on it, on portions of it.

22 Q. Okay. But the assignment of an interest to
23 Peterson was never made, probably because the well was not
24 considered capable of producing economic quantities?

25 A. Yes, no assignment to Peterson was ever made on

1 the southeast quarter, northeast quarter of Section 4, and
2 I would presume -- it appears that it never produced. I
3 didn't look at the Division's production records.

4 But also, there was never an assignment from HNG
5 to Peterson on the other acreage where there were
6 productive wells drilled. So apparently the only title
7 document is the farmout agreement as amended that Mr.
8 Brooks submitted.

9 Q. Okay. So on the other San Simon wells, you
10 didn't have to look at any of the recorded title on those,
11 did you?

12 A. I looked at it to confirm that Tempo never
13 acquired an interest in any of those wells.

14 Q. Okay. Did Peterson acquire an interest in those
15 wells eventually?

16 A. From what I could tell, he was always deemed the
17 original owner, out of HNG, and then he assigned interests
18 to various people.

19 Q. Okay, but that wasn't the way it worked on the
20 quarter section in question here?

21 A. Other than that bankruptcy filing, that's the
22 only instrument affecting that particular 40 acres under
23 which Mr. Peterson claimed an interest.

24 CHAIRMAN FESMIRE: Mr. Hall, any redirect on the
25 Commissioners' questions?

1 MR. HALL: No, sir.

2 CHAIRMAN FESMIRE: Okay. Mr. Bruce, thank you
3 very much.

4 MR. HALL: That concludes our case, Mr. Chairman.

5 CHAIRMAN FESMIRE: Why don't we -- Would the
6 Commission want to decide in executive session or in
7 open --

8 COMMISSIONER BAILEY: (Nods)

9 CHAIRMAN FESMIRE: -- in executive session.

10 Okay, at this time, assuming there are no closing
11 statements from either party --

12 MR. HALL: Well, I -- very brief --

13 CHAIRMAN FESMIRE: Okay.

14 MR. BROOKS: I would also like to make a very
15 brief one, especially if Mr. Hall does.

16 CHAIRMAN FESMIRE: Okay. Well, I guess you go
17 first, Mr. Brooks.

18 MR. BROOKS: Okay. Well, Mr. Chairman, honorable
19 Commissioners, I don't think I can say much more that will
20 shed any light on this. It seems to be fairly dark.

21 What we have to offer is the paperwork. The
22 title analysis, we believe, is inconclusive because it
23 shows that Peterson had a farmout on this section at some
24 point in time. It also shows that he apparently assigned
25 that farmout to HNG prior to the date this well was -- I

1 mean to V-F Petroleum prior to this date, this well was
2 drilled. There's no evidence that there was ever an
3 assignment to Peterson.

4 There's certainly no evidence that Tempo had
5 title, neither I nor Mr. Bruce has developed any such
6 evidence. It's clear that Tempo's name is on all the OCD
7 documents, and there's a suggestion in the instrument we
8 put in evidence that there was an agreement whereby Tempo
9 acted as operator for administrative purposes. It's just a
10 suggestion, you can take it for whatever it's worth. It's
11 contradicted by Mr. Garber's testimony. I would not want
12 to suggest that Mr. Garber is lying because I operate on
13 the assumption generally people don't do that, but the
14 Commission can come to whatever conclusions it wants to.

15 I would suggest there's a possibility that -- at
16 least one other person was mentioned who was in management
17 with Tempo, and there's always the possibility that that
18 other individual or somebody else with Tempo who wasn't
19 mentioned could have been involved in something with Mr.
20 Peterson that Mr. Garber was unaware of.

21 We're dealing in inferences where we haven't been
22 able to develop direct evidence, but the point is that the
23 Commission's records are what we have to go on, and we've
24 put it all before you and we'll let your Honors make the
25 decision.

1 CHAIRMAN FESMIRE: Thank you, Mr. Brooks.

2 Mr. Hall?

3 MR. HALL: Mr. Chairman, I thought it would be
4 helpful to frame this inquiry within the statutory and
5 regulatory parameters of the Division's plugging and
6 enforcement authority, so I'd like to provide each of you
7 with copies of the Division's Rules, excerpts from the
8 Division's Rules, which I think are applicable, and I have
9 highlighted those. I think they have a significant bearing
10 on the Commission's action today.

11 I think it's important for the Commission to bear
12 in mind its -- the agency's authority, and I believe the
13 relevant statutes are Section 70-2-12.B.(18), which
14 authorizes the agency to do all acts necessary to properly
15 plug dry and abandoned wells. And the Division is also
16 authorized to require financial assurance from operators,
17 individuals conducting activities on wells in the state.

18 You also ought to bear in mind that under Section
19 70-2-12.B.(8), the agency has the specific authority to
20 identify ownership of wells and leases and equipment in
21 this state. From that statutory framework, I think you
22 then look at the implementing regulations that the Division
23 has promulgated over the years to enforce those provisions
24 of the Oil and Gas Act.

25 I think the starting point for our inquiry today

1 is Rule 41 -- that's included within the excerpt -- and
2 that addresses enforceability, and it's directed against
3 any person who conducts any activity to a permit, obliges
4 them to comply with the Division's Rules and Regulations.
5 That would include getting financial assurances, plugging
6 wells that they drill.

7 Now in this particular case I believe, because of
8 the way these regulations are framed, in a plugging case it
9 is the Division's burden to establish who the owner,
10 operator or responsible party is, for purposes of
11 enforcement. And I would submit to you that the Division
12 has failed in this particular case to do so.

13 You might look at the Division's Rules at Rule 7.
14 Again, Mr. Brooks pointed these out. These define operator
15 and owner. There is no evidence that the Division has
16 offered to you today to establish that Tempo Energy, Inc.,
17 meets either of those definitions under Rule 7.

18 Also look at the Division's Rule 101.A, and you
19 should inquire whether Tempo Energy is a person or firm who
20 has drilled or acquired or is drilling or proposes to drill
21 the San Simon Number 6. No evidence to support that at
22 all.

23 Then again, look at the definition of Rule 40.
24 Question is whether that rule would embrace Tempo Energy at
25 all. Rule 40 refers only to operator. The Division is

1 asking you to infer on the basis of what I would say are
2 forged, altered documents, that are disavowed by the Tempo
3 Energy officers, that Tempo Energy is to be an operator. I
4 don't think you can make that assumption. You cannot make
5 that finding on the basis of altered documents.

6 And then again, finally, look at Rule 41,
7 enforceability. Again, it's addressed to any person who
8 conducts any activity pursuant to a permit, administrative
9 order or written authorization or approval from the
10 Division. What is the evidence that the Division has
11 brought to you today to establish that Tempo Energy has
12 done any of those things on the San Simon Well Number 6? I
13 don't think there's any to support it at all.

14 The Division has also failed to establish any
15 evidence at all that there was any power of attorney, other
16 authority for Mr. Peterson to act on Tempo Energy's behalf
17 at all. There's some key testimony you heard today from
18 Mr. Garber. He established for the record, unrefuted, that
19 Peterson did not have that authority.

20 So did Mr. Pannell. In fact, I had Mr. Pannell
21 check Tempo Energy's records. He gave very important
22 testimony based on his review of the corporation's records.
23 He established that those records did not contain any
24 evidence of a power of attorney or any other agency or
25 authority for Joe Peterson to act on Tempo's behalf.

1 That's important, because under the New Mexico
2 Rules of Evidence, absence of the documents are used to
3 prove the non-existence of a matter. And you may rely upon
4 that evidence, absence of documents, to establish that
5 there was no authority. And the rule that allows that in
6 this state is Rule 11.803.H.

7 I think the preponderance of the evidence shows
8 you that Tempo disavowed any ownership, they had no
9 ownership of record, they disavowed authorization of
10 Peterson to act on their behalf. The record does establish
11 that Peterson had an ownership interest of record, at least
12 a colorable claim to title, but not Tempo.

13 It is undisputed by the Division that these well
14 file records were altered by someone at some point, we
15 simply don't know who. And the Division has not come
16 forward with evidence to establish that those alterations
17 were authorized by Tempo Energy.

18 Based on that, we're asking the Commission to
19 deny the Division's Application with respect to Tempo
20 Energy and, by extension, Travelers Indemnity Company.

21 Even if the Commission does that, bear in mind
22 that the Division still has recourse. It make seek to
23 pursue Peterson, Peterson Petroleum Company, to the extent
24 it can. It's possible it may make demand on EOG Resources.
25 They continue to be the lessee of record for this lease and

1 the well. No evidence that any demand was ever made on
2 them or that they were ever contacted about this
3 proceeding.

4 And finally, there is always available to the
5 Division the Reclamation Fund to do the plugging. Based on
6 that, we ask that the Division's Application be denied with
7 respect to Tempo and Travelers.

8 CHAIRMAN FESMIRE: Thank you, gentlemen, very
9 much.

10 At this time the Commission will go into
11 executive session for the sole purpose of determining its
12 decision in this matter. We'll reconvene upon the
13 completion of those deliberations.

14 (Off the record at 11:26 a.m.)

15 (The following proceedings had at 12:42 a.m.)

16 CHAIRMAN FESMIRE: Okay, let's go back on the
17 record. Let the record reflect for the past 20 minutes
18 that the Oil Conservation Commission was meeting in
19 executive session to deliberate on Cause Number 13,711.
20 That was the only item that was discussed during the
21 deliberations. We have now come back into executive
22 session [sic].

23 The Chair would entertain a motion to dismiss
24 Cause Number 13,711 without prejudice, because the
25 Commission basically found the evidence insufficient to

1 draw the necessary conclusions, and the Chair would
2 entertain a motion to dismiss that without prejudice.

3 COMMISSIONER BAILEY: I so move.

4 COMMISSIONER OLSON: Second.

5 CHAIRMAN FESMIRE: All those in favor signify by
6 saying "aye".

7 COMMISSIONER BAILEY: Aye.

8 COMMISSIONER OLSON: Aye.

9 CHAIRMAN FESMIRE: Let the record reflect that
10 the Commission decision was unanimous, and we will direct
11 counsel to draft an order dismissing Cause Number 13,711
12 without prejudice.

13 The Commission would like to know, before they
14 can make this decision, the status of the other San Simon
15 wells, the production from this well and the other San
16 Simon wells, who received the proceeds of that production,
17 the status of any Division orders and who were the
18 beneficiaries of those Division orders, and was there any
19 responsibility or liability on the part of EOG on this
20 matter?

21 And with that, like I said, we'll direct counsel
22 to draft an order to that effect for our signature at the
23 next regularly scheduled Oil Conservation Commission
24 meeting.

25 Is there any other business before the Commission

1 today?

2 (Off the record)

3 CHAIRMAN FESMIRE: With that, the Chair would
4 entertain a motion to adjourn.

5 COMMISSIONER BAILEY: I move we adjourn.

6 COMMISSIONER OLSON: Second.

7 CHAIRMAN FESMIRE: A motion and second have been
8 received to adjourn. All those in favor, signify by saying
9 "Aye."

10 COMMISSIONER BAILEY: Aye.

11 COMMISSIONER OLSON: Aye.

12 CHAIRMAN FESMIRE: Opposed?

13 Let the record reflect that the meeting of the
14 Oil Conservation Commission was adjourned at 11:45 a.m.

15 (Thereupon, these proceedings were concluded at
16 11:45 a.m.)

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CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL March 25th, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010