

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

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

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR A COMPLIANCE)
ORDER AGAINST PRONGHORN MANAGEMENT)
CORPORATION)

CASE NOS. 13,858

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR A COMPLIANCE)
ORDER AGAINST PRONGHORN MANAGEMENT)
CORPORATION)

and 13,859

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

2007 MAR 15 AM 8 12

March 1st, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, March 1st, 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: ERNEST L. PADILLA

* * *

1 WHEREUPON, the following proceedings were had at
2 8:49 a.m.:

3 EXAMINER EZEANYIM: What I would like to do at
4 this point is to call Case Number 13,858 and 13,859 and
5 combine them for the purpose of testimony. Does anybody
6 have any objection to that before I call them?

7 None then.

8 Well, we're going to combine Case Number 13,858
9 and 13,859 for the purpose of testimony.

10 Case Number 13,858 -- these two cases are
11 continued from the February 1, 2007, Examiner Hearing, both
12 of them. And in the case of 13,858, it is the Application
13 of the New Mexico Oil Conservation Division for a
14 compliance order against Pronghorn Management Corporation.

15 Case Number 13,858 is the same thing, Application
16 of the New Mexico Oil Conservation Division for a
17 compliance order against Pronghorn Management Corporation.

18 At this point I call for appearances.

19 MS. MacQUESTEN: Mr. Examiner, Gail MacQuesten
20 with the Oil Conservation Division. I have three
21 witnesses, one will be appearing by telephone.

22 EXAMINER EZEANYIM: Very good. Any other
23 appearances?

24 MR. PADILLA: Yes, Mr. Examiner, my name is
25 Ernest L. Padilla for Pronghorn Management Corporation, and

1 earlier this week we asked for a continuance formally
2 because the principal in Pronghorn Corporation is assisting
3 his mother with medical problems with my client's father.
4 For that reason we ask for a continuance, but we're
5 prepared to go today if necessary.

6 EXAMINER EZEANYIM: Could you repeat your last --
7 What did you say? You're prepared to do it?

8 MR. PADILLA: We're prepared to go today --

9 EXAMINER EZEANYIM: Okay.

10 MR. PADILLA: -- if necessary. I don't have any
11 witness.

12 EXAMINER EZEANYIM: I don't know what the
13 Applicant -- I would prefer that we heard the case today.
14 Is it okay with you if we continue?

15 MS. MacQUESTEN: Well, I spoke to Mr. Padilla
16 yesterday or the day before, and he did mention that there
17 was a problem with his client and his father's -- his
18 client's father's health, but he did not make a formal
19 request for continuance at that time, and I haven't seen
20 anything in writing.

21 EXAMINER EZEANYIM: So Mr. Padilla, if you don't
22 mind, we can hear this case today.

23 MR. PADILLA: That's fine.

24 EXAMINER EZEANYIM: Is that okay with you?

25 MS. MacQUESTEN: Certainly.

1 EXAMINER EZEANYIM: Okay, do you have any opening
2 statements?

3 MS. MacQUESTEN: I do, briefly, please.

4 EXAMINER EZEANYIM: Go ahead.

5 MS. MacQUESTEN: Today we're addressing two
6 separate but related cases.

7 Case 13,858 is an inactive well case that
8 addresses 16 wells operated by Pronghorn that have been
9 inactive for more than 15 months, are not plugged and are
10 not on approved temporary abandonment status. The OCD
11 tried and failed to resolve these inactive well issues
12 through two agreed compliance orders.

13 In this case we are asking for an order requiring
14 the operator to return the wells to compliance by a date
15 certain and authorizing the OCD to plug the wells and
16 forfeit the financial assurance if the operator fails to
17 comply.

18 We have determined not to request a penalty for
19 the operator's failure to comply with Rule 201 as to these
20 16 wells. The operator has already agreed to a penalty
21 under the terms of the agreed compliance order. We will be
22 seeking recovery of a penalty under the terms of the order.

23 Case 13,859 addresses 11 additional wells. The
24 OCD will show that Pronghorn reported these wells as active
25 producers during time periods when the wells were incapable

1 of producing. These wells have also been inactive for more
2 than 15 months and are not plugged or on approved temporary
3 abandonment status.

4 In this case we are asking for an order finding
5 that the operator knowingly and willfully violated statutes
6 and rules on filing reports -- that's Section 70-2-31.B.(2)
7 and Rule 1115.A -- and knowingly and willfully violated
8 Rule 201, the inactive well Rule. We are asking that the
9 order impose penalties for these violations, we are asking
10 that it require the operator to bring these 11 wells into
11 compliance with Rule 201 by a date certain, and authorize
12 the OCD to plug the wells and forfeit the applicable
13 financial assurance if the operator fails to comply.

14 We are also asking that the order require the
15 operator to file corrected reports by a date certain, and
16 require the operator to provide contact information for
17 private lessors that may have been affected by the false
18 report, also by a date certain.

19 We are asking that the order set deadlines for
20 the corrective action required of the operator, so that if
21 the operator does not comply with those deadlines we can
22 seek an order finding the operator in violation of an order
23 requiring corrective action under Rule 40.

24 EXAMINER EZEANYIM: Mr. Padilla?

25 MR. PADILLA: I don't have an opening statement.

1 EXAMINER EZEANYIM: Okay, may the witnesses stand
2 up to be sworn in this case? Have they been sworn yet?

3 MS. MacQUESTEN: No, they haven't, and we do have
4 one witness who will be appearing by telephone. I don't
5 know if you want to --

6 EXAMINER EZEANYIM: Yeah, we may --

7 MS. MacQUESTEN: -- bring him in now or at the
8 time of his testimony.

9 EXAMINER EZEANYIM: I think we will bring him
10 now, swear everybody in, so we can talk to him anytime we
11 want to.

12 MS. MacQUESTEN: Okay. The witness appearing by
13 telephone is Larry "Buddy" Hill. That's his number.

14 (Off the record)

15 MR. HILL: Buddy Hill.

16 EXAMINER EZEANYIM: Hi, Buddy.

17 MR. HILL: Yeah.

18 EXAMINER EZEANYIM: Yeah, this is Richard
19 Ezeanyim, the Hearing Examiner today in Santa Fe. You are
20 one of the witnesses for today's cases. We want you to
21 stand up so that you can be, you know, sworn in for your
22 testimony today.

23 MR. HILL: Say again, please?

24 EXAMINER EZEANYIM: Could you stand up so we can
25 swear you in for your testimony today?

1 MR. HILL: Yes.

2 EXAMINER EZEANYIM: Okay, may all the witnesses
3 stand up to be sworn at the same time?

4 MR. HILL: Are you -- I'm having trouble, you're
5 cutting in and out real bad.

6 EXAMINER EZEANYIM: You are going to be sworn in
7 now, if you are standing up and raising your right hand, we
8 can swear you in.

9 MR. HILL: Okay.

10 COURT REPORTER: Please raise your right hands.
11 Do you swear the testimony you are about to give shall be
12 the truth, the whole truth and nothing but --

13 MR. HILL: Hello?

14 COURT REPORTER: -- the truth, so help you God or
15 do you so affirm?

16 MR. HILL: Hello?

17 EXAMINER EZEANYIM: Yeah, you've been sworn in.
18 You know, the court reporter just swore you in. You
19 couldn't hear -- you couldn't hear the swearing in, but you
20 have been sworn in.

21 MR. BROOKS: I think he should repeat the oath,
22 because --

23 EXAMINER EZEANYIM: Yeah.

24 MR. BROOKS: -- he couldn't hear it --

25 EXAMINER EZEANYIM: He couldn't hear it.

1 MR. BROOKS: -- or respond to it.

2 COURT REPORTER: Mr. Hill, this is Steve Brenner.
3 Can you hear me now?

4 MR. HILL: Yes. It's very staticky, I'm having
5 -- in and out. We have high winds in our area.

6 EXAMINER EZEANYIM: Oh.

7 MR. HILL: Apparently it's affecting the phone
8 service.

9 COURT REPORTER: All right, I will swear you in
10 again, if you can hear me.

11 MR. HILL: Yeah.

12 COURT REPORTER: Let me know if you can't.

13 Do you swear the testimony you are about to give
14 shall be the truth, the whole truth and nothing but the
15 truth, so help you God or do you so affirm?

16 MR. HILL: Yes, I do.

17 COURT REPORTER: Thank you.

18 EXAMINER EZEANYIM: Okay, Gail, you can continue.

19 MS. MacQUESTEN: Mr. Examiner, I've given you an
20 exhibit packet that we'll be referring to today. The cover
21 sheet is an index to help you find the appropriate exhibit
22 during the testimony.

23 Exhibit Number 1 is an affidavit of service in
24 Case 13,858.

25 Exhibit 2 is an affidavit of service in Case

1 13,859.

2 As you will see, we were able to provide actual
3 notice to Pronghorn. We received green cards from both
4 notices. Because the financial assurance in this case is a
5 cash bond, we did not notify the surety.

6 Exhibit 3 is a financial assurance affidavit with
7 a copy of the cash bond.

8 EXAMINER EZEANYIM: I think he's having problem
9 hearing you.

10 MS. MacQUESTEN: We're cut off now.

11 EXAMINER EZEANYIM: Yeah.

12 MS. MacQUESTEN: He won't be able to hear me
13 unless I --

14 EXAMINER EZEANYIM: Okay, he's sworn. Whenever
15 you want him, we'll get him back.

16 MS. MacQUESTEN: Okay.

17 EXAMINER EZEANYIM: Go ahead.

18 MS. MacQUESTEN: Okay. I would call Daniel
19 Sanchez, please.

20 JOSE DANIEL SANCHEZ,
21 the witness herein, after having been first duly sworn upon
22 his oath, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MacQUESTEN:

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

1 A. Daniel Sanchez.

2 Q. And where are you employed?

3 A. With the Oil Conservation Division.

4 Q. What is your title?

5 A. Compliance and enforcement manager.

6 Q. Do your duties include overseeing compliance
7 matters for the OCD and supervising the District Offices?

8 A. Yes, they do.

9 Q. Have you reviewed the well files for the wells at
10 issue in Cases 13,858 and 13,859?

11 A. Yes, I have.

12 Q. Have you reviewed the production reports for
13 those wells and the inspection reports?

14 A. Yes, I have.

15 Q. Would you turn to what has been marked as Exhibit
16 Number 4, please?

17 A. Okay.

18 Q. Can you tell us what this document is?

19 A. This is the total well count for Pronghorn
20 Management Corporation.

21 Q. Does it contain all non-plugged wells for which
22 Pronghorn is the operator?

23 A. Yes, it does.

24 Q. I'd like to ask you about some of the column
25 headings. The first heading on the left says "Property".

1 What does that mean?

2 A. The property number is the general designation
3 for a specific lease.

4 Q. If there's no number in the property column, what
5 does that mean?

6 A. The following wells after that first number are
7 usually within that same lease.

8 Q. All right. There's a column for "Lease Type".
9 What does that show us?

10 A. It shows us whether the lease is a state, private
11 or a federal lease.

12 Q. So for example, let's look at the J.F. Black
13 wells. They're all in property 14,988.

14 A. Okay.

15 Q. And what is the lease type for those wells?

16 A. That's a private.

17 Q. Okay. If you could look at the column second
18 from the right, titled "Last Production/Injection", what
19 does that show us?

20 A. That shows us when each well last produced or was
21 injected into.

22 Q. Again using the J.F. Black wells as an example,
23 that J.F. Black Number 1 well last showed activity in what
24 date?

25 A. March of 2006.

1 Q. And how about the other properties in the J.F.
2 Black lease?

3 A. Anywhere from January of 1984 through December of
4 1993.

5 Q. The well list has been color-coded with some
6 wells in blue and some wells in green. What does the
7 color-coding mean?

8 A. The wells in green are the inactive wells at
9 issue in Case 13,858, and the wells in blue are those at
10 issue in Case 13,859.

11 Q. Looking at the wells that are color-coded blue or
12 green, what district are those wells located in?

13 A. These are in District 1, Hobbs.

14 Q. Now Pronghorn has other wells in other districts.
15 We aren't looking at those today?

16 A. No, not today. Even though we've found similar
17 problems with some of those wells, we'll be looking at
18 those in a different case.

19 Q. So this case is strictly on the Hobbs District
20 wells?

21 A. Yes, it is.

22 Q. Going back to the J.F. Black wells, we show six
23 wells for that property. Now five of those wells haven't
24 reported production in over 15 months; is that what you're
25 saying?

1 A. Yes.

2 Q. And they are part of the inactive well case,
3 they're coded green?

4 A. Yes.

5 Q. There's one coded blue. What are the allegations
6 as to the well coded in blue?

7 A. That one well is currently reporting production,
8 but we are alleging that it's inactive and unable to
9 produce.

10 Q. Let's talk about the green wells first. That's
11 the inactive well case. Have you reviewed the well files
12 and production reports for all the wells coded in green?

13 A. Yes.

14 Q. Are they all currently inactive?

15 A. Yes, they are.

16 Q. And have they all failed to report production or
17 injection for at least 15 months?

18 A. Yes, they have.

19 Q. Are they plugged?

20 A. No.

21 Q. Are they on approved temporary abandonment
22 status?

23 A. No, they're not.

24 Q. Did the OCD enter into any agreed compliance
25 orders as to those inactive wells coded in green?

1 A. Yes, we did.

2 Q. Would you please look at what's marked as Exhibit
3 5? What is this document?

4 A. That's Agreed Compliance Order Number 77.

5 Q. How many wells did it cover?

6 A. Nineteen.

7 Q. Does it cover the 16 wells at issue in Case
8 13,858, the inactive well case here?

9 A. Yes, it does.

10 Q. When was this order executed?

11 A. On July 30th of 2005.

12 Q. Was there a deadline for bringing the wells into
13 compliance?

14 A. May 31st of 2006.

15 Q. What was the schedule?

16 A. Pronghorn agreed to do two wells per month.

17 Q. Did the order impose penalties if the operator
18 failed to meet that deadline?

19 A. Yes, it did. The penalties were going to be
20 \$1000 per well, per month noncompliance.

21 Q. Was Order 77 replaced by another order?

22 A. Yes, it was.

23 Q. Could you turn to what's been marked as Exhibit
24 Number 6?

25 A. Yes, that's Agreed Compliance Order 77-A.

1 Q. When was -- Go ahead.

2 A. That replaced the original Agreed Compliance
3 Order Number 77.

4 Q. Okay. When was this replacement order executed?

5 A. November 15th of 2005.

6 Q. That was just three and a half months after the
7 original order?

8 A. Yes, it was.

9 Q. Why was the original order replaced with this
10 order?

11 A. The operator came to us and he felt he was unable
12 to meet the goals that were set in the original agreement,
13 and the operator wasn't able to address any of the wells
14 during that period.

15 Q. Okay. What is the new deadline set by the
16 replacement order?

17 A. We agreed it would be the same date, May 31st,
18 2006.

19 Q. What changed?

20 A. The schedule on the agreed compliance order. We
21 came to an agreement with the operator that he could do
22 five wells per month, starting in February of 2005.

23 Q. Who suggested this schedule?

24 A. The operator did.

25 Q. Did the new order provide for penalties if its

1 terms were not met?

2 A. Yes. Like the first one, it was per well, per
3 month of noncompliance. But it went up to \$2000.

4 Q. Did the new order contain a provision allowing
5 the operator to seek an amendment to the order if he ran
6 into trouble?

7 A. Yes, it did. Paragraph 9 on page 5 of the order
8 has that provision.

9 Q. When the order expired on May 31st, 2006, how
10 many of the 19 wells covered by the order had been returned
11 to compliance?

12 A. Three of the wells.

13 Q. Did Pronghorn request an amendment to Order 77-A?

14 A. No.

15 Q. After the order expired, did Pronghorn make any
16 representations regarding when it would be able to bring
17 the wells into compliance?

18 A. Yes, they did. The operator called the OCD and
19 followed up with an e-mail dated May 10th of '06 indicating
20 they would be plugging the wells and claiming they could
21 complete the process by September 30th of 2006. Right
22 after that, they submitted an additional plan on August
23 14th of '06. And to date, none of the wells have been
24 addressed.

25 Q. What penalty is due under the terms of this

1 order?

2 A. Approximately \$96,000 if only those months that
3 the ACOI was in effect were taken into account. The
4 penalty would be much greater if we included those months
5 in the time frame leading up to this hearing.

6 Q. Are you asking the Hearing Examiner to impose
7 that penalty in the order today?

8 A. No, we're not.

9 Q. Let's turn to Case 13,859 --

10 EXAMINER EZEANYIM: Excuse me --

11 MS. MacQUESTEN: Sorry.

12 EXAMINER EZEANYIM: -- let me understand what he
13 means. Is this the penalty that they have agreed on or
14 additional -- which penalty --

15 THE WITNESS: This is the penalty that they
16 agreed on in the agreed compliance order.

17 EXAMINER EZEANYIM: Uh-huh. And for what did you
18 say?

19 THE WITNESS: We're not going to -- we're not
20 asking for that penalty to be collected in this hearing,
21 when I'm asking for an order in this hearing collecting
22 that penalty.

23 EXAMINER EZEANYIM: So you are going to address
24 it with other instruments?

25 THE WITNESS: Yes, under the provisions of that

1 agreed compliance order.

2 EXAMINER EZEANYIM: Okay, go ahead.

3 Q. (By Ms. MacQuesten) Let's turn to Case 13,859,
4 the case alleging false reporting of inactive wells as
5 producers. These are the wells that are coded in blue on
6 the well list. Could you turn to what's been marked as
7 Exhibit Number 7?

8 A. Okay.

9 Q. Will you tell us what this is?

10 A. Okay, this is a summary of evidence for the false
11 reporting case.

12 Q. All right. Let's go through the columns so that
13 we understand what this summary shows. The first column
14 identifies the wells how?

15 A. It gives the name of the well and its API number.

16 Q. The next column is "Inspection Comment Summary".
17 What does that show?

18 A. This shows the inspection comments that came out
19 of RBDMS and the various inspections that took place on the
20 well.

21 Q. All right. Is the information listed in this
22 column an exact copy of the information that appears in the
23 inspection reports?

24 A. Yes, it is.

25 Q. Have you compared this summary in Exhibit 7 to

1 the actual inspection reports?

2 A. Yes.

3 Q. And do they match?

4 A. Yes, they do.

5 Q. The dates next to those comments, what do those
6 dates indicate?

7 A. They indicate the date of the inspection.

8 Q. The next two columns are titled "Oil Reports" and
9 "Gas Reports". What do those columns show?

10 A. Those show the dates of production and whether or
11 not it was oil production or gas production.

12 Q. So these are -- filings were made in the months
13 indicated for either oil or gas production?

14 A. Yes, they were.

15 EXAMINER EZEANYIM: What do you say -- filings?
16 Filings of what?

17 THE WITNESS: The operator is required -- is it
18 C-115s? -- on a monthly basis for their production, and
19 these dates are the dates that they did file those
20 production reports.

21 EXAMINER EZEANYIM: If you look at number 1, it
22 says "3/02-3/06". So they were having production within
23 that four- -- three-year period?

24 THE WITNESS: Yes.

25 EXAMINER EZEANYIM: And this was actual

1 production?

2 THE WITNESS: These were -- yeah, supposedly our
3 actual production.

4 EXAMINER EZEANYIM: What do you mean,
5 "supposedly"?

6 THE WITNESS: Well, as we go -- as we go through
7 the case we're going to explain this a little bit more --

8 EXAMINER EZEANYIM: Okay.

9 THE WITNESS: -- carefully, if you don't -- if
10 that's okay with you.

11 EXAMINER EZEANYIM: I'm just -- that said
12 production, so I want to understand.

13 THE WITNESS: Yes, we're going to get into
14 that --

15 EXAMINER EZEANYIM: Yeah.

16 THE WITNESS: -- and we'll get into more depth on
17 the actual reporting.

18 MS. MacQUESTEN: Mr. Examiner, if I may, the
19 allegation in this case is that they were filing production
20 reports, and those production reports were false, that the
21 wells were not capable of producing during the time period
22 they were reporting production.

23 EXAMINER EZEANYIM: Okay, maybe you'll address it
24 later. Let's go ahead.

25 Q. (By Ms. MacQuesten) Now Mr. Sanchez, in the "Oil

1 Reports" and "Gas Reports" columns, are we trying to show
2 every reported production that has ever been filed on these
3 wells?

4 A. No, just for the time period that we're alleging
5 the false production.

6 Q. Are Exhibits 19 through 29 copies of the
7 production reports that this exhibit summarizes?

8 A. Yes, they are.

9 Q. Where do those summaries come from?

10 A. From GO-TECH.

11 Q. And where does GO-TECH get the information about
12 production?

13 A. From the OCD.

14 Q. And tracing back even further, where does the OCD
15 get --

16 A. RBDMS.

17 Q. Who files production reports?

18 A. The operator.

19 Q. Okay. So this is summarizing what the operator
20 told us --

21 A. Yes.

22 Q. -- about the production on these wells?

23 A. That's correct.

24 Q. Okay. Going back to Exhibit Number 7, there's a
25 column marked "Notice", and there are dates under that

1 column. What do those dates indicate?

2 A. Those dates were when notices were sent out to
3 the operator concerning the various inspections and what
4 was found on those inspections.

5 Q. Do those notices specifically address the issues
6 that the wells were inactive or incapable of production?

7 A. Yes, they did.

8 Q. Are Exhibits 30 through 35 copies of the letters
9 that are referenced in the notice column?

10 A. Yes, they are.

11 Q. The last column is "Number of False Reports".
12 What does that number mean?

13 A. This is the number of months of the alleged false
14 reporting for each one of those wells.

15 Q. How was it calculated?

16 A. The number of months were calculated from the
17 time period shown in the "Oil Reports" or "Gas Reports"
18 section from the "Summary of Evidence" sheet. So starting
19 from March, '02, for Fields Number 4, through '03, through
20 March '06 for that same well, there were 48 months that
21 production was actually reported.

22 Q. So in calculating the 48 false reports, you're
23 assuming that the well was not capable of production in
24 March of '02?

25 A. That is correct.

1 Q. And why did you make that assumption?

2 A. From that inspection, the electricity had been
3 turned off to that location, so we're assuming from that
4 point on, and taking into account the various inspections
5 after that, up to December 7th of '06, which continue to
6 show that that site was incapable of producing, we totaled
7 those months.

8 Q. Okay. The column for "Notice" on the Fields
9 Number 4 has one date listed. What does that mean?

10 A. That was the one report that we showed going out
11 to Pronghorn, telling them that that well wasn't producing.

12 Q. And that was dated 9-13 of '02?

13 A. Yes.

14 Q. And a copy of that letter is attached with the
15 other letters in this exhibit packet?

16 A. Yes, it is.

17 Q. Let's look at the raw data that is summarized in
18 Exhibit Number 7. And first, I'd like to look at the well
19 inspection history, and I'd ask you to turn to what has
20 been marked as Exhibit Number 8.

21 A. Okay.

22 Q. Now this is the well inspection history for the
23 Fields Number 4?

24 A. Yes, it is.

25 Q. How was the inspection history prepared?

1 A. The inspection history is compiled from
2 individual inspections performed on that particular well
3 over several years by the various inspectors.

4 Q. Who enters the information in the well inspection
5 history?

6 A. The inspector doing the actual inspection.

7 Q. There's a column marked "Inspected By", and there
8 are various numbers. What do those numbers tell us?

9 A. Those numbers indicate the actual inspector, like
10 Number 102 identifies Larry Hill as the inspector, 114
11 identifies E.L. Gonzales, and 118 identifies Sylvia Dickey
12 as the inspector.

13 Q. When is this inspection information entered?

14 A. At the time of the inspection.

15 Q. What is the purpose of keeping a well inspection
16 history?

17 A. To keep track of compliance issues on a specific
18 well.

19 Q. Is the information in the well inspection history
20 used in preparing letters of violation?

21 A. Yes, it is.

22 Q. In the first column we have a series of dates.
23 What do those dates indicate?

24 A. That shows the date of an inspection.

25 Q. And for each date, or for most of the dates,

1 there is some comment listed, and that's a comment by the
2 inspector?

3 A. Yes.

4 Q. Those dates and those comments are what is
5 summarized on the "Inspection Comment Summary" in Exhibit
6 Number 7?

7 A. Yes, they are.

8 Q. If you look at Exhibits 9 through 18, are those
9 the well inspection histories for the other 10 wells in
10 Case 13,859?

11 A. Yes, they are.

12 Q. So we have the raw data of the inspections that
13 was put into the summary that is Exhibit Number 7?

14 A. Yes.

15 Q. So the Examiner can look and see the histories
16 themselves, as well as review the summary in Exhibit 7?

17 A. That's correct.

18 Q. Let's look at the production reports. If you
19 could turn to what's been marked as Exhibit 19 --

20 A. Okay.

21 Q. -- what is this document?

22 A. It's the production report for the Fields Number
23 4.

24 Q. What years does it cover?

25 A. This one covers 2000 through 2006.

1 Q. Why start with the year 2000? Didn't this well
2 have production before then?

3 A. Yes, but we used this as a common starting point
4 since some of the wells in question go back to the year
5 2000.

6 Q. So we're giving the Examiner only production data
7 from the time period at issue in this case?

8 A. Yes.

9 Q. Running down the page, we have years and months?

10 A. Yes.

11 Q. And across the page, the report shows whether
12 oil, gas or water was produced from the well during those
13 years and months?

14 A. That's correct.

15 Q. So using this well, the Fields Number 4, as an
16 example, what production was reported?

17 A. Okay, oil production was reported for the most --
18 yeah, throughout the whole thing, and that started in 2000,
19 and we have production showing all the way through March of
20 2006 on oil.

21 Q. Okay. Can you tell how much oil was reported
22 produced from this well?

23 A. Yes, it's in barrels.

24 Q. In barrels. And for each month, can you tell
25 what barrel production was?

1 A. Yes, we start where our allegations are in March
2 of '02, all the way through March of '06, only one barrel
3 per month was reported for that time frame.

4 Q. If you looked at Exhibits 20 through 29, are
5 those the production reports for the other 10 wells in this
6 case?

7 A. Yes, they are.

8 Q. If you could turn to Exhibits 30 through 35, what
9 do these exhibits -- what are these exhibits?

10 A. These are the letters to Pronghorn from the OCD
11 informing the operator of the wells indicated in the letter
12 and are inactive and incapable of producing.

13 Q. Are these the letters that are listed in Exhibit
14 7 under the "Notice" column?

15 A. Yes, they are.

16 Q. And that notice letter that we talked about
17 previously for the Fields Number 4, that is one of those
18 exhibits?

19 A. Yes.

20 Q. If we could go back to Exhibit Number 4, that's
21 the well list with the color coding. And Mr. Examiner,
22 we're going to be referring to this exhibit throughout
23 the --

24 EXAMINER EZEANYIM: Yeah.

25 Q. (By Ms. MacQuesten) -- presentation.

1 A. Okay.

2 Q. I'd like to ask you some questions about each
3 property where we have an allegation of false reporting.

4 A. Okay.

5 Q. The first one is Property 15001. That's the
6 Fields Number 4?

7 A. That's correct.

8 Q. Are there any other wells on the property?

9 A. No.

10 Q. What type of lease is this?

11 A. It's a federal lease.

12 Q. All right. Let's go to the next property where
13 we have an allegation of false reporting, and that's
14 property 14,988, the J.F. Black wells.

15 A. Okay.

16 Q. What type of lease is this one?

17 A. That's a private lease.

18 Q. How many wells does Pronghorn operate in this
19 property, total?

20 A. Six.

21 Q. How many are allegedly false-reporting?

22 A. Just one of them.

23 Q. Are any of the other wells active?

24 A. No.

25 Q. What's the most recent activity on the inactive

1 wells?

2 A. December of 1993.

3 Q. So if Pronghorn hadn't reported production from
4 the J.F. Black Number 1, we would see no production for
5 Pronghorn wells on this property at all?

6 A. That's correct.

7 Q. And how much production was being reported from
8 the J.F. Black Number 1 in the past few years?

9 A. One barrel per month.

10 Q. Let's move to the next property with an
11 allegation of false reporting. That's 14,997, the Marshall
12 wells. How many wells does Pronghorn operate in the
13 Marshall property, total?

14 A. Total, we have six wells.

15 Q. Okay, and what type of lease is this?

16 A. Federal.

17 Q. How many of the Marshall wells are we alleging
18 false reporting on?

19 A. Just one.

20 Q. Which well is that?

21 A. That's the Marshall Number 7.

22 Q. The blue well?

23 A. Yes.

24 Q. What is it reporting?

25 A. One barrel per month.

1 Q. How many of the Marshall wells are covered by our
2 inactive well case?

3 A. Three of them.

4 Q. Those are those green wells?

5 A. The green wells, yes.

6 Q. What's the most recent production activity on
7 those wells?

8 A. April of 1998.

9 Q. Okay, that leaves two wells unaccounted for that
10 aren't color-coded.

11 A. That's correct.

12 Q. Let me ask you about the Marshall Number 2. Why
13 isn't that part of our case today?

14 A. Marshall Number 2 is a service well.

15 Q. And so it's not reporting any --

16 A. -- production, no, it's not.

17 Q. How about the Marshall Number 6? Why isn't that
18 part of our case?

19 A. This was inadvertently left out of this case, and
20 we'll have to pick it up in another one.

21 Q. Okay. So there's only one well on the Marshall
22 property reporting production, and that's the Marshall
23 Number 7?

24 A. Yes.

25 Q. And that's the one that is part of our contention

1 of false reporting?

2 A. Yes, it is.

3 Q. So if Pronghorn hadn't reported production from
4 the Marshall Number 7, the lessor would think there'd be no
5 production since 1998, right?

6 A. That's correct.

7 Q. The next property is Number 14,987, the New
8 Mexico BZ State NCT 5 well. What type of lease is this?

9 A. This one is a state lease.

10 Q. How many wells on the property?

11 A. There's five.

12 Q. How many do you contend are falsely reporting
13 production?

14 A. Two of them.

15 Q. And those are the blue wells??

16 A. The blue wells again, yes.

17 Q. How much are those two blue wells producing?

18 A. One barrel per month on each of them.

19 Q. And there's one well on this property that's part
20 of our inactive well case. That's the BZ State NCT 5
21 Number --

22 A. -- Number 4.

23 Q. -- Number 4?

24 A. Yes.

25 Q. The green well?

1 A. Uh-huh.

2 Q. When did that last produce?

3 A. In June of 1986.

4 Q. Okay. Now it looks like all the wells in this
5 property are color-coded except for one, the Number 5 well.
6 What's the most recent reporting date for this well?

7 A. That was July of 2006.

8 Q. And how much is it reporting?

9 A. This one was actually reporting three barrels in
10 July and 420 MCF of gas.

11 Q. So it doesn't follow the pattern of one barrel a
12 month?

13 A. No, it doesn't.

14 Q. And this is not part of our case, either as an
15 inactive well or as a false-reporting well?

16 A. No, it's not.

17 Q. All right. Let's go to the next property, it's
18 Number 14,998, the New Mexico DL State wells. What type of
19 lease is this?

20 A. It's a state lease.

21 Q. How many wells does Pronghorn operate on this
22 lease?

23 A. Seven.

24 Q. How many do you contend are falsely reporting?

25 A. Two.

1 Q. What is their recent reporting history?

2 A. Each is reporting one barrel per month.

3 Q. Are all the other wells on this property part of
4 the inactive well case?

5 A. Yes, they are.

6 Q. So the OCD is alleging that no wells from this
7 property are actually reporting?

8 A. That's true.

9 Q. Okay, the next property is Number 14,985, the New
10 Mexico EF State wells. What type of lease is this?

11 A. It's a state lease.

12 Q. How many wells does Pronghorn operate on the
13 lease?

14 A. Two.

15 Q. How many do you contend are falsely reporting?

16 A. One.

17 Q. What is its recent reporting history?

18 A. One barrel per month.

19 Q. Is the other well part of our inactive well case?

20 A. Yes, it is.

21 Q. Let's go to the next property, Number 14,984, and
22 this is just one well on this property; is that right?

23 A. Yes, and it's a state lease.

24 Q. And the name of the well is the State C Number 1?

25 A. Yes.

1 Q. And do you allege that this well is falsely
2 reporting?

3 A. Yes.

4 Q. What is its recent reporting history?

5 A. One barrel per month.

6 Q. All right. The last property is Number 15,000.
7 This is also a single well?

8 A. Single well, state lease.

9 Q. And this is the State HL Number 1?

10 A. Yes, it is.

11 Q. Are you alleging that it is falsely reporting?

12 A. Yes, we are. It's also reporting one barrel per
13 month.

14 Q. All right. So to summarize, we have eight
15 properties in which there is no production, but the
16 operator is reporting production on one or two wells,
17 usually at a barrel a month?

18 A. That's true.

19 Q. And there's one property, the New Mexico BZ State
20 NCT Number 5, where the OCD is seeing some production on
21 one well but alleges that the others are not producing and
22 contends that two of them are, in fact, falsely reporting
23 production?

24 A. That's correct.

25 Q. If an operator is reporting production, would the

1 operator be responsible for taxes and royalties on that
2 production?

3 A. Yes, they would.

4 Q. Why is it an issue for the OCD if an operator
5 wants to report production that isn't there?

6 A. Well, reporting false production would give the
7 OCD an inaccurate inactive well count, it would allow the
8 operator to escape Rule 201 and 40 and any applicable
9 orders it may have against it, and it would allow the
10 operator to maintain its lease under false pretenses.

11 Q. You told us about two agreed compliance orders,
12 an original order, Number 77, and a replacement order,
13 77-A. Did Pronghorn attempt to include the wells coded in
14 blue in those orders?

15 A. No, they led us to believe that they were
16 operational.

17 Q. Could you turn to what's been marked as Exhibit
18 36?

19 A. Okay.

20 Q. Can you identify this document?

21 A. This is a notice of violation that was sent out
22 on October 23rd of 2006.

23 Q. Did you review and approve the issuance of this
24 notice of violation?

25 A. Yes, I did.

1 Q. What violations does it allege?

2 A. It alleges the false reporting and a violation of
3 the inactive well rule, Rule 201.

4 Q. Does it refer to the 11 wells that are the
5 subject of the false reporting case today?

6 A. Yes, it does.

7 Q. Did the notice of violation propose a way to
8 resolve these violations?

9 A. Yes, it did.

10 Q. What did it suggest?

11 A. For one, there was a penalty of \$22,000, which
12 was calculated by \$1000 for each well for false reports and
13 \$1000 for each well for violating the inactive well rule,
14 and we were asking for corrective action.

15 Q. What would that corrective action be? It's not
16 spelled out in the NOV, but what were you hoping to
17 accomplish?

18 A. For Pronghorn to re-file correct reporting,
19 reports, return the wells to compliance, and provide the
20 contact information for the private lessor.

21 Q. Was the OCD able to resolve these compliance
22 issues through an agreed compliance order?

23 A. No.

24 Q. Did Pronghorn ever file corrected production
25 reports for these wells?

1 A. No.

2 Q. Has Pronghorn even filed any reports since July
3 of '06?

4 A. No, they haven't.

5 Q. Would you turn to what's been marked as Exhibit
6 Number 37?

7 A. Okay.

8 Q. Can you tell us what this exhibit is?

9 A. This is a cancellation of our authority to
10 transport from or inject into wells operated by Pronghorn,
11 and this was issued on February 15th of 2007.

12 Q. Why was this cancellation issued?

13 A. For violating Rule 1115.C, reporting
14 requirements.

15 Q. So that was because they weren't -- they had
16 stopped filing reports at all?

17 A. That's true.

18 Q. What are you asking for from the Examiner in Case
19 13,859? This is the false reporting case.

20 A. What we are asking for is a penalty of \$72,000.
21 And that was calculated -- it's \$1000 for each month of the
22 false reporting, for the well with the most months of false
23 reporting, which is the J.F. Black Number 1. We could have
24 asked for it on a monthly basis for each well, for each
25 month, but that would have come up to \$607,000, so we

1 decided to go with the \$72,000.

2 EXAMINER EZEANYIM: Please back up. I need to
3 understand what's going on. Go back to Exhibit Number 37,
4 "Cancellation of Authority to Transport".

5 THE WITNESS: Okay.

6 EXAMINER EZEANYIM: Is this for all the wells
7 operated by Pronghorn?

8 THE WITNESS: Yes, it is.

9 EXAMINER EZEANYIM: In the State of New Mexico?

10 THE WITNESS: Yes, it is.

11 EXAMINER EZEANYIM: Okay. So as of February
12 15th, they are supposed to stop transporting anything --

13 THE WITNESS: Yes.

14 EXAMINER EZEANYIM: Okay. Now go back to your
15 penalty. It says what -- Can you explain your penalty?

16 THE WITNESS: Okay, if you can go to Exhibit
17 Number 7 --

18 EXAMINER EZEANYIM: Just a moment, let me get --
19 Okay.

20 THE WITNESS: -- and under the number of false
21 reports --

22 EXAMINER EZEANYIM: Okay.

23 THE WITNESS: -- if we were to impose a fine of
24 \$1000 per false report --

25 EXAMINER EZEANYIM: And this is 13,859?

1 THE WITNESS: Yes. If we would have imposed a
2 fine of \$1000 for each false report for each well alleged
3 in this case, that would have come up to \$607,000. What we
4 went with was the well with the most false reporting
5 months, which was the 72, and that's where we're coming up
6 with \$72,000.

7 EXAMINER EZEANYIM: Why is that?

8 THE WITNESS: \$1000 per each one --

9 EXAMINER EZEANYIM: Yeah, but why? I mean, how
10 do you come up with \$72,000?

11 THE WITNESS: Well, it was that we were going to
12 impose a fine of \$1000 for each false report. There were
13 72 false reports on the J.F. Black Number 1.

14 EXAMINER EZEANYIM: Okay.

15 THE WITNESS: We're also --

16 MS. MacQUESTEN: In other words, Mr. Examiner, 72
17 C-115s were filed with false information.

18 EXAMINER EZEANYIM: Okay, okay.

19 MS. MacQUESTEN: Some of them were for multiple
20 wells, some of them for one well, and we just did \$1000 for
21 each false report filed, whether it covered one well or all
22 11 wells.

23 EXAMINER EZEANYIM: Okay.

24 THE WITNESS: Okay, we're also asking that the
25 filings be corrected by Pronghorn, that Pronghorn identify

1 the private lessor so that they can be notified, and that
2 all these wells be brought back into compliance with Rule
3 201 by a date certain.

4 Q. (By Ms. MacQuesten) Mr. Sanchez, because this
5 case combines an allegation of false reporting and an
6 allegation that these wells are in violation of Rule 201
7 because they're actually inactive, let me ask you just a
8 few questions on Rule 201. These 11 wells at issue in Case
9 13,859 have been inactive for a period in excess of 15
10 months?

11 A. That's right.

12 Q. Are they plugged?

13 A. No.

14 Q. Are they on approved temporary abandonment
15 status?

16 A. No.

17 MS. MACQUESTEN: Those are all my questions for
18 Mr. Sanchez.

19 EXAMINATION

20 BY EXAMINER EZEANYIM:

21 Q. Okay. While we're here -- I have a lot of
22 questions I can ask you, but let me...

23 You want the false reports to be corrected. What
24 are you looking for? It's false reports here, it's been
25 false. What are you looking for, for it to be corrected?

1 A. Well, if the allegations are true, then each one
2 of those reports has to be redone to show zero production.

3 EXAMINER EZEANYIM: Okay, do you have any
4 questions?

5 EXAMINATION

6 BY MR. BROOKS:

7 Q. Yeah, the purpose of that would be to -- so that
8 the OCD's production reporting database would speak the
9 truth, correct?

10 A. That's correct.

11 MR. BROOKS: That's all that I have.

12 FURTHER EXAMINATION

13 BY EXAMINER EZEANYIM:

14 Q. Okay, yeah. Okay, as you know, we're dealing
15 with two cases, 13,858, 13,859. Let me see. So we are
16 demonstrating here that all the 16 plus 11 wells -- I think
17 16 wells in 13,858 and 11 wells in 13,859 -- all belong to
18 Pronghorn Management Corporation?

19 A. Yes.

20 Q. And I know maybe I -- I thought you may have --
21 There are some allegations of knowing and willful
22 violation. Could you explain that to me again? It's a
23 knowing and willful violation, I think, in both cases.

24 MS. MacQUESTEN: Mr. Examiner, if I may --
25 because that's a legal question, if I could address it --

1 we need to show a violation as knowing and willful in order
2 to ask for penalties. We're only asking for penalties in
3 the false reporting case.

4 EXAMINER EZEANYIM: Okay.

5 MS. MacQUESTEN: As to the false reporting case,
6 what we are alleging is that Pronghorn knew that these
7 wells were incapable of production --

8 EXAMINER EZEANYIM: Yeah.

9 MS. MacQUESTEN: -- but reported production on
10 them falsely in order to avoid having the wells show up as
11 inactive in OCD records. This was to avoid enforcement of
12 Rule 201, enforcement of Rule 40, and/or problems with the
13 lessors, because the people who leased these properties to
14 Pronghorn would have read those reports and thought that
15 the wells -- that they had productive wells.

16 EXAMINER EZEANYIM: Okay, I'll reserve my
17 comments.

18 Okay, Mr. Padilla, do you have any questions for
19 the witness?

20 MR. PADILLA: Yes, I have a few.

21 CROSS-EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Sanchez, do you have -- Is the Division
24 seeking to cancel oil and gas leases?

25 A. No.

1 Q. Why would you be interested in knowing who the
2 lessors under the oil and gas leases are?

3 A. We feel that they should be informed about the
4 false reporting.

5 Q. Is there some obligation on the part of the OCD
6 to do that?

7 A. Not that I'm aware of.

8 Q. It's not any rules?

9 A. Not that I'm aware of.

10 Q. Do you know of any statutory authority that would
11 require the OCD to notify the lessors under the oil and gas
12 leases?

13 A. No, I don't.

14 Q. Mr. Sanchez, let me direct your attention to
15 Exhibit 36, and let me further direct your attention to the
16 fifth paragraph that starts out with, Pronghorn knowingly
17 and willfully violated NMS 1978, Section 70-2-31.B. Do you
18 know what that statute says?

19 A. Not right offhand. I'd have to look at the
20 statute.

21 Q. Doesn't that statute call for assessment of
22 criminal penalties?

23 A. Subject to check, I agree with that.

24 Q. You would?

25 A. Subject to check, yes, I would agree to that.

1 Q. Does the OCD have authority to impose criminal
2 penalties?

3 A. Not that I'm aware of.

4 Q. You would agree with me that making false reports
5 falls under Section 70-2-31.B, right?

6 A. I would agree -- what?

7 Q. That --

8 A. -- it would be a criminal penalty?

9 Q. -- making false reports falls under that statute,
10 70-2-31.B?

11 A. Subject to check, yes, I agree with that.

12 Q. Now in that same statute you have OCD Rule 1115.
13 Does that rule -- Well, let me ask it this way: Does OCD
14 Rule -- is OCD Rule 1115 authorized or follow Section
15 70-2-31.B?

16 A. I'd have to --

17 MS. MacQUESTEN: Mr. Examiner, I object. He's
18 asking questions that call for a legal conclusion. I'd be
19 happy to address the legal questions, either in closing
20 argument or through a brief.

21 MR. PADILLA: If he knows.

22 EXAMINER EZEANYIM: No --

23 MR. PADILLA: I'm not asking for a legal
24 interpretation.

25 EXAMINER EZEANYIM: Yeah, let me -- Why are you

1 asking the question?

2 MR. PADILLA: Because he wrote this letter that
3 says -- cites this rule, and he cites the statute.

4 MR. BROOKS: Well, I believe these are legal
5 issues. I would be inclined to advise the Examiner to
6 sustain the objection.

7 EXAMINER EZEANYIM: Okay, according to advice of
8 counsel I will sustain the objection.

9 Q. (By Mr. Padilla) Mr. Sanchez, you testified on
10 Exhibit Number 7 -- or, I'm sorry, the Exhibit showing
11 wells' production, I think they start with Exhibit 19 and
12 they go on through, I believe, Exhibit 29 -- and you
13 testified that -- as I understood your testimony, that you
14 got this information from GO-TECH?

15 A. Yes, sir.

16 Q. Who's GO-TECH?

17 A. GO-TECH is out of New Mexico Tech. They gather
18 this type of information, and it's available to the public,
19 to operators, to the State.

20 Q. Does the information contained in these exhibits
21 come from actual OCD records?

22 A. Yes, it does. I believe -- They gather it from
23 different methods. I guess State Land Office, I believe --
24 I don't know if they do or not. But yeah, the OCD does
25 provide much of this information.

1 Q. So are you telling me you're not sure where this
2 information really comes from?

3 A. No, I'm sure that it comes from the OCD records,
4 and I assume that they gather some of this information from
5 other sources, is what I'm saying.

6 Q. Do you have any OCD records as part of your
7 exhibits, other than your letters of violation, your
8 notices of violation and the compilations you have made?
9 But I'm asking, are any of these production records
10 compiled from OCD records?

11 A. Yes, they're compiled from production reports
12 provided by the operator.

13 Q. Do you have production reports here today showing
14 this production?

15 A. No.

16 Q. Let me ask you about the agreed compliance
17 orders. How do you go about enforcing an agreed compliance
18 order?

19 A. Well, when the agreed compliance order is written
20 it's an agreement by the operator and the OCD to accomplish
21 certain things. The OCD gives the operator the leeway to
22 choose the number of wells that it can handle in a six-
23 month period.

24 The ACOs are for a two-year period, on a six-
25 month rolling basis, but the operator himself determines

1 how many wells he can bring back into compliance under 201,
2 and depending on his performance during that initial six-
3 month period, then the following six months, they are
4 either granted or not granted.

5 There are penalties built into that which take
6 into account whether or not the number of wells that the
7 operator agreed to were completed. Those penalties, if any
8 penalties, do arise from that. They can be waived, and
9 there's provision in an ACO that allows the operator to
10 come in with sufficient evidence showing why they were
11 unable to meet that, and we can waive those penalties and
12 agree to an additional six months.

13 Q. Okay. If an operator breaches an agreed
14 compliance order, how does the OCD enforce that breach?

15 A. We've issued a letter, you know, stating the
16 violation or the inability for that operator to meet the
17 agreement and restating the actual ACO agreements. We
18 issue fines that way, and -- see how I can put this.
19 They're issued administratively.

20 Q. Do you -- does the OCD, if you know, consider an
21 agreed compliance order a contract between the Oil
22 Conservation Division and the operator?

23 A. Yes.

24 Q. And the OCD, as I understand your testimony, then
25 enforces that contract administratively?

1 A. Yes.

2 Q. Do you know whether the OCD has ever gone to
3 court to enforce an agreed compliance order between the Oil
4 Conservation Division and an operator?

5 A. No, we haven't, as far as -- well, since I've
6 been here, for the last two and a half years.

7 MR. PADILLA: Those are all the questions I have.

8 EXAMINER EZEANYIM: Thank you, Mr. Padilla.

9 Ms. MacQuesten, do you have anything else for...

10 REDIRECT EXAMINATION

11 BY MS. MacQUESTEN:

12 Q. Mr. Sanchez, is the OCD the agency responsible
13 for collecting production data on wells in New Mexico,
14 through our production reports?

15 A. Yes.

16 Q. And are those production reports used by other
17 agencies such as the State Land Office and the Tax and Rev
18 Department?

19 A. Yes, they are.

20 Q. And do lessors look to production on wells to
21 determine whether the terms of their leases are being
22 followed?

23 A. I believe they do.

24 Q. The agreed compliance order process, is that
25 something that the OCD has started using in the past few

1 years?

2 A. Yes, it is.

3 Q. Could you take a look at Exhibit 6, which is that
4 Amended Agreed Compliance Order 77-A?

5 A. Okay.

6 Q. And if you could turn to page 6 of that order --

7 A. Okay.

8 Q. -- if you could look at numbered paragraph
9 11.(e) --

10 A. Okay.

11 MR. BROOKS: Which exhibit number?

12 THE WITNESS: Six.

13 MS. MacQUESTEN: Six.

14 EXAMINER EZEANYIM: 11.(e).

15 Q. (By Ms. MacQuesten) -- by signing the order,
16 does the operator expressly waive any right to a hearing or
17 to an appeal from the order?

18 A. Yes, he does.

19 Q. And if you could look at the next subparagraph,
20 (f), does it provide that the order may be enforced by
21 suit?

22 A. Yes, it does.

23 Q. The same way an order issued by the Examiner
24 could be enforced?

25 A. Yes.

1 Q. So if an operator fails to pay penalties that
2 he's agreed to under this order, can we go straight to
3 district court?

4 A. Yes, we can.

5 Q. And if the Hearing Examiner imposed penalties in
6 a case and the operator fails to pay those penalties, is
7 the next step to go to district court?

8 A. Yes, it is.

9 Q. So this agreed compliance order is similar to an
10 enforceable order issued by an Examiner and is enforced in
11 the same manner?

12 A. Yes, it is.

13 MS. MacQUESTEN: That's all I have at this time.

14 EXAMINER EZEANYIM: Redirect?

15 MR. PADILLA: Let me ask one question.

16 RE-CROSS-EXAMINATION

17 BY MR. PADILLA:

18 Q. Mr. Sanchez, you were asked to look at paragraph
19 11.(e) of the Exhibit 6. That doesn't say that the
20 operator waives any remedies other than going to hearing
21 before the OCD, right?

22 A. That's right.

23 Q. By this order, you're not trying to preclude
24 somebody from seeking another remedy against the Oil
25 Conservation Division, should he choose to do so?

1 A. That's my understanding.

2 MR. PADILLA: All right. Nothing further.

3 MS. MacQUESTEN: If I could ask one more
4 question?

5 EXAMINER EZEANYIM: Okay, go ahead.

6 FURTHER EXAMINATION

7 BY MS. MacQUESTEN:

8 Q. Mr. Sanchez, back with Exhibit Number 6 there's
9 one more paragraph I'd like you to look at, and that's the
10 11.(g), and if you could read that to us?

11 A. "By signing this Order, Operator expressly agrees
12 that if it fails to pay penalties assessed pursuant to this
13 Order, upon application by the OCD the district court may
14 enter judgment against Operator in the amount of the
15 penalties assessed and the district court may, in its
16 discretion, impose additional penalties against the
17 Operator for violating the payment terms of this Order."

18 MS. MacQUESTEN: Thank you.

19 MR. PADILLA: One more?

20 FURTHER EXAMINATION

21 BY MR. PADILLA:

22 Q. Mr. Sanchez, does paragraph 11.(g) -- well, is
23 that paragraph 11.(g) based on Section 70-2-31.B?

24 A. I don't know.

25 MR. PADILLA: Nothing further.

1 EXAMINER EZEANYIM: Ms. MacQuesten?

2 MS. MacQUESTEN: Mr. Examiner, Mr. Padilla raised
3 a question regarding the data that comes from GO-TECH. We
4 have someone present in the examination room today who
5 could address that issue. He is not listed as a witness,
6 but if you do have questions about the validity of data on
7 GO-TECH and whether it comes from OCD records, we do have
8 someone available who can testify as to that.

9 EXAMINER EZEANYIM: Do you have any objection to
10 that?

11 MR. PADILLA: It's not my call to call -- I've
12 raised the question.

13 If Ms. MacQuesten wants to bring that witness, I
14 have no problem.

15 EXAMINER EZEANYIM: So okay, that -- I would like
16 to hear -- I would like to hear. Is he ready to say
17 something now?

18 MS. MacQUESTEN: Yes, thank you, I'd like to call
19 Mr. David Bradshaw, and he has not been sworn in as a
20 witness.

21 MR. BROOKS: Well, is this witness -- Are you
22 through with this witness?

23 EXAMINER EZEANYIM: Yeah, yeah.

24 MR. BROOKS: Oh, I didn't know if you had further
25 questions.

1 EXAMINER EZEANYIM: I might comment about, but
2 let him go, I want to --

3 MR. BROOKS: Just wanted to make sure we don't
4 have two witnesses on the stand at the same time.

5 EXAMINER EZEANYIM: Yeah, this witness may be
6 excused.

7 David, would you stand up to be sworn?

8 (Thereupon, the witness was sworn.)

9 DAVID BRADSHAW,

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

12 DIRECT EXAMINATION

13 BY MS. MacQUESTEN:

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

15 A. David Bradshaw.

16 Q. And where do you work?

17 A. The Oil Conservation Division.

18 Q. What is your title?

19 A. Management analyst.

20 Q. Do your duties include enforcing our production
21 reporting requirements?

22 A. Yes, they do.

23 Q. Are you familiar with the production reports that
24 are filed by operators?

25 A. Yes, I am.

1 Q. Are you familiar with the various -- how that
2 data that is provided by operators is placed into OCD
3 records?

4 A. Intimately.

5 Q. Are you familiar with the GO-TECH site?

6 A. Yes, I am.

7 Q. Are you familiar with how information gets into
8 the GO-TECH site?

9 A. Yes, I am.

10 Q. Could you please trace for us how production data
11 gets to GO-TECH?

12 A. An operator electronically submits their C-115
13 production report, their production statistics, to us. It
14 is compiled in an OCD database, and an extract of that
15 database is sent monthly to the folks that manage the GO-
16 TECH site.

17 Q. Is the production data -- Did you pull these
18 production reports that Mr. Sanchez testified about?

19 A. Yes, I did.

20 Q. And you pulled these from the GO-TECH site?

21 A. Yes, I did.

22 Q. Is the data that appears in these GO-TECH
23 production reports data that comes from the reports filed
24 by operators to OCD?

25 A. Yes, it matches exactly. I've actually done

1 analysis of a test file from the GO-TECH site where the GO-
2 TECH people did an extract from their system, it was sent
3 to us to test and validate the accuracy of that data, and
4 so I did -- I did some analysis to confirm that their data
5 matches our data exactly.

6 Q. Now, the GO-TECH site presents the data in a
7 format that allows us to look at production of oil, gas and
8 water for each month of production; is that right?

9 A. Correct.

10 Q. And that was what these documents were pulled to
11 show?

12 A. Right. Their site actually does a little bit
13 better job of presenting production history by API, by
14 specific well.

15 It would be a little more cumbersome with the
16 existing OCD reports to look at that history.

17 Q. So the information is the same, whether you go to
18 the OCD records or the GO-TECH records, but the GO-TECH
19 records present it in a manner that allows us to see month
20 by month?

21 A. Exactly.

22 MS. MacQUESTEN: Okay, thank you. Those are all
23 the questions I have for Mr. Bradshaw.

24 EXAMINER EZEANYIM: Mr. Padilla?

25 MR. PADILLA: I have a couple

CROSS-EXAMINATION

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BY MR. PADILLA:

Q. Mr. Bradshaw, why didn't you just use the OCD data?

A. Well, to be literal, I ran the report that was requested of me by the attorney.

Q. And did the attorney say use the GO-TECH data?

A. Yes, she did.

Q. And --

A. Well, she asked me to run the GO-TECH report, she didn't say the GO-TECH data.

Q. But you could have run the information from the OCD records, right?

A. Correct. The volume of paper and just the presentation of that would have been tremendous, though, as opposed to the neat summary that the GO-TECH site presents.

Q. Now did you compare the data from the OCD records and the GO-TECH data pertaining to these exact wells or the information here?

A. No, I did not.

Q. You just did a test on some other production, right?

A. A general test to validate that their statistics, generically, match our statistics.

Q. But as far as the production data that is

1 presented here today, you didn't verify --

2 A. No --

3 Q. -- whether that was --

4 A. -- no, I did -- I did no validation of that
5 specific data to our site, correct.

6 MR. PADILLA: Okay, that's all I have.

7 EXAMINER EZEANYIM: Okay.

8 MR. BROOKS: Do you want to go first?

9 EXAMINER EZEANYIM: Yeah, I want to first and
10 follow what he was asking.

11 EXAMINATION

12 BY EXAMINER EZEANYIM:

13 Q. Mr. Bradshaw, I think why the OCD gives this
14 information to the GO-TECH is because they present it in a
15 very readable manner. That's why I think you decide to --
16 of course, they get the information from OCD. There is no
17 -- Is there any other source of data pertaining to this
18 well that GO-TECH gets from any other source? They get all
19 this information from OCD?

20 A. As Mr. Sanchez testified, there may be some
21 supplemental data that they add as they report information
22 on a well, but the production statistics specifically come
23 from our data.

24 EXAMINER EZEANYIM: Okay, that's all I had. Go
25 ahead.

EXAMINATION

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BY MR. BROOKS:

Q. Okay, my question was just basically the same. The data is flowed -- is the data flowed electronically from our database -- in other words, it's the same computer database?

A. I'm not aware of the actual data transfer process. My knowledge is that an extract file is produced on a monthly basis by the bureau chief of the automation and records bureau and provided -- it's just a regular, routine data dump each month that feeds their system so that it's in sync with our system.

Q. So it's fed directly to them electronically?

A. That's my belief.

MR. BROOKS: Okay, thank you.

EXAMINER EZEANYIM: Gail?

MS. MacQUESTEN: Thank you, I have no other questions.

MR. PADILLA: I have one more based on your question.

FURTHER EXAMINATION

BY MR. PADILLA:

Q. You said that's your belief, is that what you said?

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

1 I'm not intimately aware of that transfer process, so I
2 can't speak any -- to any more -- of more detail than that.
3 But I mean in terms of the source of the data, it comes
4 directly from us to them.

5 MR. PADILLA: All right.

6 EXAMINER EZEANYIM: All right.

7 MS. MacQUESTEN: Mr. Examiner, the next witness
8 we would call is Mr. Larry Hill. He is the witness from
9 the Hobbs District.

10 EXAMINER EZEANYIM: Okay. Can we take about five
11 minutes' break so we can get Larry on the phone, and then
12 come back?

13 (Thereupon, a recess was taken at 10:00 a.m.)

14 (The following proceedings had at 10:33 a.m.)

15 EXAMINER EZEANYIM: Now we go on the record for
16 the case we've been addressing, Case Number 13,858, 13,859,
17 and resume testimony in that case. And I think, Ms.
18 MacQuesten, if I'm correct, we're trying to get Buddy Hill
19 on the line?

20 MS. MacQUESTEN: Yes, Mr. Examiner, and we tried
21 several numbers and we think we've found the best one,
22 although it's not perfect.

23 EXAMINER EZEANYIM: Okay, what is that? Is that
24 cell phone?

25 MS. MacQUESTEN: He's asked us to call him on the

1 land line but at a different extension.

2 EXAMINER EZEANYIM: Okay.

3 MS. MacQUESTEN: And I can give that to you.

4 It's -- this number, but extension 120. And I would also
5 ask you if it would be possible for me to sit up at the
6 witness table so that I can be closer to the microphone for
7 the --

8 EXAMINER EZEANYIM: Yes.

9 MS. MacQUESTEN: -- the phone?

10 EXAMINER EZEANYIM: Yeah, you could, that way --
11 want to hear -- that's fine.

12 MR. HILL: Hello?

13 EXAMINER EZEANYIM: Hi, Mr. Hill, can you hear us
14 now?

15 MR. HILL: Just a second.

16 EXAMINER EZEANYIM: You could?

17 MR. HILL: Just a minute. Okay.

18 EXAMINER EZEANYIM: Okay, can you hear me?

19 MR. HILL: Yeah.

20 EXAMINER EZEANYIM: All right, this is Richard
21 Ezeanyim, the Hearing Examiner. And your attorney, Ms.
22 MacQuesten, is going to be directing the questions.

23 MR. HILL: All right.

24 MS. MacQUESTEN: Mr. Hill, can you hear me?

25 MR. HILL: Barely.

1 MS. MacQUESTEN: Okay, I'm going to move the
2 microphone a little closer, and if -- Can you hear me now?

3 MR. HILL: There's still a lot of static and it's
4 buzzing in and out, I --

5 EXAMINER EZEANYIM: Talking very close.

6 MS. MacQUESTEN: Well, we'll have to do the best
7 we can.

8 MR. HILL: All right.

9 MS. MacQUESTEN: If at any time you can't hear
10 the question --

11 MR. HILL: All right.

12 MS. MacQUESTEN: -- please tell me so I can
13 repeat it for you.

14 MR. HILL: All right?

15 MS. MacQUESTEN: All right.

16 LARRY WAYNE HILL (Present by telephone),
17 the witness herein, having been previously duly sworn upon
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MacQUESTEN:

21 Q. Please state your name for the record.

22 A. Larry Wayne Hill.

23 Q. Do you commonly go by the name Buddy?

24 A. Yes, I do.

25 Q. And where do you work?

1 A. I work in the OCD office in Hobbs, District 1.

2 Q. What is your title?

3 A. I am a compliance officer, advanced.

4 Q. How long have you been with the OCD?

5 A. A little over 15 1/2 years.

6 Q. How many years have you worked in the oilfield
7 all together?

8 A. Over 30.

9 Q. Do your duties with the OCD include physically
10 inspecting wells to determine if they are in compliance
11 with OCD Rules?

12 A. Yes, ma'am.

13 Q. Have you inspected the wells operated by
14 Pronghorn Management Corporation in District 1?

15 A. Yes, I have.

16 Q. Prior to joining the OCD, did you have any
17 involvement with the wells now operated by Pronghorn
18 Management Corp.?

19 A. I was a contract pumper on the J.F. Black lease.

20 Q. When was that?

21 A. From the late 1980s to about the early part of
22 1991, I believe.

23 Q. Was Pronghorn Management Corporation the operator
24 during any part of that time?

25 A. He was the last of the operators there, when I

1 was there.

2 MS. MacQUESTEN: Okay. Mr. Examiner, I would
3 tender Mr. Hill as a practical oilman.

4 EXAMINER EZEANYIM: Mr. Hill is so qualified.

5 Q. (By Ms. MacQuesten) Mr. Hill, I'd like to ask
6 you some questions about the well inspection histories for
7 the 11 wells that the OCD alleges are falsely reporting
8 production. Would you please turn to what has been marked
9 as Exhibit Number 8?

10 A. Yes.

11 Q. Is this a well inspection history for one of
12 Pronghorn's wells?

13 A. Yes, it is.

14 Q. Now up on the top it gives a well name and
15 number, and the only thing there is the word "Fields", so
16 it doesn't have the full name of the well, but it does have
17 on the left-hand side an API number; is that right?

18 A. Yes, it is.

19 Q. Have you checked to see which well that API
20 number matches?

21 A. Yes, ma'am.

22 Q. And so what is the well covered by this
23 inspection history?

24 A. It is the Fields Number 4.

25 Q. Okay. When was this inspection history

1 generated?

2 A. January 22nd, 2007.

3 Q. All right. And Mr. Sanchez already described a
4 little bit about these well inspection histories, so I'm
5 going to skip over that part and just ask you, the
6 different -- there are a number of dates listed on the
7 left-hand side. Are those the dates that inspections took
8 place on this well?

9 A. Yes, ma'am.

10 Q. And is the most recent inspection on top and the
11 oldest inspection on the bottom?

12 A. Yes, it is.

13 Q. Let's look at that oldest inspection. What is
14 the date for the oldest inspection on this well?

15 A. March the 8th, 2002.

16 Q. Does that mean that this well wasn't inspected
17 before 2002?

18 A. No, ma'am. This is the oldest record in RBDMS
19 that appeared. Prior to that time it could have been
20 inspected many times, prior to RBDMS, or previous
21 inspections could have been lost during our RBDMS updates.
22 We did lose quite a bit of data several times prior to
23 that.

24 Q. Okay. Well, let's work with what we have on the
25 well inspection history, then. Let's look at that

1 inspection that happened on 3-8 of 2002. Could you read
2 the comments from that inspection?

3 A. Well has not produced in a long time. Electric
4 turned off.

5 Q. Would this well be capable of producing without
6 electricity?

7 A. Without electricity probably not, but it just
8 says that the electricity was turned off at the time of
9 inspection --

10 Q. Okay, so --

11 A. -- and other reasons to believe that it has not
12 produced in a long time.

13 Q. Oh, well, what are those other reasons?

14 A. It could have been that -- no activity, no polish
15 rod could have been discolored from extended exposure
16 without being operated, without moving. Any of these could
17 have -- I couldn't really say what he seen or did not see,
18 but there are many indications that the well is not active,
19 other than just electricity.

20 Q. Okay. Well, let's look at some of the other
21 inspections. Let's go up to the next one, the one on 9-3
22 of 2002, and what were the comments in that inspection?

23 A. Well has not produced in a long time (no belts on
24 motor), operator contact OCD regarding future use of well,
25 60 days.

1 Q. Okay. Now the comment, no belts on motor --
2 would this well have been able to produce if it had no
3 belts on the motor?

4 A. Very unlikely. Most stripper wells will not
5 produce without a pump action, other than possibly a small
6 amount of gas.

7 Q. Okay. The comment, Operator contact OCD
8 regarding future use of well, what does that mean?

9 A. It meant that he intended to send a letter of
10 violation to the operator asking him -- giving him 60 days
11 to respond to the inactive well.

12 Q. All right. Let's go up to the next inspection,
13 8-22 of 2003. Now in the "Inspected By" column it has
14 number 102. Does that indicate that you were the inspector
15 on this inspection?

16 A. Yes, ma'am.

17 Q. So every time we see a 102, that is an inspection
18 that you did personally?

19 A. Yes, it is.

20 Q. All right, and what was the comment on this
21 inspection?

22 A. Simply, idle well.

23 Q. Okay. And going up to the next inspection on 3-8
24 of 2004, what were the comments there?

25 A. Idle well (Rule 201), no belts on pumping unit.

1 Q. All right. And if we could just -- if you could
2 summarize what the other inspection reports say for this
3 well, coming up to the most recent one?

4 A. All right. On 9-1-2005, it shows that the motor
5 has been removed also from the pumping unit.

6 12-7 of '05, we have a comment showing that a
7 notice of intent to P&A the well from the feds has been
8 received, federal -- BLM.

9 5-18-2006, routine periodic inspection by myself.
10 It says, Pumping unit has been removed, and there's no
11 longer a pumping unit on location.

12 December 7, 2006, you have no comment, and that
13 was Sylvia Dickey, Inspector 118.

14 Q. In your opinion, was this well producing at any
15 time between March 8, 2002, to the present?

16 A. No, ma'am.

17 Q. Why do you say that?

18 A. Apparently Mr. Gonzales seen it this way, and
19 there's no activity at the well and no activity at the
20 battery. We seen no indication that they were operating
21 anything in this field at that time. This well was -- had
22 not been moved or turned or anything, they weren't checking
23 the well, there wasn't any indication or...

24 Q. Is it possible that this well could have been
25 swabbed to produce small amounts of oil?

1 A. No, ma'am.

2 Q. Why not?

3 A. It has rods and pump in the hole. There's no way
4 to swab with this equipment in the hole.

5 Q. Okay, let's turn to the next well inspection
6 history, which is Exhibit Number 9.

7 A. All right.

8 Q. Which well does this well inspection history
9 apply to?

10 A. This applies to the J.F. Black lease, Well Number
11 1.

12 Q. All right. Is this lease the lease that you
13 worked on before you came to work for the OCD?

14 A. Yes, ma'am.

15 Q. Could you tell us a little bit about the
16 condition of the lease when you worked on it?

17 A. It was -- basically only had one well operating
18 from production and one for disposal, and it was operated
19 only a small portion of the time. That's the reason I left
20 -- one of the reasons I left this lease is, someone else
21 was adjusting my equipment, and this well did not produce
22 enough gas to operate the separator or heater treater, and
23 it takes quite a long time to build up enough to operate
24 the vessels for production. And someone kept switching
25 valves and making a big mess, so there's only -- actually

1 two wells had a serviceable flow line. You open the wrong
2 valve, everything went -- you lost all your gas vessels and
3 fluids on the ground, and got tired of spending my day
4 cleaning up someone else's --

5 Q. Okay. Let's take a look at what the OCD
6 inspection history shows for this well, and let's start
7 with the oldest inspection for this well, 3-7 of 2000.
8 What was the well's condition at that time?

9 A. It's shut in, off electric.

10 Q. Okay. And can you summarize what the condition
11 of the well was from that time forward?

12 A. Basically it shows signs that there was no
13 electricity to the unit. My experience with this well in
14 about a three-year period shows that this well did not
15 produce anything unless the pumping unit ran, unless it was
16 on pump, and it shows basically that this well has no
17 electricity to run the pump from that period.

18 Q. When you say no electricity on this lease, do you
19 mean that the electricity was shut off, or that there
20 wasn't electricity available?

21 A. At the well site there's a fuse system coming off
22 the main line to the control panel that runs the motor, and
23 the pole fuses were down, which at least one unit, one fuse
24 down, causes the well to single-phase. If the motor runs
25 at all, it would only run for a short time before it burns

1 everything up, because it was running a three-phase motor
2 on two-phase electricity, and it will not operate.

3 Q. In your opinion, was the J.F. Black Number 1
4 producing from 3-7-2000, to current?

5 A. No, ma'am.

6 Q. Why do you say that?

7 A. I show that in -- 9-21 of '06, that they had
8 repaired the fuses at the well. But John Baber told me at
9 that time, during that time frame, and asked for my help to
10 come show him what would need to be done to put this well
11 -- to get the fluid to go to the tanks from that well that
12 -- that everything was eat up, and he couldn't figure out
13 how to get this to go -- to put it back on production. And
14 I've never seen the turned on after that either.

15 Q. Okay. Let's go to the next well inspection
16 history, it's Exhibit Number 10.

17 A. Yes.

18 Q. What is the well covered by this inspection
19 history?

20 A. This is the Marshall Number 7.

21 Q. And what is the oldest inspection showing on this
22 report?

23 A. It shows March 8th, 2002.

24 Q. Okay, could you summarize the condition of this
25 well from March 8, 2002, to current?

1 A. Apparently the electricity was turned off when
2 Mr. Gonzales was there at that time. Never seen anything
3 in that field operating. Well was off HOA switch, and
4 basically it was not producing at any time we had an
5 inspection or showed any sign of activity in the area.

6 Q. In your opinion, was this well producing after
7 March 8 of 2002?

8 A. No, ma'am.

9 Q. Why not?

10 A. After -- I show that -- no pumping unit,
11 September, 2005.

12 Q. How about before 2005, though? Was it producing
13 then?

14 A. No, ma'am.

15 Q. Why not?

16 A. Pardon?

17 Q. Why don't you think it was producing before 2005?

18 A. I think no activity at the battery. Battery
19 conditions showed that there had been no one there
20 operating anything, plus the well was off on electric,
21 there's no meter, gas meter. There's no reason to believe
22 that they could have produced their -- without --
23 electricity without turning into -- using the unit. No
24 indication at the well, either by belts or electric, that
25 the motor had been run at any time that we could see --

1 that I've seen personally, anyway.

2 Q. All right, let's move to Exhibit Number 11.

3 A. Okay.

4 Q. Which well does this well inspection history
5 cover?

6 A. This is the New Mexico BZ State NCT 5 Well Number
7 1.

8 Q. And what is the oldest inspection on this
9 history?

10 A. It shows September 13th, 2000.

11 Q. What was the well's condition at that time?

12 A. At that time there was no motor on the pumping
13 unit, the well was shut in and disconnected from the flow
14 line.

15 Q. Can you summarize what the condition of the well
16 was from that time to present?

17 A. Nothing changed during that time. It was shut
18 in, disconnected, the flow lines open to the air, no
19 activity.

20 Q. In your opinion, did this well produce after 9-13
21 of 2000?

22 A. No, ma'am.

23 Q. Let's turn to Exhibit Number 12. Which well does
24 this well inspection history apply to?

25 A. This is also the New Mexico BZ State NCT 5 Well

1 Number 2.

2 Q. And what is the oldest inspection on this
3 history?

4 A. 9-13-2000.

5 Q. What was the well's condition at that time?

6 A. The well was shut in with no activity.

7 Q. Can you summarize the condition of the well from
8 that time forward?

9 A. As of March 9th, 2004, I show that the flow line
10 was open to the air. Inspection, I don't -- is not as
11 noted, but there's no changes at this well since that time.

12 Q. In your opinion, was this well producing after
13 9-13 of 2000?

14 A. No, ma'am.

15 Q. Let's turn to Exhibit Number 13. Which well does
16 this well inspection history relate to?

17 A. This is the New Mexico BZ State NCT 5 Well Number
18 3.

19 Q. And what is the oldest inspection report on this
20 history?

21 A. 9-13 of 2000.

22 Q. What was the well's condition at that time?

23 A. There's no pumping unit.

24 Q. Can you summarize the well's condition from that
25 time forward?

1 A. From that time forward there was no changes.
2 Flow line was parted, there was no activity, flow line open
3 to the air at the well and also parted in the road about
4 halfway between the well and the old battery site.

5 Q. In your opinion, was this well producing after
6 9-13 of 2000?

7 A. Pardon?

8 Q. In your opinion, was this well producing after
9 9-13 of 2000?

10 EXAMINER EZEANYIM: We're losing him again.

11 Q. (By Ms. MacQuesten) Are we losing you?

12 A. It's in and out.

13 Q. Okay, I'm sorry.

14 A. Okay.

15 Q. Could this well -- In your opinion, was this well
16 producing after 9-13 of 2000?

17 A. No, ma'am, it was not.

18 Q. Let's turn to Exhibit Number 14. Which well does
19 this inspection report relate to?

20 A. This is the New Mexico DL State Well Number 1.

21 Q. And what is the earliest inspection on this
22 history?

23 A. This shows 3- -- March 8, 2002.

24 Q. What was the well's condition at that time?

25 A. At that time it shows the well has not produced

1 in a long, electric is turned off.

2 Q. Can you summarize the well's condition from that
3 inspection date to the present?

4 A. There was never any indication that the well had
5 been operated after that. The electricity was off upon our
6 inspection, flow lines closed, and never seen any
7 indication that the well was or could have been produced
8 after that time.

9 Q. All right, let's turn to Exhibit 15.

10 A. Yes.

11 Q. What is the oldest inspection on this history?

12 A. Also March 8th, 2002.

13 Q. And which well is this one?

14 A. This is New Mexico DL State Number 2.

15 Q. All right. What was its condition back in March
16 8th of 2002?

17 A. The well had not produced in a long time,
18 electric turned off.

19 Q. Can you summarize the well's condition from that
20 time forward?

21 A. Showed no pumping unit from then till 2004. We
22 have no inspection, but in 2004 the pumping unit was also
23 removed from the location, no indication that it had ever
24 been on the well after that.

25 Q. In your opinion, was this well producing after

1 March 8 of 2002?

2 A. No, ma'am, it was not.

3 Q. Why do you say that?

4 A. No activity, no pumping unit, rods and pump still
5 in the hole, they could not swab it. They also had no gas
6 meter at the battery for gas sales, no activity on the
7 lease that we could find.

8 Q. All right. Let's turn to Exhibit Number 16.

9 A. Yes, ma'am.

10 Q. Which well does this inspection history apply to?

11 A. New Mexico EF State Number 1.

12 Q. What is the oldest inspection in this history?

13 A. This is 9-13 of 2000.

14 Q. What was the well's condition at that time?

15 A. At that time, no pumping unit, no well sign, and
16 it was disconnected.

17 Q. Could you summarize this well's condition from
18 that time forward?

19 A. No indication of change of any kind. The well
20 has been idle and shut in, disconnected, no activity.

21 Q. All right. In your opinion, was this well
22 producing after 9-13 of 2000?

23 A. No, ma'am.

24 Q. Let's turn to Exhibit 17. Which well does this
25 well inspection history apply to?

1 A. This is the State C Number 1.

2 Q. What is the oldest inspection for this well?

3 A. June 28th, 2000.

4 Q. Now what was its condition at that time?

5 A. It showed to be in good shape with no activity.

6 Q. Okay. Can you summarize the condition of the
7 well from that time forward?

8 A. Still showed to be shut in, no activity from that
9 time forward. This well is a one-well lease with a gas
10 motor on the pumping unit, and there's no indication that
11 anything was moved or used at this well. And at a later
12 date they even indicated that the flow line had been broke
13 loose, taken loose from the well, left open to the air,
14 couldn't operate.

15 Q. In your opinion, was the State C Number 1
16 producing at any time after 6-28 of 2000?

17 A. No.

18 Q. Mr. Hill, I asked you this question on the first
19 couple of wells and then I stopped asking it, but could you
20 tell us if any of these wells were capable of being
21 swabbed?

22 A. The only well here that is in a condition that it
23 could have been swabbed, I believe, was the New Mexico BZ
24 State NCT 5 Well Number 3. But the vegetation has grown
25 plumb to the -- completely to the wellhead, and there's no

1 activity, no -- A swabbing unit is a large piece of
2 equipment, and it would have had to -- they would have had
3 to have left some kind of indication that they had been
4 there. There's no indication that anyone's even put a
5 wrench on the wellhead or tubing to have done this, and no
6 tracks, no vehicle activity on the location. It -- no flow
7 line. They wouldn't have brought the equipment to swab
8 too, also, another large piece of equipment.

9 Q. Okay, so for that well it was physically capable
10 of being swabbed, but you saw no evidence of swabbing?

11 A. No, ma'am, there would have had to have been
12 something there to show activity at least.

13 Q. Okay. How about the other wells? Were they
14 physically capable of being swabbed?

15 A. No, ma'am.

16 Q. Why not?

17 A. Because they all have rods and pumps -- or rods
18 in the hole that would have had to have been removed before
19 they could even run a tubing swab.

20 Q. Okay. So far, we've been talking about the
21 wells, the 11 wells that are covered in Case 13,859, the
22 wells that the OCD is alleging falsely reported production.

23 Did you also inspect the 11 wells that are at
24 issue in Case 13,858, the inactive well case?

25 A. I have been through all of Pronghorn Management's

1 wells that are in our district, yes.

2 Q. Okay, and the wells that we are alleging are
3 inactive, did you see any signs of activity on those wells?

4 A. No, ma'am.

5 Q. Okay. Now I may have missed one well, and I just
6 want to ask you about that.

7 A. All right.

8 Q. Could you turn to Exhibit 18?

9 A. Okay.

10 Q. Which well does this history apply to?

11 A. This is the State HL Number 1.

12 Q. Okay, and what is the earliest inspection on this
13 well?

14 A. Earliest inspection is 9-13 of 2000.

15 Q. What was the well's condition at that time?

16 A. It says, Well shut in, gas meter removed, no
17 activity.

18 Q. Could you summarize its condition from that date
19 forward?

20 A. I've seen no changes.

21 Q. In your opinion, has this well produced since
22 9-13 of 2000?

23 A. No, ma'am.

24 Q. Again, is this well capable of being swabbed?

25 A. Possibly, yes.

1 Q. Okay, was there any evidence that the well had
2 been swabbed?

3 A. No, ma'am.

4 Q. Mr. Hill, I'd like to now ask you about the
5 letters that were sent to Pronghorn regarding their
6 inactive wells. Could you turn to what has been marked as
7 Exhibit 30?

8 A. Okay.

9 Q. Is this a letter addressed to Pronghorn
10 Management Corp.?

11 A. Yes, ma'am, it is.

12 Q. Is that your signature at the bottom?

13 A. Yes, ma'am, it is.

14 Q. Why did you write this letter?

15 A. We had been doing inspections and coming up with
16 -- at that time we were able to check our production and --
17 some of the wells during our inspection that were -- he was
18 showing production on, that were not -- were producing, and
19 we wanted him to be aware of this and correct his status on
20 the wells.

21 Q. Okay, Mr. Hill, can you speak up a little bit,
22 because I think we're having some more trouble with that
23 phone?

24 A. All right.

25 Q. Okay?

1 A. This letter was written because we were having
2 discrepancies in our records of him reporting production on
3 wells that we -- our inspections showed were incapable of
4 producing --

5 Q. Okay, when --

6 A. -- status.

7 Q. -- when was this letter sent?

8 A. I have this letter dated September 3rd, 2000.

9 Q. Okay, and it refers to an attached list. Is --

10 A. Yes, it is.

11 Q. And that attachment is part of this exhibit?

12 A. Yes, ma'am.

13 Q. Now I notice the date on the attached list is a
14 little different, it's a month later, October 3rd, 2000.

15 A. Yes, ma'am.

16 Q. What date is correct? Can you explain that
17 discrepancy?

18 A. Ma'am, I cannot.

19 Q. Okay.

20 A. I don't know whether there's a typographical
21 error on the page or if it perhaps took me that long to
22 prepare the letter. I could not -- At this time I do not
23 recall why, or couldn't tell you exactly why there was that
24 much discrepancy in the date.

25 Q. Okay. Can you tell me if the attachment that

1 went with this letter is similar to the one that is part of
2 this exhibit?

3 A. It should be, yes.

4 Q. Would it refer to the same wells?

5 A. Yes, ma'am, it does.

6 Q. There hadn't been any change from September to
7 October of 2000?

8 A. No, ma'am.

9 Q. Let's turn to the next letter, it's Exhibit 31.

10 A. Yes.

11 Q. Now this has a different format. Can you tell us
12 how this type of letter is generated?

13 A. This letter is generated through a report in our
14 RBDMS program that takes inspections marked with violations
15 and prints them to a letter of violation for the inspectors
16 to send out.

17 Q. Okay, and it uses those same inspection history
18 entries that we saw on the inspection history reports?

19 A. Yes, ma'am.

20 Q. What is the date of this letter?

21 A. This letter was dated the 13th of September,
22 2002.

23 Q. And are Exhibits 32 through 35 similar RBDMS
24 letters?

25 A. Yes, they are.

1 Q. Okay. And in each letter it will identify the
2 particular wells and the particular problems that the OCD
3 has with those wells?

4 A. Yes, ma'am.

5 Q. All right. Did the District Office ever get a
6 response from Pronghorn to any of these letters?

7 A. To my knowledge, no.

8 Q. Did you have any contact with anyone from
9 Pronghorn from 2000 until the notice of violation was
10 issued in this case?

11 A. Yes, I did.

12 Q. Can you tell us about those contacts?

13 A. In February of 2006 I met with John Baber on the
14 New Mexico BZ State 5 NCT lease concerning an environmental
15 complaint and asked him about the cleanup and also about
16 the problem with reporting on the wells. And he referred
17 me to Mr. Baber, G.A. Baber, and gave me a phone number.

18 At that time I also called Mr. Baber, or G.A.
19 Baber, and asked him about the environmental problem we
20 were having and also his reporting on wells that were
21 without flow lines or connections or -- and at that time he
22 told me it was simply a clerical error.

23 Q. What did you -- Do you remember what you asked
24 Mr. Baber about regarding the reporting issue? How did you
25 phrase it?

1 A. At that time, that was a phone conversation.

2 Q. Uh-huh.

3 A. I also had a meeting with him here in my office
4 on June 13th, 2006.

5 Q. Okay, let's wait on that for a minute, though,
6 and stay with the telephone conversation you had --

7 A. All right.

8 Q. -- in February, 2006. What did you tell him was
9 the problem about reporting?

10 A. I told him we had a problem with his reporting on
11 these wells, that he was showing production on wells that
12 were incapable of producing, and his comment was, It was a
13 clerical error.

14 Q. Did he claim that the wells were actually
15 producing?

16 A. Not at that time.

17 Q. Okay. Did he take any action to correct the
18 false reporting? Mr. Hill, can you hear me?

19 A. Yes.

20 Q. He told you it was a clerical error. Did he do
21 anything to correct those clerical errors?

22 A. Not to my knowledge, no.

23 Q. Okay, let's move to that next contact that you
24 were about to tell us about. When did that occur?

25 A. Yes, I was part of a teleconference on June 12th,

1 2006, with you and Daniel Sanchez and with Mr. G.A. Baber.
2 And at that time I mentioned that his reporting these wells
3 was not correct. He disputed that, and I invited him to a
4 meeting in my office, to which he did come, to my office,
5 on June 13th, 2006.

6 At that time I told him that, you know, we'd go
7 over these wells, anything he had a dispute on that I was
8 showing as inactive that he was showing production on. And
9 at that time I told him that if there was anything when we
10 were through, we'd go over what I had for inspection
11 records, and if he had a dispute on that at the end of
12 this, that I would be happy to go with him and/or any of
13 his field people and go over any run tickets, gauge books,
14 and I would go -- and gauge tank, verify production, and he
15 could show me how these wells were producing, and I'd be
16 glad to do that at any time, starting at that time.

17 It didn't happen.

18 Q. So Mr. Baber never showed you any run tickets or
19 gauge books to show production?

20 A. No, ma'am.

21 Q. Did you offer to take him out in the field to
22 show him these wells?

23 A. Yes, ma'am.

24 Q. Did he take you up on that offer?

25 A. No, ma'am.

1 Q. Did anyone from Pronghorn take you up on that
2 offer?

3 A. No, ma'am.

4 Q. What was Mr. Baber's reaction when you showed him
5 the well inspection histories that you had?

6 A. We went through approximately half of these
7 wells, showing him what I had and as the pictures were
8 available of these -- some of these wells.

9 And he stopped and he says he guessed just one
10 thing that, basically -- I can't tell you his exact words,
11 what he said, but he said, I guess it's just one thing more
12 that he needed from me. And I asked him what --

13 EXAMINER EZEANYIM: We lost you.

14 (Telephone number re-dialed.)

15 THE WITNESS: Buddy Hill.

16 EXAMINER EZEANYIM: Hi, Buddy. We just lost you,
17 so...

18 THE WITNESS: Yeah, I was doing a lot of talking,
19 I guess, to myself.

20 (Laughter)

21 EXAMINER EZEANYIM: I'm sorry about that. Go
22 ahead.

23 Q. (By Ms. MacQuesten) All right. Mr. Hill, we
24 were asking you what Mr. Baber's reaction was when you
25 showed him the well inspection histories and other

1 information about these wells in your office, and can you
2 tell us again what his reaction was?

3 A. His reaction, we went through approximately half
4 of these wells, and he stopped and he says, Well, he said,
5 I guess there's just one thing I need to know from you.

6 And I says, Okay, what is that?

7 And he said, Are they canceling leases, anyone's
8 lease, because of this?

9 And I said, I haven't been told of any but I
10 suppose it could happen.

11 And he says, Well, that's all I need, then.

12 And he got up and left my office at that time.

13 Q. Okay, let's look at Exhibits 38 through 41.

14 A. Okay.

15 Q. And these are photographs?

16 A. Yes.

17 Q. Who took these pictures?

18 A. I did.

19 Q. When did you take them?

20 A. I'm not exactly sure. I'd have to look at the
21 inspection. It'll tell you when they were taken.

22 Q. Okay, can you give us an approximate date? Were
23 they taken in the last six months?

24 A. No, I believe they were taken probably around
25 June of 2006.

1 Q. Okay. Okay, let's go through each exhibit, and
2 let's start with Exhibit 38, which is two sheets. Can you
3 tell us what that first sheet shows us?

4 A. The first sheet shows us the well sign.

5 Q. Okay, and which well is this one for?

6 A. This is for the State C Well Number 1.

7 Q. All right, that's one of the wells we are
8 alleging was falsely reporting production?

9 A. Yes, ma'am.

10 Q. Can you take a look at the second sheet on that
11 exhibit and explain what that is showing us?

12 A. This is showing the wellhead and connections at
13 the well for that well. It shows the tubing, also the flow
14 line connection and front end of the pumping unit.

15 Q. What is the condition of that wellhead?

16 A. There's no connection from the tubing, the
17 pumping T, to the flow line, and there's also -- the other
18 connection, which would be production casing coming up to
19 the flow line from out of the ground, is open to the air,
20 also not capable of transferring fluids or gas from the
21 well to the battery.

22 Q. Okay. Now this is one of the wells you are
23 saying has not produced in some time. Is there anything
24 you'd like to point out in this picture to show us that
25 it's not -- it hasn't produced?

1 A. The polish rod is discolored from not being
2 moved. There's no connection to the flow line to the
3 battery. This is an old skid-mounted pumping unit in which
4 the white arms go below the base of the skids, and the pack
5 rats have hauled in material, cow chips and such that
6 they've filled the area that the white arms would have to
7 go down into in order to turn -- for the pumping unit to
8 move.

9 Also the gas engine on here, the -- everything
10 are corroded. So it shows no -- that the unit has not been
11 -- the motor has not been used.

12 Q. Okay, let's move to Exhibit 39 --

13 A. All right.

14 Q. -- and this has, let's see, three pages.

15 A. Uh-huh.

16 Q. Can you explain what these pictures show?

17 A. First picture is a picture of the well sign at
18 that well.

19 Q. And which well is this?

20 A. This is the New Mexico -- it indicates State of
21 New Mexico BZ NCT 5 Well Number 2.

22 Q. Okay.

23 A. Our indication of the well is New Mexico BZ
24 State.

25 Q. Okay.

1 A. So it's -- Texaco's use of the well sign is a
2 little different than our -- what shows up in RBDMS.

3 Q. And even though the well sign says Texaco, this
4 is one of the wells that shows up as being operated by
5 Pronghorn?

6 A. Yes, ma'am, it is.

7 Q. Let's go to the second and third pages, and if
8 you could point out what you think is important about those
9 pictures?

10 A. Both the pictures are different angles of the
11 wellhead, photos showing that this well has no connection
12 to a flow line for production, the casing valve is not
13 connected in any way to the -- it's open on both sides.
14 Also there's tubing, production tubing, from the pumping T,
15 it has a check valve there, there's no top on it, open to
16 the air, flow line has been taken loose of the union.
17 First photo shows that the flow line on the ground is open
18 to the air. Second photo shows that the -- open view of
19 the top check valve.

20 Q. Okay, is there anything else you want to draw our
21 attention to?

22 A. -- self-explanatory.

23 Q. Okay, let's move to Exhibit 40 --

24 A. Okay.

25 Q. -- and can you tell us which well this exhibit

1 shows?

2 A. State NCT 5 Well Number 1.

3 Q. Okay, let's turn to the second page, and if you
4 could point out the condition of this well?

5 MR. BROOKS: We can't hear you.

6 THE WITNESS: Check valve coming on the pump,
7 from the tubing, production tubing, is -- no top on the
8 check valve, and there's also no connection to the flow
9 line. Also, the union half sticking up on the ground would
10 probably be your casing production, which is open to the
11 air here, also is open on the other side of the well.

12 EXAMINER EZEANYIM: Can I ask a question at this
13 point? On this Exhibit Number 39, 40, is this the ones in
14 blue that reported production?

15 THE WITNESS: I'm sorry, I cannot hear you.

16 EXAMINER EZEANYIM: You're talking about Exhibit
17 Number 39 and 40, and you are giving us the conditions of
18 the well. Is this one of the wells that a report was
19 produced that they reported that has some production from
20 them?

21 THE WITNESS: Yes --

22 EXAMINER EZEANYIM: Okay, go ahead.

23 THE WITNESS: -- yes it is.

24 Q. (By Ms. MacQuesten) Mr. Hill, was there anything
25 else about Exhibit 40 you wanted to share with us?

1 A. I don't know of anything.

2 Q. Okay, let's go to 41, then --

3 A. All right.

4 Q. -- and if you can tell us which well these photos
5 are of?

6 A. This is the New Mexico State BZ -- the State NCT
7 5 Well Number 3.

8 Q. All right, and what's the condition shown in
9 these photographs?

10 A. The condition shown in these photographs is
11 vegetation growing -- the hole location is like this. No
12 one has driven on the location or done any activity in a
13 very long time. There's no connection from the tubing to
14 the flow line. Also the casing would be -- no connection.
15 I can also tell you that this -- the flow line for this
16 well is completely parted in the road up a distance,
17 probably within -- halfway between the well and the old
18 battery site. There is no -- that the life flow line is
19 completely parted, completely in two. And as you can see
20 from the -- any of the equipment there, there's no
21 indication that anyone has tried to move anything, wellhead
22 or a connection on here.

23 Q. Okay. Now the four wells that we have
24 photographs of, those are four of the wells that the OCD is
25 alleging are reporting production when they're incapable of

1 producing?

2 A. Yes, ma'am.

3 Q. We don't have photos for all 11 wells, though, do
4 we?

5 A. Not that we can find.

6 Q. Okay.

7 A. We did have photos at one time, but some time
8 back in -- or along the line we've lost them.

9 Q. Okay, so we've come forward with the photographs
10 that we have?

11 A. Yes, ma'am.

12 MS. MacQUESTEN: All right.

13 Mr. Examiner, I would move to admit OCD Exhibits
14 1 through 41.

15 EXAMINER EZEANYIM: Any objection?

16 MR. PADILLA: No.

17 EXAMINER EZEANYIM: At this point Exhibits 1
18 through 41 will be admitted into evidence.

19 MS. MacQUESTEN: I have no other questions of Mr.
20 Hill at this time.

21 EXAMINER EZEANYIM: Do you have any questions?

22 MR. BROOKS: No questions.

23 EXAMINER EZEANYIM: No questions. Do you have
24 any?

25 MR. PADILLA: I only have a couple, Mr. Examiner.

1 Mr. Hill --

2 MR. BROOKS: I doubt he'll be able to hear you
3 that far from the microphone.

4 EXAMINER EZEANYIM: You might, you know --

5 CROSS-EXAMINATION

6 BY MR. PADILLA:

7 Q. Can you hear me, Mr. Hill?

8 A. Some, yes.

9 Q. Okay, my name is Ernest Padilla, I'm the attorney
10 for Pronghorn. I just have a couple of questions.

11 On your Exhibits 38 through 41, I notice that all
12 those exhibits deal with State Land Office leases; is that
13 right?

14 A. Yes, sir.

15 Q. Is there any significance that you only chose the
16 State Land Office leases to have pictures...

17 A. These pictures were taken at the same time I was
18 also taking photos of an environmental issue at the old
19 battery site for the New Mexico BZ State Lease, and the
20 State C Number 1 well is also almost on the same site with
21 these wells. And the time that -- These photos were taken
22 at a time that I was there on this location for other
23 purposes and inspections. The photographs were taken as
24 part of that inspection at that time.

25 Q. Were there environmental issues associated with

1 these wells?

2 A. With the battery site, the old battery site for
3 these wells, for the New Mexico BZ State Lease wells, yes.

4 Q. Were there any environmental concerns involved in
5 the other wells?

6 A. At the other leases?

7 Q. Yeah, at the other leases, yes.

8 Q. None that were of immediate concern.

9 Q. Was there any concern for any downhole problems
10 associated with any of these wells?

11 A. There's always concerns on downhole casing leaks
12 and stuff on wells that have not been properly TA'd and
13 tested, yes.

14 Q. Other than concerns, do you have any direct
15 evidence that there is a problem with downhole equipment in
16 any of the wells involved in this hearing today?

17 A. No, sir, we do not have anything imminent or --
18 that is showing at this time. But untested wells, we do
19 not know.

20 MR. PADILLA: Thank you, that's all I have.

21 EXAMINER EZEANYIM: Redirect?

22 MS. MacQUESTEN: No more questions. Thank you,
23 Mr. Hill.

24 THE WITNESS: All right.

25 EXAMINER EZEANYIM: Thank you, Mr. Hill.

1 THE WITNESS: Am I released?

2 EXAMINER EZEANYIM: You are.

3 THE WITNESS: Okay.

4 EXAMINER EZEANYIM: Thank you.

5 MS. MacQUESTEN: Thanks.

6 THE WITNESS: Bye.

7 EXAMINER EZEANYIM: Any further witnesses?

8 MS. MacQUESTEN: No more witnesses for the OCD.

9 EXAMINER EZEANYIM: Okay. Well, then --

10 MR. PADILLA: I don't have any witnesses.

11 EXAMINER EZEANYIM: All right, the closing
12 statements? Ms. MacQuesten, do you have a closing
13 statement?

14 MS. MacQUESTEN: I'd like to address two legal
15 issues that came up. One came up today, and one was raised
16 in the prehearing statement.

17 Today Mr. Padilla asked questions about our
18 ability to find a violation under the Statute, 70-2-31.B,
19 and he pointed out it is a statute that provides for
20 criminal penalties, and that is true. It is a statute that
21 describes various types of false reporting and says that
22 they are unlawful and punishable by a criminal penalty.
23 And he questioned whether we had the ability to bring a
24 criminal case, and I'd like to explain what we're trying to
25 do here.

1 We are not bringing a criminal case. We agree
2 with Mr. Padilla, we have no authority to assess criminal
3 penalties or impose a criminal conviction in this
4 proceeding.

5 What we are doing is using our authority under
6 the Oil and Gas Act to ask for penalties for violations of
7 the Act. 70-2-31.B is a provision of the Act that makes it
8 unlawful to file false reports, so we are proceeding to ask
9 for a civil penalty for that violation.

10 I'd like to point out, that isn't the only ground
11 you could find to establish a violation based on the facts
12 that you have seen today. You can also look at Rule 1115,
13 which is the other citation for the violation of false
14 reporting. 1115 is the Rule that requires operators to
15 file production reports. And you'll note that it requires
16 the operator to set forth complete information and data
17 indicated on said forms in the order, format and style the
18 Division Director prescribes. And OCD forms require you to
19 report production. They were not reporting production
20 accurately, they were not giving forth complete
21 information, they were giving false information.

22 So the violation that we've seen today is a
23 violation both of the statutory requirement of correct
24 reporting and a violation of the rule requiring reporting.

25 What Pronghorn did on those 11 wells is also a

1 violation of 201. 201 is the inactive well rule that says
2 a well inactive for more than one year plus 90 days must be
3 plugged or temporarily abandoned. What we are contending
4 is that these wells were inactive for more than one year
5 plus 90 days. Despite Pronghorn's false reports, they were
6 inactive. And it was also a violation of Rule 201.

7 So we have three theories to support a violation
8 based -- for those 11 wells.

9 The other issue I wanted to bring up was the
10 issue raised in Mr. Padilla's prehearing statement. He
11 raised the issue of whether the OCD has the authority to
12 assess penalties in an administrative proceeding. I'd like
13 to make two points with regard to this.

14 The first point is that I don't believe that it
15 would be appropriate for the Examiner to rule on this issue
16 because the Oil Conservation Commission itself has assessed
17 penalties administratively, most notably in the compliance
18 action against Saba Energy of Texas. You can see that
19 order in R-12,132, and recently they used Rule 40 against
20 Saba, insisting that Saba pay those penalties. So twice in
21 that one case the Commission quite recently has assessed
22 penalties and affirmed that they are assessing penalties.

23 Because the Commission has taken the position
24 that penalties may be assessed administratively, it's not
25 appropriate for the Division Examiner to overrule that

1 position. It may be something that Mr. Padilla wants to
2 take up with the Commission.

3 My second point goes to the merits, if you decide
4 to reach the merits of this issue. And I'd like to
5 summarize my argument.

6 The statute that provides for penalties is
7 Section 70-2-31, and it provides that a person who violates
8 the Oil and Gas Act or a rule or order issued pursuant to
9 that Act, quote, shall be subject to a civil penalty, close
10 quote. It doesn't tell us where that penalty is assessed.
11 It doesn't say a penalty assessed administratively or a
12 penalty assessed in District Court, it is silent on that
13 point.

14 I argue that penalties can be assessed
15 administratively. Section 70-2-31 must be interpreted to
16 carry out the provisions of the Oil and Gas Act, and it
17 must be interpreted consistently with those provisions.
18 The Act gives broad powers to the OCD and the OCC to
19 regulate the oil and gas industry and enforce its
20 regulations.

21 The Legislature also gave the OCC and the OCD
22 primary jurisdiction over issues covered by the Act,
23 setting up the administrative process that we are using
24 today. So that disputes arising under the Act come before
25 the OCD and the OCC for decision, rather than to district

1 courts. One reason for that is so the agency can apply its
2 technical expertise in interpreting the Act and rules and
3 orders issued under the act.

4 If you interpret the penalty provision to allow
5 the Division or Commission to assess penalties after notice
6 and hearing, that would be consistent with the structure
7 established by the statute. It allows the OCD and OCC to
8 interpret and enforce the Act and the rules issued pursuant
9 to that Act, in other words, to do the job the Legislature
10 told it to do.

11 If you decide that the penalty provision is to be
12 interpreted to require all penalty assessments to be made
13 by the district court, it would disrupt that structure.
14 Cases assessing penalties would have to be brought in
15 district court, bypassing this entire administrative
16 process. It would be the district court, rather than the
17 OCD or the OCC, giving the initial interpretation of the
18 Act and Rules. Note that the OCD can't bring a case in
19 district court on its own. It has to act through the
20 Office of the Attorney General.

21 So if all penalty cases must be brought in
22 district court, it will be the AG, not the OCD or the OCC,
23 making the decisions on the enforcement of the Oil and Gas
24 Act and the Rules, which would be again contrary to the
25 structure that was established by the Legislature, where

1 the clear intent is that those issues be decided here
2 first.

3 There's another argument that I believe supports
4 the interpretation of the Statute to allow administrative
5 assessment, and that is language in the Statute itself. If
6 you look at Section 70-2-31 it provides that, quote, the
7 penalties provided for in this subsection shall be
8 recoverable by a civil suit filed by the Attorney General
9 in the name and on behalf of the Commission or the
10 Division.

11 I'd like to focus on that word "recoverable".
12 This is the type of language that you see in statutory
13 provisions that allow administrative assessment of
14 penalties. The reason that language is there is that
15 administrative agencies have no power on their own to
16 recovery penalties. I cannot take an order assessing
17 penalties in this administrative process and take it to the
18 sheriff and say, Please seize this person's property, I
19 have an order from the OCD. I can't take the order and use
20 it to file a lien against property and collect penalties
21 that way.

22 I have to take it a second step, which is to go
23 to district court and get an order that can be enforced.
24 That's why it says you can recover the penalties by going
25 to district court.

1 If, as Mr. Padilla suggests, penalties are
2 supposed to be assessed by district court in the first
3 instance, there would be no need for this language, because
4 the Rules of Civil Procedure tell you how to enforce
5 district court orders. They tell you how to get liens,
6 they tell you how to get the order enforced through the
7 sheriff, et cetera. You wouldn't need this language.

8 The only reason you need this language is because
9 the penalties are going to be assessed administratively,
10 and you need to take that second step to go to district
11 court.

12 So for that reason I would argue, first of all,
13 that there is no need -- or it would be improper for you to
14 find, contrary to the OCC, that penalties cannot be
15 assessed administratively. But should you decide to reach
16 the merits of the issue, I would argue that read in context
17 the language in the statute, which should be read
18 consistently with the structure provided by the statute and
19 to carry out the purpose of the statute, does provide for
20 the assessment of penalties administratively.

21 Thank you.

22 EXAMINER EZEANYIM: Thank you very much.

23 Ernie, before I give you the opportunity to talk,
24 I'm not here to overrule the Commission. You know, from
25 all you said, I can't overrule whatever the Commission has

1 said, because whatever we do here at the Division level is
2 appealed to the Commission, and the Commission has to have
3 the obligation to have a ruling that might be taken to the
4 district court.

5 I'll reserve my comments at this point, but I
6 want to give you an opportunity to make some comments.

7 MR. PADILLA: Certainly. I don't want to talk
8 too much about this issue. Mr. Brooks and I have been at
9 this thing before and -- when I have represented clients
10 regarding 70-2-31, and obviously it's our position, and
11 it's my -- Pronghorn's position in this case that as far as
12 civil or criminal penalties, a lawsuit must be filed in the
13 district court in order to collect any fines.

14 It's not as simple as Ms. MacQuesten states,
15 because there are other remedies that come in conjunction
16 with a lawsuit in a civil proceeding or a criminal
17 proceeding in the district court, and that is that you have
18 the right to a jury. That's a constitutional issue. I
19 won't talk about it other than that under the Rules of
20 Civil Procedure and state statutes, a jury could be
21 empaneled to hear that case, to...

22 But let me talk a little bit about 70-2-31.B.
23 And in Mr. Sanchez's letter he states that Pronghorn
24 knowingly and willingly violated the rules. Knowingly and
25 willingly is a criminal proof that is necessary in order --

1 beyond a reasonable doubt, not just by a preponderance of
2 the evidence, you know, a 50-50 case or 51-49 percent.
3 That statute requires proof beyond a reasonable doubt.

4 We're not questioning the ability of the Division
5 or the Commission to require an operator to plug and
6 abandon wells. That's certainly within the authority of
7 the Division and the Commission. That's what the agency is
8 designed to regulated. But when you get into assessment of
9 penalties, we just simply state and submit that the
10 Division or the Commission does not have any authority.

11 Ms. MacQuesten cites the Saba case of the
12 Commission, and that's not any more compelling to us than
13 -- our position is that the Commission just simply doesn't
14 have that authority.

15 But as a practical matter in this case, these
16 cases are designed essentially to forfeit the bonding
17 capacity of Pronghorn, and we have in the one case 16
18 wells, in the other case 11 wells. The practical effect of
19 pulling a \$50,000 bond to somehow plug and abandon these
20 wells is just -- I don't think you can do that for two
21 wells. I'm not sure what it costs to plug and abandon the
22 well so that -- and we believe that that would be -- the
23 \$50,000 would be eaten up very quickly.

24 Certainly with the imposition of penalties I
25 don't know how, as a practical matter, it solves anything

1 in this case, especially when there's no direct evidence
2 here that there's any type of downhole problems of
3 pollution or that sort of thing.

4 I represent to you that my client is desperately
5 trying to get this problem fixed, and it's just a matter of
6 finances. I don't think he's trying to purposely evade any
7 obligation under the Oil and Gas Act to do what the
8 Division says. He simply doesn't have the money to do --
9 to place those wells back into production, and I think
10 that's been his problem all along.

11 Now, I don't know -- How far that \$50,000 will
12 go, I don't know. And I know that he's been trying to do
13 some kind of thing with these leases to where he turns that
14 around and gets somebody to invest with him so that the
15 problems can be corrected. But again, as far as civil or
16 criminal penalties, we submit that it's for the district
17 court to decide.

18 And let me also talk in terms of the Attorney
19 General. When I was the lawyer for the Oil Conservation
20 Division a long time ago, I was designated as Special
21 Assistant Attorney General and I brought these kind of
22 cases in the district court. I didn't have to go to the
23 Attorney General's office to tell him what I was doing, I
24 had the authority to do it under the designation of Special
25 Attorney General representing the Oil Conservation

1 Division. I'm not sure what the status of the lawyers at
2 the OCD are now, but I'm sure that they may have
3 designations of Assistant Attorney Generals. So I don't
4 think that is a major problem in this case.

5 And with that, I'll shut up.

6 EXAMINER EZEANYIM: More --

7 MS. MacQUESTEN: May I respond?

8 EXAMINER EZEANYIM: Yeah, you may respond before
9 -- I will comment, but go ahead.

10 MS. MacQUESTEN: As far as the authority from the
11 Attorney General, my understanding is that we also have the
12 designation of Assistant Attorney Generals. However, it's
13 the policy of the Attorney General's Office that before any
14 lawsuit is brought, we have to seek permission from the
15 AG's office to do that. So that leaves it within the AG's
16 power to decide whether or not the case will be brought.

17 And my suggestion is that when the Legislature
18 sets up an agency to enforce certain statutes, you want the
19 agency to make those enforcement decisions. If it is left
20 to the AG to even initiate enforcement proceedings, that
21 leaves it to a different agency, headed by someone who is
22 elected and faces the pressures of election to make a
23 decision, you take what should be an administrative process
24 through an agency and turn it into a political decision,
25 and I don't think that's what was intended by this

1 structure.

2 Also, I'd like to address the issue of how to
3 resolve this matter, because Mr. Padilla suggested that Mr.
4 Baber and Pronghorn would like to return these wells to
5 production and doesn't feel that a penalty is appropriate
6 or may in fact impair his ability to return these wells to
7 compliance.

8 The evidence showed that Mr. Baber has been on
9 notice since 2000 that there are reporting issues in this
10 case, and all we have seen since 2000 is equipment being
11 stripped from the leases. He is in a worse position now
12 than he was when these letters started going out.

13 More recently, there was the meeting in February,
14 2006, when Mr. Hill talked to Mr. Baber about the reporting
15 issues, and again a teleconference in June of 2006 and a
16 meeting in the District Office in June of 2006 about the
17 reporting.

18 Then we have the notice of violation about the
19 reporting.

20 In all of this time period, Mr. Baber hasn't
21 taken the action to correct that false reporting. That is
22 something he could do inexpensively, and we haven't seen
23 him take even that step. We've seen repeated promises that
24 the wells would be returned to compliance, but we have not
25 seen any activity.

1 So I would ask the Examiner not to give Mr. Baber
2 any lengthy time to return these wells to compliance. We
3 are here to get them plugged.

4 Thank you.

5 EXAMINER EZEANYIM: Thank you.

6 Any more comments?

7 MR. PADILLA: Nothing further.

8 EXAMINER EZEANYIM: Do you have any comments?

9 MR. BROOKS: (Shakes head)

10 EXAMINER EZEANYIM: I'm sorry Mr. Baber is not
11 here today, because I really have a lot of questions I
12 wanted to ask him. But since he's not here, I might direct
13 them to someone to see whether you could answer them.

14 Let me thank you. You mentioned something -- you
15 mentioned that you were on this side of the shoe sometime,
16 I don't know, I don't know, you work for OCD, and you took
17 most of these cases to the district court. So is it --
18 when you were -- I don't know what time it was, when you
19 worked here, but you just made a statement that you worked
20 for OCD or OCC some time -- some time ago, and you took all
21 these cases to the district court.

22 Did you, in all cases, take all these to the
23 district court yourself when you have all these violations
24 occur during your tenure in this OCD, in this department?
25 When you worked here, I mean, at least -- since you worked

1 here you may have taken everything, every violation that
2 required penalties, to the district court. Did you do
3 that?

4 MR. PADILLA: Yes.

5 EXAMINER EZEANYIM: In all cases?

6 MR. PADILLA: In all cases. We were trying to
7 assess penalties, and the most common case were oil spills
8 at that time, somebody didn't -- they discharged produced
9 water in a watercourse or someplace where they weren't
10 supposed to be doing that.

11 I think maybe we had to touch base with the
12 Attorney General about filing a lawsuit, just so that they
13 would know that it was some type of enforcement action.
14 Certainly, any kind of policy-making lawsuit which wasn't
15 routine would have to be considered by the Attorney
16 General. I think that just makes sense.

17 The only case I can remember about that, where
18 the Attorney General was involved -- and it didn't involve
19 the Oil Conservation Division -- was when I was a lawyer at
20 the Land Office and we took in -- we filed a lawsuit
21 against a public-interest -- in a public-interest issue,
22 and the Attorney General did want to get involved.

23 But in that case, we were -- at the Land Office
24 we were still Special Attorney Generals, and they sided
25 with us in terms of federal land policies intervening in

1 state land policies. So we were in the federal district
2 court in that. And we primarily, at the Land Office, did
3 the litigation, but we had the -- since the Attorney
4 General was involved, we co-counseled with someone from the
5 Attorney General's office.

6 EXAMINER EZEANYIM: Yeah --

7 MR. PADILLA: But as far as the Oil Conservation
8 Division, it was just simply filing the lawsuit. That's
9 the way it had been done before and how it had been
10 interpreted, is that we had to file a lawsuit in the
11 District Court.

12 EXAMINER EZEANYIM: Yes, you mentioned some of
13 them were just spills. It's not like now, we have
14 thousands and thousands of inactive wells. I don't know
15 how many inactive wells you had at that time, and I don't
16 think --

17 MR. PADILLA: Oh, I think there were just as many
18 inactive wells --

19 EXAMINER EZEANYIM: Okay.

20 MR. PADILLA: -- back then. I think, you know,
21 if we -- but if we were trying to cite somebody and try and
22 get penalties, then it was at least our position, the
23 position of the prior lawyers who had succeeded me -- not
24 succeeded, but who had preceded me -- were that we had to
25 file a lawsuit in the district court.

1 EXAMINER EZEANYIM: For inactive wells.

2 MR. PADILLA: For inactive wells. But if
3 somebody had a whole bunch of wells that needed to be
4 plugged and abandoned, then I think, yeah, we could do that
5 by administrative hearing. They weren't taking care of
6 production.

7 And I see here -- I mean, I'm not going to sit
8 and represent here that based upon the pictures in this --
9 that are part of the evidence here, that Pronghorn wasn't
10 -- you know, should have been more diligent in taking care
11 of its equipment and its wells in compliance with OCD
12 regulations.

13 EXAMINER EZEANYIM: Yes. Do you -- I don't know,
14 let me -- I ask you these questions, see if you can answer
15 them --

16 MR. PADILLA: Sure.

17 EXAMINER EZEANYIM: -- because I was looking at
18 -- Mr. Baber, is that how you say -- ?

19 MR. PADILLA: Baber.

20 EXAMINER EZEANYIM: Baber. He's supposed to be
21 here but he's not.

22 First of -- I'm trying to determine what is going
23 on here. There is no question the 16 plus 11 wells belong
24 to Pronghorn Management Corporation. There is no question,
25 they operate those wells?

1 MR. PADILLA: I believe they do.

2 EXAMINER EZEANYIM: Okay.

3 MR. PADILLA: Now whether they have 100-percent
4 ownership or -- in the lease or that kind of thing, I don't
5 know, but --

6 EXAMINER EZEANYIM: Yeah, it doesn't really
7 matter. We are looking at who is the operator of the
8 wells.

9 MR. PADILLA: Right.

10 EXAMINER EZEANYIM: Okay, good.

11 I don't know whether you've mentioned this in
12 your statement, that they have failed to comply with the
13 OCD -- We have a lot of rules here that people may use.
14 I'm going to -- in my -- I will tell you that when they
15 fail to comply with those rules, then after several years
16 -- I can see some of these wells may have been out of
17 compliance for 10 years.

18 And you state that there is no evidence to
19 demonstrate that downhole those wells are not doing
20 anything because there wasn't anything on the -- however,
21 those -- It's an easy job, we just go and test the wells,
22 and if they are leaking it means that there is a flow
23 upwards and contaminating the water. We can demonstrate
24 that. And I know you said you -- during your tenure you go
25 to district court -- I mean, there's a difference between

1 administrative hearing here and district court.

2 I want to make it better for operators like
3 Pronghorn Management. You mentioned they don't have funds
4 to do it.

5 If we take a cause to district court, we will be
6 asking for penalties in the millions. But in an
7 administrative court we ask for a pittance. That's one
8 other thing you are going to be looking at.

9 When we look at -- I know during the testimony
10 here, I know the -- say, Well, we could have asked for
11 \$607,000. But no, we want to do \$72,000.

12 And you compare that -- if I go to court, I will
13 bring you the evidence that they -- that the wells that
14 have been there inactive for twenty years is doing this.
15 And I don't know how -- I'm not a lawyer, but the judge
16 might be convinced to award millions in this when you go to
17 district court.

18 So that even though you overlook the
19 administrative hearings there is a purpose we do it, and
20 that's for the benefit of the operator. When we assess
21 penalties we take into account, you know, how liable the
22 operator is, even though we're not supposed to do -- When
23 you go to court, I don't think that's taken into account.
24 So that's why a penalty like a million dollars, we can say,
25 okay, pay \$1000. And you know, you go -- but if you are --

1 you have to go to district court.

2 Well, we look at the statutes and -- you know,
3 like I said, all the interpretations that both you and Ms.
4 MacQuesten have given me, I just understand that's a -- But
5 I think common sense dictates that if you want an
6 administrative hearing you might, you know, benefit by
7 going to district court with all those resources and still
8 be penalized for all those money, whether you have it or
9 not. That's the district court.

10 Plus the fact that there is -- like I told you,
11 there are thousands of these wells. If you want to go to
12 district court -- I mean, the AG will not be doing
13 anything, nobody here will be doing anything else. We are
14 going to go to that district court.

15 You might be right that 70-2-31.B or whatever it
16 is, but -- and then you can assert that the Commission or
17 the Division doesn't have any authority.

18 But that authority didn't even get you to the
19 district court. It was just silent. So -- but how fair do
20 we -- how -- it's silent unless you can say, Okay, this
21 penalty, civil penalty, should be addressed in the district
22 court. Then all the authority is given to -- it was
23 silent, it didn't say the Division, it didn't say the
24 Commission, it didn't say the district court, but you
25 interpret it as going to district court.

1 But that's okay. If that's what people want,
2 well, that's no problem. When they go to district court
3 they get what they want.

4 But I'm telling you that we -- administrative
5 hearing is more lenient than going to district court, and
6 certain other resources -- of course, it may be that's not
7 what you want to hear, but that's my thinking, not being an
8 attorney.

9 Let me go back and ask a lot of -- some of these
10 questions.

11 When we come to penalties, you know, and we go
12 back to 70-2-31, well, Pronghorn Management came to OCD and
13 entered into an agreement, agreed compliance order. And
14 that was really where this -- you know, the agreed
15 compliance order, what do you want as an operator, what do
16 you want?

17 And they put it down, that if we don't plug this
18 well within this time period, we are going to pay this
19 penalty. That's what I'm reading -- what the ACO is
20 saying. That's not -- that's not -- whatever, that's the
21 penalty they agreed to pay. And we can't -- you don't have
22 to go to district court to get those penalties.

23 They agreed to pay it, and if they neglect on
24 that, they have -- you know, they are liable still, because
25 they agreed they would pay it. It's -- tied to the 70-2-

1 31.B. So when I look at that, if -- I agree to pay --
2 under the terms of the agreement, but fail to do it.

3 Okay, that's -- I'm making that point now. I
4 don't want ask you -- because I have some questions I
5 wanted to ask. Unfortunately, he didn't show up.

6 But I will make some comments and find out why,
7 if you could tell me, why, you know, they refuse to even
8 comply with the agreed compliance order that they entered
9 into. They entered into agreed compliance order, they
10 didn't. And then the second, they didn't do anything. And
11 they have an opportunity to come in for a third or the
12 fourth, as we go on trying to negotiate on how we can
13 correct this problem, but they didn't.

14 So I don't know how I look at it sitting on this
15 seat, how I look at that, you know, whether -- I don't know
16 what I think unless you can tell me what they're thinking.

17 MR. PADILLA: I can't tell you what those people
18 are thinking. Mr. Baber -- I just have no -- I'm not privy
19 to any of that.

20 I would respond to one of your comments about the
21 agreed order, is that if it is in the nature of a contract,
22 then I'm not sure that it would be enforceable before the
23 Oil Conservation Division. It would be enforceable in the
24 district court, if there was a breach of contract.

25 EXAMINER EZEANYIM: Okay, you continue talking

1 about the district court. I've given you some implication
2 from a lay person how the district court works and does not
3 work. But that's okay. That's the prerogative of
4 Pronghorn Management.

5 I would like to make a certain statement, and
6 maybe you might give it back to them. It's unfortunate,
7 and I wanted to hear this case today, I could have deferred
8 it until we get somebody from them.

9 You see, when the Legislature promulgated all
10 this Oil and Gas Act, they have something in mind.
11 Sometimes it's not clear and so we don't know, we have to
12 try to see -- you know, do whatever we can do to enforce
13 that.

14 So you know, Rule 201, you know, what -- you
15 know, if you are familiar with Rule 201, which is the case
16 here, what it says, that you should -- oil well, gas well
17 or -- any well, surface well, you are responsible to plug
18 it, just like Pronghorn Management. So you have to plug
19 the well. I mean -- and that's why they put it -- put down
20 all these, you know -- a plugging bond, so everybody is
21 aware of that.

22 Okay, if the wells can no longer be used for
23 anything, then Rule 202 says plug and abandon. That's what
24 it says. I mean, there are guidelines that what you -- 201
25 says you must plug any well you drill, you have to plug it.

1 And then if you don't want to make use of those wells
2 anymore, you plug and abandon, and I'm telling you why it's
3 important that you plug and abandon.

4 However, if you think those wells can be used in
5 the future for beneficial purposes, then there is 203. You
6 put them in temporary abandonment, and there is no limit to
7 temporary abandonment.

8 And Pronghorn did not use that opportunity. They
9 could have gathered all these wells -- you said they don't
10 have money, but they could put it -- to put it in temporary
11 abandonment, and there are procedures on how to do that.
12 And once it's in temporary abandonment, the OCD or the OCC
13 will not come after you because, you know, you've passed
14 all the MIT, you've done everything you're supposed to do,
15 and we'll give you a period five years. After five years
16 you can renew. You can renew indefinitely.

17 But -- However, they didn't do that. They didn't
18 plug the well, they didn't put it in TA -- in TA status.
19 Okay.

20 Now -- and we discover that some of them have
21 been inactive for 10 years. We don't know how the casing
22 is doing on those wells. We don't have any studies seeing
23 any problem out there. When you start seeing problem in
24 all wells that is abandoned, you must go remove because you
25 can't drink any water.

1 So we discovered them, and they're working to
2 this agreed compliance order that we are arguing here. The
3 agreed compliance order says -- I think they say, what are
4 you going to do to comply with those rules I just listed?

5 And this date -- It's not forced on them, I
6 understand. I don't think this is forced on them. They
7 say, Okay, this is what we are going to do, we are going to
8 plug the well, three in a month, five in a month, or
9 whatever they want, and if we don't we are going to pay a
10 substantial penalty.

11 There is ACO 77 in the first one. They didn't do
12 anything. There is ACO 77-A. In fact, in that one they
13 agreed to pay penalties each month for any well they didn't
14 bring -- because I read them. Now, how -- now, they didn't
15 do all those things.

16 Meanwhile, we don't know what's happening with
17 those wells, that they haven't been plugged for a long
18 time. And currently they are, you know, reporting false
19 production.

20 What I wanted to ask Mr. Baber is, Your false
21 production, are you paying taxes on that? Are you paying
22 royalties on that? And why are you doing it in the first
23 place? It's not clear to me why they are reporting it
24 falsely. I don't understand why they are -- you know, you
25 see the pictures, how they look, and you say, Tell me that

1 is producing, when there is not even a link between the
2 production line and the wellhead. And yet you're reporting
3 production.

4 Do they pay taxes -- Did they pay taxes on that?
5 I don't know. Did they pay royalties? Because they are --
6 paying royalties, nobody knows. Has the groundwater been
7 contaminated and been -- you know, the fresh water we drink
8 here? How is it -- We don't know. We still have to go
9 back and find out.

10 Those are agreed compliance order. They didn't
11 do anything, and then -- up to now.

12 In fact, 77-A says, if you have circumstances
13 that warrant that you can come in now and get an extended
14 -- yeah, you can come -- 77-B, because that -- you know,
15 I'm trying to repeat it to you that the OCD tries to work
16 with you, we try to work with you -- anytime -- go to
17 district -- we want to work with you and make sure those
18 things are plugged.

19 I don't think anybody here -- Is there anybody
20 here who doesn't want oil and gas to be produced? I don't
21 think there is anybody.

22 However, there is nobody here who wants fresh
23 water to be contaminated. Can't we do this in a prudent
24 way? And then we're going to do it -- Mr. Padilla is going
25 to use his -- maybe you use it -- if you don't want to use

1 our agreed compliance order, and you can come back as many
2 times as you like, explain your circumstances. I think you
3 will be accommodated.

4 Maybe you are going to give it back to them.
5 This is what I -- Mr. Baber, if he's here today. But I
6 think -- as their lawyer, I think you might -- you may have
7 to advise them, you know. I'm just speaking from the
8 information before me. There might be other things that
9 might happen, I don't know. But I'm just talking to you
10 about what I've read and what's going on and how do you
11 know he's doing that and everything on the technical side
12 of it.

13 So if that is the case, if you can be prudent by
14 producing the oil -- because to me, I want to drill, or you
15 want to drill, everybody wants to drill, I want to produce
16 the oil. Nobody is here saying you can't produce the oil.

17 But we have to produce it in the most prudent
18 way, and the way to do it is to cooperate. Try to see
19 that, you know, we -- you drill this well and you can't
20 plug, work with us and, you know, we -- you know, and see
21 how you can get these wells plugged and abandoned in the
22 most prudent way so that -- that's a commodity we have
23 called water. And even the -- running it in the State of
24 New Mexico is protected, they just go there and -- oil and
25 gas, drive our car, you know, and then everybody can -- you

1 don't care what happens to the water. And you know, we
2 live in the desert.

3 So these dual objectives of drilling the --
4 producing the oil and gas and protecting the fresh water
5 and the environment, is there any way -- you tell me how
6 your plan is trying to, you know, accomplish these
7 objectives? That's what I really want to ask Mr. Baber
8 today.

9 MR. PADILLA: From what I understand is -- in
10 speaking yesterday he said, I'm two days or I'm two weeks
11 away from doing a deal. I don't know what that means.

12 EXAMINER EZEANYIM: Do what?

13 MR. PADILLA: To try to get investment and get
14 production out of these oil and gas leases.

15 Now I'm not privy to any negotiations that he's
16 having or -- That's all I hear, and for all I know it may
17 be the same thing that he has told Ms. MacQuesten, that --
18 I'm -- I don't want to escape by saying I'm just a lawyer
19 without information, but that's what he tells me and that's
20 all I can convey to you.

21 EXAMINER EZEANYIM: As the attorney, do you think
22 they have acted prudently? You know, from what you saw
23 today from --

24 MR. PADILLA: Well, let me -- let me put it this
25 -- let me put it this way: He sounds frightened enough and

1 panicked enough about trying to get something done and is,
2 I think, pretty frustrated about not being able to comply.

3 So I don't think that he has a malicious intent,
4 you know, to just disregard everything. I know that when I
5 spoke to him yesterday, he was really concerned about the
6 bond being pulled because that puts him out of business
7 entirely in terms of trying to stay in the business. So...

8 But that's something that I think the OCD has
9 authority to do, is to pull the bond. And I don't have --
10 You know, I can only tell you what his concerns are about
11 the bonding capacity and that sort of thing.

12 EXAMINER EZEANYIM: Yeah. I don't know, maybe my
13 attorney will advise me on this. I've been writing and
14 writing, but just from what I've read, the bonding
15 \$50,000 -- I don't know, even if you pull it, it's not
16 going to plug these 22 wells -- these 27 wells.

17 Of course, we don't have to pull it if he plugs
18 and abandons them or returns them to beneficial use or
19 temporarily abandon them. There are a lot of approaches in
20 this that he could use, very minimal approaches he could
21 use to be in compliance with our Rule 40 or with what we
22 are doing here today, you know.

23 We are not interested in collecting penalties --

24 MR. PADILLA: Well, I understand, I --

25 EXAMINER EZEANYIM: -- we are just interested in

1 making sure the fresh water is protected. Once it's
2 protected, we don't want penalties. A penalty is just to
3 make a statement. If we want to make -- collect penalties,
4 then we -- we can calculate it with millions and that --
5 you know, you see what I mean.

6 And that's why I was arguing with you about going
7 to district court. We can go there and say we want \$10.2
8 million. But what we do is, okay, you pay \$72,000 and the
9 whole thing is settled -- you know, so we don't really want
10 to collect penalty, we want these wells to be plugged and
11 abandoned. Once they are plugged and abandoned, we have no
12 issue with you.

13 But that's really -- if you plug and abandon the
14 well, you don't have to fear that we are going to take your
15 \$50,000 -- You see, it's going to still be there for you.
16 And then he's afraid we're going to use it -- It's not even
17 going to be enough to plug the 27 wells. We can even come
18 for more after the \$50,000 is pulled. So the important
19 thing is to plug the well or -- either you return it to
20 beneficial use or put it in temporary abandonment status.
21 They know all of this, they have the operating -- they have
22 all this information, they could do it.

23 See, as long as you put it in temporary
24 abandonment status, what is called TA, nobody -- as long as
25 it's in good condition, it's not leaking, that's fine. You

1 put it in temporary abandonment status, and that's it,
 2 until you want to use it again. And if you don't want to
 3 use it again, you plug and abandon.

4 All this is in our Rules. I mean, it's not --
 5 it's not a -- it's not -- it's just no-brainer. I mean,
 6 anybody can do that, at least put it in TA status. I mean,
 7 that's my -- that's my conviction, so that we can protect
 8 fresh water, which you have very scant amount of in New
 9 Mexico. We are not trying to, you know, squeeze the
 10 operator, no, that's not our intention. Our intention is
 11 to take care of the well you drilled, plug and abandon it,
 12 simple, and we'll have no issue.

13 You worked for us here. That's what the
 14 objective was at the time when you worked for the OCD, and
 15 not -- because you don't -- who am I? an attorney? I'm
 16 not, but at least common sense says that's what we should
 17 do.

18 MR. PADILLA: No, I understand.

19 EXAMINER EZEANYIM: Anybody have any other
 20 comments? Okay. Well, at this point I will take Case
 21 Number 13,858 and 13,859 under advisement.

22 Thank you very much.

23 (Thereupon, these proceedings were concluded at
 24 12:17 p.m.)

25

I do hereby certify that the foregoing is
 * * a complete record of the proceedings in
 the Examiner hearing of Case No. 13858
 heard by me on 5/11/07
 STEVEN T. BRENNER, CCR
 (505) 939-9317
 Examiner
 Oil Conservation Division

STEVEN T. BRENNER, CCR
 (505) 939-9317

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL March 4th, 2007.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2010