

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 GANDY CORPORATION FOR)
AUTHORIZATION TO INJECT)

CASE NO. 13,962

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Jr., Hearing Examiner

July 26th, 2007

Santa Fe, New Mexico

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This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, Jr., Hearing Examiner, on Thursday, July 26th, 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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July 26th, 2007
 Examiner Hearing
 CASE NO. 13,962

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A P P E A R A N C E S

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(Continued...)

A P P E A R A N C E S (Continued)

FOR ENERGEN RESOURCES CORPORATION:

MILLER STRATVERT, P.A.
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By: J. SCOTT HALL

* * *

ALSO PRESENT:

Jerry Carlisle
J&J Services

* * *

1 WHEREUPON, the following proceedings were had at
2 12:55 p.m.:

3 EXAMINER JONES: Okay, let's go back on the
4 record this afternoon and call Case Number 13,962, which is
5 the Application of Gandy Corporation for authorization to
6 inject.

7 Call for appearances.

8 MR. LAKINS: Charles Lakins and Pete Domenici,
9 Jr., on behalf of the Applicant Gandy Corporation, Mr.
10 Hearing Examiner.

11 EXAMINER JONES: Other appearances?

12 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
13 representing DKD, LLC.

14 EXAMINER JONES: Okay, we -- Any other
15 appearances?

16 MR. CARLISLE: Yes, sir, Jerry Carlisle.

17 EXAMINER JONES: Are you representing yourself,
18 Mr. Carlisle?

19 MR. CARLISLE: I guess so. They said they didn't
20 get my papers back up here or something.

21 EXAMINER JONES: Okay. Can you spell your name?

22 MR. CARLISLE: C-a-r-l-i-s-l-e.

23 EXAMINER JONES: Okay. We had -- in this case we
24 had -- before we talked about anything else, we had other
25 people -- Terry Duffey, I guess, presented this as an

1 injection well, administrative application, to the
2 Devonian, and there was other people that I have in that
3 record that had objected, and they may have -- Mr. Hall?

4 MR. HALL: If I could address that, Mr. Examiner.
5 Scott Hall, appearing on behalf of Energen Resources
6 Corporation.

7 Energen did file an objection to the Application
8 at the administrative level. Energen has since resolved
9 its objections with the Applicant and is not taking a
10 position in the case today, but the objection is withdrawn
11 at this point.

12 EXAMINER JONES: Okay. There was Energen, and
13 there was two people out of Arkansas that -- Here we go.
14 P.K. Stokes -- Now these people, as far as I'm concerned,
15 have not made an entry of appearance or a prehearing
16 statement or anything with this particular case. The just
17 did in the original one. So I don't know exactly where we
18 need to address that, or even if we do, because they didn't
19 show up here, or they didn't -- Mr. Carlisle?

20 MR. CARLISLE: They called me about two days ago
21 and said that they couldn't make it from Arkansas.

22 EXAMINER JONES: Okay.

23 MR. CARLISLE: They said they had already
24 objected and they faxed me a sheet, if you'd like to have
25 it.

1 EXAMINER JONES: Okay.

2 MR. LAKINS: Mr. Hearing Examiner, just for a
3 point on the record. All the protestants were served by
4 certified mail return receipt notice of this hearing.

5 EXAMINER JONES: Of this hearing?

6 MR. LAKINS: Yes, sir.

7 EXAMINER JONES: Okay, so that's what Mr.
8 Carlisle is talking about here.

9 And Mr. Carlisle, did you enter an entry of
10 appearance?

11 MR. CARLISLE: Yes, sir, I think my wife sent
12 it to you all. Mr. Charles, he said that they didn't get
13 it --

14 EXAMINER JONES: Did --

15 MR. CARLISLE: -- which I found out about two
16 hours ago.

17 EXAMINER JONES: Did Kay Stokes enter an entry of
18 appearance? Did she mail anything?

19 MR. CARLISLE: No, sir, not that I know of. I
20 don't even know the lady. Her and her uncle just called me
21 and wanted to know if I was going.

22 EXAMINER JONES: Is her uncle D.B. Wharton?

23 MR. CARLISLE: Yes, sir.

24 EXAMINER JONES: Okay. Now those, I think, are
25 the only two -- I know Terry Duffey was talking about some

1 other people, but he never really told me exactly who they
2 were.

3 But Mr. Carlisle, I don't -- we don't have an
4 entry of appearance for you and --

5 (Off the record)

6 MR. THOMAS: Basically -- What's your name again?
7 Sorry, sir.

8 EXAMINER JONES: Mr. Carlisle.

9 MR. THOMAS: Carlisle. If you haven't officially
10 intervened in the case under the OCD rules you'll be able
11 to make a statement at his discretion, but you won't be
12 able to cross-examine the witnesses or present evidence.
13 Is that something you understand?

14 MR. CARLISLE: Yes.

15 EXAMINER JONES: Okay, so you can listen to what
16 happened, and then you can make a statement at the end.
17 We'll make sure we don't forget you at the end.

18 MR. BRUCE: Is there -- His company is actually
19 J&J Services. Did you receive something from them?

20 EXAMINER JONES: Oh.

21 MR. LAKINS: There was a protest initially filed
22 by J&J.

23 EXAMINER JONES: J&J Services. That's not JAS,
24 is it? It's different. We might have to look through this
25 -- start through down here.

1 You won't have a witness anyway, would you?

2 MR. CARLISLE: (Shakes ahead)

3 EXAMINER JONES: Okay, but you still -- it would
4 affect --

5 (Off the record)

6 EXAMINER JONES: I don't know if we have that in
7 here or not.

8 MR. LAKINS: Mr. Hearing Examiner, I have our
9 copy. I don't have any extras, but I could provide the --

10 MR. DOMENICI: This is a protest letter, this
11 would not be --

12 MR. LAKINS: No.

13 MR. DOMENICI: We don't consider this an entry of
14 appearance or a prehearing statement.

15 MR. LAKINS: No, if that's what you're looking
16 for --

17 EXAMINER JONES: It was a protest letter to this
18 hearing?

19 MR. LAKINS: No, it was an initial protest letter
20 to the --

21 EXAMINER JONES: Yeah, we have that.

22 MR. DOMENICI: We're not aware of anything other
23 than that.

24 EXAMINER JONES: Okay, because I don't see it
25 here anyway. I just see all this administrative stuff, and

1 -- the stuff originally from Energen and then the
2 withdrawal from Energen, and then of course from Visa
3 Industries of Arizona, Incorporated. It says, We do not
4 object to this Application, per se, but as an original
5 partner we believe we should retain an interest in the
6 proposed use of the wellbore.

7 So that wasn't an objection, that was something
8 that is separate.

9 Here we go.

10 (Off the record)

11 MR. CARLISLE: That was sent to me two days ago.

12 EXAMINER JONES: Okay, Nobody else probably has a
13 copy of this, though, so...

14 MR. CARLISLE: No, sir, I doubt it.

15 EXAMINER JONES: Did you get it -- this? This
16 is --

17 MR. LAKINS: It doesn't look familiar from here,
18 Mr. Hearing Examiner.

19 EXAMINER JONES: Let me read it, and then we'll
20 make copies. It says -- This is Visa Industries of Arizona
21 to State of New Mexico, Energy, Minerals -- from Visa
22 Industries of Arizona, Edgar J. Hoofman.

23 Sirs: We are protesting Gandy Corporation's
24 Application to re-enter the P-and-A'd Julia Culp Number 2.
25 The reasons are as follows. It is our understanding that

1 we would lose our remaining interest in this lease. We
2 believe there is continued -- valve -- in our lease right,
3 and we should retain these rights or be compensated --
4 value, I guess. It is our belief that casing corrosion
5 problems in our West Lovington-Strawn Unit wells are in
6 part due to injection well operated by Gandy in the area.
7 We believe that approval of this injection well will
8 continue to damage our assets in this area. We have not
9 been supplied with any technical information that would
10 alter our concerns as to possible damage to our production
11 in the West Lovington-Strawn Unit.

12 We authorize Jerry Carlisle -- the gentleman here
13 today -- to represent the interest of Visa Industries of
14 Arizona, Incorporated, in this hearing.

15 So we have this, along with the others.

16 (Off the record)

17 EXAMINER JONES: So what we have here, Mr.
18 Carlisle, is -- and I think -- Mike Thomas is our attorney
19 today, with me, and he can probably explain this better
20 than --

21 MR. THOMAS: Sir, were you intending this to be
22 your entry of appearance in the case?

23 MR. CARLISLE: No, they just faxed it to me --
24 they called me and -- from Arizona. I do not know the
25 people, or the company either. They just faxed that to me

1 and said I could bring it up when I went.

2 EXAMINER JONES: Okay.

3 MR. CARLISLE: So I --

4 EXAMINER JONES: Well, we're going to consider --

5 MR. CARLISLE: I know nothing about this deal,
6 really, you know, how you all work and all.

7 EXAMINER JONES: Okay --

8 MR. BRUCE: Mr. Examiner, if I may -- I mean, I'm
9 not here representing Mr. Carlisle, although I think he has
10 certain things to say on the record. But I know the
11 Division does have its rules regarding intervention of
12 parties to a proceeding. Mr. Carlisle was clearly given
13 notice by the Applicant. As he just stated, he doesn't
14 take part in these hearings much, and the Division Rules do
15 allow a person to enter an appearance at the last day under
16 Rule 1208.B I think Mr. Carlisle should be allowed to say
17 what he wants to say.

18 EXAMINER JONES: Okay. Mr. Domenici, Mr. Lakins?

19 MR. DOMENICI: Well, I think you already ruled he
20 can say what he says -- what he wants to say. The question
21 is, does he have party status, meaning he could cross-
22 examine people?

23 And so I -- our feeling is, his status is to give
24 nontechnical testimony and to be subjected to cross-
25 examination. And he didn't meet the other requirements,

1 and I don't think there's any grounds for him doing it, and
2 it's prejudicial to us.

3 We don't know what his -- the purpose of the
4 prehearing statement is so that we know he's going to do
5 and what he's going to say and we can react to it.

6 But as far as him giving nontechnical testimony,
7 and if you want to consider that letter that you just had
8 as nontechnical testimony, make that part of the record, we
9 wouldn't object to that either.

10 MR. THOMAS: But you're just saying you don't
11 want him cross-examining the witnesses?

12 MR. DOMENICI: No, we don't think he has party
13 status. He can't have party -- he can't be designated by
14 some other party to give their party status if they're a
15 corporation and he's not authorized to do that.

16 (Off the record)

17 MR. THOMAS: We agree, I think.

18 EXAMINER JONES: Oh, yeah, we -- I'm --

19 MR. DOMENICI: So that letter could be a
20 nontechnical submission, and then he can say his
21 nontechnical piece at the end of the hearing. That's our
22 position. Anything else --

23 MR. BRUCE: We could put him on the witness stand
24 and I could ask him a few questions, providing I get in
25 here.

1 MR. THOMAS: Well, as long as Mr. Carlisle
2 understands that whatever statement he makes, then he'll
3 then be subject to cross-examination by the parties.
4 That's the way I understand the rule, right?

5 MR. DOMENICI: That's the rule.

6 MR. LAKINS: That's the rule.

7 MR. THOMAS: Okay, so I think that solves it.

8 EXAMINER JONES: Okay, then we've got --

9 MR. BRUCE: We've got the separate issue here.

10 MR. DOMENICI: Yeah and, you know, I don't know
11 how you want to address it, but we don't think DKD should
12 have party status.

13 EXAMINER JONES: Okay, I'm going to let Mike
14 handle this part of it, because -- the legal --

15 MR. DOMENICI: But I just -- if we could -- I
16 mean, we filed a -- first they filed an entry of appearance
17 without any grounds, and they don't have grounds to file a
18 late entry of appearance. Then they tried to intervene
19 yesterday, and you have -- and filed a prehearing
20 statement. And I think if you look at the combination of
21 the prehearing statement and the notice of intervention,
22 you should exercise your discretion and not let them
23 intervene.

24 And really, if you look at the substance of that
25 prehearing statement, there's nothing in it except pure

1 surprise. They don't make it clear what their position is
2 on this Application, they don't say what their witness is
3 going to testify to, they don't identify any exhibits, they
4 don't identify any interest, and then they give grounds for
5 filing late which are meritless, frankly, is our position.

6 DKD has been involved in several injection well
7 permits by Gandy over the last two years. One of them is
8 continued through three or four hearings. It started out
9 as Case Number 12,905, Pronghorn, and then it went to --
10 and then went to -- and then Gandy bought Pronghorn's
11 interest and DKD was involved. Mr. Hall was the attorney
12 in that matter. And this matter has been on the docket, on
13 the website for over 30 days, this hearing.

14 So to come in at the last minute and file a
15 prehearing statement that essentially says, We're going to
16 wait until after you put on your case and then tell you
17 what our case is, if we have a case, is prejudicial to us.
18 And that's all it says, is Danny Watson might testify for
19 15 minutes, and they may present testimony based on the
20 presentation made by the Applicant.

21 But this file has been pending since February,
22 the technical -- all the technical information has been
23 available to any party, any member of the public, so they
24 could identify their witnesses, comply with the prehearing
25 rules and tell us what they're -- in time, what they're

1 going to do so our witness can prepare if we need to or
2 anything like that.

3 So we would suggest there's no grounds for you to
4 exercise that discretion.

5 And then if you look at the substance of this
6 prehearing statement there's nothing in there where they
7 are saying, We have evidence that is important for you to
8 hear. On the issue of waste, on the issue of correlative
9 rights, on the issue of protection of the environment.
10 They're saying just the opposite: We have no evidence, we
11 just want to be here to cross-examine.

12 EXAMINER JONES: Mr. Bruce?

13 MR. BRUCE: Well, I dispute that it's meritless,
14 but under the Division Rule 1209, quote, The Division
15 Examiner, at his discretion, may allow late intervenors to
16 participate if the intervenor files a written notice on or
17 after the date provided for before, which is last Thursday,
18 or by oral appearance at the record -- on the record, at
19 the hearing. That's -- we filed a couple of days ahead of
20 time.

21 Secondly, the intervenor -- intervention should
22 be allowed if the intervenor has standing or shows that the
23 intervenor's participation will contribute substantially to
24 the prevention of waste, protection of correlative rights,
25 protection of public health or the environment.

1 DKD operates a well about a mile and a half away
2 from the proposed injection well. It's not within the
3 half-mile area of review, but that has never precluded
4 people from intervening before in these matters.

5 There's precedent, there was -- I think it was
6 two years ago, there was a cooperative waterflood project
7 proposed by Pecos Production Company, and Yates owned a
8 well outside the one-half mile area of review. They were
9 allowed to present evidence as a matter of fact. The
10 Division agreed with Yates and restricted certain injection
11 in that matter because of the Yates -- matters presented by
12 Yates.

13 Just because that one-half mile isn't an absolute
14 cutout, doesn't mean that nobody's going to be affected
15 outside that one-half mile. And as the Division is well
16 aware, DKD has encountered problems caused to its well by
17 Gandy before. Without reiterating them, just refer to the
18 proceedings in Case 13,686. As a result of matters raised
19 by DKD the Gandy well, the offending well, was subsequently
20 plugged and abandoned.

21 So I think DKD not only has standing, it has good
22 cause to show -- It has to protect its rights. Merely
23 because it's a business competitor, as stated in their
24 objection to intervention, is meaningless. Every case you
25 hear that's opposed, almost, it's one business competitor

1 objecting to another business competitor.

2 And so I think there are -- and frankly, I was
3 moving house and office. I didn't speak to Danny Watson,
4 my possible witness, until late Monday, and I subsequently
5 filed the entry of appearance. And I apologize to Mr.
6 Domenici. I agree, it was late. But I just didn't have
7 the time. I didn't even return his phone call until late
8 Monday. And so I was unavailable to even do this matter,
9 or even think about this matter until Tuesday and
10 Wednesday.

11 We think that the -- and although -- We hope that
12 they put on a good case. But you know, when Mr. Domenici
13 says wait until after you put on your case to see what
14 might happen, that's what everybody does up here every
15 week, when there's a fight. You don't know what the other
16 side is going to say, you don't get their witnesses ahead
17 of time. I was completely unaware of this case until a
18 couple of days ago, and as a result I think intervention
19 should be allowed.

20 Another reason is, in talking about this, I --
21 frankly, I don't think Gandy has the legal right to re-
22 enter this well, and I will -- actually, I would like to
23 ask Mr. Carlisle a couple of questions about that.

24 So I think there are several issues here, and
25 therefore DKD should be allowed to intervene in this case.

1 I really don't think Mr. Watson would need to testify, but
2 we'd like to see what's going on, just so we can protect
3 his interests.

4 MR. DOMENICI: If I could respond, I'm not
5 complaining about Mr. Bruce's conduct. It's Mr. Watson's
6 conduct in not timely obtaining counsel, filing a
7 prehearing statement, making an intervention, letting us
8 know of the issues that Mr. Bruce is now raising in a
9 prehearing statement so we could be prepared.

10 So the prejudice has nothing to do with Mr. Bruce
11 being busy this week.

12 MR. BRUCE: And I'm not blaming Mr. Domenici. He
13 wasn't aware of what I was up to.

14 MR. DOMENICI: Yeah, I --

15 MR. BRUCE: But I will say that Mr. Watson did
16 try to call me last Thursday and Friday, and I was
17 completely unavailable.

18 MR. DOMENICI: But even that was too late, and
19 this matter has been pending since February. And there's a
20 reason for these prehearing statements, so parties who put
21 a lot of investment into this and have witnesses come in
22 have some indication of what the issues are.

23 These are all new issues, they're not even set
24 forth in a prehearing statement.

25 MR. BRUCE: And that's --

1 MR. DOMENICI: Then he filed late.

2 MR. BRUCE: And that's because I didn't even
3 speak with my client until -- other than on the phone,
4 until this morning.

5 MR. DOMENICI: And it just highlights the
6 prejudice. Mr. Watson needed to get an attorney, get
7 involved, give us notice so we're not prejudiced.
8 Otherwise, we don't think you should exercise your
9 discretion. And that's our request.

10 EXAMINER JONES: Okay. You guys both have really
11 good points.

12 Off the record.

13 (Off the record)

14 EXAMINER JONES: Okay, let's go back on the
15 record here, and -- Okay, what we've -- we're going to do
16 here is, we're going to allow DKD to intervene as an
17 intervenor, and -- but if they fail to show standing during
18 the course of this hearing, then they're -- basically
19 they're --

20 MR. THOMAS: What you presented as evidence will
21 just be considered as if you allowed just to submit that as
22 a statement without it being evidence in the first place.

23 MR. DOMENICI: Well, we would propose to have
24 them show standing now. I mean, let's put on a short
25 hearing and let them show standing.

1 MR. THOMAS: We talked about that, but I think
2 it's kind of part of the case.

3 MR. DOMENICI: Well, it's not really, because
4 what you're going to have is cross-examination of all the
5 witnesses, based on party status --

6 MR. THOMAS: Right.

7 MR. DOMENICI: -- that then becomes part of the
8 record, and I think you should establish standing first. I
9 think that's a central question. That's a preliminary
10 issue, that they have standing.

11 MR. BRUCE: Well, I disagree. It depends on what
12 they're going to do with their subject well and how it
13 might harm DKD.

14 EXAMINER JONES: So you're not going to know your
15 argument for standing until you hear the other case?

16 MR. BRUCE: That's the way I see it.

17 MR. DOMENICI: I think that's totally improper.
18 You get to sit through a case, cross-examine everyone, and
19 then decide standing after the case has been shaped by that
20 participation.

21 Standing is a preliminary legal question which
22 they should be -- particularly when they come in this late,
23 I think they should have to show it. I mean, it would be
24 different if we were on notice and we were able to -- and
25 we knew what their issues were, and -- But I think to be

1 fair to us, standing should be determined right now. Let's
2 have them show standing.

3 EXAMINER JONES: Okay, are you --

4 MR. THOMAS: That's fine.

5 EXAMINER JONES: Let's go ahead and do that,
6 then. Let's have you guys make a case for standing, and
7 then you can argue against it. As far as how your wells
8 would be affected by their wells, that kind of thing. So
9 basically they put on their case first.

10 (Off the record)

11 MR. BRUCE: Suppose he needs to be sworn in.

12 EXAMINER JONES: Okay, could all the witnesses
13 please stand to be sworn, if -- at least for the standing
14 part of it?

15 (Thereupon, the witnesses were sworn.)

16 DANNY R. WATSON,
17 the witness herein, after having been first duly sworn upon
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BRUCE:

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

22 A. My name is Danny R. Watson.

23 Q. Where do you reside?

24 A. I live in Tatum, New Mexico.

25 Q. What is your relationship to DKD, LLC?

1 A. I own and operate it.

2 Q. Have you previously testified before the Division
3 or the Commission?

4 A. Yes, I have.

5 Q. Now I've handed you a land plat, Mr. Watson, and
6 where is your well on this plat?

7 A. I'm under the DKD, LLC, which is about the middle
8 of the page there.

9 Q. In Section 6?

10 A. Yes.

11 Q. And you own a leasehold working interest in that
12 lease, do you not?

13 A. Yes.

14 Q. I'm referring to "you" and DKD interchangeably at
15 this point.

16 A. Correct.

17 Q. Does DKD have wells on that lease?

18 A. Yes, I do.

19 Q. What type?

20 A. I just have an SWD well.

21 Q. And is it one of the numbered wells? Can you
22 point out which lot it's in?

23 A. It's pretty hard for me to read, but it's -- It's
24 the Watson 6 Number 1.

25 Q. I think that would be in --

1 A. 36.65 acres there.

2 Q. -- in Lot 13?

3 A. Yes, I believe that's correct.

4 Q. Okay. And is it your understanding that the well
5 we're here for today is in Section 34 to the north?

6 A. Yes.

7 Q. In the southeast quarter of the northeast
8 quarter?

9 A. Yes.

10 Q. Okay. And so your lease hold is roughly a mile
11 from this proposed injection well?

12 A. Yes, sir, roughly about a mile. I think it's
13 about a mile and four-tenths, something like it,
14 approximate.

15 Q. Could you tell the Hearing Examiner about some of
16 your concerns about Gandy's proposed injection well and how
17 that comes about?

18 A. Well, naturally I wasn't notified of it, and of
19 course I was relying on Scott Hall at that time, and he was
20 representing Energen. And I thought everything was taken
21 care of through all of them, and so --

22 MR. DOMENICI: I'm going to object to hearsay on
23 that. That's all -- I don't know what -- There's no basis
24 for any of that.

25 EXAMINER JONES: Okay.

1 THE WITNESS: Okay, repeat the question.

2 Q. (By Mr. Bruce) But Scott Hall is your normal
3 attorney?

4 A. That is correct.

5 Q. And he was unable to represent you?

6 A. That is correct.

7 Q. Did he inform you of the reason why?

8 MR. DOMENICI: That's hearsay. I'm going to
9 object to that too.

10 MR. BRUCE: How is it hearsay?

11 MR. DOMENICI: He's asking what Scott Hall said.

12 MR. BRUCE: He's asking what --

13 MR. DOMENICI: That's hearsay, he's asking what
14 Scott Hall --

15 Q. (By Mr. Bruce) Do you know why Scott Hall
16 refused to represent you in this matter?

17 A. No, sir, I don't exactly, other than conflict of
18 interest, I believe he told me.

19 EXAMINER JONES: Okay, go ahead.

20 Q. (By Mr. Bruce) Have you -- anyway, that's when
21 -- Did you try to then contact me?

22 A. Yes, I did.

23 Q. How many times? Did you call me a number of
24 times?

25 A. Yes, sir, several.

1 Q. Before I responded?

2 A. Yes, sir.

3 Q. Okay. Now with respect to your technical
4 concerns about this, even though your lease hold is about a
5 mile away, are there concerns with wells -- Let me go into
6 your background. What do you do for a living? What does
7 DKD do?

8 A. DKD owns and operates three disposal wells in the
9 vicinity and around Lovington, and that's my primary
10 business at the present time.

11 Q. Okay. And when you have disposal wells, do they
12 have to be properly completed, et cetera, so that they work
13 properly?

14 A. Yes, sir.

15 Q. And have you made sure that your wells, your
16 disposal wells, operate properly?

17 A. Yes, sir, to the best of my ability.

18 Q. Including this Watson 6 Number 1 well?

19 A. Yes, sir.

20 Q. In this area, looking at the area between Gandy's
21 proposed well and your Watson well, are there concerns
22 regarding the operation of wells and casing issues?

23 A. Yes, there are.

24 Q. Could you describe those for the Hearing
25 Examiner?

1 A. Previously, we've encountered on my well also a
2 casing collapse, excessive waterflow, just a tremendous
3 amount of pressure on casing and all that, previously.

4 Q. And are you concerned that if Gandy's well is not
5 properly completed as an injection well there might be
6 other problems with this well?

7 A. Very possible, from past history.

8 Q. And when you say there are casing problems on
9 your well, do you have knowledge of other wells in this
10 area not owned by DKD that have had casing problems?

11 A. Yes, sir, I went out and looked myself. There's
12 approximately 14 wells that has had casing problems in
13 approximately the same area, around 6000 foot, give or take
14 a thousand foot.

15 Q. And if there's a casing collapse on an injection
16 well, or on any of these other wells out here, what type of
17 problems may result?

18 A. Tremendous loss on production. It would be a
19 tremendous loss to me if I do lose my SWD. It was a loss
20 to my producing well. Still I have currently 790 pounds on
21 a casing pressure, so there's not much I can do with it
22 right now, at the present time.

23 Q. Because of the high pressure?

24 A. That is correct.

25 Q. And could it -- Let's go back. I've referenced

1 Case 13,686 before. Have you had disputes with Gandy over
2 their operations before?

3 A. Several times, yes.

4 Q. And as a result of those disputes, did Gandy have
5 to take certain corrective action with respect to other of
6 its injection wells?

7 A. I guess they probably tried to. But the damage
8 was already done, and it was still coming.

9 Q. Did their prior actions damage your Watson 6
10 Number 1?

11 A. No, sir, not at the current time.

12 Q. Not at the current time.

13 And in the prior action, you were able to get the
14 Division to take enforcement action against --

15 A. Yes, sir.

16 Q. -- against Gandy Corporation?

17 A. They shut them down last November the 25th.

18 Q. As a result of the proceedings in Case 13,686?

19 A. Yes, sir.

20 Q. And again, is it your concern that if Gandy does
21 not properly complete and operate its proposed injection
22 well, it could have an adverse effect on your leasehold
23 estate?

24 A. It's possible, very possible.

25 MR. BRUCE: Thank you.

1 EXAMINER JONES: Okay, Mr. --

2 CROSS-EXAMINATION

3 BY MR. DOMENICI:

4 Q. Have you read this prehearing statement of Gandy
5 in this case?

6 A. Have I read it?

7 Q. Yeah.

8 A. No, sir.

9 Q. Have you read Gandy's Application in this case?

10 A. I got to see it briefly yesterday afternoon.

11 Q. That's the first time you saw any of the
12 technical information related to this Application, was
13 yesterday afternoon?

14 A. That is correct.

15 Q. After you'd already filed an entry of appearance
16 and after you'd already filed a prehearing statement,
17 correct?

18 A. That is correct.

19 Q. And I think you testified that your well is 1.4
20 miles away from the proposed Gandy well?

21 A. Approximately.

22 Q. And the Gandy -- What is your understanding of
23 the injection level that Gandy proposes in this
24 Application?

25 A. Well, I understand that they're going to try to

1 go to around 13,800 feet.

2 Q. And I think you just testified your concern was
3 -- or the basis for your concern is possible impact from
4 other operations unrelated to this well at the zone of 5000
5 to 6000 feet, in the neighborhood of your well, correct?

6 A. That's correct.

7 Q. And you don't have any information to present
8 that -- in reviewing the files, that there's any concern
9 that injection at 13,500 from 1.4 miles away would provide
10 any possible -- or could provide any possible impact to
11 your Watson 6 well, correct?

12 A. I don't know that that is correct.

13 Q. Okay, you haven't reviewed -- Let me ask it this
14 way. You don't have any technical information that shows
15 that based on information in this Application or Gandy's
16 prehearing statement that there is any technical basis for
17 you to have concern that if this is approved it could
18 possibly affect your well, correct?

19 A. Well, if I may -- ?

20 EXAMINER JONES: Go ahead.

21 THE WITNESS: In the past, they set the packer at
22 like 1100 foot too high, and they put a plug at like 1500
23 foot too low. I'm concerned that they're not going to set
24 that well up like their diagram is drawn up.

25 Q. (By Mr. Domenici) And in the past when you've

1 had those concerns, you've brought in enforcement action
2 and you've asked the Division --

3 A. Well, I've tried for two and a half years, yeah.

4 Q. But basically what your position is now, is that
5 it's possible that this -- it's possible that you have no
6 information or no reason to believe that this proposed
7 Application would affect your well?

8 A. I have no information at the current time.

9 Q. And anything possible, correct?

10 A. Yes, sir --

11 Q. And this --

12 A. -- it is correct.

13 Q. -- could have -- under that scenario, this could
14 -- this proposed Application could affect a well five miles
15 away, and they should be able to come in here and ask
16 questions, because it's possible that it could affect a
17 well anywhere, right?

18 A. It's possible it could affect it, yes, sir.

19 Q. So your argument essentially is, possibility
20 should be sufficient for you to participate in a case with
21 one day's notice, having not -- without having reviewed the
22 Application, without having any technical basis. That's
23 your position, correct?

24 A. Well, again I did not know it till last week.

25 Q. Do you know that OCD has a website?

1 A. Yeah, I do know they have it.

2 Q. And they have hearing notices on the website?

3 A. Yes, sir.

4 Q. And this case is noticed under Gandy Corporation,
5 it's not some other corporation, right?

6 A. Right.

7 Q. And it's noticed as a saltwater disposal well,
8 correct?

9 A. Right.

10 Q. And the location is set forth, correct?

11 A. Yeah.

12 Q. And it was published in the local newspaper.

13 A. Well, I don't know about that.

14 MR. DOMENICI: Okay, I don't have anything
15 further.

16 EXAMINER JONES: Okay, Mr. Bruce?

17 MR. BRUCE: Just one thing.

18 REDIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Watson, I'm handing you what's been marked --
21 This is Exhibit 7 of Gandy, and there's a wellbore sketch
22 in there for their proposed well.

23 One thing, are there concerns about the -- what
24 might occur with -- from, say, 4800 feet to 9280 feet on
25 that wellbore?

1 A. Yes, sir.

2 Q. And what are they?

3 MR. DOMENICI: I'm going to object. This is
4 beyond the scope of my questioning of him. This is a --

5 EXAMINER JONES: Oh, you're talking about
6 redirecting?

7 MR. DOMENICI: Yeah.

8 EXAMINER JONES: Okay --

9 MR. BRUCE: Well, you know, we're trying to --
10 we're trying to establish standing. The strict rules of
11 evidence don't apply in the --

12 MR. DOMENICI: I agree they don't apply --

13 MR. BRUCE: -- in the Division.

14 MR. DOMENICI: -- but we're just fishing for
15 standing, is all we're doing. We're just fishing around
16 for standing, is all that's happening.

17 EXAMINER JONES: Yeah, I see your argument. But
18 let's go ahead and see what happens here.

19 Q. (By Mr. Bruce) What are your concerns on the
20 wellbore sketch?

21 A. Okay, just looking at this briefly, they're
22 showing that they have a casing shot off at about 4764.
23 That's approximately where all the casing really starts
24 getting bad. It's normally, in that area, bad down to
25 close to 7000 feet. It's over 6000 on average.

1 So my main concern is, they said they were going
2 to tie back in. That's true. But how far are they going
3 to tie back in? Are they going to have vacation, or are
4 they going to be forced to put their packer up above -- way
5 above where they're saying they're going to be?

6 Q. And so -- and you don't -- you've never -- In
7 your review of the file, you don't know what they're -- you
8 weren't given notice of the original Application?

9 A. No, I wasn't.

10 Q. And you saw this yesterday?

11 A. Right.

12 Q. And --

13 A. This is the first time I --

14 Q. -- you just want to make sure it's done right so
15 again you don't have to face a casing collapse?

16 A. Right. Because I mean, we've already got 14
17 wells that's damaged, and that's well over a mile and a
18 half from where we're at. I mean, if there are damaged
19 wells for a mile and a half over there, I'm trying to
20 protect my SWD well. And I'll go down fighting trying to
21 save my well.

22 MR. BRUCE: Thank you.

23 EXAMINER JONES: Okay. As far as the -- Let me
24 talk to my counsel here first.

25 (Off the record)

1 MR. THOMAS: We'll take a little break.

2 (Off the record at 1:40 p.m.)

3 (The following proceedings had at 1:57 p.m.)

4 EXAMINER JONES: We've got Ted Apodaca here.

5 Mike had to take off to another meeting. And I think we
6 can go back on the record.

7 Ted didn't get a chance to hear the standing
8 argument that DKD made, but we've talked about it.

9 And what we've decided to do, because we're aware
10 that there is some rotten casing and some problems with the
11 casing down at 6000 feet in this Julia Culp well that will
12 have to be repaired and cased off, scab liner or something,
13 before any injection. And there will have to be an
14 injection packer set below that, with monitoring the back
15 side and everything.

16 And because your well is only 6000 feet, their
17 injection well is 13,000 feet, and your well is a mile and
18 -- about a mile and a half away, we don't feel that it
19 would -- enabling you to make a statement at the end, we
20 feel like that is the way to go in this case.

21 So we're going to deny the standing, and you can
22 listen to the case that's presented. If you don't --
23 whatever is presented.

24 You can make a statement at the end, and -- or
25 through your attorney if you want to, and then you can be

1 re-examined by the Applicant for the statement that you
2 make at the end.

3 And have I said that right?

4 (Off the record)

5 EXAMINER JONES: But you can't cross-examine any
6 witnesses. That's the difference.

7 So that's the way we want to go here on this one.

8 MR. BRUCE: But I can't cross-examine any
9 witnesses?

10 MR. APODACA: Correct.

11 EXAMINER JONES: Correct.

12 MR. BRUCE: Any of their witnesses, or could I
13 question Mr. Carlisle about his statement?

14 EXAMINER JONES: Mr. Carlisle has entered -- Mr.
15 Carlisle has showed up with a -- representing some people
16 from Arizona and himself, and two parties from Arkansas.

17 (Off the record)

18 MR. BRUCE: Now, what was --

19 EXAMINER JONES: Yeah, that's -- See, Mr.
20 Carlisle will not be a witness for Mr. Lakins and Mr.
21 Domenici.

22 (Off the record)

23 EXAMINER JONES: Okay, your witnesses, no cross-
24 examining of even Mr. Carlisle. So...

25 MR. BRUCE: Well, are you denying intervention or

1 merely denying cross-examination?

2 (Off the record)

3 EXAMINER JONES: Intervening is the third step on
4 the list, and it has to be by somebody that has standing.

5 (Off the record)

6 MR. BRUCE: And I would merely state, Mr.
7 Examiner, standing isn't the only reason to allow
8 intervention under the Division Rules.

9 EXAMINER JONES: But it's the last of the three
10 on the list, and the first two were -- basically you had to
11 enter the entry of appearance and the prehearing statement
12 on the Thursday before the hearing was going to be held.
13 And the last one on the list is --

14 (Off the record)

15 EXAMINER JONES: Yeah, we just -- Based on what
16 was presented and the distance away and the depth
17 difference, Mr. Watson is free to bring a compliance case
18 against Gandy if they don't comply with the requirements in
19 any resulting order in this case.

20 But based on the arguments you made, we don't
21 believe that there is standing.

22 So let's go ahead and get started.

23 MR. DOMENICI: We're ready to proceed. Mr.
24 Lakins is going to call our first witness.

25 MR. LAKINS: Call Dale Gandy.

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DALE GANDY,

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

DIRECT EXAMINATION

BY MR. LAKINS:

Q. Mr. Gandy, would you please state your name?

A. Yes, sir, Dale Gandy.

Q. And Mr. Gandy, where do you live?

A. Lovington, New Mexico.

Q. Mr. Gandy, could you summarize your background in the oil and gas business?

A. I've been in the oil and gas service industry for most of my life, for around 40 years.

Q. And what's your relation to Gandy Corporation?

A. I'm a major stockholder in Gandy Corporation and the president.

Q. Have you testified before the Oil Conservation Division before?

A. Yes, sir.

Q. Mr. Gandy, could you tell us about Gandy Corporation's operations?

A. Yes, sir, Gandy Corporation employs about 85 people. We are in the water-hauling business. We also haul oil, we do dirt work and various other constructions for the oilfield. Everything on the surface. We don't do

1 any subsurface work.

2 Q. For your oil -- or excuse me, for your water
3 hauling business, do you have a number of customers that
4 you service?

5 A. Yes, sir, we do.

6 Q. About how many?

7 A. About 45.

8 Q. Has that number increased over the past few
9 years?

10 A. It's stayed pretty steady. Yes, sir, it's
11 increased some. The amount of water has increased.
12 There's been a lot of buying and changing of ownership, but
13 the customer base has stayed about the same number.

14 Q. There's been a -- if I understand you correctly,
15 there's been an increased demand for the water hauling?

16 A. Yes, sir, that's correct.

17 Q. And why would that be?

18 A. There's more wells, and as the wells get older
19 they produce more water as a general rule.

20 Q. So you're seeing an increasing demand for
21 disposal?

22 A. Yes, sir.

23 Q. Tell me, Mr. Gandy, what's the reason that Gandy
24 Corporation applied for this particular injection well?

25 A. We feel like it's a prudent operation. It's in

1 the Devonian, it should take it on a vacuum, it shouldn't
2 have to be pumped, so it shouldn't pressure up anything.

3 We have a great need for the service. We need it
4 to operate our equipment with and keep our people busy.
5 The current situation, a lot of times by three o'clock all
6 the disposals in the area are full and we'll have to truck
7 it an extra 30 or 40 miles, which is not economically
8 feasible, or leave it on a truck overnight and wait till
9 the next morning.

10 So there's definitely a need for the disposal.

11 Q. Would you say that that need has been steadily
12 increasing over the past year or so?

13 A. Yes, sir, it has.

14 Q. What are your other options when these injection
15 -- or these current disposal wells close down at three
16 o'clock? What can you do?

17 A. We have to truck the water sometimes as high as
18 40 miles further to dispose of it, which most of the water
19 we have bid by the barrel to dispose, and it causes us a
20 financial loss to do that.

21 Q. Would you say that there's a definite need for
22 additional disposal capacity in your area?

23 A. I would.

24 (Off the record)

25 Q. (By Mr. Lakins) When you were looking at finding

1 another injection well, did you hire someone --

2 A. I did.

3 Q. -- to undertake that? And who is that?

4 A. Terry Duffey.

5 Q. Mr. Duffey is here to testify today; is that
6 correct?

7 A. He is.

8 MR. LAKINS: I have nothing further.

9 EXAMINER JONES: Okay, I really don't have
10 anything, Mr. Gandy. Thank you very much.

11 MR. GANDY: Yes, sir.

12 MR. LAKINS: Thank you, Mr. Gandy.

13 Call Terry Duffey.

14 TERRY M. DUFFEY,

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

17 DIRECT EXAMINATION

18 BY MR. LAKINS:

19 Q. Mr. Duffey, good afternoon.

20 A. Good afternoon.

21 Q. Would you please state and spell your name for
22 the record?

23 A. Yes, my name is Terry Duffey. The last name is
24 spelled D-u-f-f-e-y. Most people miss the "e".

25 Q. Mr. Duffey, where do you reside?

1 A. I live in Midland, Texas.

2 Q. Mr. Duffey, have you ever testified before the
3 New Mexico Oil Conservation Division before?

4 A. No, I have not.

5 Q. Have you ever testified before any other state
6 agencies?

7 A. I have made testimony at the Texas Railroad
8 Commission.

9 Q. Does Texas Railroad Commission handle oil and gas
10 matters?

11 A. Yes.

12 Q. Were you qualified -- or excuse me, have you been
13 qualified as an expert before the Texas Railroad?

14 A. I have, yes.

15 Q. In what field?

16 A. In the engineering field, petroleum engineering.

17 Q. Could you tell us -- summarize your education and
18 continuing education?

19 A. Okay. I graduated from the University of Texas
20 in Austin in 1977 with a BS in petroleum engineering.

21 From there, I went to work in Houston, Texas,
22 with a large independent, went through a training program,
23 worked in the drilling and operations side for about five
24 years with that company. It was called Houston Oil and
25 Minerals. They were subsequently merged with Tenneco Oil,

1 again in Houston. I stayed on, switched to the reservoir
2 engineering section and spent about six years with Tenneco.
3 They were subsequently sold and purchased by Fina Oil and
4 Chemical.

5 At that time I was still in Houston. They asked
6 me to move to Midland, where I was a production manager for
7 Fina for about five years.

8 And then left Fina and went to work for a project
9 management company that was located in Midland by the name
10 of Coastal Management, and we had a large project that we
11 project-managed for Burlington Resources in Crane County,
12 which consisted of about 2000 oil wells that we -- it was
13 part of a royalty trust that had been set up in the '80s,
14 and nobody really wanted to operate it, just because of the
15 trust, so it was a perfect project-management opportunity.
16 I spent about five years on that project, where we spent
17 about \$200 million in an exploitation effort.

18 From there, Schlumberger purchased Coastal
19 Management. I remained with Schlumberger in essentially
20 the same capacity for about two years, helped them on their
21 -- trying to grow their business and project management on
22 the domestic side.

23 Eventually, in 19- -- or in 2000, January of
24 2000, I left Schlumberger and went as an independent
25 producer, and I started a company called EverQuest Energy

1 that's located and incorporated in the State of Texas.

2 Q. During these -- almost 30 years, basically? --

3 A. Thirty years.

4 Q. -- of work, has most of that time been -- the
5 duty that you have performed, is that as a petroleum
6 engineer?

7 A. Yes, the entire time. And it's covered a lot of
8 different facets of the business, from drilling, reservoir,
9 production. And today with my producing company I also do
10 occasional consulting, and that was where the relationship
11 with Mr. Gandy developed.

12 MR. LAKINS: Mr. Hearing Examiner, I tender Mr.
13 Duffey as an expert petroleum engineer.

14 EXAMINER JONES: Mr. Duffey is qualified as an
15 expert petroleum engineer.

16 Q. (By Mr. Lakins) Mr. Duffey, let's talk a little
17 bit about injection wells. Could you summarize your
18 previous involvement with injection wells?

19 A. Over the last five years I've been involved with
20 permitting new injection wells in the State of Texas for
21 one of Dale's competitors, Key Energy, where I've done
22 approximately five applications for new disposal wells.
23 And for the most part they were what you would consider
24 Class II wells in New Mexico.

25 And then I've helped Dale on this particular

1 Application here, as well as -- there's some other pending
2 applications before the OCD for another operator, for a
3 disposal well.

4 Q. Have you had other involvement with injection
5 wells, aside from just the permitting?

6 A. Yes, the Coastal Management project was -- quite
7 a few of the wells were injection wells. It was secondary
8 recovery operation, so we had a lot of injectors that were
9 part of that particular program.

10 Q. Let's talk a bit about your involvement with
11 Gandy Corporation and the Julia Culp --

12 A. Okay.

13 Q. -- Number 2 well. Could you tell us how that all
14 began?

15 A. Yes. I became a little bit involved with the
16 well that we've talked about a little earlier, the State T
17 Number 2, which is injecting into that zone around 5000 to
18 6000 feet. At the time Mr. Gandy, you know, saw the
19 increase in demand for disposal, he saw the potential
20 problems on the horizon with his well and he came to me and
21 asked me, Can you help me find a better alternative site
22 for disposal? And at that point I began searching for a
23 better site for disposal.

24 Q. Were there certain criteria that you were looking
25 at for a better site?

1 A. Yes, there were. There's -- I think one of the
2 primary considerations was the investment that Gandy had in
3 the surface facility that served the State T Number 2.
4 That facility was in place. Ideally, if we could find a
5 suitable injection site, close proximity to that, then he
6 could utilize that existing facility.

7 In addition to that, Dale mentioned that we
8 wanted to find a zone that was deep, that was away from all
9 the producing horizons in that Lovington area. The
10 Devonian certainly is a known zone that takes a lot of
11 water, and typically on a vacuum, so I began looking for
12 Devonian wells that we could re-enter, that would be a
13 suitable disposal site.

14 Q. Why is the Devonian particularly a good site?
15 Let me rephrase that. Why were you looking for Devonian?

16 A. One is, it put us away from those horizons that
17 have caused the problems with pressuring in the past, at
18 5000 to 6000 feet. It put us below the Strawn interval,
19 which is really the deepest producing horizon in that
20 vicinity. And once again, it got us into a formation that
21 typically takes water on a vacuum.

22 Q. Is there any oil production in the Devonian in
23 that vicinity?

24 A. I think later we'll show some exhibits that show
25 there are quite a few Devonian fields pretty much south and

1 east of the proposed injection site that have produced
2 Devonian oil, attic oil, up in the top of the Devonian for
3 years. There are recycling projects where they produce
4 high volumes of water, separate out small oil cuts, and
5 then re-inject water back into the downdip water leg
6 section of the Devonian.

7 Q. Did the Julia Culp Number 2 well meet all of
8 Gandy's criteria?

9 A. Yes, it did. You know, it would have been
10 perfect if the previous operator, when they plugged the
11 well, had left all the casing intact. But they did cut
12 casing, the 5-1/2 casing right up inside the intermediate,
13 around 4600 feet, so other than that, it's a pretty ideal
14 well.

15 And the last thing that made it come to the top
16 of the list is, it's a relatively recently drilled and
17 plugged well. So it's not a wellbore that's been plugged
18 for a lot of years.

19 There were some other wells close by that had
20 similar characteristics that they penetrated the Devonian,
21 but they were drilled in 1955, versus 1990.

22 Q. Did you undertake an investigation of the geology
23 and the hydrology --

24 A. Yes.

25 Q. -- of the Julia Culp area?

1 A. Yes, I did.

2 Q. And did you -- after investigation, did you form
3 an opinion as to whether the well, the Julia Culp Number 2
4 well, would or would not be a good candidate for an
5 injection disposable well?

6 A. I determined that it would be a very good
7 location for disposal.

8 Q. Did you prepare Gandy's application for
9 authorization to inject, the C-108 form?

10 A. I did.

11 Q. Let me turn you to Exhibit 6 in that packet there
12 in front of you, if you would, please. Actually, kind of
13 if you could look at Exhibits 6 through 10.

14 A. Okay.

15 Q. And have you recently reviewed those Exhibits 6
16 through 10?

17 A. I have.

18 Q. And are Exhibits 6 through 10 a correct copy of
19 the complete Application for this well?

20 A. Yes.

21 Q. And are all the results of your investigation of
22 the well contained within all those exhibits?

23 A. They are.

24 Q. All right. Let's turn to -- And Exhibit 6 is the
25 C-108, correct?

1 A. Right.

2 Q. Let's turn to Exhibit 7.

3 A. Okay.

4 Q. And if you could go through the pages in this
5 exhibit, if you would, please, Mr. Duffey, and describe to
6 us this portion of the Application, the existing bore, the
7 project, and things of that nature?

8 A. Okay. Yeah, Exhibit 7 is kind of a narrative
9 that describes how the wellbore will be re-entered and what
10 kind of construction steps will be taken to ensure that
11 water is directed into the Devonian.

12 Since this well was plugged back in 1991, casing
13 has been cut off below surface level, so all that will have
14 to be excavated and tied back to the surface. Plugs will
15 have to be drilled out that were placed in the well.
16 Eventually we'll get back down to this casing stub. You
17 may want to refer to the diagram. There's two diagrams.
18 I'll point out that one is the -- is identified as the
19 current configuration where you see that 5-1/2-inch casing
20 stub that is sticking up at around 4764.

21 So you know, we will eventually have to drill
22 that plug out. But before we do, it will give us an
23 opportunity to do some kind of a pressure test of the 8-5/8
24 to make sure that it is still in good condition. Then we
25 can proceed to drill these other plugs and eventually get

1 down and -- get down to the Devonian level.

2 There may be some things that we have to do along
3 the way, because you can see there's some old perforations
4 that were tested in the well that were simply isolated with
5 cast-iron bridge plugs. It doesn't appear that they
6 squeezed the perforations, although they were very
7 nonproductive when they were tested, where there was very
8 little feed in.

9 So our objective is to get down and really get
10 back to the Devonian with as little intervention as
11 possible, and then do some kind of an injectivity test to
12 ensure that we can -- that we should move forward with
13 trying to complete this as a saltwater disposal well.

14 Q. All right. Now that next page there, the next
15 diagram, does that set out the proposed configuration of
16 what you just discussed?

17 A. Yes.

18 Q. If we turn to the next pages, which we have a
19 couple of -- sort of some basic information, could you
20 explain that information to us, please?

21 A. Are you referring to the tabular --

22 Q. Yes.

23 A. Okay. In the C-108 guidelines they specify
24 different documents that need to be submitted with the
25 Application. Really these tables are just tabular form of

1 what you see on the configuration diagram. So it just
2 gives you a little bit more information of what is set
3 where and the casing sizes and just various technical
4 information.

5 Q. All right. And then that next page, which is the
6 -- across the top it says, Proposed SWD Well, beginning
7 with the historic information --

8 A. Yes.

9 Q. -- is that essentially the same type of
10 information that is essentially a summary of everything
11 that's been done to this well?

12 A. Yes, it is. It's just a well history. It is a
13 summation of all the documents that are on the OCD imaging
14 website on C-103s that were filed, that define different
15 operations that were done to the well, and it's really some
16 due diligence on our part to ensure that the configuration
17 of the well, we're not going to have some surprise that we
18 run into that we were not aware of. And at the same time,
19 it just gives us some assurance that we've checked the
20 records and understand the current condition of the well.

21 Q. Now just to be sure, you essentially summarized
22 this information from the forms that were of public record
23 on the OCD website?

24 A. Yes.

25 Q. Now if we get to the next three pages, which

1 starts out with the PI/Dwight's PLUS on CD Well Summary
2 Report, could you explain what information is contained in
3 those pages?

4 A. Yes. There is occasionally information that is
5 not necessarily reported to the State agency. And it's not
6 an omission, it's just that the requirements don't
7 necessarily include some data to be reported to the
8 Commission.

9 This is what is known as a -- People have called
10 it scout tickets for years. It's just an electronic scout
11 ticket that really itemizes what was done to this well
12 pretty much during the drilling phase of the operation.
13 Some of it may or may not have actually gotten to the OCD,
14 C-103-type information.

15 But primarily it was to look -- and it was very
16 early on. When I said we were looking for Devonian wells,
17 just wells that penetrate the Devonian wasn't really
18 enough. We wanted to find a Devonian well that ideally had
19 tested the Devonian, to give us some kind of an idea of the
20 type reservoir that we're dealing with. Was it tight? Did
21 it give up water? What did it do?

22 So this is a good record of the drill stem tests
23 that were performed on the well. Back on page 3 of 3, test
24 number 6 corresponds to the test -- the drill stem test
25 that was done in the Devonian at around 13,800-and-some-odd

1 feet. 13,865.

2 Q. Do you have information on the results of that
3 test?

4 A. It's on this sheet.

5 Q. And what does that tell us?

6 A. Essentially, when they tested it -- And let me
7 get the exact depth. Drill stem, back on page 2, test
8 number 6, the top of the test was 13,865, the bottom was
9 13,900. The top of the Devonian was at 13,860, so it's
10 definitely a drill stem test of the Devonian formation.

11 They tested it with their equipment. They had a
12 3500-foot water blanket, and when they opened up the tool
13 they left it open for -- it looks like 310 minutes, and
14 then they recovered their water blanket, which you would
15 expect, 270 feet of water-cut mud, and then 3500 feet of
16 ZW, which is saltwater.

17 Sorry you have to keep going back and forth, but
18 they also report the pressures that they recorded at the
19 bottomhole during -- throughout the test. It showed a
20 shut-in pressure of 5200 pounds, and then they also show
21 the flowing pressures throughout the test.

22 So from then it looked like the formation gave up
23 fluid, the pressures were good, so it appears like
24 hopefully when you try to inject it will go the other
25 direction as easily as it came in during the drill stem

1 test.

2 Q. And why would that be?

3 A. Well, it's nothing that I think you can take to
4 the bank, but it's certainly better than a well that was
5 drill stem tested and had no fluid entry throughout the
6 test. So it shows that that formation fed something in,
7 and it's got to be a good sign. So that's what we took it
8 as.

9 Q. All right. Now Mr. Duffey, are you familiar with
10 the casing and cementing requirements of the New Mexico OCD
11 that are contained in the New Mexico Administrative Code?

12 A. Yes.

13 Q. And do these plans for the wellbore that are
14 included in the Application, do those plans meet the
15 requirements as you understand them?

16 A. Yes. In the upper section of the hole the fresh
17 water is protected with the casing, the existing casing
18 that the surface pipe is set through. The intermediate
19 casing at 4700 feet protects any possible water zones that
20 -- down to that level. Cement again was circulated to
21 surface, so there's good integrity there.

22 On bottom, the casing is set at 13,950, I
23 believe. Circulated -- They did not circulate cement, but
24 they pumped cement and found the top of cement, I think at
25 somewhere around 8900 feet, and confirmed that with a bond

1 log. So it appears that the zone that we would be
2 injecting into is well covered by cement so we can contain
3 the injected fluids into the Devonian formation.

4 Q. Mr. Duffey, are you familiar with OCD's saltwater
5 disposal well criteria that's contained in the New Mexico
6 Administrative Code?

7 A. Yes.

8 Q. Let me ask you, do you have a test that indicates
9 what the native water at the injection zone and the well
10 site tested at?

11 A. Yes, we do. We do.

12 Q. And could you tell us the results of those tests?

13 A. We've secured -- or Mr. Gandy secured samples
14 from some of those Devonian producing fields that I
15 mentioned, that are just nearby, and had them analyzed. So
16 we're looking at Devonian water, which should be the same
17 native water that we're dealing with. And we're looking at
18 chloride -- or at total dissolved solids somewhere around
19 75,000 to 80,000 parts per million. So it's well above the
20 10,000 parts per million as far as possibly usable drinking
21 water.

22 To go on, we also have samples of the typical
23 type waters that we're going to inject into this well that
24 come from these various 45 operators in the area, and have
25 had that analyzed and compared and looked at the

1 compatibility with the Devonian waters and find no kind of
2 an incompatibility problem between the waters.

3 So the water we'll be putting into the -- the
4 80,000 parts per million Devonian will not adversely impact
5 our injectivity into that zone.

6 Q. Now if I could just refer you to Exhibit 10,
7 there towards the back of Exhibit 10, is that a listing of
8 all those test results?

9 A. Yes, it is. I believe it's Cardinal well
10 service, or Cardinal services, that did the water testing.
11 Cardinal Laboratories.

12 And in addition to those tests of producing
13 waters and formation waters, we've also -- as required by
14 the application process, have sampled several freshwater
15 wells in the area and have done similar analysis on the
16 freshwater.

17 Q. Have you determined that adequate safeguards are
18 in place to protect any domestic water supply, groundwater
19 supply?

20 A. We believe that there is.

21 Q. And was all that information about the native
22 water, the local produced water, the domestic groundwater,
23 contained within the Application?

24 A. Yes.

25 Q. Mr. Duffey, you were here when Mr. Watson

1 testified about their concerns that he expressed, were you
2 not?

3 A. Yes.

4 Q. Let's talk a little bit about the area that's
5 affected and the efforts you undertook to identify all the
6 people within the AOR?

7 A. Okay.

8 Q. Could you tell us what you did? And let me refer
9 you to -- start you at Exhibit 8, if you could kind of talk
10 through that.

11 A. Okay. Yeah, we looked at the one-half-mile area
12 of review and identified all the tracts within that circle
13 that would be -- I guess that would fall inside the circle,
14 and realized early on that we were dealing with a lot of
15 fee acreage. Not a lot of state acreage. So we knew that
16 -- And if you look at this map, these small land maps, that
17 there's a tremendous number of different interests that are
18 encompassed by that half-mile circle.

19 But you know, the Commission requires that
20 certain people be notified. And to define who those people
21 are, if they're a mineral owner, if they're a lessee, if
22 they are an operator, they must be notified. So it was
23 about a four-week job for a certified landman searching the
24 records in the courthouse in Lovington to find who those
25 owners of record were.

1 Q. Let me refer you to Exhibit 11. Is that part of
2 that landman's report?

3 A. Yes, Ellis and Ellis. Yes, it is.

4 Q. So you hired -- or Gandy hired Mr. Ed Ellis of
5 Ellis and Ellis to essentially do the investigation work of
6 all the persons and all the parties that had to be given
7 notice of the Application?

8 A. Yes.

9 Q. About how many folks were identified?

10 A. Well, we tried to err on the side of -- to notify
11 people that maybe didn't necessarily have to be notified.

12 But rather than keep the landman in the
13 courthouse for any longer, we -- anybody that we felt like
14 just had a possibility that they would be one of those
15 parties we notified. And we ended up notifying about 95
16 people by certified mail.

17 Q. Did you send out those certified mail --

18 A. Yes.

19 Q. -- notices yourself?

20 A. I did.

21 Q. And were the copies of those certified mail
22 receipts a part of your Application process?

23 A. Yes, they were.

24 Q. Did you look at any wells and the potentially
25 affected individuals outside that one-half-mile radius?

1 A. Well, there were a couple wells that fell right
2 on the surface, and once again, rather than leave them out
3 because they may have been a pencil hair outside the
4 circle, and knowing that my circle wasn't necessarily a
5 surveyor's circle, if they were close to the circle we at
6 least looked to make sure that they wouldn't be somebody
7 that shouldn't be notified, or looked at the wellbore
8 itself to make sure that there wasn't something with that
9 wellbore that was going to come and cause an issue at some
10 point down the road, so...

11 Q. Now we turn the next page in Exhibit 8, and
12 there's a number of pages here, looking at various
13 information on it. Could you talk us through what each of
14 those next few pages are, please?

15 A. Okay. These are pages that typically I use to
16 try to identify where these wells were and -- just so I
17 could get an idea of the population of what wells we were
18 going to have to look at. So it was really try to identify
19 the wells. It's using a software program that's pretty
20 much used across the industry, by PI/Dwight's or IHS
21 Energy, as they're known. But it was just to identify who
22 they were, get the lease names, and then do the research
23 that was required to see what needed to be reported as far
24 as the mechanics of those particular wells.

25 Q. Now within these pages here, were there any wells

1 that you identified that were also Devonian wells?

2 A. Well, we identified one well within that half-
3 mile area of review that penetrated the Devonian, and it
4 was drilled by -- well, it's operated by Devon. It's known
5 as the Daisy Chambers Number 1, and it was located just
6 right up on the edge of that half-mile circle.

7 But it was a well that was drilled back in 1955,
8 and it produced several horizons. But it was plugged back
9 in December of 1992. And incidentally, it was a Permo-Penn
10 or Wolfcamp producer.

11 Q. All right.

12 A. But just real quick, what it all led to is, that
13 was the primary well that we had to research. And looking
14 at the configuration of the wellbore, how it was plugged,
15 we deemed that -- we believe that there was no danger that
16 that well would cause us, injecting into the Devonian.

17 Q. Now in this Exhibit 8 we have a diagram, and
18 that's the Daisy Chambers well?

19 A. Uh-huh, yes.

20 Q. You reviewed that information? That was public
21 information?

22 A. Yes, yes.

23 Q. From that review you reached that opinion?

24 A. Yes.

25 Q. Did you also look at potential impacts to any

1 other producing horizons within that vicinity?

2 A. We did. We also looked within the Strawn
3 interval, which is about 2000 feet, 2000 to 3000 feet above
4 the Devonian. And then I mentioned the Permo-Penn section,
5 which is about 10,500 feet. So it's like another 1000 feet
6 up the hole from the Strawn.

7 Q. Now if I can turn your attention to Exhibits 0
8 through 5.

9 And Mr. Hearing Examiner, I have to just point
10 out that we have not precise sequential exhibits, it just
11 resulted from when we were putting them all together. So
12 we started out with 0, and we have 1A, 1, 2, 3, 4, and 5.

13 Mr. Duffey, if you could please go through
14 Exhibit -- First let's start at Exhibit 0, and could you
15 tell us what that represents?

16 A. Okay. This is a map, really, to look at wells
17 nearby that produced from this Pennsylvanian/Permian
18 section at 10,300 to 10,600 feet. If you can see -- it's
19 kind of small, but there's a -- the section numbers
20 written. We're looking in Section 34. The Julia Culp
21 Number 1 well is noted there. The Julia Culp Number 2 is
22 not noted on the map, but it lies about 700 feet to the
23 south southeast of the Number 1.

24 And we've really highlighted the wells that we
25 felt like were very close to the Julia Culp that produced

1 in that Wolfcamp section.

2 Q. All right. Now turn your attention to the next
3 exhibit, 1A, and could you tell us what this exhibit
4 represents?

5 A. This is really a composite production curve that
6 would really take in all the wells that were shown on
7 Exhibit 0, that produce in the Pennsylvanian section. And
8 just consolidate them into one curve so you can kind of get
9 an idea of how those wells produced, in summary, from 1970
10 through present day.

11 Q. And is there any significant trend that you
12 noticed in the past five years?

13 A. Well, significantly you can see on the solid
14 black curve it's the well count. You can see that the well
15 count, you know, from the mid-'80s back to the mid-2000 has
16 dropped significantly and especially accelerated the drop
17 over the last several years where they're down, you know,
18 below 10 wells still producing.

19 Q. All right. If I could turn your attention to the
20 next exhibit, Exhibit 1, could you describe to us what's
21 represented on that exhibit?

22 A. Sure. And back on 1A, I mean, you can also look
23 at the green curve to look at what the oil production is
24 doing, what the water production is doing, as well as the
25 gas production. And you can see that that Pennsylvanian

1 production has -- not only the well count, but it's
2 certainly very near the end of its maturity where
3 production rates are very low.

4 Exhibit 1 is really what kind of recovery -- the
5 cumulative oil recovery from the various wells that are
6 nearby. Just for reference purposes, the Julia Culp Number
7 1 has produced 41,000 barrels of oil, and it was depleted
8 years ago and has since been plugged and abandoned.

9 Some of the recoveries -- you know, you can look
10 around, there's -- it kind of runs the whole range from one
11 well recovered 500 barrels, another recovered 294,000
12 barrels. So it's very unpredictable.

13 Q. And turn your attention to Exhibit 2, if you
14 could tell us what that exhibit represents?

15 A. Yeah, Exhibit 2 is just the production history on
16 the Julia Culp Number 1. Like I said, it produced
17 throughout its history, starting in early 1975, until it
18 was depleted in 2001. It produced 41,000 barrels of oil,
19 94 million cubic feet, and about 16,000 barrels of water.

20 Q. That's the -- Sorry, go ahead.

21 A. And the perforations are listed up there, just to
22 kind of give you an idea of the zones that it was
23 perforated.

24 Q. All right. And then if you could walk us through
25 Exhibit 3, please.

1 A. Exhibit 3 is really a -- I guess it's just the
2 one log, but it's the Julia Culp Number 1 well log cross
3 that Pennsylvanian section. The perforations are noted
4 there. Only the bottom two sets of perforations. There
5 were some perforations way up at 10,300, but -- which was
6 way above what normally produces from the Pennsylvanian.

7 But it just shows -- it's a porosity log showing
8 where it was perforated, and certainly you can see some
9 porosity on the log across from the perforated interval?

10 Q. And that's the Julia Culp Number 1 --

11 A. Correct.

12 Q. -- producing well, not the injection well that
13 we're looking at?

14 A. Yes, yes.

15 Q. And if I could turn your attention to Exhibit 4,
16 if you could explain to us what this exhibit is all about.

17 A. Exhibit 4 is a -- it's just kind of a well that
18 -- It's quite a distance away, but it's an example of a
19 really good well that recovered a lot of reserves out of
20 that Pennsylvanian section. It's know as the Snyder F
21 Number 2.

22 I say it recovered a lot. Well, it recovered
23 19,000 barrels. So it wasn't quite as good a well as the
24 Julia Culp Number 1. But once again, the perforations are
25 noted, and it's a porosity log, and you can see various

1 porosity stringers that were perforated.

2 Q. And if I could turn your attention to Exhibit
3 Number 5.

4 A. Exhibit 5 is the Julia Culp Number 2 itself.
5 It's the porosity log across that same interval that's in
6 Exhibits 3 and 4.

7 One thing that -- Exhibits 3 and 4, you can see
8 that the perforated interval is -- there's quite a bit more
9 perforated in the Snyder F Number 2, and yet it recovered
10 19,000 barrels, versus the Julia Culp Number 1 which had
11 just two small perforated intervals and recovered 41,000
12 barrels.

13 The Julia Culp Number 2 well log, one thing it
14 shows if you look at the caliper curve on the left-hand
15 track, which is the dotted curve, it's got -- all through
16 the Pennsylvanian it's got washed-out hole, way, way in
17 excess of, let's say, 10 inches. So it would be a --
18 potentially a difficult zone to try to complete in, in that
19 you've got a huge hole that's probably filled with cement,
20 since cement was circulated to 9280. So you've got a lot
21 of cement opposite you in that particular instance.

22 But the other thing it shows, that when you've
23 got a washed-out hole it's very difficult to really
24 interpret what the porosity log is saying, because you lose
25 contact with the borehole, and the tool itself becomes

1 compromised. So the porosities are probably very doubtful,
2 as far as what you read from this particular log across the
3 Pennsylvanian.

4 Q. And did you look at these three logs as part of
5 your evaluation of the Julia Culp Number 2 as a potential
6 injection well?

7 A. For the simple reason that when J&J protested
8 back in February, they alluded to the fact that they were
9 concerned about the Permo-Penn section. And we felt like
10 that we ought to at least look at that particular interval
11 and see what the basis for his concern was. So that really
12 was no more reason for us looking at it. We didn't feel
13 like it was necessarily going to be something that our
14 injection had any impact on whatsoever. But just for
15 completeness, we took a look at it.

16 Q. Okay. Now if I could turn your attention to
17 Exhibit Number 9, please. We've got more maps, more dots.
18 And if you could talk us through this exhibit and explain
19 what information this contains. I believe it says the
20 various production data.

21 A. Yeah, I think this was -- it's kind of -- there
22 are a lot of redundancies, I will admit, in our submittal
23 as the Application. Not knowing exactly what the staff
24 here looks at, we kind of gave them data in different
25 formats that really is all the same data, and I think

1 Exhibit 9 is just kind of a rehash of some of the
2 information that we looked at earlier.

3 Q. Okay. At some point were you informed by the
4 OCD, after you submitted all this information, were you
5 informed by the OCD that the Application was
6 administratively complete?

7 A. Well, we sent the Application in to Will as a
8 kind of a draft. You may recall this or not. Since it was
9 really my first time in New Mexico to go through this
10 process, and since there were so many affected parties with
11 notice, I just didn't want to make a mistake and we end up
12 having to double back. And especially Dale has his
13 disposal well shut down. And so time was of the essence.
14 And I felt like that to be prudent, let somebody look at
15 the Application. And Will looked at it and made some
16 suggestions on things that -- just, I think, some things he
17 thought we ought to think about, that we took under our
18 hat. Some of them we addressed in the final Application.
19 Other things I think we've given some consideration to.
20 So...

21 But in answer to your question, after we went
22 through that process -- and we requested it be
23 administratively reviewed for completeness, and I believe
24 that at the very last minute there was a protest received.
25 And it was within days of when I think it would have been

1 determined to be administratively complete.

2 The way I understood it, it was administratively
3 complete, but this protest came in, so I think it --

4 Q. Okay.

5 A. -- started it down this other path.

6 Q. Were you aware of the various protestants and who
7 had actually filed a protest?

8 A. Yes, yes.

9 Q. Could you tell us who you recall that being?

10 A. Well, the very first person that we found out
11 were protesting -- or at least had some concern; they
12 hadn't formally protested -- was Energen. And their
13 district landman called me because he had received his
14 notice, that they had some problems with it.

15 And so we began a discussion that lasted several
16 months to work through those issues, that eventually were
17 -- everybody worked out an amicable agreement and went on.
18 But at the same time, there were two people in Arkansas
19 that protested, Mrs. Stokes and Mr. Wharton, who are
20 related. And that's kind of where we thought things stood.
21 And then eventually J&J Services protested and we, through
22 communication with the Department, were made known and they
23 sent us copies, so we knew what the protests were and who
24 they were, and we started making calls to various people to
25 see if we could resolve the matter and get them to waive

1 the protest.

2 Q. Well, after Energen's protest was resolved this
3 hearing was set, right?

4 A. That's correct.

5 Q. And after this hearing was set, did you
6 personally send notice of this hearing to all those
7 individuals who had protested?

8 A. I sent five different notices to the -- D.B.
9 Wharton, P.K. Stokes, Visa Industries, J&J Services, and
10 Energen.

11 Q. Turn back to the Permo-Penn information. Let me
12 ask you the differences between the Permo-Penn and the
13 proposed injection zone. Could you explain to us how those
14 are geologically separate?

15 A. Well, the Permo-Penn is from a level that -- I'll
16 just say, just for simplification, from 10,300 feet to
17 10,600 feet. It's also -- many people call it the Wolfcamp
18 interval -- versus the Devonian, which we are looking at
19 around 13,800. So we're talking 3500 feet of separation
20 between the two.

21 On top of the Devonian section is a very thick
22 shale that people -- everybody recognizes as a very
23 impermeable shale, known as the Woodford shale. So it
24 gives great vertical separation between the Devonian and
25 anything up the hole.

1 Q. And as I asked you previously, you've heard Mr.
2 Watson's testimony earlier here this afternoon. Do you
3 believe that there would be any chance of infiltration from
4 the Devonian to a higher level up above the Wolfcamp and
5 into the Strawn where there's other injections and other
6 operations?

7 A. I don't believe from a hydrological or a
8 geological standpoint that there would be any chance for
9 any kind of communication between those two intervals.

10 Q. Mr. Duffey, are you familiar with the definition
11 of waste as contained in Section 70-2-3 of the New Mexico
12 Oil and Gas Act?

13 A. I am.

14 Q. Do you have any reason to believe that granting
15 this Application would result in any waste as that term is
16 used in the Act?

17 A. I do not.

18 Q. Mr. Duffey, are you familiar with the definition
19 of waste under the New Mexico Statutory Unitization Act?

20 A. Yes.

21 Q. Do you have any reason to believe that granting
22 this Application would result in any waste as that term is
23 used in the Unitization Act?

24 A. No.

25 Q. Are you familiar with the definition of

1 correlative rights as that term is used in the Oil and Gas
2 Act?

3 A. Yes.

4 Q. Do you have any reason to believe that granting
5 this Application would adversely impact any correlative
6 right?

7 A. I do not.

8 Q. Do you have any reason to believe that granting
9 this Application would adversely affect public health?

10 A. No.

11 Q. Do you have any reason to believe that granting
12 this Application would adversely affect the environment?

13 A. No.

14 Q. Mr. Duffey, is there anything further that you
15 would like to add to your testimony about this Application?

16 A. There is one thing that I failed to point out.
17 If you look at the proposed configuration of this wellbore
18 after it is completed as a disposal well -- and let me --
19 since I think that is important, let me make sure I've --
20 If we look on Exhibit 7, back on the third page, there's a
21 proposed diagram of the wellbore.

22 And I failed to point out that in the interval
23 that has had this zone of water migration through the San
24 Andres-Glorieta, between 5000 and 6000 feet, we propose to
25 cement across that zone remedially to make sure that it's

1 protected in our wellbore, and we are doing it from a
2 standpoint of the longevity of the mechanics of this well,
3 in order for this well to be a viable well for many, many
4 years to come. We feel like we don't want to get a hole on
5 the outside of the casing any more than Mr. Watson would
6 like to.

7 So we propose to circulate cement across that
8 interval and do whatever we have to do to make sure -- be
9 it cement bond logs, temperature surveys to make sure that
10 it is placed and protecting the casing. That, I think, is
11 the only other thing I wanted to say.

12 Q. And just to double check, just to reiterate, you
13 have investigated the freshwater in the area, and you were
14 satisfied that the -- one, the project itself and, two, the
15 proposed configuration would not impact any fresh water?

16 A. I am.

17 MR. LAKINS: I have no further questions, Mr.
18 Hearing Examiner.

19 EXAMINER JONES: Do you want to admit these?

20 MR. LAKINS: Yes, thank you. That phone --

21 (Laughter)

22 MR. LAKINS: Mr. Hearing Examiner, I move to
23 admit our Exhibits 0 through 11.

24 EXAMINER JONES: Exhibits 0 through 11 will be
25 admitted into evidence.

EXAMINATION

BY EXAMINER JONES:

Q. Mr. Duffey, why wouldn't you want to perforate right above the top of cement and squeeze up above, instead of -- why did you pick that spot, to propose to cement over?

A. Versus going from 9000 feet --

Q. Yeah.

A. -- for instance?

Q. Yeah. I don't see where the bottom of that spot is on this diagram.

A. Yeah.

Q. What was --

A. Well, I think we know that that interval, you know, 5000 to 6000 feet is the problem. But I will say that if we believe that by not cementing from all the way where the known top of cement is, that we're going to compromise ourselves. I think we got one chance to do it right. So if --

And another thing, there's a chance that we could cut and recover casing much lower than where it was plugged and abandoned, as far as what they recovered. So ideally, if we have a chance to recover some of that casing and get that out of the way and, you know, run an overshot with a DV tool to give us the best shot -- I think whatever we can

1 do to give us the best shot. But the point is, whatever
2 way we do it, we want to have cement across that zone, San
3 Andres-Glorieta zone.

4 Q. Yeah, it looks like your mechanical problems on
5 this well could be severe, especially since they didn't
6 squeeze some of those lower zones, you know. It's possible
7 you could have trouble with this well, which is always a
8 risk getting into a well.

9 A. Yeah. It's certainly something we have
10 considered, but compared to the cost of drilling a new
11 Devonian well, we feel like it's worth the risk.

12 Q. Yeah, it looks like it -- Drill stem test really
13 showed plenty of at least pressure and permeability maybe,
14 maybe down there.

15 A. Yeah.

16 Q. What about the nearest Devonian production?

17 A. The nearest Devonian production is about five
18 miles to the south and five miles to the east --

19 Q. Okay.

20 A. -- as far as I know.

21 Q. Not north, north and east?

22 A. There could be some north and east also.

23 Q. Around Tatum?

24 A. Tatum, Bronco.

25 Q. But south and east --

1 A. Yeah, I believe that -- Mr. Examiner, there's a
2 map in here that is back in the geological section that
3 shows all the Devonian producing structures --

4 Q. Okay.

5 A. -- in the fields.

6 Q. Does it have a structure right around this area,
7 the Devonian?

8 A. Yes, it does. Exhibit 10, the second page of
9 Exhibit 10.

10 Q. Okay.

11 A. I hope you're -- Are you looking at a color copy?

12 Q. No, but --

13 A. Okay. But it does show, you know, like the big
14 cluster in the middle of the page is the Denton field,
15 which is --

16 Q. Okay.

17 A. But it gives you a chance that you can see that
18 trend sweeps around to the south and then up to the east
19 and continues on, like you say, up to the Bronco area.

20 Q. Okay.

21 A. But if you look to the west, there's been just
22 some very spotty, marginal, non-economic production in the
23 Devonian.

24 Q. Okay.

25 A. But the key thing is looking at the structure

1 map, which is the next page back, which you can see that
2 these Devonian fields that have been prolific are producing
3 on anticlines, and we are sitting -- the Julia Culp is on a
4 trough between those anticlines, so we're on a much lower
5 structural level, probably well down into the water
6 section.

7 Q. So you're not concerned at all about any reserves
8 in the Devonian, oil and gas reserves --

9 A. No.

10 Q. -- in this area?

11 A. No. We think it's been tested and proven to be
12 water-productive, certainly at the level -- you know, the
13 subsea level we're talking about.

14 Q. So are you looking at an open-hole completion, or
15 a little bit of perfs, a little bit of open-hole?

16 A. Well, the plan is to perforate from 13,865 to
17 -85, which is the next -- a couple of pages back. It's
18 just a well log across that Devonian section. And you can
19 see the little bit of porosity for about 20 feet in the top
20 of the Devonian. So our first attempt will be to perforate
21 it and see how much water we can get into those
22 perforations.

23 Q. Is that the interval that was drill stem tested?

24 A. Yes.

25 Q. Okay.

1 A. It's actually drill stem tested just a little bit
2 deeper than we'll perforate, but it's certainly within
3 the...

4 But if -- you know, if we can't -- if the
5 injectivity is not what we're looking for, we may have to
6 acid-stimulate the perfs and see what could happen. You
7 know, the mechanism in the Devonian is typically low
8 porosity but enhanced by fractures. So you can't see the
9 fractures on the log, so you just have to wait and see what
10 you end up with.

11 But it could be that the fractures were cemented
12 up during the primary cementing job, and we need to get
13 them back open with some acid.

14 Q. Okay, the surface location -- Who owns the
15 surface here?

16 A. The surface is owned by Dan Fields.

17 Q. Okay, and he's been notified?

18 A. He's been notified.

19 Q. He wasn't one of the protestants?

20 A. No.

21 Q. You talk about these people that Energen -- What
22 was their concern originally?

23 A. Well, I -- It's been a long time ago, to be
24 honest with you, but I remember there were issues that
25 didn't seem like they had much to do about the injection

1 itself. It was more wellbore-related issues. And knowing
2 the history of some of the concern they've had about this
3 San Andres-Glorieta, you know, I've talked to that landman.
4 I never talked to an engineer, but -- eventually turned it
5 over to Charles Lakins, who dealt with them, so he could
6 maybe address that a little bit better than I can.

7 Q. Okay.

8 A. But it didn't seem like there were any issues
9 that were from an injection standpoint.

10 Q. Okay. You've got the mineral interest owners
11 outlined down to the Wolfcamp and like through the Wolfcamp
12 and then down below the Wolfcamp; is that right?

13 A. Right.

14 Q. So as far as the Devonian goes, there's no
15 lessees; is that right? They're just all mineral interest
16 owners?

17 A. I think it's a mixture. I believe that there are
18 some lessees and -- Well, I think all the minerals are
19 leased, best we can tell.

20 Q. In the Devonian?

21 A. In the Devonian.

22 Q. By oil companies?

23 A. Yeah, and they're held by production from the
24 Strawn.

25 Q. From the Strawn --

1 A. Yeah.

2 Q. -- okay. But the other people that protested,
3 they were all -- is it correct to say mineral interest
4 owners? Fee owners?

5 A. Well, if you look at that takeoff of interests,
6 Visa Industries, J&J Services, have a small interest in the
7 Devonian.

8 Q. A working interest.

9 A. Working interest. They -- Yeah.

10 Q. What was their concern?

11 A. J&J? You're talking about J&J and Visa?

12 Q. Yes.

13 A. From my understanding, reading the letter of
14 protest that J&J sent back in February, they were concerned
15 about the use of the wellbore, that they felt like it may
16 have some utility as a Permo-Penn producing interval. And
17 that kind of was what got me looking at the Permo-Penn,
18 which we looked through some of that information.

19 But my conclusion on that is that the Julia Culp
20 Number 1, which is 700 feet to the north of the Number 2
21 well, has depleted the Wolfcamp in the vicinity that we're
22 talking here and that it would be a very risky venture for
23 somebody to go out and spend the tight money it's going to
24 take to get back to that zone and perforate it and test it.
25 And I think I calculated a drainage that the number of feet

1 between the Number 1 and the Number 2 is 740 feet, that --
2 it's about 40 acres. So if the Julia Culp drained 40
3 acres, it's probably drained the Julia Culp Number 2.

4 Now that's -- you know, it could be argued, but
5 it seems reasonable to say that it would be a risky --
6 whether or not there are any other reserves there.

7 Q. Well, the -- Are you planning on using this as a
8 commercial --

9 A. Yes.

10 Q. -- commercial injection well?

11 A. Yes.

12 Q. And those -- nobody has proposed -- actually
13 proposed a Wolfcamp well, they're re-entry.

14 A. Yeah.

15 Q. In other words, there's -- And you actually have
16 the rights to the wellbore --

17 A. Yeah.

18 Q. -- as far as -- Gandy has the rights to re-enter
19 this well?

20 A. Well, I don't think Gandy would go to this
21 expense --

22 Q. -- without --

23 A. -- without having some assurance that they had
24 the rights to do it.

25 EXAMINER JONES: Okay. Is he going to be the

1 only witness today?

2 MR. LAKINS: Yes, Mr. Hearing Examiner.

3 EXAMINER JONES: Okay. I know Terry's been in on
4 it from the start, so...

5 Q. (By Examiner Jones) And what about the waters
6 that are going to be put in? Commercial injection, so
7 the -- we usually ask that the applicant give a list of all
8 the waters that are going to be -- from the pools that are
9 going to be put in the wells. Do you have an idea? Going
10 to be all over the Permian Basin or something?

11 A. No, I think Dale could probably answer that
12 better than I could. I know it's probably from a lot of
13 different horizons from the San Andres all the way down
14 through the Strawn.

15 MR. GANDY: Even to the Devonian, yes, sir.

16 EXAMINER JONES: So some reinjecting of the
17 Devonian?

18 MR. GANDY: Yes, sir, could be.

19 EXAMINER JONES: Well, Ted?

20 I don't think we have any more questions.

21 MR. LAKINS: No further questions, Mr. Hearing
22 Examiner.

23 EXAMINER JONES: Okay, let's --

24 MR. LAKINS: Maybe I could retrieve that
25 exhibit --

1 EXAMINER JONES: Yes.

2 MR. LAKINS: -- Mr. Hearing Examiner.

3 EXAMINER JONES: If we can find it.

4 MR. LAKINS: Well, it's just the colored --

5 EXAMINER JONES: Okay, the parties that made an
6 entry or have an interest in the case, who wants to make a
7 statement, or who wants to go first?

8 MR. BRUCE: Mr. Examiner, Mr. Watson doesn't care
9 to make a statement, but I believe that Mr. Carlisle does.

10 EXAMINER JONES: Okay, Mr. Carlisle?

11 MR. CARLISLE: I was kind of gun-shy on all that
12 disposal, because Energen is pulling 5-1/2 casings out of
13 nearly every well they've got out there to repair them, and
14 I've got a part interest in that. So do the other people
15 that have objected, you know, the one from Phoenix --

16 EXAMINER JONES: Okay.

17 MR. CARLISLE: -- Mr. Duffey, whatever his name
18 was.

19 But you know, it's a full-time job, kept a couple
20 of rigs running out there. And as everybody knows, pulling
21 casing gets expensive. And a lot of it they couldn't get
22 it out. They had to plug them, kick off at 5000 foot, do
23 down at -- you know, sidetrack and re-drill. And anyway,
24 that's part of the -- that end of it.

25 And then the -- I've got expense sheets if you

1 all would like to see them, you know, that -- because I get
2 the stuff from Energen all the time, on some of the wells
3 that -- I don't know where -- I don't see how Gandy -- I
4 mean, Dale and I have been friends for 40 years at least,
5 but I don't see where he comes from to have any interest in
6 that wellbore. I bought my interest into it, so did all
7 the other people, because the lease is still in effect.
8 That lease has never expired. And it's -- now is in
9 Energen as a pooled unit.

10 EXAMINER JONES: Okay, the lease -- you're
11 talking about the lease being in the Wolfcamp?

12 MR. CARLISLE: All of it. I think they had --
13 Terry there had the sheets on the breakdown there --

14 EXAMINER JONES: Yeah, they do.

15 MR. CARLISLE: -- on a hundred percent.

16 EXAMINER JONES: Yes.

17 MR. CARLISLE: Okay, the first sheet is from
18 surface down to the bottom of the Strawn. Second sheet,
19 they changed one EOG partner and go from Strawn to
20 infinity. And then it says that -- saying that it excepts
21 the Wolfcamp zones, which is around 800 foot or so, 1000,
22 before the guy in Arizona and I own 100 percent of that
23 zone.

24 EXAMINER JONES: From which -- what depths now?

25 MR. CARLISLE: It's like he was saying, they list

1 it as Wolfcamp, but it's Permo-Penn --

2 EXAMINER JONES: Okay.

3 MR. CARLISLE: -- which in that area, I've got
4 two wells right to the east of it in the same -- inside of
5 that zone that's Permo-Penn wells.

6 EXAMINER JONES: Permo-Penn oil wells --

7 MR. CARLISLE: Yes.

8 EXAMINER JONES: -- is that right?

9 MR. CARLISLE: It's inside of the Strawn unit.

10 EXAMINER JONES: Okay. So they're 40-acre Permo-
11 Penn oil wells, and you have an interest in them?

12 MR. CARLISLE: I own 100 percent of them.

13 EXAMINER JONES: And there's a plugged and
14 abandoned wellbore out there that -- with a fee owner on
15 the surface that -- But in the Devonian that they're going
16 to inject into, do you have an interest in the Devonian?

17 MR. CARLISLE: Yes, sir, it's that --

18 EXAMINER JONES: Yeah, yeah, I saw that.

19 MR. CARLISLE: I've got a bigger print of one if
20 you'd like to see it --

21 EXAMINER JONES: I did see that.

22 MR. CARLISLE: -- larger sheet.

23 EXAMINER JONES: Are you concerned about reserves
24 in the Devonian?

25 MR. CARLISLE: No, sir, I'm just saying that I

1 went out there about three years ago and bought that lease,
2 or purchased that leasehold.

3 EXAMINER JONES: And --

4 MR. CARLISLE: And now --

5 EXAMINER JONES: -- you're concerned about
6 reserves in the Permo-Penn?

7 MR. CARLISLE: Yeah, I'm trying to protect it and
8 the Strawn, because I've got an interest in all those
9 Strawn wells also there, that's in the unit. I think I
10 participate in about 10 of them to redrill now.

11 But I'm just saying that I don't think Dale's
12 leased anything. I haven't seen at the courthouse, you
13 know, filed. I don't see how he can come in and take a
14 wellbore over from somebody -- It's plugged and abandoned,
15 but it seems like the Statute of New Mexico says that even
16 if the lease expired you can still come back two years
17 on --

18 EXAMINER JONES: That's --

19 MR. CARLISLE: -- so I mean, I just don't see how
20 they're going to take the wellbore from everyone without --
21 like the guy from Visa said, without compensation or buying
22 it or leasing it or -- or whatever, because the landowner
23 doesn't get it -- the landowner doesn't get the lease -- I
24 mean, get the wellbore until a couple years after it's --
25 the lease has expired if the surface owner don't own the

1 minerals.

2 EXAMINER JONES: Okay. Okay, how much would it
3 cost to drill another well to the Wolfcamp out there?

4 MR. CARLISLE: Probably right now it would be
5 about a million and a quarter or so, because we've been
6 drilling the Strawns for a million eight.

7 EXAMINER JONES: How much would it cost to re-
8 enter that well, to --

9 MR. CARLISLE: Well, I haven't really put all the
10 pencils to it. I've looked at it, thought about it. But
11 you wouldn't have to go back in, you could tie the 5-1/2
12 back into the 8-1/2, or eight and five up there, because
13 it's up inside of it. Squeeze it -- shoot it and squeeze
14 it under, you know, down across all your bad zones, which
15 would be about 2000 foot, you know, down to about 6500 or
16 7000 foot there.

17 EXAMINER JONES: Okay.

18 MR. CARLISLE: But I was kind of wanting to know
19 from you all, how does a person get that when the lease is
20 still in effect, the wellbore? Even Energen says that we
21 have a right to it. I have a letter here from the landman,
22 John Cox, the one that Terry was talking about, that states
23 that all the people that originally was in the wellbore
24 still owns that wellbore since the lease has never expired.

25 EXAMINER JONES: Okay. Okay, we're going to ask

1 Kenny's attorneys to talk about that in a minute.

2 Is there anything else that -- specifically that
3 you want to focus on?

4 MR. CARLISLE: I was going to say, the only thing
5 -- I jotted a few notes down. But I was going to say, I
6 don't remember giving anybody or Gandy either -- I mean, no
7 one leased it, you know. You know, to come in and put a
8 well on there.

9 And I've got four or five oil wells south of the
10 highway there, from their other disposal well that went
11 bad. And I've got about 35 water wells over there, strung
12 up and down my farms and ranches there too.

13 And that's another thing that comes to mind, you
14 know, about -- is those wells -- about 800, 1000 pounds of
15 them now. You know, the whole zone is pretty well loaded.
16 The old well, not the new.

17 They just repaired the casing, a quarter of a
18 mile, the next 40 over from this well that you're talking
19 about going into. They just did it. I think it's Well
20 Number 9, off the top of my head. Anyway, it's the next
21 well to the west --

22 EXAMINER JONES: Okay.

23 MR. CARLISLE: -- and they just did a casing job
24 on it. And --

25 EXAMINER JONES: Where's the problem in the

1 casing?

2 MR. CARLISLE: Oh, they all come in there around
3 6000. And of course if they sit there very long, the water
4 will go down and eat the casing, down to around 7000 to
5 8000 foot, usually close to the top of the cement.

6 EXAMINER JONES: Okay.

7 MR. CARLISLE: And then they told me -- Last week
8 I was out there, and that casing -- on the Energen rig,
9 because I'm -- you know, I'm kind of partner with them on
10 it. And they called and said they was getting water out of
11 the Number 17, which would be the well to the south and the
12 east, the 40 -- it would be like 40 down and 40 to the
13 east. And said the casing on it has got a hole in it now.
14 We're getting about two holes for each one we repair.

15 EXAMINER JONES: Yeah. Well, they may have a lot
16 of trouble getting in this well, actually.

17 MR. CARLISLE: Well, I don't know about that, but
18 it could be because the one I've got -- both sides of it
19 are -- you know, casing is already eaten.

20 EXAMINER JONES: So who's the operator of record
21 in the nearest Wolfcamp well out there, the nearest
22 Wolfcamp well? Is it Energen?

23 MR. CARLISLE: They might be, from this well
24 we're talking about --

25 EXAMINER JONES: Yeah.

1 MR. CARLISLE: -- 34. I don't remember if
2 they've still got one across the road. They've lost about
3 eight south of the road there, between going back towards
4 Dale and Danny's saltwater disposals. I think Energen's
5 had about eight of those wells go bad on the south side of
6 the road, plus some of the unit has. The Strawn also.
7 I've got two wells in 33, which is straight west of this
8 well here.

9 EXAMINER JONES: Okay, but this --

10 MR. CARLISLE: It would be in the north half of
11 the southwest quarter. I've got two Permo-Penns.

12 EXAMINER JONES: Okay, north half of the
13 southwest. You've got -- you have two Permo-Penn wells.
14 Do you operate them?

15 MR. CARLISLE: I'm an operator.

16 EXAMINER JONES: But this particular 40-acre --
17 it would be a 40-acre tract -- there's no well on it --

18 MR. CARLISLE: No --

19 EXAMINER JONES: -- right now, there's no
20 operator of record. But there's lessees. And are you --
21 You're the -- one of the lessees --

22 MR. CARLISLE: Yes.

23 EXAMINER JONES: -- is that correct? And --
24 Okay.

25 MR. CARLISLE: See, that's what ties -- That

1 lease there is the one that Dale -- that 160 acres is what
2 ties me into the unit. So the unit -- you know, the whole
3 unit expires. And so it's all held by production.

4 EXAMINER JONES: Well, held by production
5 sometimes --

6 MR. CARLISLE: HBP.

7 EXAMINER JONES: Yeah. But --

8 MR. CARLISLE: Well, you know, you all -- Well,
9 you have a map showing the perimeter of the unit.

10 EXAMINER JONES: Yeah, that West Lovington- --

11 MR. CARLISLE: Yes.

12 EXAMINER JONES: -- Strawn unit?

13 MR. CARLISLE: -- Strawn unit. Yeah, that's --
14 See, it's all through that --

15 EXAMINER JONES: Okay.

16 MR. CARLISLE: That's what I was going to say,
17 they took me in on that 160 acres in that Section 34 there,
18 which puts that well -- the two wells, the two Julia Culps,
19 in that 40 there.

20 EXAMINER JONES: Yeah.

21 MR. CARLISLE: And that's how I got tied into it.

22 But I can't -- you know, I couldn't understand
23 how somebody could come in on it, because Dan Fields don't
24 own the well yet, because it won't go to a surface owner
25 till they lose this --

1 EXAMINER JONES: Okay, that's a legal issue. I
2 understood that it reverted to the surface owner if it were
3 going to be plugged and abandoned, but I didn't know if
4 they --

5 MR. CARLISLE: Right.

6 EXAMINER JONES: -- it had to be the lease
7 expires yet or not. I didn't know about that.

8 MR. CARLISLE: And I think there's two years
9 exception on that if you'll --

10 EXAMINER JONES: Okay. Okay, so basically this
11 is -- This is all based on correlative rights. Okay.

12 Okay, Mr. Watson, do you want to make a
13 statement? You did make a statement already, but do you
14 want to make another statement?

15 MR. WATSON: No. I don't think they'll listen to
16 me anyway, so I'll just be quiet.

17 EXAMINER JONES: Well, I do appreciate you coming
18 up here and --

19 MR. BRUCE: I'm afraid I do have to say
20 something --

21 EXAMINER JONES: Okay.

22 MR. BRUCE: -- and this is -- I believe that
23 DKD's intervention has been timely filed, and the reason is
24 this. The witness testified that when he notified people
25 of the administrative application, he notified over 90

1 people.

2 EXAMINER JONES: Yeah.

3 MR. BRUCE: And I didn't see a notice affidavit
4 in the exhibit, but -- in the exhibit package. But he also
5 testified that for this hearing he notified five people,
6 who were the people who objected.

7 Well, it's in the Division Rules, and it's also
8 Division policy and has been for a long time, that when an
9 administrative application is objected to and is set for
10 hearing, you have to notify everyone, not just the
11 objectors. Therefore I believe this matter has not been
12 properly noticed. It must be continued for at least four
13 weeks. Proper notice must be given, and therefore DKD's
14 intervention is timely.

15 Thank you.

16 EXAMINER JONES: Okay.

17 (Off the record)

18 EXAMINER JONES: Okay, Mr. Domenici and Mr.
19 Lakins --

20 MR. DOMENICI: Yeah --

21 EXAMINER JONES: -- would you guys like to --

22 MR. DOMENICI: -- just a couple responses.

23 First, I think -- Mr. Bruce's statement, I'd ask
24 to strike it, because you already ruled he's not a party,
25 and that's what he's doing, is test- -- is being treated --

1 asking to be treated as a party, after you already ruled he
2 wasn't a party. So I would ask that statement he just made
3 be stricken and not considered. It wasn't made by Mr.
4 Watson, it wasn't made by -- Mr. Watson said he didn't want
5 to make a statement.

6 Also, you know, as far as this -- where you're
7 moving towards as far as title issues, we have rights from
8 the surface owner. We also have assignments of the
9 wellbore from Energen, and we think those assignments
10 essentially wipe out Mr. Carlisle's rights. That's the
11 reason we haven't negotiated with him, we haven't reached
12 an arrangement with him. We don't think he has any rights
13 to offer us.

14 And our understanding is, and our feeling is, you
15 don't have jurisdiction to consider that. I don't think
16 you want to get into that issue. But I want the record to
17 be clear, we don't think he has rights to argue about this
18 lease or this wellbore. And even if he did, that's -- this
19 isn't the place where those issues should be heard.

20 But we -- a good faith basis from both the
21 surface owner and from an assignment of Energen of their
22 interest in the wellbore, which -- which traces back and
23 actually predates Mr. Carlisle's rights, and so we think he
24 may be operating on an assignment that's essentially
25 invalid.

1 All of those issues need to be decided in a title
2 forum, not this forum.

3 EXAMINER JONES: So the outline of the lease is,
4 Energen has -- Are you saying Energen's lease covers this
5 area, and you have assignment from Energen?

6 MR. DOMENICI: Of the wellbore.

7 EXAMINER JONES: Of the wellbore. But there is
8 no well on this 40-acre tract to the Wolfcamp, so -- But
9 you're saying there was possibly an operating agreement
10 between Mr. Carlisle and Energen for Energen to be the
11 operator in this area, and you got the assignment from
12 Energen?

13 MR. DOMENICI: That's correct, which is why
14 Energen --

15 EXAMINER JONES: I don't think we decide things
16 like that, though.

17 MR. DOMENICI: No, I don't -- I think the law is
18 clear, you don't. And we have a good faith basis from both
19 the surface owner rights through abandonment that the
20 surface owner owns this wellbore, and from assignments from
21 Energen.

22 EXAMINER JONES: So what is your -- Are you
23 maintaining the surface owner does own this wellbore?

24 MR. DOMENICI: Yes. But if there's any question,
25 we also have rights on top of that from Energen.

1 EXAMINER JONES: Okay.

2 MR. DOMENICI: And we assert that our rights from
3 Energen effectively eliminate Mr. Carlisle's rights.

4 EXAMINER JONES: Okay.

5 MR. DOMENICI: And therefore I don't think he can
6 raise waste, frankly. But you know, that's kind of a
7 circular argument.

8 But I do -- I would suggest, since he didn't
9 provide technical testimony, that his testimony shouldn't
10 be treated as technical testimony.

11 EXAMINER JONES: From DKD, you're talking about?

12 MR. DOMENICI: From Mr. Carlisle.

13 EXAMINER JONES: Mr. Carlisle.

14 MR. DOMENICI: Yeah. He didn't provide a notice
15 of filing, he didn't give us any exhibits, he -- It's
16 nontechnical public comment, is essentially what he's
17 providing, nontechnical testimony.

18 EXAMINER JONES: And he was noticed of this
19 hearing.

20 MR. DOMENICI: Absolutely.

21 EXAMINER JONES: And so was J&J, and so was
22 Energen --

23 MR. DOMENICI: No, he is J&J.

24 EXAMINER JONES: Oh, he is J&J.

25 What about these Visa Industry people?

1 MR. DOMENICI: They were noticed too, and there
2 was no technical testimony from them.

3 EXAMINER JONES: Right.

4 (Off the record)

5 EXAMINER JONES: Okay Mr. Lakins, Mr. Domenici,
6 is it your opinion that notice -- after a protested
7 administrative application, notice to -- of the hearing
8 itself should have been to every affected party within the
9 half-mile radius?

10 MR. LAKINS: Mr. Hearing Examiner, actually I'd
11 like to refer the Hearing Examiner to Rule 19.15.14.1210 --
12 .6 -- or .7 --

13 EXAMINER JONES: 1210 --

14 MR. LAKINS: -- which --

15 EXAMINER JONES: -- 27?

16 MR. LAKINS: -- requires notice --

17 MR. DOMENICI: Make sure you give him the cite,
18 so he won't --

19 MR. LAKINS: Yeah, NMAC 19.15.14.1210.7 --

20 EXAMINER JONES: Okay.

21 MR. LAKINS: -- which specifically covers surface
22 disposal of produced waters or other -- Oh, sorry, that's
23 surface disposal. My error, that's surface disposal.

24 EXAMINER JONES: Yeah, the notice rule for SWDs
25 is 701.B.(2).

1 But the question is, do you just -- once you've
2 already noticed them for administrative application and
3 then the application -- the exact same case is made for
4 hearing, do you only have to notice the people of the
5 hearing that have protested, or do you notice everyone
6 again as in 701.B.(2)?

7 MR. LAKINS: We actually spoke with Mr. Brooks
8 about just that issue, concerning just this hearing, and we
9 were advised that the only individuals we were required to
10 send certified notice to were those who had protested.

11 EXAMINER JONES: Well, he's told me that too in
12 the past, but I'm not positive where he gets that in our
13 Rules.

14 MR. BRUCE: And Mr. Examiner, that's not in the
15 Rules. The Rule -- the notice Rule does not say, Notify
16 only objectors to an administrative application. It says,
17 Notify parties A, B and C.

18 EXAMINER JONES: Well, he's saying since they've
19 already been noticed, but then they wouldn't --

20 MR. BRUCE: But they haven't been notified of the
21 hearing date exactly. And I have had to do this time after
22 time, year after year, and over the last six -- 12 months,
23 the Division has been imposing new notice requirements on
24 parties, and all of a sudden they're telling people that,
25 No, you only have to notify the parties that have objected.

1 That's just not proper.

2 I think the Division has to follow the Rules, as
3 well as the operators, and I think everyone had to be
4 notified and that this case has to be continued for four
5 weeks.

6 EXAMINER JONES: Okay, we're going to take like a
7 10-minute break here, and Ted's going to straighten me out.

8 (Off the record at 3:32 p.m.)

9 (The following proceedings had at 3:33 p.m.)

10 MR. LAKINS: Mr. Hearing Examiner, I think our --
11 701 requires only notice of the application. That's what
12 it says, notice of the application.

13 Under 15.14.1210 where it's noticed requirements
14 for specific adjudications --

15 EXAMINER JONES: 1210.

16 MR. LAKINS: 1210. -- in that section there is
17 not an explicit requirement -- or really, that section does
18 not address injection wells. However, under 9, Section 9,
19 adjudications not listed above, it does say the applicant
20 shall give notice as the Division requires.

21 And what we were required by the Division, by Mr.
22 Brooks, was to provide notice of this hearing to the
23 protestants.

24 EXAMINER JONES: Yeah. But Brooks went off on
25 vacation, so he's not here. But -- I believe what you

1 said, but it's -- I think it's up to the Hearing Examiner,
2 what -- if they just determine that additional notice needs
3 to be required, any reason, then we would do that.

4 And if we did it in this case, it would just be
5 to the 701.B.(2) again, which would be basically anybody
6 within a half mile, lessees or -- mineral interest owners,
7 lessees or operators of record within a half mile. And it
8 would -- it doesn't say just the Devonian either.

9 It says just -- and in this case, obviously,
10 there's issues that -- I know there's not -- there wasn't
11 an entry of appearance by Mr. Carlisle here. But we do
12 have -- the issue has been raised about it. So...

13 MR. DOMENICI: Where are you referring to, the
14 Hearing Officer can require notice?

15 MR. LAKINS: After a hearing.

16 EXAMINER JONES: Well, in --

17 MR. DOMENICI: After the hearing occurs, that you
18 can require notice.

19 EXAMINER JONES: Oh. Well, if you determine that
20 additional notice may need to be done you can do that.

21 MR. DOMENICI: But what are you basing it on?

22 EXAMINER JONES: It says --

23 MR. APODACA: 701?

24 EXAMINER JONES: Well, 701 is just saltwater
25 disposal application. But the --

1 MR. APODACA: Maybe 1210?

2 EXAMINER JONES: Several places it says that
3 additional notice can be required if we think there's an
4 issue that possibly could be there about waste and
5 correlative rights, you know, or -- I mean, we can decide
6 that to -- for additional notice, even beyond what is
7 specifically allowed in the Rules, and we've done that
8 recently on some project areas that were done for
9 horizontal drilling, and we required notice to everybody
10 around them where it's -- not even says that in the Rule,
11 and we continued it.

12 All it amounts to is, we continue it to another
13 hearing where you have time to provide notice for that. We
14 don't take it under advisement at this time. That's all it
15 requires. It's a lot more work.

16 MR. BRUCE: And Mr. Examiner, my point in those
17 rules is, the way they read is, the Division Rules require
18 notice to certain people and such additional notice as the
19 Division may require. And I think when you look at what is
20 required in a case like this is to notify everyone, not
21 just the protestants of an administrative application,
22 because that's not the way the Rules read.

23 MR. LAKINS: Mr. Hearing Examiner, I'd also like
24 to point out in 1210.B.(e) [sic], because it says in the
25 case of administrative application, which this was, where

1 the required notice was sent and a timely filed protest was
2 made, the Division shall notify the Applicant and the
3 protesting party that the case has been set for hearing and
4 the hearing dates, time and notice. No further notice is
5 required.

6 EXAMINER JONES: Unless, you know, some other
7 issue is raised that may have --

8 MR. DOMENICI: Doesn't say that.

9 MR. LAKINS: Doesn't say that.

10 EXAMINER JONES: Doesn't say that.

11 MR. LAKINS: It says no further notice is
12 required, that the Division shall notify the applicant and
13 the protesting party that the case has been set for hearing
14 and the hearing's date, time and place, and no further
15 notice is required. That's what the rule says.

16 (Off the record)

17 MR. APODACA: We're back on the record.

18 On behalf of the Hearing Examiner we've looked at
19 this issue carefully, and I'm convinced that in this
20 instance the Hearing Examiner's rule should -- to decline
21 the intervention and DKD should stand because that
22 intervention was not timely, there has not been a showing
23 of standing to qualify that, and there's been no
24 demonstration by DKD of the requirements in the Rule under
25 1209.C that their intervention is necessary to prevent

1 waste, protection of correlative rights or protection of
2 public health or environment.

3 MR. BRUCE: Well, that's fine, but that ignores
4 the notice.

5 MR. APODACA: Well, further, we're convinced that
6 the arguments have been made with respect to who should be
7 entitled to notice for the adjudicatory hearing.

8 (Off the record)

9 EXAMINER JONES: As far as who can use that
10 wellbore, it's more the courts can -- is going to have to
11 decide that.

12 MR. APODACA: It's a title issue.

13 EXAMINER JONES: It's a title issue, and we can't
14 decide that.

15 MR. CARLISLE: I'm getting old and hard of
16 hearing, and I couldn't hear what attorney Pete was saying
17 a while ago about me not having any rights or --

18 (Laughter)

19 MR. CARLISLE: -- and I didn't know whether to
20 get closer up or what, you know. But I just caught a few
21 words on it, of why I was too late or something on it, you
22 know, and I didn't understand that.

23 MR. APODACA: Sir, I think that the argument was
24 made that with respect to who owns -- who has a lease
25 interest, that it's the position of Gandy Marley that those

1 rights have been required with respect to the lease that's
2 been assigned, the Energen lease, and that your interests
3 are folded into that.

4 That's actually an issue of title that -- and the
5 Oil Conservation Division does not adjudicate the title
6 interests with respect to those rights. So that's not an
7 issue that we would look into.

8 If that's an issue that you wish to pursue, then
9 that probably should be taken to another proceeding in
10 court to dispute the title issues.

11 MR. CARLISLE: I've got a letter here from
12 Energen that's from their landman. It says that we have
13 the rights to the wellbore.

14 MR. APODACA: It's not a matter that the OCD
15 adjudicates.

16 EXAMINER JONES: Yeah, we can't -- and as far as
17 -- Mr. Brooks has told me before the same thing on these
18 specific saltwater disposal applications. And whether he's
19 right or not, and -- I'm not sure what purpose it would be
20 -- serve to re-notice everybody, exactly the same people
21 that had been noticed originally. And they did sort of
22 show up, but they didn't show up and make a prehearing
23 statement and have an attorney and make an argument.

24 So to re-notice everybody that has been noticed
25 in the past, you know, I really -- talking to David Brooks

1 about this, to find out why exactly he said that. But he's
2 told me that before too, so I think we better stand by
3 what's been done so far.

4 MR. CARLISLE: So he may not need to go buy a
5 lease anymore to make a well?

6 EXAMINER JONES: We don't try to decide leases,
7 we just react to them.

8 MR. CARLISLE: I'm wasting my money, I guess,
9 buying a lease --

10 EXAMINER JONES: No --

11 MR. CARLISLE: -- for them to put a well on it?
12 Maybe I'm not following or something.

13 EXAMINER JONES: Well, it was a plugged and
14 abandoned wellbore.

15 MR. CARLISLE: But the lease had never expired.

16 EXAMINER JONES: Well, Energen -- Sounds like it
17 needs to be a conversation between you and Energen on that,
18 is to -- But you say you already had that conversation?

19 MR. CARLISLE: Yeah, I've got a letter here --

20 EXAMINER JONES: You've got it right there.

21 MR. CARLISLE: -- that says we have certain
22 rights in that wellbore.

23 EXAMINER JONES: Okay. Well --

24 MR. DOMENICI: We're happy to continue the
25 conversation --

1 MR. CARLISLE: Sir?

2 MR. DOMENICI: We're happy to continue the
3 conversation with you. We have title documents, you have
4 title documents. And I think our position is, this isn't
5 the group to decide those.

6 EXAMINER JONES: Okay, I think this closes this
7 case, and everybody's -- Nobody's satisfied now, so we'll
8 go ahead and close it with nobody being satisfied.

9 MR. LAKINS: Well, this is -- one last request,
10 if it would be possible for the Hearing Examiner and the
11 Division to issue an expedited decision on this case?

12 EXAMINER JONES: I'll make an effort.

13 MR. LAKINS: Thank you, Mr. Hearing Examiner.

14 EXAMINER JONES: Okay, with that we'll -- Thank
15 you.

16 With that, we'll take Case 13,962 under
17 advisement.

18 And that's the last case in this docket, so
19 Docket Number 22-07 is adjourned.

20 (Thereupon, these proceedings were concluded at
21 3:45 p.m.)

22 * * *

23 I do hereby certify that the foregoing is
24 a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____.

25

_____, Examiner
Oil Conservation Division

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

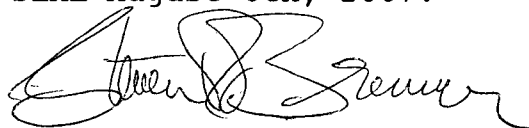
CERTIFICATE OF REPORTER

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 August 6th, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010