

Exhibit 3

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

ORIGINAL

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

CASE NO. 14106

APPLICATION OF THE NEW MEXICO OIL
 CONSERVATION DIVISION FOR A COMPLIANCE
 ORDER AGAINST XERIC OIL AND GAS
 CORPORATION ("XERIC")

SEP 11 PM 2 35

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Legal Examiner
 TERRY G. WARNELL, Technical Examiner

September 4, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
 Oil Conservation Division, DAVID K. BROOKS, Legal Examiner,
 TERRY G. WARNELL, Technical Examiner, on Thursday, September 4,
 2008, at the New Mexico Energy, Minerals and Natural Resources
 Department, 1220 South Saint Francis Drive, Room 102, Santa Fe,
 New Mexico.

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Case No. 14106, De Novo
 Re Xeric Oil & Gas
 OCD EXHIBIT No.3

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1 which there's no objection be admitted.

2 MS. ALTOMARE: Do you object to --

3 MR. BROOKS: There was no objection to Mr. Sanchez'
4 testimony, so it's part of the hearing at this point. Anyway,
5 Mr. Sanchez has testified without objection, so there's no
6 question at this point --

7 MS. ALTOMARE: At this point in time, I'm not going
8 to bother. I'll just know for the next hearing that I need to
9 call them as witnesses.

10 But I would move for the admission of C, D and E.

11 MS. MUNDS-DRY: I have no objection to that.

12 MR. WARNELL: Okay. Exhibits C, D and E will be
13 admitted.

14 [Applicant's Exhibits C, D and E admitted into
15 evidence.]

16 MR. WARNELL: Ms. Munds-Dry?

17 MS. MUNDS-DRY: Would you like me to call my first
18 witness?

19 MR. WARNELL: Yes.

20 MS. MUNDS-DRY: I'd like to call Ronald St. John.

21
22 RONALD ST. JOHN

23 after having been first duly sworn under oath,
24 was questioned and testified as follows:
25

DIRECT EXAMINATION

BY MS. MUNDS-DRY:

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

A. Ronald St. John.

Q. And where do you reside?

A. Midland, Texas.

Q. And by whom are you employed?

A. Xeric Oil and Gas.

Q. In what capacity?

A. I'm overseeing field operations.

Q. Have you previously testified before the Division?

A. No.

Q. Are you familiar with the application that's been filed by the Division in this case?

A. Not really, no.

Q. Okay. Are you familiar with the status of the lands and the wells that Xeric owns?

A. Yes.

Q. Mr. St. John, when did you and your partners acquire Xeric Oil and Gas Corporation?

A. It was April the 5th, I believe, was the closing date.

Q. April or March?

1 A. Or March 5th, I'm sorry.

2 Q. When did OCD file this application, do you know?

3 A. I think it was March the 5th, the day we closed
4 on the lease.

5 Q. Why did you buy Xeric and its assets?

6 A. We bought it because we think there's upside to
7 the properties that they had owned. It was pretty much -- had
8 been neglected. We feel like the operations in the past on
9 these properties was poorly done and done by non-prudent
10 operators. We just felt that we could probably do something
11 with them.

12 Q. How did you come to know about these properties
13 in New Mexico?

14 A. We actually -- I had spent the last eight years
15 of my career working in the Rocky Mountains, and I started
16 buying assets from Xeric in Montana and Wyoming and Colorado,
17 and they happened to mention to me that they had some
18 properties in New Mexico.

19 Q. So you had a previous relationship with Xeric?

20 A. Yes.

21 Q. Did you know the state or the condition of the
22 wells that you were acquiring?

23 A. We did. We did. Some of the environmental
24 issues weren't fully disclosed in the beginning; however, we
25 did know it was pretty much a distressed property.

1 Q. What did you know? You mentioned that they
2 didn't disclose certain environmental issues. What did you
3 know about the Pearl Queen #301 well?

4 A. The Pearl Queen #301 pit -- they said that they
5 had started the cleanup process and the environmental cleanup
6 on it; however, it was still probably in the beginning phases.
7 And they said that they would go back in and actually complete
8 that project. And we felt like we were better qualified to
9 step in and do that, so we did.

10 Q. What was your agreement, though, when you
11 acquired it? Were they required to clean up that pit or were
12 you required to?

13 A. Yes.

14 Q. What is your history, if you wouldn't mind
15 explaining to the Examiner a little bit, in other states in
16 terms of acquiring wells and bringing these kind of state of
17 wells back into compliance?

18 A. Right, right. We bought wells off of Xeric in
19 Musselshell County, Montana and also in Sweetwater County,
20 Wyoming -- off of Xeric that were pretty much in the same
21 condition as these wells and these leases -- environment
22 issues, pits, wells that were in a situation where they were to
23 be plugged or produced.

24 We bought those leases and brought them into
25 compliance. And that was the history in the Rockies. One of

1 the reasons why we purchased this is we felt like we were good
2 candidates to come in and do this also.

3 Q. The wells that you brought back into compliance
4 in Wyoming, what is the current condition of those wells now?

5 A. They're in good standing. All wells are
6 productive wells. Everything is in compliance as far as
7 environmental issues. Everything was pretty much cleaned up.

8 Q. Were those federal or state wells?

9 A. They were federal.

10 Q. And what is your relationship with the federal
11 agency that you deal with?

12 A. The Bureau of Land Management out the Rollins
13 field office is excellent.

14 Q. And what about Montana? What are the conditions
15 and state of those wells today?

16 A. Those wells, we're in the process. We've got all
17 the environmental issues taken care of. We're in the process
18 of completing some infrastructure that needed updating, and
19 they're, for the most part, 90 percent complete.

20 Q. What is your relationship with the those
21 regulatory agencies?

22 A. Good, real good.

23 Q. How many partners or employees make up Xeric Oil
24 and Gas Corporation in New Mexico?

25 A. Two.

1 Q. And who are those?

2 A. Myself and Adam Hirschfeld.

3 Q. And how are your responsibilities divided?

4 A. Adam Hirschfeld is more on the administrative
5 side. I do all the field operations, oversee field operations.

6 Q. Who does your regulatory work?

7 A. Adam Hirschfeld.

8 Q. Since acquiring Xeric, what work have you done on
9 your wells?

10 A. We repaired some surface mechanical problems
11 on -- there were three wells on the West Pearl Queen unit.
12 While we were doing these repairs and had all production
13 equipment out of the hole, we did some casing -- or some
14 mechanical integrity tests for our own benefit. We weren't
15 required to do that. We did it just for our own benefit.

16 We did one well on the South Pearl Queen. Then we
17 completed the environmental issues on the reserve pit on #301.

18 Q. Has that work been completed on that reserve pit?

19 A. It has. And there's actually a report that's
20 been delivered to the OCD.

21 Q. What else are you doing in New Mexico, currently?

22 A. I'm currently working on the Crosby and Gregory
23 leases south of Jal, New Mexico. We're getting our locations
24 prepared to move in a rig. And we're also involved with the
25 BLM, communicating with them on the environmental issues on

1 that list. And Tricia Badbear is actually our contact there,
2 out of the Hobbs field office.

3 Q. Have you contracted with any environment
4 companies?

5 A. We have, Phoenix Environmental. I'm fairly new
6 to that area, so I'm not really familiar with all the
7 contractors. I'm kind of getting to know them. But Phoenix
8 Environmental was the one responsible for helping us to do the
9 pit closure on West Pearl Queen #301.

10 Q. Mr. St. John, I'd like to ask you to turn to
11 what's been marked as Exhibit A. I believe this has already
12 been admitted actually by the OCD. It's their exhibit as well.
13 What is this exhibit?

14 A. Is the reserve drill and pit closure report?

15 Q. The one before that actually, the one on top.

16 A. Okay.

17 Q. What is this?

18 A. Oh, this is the plan of action submitted by Xeric
19 to the OCD, and it spells out the status update and plan of
20 action and completed task.

21 Q. Were you present for Mr. Sanchez' testimony?

22 A. Yes.

23 Q. Did you hear his testimony regarding why this
24 letter was not sufficient in their view?

25 A. Yes.

1 Q. One of the statements he made was that there was
2 insufficient information on that #301 pit. Do you know if that
3 report has been submitted to the OCD?

4 A. It has. It was hand-delivered. Actually, two
5 copies of that were hand-delivered to the Hobbs, New Mexico,
6 field office.

7 Q. In terms of your tasks that are to be completed,
8 if you would please turn to page 2. It shows you're focusing
9 on the Crosby unit?

10 A. Yes. That's correct.

11 Q. You talked a little bit about that. Could you
12 please just expand on what it is that you actually have to do
13 before you actually get into that unit to do work?

14 A. The locations -- this lease has been TA'd, so to
15 speak, for several years. I think since '05. The locations
16 are grown over. We're actually getting our locations ready.
17 We're testing rig anchors, repairing roads, so we can actually
18 get into the locations. I plan to move a rig in and do an MIT,
19 and either produce the wells or plug them.

20 Q. What agencies are you having to coordinate with?

21 A. I'm sorry?

22 Q. What agencies are you having to coordinate with?

23 A. Rig companies, pulling unit companies. I'm
24 coordinating once again with Phoenix Environmental, who is
25 actually out there working. They have been for the last week.

1 I'm coordinating with the landowner. It's a Mr. George Willis.
2 He's the surface owner out there. He's been real cooperative.
3 I'm trying to balance that between the BLM, because it is
4 federal -- and Mr. Willis and, of course, I'll get the OCD
5 involved, also.

6 Q. And what has the nature of your discussions been
7 with the BLM on those properties?

8 A. The BLM is that there are some issues that need
9 to be addressed. We want to address them. We just want to
10 make sure that everybody is going to be pleased with what we're
11 going to do. So at that point, we'll ask that the OCD, the
12 BLM, and the surface owner all be present when we come up with
13 a plan.

14 Q. Besides this report that you submitted to the
15 OCD, what other contacts have you or members of Xeric had with
16 the Division?

17 A. With the OCD?

18 Q. With the OCD.

19 A. I actually drove to Hobbs, New Mexico, twice to
20 meet with Buddy Hill, because I was informed that he was our
21 contact guy there. They have gone to a four-day work week. I
22 wasn't aware of that. I drove up on a Friday. Buddy Hill was
23 not there, and so I spoke with another gentleman that just
24 transferred in. I believe he's an environmental engineer. His
25 name is Jeff.

1 So I did speak with him, and then -- so I think a
2 week went by, and I drove back over there on a Monday. And I
3 wasn't aware that their four-day work week was with rotating
4 days off. So he was off on that Monday, but I spoke with a
5 Mr. Larry Johnson. And I actually hand-delivered him the
6 completed report on the West Pearl Queen #301.

7 Q. And have you since made contact with Buddy Hill?

8 A. I have. It was actually through the rancher that
9 owns the surface on the Crosby and Gregory. Him and Buddy are
10 actually friends, and I happened to be with the rancher and
11 told him I'd been trying to locate Buddy Hill, and he made the
12 comment he knew him, and he wanted to take me over and
13 introduce me, but that was about it.

14 Q. What is your plan for going forward with
15 communicating with the OCD?

16 A. It's my understanding Buddy Hill is actually
17 promoted. I know Gary Wink's name has come up. Gary Wink is
18 no longer employed with OCD. He's working for a private firm
19 out of Hobbs, New Mexico. And Buddy has been promoted and
20 won't be coming to the field. I don't know who my field
21 contact is going to be. I would like to know that so I
22 coordinate with them and choose one person to actually
23 communicate with instead of communicating with several.

24 Q. Will you follow up with that, though, to try to
25 determine --

1 A. I will. I will.

2 Q. Were you present for the June meeting that
3 Mr. Sanchez testified about with the Division in Santa Fe?

4 A. I don't think I was. The June meeting?

5 Q. Here in Santa Fe?

6 A. I was in one other meeting with Mikal, and that
7 was it. I don't remember. I think it might have been in June.

8 Q. Okay. And what took place at that meeting?

9 A. We just talked about what we are going to do as
10 far as submitting a plan of action, what Xeric's intentions
11 were in bringing the wells into compliance, and a reasonable
12 amount of time to do that.

13 Q. I believe one of your partners, Mr. Collier, was
14 present during that meeting?

15 A. That's correct, yes.

16 Q. And as Mr. Sanchez testified to, did he make
17 certain representations at that meeting?

18 A. He did.

19 Q. And as far as you know, were those promises kept?

20 A. No.

21 Q. What is Mr. Collier doing now?

22 A. He is no longer with Xeric Oil and Gas.

23 Q. Where were you during this period of time between
24 June and this hearing in terms of your focus on the New Mexico
25 properties?

1 A. I was doing what we had here as far as pulling
2 the wells on the West Pearl Queen, the South Pearl Queen, and
3 doing the pit reclamation on #301.

4 Q. Were you aware of that Mr. Collier had not kept
5 his promises?

6 A. I was not.

7 Q. What did you do when you found out that that
8 didn't happen?

9 A. We immediately stepped in and started to
10 communicate with you, and we understood that he didn't do what
11 we told the OCD we'd do.

12 Q. Through your discussions with the district office
13 and the Santa Fe office, what did you understand the priorities
14 of the OCD to be in terms of getting your wells back into
15 compliance and addressing any environmental issues?

16 A. We were just supposed to coordinate with the OCD,
17 keep them in the loop on what we were doing, when we were doing
18 it, so that the field office could actually come in and verify
19 we were doing what we said we were doing.

20 Q. What was the first bit of work that you took on
21 when you came to New Mexico?

22 A. The West Pearl Queen #301 pit.

23 Q. When you talked to the district office, what did
24 they tell you about that pit?

25 A. They said that pit was a sore subject, that it

1 had been on the books and everybody, including Mikal, and
2 anybody who had to the field office in Hobbs, that that was
3 pretty much the place that they took them to show what a
4 non-prudent operator does. And that was my understanding, so
5 we felt like that would be the best place to start.

6 Q. Would you please turn to what's been marked as
7 Xeric Exhibit B?

8 A. Okay.

9 Q. What is this?

10 A. That is a completion report for the reserve
11 drilling pit closure on West Pearl Queen #301.

12 Q. Would you turn to the fourth page in Exhibit B.
13 What is that document?

14 A. This is registration or closure for Xeric Oil and
15 Gas signed by Nick Hood.

16 Q. And what was that dated?

17 A. That was dated 4/21 of '06.

18 Q. Would you turn to the next page and identify this
19 for the Examiner.

20 A. This is an inspection detail by the OCD.

21 Q. And when is this dated?

22 A. That was dated -- received April 11th of '06.

23 Q. Would you flip another couple of pages to three
24 pages after that. At the top of the letter, it says Phoenix
25 Environmental.

1 A. Okay.

2 Q. What is this page?

3 A. This is a work plan to clean up the West Pearl
4 Queen unit #301, but this is -- actually, it is addressed to
5 Xeric Oil and Gas, attention Mr. Nick Hood. These are the
6 previous owners of Xeric.

7 Q. And when is that dated?

8 A. April 21st of 2006.

9 MS. ALTOMARE: I'm going to object at this point.
10 This well is not an issue in this hearing. I don't know why
11 we're actually going into it at this point.

12 MS. MUNDS-DRY: The assertion is that Xeric has not
13 done anything to bring any of their wells into compliance and
14 any of their environmental issues. And this is to show not
15 only what the priority of the Division was, but what they've
16 been focusing on. It also goes to show that Xeric immediately
17 came in as new owners and started working in New Mexico.

18 MS. ALTOMARE: Actually, the assertion is that they
19 haven't done anything to bring their wells into compliance with
20 Rules 101(B) or 201. The environmental issues are addressed in
21 a separate action that is not being addressed in today's
22 hearing.

23 MR. BROOKS: This is a relevance objection and is
24 entirely discretionary to the presiding Examiner.

25 MR. WARNELL: I think that because it is a hearing,

1 we ought to probably continue.

2 MS. MUNDS-DRY: I'll get through it quickly,
3 Mr. Examiner.

4 Q. (By Ms. Munds-Dry): Mr. St. John, if you would
5 please, then, turn another couple of pages to another report
6 from Phoenix Environmental, LLC. What is this document?

7 A. This is also a work plan to clean up the West
8 Pearl Queen unit #301.

9 Q. And when is this dated?

10 A. This is dated April 15th of 2008.

11 Q. And then could you turn to the page -- at the top
12 of it, it says page 14 of 27?

13 A. 14 of 27.

14 Q. Yes, sir. Explain what this page indicates to
15 the Examiner.

16 A. This is a step-by-step procedure for cleaning the
17 pit.

18 Q. Was this completed on that pit?

19 A. Yes, it is.

20 Q. And Mr. St. John, when did you say this report
21 was submitted to the district office?

22 A. It was submitted -- I'm not sure. I think it was
23 three weeks ago. I believe I hand-delivered it to Hobbs.

24 Q. Do you know why the delay between when the work
25 was actually completed and the report was submitted to the

1 district office?

2 A. Yes. That was part of the agreement with Phoenix
3 Environmental. They were a little slow on getting their
4 completion report completed.

5 Q. Okay. Mr. St. John, let's turn to what Xeric's
6 long-range goals for its wells in New Mexico are?

7 A. Okay.

8 Q. What is your plan for bringing your wells into
9 compliance with OCD rules?

10 A. We're going on a well-by-well, lease-by-lease
11 basis. The leases were actually -- most of them were actually
12 shut-in, and had been shut-in for years, temporarily abandoned.
13 The surface equipment -- the individual wells are all pretty
14 much overgrown and just -- there hadn't been anything done over
15 there.

16 So we're -- right now, an example is, we're working
17 on the Crosby and Gregory lease, which is a federal lease.
18 We're starting to go in and recondition our surface equipment.
19 We'll be moving in a workover rig soon, probably within the
20 next week, depending on rig availability. I've been in contact
21 with the rig company.

22 And we'll be going to each individual well doing
23 integrity tests on the casing, evaluating what stimulation jobs
24 need to be done on that particular well to put it back on
25 production.

1 Q. Are these wells --

2 A. Either that or plugged.

3 Q. I'm sorry. Are these wells in secondary recovery
4 phase?

5 A. Some of them are, yes. We'll be implementing a
6 waterflood situation on those.

7 Q. Mr. Sanchez testified that they were seeking an
8 Agreed Compliance Order to manage your inactive well list.
9 Would you be willing to enter into such a compliance order
10 setting dates for bringing all your wells back into compliance?

11 A. Absolutely.

12 Q. You'd be willing to have those discussions with
13 the Division to determine the correct number of wells?

14 A. Yes.

15 Q. This is an obvious question, but what are your
16 thoughts on the civil penalty that Mr. Sanchez is asking for,
17 the \$88,000?

18 A. Well, I don't think it's fair, because we have
19 made an honest attempt. We did work on four wells. We did
20 clean up an environmental situation that had been on the books
21 for over five years. That in itself was an accomplishment. I
22 think there's more that can be done; however, we've only owned
23 it since March.

24 MS. MUNDS-DRY: That concludes my direct testimony,
25 Mr. Warnell.

1 We would move into evidence Xeric Exhibits A and B.

2 MR. WARNELL: Exhibits A and B will be admitted.

3 MS. ALTOMARE: Actually, I would object to the
4 admission of Exhibit B, on the basis that it's not relevant to
5 this proceeding.

6 MR. BROOKS: Again, the decision is discretionary
7 where it's a relevance objection.

8 MS. ALTOMARE: It's also incomplete, although it's
9 complete as it was submitted to the OCD. It's missing page 13.
10 It's incomplete.

11 MS. MUNDS-DRY: I don't think that that missing page,
12 if it's in there, which I apologize for, I don't know where it
13 went. But I don't think --

14 MS. ALTOMARE: It was actually submitted as an
15 incomplete report to the OCD in that fashion, but it is
16 actually a significant page of the report.

17 MR. WARNELL: Could you provide us, Ms. Munds-Dry --

18 MS. MUNDS-DRY: We will certainly provide page 13,
19 yes.

20 MR. WARNELL: When we get page 13, we will submit
21 Exhibit B. We'll accept Exhibit A.

22 [Respondent's Exhibit A admitted into evidence.]

23 MS. MUNDS-DRY: That concludes my direct testimony
24 for Mr. St. John. Pass the witness.

25

CROSS-EXAMINATION

BY MS. ALTOMARE:

Q. Mr. St. John, you were not involved in the telephone conference that took place in April; is that right?

A. No.

Q. But Mr. Collier was speaking on behalf of Xeric at that point in time?

A. Yes, he was.

Q. What was his position at that time?

A. Mr. Collier was actually an officer of Xeric Oil and Gas.

Q. What was his specific position?

A. He was actually president.

Q. And why is it he's no longer involved?

A. He had other agendas, and we didn't feel like that -- once we found out that he wasn't communicating with OCD, that was unsatisfactory for us, so he was pretty much let go.

Q. Okay. But at both meetings that were held, the one in April by telephone and the one in June, he was at that point in time acting on behalf of Xeric Oil and Gas?

A. He was.

Q. Okay. You do understand that Xeric is a corporation, that by purchasing -- or a company becoming involved in Xeric, you are becoming involved in a corporation?

1 A. Uh-huh, yes.

2 Q. And that the same laws that protect you as an
3 individual from liability for actions of the corporation make
4 you liable for the actions of the corporation as a whole?

5 MS. MUNDS-DRY: Mr. Examiner, I'm going to object.
6 This is calling for a legal answer that I don't believe Mr. St.
7 John is qualified to answer.

8 MS. ALTOMARE: The respondents are making the
9 argument that they are not responsible for the history of this
10 company, but they came in and took over this company knowing
11 the history of it.

12 MS. MUNDS-DRY: I don't think that's what they're
13 asserting at all. I think they are saying that they knew what
14 they were getting into, and they're doing their best to rectify
15 the situation.

16 MR. BROOKS: Well, I think the question wasn't real
17 clear, but it's not being offered for the purpose of proving
18 what the law is, but for the purpose of proving the witness'
19 knowledge, so I would recommend that the Examiner overrule the
20 objection. If the witness doesn't understand the question, he
21 can ask for clarification.

22 MR. WARNELL: Overruled. Restate your question.

23 Q. (By Ms. Altomare): You understand, though, the
24 dynamics of buying into a company and becoming an officer in a
25 company?

1 A. I do. I do.

2 Q. And as a savvy businessman, you research your
3 purchases before you make them?

4 A. We try to.

5 Q. Okay. What kind of research did you do on Xeric
6 Oil and Gas in New Mexico prior to making the decision to
7 become involved in New Mexico?

8 A. The due diligence process was pretty brief here
9 because I was still living in the Rockies. But we did -- we
10 were aware that there were problems.

11 Q. Okay. Did you review well files either through
12 the OCD or through Xeric's own in-house files?

13 A. We did.

14 Q. What is your current official title? I think you
15 might have already said this, but --

16 A. I oversee field operations and I'm also VP.

17 Q. VP, and that would make Mr. Hirschfeld the
18 president?

19 A. That's correct.

20 Q. What role does Mr. King, the former president or
21 owner, currently play?

22 A. He does not have a role in our organization.

23 Q. Is he still signing off on any reports that are
24 being submitted to OCD?

25 A. He did, but not with our approval. He evidently

1 turned in some sundry notices -- actually on the Crosby and
2 Gregory leases, the leases I'm doing now. We filed amended
3 sundries on that stating that Mr. King is no longer -- he never
4 has been with the new owners of Xeric.

5 Q. Okay. So you testified that March 5th was the
6 closing date. So since then it's been transferred into you,
7 Mr. Hirschfeld, and at the time, Mr. Collier?

8 A. That's correct.

9 Q. Are you aware that as an operator in New Mexico,
10 you're obligated to comply with New Mexico Oil Conservation
11 Division rulings for operating wells in New Mexico?

12 A. Uh-huh.

13 Q. Did you take any steps to familiarize yourself
14 with the rules of New Mexico?

15 A. We're somewhat familiar. We're still learning
16 them.

17 Q. Did you at any point consider contacting the Oil
18 Conservation Division to find out what you might need to do to
19 make sure that you were on the up-and-up and to make sure you
20 were operating according to OCD rules?

21 A. That was actually Mr. Collier's responsibility.
22 I was busy in the field at the time, but it's now my
23 responsibility.

24 Q. When did you become aware that the application
25 had been filed by the OCD?

1 A. What application?

2 Q. The application in this matter?

3 A. I guess the day that we purchased the wells.
4 Isn't that the day you filed it?

5 Q. The date we filed it, but when did you personally
6 become aware that there was an action pending against Xeric?

7 A. This may not be accurate. I'm going to say
8 60 days ago.

9 Q. Do you know when your partners became aware of
10 it?

11 A. I'm not sure.

12 Q. How did it come to be that Mr. Collier took part
13 in that April 15th telephone conference?

14 A. How did it come to be that he took part in the
15 telephone conference?

16 Q. Yeah, on April 15th. How did he know to meet
17 with Mr. King and call our offices to discuss the pending
18 matter?

19 A. He must have discussed that with Mr. King, and it
20 was his understanding there may have been a problem or an
21 issue.

22 Q. Okay. When did Xeric Oil and Gas take steps to
23 update the new contact information with the Oil Conservation
24 Division?

25 A. When did Xeric take --

1 Q. When did you all update your new contact
2 information with the Oil Conservation Division?

3 A. That was done by administration. I'm not sure.
4 Mr. Hirschfeld is here. He'll have those dates.

5 Q. Do you recall ever seeing a letter that was sent
6 out in April to all operators that were currently in violation
7 of the new financial assurance requirements advising you that
8 Xeric was in violation of those requirements?

9 A. I did not personally see the letter. My capacity
10 in the company at that time was at the field level, but once
11 again, Mr. Hirschfeld is here. He can probably answer that.

12 Q. Did you at any point become aware of what had
13 occurred at the April 15th telephone conference with
14 Mr. Collier, Mr. King and the OCD?

15 A. I was not there.

16 Q. Did Mr. Collier at any point discuss it with you?

17 A. He said that there was some environmental issues
18 pertaining to the pit #301. I knew there was some -- he just
19 had mentioned that there was some environmental issues that
20 needed to be addressed. But outside of that, that's --

21 Q. Okay. So you weren't aware of the representation
22 and assurances made by Mr. Collier on behalf of Xeric regarding
23 other compliance issues at the time?

24 A. No.

25 Q. Okay. You did testify that you recalled coming

1 in to meet with the OCD in June?

2 A. I did.

3 Q. And you do recall Mr. Collier making certain
4 representations and assurances at that time?

5 A. I do.

6 Q. Do you recall it being specifically outlined that
7 the OCD was requesting a time line of sorts, even if they were
8 general dates, for tasks to be completed to give us an idea of
9 what might be expected in terms of compliance?

10 A. I'm aware that the OCD wanted a written plan of
11 action and that Mr. Collier's responsibility at that time was
12 to stay in contact with the OCD.

13 Q. Okay. And do you recall -- I think you spoke
14 about this in your direct testimony that your recollection was
15 that the priority of the OCD was keeping the OCD informed?

16 A. That's correct.

17 Q. And you recall the OCD saying that, as long as
18 the OCD was informed as to progress, that the OCD would be
19 willing to work with you to move things towards compliance?

20 A. Yes, that's correct.

21 Q. What explanation do you have for why there was
22 never a time line with actual dates and prioritization of sites
23 submitted to the OCD that would have comported with what was
24 discussed at that June meeting?

25 A. In large part, that was my responsibility. It

1 was -- Mr. Collier had stepped up, and I think we had an
2 agreement that he would be the one to communicate with the OCD.
3 That didn't happen. I was in the field and was out of the
4 touch with what was going on with the administrative side. We
5 were aware that there was a problem, that wasn't getting done,
6 and the communication -- there was a failure there. So that's
7 one of the reasons why Mr. Collier is no longer with Xeric.

8 Q. And do you recall that while the #301 pit was
9 discussed, there were other compliance issues that were also
10 spoken about?

11 A. They were some, but I remember #301 being the
12 sore subject for everybody, it seemed like.

13 Q. And you had mentioned that you had driven down to
14 see Buddy Hill to try and make contact with him?

15 A. I did.

16 Q. You didn't call ahead to find out what his
17 schedule was?

18 A. I did call, and they said they went to a four-day
19 work week. I was actually in Hobbs, and so I went ahead and
20 stopped by the office. They said he was out. That was on a
21 Friday.

22 Q. Okay. And then when you went back a second time,
23 did you call ahead?

24 A. I did not. That was on a Monday, and he was off
25 again.

1 Q. In fact, that all happened within the last three
2 or four weeks, right?

3 A. Actually, within the last month and a half, I
4 believe.

5 Q. I believe your meeting with Mr. Johnson occurred
6 about a week and a half ago?

7 A. I met with Mr. Johnson. I met -- the first time
8 I showed up there, there was a new environmental engineer named
9 Jeff that had just transferred into the field office. I met
10 with him, talked with him. He was one of the few people that
11 was there that day.

12 The second time I went and Buddy Hill was not in, I
13 asked to meet with someone else, and Larry Johnson was
14 available, so I met with him. And, yeah, that was about two
15 weeks ago.

16 Q. But again, none of this occurred with any kind of
17 immediacy after that June meeting?

18 A. No. I had called Buddy Hill and talked to him
19 two or three times on the phone.

20 Q. Who prepared the documents that were submitted on
21 August 15th as the status update and plan of action?

22 A. Adam Hirschfeld.

23 Q. What explanation do you have for why it took two
24 months for that report to be submitted?

25 A. That, again, was the responsibility of

1 Mr. Collier.

2 Q. Okay. And why are no dates included in that
3 document despite the fact that a time frame was something that
4 was specifically discuss at the June meeting?

5 A. I didn't complete this document. Once again,
6 Mr. Hirschfeld is here.

7 Q. Okay. And there's some reference made in your
8 direct testimony about the Rule 301 -- I mean, the West Pearl
9 Queen #301 pit.

10 A. Uh-huh.

11 Q. My understanding is that the report was submitted
12 to the OCD. I can't remember the exact date that it was
13 submitted either. However, are you aware that it was
14 incomplete at the time that it was submitted to the OCD?

15 A. No. I'm not aware that it was incomplete. If
16 it's missing one page, I was not aware of that.

17 Q. I direct your attention to that exhibit. If you
18 look between -- well, look at pages 12 and 14. I think we've
19 since somehow procured page 13, but it does seem to be the
20 beginning of that time line.

21 A. Okay. So we're missing page 13. I will make
22 sure --

23 Q. Would you say it's a substantive portion of the
24 report?

25 A. Yeah. It was probably an oversight on the part

1 of Phoenix Environmental. We were -- they were slow about
2 getting this report to us. And as soon as I got it in my
3 hands, it looked complete. I thumbed through it and drove
4 immediately to the OCD's office and made sure they had it. So
5 I apologize for that.

6 Q. In fact, all the work on this site has not been
7 completed; isn't that right?

8 A. It has been completed.

9 Q. Weren't you issued a letter of violation on
10 August 20th for a barrel that was still on the site?

11 A. I'm -- if there's a chemical barrel out there, it
12 had nothing to do with the pit.

13 Q. Okay. But the site is not completely clean.

14 A. The site is completely -- this pit has been
15 closed.

16 Q. Okay. Would it surprise you to know that there
17 is still a barrel remaining out there?

18 A. No, it wouldn't. Because there's a chemical drum
19 at the well site at the #301. There's actually a #301 well.
20 There's #301 pit. We actually -- that's one of the few wells
21 that we actually do a corrosion inhibitor.

22 Q. Would it surprise you to know that there was
23 contaminated soil discovered at the site that still needs to
24 be --

25 A. No. Yeah, that would surprise me.

1 Q. Okay. Are you aware that the APD for this site
2 specifically required that the reseeding be done only after the
3 surface owner approved the reseeding mixture to be used?

4 A. No. I wasn't aware that the surface owner needed
5 to approve anything.

6 Q. And to your knowledge, was the surface owner
7 involved in the reseeding that was done at this site?

8 A. To my knowledge, I do not know.

9 Q. Okay. I'll represent to you that they were not,
10 and if that is --

11 A. Who is the surface owner there?

12 MS. MUNDS-DRY: Mr. Examiner, I think that counsel is
13 starting to testify, and I don't want to raise an objection
14 just to -- it seems like she's starting to testify and I'm a
15 little concerned about that.

16 MS. ALTOMARE: At this point, I would like to
17 clarify, since he has testified that this site is completed.
18 There are, apparently, facts that he's not aware of. I was not
19 prepared to address this pit because this well is not a part of
20 this case. I, therefore, do not have exhibits prepared to
21 present on this. However, I am entitled to impeach this
22 witness.

23 MS. MUNDS-DRY: Mr. Examiner, I just ask that they be
24 questions and not statements by counsel.

25 MR. BROOKS: Well, the would-it-surprise-you-to-know

1 is a standard attorney's trick. It's not really proper. But
2 it has been used by many masters of the art. So I will leave
3 it to the Examiner's discretion.

4 MS. ALTOMARE: We're straying away from that, Mr.
5 Examiner. That's what my concern is.

6 MR. BROOKS: I will leave it to the Examiner's
7 discretion. I don't think there's any great harm done when
8 we're not before a jury.

9 MR. WARNELL: I see no harm. Although, I am a bit
10 surprised that we're spending so much time talking about #301
11 when it's not in my case folder.

12 Q. (By Ms. Altomare): All right. Well, that being
13 said, you do understand at the time the application was filed
14 in this particular case that Xeric Oil and Gas had 80 wells on
15 OCD's inactive well list showing up as being in violation of
16 Rule 201?

17 A. I knew there were several. I didn't know exactly
18 how many.

19 Q. And Xeric has a total of 110 wells; is that
20 right?

21 A. I believe that's right.

22 Q. And you know that now that number has actually
23 risen to 82.

24 A. On non-compliant wells?

25 Q. In violation of 201?

1 A. That don't surprise me.

2 Q. You understand that at the time the application
3 was filed, Xeric has 69 wells for which it owed single well
4 financial assurances?

5 A. Could you repeat the question, please?

6 Q. At the time the application was filed, Xeric had
7 69 wells coming up as in violation of Rule 101(B).

8 A. 101(B) being what?

9 Q. Owing single well financial assurances.

10 A. Okay. I'm not aware on the exact amount of wells
11 and how many they had bonds on and how many they didn't.

12 Q. Are you aware now that that number has risen to
13 74?

14 A. It has.

15 Q. Did you hear the testimony earlier this morning
16 about the total amount of single well financial assurances owed
17 by Xeric Oil and Gas?

18 A. Yes.

19 Q. Was that number a surprise to you?

20 A. Yes, it was.

21 Q. Have you or anyone in your company, to your
22 knowledge, contacted the financial assurance bonding
23 administrator to --

24 A. That again, would be Mr. Hirschfeld.

25 Q. Okay.

1 MS. ALTOMARE: I think, apparently, the rest of these
2 issues are issues I need to address with the other witness, so
3 I'll pass the witness.

4 MR. WARNELL: Ms. Munds-Dry?

5 MS. MUNDS-DRY: I have no further questions.

6 MR. WARNELL: No further questions? The witness may
7 step down, and you may call your next witness.

8 MS. MUNDS-DRY: Thank you. I'd like to call Adam
9 Hirschfeld, please?

10 MR. WARNELL: I'm sorry. I forgot to ask Mr. Brooks.

11 MR. BROOKS: Well, I was going to ask a couple of
12 questions here.

13 EXAMINATION

14 BY MR. BROOKS:

15 Q. Who owns Xeric at the present time?

16 A. Myself and Adam Hirschfeld.

17 Q. No one else?

18 A. No.

19 Q. Was Mr. Collier, was he an owner?

20 A. He was.

21 Q. And he's sold his interest?

22 A. Yes.

23 Q. When you and Mr. Hirschfeld acquired Xeric, did
24 you make any contact with the Oil Conservation Division prior
25 to acquiring Xeric to determine what its regulatory status was

1 at that time?

2 A. We did not. We were informed by the previous
3 owners, Mr. Cook and Mr. King, and just the discussions we had
4 with them.

5 Q. Were you informed by them that Xeric was
6 presently in violation of a number of Oil Conservation Division
7 rules?

8 A. We were not.

9 Q. And you did not check it out with the Division?

10 A. Well, we knew -- we did know that there were some
11 environmental issues; however, we weren't aware that the OCD
12 was demanding a financial assurance bond.

13 Q. Did you make any investigation of the Oil
14 Conservation Division's rules about activity -- wells and
15 bonding and so forth -- before you bought this?

16 A. The administrative part of the company that we
17 were actually running at the time, Mr. Collier was involved in
18 that, and also Mr. Hirschfeld.

19 Q. And not you?

20 A. Not me.

21 Q. Now, April 15th, is that the first contact you
22 had with the Oil Conservation Division?

23 A. Actually, it was the meeting we had with Mikal,
24 which was in June the first time.

25 Q. So you didn't have any contact?

1 A. I personally did not.

2 Q. Okay. And when did you become aware that there
3 was a requirement for furnishing financial assurance for
4 inactive wells?

5 A. That -- I personally -- it come to my attention
6 just previous to the meeting in June.

7 Q. Okay. So you have known since June that there is
8 a requirement to furnish --

9 A. I have.

10 Q. -- financial assurance for inactive wells?

11 A. Yes, yes.

12 Q. Now, when did you become aware that there was a
13 requirement that wells either be returned to production or that
14 they -- the Oil Conservation Division approve the abandonment
15 of the wells, temporary abandonment, of the wells?

16 A. That would have been in June also.

17 Q. Okay. Thank you. That's all I have.

18 EXAMINATION

19 BY MR. WARNELL:

20 Q. Mr. St. John, I have a question or two, if you
21 don't mind.

22 A. Okay.

23 Q. Carrying on kind of the same train of thought
24 there with Xeric Oil and Gas Corporation --

25 A. Yes.

1 Q. -- when you bought the company, how many people
2 were involved with the company, the previous owners?

3 A. The previous owners.

4 Q. I've heard three names now; Mr. Collier, Cook and
5 King?

6 A. Mr. Collier originally was a part of the new
7 ownership of Xeric, which would be myself, Adam Hirschfeld and
8 Tim Collier. The two previous owners are actually Mr. Joe Cook
9 and Mr. Walter King.

10 Q. And where did they live?

11 A. Mr. King lives in -- I do not know him very well.
12 He lives in Midland, Texas. Mr. Cook lives in Odessa, Texas.

13 Q. And yet your letterhead has a Houston, Texas,
14 address.

15 A. The new Xeric, yes. That would be myself and
16 Mr. Hirschfeld.

17 Q. Do you live in Houston?

18 A. I live in Midland, Texas.

19 Q. Mr. Hirschfeld, where does he live?

20 A. He resides in Ohio right now.

21 Q. Who's in the Houston office?

22 A. We have some administrative people that handle,
23 actually, account payable, accounts receivable.

24 Q. You testified here this morning in the very
25 beginning that you weren't familiar with the case. I thought I

1 heard that.

2 A. Weren't familiar with this case?

3 Q. Yes.

4 A. Just what conversations that we had back in June
5 with Mikal. My capacity up to this point until just very
6 recently has been at the field level. I spend most of my time
7 in the field doing the hands-on stuff.

8 Q. I guess where I'm going -- I'm a little bit
9 concerned. We spent a lot of time here this morning talking
10 about #301 --

11 A. Uh-huh.

12 Q. -- but yet I'm not sure if you and I were to sit
13 down and you told me what it is that OCD is requiring of your
14 company, would it be actually what OCD is asking for?

15 A. I'm not sure I understand the question.

16 Q. You said you weren't familiar with the case. Do
17 you know what OCD is asking your company?

18 A. They're wanting us to post a financial assurance
19 bond on all non-compliant wells; is that correct?

20 Q. Yes.

21 A. Okay.

22 Q. And you know those wells, they are outlined
23 specifically?

24 A. Yes, sir. And we have every intention of doing
25 just exactly we have done, which is go in and test the

1 integrity of the well. And one of two things will happen at
2 that point: We will either put the well on production and
3 producing it, or we will plug it.

4 Q. You mentioned something about an MIT?

5 A. Yes, sir.

6 Q. Is that an integrity test?

7 A. That is a mechanical integrity test on the
8 casing.

9 Q. All right. Who is your BLM contact, the person
10 that you deal with?

11 A. The BLM contact that we're working with right now
12 on the Crosby and Gregory lease will be Tricia Badbear.

13 Q. And who is your OCD contact?

14 A. OCD contact, it was supposed to be Buddy Hill.
15 It's my understanding he got a promotion within the OCD, so he
16 will not be coming to the field. I'd like to know who that's
17 going to be so I can start communicating with them. I think
18 Buddy has moved up, and I need someone who is actually at the
19 field level who I can coordinate with in the field.

20 MR. WARNELL: Can we get Mr. St. John a name and a
21 contact and make sure that they get together?

22 THE WITNESS: I'd appreciate that.

23 MR. WARNELL: I have no further questions. You may
24 step down. Thank you.

25 Ms. Munds-Dry, your next witness?

1 MS. MUNDS-DRY: Thank you. I'd like to call Adam
2 Hirschfeld, please.

3 ADAM HIRSCHFELD

4 after having been first duly sworn under oath,
5 was questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MUNDS-DRY:

8 Q. Would you please state your name for the record.

9 A. Yes. Adam Hirschfeld.

10 Q. Where did you reside?

11 A. Ohio.

12 Q. And by whom are you employed?

13 A. Xeric Oil and Gas.

14 Q. And in what capacity?

15 A. I run the back office, the financial side of the
16 business, the account payable, the accounts receivable, and
17 basically I work with regulatory filings. I have an assistant,
18 and that's about it.

19 Q. Have you previously testified before the Oil
20 Conservation Division?

21 A. No, ma'am.

22 Q. Are you familiar with the application that's been
23 filed by the Division in this case?

24 A. I've become familiar with it.

25 Q. You mentioned a little bit about your capacity.

1 What are your exact responsibilities for Xeric?

2 A. My responsibilities are to basically make sure
3 that Xeric is capitalized to meet the needs that we have in the
4 field, whether that be to fix the wells, or to pay contractors
5 or bond.

6 Q. And what other responsibilities do you have?

7 A. We file the C-115s every month. We also take
8 care of all the monthly reporting and financial requirements on
9 all the Rocky Mountain properties. When it comes to buying and
10 selling properties, I'll work with counsel to arrange the
11 contracts. Basically, everything that's beyond the field
12 level, my office will handle.

13 Q. Anything that Mr. St. John doesn't do?

14 A. Anything he doesn't do.

15 Q. Okay.

16 A. In fact, I call him quite often and discuss what
17 has to be done with him.

18 Q. What is the total amount, as you understand it,
19 for posting the single well bonds for all the wells that are
20 the subject of this application?

21 A. The most recent letter that was forwarded to
22 me -- I believe it was the end of August -- by you, Ocean, I
23 believe it was -- 813,000 is what I saw on there.

24 Q. Would you explain to the Examiner what sort of
25 impact would this have on Xeric's ability to continue its work

1 on the wells in New Mexico if you had to post these bonds?

2 A. Yes. At the time, we started this business with
3 the goal of being prudent operators. And, you know, the Rocky
4 Mountains was our original focus -- meaning Colorado, Wyoming
5 and Montana. We've spent a significant amount of money
6 improving those assets and bringing them into compliance. We
7 do have production up in that area. Our budget isn't
8 necessarily as fluid as some people's or some operators'
9 budgets might be, but we do have a budget, and we do have
10 cash-flowing assets.

11 But when the acquisition was made for Xeric, I had
12 scheduled the finances for improvements in the field. I had
13 basically researched the temporarily abandoned wells, the
14 abandoned wells, the wells that basically we need to bring back
15 on to production. We needed to equip them and whatever else
16 might need to be completed, including the environmental issues.

17 When we had acquired the asset, it wasn't
18 communicated to us that there was financial assurance
19 requirements. At that time, we hadn't contacted the OCD, and
20 I'll admit that that would be my fault and Mr. Collier. I
21 suppose we had grown to trust Joe Cook in the past, and
22 whatever he had known in the past about the previous properties
23 we had purchased had come to be the truth. We had understood
24 that their status at the Oil Conservation Division was one that
25 we had to return the wells back to production -- which was our

1 intention in buying the property -- and was one that the
2 relationship was good with the Oil Conservation Division.

3 And with that, our near-term goals were bringing the
4 Rocky Mountain properties into completion and producing or
5 selling and focusing operations on New Mexico.

6 Q. So is that Xeric's focus now, the properties in
7 New Mexico?

8 A. Yes.

9 Q. If you have to post all these single well bonds
10 at one time, what does that do to your ability to bring the
11 wells into compliance?

12 A. It will certainly delay us a significant amount
13 of time.

14 Q. Why is that?

15 A. We would have to sell a couple of our properties
16 in the Rocky Mountains to meet the financial need, or I'd have
17 to work with counsel to draft private placement and seek some
18 form of alternative financing.

19 Q. What kind of time does that take to put that in
20 place?

21 A. It varies. It requires audits. It requires some
22 form of registration with the individual states as well as the
23 security commission, the SEC. In the past, I've done it in a
24 four-month period. The issue with our current assets would be
25 included in audit and evaluation and would require engineering

1 and reserve studies to be updated. We have some older ones.
2 We'd have to get those updated and valued properly.

3 At this time, we have an engineer that has done a
4 small amount of work for us. It took about six weeks to update
5 a study he had done five years prior on one property.

6 Q. In addition to Xeric being out of compliance, why
7 does Xeric want to bring these wells back into production?

8 A. We feel like it's economically feasible, and we
9 can basically get some additional primary recovery and move
10 into a secondary recovery phase.

11 Q. Were you present for Mr. St. John's testimony?

12 A. I was.

13 Q. Did you prepare what's been marked as Exhibit A,
14 Xeric's Exhibit A, the status update and plan of action?

15 A. Yes.

16 Q. Do you know why there were not more specific time
17 frames put in the "to be completed actions"?

18 A. The issues -- when we had begun to draft that
19 report, initially we had found out that it wasn't completed by
20 our former partner, Mr. Collier, and I had moved in to complete
21 it. And that included the environmental issues that we're
22 facing on the Crosby and Gregory units. At this time, just two
23 days ago, we were informed by Tricia Badbear that we weren't
24 allowed to move any dirt whatsoever until we had her approval
25 as well as the landowners. With that being understood, even

1 prior to that time on Tuesday of this week, we still were not
2 sure when we were going to be allowed to move dirt whatsoever
3 to take care of the two main environmental issues we were
4 looking at over there.

5 In addition to that, in regards to getting the Crosby
6 and Gregory wells going and all the other wells that are
7 temporarily abandoned or non-compliant, there is a question of
8 rig availability. In the past, we have had delay time of a
9 week to two weeks. That's not too bad. But in that are the
10 reasons why we didn't put any specific dates in there. And
11 finally, would be that it was not my primary focus to put dates
12 in there, rather to get the plan over saying what we were
13 trying to accomplish, and I know now that I've got to put dates
14 on it. So I apologize for that.

15 Q. Mr. Hirschfeld, do have a copy of Exhibit C in
16 front of you?

17 A. Yes.

18 Q. Would you identify and review what this packet
19 is?

20 A. It's C-103 sundry notices on ten wells between
21 the Crosby Deep and Gregory leases southwest -- or south of
22 Jal, New Mexico. It's our intent to bring these ten wells
23 either back to production or plug and abandon them. Ron right
24 now does have Phoenix Environmental getting the roads ready and
25 getting the well locations ready to have a rig on location.

1 We're also refurbishing the surface equipment so they can
2 handle production here in the near future, God willing.

3 That's what this is right here. So it is our intent
4 to move ahead on this as soon as the roads are capable of
5 handling a rig.

6 Q. Okay.

7 MS. ALTOMARE: Do you have an Exhibit C for us?

8 MS. MUNDS-DRY: Oh, I'm sorry. That must be why I
9 have an extra one. Sorry.

10 MS. ALTOMARE: Thank you.

11 Q. (By Ms. Munds-Dry): Mr. Hirschfeld, has this
12 been submitted to the OCD yet?

13 A. It has not been submitted to the OCD yet.

14 Q. When do you plan to submit these to the Division?

15 A. I was planning to submit them either today or
16 before the end of this week. The main issue we had in
17 submitting these was making sure that within a 60-day period we
18 could, in fact, complete the work on these ten wells. And the
19 problem was, until our visit on location on Tuesday, I wasn't
20 sure how long it was going to take us to have the roads
21 prepared and ready to go. I was making sure we can get
22 everything aligned. I don't think -- if we move ahead, I don't
23 want to be filing any more amended C-103s. I'd like to get it
24 done when we say we're going to get it done.

25 Q. Mr. Hirschfeld, you heard Mr. St. John agree that

1 entering into an Agreed Compliance Order for inactive wells
2 would be acceptable to Xeric. Do you agree with that?

3 A. I do.

4 Q. And would you also be willing to sit down with
5 the Division and come up with a time line that works for both
6 of you to bring your wells back into compliance?

7 A. Yes.

8 MS. MUNDS-DRY: With that, we move the admission of
9 Exhibit C into evidence.

10 MR. WARNELL: Any objections?

11 MS. ALTOMARE: No objection.

12 MR. WARNELL: We will admit Exhibit C.

13 [Respondent's Exhibit C admitted into evidence.]

14 MS. MUNDS-DRY: And I have nothing further for
15 Mr. Hirschfeld. I pass the witness.

16 MR. WARNELL: Ms. Altomare?

17 CROSS-EXAMINATION

18 BY MS. ALTOMARE:

19 Q. What is your official title with Xeric?

20 A. I recently became president. Prior to that, I
21 was secretary.

22 Q. And at what point did that change occur?

23 A. We're still working through the documents now.
24 I've been majority shareholder since we acquired it.

25 Q. And at what point in time did Mr. Collier

1 officially no longer -- was he officially no longer involved in
2 Xeric?

3 A. Basically the first week of August.

4 Q. Okay.

5 A. And that's give or take a few days.

6 Q. What steps did you take prior to acquiring Xeric
7 in New Mexico to research to look into it to make the decision
8 to ultimately become involved with Xeric Oil and Gas?

9 A. I had allocated the financial resources. I
10 basically went through the file boxes. I was looking at old
11 well logs and reserve studies. I did go through the New Mexico
12 Oil Conservation Division website and obtained a list of all
13 the wells that are being reported on the C-115s showing
14 production on certain wells. That is the most that was done
15 besides the field visits, obviously, and a couple of meetings
16 with Mr. Cook and Mr. King.

17 Q. And so you familiar with the OCD website?

18 A. Very.

19 Q. Okay. And you reviewed the C-115s, so you were
20 aware that there were a significant number that were not
21 reporting or were inactive?

22 A. That's correct.

23 Q. Okay. And having access to the OCD website, you
24 were not aware of the single well financial assurance
25 requirement?

1 A. I was not.

2 Q. You are aware that that is due now, not --

3 A. I am.

4 Q. Okay. That regardless of whether or not you
5 filed these sundries with an intention to complete within a
6 certain amount of time, that the bonds for those wells are due
7 now?

8 A. I understand that.

9 Q. Okay. Again, you were not present for the
10 April 15th telephone conference; is that right?

11 A. The way that happened is -- this question was
12 asked of Ron. I received a phone call later that day from
13 Mr. Collier. I was living in Colorado at the time, so I just
14 received a cell phone call while I was driving. He informed me
15 that Mr. Cook had received a notice from the OCD on Case 14106
16 and 14107 listing the various issues.

17 I was not informed that there was a call, but it was
18 my understanding that document was sent to Mr. Cook's old
19 office. And I'd have to go back and look, but I do recall us
20 filing an address change prior to that. Whether that's
21 recorded on your books or not, I'm not sure. But it gone to
22 Mr. Cook's office. Our first day understanding that there was
23 a problem was April 15th. That's my extent of the knowledge.

24 Q. Okay. What did Mr. Collier convey to you
25 regarding the conversation that occurred on April 15th?

1 A. He did not communicate to me that he had a
2 conversation, but he did communicate the fact that we needed to
3 get counsel, and we needed to move ahead to get things fixed.

4 So I contacted Holland and Hart and our existing counsel in
5 Denver. That was the step I took.

6 Q. Did he discuss with you what the particular
7 violation were that were at issue?

8 A. He discussed with me that we have wells that were
9 temporarily abandoned that were not producing and that we had
10 to bring back on to production. At the time, I had taken

11 Mr. Collier's word for it about operating and drilling wells in
12 New Mexico.

13 Q. Okay. Did he talk to you at all about setting up
14 a meeting to come in and meet with OCD in person to discuss the
15 issues?

16 A. He did discuss that with me. He said we'd have
17 to have a face-to-face meeting with you.

18 Q. Did he talk to you about how quickly that would
19 need to happen?

20 A. We both agreed it had to happen very quickly.

21 Q. Do you have any explanation as to why that didn't
22 occur before the next hearing setting as was promised?

23 A. My only explanation is that we had at the time
24 three partners. And Mr. Collier, who is familiar with the
25 State of New Mexico, was an individual that we trusted, and he

1 said he was communicating with you. And we scheduled a meeting
2 when he said he had spoken with Ms. Munds-Dry about it.

3 Q. And you did attend that meeting in June; is that
4 right?

5 A. I did.

6 Q. So do you recall the representations made by Mr.
7 Collier at that meeting?

8 A. Absolutely.

9 Q. And do you recall him talking about providing the
10 OCD with a plan of action and general time frame for
11 accomplishing certain compliance actions?

12 A. I certainly did.

13 Q. And do you feel that those goals were achieved?

14 A. They were not. If fact, when Ron and I were
15 touring locations in the Rocky Mountains, we had been informed
16 that they were not fulfilled. And that is when I returned back
17 to my office and completed the report to do that.

18 Q. Okay. Do you recall at that meeting it being
19 discussed the importance of about keeping the OCD informed?

20 A. I understand it's very important.

21 Q. Okay.

22 A. I do understand that we basically do not have a
23 business unless we can operate within the regulatory standards.

24 Q. And do you recall that more than just the West
25 Pearl Queen #301 pit violations were discussed at that meeting?

1 A. I do.

2 Q. That there were issues of the inactive wells and
3 financial assurances that were discussed there as well?

4 A. But I do recall it being a focus on environmental
5 issues first, as you even mentioned at that meeting.

6 Q. Okay. You had testified that you prepared what
7 as been marked as your Exhibit A, the status update and plan of
8 action?

9 A. Yes, ma'am.

10 Q. Okay. And you had indicated why there were no
11 dates for the "to be completed."

12 A. Uh-huh.

13 Q. You didn't indicate an order of priority either,
14 though; isn't that right?

15 A. I believe I didn't.

16 Q. Even though you didn't include dates, why didn't
17 you include at least a prioritization of what was to be done?

18 A. We basically planned on doing it concurrently.

19 Q. Okay.

20 A. Which is manageable with the Phoenix
21 Environmental contractors and the rig.

22 Q. And as for the completed tasks, you didn't
23 include dates there, either, right?

24 A. No, I didn't.

25 Q. And nothing on here actually involves any of the

1 inactive wells or the financial assurance issues at issue in
2 this case, right?

3 A. I do not believe so.

4 Q. Okay. Why didn't you choose to include any of
5 that in this particular report?

6 A. We had had problems with those existing wells
7 that we had worked on. They were previously producing wells.
8 We had had some parted rods and downhole issues on those, so
9 they had gone down in production the prior month.

10 So our goal was to basically take the well-equipped
11 wells and bring them back on to production so they didn't go
12 onto the -- basically, the non-compliance list here in the
13 future -- and do chemical tests downhole so that we could
14 understand better what the formation would react to. So as we
15 moved ahead and did equip wells and did the mechanical
16 integrity tests on the wells in the future, not only would we
17 have the existing wells producing revenue for us, we would also
18 have the test so we would know better how to stimulate these
19 wells and bring them back into production.

20 Q. But at the time you prepared this report, you
21 knew that this hearing was coming up, right?

22 A. I believe so, yes.

23 Q. So you knew the OCD was concerned about inactive
24 wells and financial assurance compliance?

25 A. Absolutely.

1 Q. And you still didn't include any of that
2 information in this report?

3 A. No, ma'am.

4 Q. Okay. Do you understand that it is the policy of
5 the Oil Conservation Division that prior to -- even though the
6 Oil Conservation Division is willing to enter into an ACO --
7 addressing the inactive wells, it's the policy of the Oil
8 Conservation Division that in order to do that, you must first
9 post any outstanding single well bonds?

10 A. I didn't understanding that they had to be
11 completed before we bring these wells back on, no.

12 Q. Do you understand the implications for being in
13 violation of Rule 40 by having inactive wells and/or having
14 financial assurance violations as far as the impact on your
15 ability to operate?

16 A. I'm not familiar with that.

17 Q. Do you know that it can affect your ability to
18 get permits to drill new wells?

19 A. I'm not understanding -- no. It's Rule 40 you're
20 talking about?

21 Q. Right.

22 A. No, I'm not familiar with Rule 40.

23 Q. You're not familiar with Rule 40?

24 A. No, ma'am.

25 Q. Does it change your approach, your analysis in

1 delegation of finances, for instance, knowing that you're not
2 going to get approved for permits to drill, authorization to
3 transport, those kinds of things unless and until you post
4 those bonds?

5 A. Well, it would. Our intent is not to drill. Our
6 intent would be to rework. But if it's going to prevent us
7 from being able to sell oil -- is that what you're saying?

8 Q. Any --

9 A. When you say "transport," is that --

10 Q. Any new request for allowable authority to
11 transport, any new reworking that is going into a new pool --

12 A. Okay.

13 Q. -- so potentially depending on what it is you're
14 proposing, potentially, yes, it could affect.

15 A. Okay. Well, in that case, it would certainly
16 change the way we would do it. The only issue that I'm faced
17 with is that I cannot call a rig up next week if we post this
18 bond at the end of the month.

19 Q. Okay.

20 A. That's the main issue I've got. And I understand
21 there's no legal defense on having ignorance in going into
22 this, but that is the fact right now.

23 Q. Have you made any contact with the financial
24 assurance administrator with the Oil Conservation Division to
25 date?

1 A. No, ma'am.

2 MS. ALTOMARE: I think that's it.

3 MR. WARNELL: Mr. Brooks?

4 EXAMINATION

5 BY MR. BROOKS:

6 Q. Well, I guess I would ask you the same questions
7 basically that I asked Mr. St. John. Did you have any contact
8 with the Oil Conservation Division before you acquired Xeric?

9 A. No, sir.

10 Q. Did you make any -- did you undertake any
11 research regarding the Oil Conservation Division's rules before
12 you acquired Xeric?

13 A. I did not.

14 Q. When did you first have contact with the Oil
15 Conservation Division?

16 A. June 13th, that meeting with --

17 Q. Your answer is basically the same as
18 Mr. St. John's. When you became aware of these things was in
19 June?

20 A. No. I became aware of them on April 15th when
21 Mr. Collier had called me.

22 Q. You were not a participant in the telephone call?

23 A. I was not.

24 Q. But Mr. Collier informed you of what?

25 A. He had informed me that we had received a letter

1 from the Oil Conservation Division basically stating that we
2 were going to have a hearing in the next -- I can't remember
3 when the first hearing was scheduled, but he said that we were
4 going to have a hearing in the next month, I believe.

5 Q. Did he inform you that the Oil Conservation
6 Division was requiring the filing of additional financial
7 assurance?

8 A. No, he didn't.

9 Q. When did you become aware of that requirement?

10 A. This meeting on June 13th.

11 Q. Okay. Did he inform you that the Oil
12 Conservation Division was requiring that the wells be either
13 tested or returned to active status?

14 A. No, sir.

15 Q. And when did you become aware of that?

16 A. Basically right around June 13th. But I can say
17 that it was discussed that we were going to have to bring wells
18 back to production and or plug them.

19 Q. That was discussed when?

20 A. It was discussed in the April 15th time line.

21 Q. Okay.

22 A. And prior to that, though -- being that it was
23 our purpose in purchasing the asset was to do that very thing.

24 Q. Okay. Thank you.

25

EXAMINATION

BY MR. WARNELL:

Q. This conference call, now, in April, was that on the 15th or the 17th? I've heard several dates.

MS. ALTOMARE: The hearing was schedule for the 17th. The telephone conference call occurred two days earlier.

MR. WARNELL: On the 15th, okay.

Q. (By Mr. Warnell): Have you ever been into the OCD website?

A. I have.

Q. So you realize all the rules and everything else that we've talked about here this morning is on the website?

A. Correct. I had started to become familiar with them after our June 13th meeting. Yes, sir.

Q. Xeric Oil and Gas Corporation; we talked about Wyoming, Colorado, Montana, and your Rocky Mountain properties and New Mexico.

A. Yes, sir.

Q. I was thinking at one time Xeric had activity in Arkansas and Texas and some other states. What happened to that property?

A. You know, Xeric has changed hands in 2006 from -- Randall Capps was the previous owner of Xeric. And then he had sold it to Joe Cook and Walter King, and they had sold it to us. In that sale from Randall Capps to Joe Cook, I recall from

1 the records that Mr. Capps had kept some properties back and he
2 had separated some assets from it. So that's my understanding.

3 Q. So he's probably still operating some of that?

4 A. He certainly is, under a company names XOG
5 Operating.

6 Q. XOG. How many people are currently employed by
7 Xeric Oil and Gas Corporation?

8 A. Ron and I, and we have a consultant in Houston
9 that we bring on.

10 Q. And the consultant is at this Memorial Drive
11 address?

12 A. Correct.

13 MR. WARNELL: Ms. Munds-Dry?

14 MS. MUNDS-DRY: I have nothing further.

15 MR. WARNELL: You may step down. Thank you. Any
16 other witnesses?

17 MS. MUNDS-DRY: That concludes my case.

18 MR. WARNELL: Closing statements?

19 MS. ALTOMARE: I just wanted to clarify the relief
20 that we're asking for, and that is that while we are willing to
21 enter into an ACOI because of the sheer number of wells that
22 are involved, it is OCD policy and, in this case in particular,
23 given the amount of bonds and the time that has passed, that
24 the operator post the bonds first before they be eligible to
25 enter into any kind of an ACOI.

1 So we would ask that there be a date specific set for
2 the posting of the single well financial assurances on all
3 wells that they are due on, and that thereafter we would be
4 willing to negotiate an ACOI to address the inactive wells.

5 And we are asking for a penalty to be assessed in
6 this case because -- I mean, understand that there was a
7 falling out amongst partners, but they are a company. They
8 entered into this endeavor together. They knew what they were
9 getting into. The resources were there. They could have
10 looked up our rules. They could have contacted us. The
11 financial assurance obligations were pre-existing their
12 acquisition of the properties. We have made good-faith efforts
13 to work with them. And they've been aware of these issues for
14 some time now.

15 So we would be asking for the penalty to be assessed
16 in the amount of \$88,000, which is \$1,000 per well at the time
17 of the filing.

18 MR. WARNELL: Ms. Munds-Dry?

19 MS. MUNDS-DRY: Mr. Warnell, we would say that if we
20 are required to enter into single well bonds first before they
21 are willing to enter into an ACOI, which you heard, both
22 gentlemen testified that they would be willing to enter into
23 one and that they be given time. As Mr. Hirschfeld testified,
24 unfortunately, there's a kink in their plans, and they're going
25 to need time to get these into place. And, conversely, that

1 means if they are entering into an Agreed Compliance Order,
2 they're going to need time also to recapitalize to actually
3 meet their promises.

4 What they're trying to do is be realistic in what
5 they can accomplish. They realize that there was a failure of
6 one of the partners and that they have to make up for that, and
7 they have every intention of doing that. You have a good
8 operator here who has finally taken over this company and
9 intends to bring all these wells into compliance. We ask you
10 to give them time to do that and to be reasonable.

11 The civil penalty is certainly not reasonable.
12 They've only owned this company since March and you're going to
13 try to penalize them \$88,000 for that. This is way out of line
14 and should not be considered.

15 We just would really emphasize that you give them
16 time to get all of their affairs in order. They do have every
17 intention of coming into compliance.

18 MR. WARNELL: Thank you. Mr. Brooks?

19 MR. BROOKS: Nothing.

20 MR. WARNELL: Are we going to take this under
21 advisement, or do we need to --

22 MR. BROOKS: I can't think of anything else we need
23 to do. I believe Ms. Altomare has indicated that she has
24 offered all the evidence she feels is necessary to offer. Is
25 that correct?

1 MS. ALTOMARE: I believe so.

2 MR. BROOKS: Very good.

3 MR. WARNELL: Okay. That being the case, then, that
4 concludes Case No. 14106, and it will be taken under
5 advisement.

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

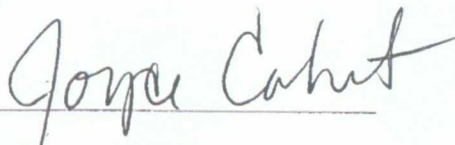
_____, Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.

DATED this 4th of September, 2008.



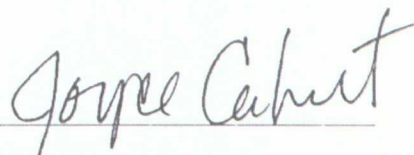
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1 STATE OF NEW MEXICO)

2 COUNTY OF BERNALILLO)

3
4 I, JOYCE D. CALVERT, a New Mexico Provisional
5 Reporter, working under the direction and direct supervision of
6 Paul Baca, New Mexico CCR License Number 112, hereby certify
7 that I reported the attached proceedings; that pages numbered
8 1-87 inclusive, are a true and correct transcript of my
9 stenographic notes. On the date I reported these proceedings,
10 I was the holder of Provisional License Number P-03.

11 Dated at Albuquerque, New Mexico, 4th day of
12 September, 2008.

13
14 

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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. 14106

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST XERIC OIL AND GAS
CORPORATION ("XERIC")

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Legal Examiner
TERRY G. WARNELL, Technical Examiner

September 4, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
Oil Conservation Division, DAVID K. BROOKS, Legal Examiner,
TERRY G. WARNELL, Technical Examiner, on Thursday, September 4,
2008, at the New Mexico Energy, Minerals and Natural Resources
Department, 1220 South Saint Francis Drive, Room 102, Santa Fe,
New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
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