

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:)

CASE NO. 14,041

APPLICATION OF THE NEW MEXICO)
OIL CONSERVATION DIVISION FOR)
A COMPLIANCE ORDER AGAINST MARKS)
AND GARNER PRODUCTION, LTD. CO.)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Jr., Technical Examiner
DAVID K. BROOKS, Jr., Legal Examiner

January 10th, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, Jr., Technical Examiner, DAVID K. BROOKS, Jr., Legal Examiner, on Thursday, January 10th, 2008, 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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 Examiner Hearing
 CASE NO. 14,041

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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By: ERNEST L. PADILLA

* * *

1 WHEREUPON, the following proceedings were had at
2 2:33 p.m.:

3 EXAMINER JONES: Let's call Case Number 14,041,
4 Application of the New Mexico Oil Conservation Division for
5 a compliance order against Marks and Garner Production,
6 Ltd.

7 MS. ALTOMARE: Mikal Altomare on behalf of the
8 Oil Conservation Division --

9 EXAMINER JONES: Okay.

10 MS. ALTOMARE: -- I have one witness.

11 EXAMINER JONES: Other appearances?

12 MR. PADILLA: Mr. Examiner, Ernest L. Padilla for
13 Marks and Gardner [sic]. I have one witness.

14 EXAMINER JONES: Any other appearances?

15 Will all the witnesses please stand to be sworn?

16 (Thereupon, the witnesses were sworn.)

17 EXAMINER JONES: Okay, the Applicant, go ahead
18 and proceed.

19 MS. ALTOMARE: Thank you, Mr. Hearing Examiner.
20 I'd like to make a brief opening statement before calling
21 my first witness.

22 I know that you have read the Application, so I
23 won't belabor the point too much. This is a pretty
24 straightforward application against the operator, Marks and
25 Garner, for inactive wells. At the time that we filed the

1 Application there were 23 inactive wells. It is my
2 understanding that at this time our system is revealing
3 that there are 19 inactive wells for Marks and Garner.

4 My understanding is that five -- is it five? --
5 of the inactive wells that were originally listed in our
6 Application have since fallen off of the list, and then one
7 new one has been added. So it's not a simple subtraction
8 of the original list. But nonetheless, there are 19
9 inactive wells at this time listed on the Oil Conservation
10 Division website as being inactive for Marks and Garner.

11 It is our position that either these wells have
12 been in violation of 2- -- Rule 201 for one year plus 90
13 days and either have not been plugged and abandoned temp-
14 -- under temporary abandonment status approved through the
15 Oil Conservation Division, or brought back into production
16 as required by the rule, or these wells have been producing
17 in fact and production reports have not been filed
18 according to Rule 1115, as required under the OCD Rules.

19 We are seeking an order pursuant to Oil and Gas
20 Act assessing a penalty to be paid by a date certain, given
21 the history of this particular operator with regard in
22 particular to the recurrent inactivity of these wells, and
23 we are seeking in addition to that an order asking that the
24 wells be brought into compliance by either plugging and
25 abandoning -- obtaining approved temporary abandonment

1 status or bringing them back into production, filing any
2 and all delinquent reporting -- production reports that
3 might be due, filing any new single well bonds that have
4 become since January 1st.

5 And it is my understanding that all but two of
6 the wells that are currently inactive do carry with them
7 the need for additional single-well bonding. One
8 additional one will come due, come February, I believe. So
9 a total of 18 wells by February will need single-well
10 bonding, in addition to the blanket bond that has been
11 posted.

12 And all of that we are asking that there be *for*
13 specific date -- dates and deadlines be given and that if *18*
14 the operator doesn't comply, additional penalties be *date*
15 assessed and that the Division then be authorized to go in *within*
16 and plug the wells and forfeit the bond.

17 We are presenting a packet of exhibits before
18 you. The first two exhibits are affidavits.

19 One is an affidavit of notice indicating the
20 notification that was provided both to the operator of the
21 initial hearing setting, which was later continued, and to
22 the surety company through whom the bond was obtained for
23 the -- the blanket bond in this case.

24 The second is the affidavit of Dorothy Phillips,
25 indicating the financial assurance information relating to

1 this case. The other exhibits we will be moving for
2 admission through our initial witness.

3 Given the long history of Marks and Garner,
4 beginning at least as far back in 2001, and frankly before
5 that, but our system has long -- has well-documented
6 information as far back as 2001, both relating to these
7 particular wells and to other wells, with regard to
8 recurring and long-term inactivity and noncompliance, Marks
9 and Garner has just routinely disregarded letters of
10 violation and attempts from the Division to obtain
11 compliance, it has routinely maintained a large load of
12 inactive wells that are just sitting out there, not doing
13 anything, and -- some of these wells have been sitting out
14 there for over six years, being inactive, and because of
15 this we are -- that is the basis for us seeking the penalty
16 in addition to asking for an order of compliance.

17 So that is the basis of our case.

18 Did you want to make an opening at this time,
19 before I call my first witness?

20 EXAMINER JONES: Go ahead.

21 MR. PADILLA: Very briefly. Some of the
22 testimony you're going to hear today is that Marks and
23 Gardner had a change of ownership in 2004. Whatever
24 happened before the purchase of the current ownership of
25 Marks and Gardner was on somebody else's nickel.

1 Since 2004 the current ownership of Marks and
2 Gardner may be responsible, but we're prepared to tell the
3 Examiner and the Division what the status of the subject
4 wells are, and I think after you hear some of the
5 testimony, and looking at some of the exhibits of the
6 Division briefly, have two different mailing addresses. I
7 know some of the notices have been sent to Lovington, which
8 is the old Marks and Gardner, some of the new notices of
9 violation have been sent to -- correctly, to Hobbs, the New
10 Marks and Gardner.

11 So other than that, that's all we have for an
12 opening.

13 EXAMINER JONES: Okay.

14 MS. ALTOMARE: Thank you, Mr. Hearing Examiner.
15 At this time I call Mr. Daniel Sanchez, the Oil
16 Conservation Division.

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

20 DIRECT EXAMINATION

21 BY MS. ALTOMARE:

22 Q. Mr. Sanchez, can you please state your full name
23 for the record, please?

24 A. Daniel Sanchez.

25 Q. And what is your title?

1 A. I'm the compliance and enforcement manager.

2 Q. And for whom are you -- by whom are you employed?

3 A. The Oil Conservation Division.

4 Q. Okay. What are your duties as compliance and
5 enforcement manager with the Oil Conservation Division?

6 A. I manage the four district offices throughout the
7 state and the enforcement issues that come up out of those
8 offices, among other things. I manage the Environmental
9 Bureau out of Santa Fe, and I direct the program -- the
10 underground injection control program.

11 Q. Are you familiar with the requirements of Rule
12 201?

13 A. Yes, I am.

14 Q. Okay. And just generally, what are the
15 requirements?

16 A. They require an operator who has wells that have
17 been out of compliance or inactive for more than a year
18 plus 30 -- plus 90 days, to either properly plug and
19 abandon the well, get it back on temporary abandonment
20 status or get it producing or injecting again.

21 Q. And are you familiar with the requirements
22 imposed by Rule 1115?

23 A. Yes, those requirements being properly reporting
24 production or injection on those wells, on active wells.

25 Q. Okay, and how often are those reports required?

1 A. Monthly.

2 Q. Have you reviewed the exhibit packet sitting
3 before you that the OCD is presenting today in this case?

4 A. Yes, I have.

5 Q. I'd like to direct your attention to Exhibit
6 Number 3.

7 A. Okay.

8 Q. Can you describe this document, please?

9 A. That is the inactive well -- the inactive well
10 list for Marks and Garner. It shows that they have a total
11 number of 71 wells, and 23 of those being inactive, though
12 this was printed back in December of '07, and since then
13 the well list has gone down to 19 inactive wells.

14 Q. Okay, and what is your understanding about how
15 these -- how the information for this list is accumulated
16 and how these lists are generated?

17 A. It's provided by the operator.

18 Q. Okay. And are these lists and the information
19 contained within them maintained in the ordinary course of
20 business?

21 A. Yes, they are.

22 Q. I'd like to direct your attention to the column,
23 Last Production. What does that column indicate?

24 A. Last Production shows the last date that that
25 well either produced or injected.

1 Q. Okay. And from where is that data derived?

2 A. That too is given by the operator through the
3 filing of reports.

4 Q. Okay, so that's the last production reported by
5 the operator?

6 A. Yes.

7 Q. And at least one of the wells listed on Exhibit
8 Number 3 has not produced according to the report since
9 1994; is that right?

10 A. That's correct, the Northwest -- Northeast
11 Maljamar Unit Number 1.

12 Q. Okay. I'd like to direct your attention to the
13 next exhibit, Exhibit Number 4. What is this document?

14 A. This is an updated inactive well list. This was
15 printed out on January 9th, yesterday, and this is the one
16 that shows that there are now only 19 well on that list.

17 Q. Okay. Generally what is the -- besides the
18 numeric difference, what is the difference between this
19 list and the other list?

20 A. This one shows that the wells that were put back
21 to productive use -- or were temporarily abandoned, I'm not
22 sure which it is on these ones -- they have fallen off now,
23 they're in compliance.

24 There was one well on this -- I think there were
25 five total that came off, but another one that just came

1 back on recently.

2 Q. Okay, and that's the Gulf Hanagan Federal Number
3 001, correct?

4 A. I believe it is, yes.

5 Q. Okay. So it's your understanding that as of
6 yesterday, at least, this operator, according to OCD
7 records, based upon the information reported by Marks and
8 Garner, has 19 inactive wells?

9 A. That's correct.

10 Q. Have you reviewed the well files for the wells at
11 issue in this hearing?

12 A. Yes, I've gone through them.

13 Q. And are you familiar with the history of
14 violations and noncompliance with regard to this particular
15 operator, Marks and Garner?

16 A. Yes.

17 Q. Based on the well files, when did inactivity
18 issues first begin to arise that are significantly
19 documented in OCD records with regard to Marks and Garner
20 and this particular grouping of wells?

21 A. Back in 2001.

22 Q. Okay. What do you know upon your review of the
23 2001 records?

24 A. A number of the wells, Marks and Garner was
25 notified through letters of violation, and subsequently

1 they would bring them back into compliance, but eventually
2 they would go back off those, like they would only be
3 pumping for a while or producing for a while, or injecting,
4 and then they would go ahead and get them back on an
5 inactive status, and it was kind of an off-and-on thing
6 throughout those years.

7 Q. Okay, and seven of the wells that are currently
8 at issue in this case now started being cited back in 2001;
9 isn't that right?

10 A. That's correct.

11 Q. In the more recent past, when do records reflect
12 that the Division began making formal attempts to obtain
13 compliance from Marks and Garner?

14 A. That started occurring in April of 2005.

15 Q. And what efforts were made at that time?

16 A. A letter of violation was sent out on April 7th
17 of '05, informing Marks and Garner of a violation of Rule
18 201. This was really just on the Coquina State Number 1,
19 but it was to get their attention, to get them to come in
20 and let them know that they had a number of other wells
21 that were falling on that list.

22 Q. Okay, and this is documented on Exhibit 5,
23 correct?

24 A. That's correct.

25 Q. Okay, and looking at Exhibit 5, do you recognize

1 the signature of the compliance officer at the bottom of
2 the document?

3 A. Yes, that's Buddy Hill. He's our compliance
4 officer out of the Hobbs district office.

5 Q. Okay, and is he an employee that you supervise?

6 A. Yes, he is.

7 Q. And is this document the type of document that is
8 generated in the usual course of business by compliance
9 officers in that district?

10 A. Yes, it is.

11 Q. What if any response was received from the
12 operator?

13 A. There was no response to this letter.

14 Q. Okay. I'd like to direct your attention at this
15 time to Exhibit Number 6. What is reflected on Exhibit
16 Number 6?

17 A. Exhibit Number 6 is another letter of violation
18 that was sent out that same year, November 21st of 2005,
19 and it was regarding the same issue, the same well.

20 Q. And this is indicated to be the third notice; is
21 that right?

22 A. Yes.

23 Q. Looking at Exhibit Number 7, what is this
24 document?

25 A. Exhibit Number 7 is another letter of violation,

1 and this was dated June 19th, 2006, and once again it's
2 regarding the violation of Rule 201 on the Coquina State
3 Number 1 well.

4 Q. Okay. And once again, Exhibits Number 6 and 7
5 are documents that are maintained and issued in the
6 ordinary course of business by the district office?

7 A. Yes, they are.

8 Q. Looking at Exhibit Number 8, what is Exhibit
9 Number 8?

10 A. Exhibit Number 8 is a letter of violation that
11 was issued on August 30th of 2007 to Marks and Garner.

12 Q. Okay, what's different about this particular
13 letter?

14 A. This letter goes into a little bit more depth on
15 the violations, it does let them know that there are now 24
16 wells identified in the exhibit attached as being inactive
17 and tries to get their attention at that point. I can go
18 through it if you'd like.

19 Q. I don't think that's necessary since we're going
20 to be moving these exhibits into evidence, but what I would
21 like to draw your attention to is, what if anything --
22 Let's see if I can find the exact paragraph.

23 What if anything is the operator instructed will
24 occur if --

25 A. The letter here is to notify Marks and Garner

1 that the OCD intends to file an application for hearing to
2 obtain an order imposing penalties, requiring Marks and
3 Garner to return the wells to compliance by a date certain,
4 and authorizing the OCD to plug the wells and forfeit the
5 applicable financial assurance if Marks and Garner fails to
6 meet the compliance deadline set in the order.

7 Q. So the operator has been put no notice that an
8 application seeking compliance will be filed if they fail
9 to respond to this final letter of violation?

10 A. Yes, they were.

11 Q. Was any response received, to your knowledge?

12 A. No.

13 Q. What remedy are you seeking in this Application?

14 A. We're requesting that the Hearing Examiner issue
15 an order giving the date certain as to when these wells
16 should be brought back into compliance, whether that be
17 plugged, temporarily abandoned or get back into productive
18 use.

19 We're also requesting a penalty of \$19,000, which
20 is \$1000 for each of the wells currently on that list, with
21 a date certain as well in the order as to when that penalty
22 should be paid.

23 Q. Okay. What is your understanding about the new
24 single-well bonding requirements that came into effect on
25 January 1st?

1 A. If a well has been inactive for two years or more
2 as of January 1st, 2008, additional single-well bonding is
3 required.

4 Q. Okay. And based upon your review of Exhibit
5 Number 4, which was the well list that was printed
6 yesterday, what if any of those wells are going to require
7 additional bonding?

8 A. As of today, there are 17 of those wells that
9 would require it. One more would be falling off -- or onto
10 that list next month, and another one in June.

11 Q. Would you ask the Hearing Examiner to impose any
12 kind of a requirement on the operator with regard to the
13 posting of those single well bonds in addition to bringing
14 the wells into compliance?

15 A. Yes, we would be asking that those bonds be
16 placed.

17 Q. Okay. Are you familiar with the requirements of
18 operators to keep the Oil Conservation Division apprised of
19 their current contact information?

20 A. Yes, it is the operator's responsibility whether
21 they've been in business for any length of time or they've
22 moved, or if they are taking over as a new operator, to
23 notify the OCD of a contact address, so that any kind of
24 notifications, letters, whatever, can be sent to them at
25 that time.

1 Q. And what is an operator's obligation when he
2 sells or transfers operatorship of a well to another
3 operator?

4 A. It's up to them to notify the OCD as well and
5 make sure all the paperwork is in place for that transfer
6 to occur.

7 Q. And that too is imposed by regulation, by OCD
8 Rule, correct?

9 A. That's correct.

10 MS. ALTOMARE: Okay. I believe that's all the
11 questions that I have at this time. Pass the witness.

12 EXAMINER JONES: Mr. Padilla?

13 CROSS-EXAMINATION

14 BY MR. PADILLA:

15 Q. Mr. Sanchez, let me refer you to Exhibit Number
16 1, which is an affidavit of service. In the middle of the
17 page -- of the first page of Exhibit Number 1 it has an
18 address for Marks and Gardner, P.O. Box 1089, Hobbs, New
19 Mexico, right?

20 A. That's correct.

21 Q. Then refer to Exhibit Number -- direct your
22 attention to Exhibit Number 6.

23 A. Okay.

24 Q. That's a letter dated November 5th of -- November
25 21st of 2005, right?

1 A. That's correct.

2 Q. And that letter is addressed to Marks and Gardner
3 at Post Office Box 70, Lovington, New Mexico?

4 A. That is correct.

5 Q. Let me address or direct your attention to
6 Exhibit Number 7, which is a letter dated June 19th of '06
7 to Marks and Gardner at P.O. Box 1089, Hobbs, New Mexico,
8 right?

9 A. That's correct as well.

10 Q. Let me direct your attention to Exhibit Number 8,
11 which is a letter of violation, and it's a letter dated
12 August 30th, 2007, right?

13 A. Yes, sir.

14 Q. And it's addressed to Marks and Gardner
15 Production LTD Company at P.O. Box 70, Lovington, New
16 Mexico, right?

17 A. That's correct.

18 Q. Do you know which is the correct address? The
19 P.O. Box 70, Lovington, New Mexico, or the P.O. Box 1089,
20 Hobbs, New Mexico?

21 A. I believe the P.O. Box 1089 in Hobbs is the
22 correct address.

23 Q. When did you find that out?

24 A. Just when we were reviewing the case now.

25 Q. If the letter of August 30th, 2007, was

1 incorrectly sent to P.O. Box 70, Lovington, New Mexico, and
2 Marks and Gardner did not get that letter, would they have
3 received notice of the letter of violation on August -- by
4 the letter dated August 30th, 2007?

5 A. That I don't know. It depends on whether or not
6 there was going to be a forwarding address from that
7 address to the new one.

8 Q. Okay. That letter was not sent certified return
9 receipt requested, correct?

10 A. I don't know. Subject to check, I would say it
11 wasn't.

12 Q. Do you know what the practice of the OCD is with
13 regard to a letter of violation, whether or not you send it
14 certified mail?

15 A. They're usually not sent certified.

16 Q. The only other letter addressed to Marks and
17 Gardner in Hobbs is a letter dated June 19th of '06 --

18 A. That's correct.

19 Q. -- in this packet --

20 A. Yes.

21 Q. -- right?

22 And of course the affidavit of service was sent
23 directly to Marks and Gardner?

24 A. Uh-huh.

25 Q. And that would have the attached Application of

1 the OCD for this hearing, correct?

2 A. That's correct.

3 Q. And there is attached to that a certified return
4 receipt for notice of hearing?

5 A. Yes.

6 Q. So essentially the only known notice -- correct
7 notice, other than the letter dated -- well, for all of the
8 wells is the notice of hearing that was sent by Ms.
9 MacQuesten in -- it appears that Marks and Gardner received
10 this on 11-27-07, right?

11 A. That's correct.

12 Q. Assuming that Marks and Gardner did not receive
13 notice of the August 30th, 2007, for all of the wells, then
14 the -- Well, let me ask it this way. Do you normally --
15 What is the purpose of the August 30th, 2007, letter? A
16 notice of violation?

17 A. To once again try to contact Marks and Garner
18 about their issue with the inactive wells.

19 Q. Okay. And in that -- does that have a date
20 certain in that letter as to some kind of compliance?

21 A. No, this one doesn't look like it does, no.

22 Q. So you would agree with me that the only -- the
23 only real notice that Marks and Gardner had at correct
24 address is the Application for this hearing?

25 A. The Application for hearing and the June 19th,

1 206 [sic], letter, the violation.

2 Q. That was only for one well?

3 A. Yes, but if Marks and Garner would have responded
4 to that, we would have let them know that the other wells
5 were on that list as well.

6 Q. And do you know yourself whether or not they
7 responded to the Oil Conservation Division in the district
8 office?

9 A. Yes, by checking with the district office they
10 never got a reply.

11 Q. Do you know whether they got some -- whether
12 Marks and Gardner made some kind of oral communication with
13 the district office?

14 A. They didn't recall any kind of reply.

15 Q. For the entirety of the wells, the 17 wells that
16 are under consideration here, the first notice, then, would
17 have been the November notice with the Application?

18 A. If they hadn't gotten the previous letters? Is
19 that what you mean?

20 Q. Yes.

21 A. Well, the June -- well, concerning all of the
22 wells as noticed, yes, that's true.

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

24 EXAMINATION

25 BY EXAMINER JONES:

1 Q. Okay. So the 17-well list is, I take it, the
2 Exhibit Number 4?

3 A. Number 4, yes.

4 Q. Okay, so that's the latest list, that's the one
5 you're going for, then?

6 A. Actually that's 19 wells --

7 MS. ALTOMARE: Nineteen --

8 THE WITNESS: -- only 17 of them would be subject
9 to additional financial assurance today.

10 Q. (By Examiner Jones) Okay, financial assurance
11 and then -- okay, and then what are their -- okay, the
12 Application assessing a monetary penalty assessment in an
13 amount consistent with both the large number of
14 noncompliant wells and the long-term nature of this
15 operator's noncompliance -- do you have a suggested amount
16 for that?

17 A. \$1000 per well.

18 Q. You probably already said that, but I just didn't
19 catch it. So \$1000 per well --

20 A. On the 19, on the latest...

21 Q. Okay. Okay, and that's based on Exhibit Number
22 4, right?

23 A. Yes.

24 Q. Do you think that Marks and Garner has been given
25 adequate notice in this case?

1 A. I believe they have.

2 Q. Do you think they've been given adequate notice
3 of these particular wells that are on this list, that they
4 are in compliance?

5 A. In their day-to-day business, the operator, I
6 believe, knows which wells are out of compliance, which
7 wells aren't. They do the reporting on a monthly basis.

8 They did get a letter -- granted it was only
9 concerning the Coquina State Number 1 -- back in June of
10 2006. But the letters -- once an operator responds, we
11 also let them know what other issues we have, including the
12 additional number of inactive wells. So I believe with
13 that, if they would have responded, we would have given
14 them plenty of notice and we probably wouldn't even be here
15 today.

16 Q. Have you heard back from any bondholder in this?

17 A. Not that I'm aware of.

18 EXAMINER JONES: Okay, do you have any more
19 questions?

20 EXAMINER BROOKS: No.

21 MS. ALTOMARE: Could I follow up, please?

22 EXAMINER JONES: Sure.

23 REDIRECT EXAMINATION

24 BY MS. ALTOMARE:

25 Q. Mr. Sanchez, is it uncommon for an operator to

1 have multiple addresses, especially in different locations?

2 A. No.

3 Q. Regarding Exhibit Number 7, I'd like to direct
4 your attention to the last full paragraph on the first
5 page.

6 A. Okay.

7 Q. Could you read that paragraph out loud, please?

8 A. In the event that a satisfactory response is not
9 received to this letter of direction by the corrective
10 action due date, date shown above, further notice [sic]
11 will occur. Such enforcement may include this office
12 applying to the Division for an order summoning you to a
13 hearing before a Division Examiner in Santa Fe to show
14 cause why you should not be ordered to permanently plug and
15 abandon this well. Such a hearing may result in imposition
16 of civil penalties for your violation of OCD rules.

17 Q. So the operator was put on notice, at the very
18 least, in this particular letter that counsel has conceded
19 did go to the correct address, that an application may be
20 filed based on this particular violation in the June, 2006,
21 letter?

22 A. That's true.

23 Q. Okay, and at the very bottom on the first page,
24 under comments on inspection, it indicates that it's in
25 fact the third letter that was issued, right?

1 A. Yes, it reads, Idle well (Rule 201), third letter
2 expired 2-18-06, no response. This well needs to be TA'd,
3 PA'd or put back in use. Compliance by due date 7-06-06 or
4 will set for ACO forth notice.

5 Q. Okay, so in fact at that time, Marks and Garner
6 Production, Limited, was put on notice that even if it
7 hadn't received the previous notices, there were previous
8 notices, and perhaps it should look into the issue?

9 A. Yes.

10 MS. ALTOMARE: Okay. I think that that's all
11 that I have.

12 EXAMINER JONES: Okay. Any more questions for
13 this witness?

14 MR. PADILLA: No.

15 EXAMINER JONES: Do you want to move for the
16 admission of the --

17 MS. ALTOMARE: Yeah.

18 EXAMINER JONES: -- exhibits?

19 MS. ALTOMARE: I'd like to move for the admission
20 of Exhibits 1 through 8.

21 EXAMINER JONES: Any objection?

22 MR. PADILLA: No.

23 EXAMINER JONES: Exhibits 1 through 8 will be
24 admitted.

25 And -- No more witnesses for your -- the

1 Applicant?

2 MS. ALTOMARE: No.

3 EXAMINER JONES: No more witnesses, okay.

4 MR. PADILLA: We'll call Quinton Welborn.

5 QUINTON R. WELBORN,

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

8 DIRECT EXAMINATION

9 BY MR. PADILLA:

10 Q. Mr. Welborn, you please state your name.

11 A. Quinton Ray Welborn.

12 Q. Mr. Welborn, what is your position or your
13 relationship with Marks and Gardner Production, Ltd.?

14 A. I'm the manager and part owner.

15 Q. Mr. Welborn, let's go through the OCD's exhibits.
16 You have a copy of those?

17 A. Yes, sir.

18 Q. Did you get a copy of the OCD Exhibit Number 1,
19 which is the Application of this hearing?

20 A. Which --

21 MS. ALTOMARE: It's actually just the affidavit
22 of --

23 THE WITNESS: The affidavit. November 19th
24 letter, is that what you're referring to? The notice of --

25 Q. (By Mr. Padilla) Yes.

1 A. Yes, I did.

2 Q. What is your address?

3 A. My mailing address is P.O. Box 1089 in Hobbs, New
4 Mexico, 88241.

5 Q. And when I say your address, that's the address
6 for Marks and Gardner?

7 A. Yes, correct.

8 Q. Do you have a mailing address in Lovington, New
9 Mexico at P.O. Box 70?

10 A. No, I do not.

11 Q. Do you know where -- whether that P.O. Box is --
12 who owns that P.O. Box or --

13 A. The partners that had Marks and Garner before we
14 were involved, that was their P.O. box.

15 Q. Can you tell the Division and the Examiner what
16 -- when you purchased the -- what did you --

17 A. Marks and Garner was purchased from Buddy Garner
18 in late March and August of 2004. We kept the name, due
19 for financial reasons, to keep the -- be able to transfer
20 accounts and not changing well signs, and it was easier for
21 us on the plugging bond at that time.

22 Q. In retrospect, was that a wise decision?

23 A. No, it was a mistake. We should have changed the
24 name then.

25 Q. Why is that?

1 A. Well, because they have had a reputation of
2 noncompliance, apparently, and they -- I don't know how
3 they were to deal with the OCD in the past, but apparently
4 they -- it wasn't very good.

5 Q. Now let me direct your attention to the OCD's
6 exhibits, Numbers 5, Number 6 and Number 8. When is the
7 first time you've seen -- Well, let me ask you, did you
8 ever receive these letters?

9 A. I received the one on June 19th for the Coquina,
10 on that -- on that one. The others I have not.

11 Q. Well, I asked you about the -- that's Exhibit
12 Number --

13 A. -- 7. Let's see, Exhibit Number 8 I did not
14 receive, or Number 6 or Number 5.

15 Q. Okay. Did you receive Exhibit Number 8?

16 A. No, I did not.

17 Q. Were those exhibits forwarded to you?

18 A. No.

19 Q. What is your relationship to the partners or the
20 people who owned Marks and Gardner before August, 2004,
21 when you purchased it?

22 A. Well, we don't really have any relationship
23 anymore. They -- I guess Link Marks is still a lienholder
24 on the contract from the payout, but they don't -- they're
25 not involved in any way.

1 Q. Have you made any requests to them concerning
2 operation of some of the wells that are on the list of the
3 OCD?

4 A. Yes, I know that as far as the ones that were
5 sold to Buddy Garner --

6 Q. Well, let's -- let's --

7 A. Oh, okay.

8 Q. -- move on to our Exhibit Number 1.

9 A. Yes, sir.

10 Q. Is that easier for you?

11 A. Yes, sir.

12 Q. Can you identify the wells that you sold?

13 A. Yes.

14 Q. You sold back to Buddy Gardner; is that how it
15 happened?

16 A. Well, it was -- it was an agreement that -- when
17 we purchased them from August, 2004, his son stayed on for
18 a year, and they were supposed to help us get all this up.

19 We had a pulling unit. They took the pulling
20 unit. It didn't work on the well, so we had a -- we had a
21 major split there, and for us not to owe him any more
22 money, he got -- he ended up with three wells and a pulling
23 unit in the deal.

24 Q. Are those wells identified on your Exhibit Number
25 1?

1 A. Yes, they are.

2 Q. Which wells are those?

3 A. The first one would be the Cities Service State
4 Number 1 --

5 Q. Okay.

6 A. -- the Kemnitz 17 State Number 1...

7 Q. There's another one?

8 A. Yes, the Northeast Maljamar Unit Number 1.

9 Q. Now attached to your packet of exhibits are
10 Exhibits 3A, 3B and 3D.

11 A. Yeah.

12 Q. What are those?

13 A. These -- this is the agreement where they -- in
14 March of 2006, where he became -- control over the wells,
15 James Garner --

16 Q. Were those --

17 A. -- those three wells.

18 Q. Those are the three wells that you've
19 identified --

20 A. Yes, sir.

21 Q. -- in Exhibit Number 1?

22 A. Correct.

23 Q. Okay. What efforts have you tried to get Buddy
24 Gardner to change bonding or get the correct bonding in
25 place?

1 A. Well, we had done several things. For one, they
2 were like -- he was getting gas off the Kemnitz well or
3 something, they'd send a check to me, I'd hold it until
4 they would do that. That didn't work.

5 I have basically got to where I wouldn't have any
6 contact with them through a lawyer there in Hobbs. We have
7 tried everything. They did come up with bonding for the
8 Kemnitz and the Cities Service, I believe, but they never
9 could come up with the money for the northeast Maljamar to
10 bond it.

11 They would call and say, We got it done. So we
12 would go online to certify that, we would do our end of it,
13 it kept getting denied because they did not have the
14 additional bonding they needed to operate those wells.

15 Q. Do you feel you're on the hook as far as those
16 wells are concerned?

17 A. Yes. I mean, I feel like I'm in -- in the
18 middle, is what you mean?

19 Q. Yes.

20 A. Yes. Oh, yeah, it's been a -- it's been an
21 ongoing deal. I don't know, really, what the next step is
22 to take on that situation.

23 Q. Are those wells producing oil and gas?

24 A. Two of them I know are producing.

25 Q. Which are producing oil --

1 A. The Kemnitz and the Cities Service. And the
2 reason I know they're producing, I've got a statement from
3 Duke showing that the Kemnitz has been producing gas -- I
4 don't know about the oil. And I have -- we have seen the
5 Cities Service pumping, and I have got invoices from when
6 -- I get from some hot oil companies, getting hot oil to
7 treat a tank, so I just presume that they have been pumping
8 that well.

9 Q. What do you do with those invoices?

10 A. I send them back to the company and tell them
11 it's no longer ours and to contact Mr. Garner on that.

12 Q. And the third well, the Maljamar Unit well, do
13 you know whether that's productive or --

14 A. No, it's not productive, it's -- I don't think
15 there's -- I don't know exactly what's there, but I know
16 there's not a pumping unit or anything like that on there.

17 Q. Did you prepare Exhibit Number 1?

18 A. Yes, I did.

19 Q. Now you prepared it some time ago, right?

20 A. Yes.

21 Q. In December of 2007?

22 A. Yes, sir.

23 Q. Is that completely updated?

24 A. Not completely. We got --

25 Q. Let's start up at the top --

23-426
1 A. Yes.

2 Q. -- with the Bradley Federal Number 1.

3 A. Bradley Federal Number 1 we have plugged and
4 abandoned in March of 2006 through the BLM.

5 Q. Attached as Exhibit 2 are completion -- plug-and-
6 abandon reports, right?

7 A. Yes, sir.

8 Q. And when did you file those?

9 A. Well, I thought I had filed them, you know, not
10 long after that. But come to find out when I have
11 contacted them, since this has arrived, that they did not
12 receive them. So I filed them again last week.

13 Q. Okay. And the Bradley Number 3 you also plugged
14 and abandoned?

15 A. Yes, sir.

16 Q. And that report is attached as part of Exhibit 2?

17 A. Yes.

18 Q. And what other well did you plug and abandon?

19 A. At that time we also plugged and abandoned the
20 Gulf Hanagan Number 1. not in step

21 Q. And --

22 A. And that -- that you said was one that just come
23 on the list. But since then we've also plugged and
24 abandoned the Ernest Federal Number 1.

25 Q. And that's part of Exhibit 2, right?

1 A. Yes.

2 Q. This morning we took out the Gulf Hanagan --

3 A. Right, because it wasn't on the list that we had
4 there.

5 Q. It wasn't on that list. So you have that
6 plugging report --

7 A. Yes, sir.

8 Q. -- that we can go back into this packet, okay.
9 Let's go -- How about the Cave Pool Unit wells, the next
10 two --

11 A. Okay, and I did make a mistake on the second one,
12 that should be the Cave Pool Unit Number 36.

13 These were two SWD wells we had under Cave Pool
14 Unit in Eddy County, and I believe it was during the time
15 when -- around '05, when we still had Devin Garner in on
16 the -- when he was taking care of these, before I had
17 anything to do with them. He lost the -- I guess we lost
18 the authority to inject. I think it was because it wasn't
19 me going out there for an MIT, is what I believe happened.
20 I'm not real sure.

21 Q. What are your intentions with regard to those
22 wells?

23 A. Well, I'm not real sure economicwise what would
24 be best. We might want to plug those wells.

25 Q. If you plug those wells, when will you do that?

1 A. I'm not sure. It would be within three or four
2 months, is when we would like to do that. I believe that
3 we got some here that would be easier for us to start on
4 and do first before we got to those, is the reason I don't
5 know exactly when we would try that.

6 Q. Let's go on to the next one, which is the Coquina
7 State. We already -- you already talked about the Cities
8 Service --

9 A. Yes.

10 Q. -- you sold that.

11 A. Yes, sir.

12 Q. The Coquina State Number 1.

13 A. Coquina State, we have -- well, actually when we
14 had received the letter -- it was another exhibit -- I --
15 and I do not have it with me, I should have brought it --
16 we did send in a report -- or proposal to T-and-A that
17 well, never did get a response.

18 But we would want to T-and-A it because we could
19 believe we could sell it or put it back on later, because
20 we do think it would be a productive well.

21 Q. To whom did you send the request?

22 A. I believe it was to the Hobbs office.

23 Q. Can you get us -- or get the Division a copy of
24 your request?

25 A. Yes, because I remember we used a service there

1 to do that, and I will contact them. And I believe I've
2 got another copy myself there at the office.

3 Q. It's your testimony that you never received a
4 response back --

5 A. Yes, sir.

6 Q. -- from the district office?

7 A. Yes.

8 Q. Which district office is that?

9 A. The Hobbs office.

10 Q. Ernest Federal is plugged, right?

11 A. Correct.

12 Q. Okay. How about the Graham Federal?

13 A. Graham Federal Number 3, we have it producing
14 gas.

15 Q. Since when?

16 A. I think probably September.

17 Q. Is that on the Division's list that you saw?

18 A. Yes.

19 Q. It's on the Division's list?

20 A. Yes, it's on the -- yes, the inactive wells, yes.

21 Q. And have you been making production reports on
22 that well?

23 A. Yes, they should have been in -- September should
24 be showing production.

25 Q. How about the Jennings Federal Number 2?

1 A. The same thing, we got it going right around the
2 same time. It's just producing a little bit of gas.

3 Q. Your notation on that was that you would have
4 it --

5 A. Oh, no, excuse me, that one was done -- that was
6 -- I was thinking of another well. This one was done in
7 December, the Jennings Federal Number 2 was done around the
8 15th of December. We replaced a flow line and did some --
9 worked on it, and it is flowing gas.

10 Q. The Julia Culp?

11 A. The Julia Culp is, from what I understand -- and
12 I cannot find paperwork on it, because it was before we had
13 maintained control -- was according to Link Marks that that
14 well was plugged and abandoned, he thought, in 2001, and
15 was witnessed by Bill Prichard at the time. It says --

16 Q. Who?

17 A. -- that it was approved and done that. So I've
18 never actually -- know anything else about it, other than
19 they told me it had been plugged and abandoned?

20 Q. Who is Bill Prichard?

21 A. Bill Prichard, that used to work in the Hobbs
22 office at the OCD.

23 Q. Have you looked for paperwork --

24 A. Yes, I have looked for it. It's not in the
25 actual paperwork I got, and I had Link Marks checking.

1 Last time I talked to him, he didn't find anything on
2 there.

3 And I know that they use their -- I'm sure they
4 used their own unit, and they did have some cement
5 equipment.

6 So I don't really know -- Like if it was Basic
7 did it, I could go towards there. But since they did it
8 themselves, I don't know where to go, and I did not find it
9 on the Internet.

10 Q. How about the W.M. Snyder Number 1?

11 A. W.M. Snyder, that's a well that we had some
12 people looking at it, they were going to make an SWD but
13 got denied on it, so I believe we were going to -- we were
14 wanting to plug that one, would be the first one that we
15 would actually plug, because it's -- I don't think it's got
16 any tubing or anything in there, we would -- and I think
17 some -- they pulled some of the casing. So that would be
18 economically better for us to plug that one first.

19 Q. And if you plug that, when do you intend to plug
20 it?

21 A. Probably -- hopefully February or March.

22 Q. How long do you have to wait for a contractor to
23 plug and abandon --

24 A. Yeah, that's the problem. We've got a lot of our
25 own equipment, but as far as getting the cement, it's kind

1 of a crapshoot. One time we waited seven months on doing
2 some of this with the BLM, one time we waited three months.
3 So I would say an average of three or four months anyway,
4 to get everything lined up to do it.

5 Q. How about the Theos State Number 1?

6 A. The Theos State Number 1, all I know, it was the
7 -- from what we were told was that it was temporarily
8 plugged and abandoned in 2001. And as far -- we have not
9 done any work to it or attempted to do it yet either.

10 Q. Do you know whether that well poses any threat to
11 the environment?

12 A. No, it does not. These ones that are TA'd here,
13 like that one is in -- well, they're Grayburg wells, I
14 believe, in what we call our Cave Pool Unit, which has got
15 a lot of potential. I think it's one of those that has a
16 market for it, so we believe it could produce in the
17 future.

18 Or if somebody actually did buy some of these
19 wells at the Cave Pool Unit, that might be something they'd
20 want to do, would be to complete them.

21 Q. In preparation for this hearing, did you do any
22 investigation as to whether it was actually T-and-A'd?

23 A. I could -- well, just by going out and looking,
24 there was no casing in the hole. I mean, there wasn't no
25 tubing or anything there, just a wellhead and how like --

1 looked like they had T-and-A'd it, yes. And as far as -- I
2 did not look on the Internet to see -- through the file to
3 see if it had.

4 Q. The Kemnitz 17, you've already testified about --

5 A. Yes, sir.

6 Q. -- and that's a producing well, you're saying?

7 A. Yes, that -- I know that one is producing.

8 Q. To your knowledge, does that have a bond?

9 A. No, it's -- now yes, they've got a bond on that
10 one and the Cities Service, yes. They do not have a bond
11 for the northeast Maljamar.

12 Q. Do you know what the problem is with -- Do you
13 know whether whoever owns it now, Buddy Gardner, is he
14 filing C-115s for production?

15 A. I don't think he is. As far as I know, he
16 wouldn't be.

17 Q. Why do you say that?

18 A. Well, because I figured if he would have, that it
19 might not be on this list if he was produc- -- Just knowing
20 him, he hadn't -- I wouldn't think he would do anything
21 like that until somebody -- till it was on his plate there
22 to fix.

23 Q. When did you get first notice that you had some
24 problem with 23 wells, or 19 wells?

25 A. Well, I knew that we had had a lot -- that we had

1 to get a lot of wells worked on that we'd been working on,
2 but I didn't know about all twenty-, you know, -three of
3 them, probably, until I got the letter of the hearing.

4 Like I said, I knew we had some wells that needed
5 to be back into compliance, but I didn't know that --

6 Q. Since you got that notice of hearing, have you
7 been working on these wells trying to do something with
8 them to --

9 A. Yes. Yes, I have. We've -- we've been working
10 on these wells ever since we've gotten -- pretty much ever
11 since the Garner issue about selling the wells, we've
12 worked and fixed as many as we could in a given -- I mean,
13 we -- just in -- we would fix one and then move to another,
14 we just -- you know, we didn't want to exhaust all our
15 resources just all at once.

16 But we have been trying to -- you know, as time
17 and money allows, to get more and more going, because of
18 course that's more cash flow for us.

19 Q. But is that mainly a company operation that
20 you --

21 A. Yes.

22 Q. But in terms of the 23 wells, as I understand
23 your testimony, only since November when you got --

24 A. Yes --

25 Q. -- notice --

1 A. -- yes --

2 Q. -- of this hearing --

3 A. -- yes --

4 Q. -- did you have -- did you realize you had a
5 problem?

6 A. Right, and some of those were that we got going
7 real -- was the Levers Number 3Y. Since then we have got
8 it pumping. And we had also worked on the -- the Jennings
9 was one of the wells since then that we -- we got pumping
10 since the letter.

11 Q. Let's not jump out of our sequence --

12 A. Okay, I'm sorry.

13 Q. -- all right?

14 A. Yes, sir.

15 Q. Let's go to the Lea UA State Number 1.

16 A. Okay, the -- we thought we might could get some
17 gas off that well. We didn't. We have worked on it. But
18 we want to -- that is a well that we would like to
19 recomplete after the first of the year, because it -- the
20 history of the well is that it is a good well, makes 20
21 barrels a day and about 40 MCF a day.

22 We actually bought that well before we bought all
23 the rest of them, and then -- that was our plan. But, you
24 know, due to not having the pulling unit, when they took
25 the pulling unit, and then when we had to plug and abandon

1 these wells, it's kind of -- it hadn't been our top
2 priority, but we do want to make that a priority to get it
3 producing, because we believe that is a very good well.

4 Q. Okay. Now you already talked about the Levers
5 3Y. Is that -- you've already said you're --

6 A. Yes, we replaced the electric -- we replaced some
7 electric lines, we put in a new electric motor, a key
8 stock, and we've had it pumping about a week and a half,
9 two weeks. It is producing some oil, water and a little
10 bit of gas.

11 Q. What kind of oil production are you getting?

12 A. Well, when we first started, of course, we got a
13 lot of flush. But it started off making seven or eight
14 barrels. Well, the first days it didn't make hardly but, I
15 think, one barrel. Then it jumped to about eight or nine,
16 and now it's kind of back to about two barrels a day.

17 Q. Northeast Maljamar, you've already testified
18 about that.

19 A. Yes.

20 Q. And the Red Twelve Federal Number 2?

21 A. Yes, that is a gas producing well. We do have a
22 -- we have placed flow lines on it, it is producing gas.

23 Q. Since when?

24 A. September.

25 Q. The next, Red Twelve Levers Number 8Q?

1 A. Yes, this one and the one below it, the Number
2 12, I didn't find that out until -- till this come up on
3 the hearing.

4 We found out that these two wells were drilled
5 but never completed. And that was, I think, even before
6 Buddy and Link had that. I think it was -- the Diamondback
7 had done that.

8 But we feel like it's in a good field, and so we
9 would like to T-and-A these two wells, which we have our
10 own equipment to do that, we wouldn't have to wait on a
11 contractor, so to speak, and T-and-A those two wells and
12 see what happens later, like -- if we sell it, it could be,
13 you know, somebody -- you know, the work's halfway done to
14 complete those wells, is one reason that we think they
15 could be economically --

16 Q. Do they have casing set in them?

17 A. Yes, they have the casing -- as far as -- I don't
18 know if they've even been perforated, though. I do know
19 the casing is set, but I do not know if they have been
20 perforated.

21 Q. Are they completed in such a fashion as to --
22 what I'm trying to get at, do they pose any -- any --

23 A. No.

24 Q. -- environmental concern?

25 A. I would not think -- not in my opinion, no.

1 Q. Okay, the Red Twelve State Number 3 and Number 6
2 look about -- They're T-and-A'd?

3 A. Yes, sir.

4 Q. Have you been out to the wells?

5 A. Yeah, it's -- like the Theos, I think those were
6 all supposed to be done around the same time. And that
7 would have been to the wells that looked -- and like I
8 said, there's no tubing in the hole, it looks like it's
9 been T-and-A'd.

10 Q. And the State Number 2?

11 A. Yes, we have it producing gas.

12 Q. Since when?

13 A. September.

14 Q. Okay. So what wells are actually inactive in all
15 this --

16 A. We have -- that are actually -- the Coquina State
17 Number 1, the W.M. Snyder, Theos State Number 1, the Lea UA
18 State Number 1, the Red Twelve State Number 3, the Red
19 Twelve State Number -- or I'm sorry, the Red Twelve State
20 Number 6 and the State Number 1, and the northeast Maljamar
21 Unit Number 1, I know that it is not producing, even though
22 that was part of the agreement.

23 Q. What's your plan to solving problems posed by
24 this Application?

25 A. Well, we would like to first probably start off

1 with -- like I said, T-and-A'ing those ones that have been
2 drilled but never completed. And as time and money allows,
3 we'll try to plug the Snyder well, and then the Cave Pool
4 Unit 27 and 36.

5 As far as the rest of them, kind of -- like the
6 T-and-A-d wells, we have had some interest in that, and
7 that is in that lease there, the Cave Pool Unit. We're not
8 sure, we might sell that lease. We just figure there's a
9 market value there. That's an option we've -- we've
10 definitely considered.

11 And we've definitely considered, if we don't, you
12 know, we want to go in there and work on some of these
13 wells and put them back on production and maybe frac a
14 couple of them, is what -- because all the wells around
15 that area have been doing good, so we do think it's -- that
16 they are good wells.

17 Q. Do you have the financial resources to do that?

18 A. We do if we take our time. We can't just go jump
19 in and do it all at once. If we -- you know, if we -- even
20 with our own equipment it's going to cost -- with the
21 equipment we got, the last well that I plugged cost
22 \$17,000. And that's if we don't get a pulling unit. If we
23 have to get a pulling unit, get another pulling unit, it's
24 going to be around \$35,000 or \$40,000. So it takes us a
25 month or two to get healed back up, so to speak, after

1 doing that.

2 Q. In terms of notice to you, do you think that the
3 notice of the Application for all of the wells that were
4 originally under consideration here -- in other words, the
5 23 wells -- do you feel you had adequate notice about
6 curing the problems in these wells?

7 A. No, I have not. And I'd also like to say, I have
8 sent -- the P.O. box deal, that has been an ongoing issue.
9 I know I have sent the OCD office in Artesia and the OCD
10 office in Hobbs our P.O. box, 1089, and it just -- it seems
11 like sometimes it's hit or miss of where some of this stuff
12 is going to go.

13 So like I say, as you can tell, some of these go
14 to P.O. Box 70, which they were forwarded for a little bit,
15 but I do not think that -- I know that they haven't
16 forwarded that in a couple years, easy. Probably -- I
17 think he might have put a month or two on that since
18 August, 2004. It might have gone a couple months after
19 that, but other than that I haven't -- nothing has been
20 forwarded to me from that box.

21 MR. PADILLA: That's all I have. Rest.

22 And we move the introduction of Exhibits 1, 2 and
23 3A, -B and -D.

24 EXAMINER JONES: Any objection?

25 MS. ALTOMARE: No objection.

1 EXAMINER JONES: We'll admit Exhibit 1, 2 and 3A,
2 -B and -C.

3 MR. PADILLA: -- and -D. We took out --

4 EXAMINER JONES: -- and -D.

5 MR. PADILLA: -- -C because it didn't apply. We
6 had it marked Exhibit C -- 3D -- 3C, I'm sorry.

7 EXAMINER JONES: 3C --

8 MR. PADILLA: Right.

9 EXAMINER JONES: -- was taken out.

10 MR. PADILLA: Taken out.

11 EXAMINER JONES: Okay. Exhibits 1, 2, 3A, -B and
12 -D.

13 MR. PADILLA: Right.

14 EXAMINER JONES: And go ahead.

15 MS. ALTOMARE: Thank you.

16 CROSS-EXAMINATION

17 BY MS. ALTOMARE:

18 Q. Mr. Welborn, you indicated that you took over
19 Marks and Garner in approximately August of 2004?

20 A. Yes, that is when it was purchased, yes.

21 Q. Okay.

22 A. Now I did not have actual control of it. We had
23 a guy running it for a year. It was, I believe, 2006 since
24 I've -- I have been in total control of it --

25 Q. Okay.

1 A. -- as far as all the decisions and --

2 Q. I'm going to show you what we're going to submit
3 as OCD Exhibit -- and I apologize for the -- I may not have
4 enough. Do you mind sharing?

5 EXAMINER JONES: No, sure.

6 EXAMINER BROOKS: Give it to the Examiner.

7 Q. (By Ms. Altomare) Do you recognize this document,
8 Mr. Welborn?

9 A. It seems fairly familiar.

10 Q. Okay, this is the Electronic Permitting Operator
11 Administrator Registration Form for the Oil Conservation
12 Division.

13 A. Uh-huh.

14 Q. Is that -- am I correctly --

15 A. Yes.

16 Q. -- indicating what's labeled at the top of that
17 document?

18 A. Yes, uh-huh.

19 Q. Okay. Do you recall filling out this form?

20 A. Yes, I do.

21 Q. Okay. Is that your signature and your
22 handwriting?

23 A. Yes, it is.

24 Q. Okay. Can you what is listed as the mailing
25 address?

1 A. P.O. Box 70 in Lovington.

2 Q. Okay, and what is the operator organization name
3 above that?

4 A. Marks and Garner Production Company.

5 Q. Okay, and what is listed under -- for title under
6 your name?

7 A. Controller.

8 Q. So the P.O. Box 70 in Lovington is actually
9 listed --

10 A. Yes.

11 Q. -- as the address for Marks and Garner --

12 A. Right.

13 Q. -- associated with your name?

14 A. Uh-huh.

15 Q. Okay. Would it surprise you to know that this is
16 the last document that the Oil Conservation Division has
17 received in the way of advising us regarding the official
18 contact address for Marks and Garner?

19 A. Yes, it would. I do remember, because after this
20 -- when I spoke to the Artesia and Hobbs office, they just
21 told me to fill out a letter -- I did not know about this
22 -- just fill out a letter saying our address has been
23 changed as of this date, please correspond to this. And
24 that's what I did. I did fail to -- to -- I did not go
25 electronically and do that. I thought I had it resolved,

1 but apparently I had not.

2 Q. Okay. Now you are aware that as an operator in
3 New Mexico, that you are required to follow the rules of
4 the Oil Conservation Division?

5 A. Yes.

6 Q. Okay. And you are aware that one of those rules
7 requires you to keep your address and contact information
8 updated with the Oil Conservation Division so that we can
9 contact you?

10 A. Yes.

11 Q. Are you also aware that you are required by the
12 Oil Conservation Division -- by the Rules and the Statutes
13 of the State, to inform the Oil Conservation Division when
14 there's a change in operatorship --

15 A. Yes.

16 Q. -- or a change in ownership of one of the wells
17 or facilities that you --

18 A. Correct, yes.

19 Q. Okay. You have indicated that back in March of
20 2006 -- I believe you have indicated that -- I'm assuming
21 that Buddy is a nickname, Garner?

22 A. Yes, his name is James Garner --

23 Q. Okay.

24 A. -- I apologize.

25 Q. -- took over three of the wells on this list?

1 A. That is correct.

2 Q. Okay. What explanation do you have for not
3 filing an appropriate change of operatorship form through
4 the Oil Conservation Division?

5 A. I believe I've exhausted every attempt to get Mr.
6 Garner to come up with his plugging obligation. Like I
7 said, we would get some money from him, I wouldn't pay it,
8 I got to where I couldn't even hardly deal with him, I
9 would let the lawyer there in Hobbs -- other than filing a
10 lawsuit against him, I've done everything I think I can.
11 We have done everything on our side.

12 They said they'd have -- you know, every time you
13 talk to them, Oh, we got it, let's certify it. We certify
14 it, it gets denied.

15 Q. Did you log on to the Oil Conservation Division
16 online system and fill out your portion of that operator
17 transfer form?

18 A. Yes, we have done that two or three times.

19 Q. Okay, and did you print out the copy of that
20 indicating that you had --

21 A. I believe the lady that we've had, Debbie
22 McKelvey do that for us, I believe she would have something
23 to document that with.

24 Q. Okay, have you brought that for us to see today?

25 A. No, I did not.

1 Q. Okay. Could you provide that to us if we asked
2 you --

3 A. Yes, I could.

4 Q. -- asked you to provide it at a later time?
5 Okay.

6 Have you at any time contacted formally the Hobbs
7 or Artesia office, whichever would be the appropriate
8 office, given the well involved, and advised them that you
9 are no longer the operator of record for that particular
10 well?

11 A. Yes, I have had phone conversations. I did not
12 write it down. One guy was, I believe, from -- was there,
13 and I believe they were both from the Hobbs office on those
14 wells.

15 But they had called and said, Hey, this thing is
16 -- I did receive a phone call about that, and I told them
17 we did not own it anymore, and that's actually how I found
18 out we needed to get that done.

19 And since then I've set those wells -- well, I
20 guess I've just -- I've had my lawyer in Hobbs on other
21 issues deal with Buddy on trying to get that done, and it's
22 just been an ongoing process, like I said, I don't know
23 what our next step is, file suit or -- I don't know if
24 we're going to try to -- I don't know if those wells will
25 end up back in our possession or not, I just don't know.

1 Q. So if you had enlisted the assistance of an
2 attorney -- I presume that there -- your attorney probably
3 wrote letters on your behalf to Mr. Garner.

4 A. Yes, he --

5 Q. Would you be willing to produce those letters to
6 show us your good faith effort to resolve the change-of-
7 operatorship issue --

8 A. Sure.

9 Q. -- with regard to those three wells?

10 A. Yes, I sure would.

11 Q. Okay. With regard to the plugged and abandoned
12 wells that you're saying that were plugged back in 2006 or
13 2007 --

14 A. Uh-huh.

15 Q. -- why weren't those documents properly filed in
16 a timely fashion, as required under federal and state law?

17 A. Right, I guess I thought that we had done
18 everything and filed them. Apparently they never did
19 receive them. I just -- you know, I filed them and it just
20 kind of went on. And I'm not -- wasn't real familiar with
21 the process, so -- I am now, about them sending it back
22 approved and all that, and so what I have done to remedy
23 the problem is resubmit them and get that taken care of.

24 Q. Okay, so despite the fact that your exhibits that
25 you've attached do not indicate that they've been received

1 by the BLM and the OCD and do not indicate approval
2 signatures or date stamp --

3 A. Right.

4 Q. -- you're representing to us today that they
5 have, in fact, been filed --

6 A. Yes --

7 Q. -- at this time?

8 A. -- yes.

9 Q. Okay. And that's with regard to the ones that
10 are indicated on Exhibit 1 as having been plugged and
11 abandoned?

12 A. Yes.

13 Q. Okay. I believe you said the Coquina State
14 Number 1 -- you had indicated you had a potential buyer
15 looking at it back in December. Did that sale fall
16 through?

17 A. Well, I wouldn't say it fell through, but they've
18 still got the stuff, looking at it. They have not made a
19 decision on it.

20 Q. Okay, and so you indicated that your plan for
21 that one in particular is to try and seek temporary
22 abandonment status for that one?

23 A. Yes.

24 Q. Have you looked into getting the appropriate MIT
25 testing done to obtain the temporary --

1 A. Yes, that's -- that was our plan, yes.

2 Q. Okay.

3 A. We're aware of the MIT test, that we'll have to
4 do it on all the ones that we do temporary abandon.

5 Q. Okay. Are you also aware that temporary
6 abandonment is not indefinite, that there is --

7 A. Yes, I do.

8 Q. -- an end date?

9 A. Yes.

10 Q. Okay. Because, for instance, the Red Twelve
11 State Number 6 that you indicated had been T-and-A'd around
12 2001 --

13 A. Yes.

14 Q. -- that TA expired in December of 2002?

15 A. Right, and --

16 Q. Okay, as did the TA for the Theos State Number 1?

17 A. Right.

18 Q. Okay, why didn't you take steps to either renew
19 the TA or otherwise bring those wells back into compliance?

20 A. Well, basically because that was back when they
21 had control of this, and we did not know anything about it.
22 We were kind of snowballed by some of these T-and-A'd
23 wells, coming on later to find out that there had been a
24 bunch of them TA'd since about 2001.

25 Q. But you know that when you take on a company, you

1 take on the good and the bad, right?

2 A. Yes, yes, we're aware of that.

3 Q. So if you take it on and you understand that
4 you've been TA'd back in 2001, by then it had already
5 expired in 2002, you probably have the full gamut of
6 information?

7 A. Well, so to speak. Some of these records they
8 have are very shady, especially in that Cave Pool area. A
9 lot of the well files have been damaged, and they got
10 rained on out there. They didn't -- When we first took
11 this over, they had not filed C-115s for two or three
12 years, that type of stuff. So we took it on ourselves to
13 fix that.

14 And it's just -- you know, we -- we're aware of
15 some problems, we've been fixing one at a time as we can.
16 I know it does look bad, but as far as how we operate the
17 wells is different as night and day. We are getting better
18 with the paperwork.

19 You know, I know it's an excuse but we were
20 handed a mess, and we have really -- really have been
21 working on making it right, making the -- we do not want to
22 be known as a company that does -- disregards everything.
23 We try to -- you know, we operate those wells right, we
24 don't let them -- the neglected them. They might not even
25 check them for a long time. We do not operate like that.

1 And like I said, our worst mistake was keeping
2 that name.

3 Q. Okay. With regard to the Jennings Federal Number
4 2, you had indicated that it was your understanding that
5 that was producing?

6 A. Yes.

7 Q. When did you think that that had started
8 producing?

9 A. We replaced a flow line around the 15th of
10 December of this year [sic].

11 Q. Okay, so that would be why it's not showing up
12 yet --

13 A. Yes --

14 Q. -- on our report?

15 A. -- uh-huh.

16 Q. Okay, so that's producing as of December.

17 For the Julia Culp, you had said it was your
18 understanding it was plugged and abandoned.

19 A. Yes.

20 Q. Our records indicate that that is not the case,
21 and we have reason to believe that that is indeed not the
22 case. If that is the situation, you understand that you do
23 otherwise have to bring that into compliance --

24 A. Right.

25 Q. -- whether it be by plugging and abandoning it or

1 bringing it back into production?

2 A. Right, yes.

3 Q. And you're willing to do that?

4 A. Yes, but I -- Yes, and I will get with Bill
5 Prichard --

6 Q. Okay, he's no longer with our department.

7 A. Right, but I know he'll remember it. Maybe he
8 can point me in the right direction to find some
9 information on that.

10 Q. I suspect that what you're probably going to have
11 to do is get with the current investigators down --
12 inspectors down there and --

13 A. Okay.

14 Q. -- work with them to see what the current status
15 is and what you're going to be required to do. I think
16 there were some issues with the record keeping back then.

17 A. Yes, yes.

18 Q. Okay, with regard to the Red Twelve State Number
19 6, you had indicated that you thought that had been TA'd in
20 2001?

21 A. Yes.

22 Q. I don't have any record of that ever having been
23 TA's.

24 A. Okay, and this could be a mistake. Like I said,
25 we just -- we figured it was T-and-A'd with the rest of

1 them --

2 Q. Okay.

3 A. -- because it looked like that, but that was --

4 Q. But nonetheless, you plan to address it?

5 A. Yes.

6 Q. Okay. The Red 12 Levers Federal 008Q and 012,
7 you had testified that they had been drilled but never
8 completed --

9 A. Yes.

10 Q. -- however I have information that production had
11 been reported in 2005 and 2004 on those.

12 A. Okay, well, if it had, the production should not
13 have been reported on that.

14 Q. Okay, now that production was reported after you
15 took over the company?

16 A. Yes, it must have just been a mistake.

17 Q. Okay, so --

18 A. So I can amend those reports to get that off of
19 there, but I do know for a fact that they have not
20 produced.

21 Q. Okay, and we would ask that you look into that,
22 because that -- we -- it's important that our records be
23 current --

24 A. Yes --

25 Q. -- and accurate.

1 A. -- yes, I understand that. And I want our
2 records to be just as accurate as they can be.

3 Q. Okay. Do you have any idea what kind of a
4 timeline you're looking at as far as --

5 A. Reasonably, to get all the wells plugged or
6 T-and-A'd or -- I would say probably, with the way things
7 are, around eight or nine months. Not that we'd just put
8 it off. I mean, we will -- you know, we will continually
9 work through the time to do whatever we can, but just from
10 my short experience on doing some of this, that's what it
11 looks like to me.

12 MS. ALTOMARE: I think that's all I have. Thank
13 you.

14 EXAMINATION

15 BY EXAMINER JONES:

16 Q. Okay, yeah, that last question was what I was
17 going to ask also, how much time you need. You say eight
18 or nine months to do six wells; is that right?

19 A. Yes, sir.

20 Q. The -- again, Snyder Number 1 and the Julia Culp,
21 I think I remember those. I think we came to hearing on
22 the Julia Culp, unless it's a different Julia Culp.

23 A. They might have, but it was before I'd come on,
24 and I wouldn't have no knowledge of that. I do know that
25 they did have a hearing, and I believe you are correct.

1 Q. Julia Culp was -- unless that's Number 1 or
2 Number 2 well, Julia Culp. Do you remember?

3 A. I think it was the Number 1, I believe.

4 Q. One of them was a re-entry of a plugged well to
5 turn it into a disposal well, and it was multiple fee
6 owners, and there was an objection because they wanted to
7 use the upper part of the wellbore for something else.

8 A. Yes.

9 Q. The owners in the Wolfcamp, I think, the whole --
10 but anyway -- but you own that well, or you -- your name is
11 still on it --

12 A. Yes.

13 Q. -- Marks and Garner's name is still on it, so --

14 A. Right.

15 Q. Okay. And I'm not positive whether it was
16 totally plugged or it was TA'd or --

17 A. Okay, yes. Like I said, the -- what they had
18 told me, that they had plugged and abandoned it, and I just
19 -- I was going from what he -- from what Ernest Marks had
20 told me.

21 Q. These API numbers, there's some digits missing.

22 A. Yes, sir.

23 Q. Is that zeroes? Are those zeroes?

24 A. More than likely, yes, sir.

25 Q. Okay. The -- I don't think I have any more

1 questions. The -- but if you have inactive wells as of the
2 first of the year, it hits you pretty hard, don't it --

3 A. Yes, sir.

4 Q. -- on the bonding?

5 A. Uh-huh.

6 Q. Of course you probably knew that was coming.

7 A. Yeah, yeah, we've been -- yeah, like I said, we
8 knew it was coming, but we're trying, we're working,
9 we're -- like I said, I -- if -- I don't know if you could
10 now or not, because we already took the name, but like I
11 said, the worst case we did -- the biggest mistake we did
12 is not changing the name when we first took it over. And,
13 you know, if we do keep it longer, that's something that we
14 would like to do, is change the name of that company.

15 Q. Okay. And as far as reporting sundries on BLM
16 wells, you reported on a BLM sundry form. You also sent a
17 copy of that to the OCD?

18 A. No, I just had sent it to the BLM.

19 Q. Okay.

20 A. I --

21 Q. I know we're -- our people say you can use a BLM
22 form to send us a sundry, but I thought you had to go ahead
23 and forward the form yourself to the --

24 A. Okay. Yeah, I use a lady, Debbie McKelvey there,
25 and she was working on these again. She still -- when she

1 gets them back from the BLM is when she submits them to the
2 OCD.

3 Q. Okay.

4 A. They insist we never got them back --

5 Q. Oh, she does, she does, after --

6 A. Yes, after she gets them back approved and
7 everything --

8 Q. Yeah.

9 A. -- but since that never happened, they never got
10 there.

11 EXAMINER JONES: Her mom made the best -- best
12 cakes you could ever believe, Debbie McKelvey. Small
13 world.

14 Okay, that's all the questions I've got.

15 EXAMINER BROOKS: I don't have any other
16 questions. I'd just observe that one of these API numbers
17 has got an extra digit.

18 THE WITNESS: Oh, well, I apologize. I should
19 have been more diligent than that. I apologize.

20 EXAMINER BROOKS: Okay, no questions.

21 MR. PADILLA: I have some -- the completion
22 report for the Gulf Hanagan Federal Number 1.

23 EXAMINER JONES: Okay.

24 MR. PADILLA: So that would be part of Exhibit
25 Number 2.

1 EXAMINER JONES: Okay.

2 MR. PADILLA: And that's not on that list.

3 EXAMINER JONES: Okay.

4 THE WITNESS: Right, I believe that's the one he
5 said was coming up.

6 MR. PADILLA: I don't have anything further.

7 EXAMINER JONES: Okay.

8 MS. ALTOMARE: I just have one clarification.

9 FURTHER EXAMINATION

10 BY MS. ALTOMARE:

11 Q. I know that you're optimistically thinking in
12 terms of six wells, but in actuality, there are actually --
13 even after you subtract out the ones that you're saying are
14 owned by -- or operated by --

15 A. Right --

16 Q. -- Mr. Garner --

17 A. -- uh-huh.

18 Q. -- and the ones that -- once the filings get
19 approved for the plugging and abandonments and the --

20 A. Yes.

21 Q. -- production gets registered for the more recent
22 production. I think that still only takes us down to 12 --

23 A. It's 12, okay.

24 Q. -- if my calculations are correct. My -- and
25 correct me if I'm wrong, my reading of this leaves us with

1 some issues at least to be addressed --

2 A. Right.

3 Q. -- as to the Cave Pool Unit 27, the Cave Pool
4 Unit 36, the Coquina State 001 --

5 A. Uh-huh.

6 Q. -- the Julia Culp --

7 A. Yes.

8 Q. -- the William Snyder, the Theos State --

9 A. Yes.

10 Q. -- the Levers 003Y --

11 A. Yeah, we have that one producing --

12 Q. Okay --

13 A. -- that one --

14 Q. -- that was --

15 A. -- was only done the last week or two --

16 Q. Oh, I'm sorry, I circled the wrong one, the Lea
17 -- the Lea State is the one I mentioned --

18 A. Yes, yes, that --

19 Q. -- okay.

20 Q. -- the Red Twelve Levers Federal 008Q --

21 A. Uh-huh.

22 Q. -- and 012, the Red Twelve State 006, the State
23 001 --

24 A. Uh-huh.

25 Q. -- and I think that that's it. And I think that

1 that comes to 12, if that's right. So as far as the
2 expired TAs --

3 A. Yes.

4 Q. -- and other issues that have -- that have come
5 up, so that's --

6 A. Okay.

7 Q. -- that's where I am in my narrowing of it.

8 EXAMINER JONES: Can you give us a list of
9 those --

10 MS. ALTOMARE: Yeah --

11 EXAMINER JONES: -- after the --

12 MS. ALTOMARE: -- yeah. Does that sound like --

13 MR. PADILLA: I have 11, I'm not sure which --

14 MS. ALTOMARE: Maybe I counted wrong. That's
15 entirely possible.

16 MR. PADILLA: Cave Unit 27, the 36, Coquina State
17 1, the Julia Culp, the William Snyder, Theos State, the Lea
18 UA State, Red Twelve Levers 8Q, the Levers Federal 12, the
19 Red Twelve State 6 and the State 01.

20 MS. ALTOMARE: Is it 12? One, two, three --

21 MR. PADILLA: You might have counted wrong --

22 MS. ALTOMARE: No, it's 11. Anyway -- I think it
23 is 11. They're all squished together. Ernest Federal is
24 producing, Graham Federal is producing -- Right, one of my
25 checkmarks is wrong. It's 11.

1 MR. PADILLA: Eleven.

2 MS. ALTOMARE: Yeah, because I had accidentally
3 checked -- It's 11. Sorry. Don't ask lawyers to do math.

4 So anyway, that's my reduction of --

5 EXAMINER JONES: You guys agree on that?

6 MR. PADILLA: Looks like -- if he agrees.

7 THE WITNESS: (Nods)

8 EXAMINER JONES: Well, the list would just have
9 to be looked at --

10 MR. PADILLA: Right.

11 EXAMINER JONES: -- to -- okay.

12 MS. ALTOMARE: Just to kind of focus our
13 attention on the ones that --

14 EXAMINER JONES: I should also say that Buddy
15 Hill is married to my mom's cousin. So if you want Brooks
16 to write the order --

17 EXAMINER BROOKS: Well, you're not talking about
18 Mr. Garner. Buddy Hill, not Buddy Garner, right?

19 EXAMINER JONES: Did I say Buddy Garner?

20 MR. PADILLA: No, you said --

21 THE WITNESS: No, you said Buddy Hill.

22 EXAMINER BROOKS: Buddy Hill.

23 EXAMINER JONES: Buddy Hill.

24 EXAMINER BROOKS: Buddy Hill. What is Buddy
25 Hill's relation to this case?

1 MS. ALTOMARE: Oh, he was the --

2 THE WITNESS: He's a --

3 MS. ALTOMARE: -- compliance officer.

4 EXAMINER JONES: Compliance officer.

5 EXAMINER BROOKS: Yeah, I don't think --

6 MR. PADILLA: We don't have to --

7 EXAMINER BROOKS: I don't think that's any
8 indication for a disqualification.

9 MR. PADILLA: Related twice-removed, right?

10 EXAMINER JONES: I can't -- I can't push it off
11 on you that easy, huh?

12 EXAMINER BROOKS: Well, no.

13 MS. ALTOMARE: Man, that was sneaky. After
14 the --

15 EXAMINER JONES: Wait till the end.

16 MS. ALTOMARE: -- all the evidence and
17 everything.

18 EXAMINER JONES: Yeah.

19 MS. ALTOMARE: All right.

20 EXAMINER JONES: Okay, do you guys want closing
21 statements, or do you want -- is this good enough?

22 MS. ALTOMARE: I'd like to just briefly.

23 MR. PADILLA: Go ahead.

24 MS. ALTOMARE: I just -- I think after the
25 presentation of evidence, I think the priority of the

1 Division is always trying to get things back in compliance,
2 getting our records updated. I do still think that an
3 order is necessary. I think that we need to have some
4 specific dates getting these single-well bonds posted and
5 getting the paperwork filed. We need to get these change
6 of operatorships filed, we need to get the records current
7 as to your contact information, and, you know, we need to
8 get these wells into compliance.

9 However, I don't think that the Division would be
10 opposed to an order that would be holding the penalty in
11 suspension, pending -- with the understanding that it would
12 be imposed should the compliance not be -- should the money
13 not be spent on efforts to comply. I think that the
14 Division would rather see the funds be spent on bringing
15 things into compliance and moving things in that direction.

16 So we would ask that some very specific orders be
17 listed to bring these wells into compliance and get our
18 wells updated and accurate. But that being said, I think
19 that the focus should be on the compliance aspect of it.

20 MR. PADILLA: I don't have a problem with the
21 compliance issue. I think probably a date certain would
22 work, and if Marks and Gardner can't complete it, then I
23 think that administratively Marks and Gardner should be
24 able to ask for some kind of an extension that would be
25 reasonable.

1 In light of the notice issues here, irrespective
2 of whether P.O. Box 70 was filed as an OGRID number on this
3 latest exhibit, you still have a problem with actual
4 notice. The testimony is that Mr. Welborn didn't receive
5 notice of the August, 2007, listing all of the wells that
6 needed to be -- come under compliance. So I think any
7 notion of a penalty shouldn't be there.

8 Now, if there's no compliance, then an order to
9 show cause might be appropriate, and at that time a penalty
10 would be in accordance.

11 EXAMINER JONES: Okay. Thank you both.

12 MS. ALTOMARE: Leave that battle for another day.

13 EXAMINER JONES: With that, we'll take Case
14 14,041 under advisement.

15 And let's break 10 minutes.

16 (Thereupon, these proceedings were concluded at
17 4:03 p.m.)

18 * * *

19
20 I do hereby certify that the foregoing is
21 a complete record of the proceedings in
22 the Examiner hearing of Case No. _____
23 heard by me on _____, Examiner
24 _____
25 _____, Conservation Division

CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL April 5th, 2008.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010