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

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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August 13, 2009
Santa Fe, New Mexico

BEFORE: MARK E. FESMIRE: Commission Chair
JAMI BAILEY: Commissioner
WILLIAM C. OLSON: Commissioner

This matter came for hearing before the New Mexico
Oil Conservation Commission on August 13, 2009, at the
New Mexico Energy, Minerals and Natural Resources
Department, 1220 South St. Francis Drive, Room 102,
Santa Fe, New Mexico.

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25 COURT REPORTER'S CERTIFICATE 319

1 CHAIRMAN FESMIRE: Let the record reflect that
2 this is the Thursday, August 13, 2009 regularly scheduled
3 meeting of the New Mexico Oil Conservation Commission.

4 The record should reflect that Commissioners
5 Bailey, Olson and Fesmire are present.

6 The first order of business before the
7 Commission today is the minutes of the July 16, 2009
8 Commission meeting. Secretary Davidson has circulated a
9 copy of the minutes. Have the Commissioners all had a
10 chance to review those minutes?

11 COMMISSIONER BAILEY: Yes, I have, and I move
12 that we adopt them.

13 COMMISSIONER OLSON: Yes, I read them as well.
14 They accurately reflect our actions, and I second the
15 motion.

16 CHAIRMAN FESMIRE: All those in favor of
17 adopting the minutes as presented by the secretary signify
18 by saying "aye."

19 COMMISSIONER OLSON: Aye.

20 COMMISSIONER BAILEY: Aye.

21 CHAIRMAN FESMIRE: Let the record reflect that
22 the minutes were unanimously adopted by the Commission,
23 signed by the Chairman, and conveyed to the secretary.

24 At this time, the first case to be taken before
25 the Commission is Case No. 13957, De Novo, the Amended

1 Application of Energen Resources Corporation to Amend the
2 Cost Recovery Provisions of Compulsory Pooling Order
3 R-1960 to Determine Reasonable Costs and for Authorization
4 to Recover Costs from Production of Pooled Mineral
5 Interests in Rio Arriba County, New Mexico.

6 The Commission has a little bit of unfinished
7 business on this that needs to take place in executive
8 session, and at this time, the Commission will go into
9 executive session. So we'll ask folks to vacate the room.
10 It should not take very long at all.

11 (Note: Executive session took place.)

12 CHAIRMAN FESMIRE: The record should reflect
13 that the Commission is now coming out of executive session
14 in Case No. 13957, that the Commission has decided in that
15 case, and has directed counsel to draft an order
16 reflecting that decision.

17 But he's not ready to present it yet. He's
18 going to go upstairs and change the order. So therefore,
19 we will continue Case No. 13957 until later today.

20 And the next case before the Commission is Case
21 No. 14055. It's the continuation of the Application of
22 the New Mexico Oil Conservation Division for a Compliance
23 Order against C&D Management Company, doing business as
24 Freedom Ventures Company.

25 Could I have the appearance of attorneys,

1 please?

2 MR. SWAZO: Sonny Swazo on behalf of the
3 Applicant, the Oil Conservation Division.

4 MR. PADILLA: Ernest L. Padilla for C&D
5 Management.

6 CHAIRMAN FESMIRE: Okay. Mr. Swazo, I believe
7 when we left off at the last commission meeting, we were
8 about to begin the cross-examination of Ms. Prouty; is
9 that correct?

10 MR. SWAZO: That's correct, Mr. Chair.

11 CHAIRMAN FESMIRE: Mr. Padilla, are you ready to
12 begin that cross-examination?

13 MR. PADILLA: Yes, I am.

14 CHAIRMAN FESMIRE: Ms. Prouty, you've been
15 previously sworn in this case.

16 MS. PROUTY: Yes.

17 CHAIRMAN FESMIRE: Okay. Mr. Padilla, you may
18 begin.

19 CROSS-EXAMINATION

20 BY MR. PADILLA:

21 Q. Ms. Prouty, when we were last in session here,
22 you testified about making some notations about Mr. Kiser
23 calling you in the course of a week about how to fill in
24 the C-115s. Do you recall your testimony?

25 A. He didn't call me, we had never spoken on the

1 phone that I know of. He called the person who handles
2 the C-115s.

3 Q. But as I understand your testimony, you've had
4 some kind of record of his telephone calls to the Oil
5 Conservation Division to your section?

6 A. Right. In this case, they were records of a
7 group of calls mixed in with some e-mails.

8 Q. But you never yourself spoke with Mr. Kiser?

9 A. I don't believe we've ever spoken on the phone.

10 Q. Okay. I recall your testimony also indicating
11 that you had prepared a sample C-115 that he could access
12 or use.

13 A. Not me. I did not, no. We have sample C-115s
14 on the web for all operators. But I believe also, Karen
15 Allison sent Mr. Kiser a C-115 to work from after he had
16 had difficulty with the one he was preparing.

17 That's what I remember. I don't remember any
18 testimony about that other than saying we had samples on
19 the web. If you could refresh what you're referring to me
20 now, I --

21 Q. Well, I'm just recalling from my notes as to
22 what you testified to. And correct me if I'm wrong as to
23 your testimony, but I had understood that you had spoken
24 with Mr. Kiser. That's not correct, though?

25 A. I don't believe we've ever spoken.

1 Q. Were you consulted about Mr. Kiser's problems
2 with the C-115s?

3 A. Yes.

4 Q. By your staff?

5 A. Right.

6 Q. And did you note that Mr. Kiser was being
7 insincere or deceptive in any way in trying to obtain
8 information from the Division regarding the C-115s?

9 A. Insincere or deceptive, no. I believe I said
10 there might have been a lack of attention to the answers
11 to the questions, or lack of consecutive time spent until
12 this problem was resolved so that the time between the
13 information was lost.

14 Q. Could you say that he was slow on the up-take
15 with regard to the C-115s, he was just not -- you weren't
16 getting across to him on how those C-115s should be
17 prepared, or at least your staff?

18 A. I think the issues were that he perhaps didn't
19 read the material in advance or -- Based on the questions
20 that came in, these are the things that appeared, that he
21 didn't read the instructions in advance, that whenever he
22 encountered any problems, he tended to send an e-mail or
23 call rather than looking at the documentation and trying
24 to get through the problem.

25 And that too much time passed in between efforts

1 to solve the problem so that maybe he forgot where he was.

2 Does that answer your question?

3 Q. Somewhat, I think. But going back to whether or
4 not there was any kind of deceptiveness or some kind of
5 stalling tactic because of that, did you conclude any of
6 that going on with Mr. Kiser?

7 A. No.

8 Q. Have you had similar problems with other
9 operators concerning reporting practices, not getting the
10 electronic transmission of information to you?

11 A. Okay, so you're asking similar in the sense of
12 not receiving C-115s?

13 Q. Yes.

14 A. We have many operators who don't send in C-115s,
15 that's why we send a letter every month of noncompliance.
16 As far as similar -- as far as the long number of C-115s
17 not reported, no, this one stands out among five or so.

18 Q. But you have instances where operators don't
19 file their C-115s timely?

20 A. Yes. So we notify them and they tend to send it
21 in.

22 Q. Now, let me understand, you had testified from
23 exhibits entitled "Detailed Balancing Reports." Can you
24 tell me what those are?

25 A. All right. Do you have an exhibit number so I

1 can --

2 Q. Let's look at Exhibit 57. That's one of them.

3 A. Yes.

4 Q. Okay. Are those just monthly reports for the
5 production from various wells in this case for C&D
6 Management?

7 A. Yes. This is on the web. So at any time,
8 anyone can pull a detailed balancing report, which, in a
9 way, looks like a C-115, but it doesn't include water,
10 because we created this report for ourselves and the tax
11 group to look at whether production matches disposition.

12 So that's the intention of this report is to
13 look similar to a C-115, but also to very clearly point
14 out if produced disposition of oil and disposition of gas
15 matches produced oil and gas.

16 Q. Okay. Ms. Prouty, do you -- these exhibits go
17 through -- let me see. Looks like April 2009 on Exhibit
18 62 as the latest one you have, right?

19 A. The latest one we had when we turned -- you
20 know, supplied you with these exhibits, yes.

21 Q. Now, were there reports for the Scott federal
22 and the Saunders federal well that showed production based
23 on the C-115s that had been filed by C&D Management?

24 A. Let's see. Are you talking about a specific
25 month, or ever, or what?

1 Q. Well, let's talk about the period from January
2 2009 through April 2009.

3 A. Okay, so the specific well, the Scott federal
4 No. 1 is 3001525437?

5 Q. Right.

6 A. Okay. This is not an exhibit. What I happened
7 to pull was from what we call Well Search on the web that
8 shows all production for one well, whereas this report
9 that we were just discussing shows all wells for one
10 month.

11 So I'm going to look at the balancing for that.
12 And for the Scott federal, the last time we received any
13 production was in 2003.

14 Q. Okay. And you didn't have any C-115s on file at
15 that time that would indicate there was some production
16 from January through April 2009?

17 A. As of today, I still don't have any production.
18 I pulled this one this morning, a list of all production
19 for the well.

20 Q. Now, the C-115s that -- you testified they were
21 amended, correct?

22 A. And again, which ones?

23 Q. Well, a number of C-115s apparently were amended
24 to show zero production.

25 A. Actually, what I've testified about was the

1 reverse, that they were amended where they had been
2 reported -- I'll talk a specific month so that I'm clear.

3 Q. Okay.

4 A. But I had used -- when I testified in July 2008,
5 a C-115 was an example. So let me get that one. What had
6 happened here was that some wells had been -- and these
7 were the ones amended.

8 So July 2008 was amended -- it was initially
9 filed on March 27, 2009, and it was amended in May of 2009
10 right before the hearing we were supposed to have in May.

11 And the difference between the amended version
12 and the initial version was that quite a few wells, the
13 production changed greatly. Like one well, the Amoco, had
14 been initially reported as producing 552 MCF of gas, and
15 that was reduced down to 158.

16 And other wells were reported as producing no
17 gas but they were amended up to reporting 9 MCF, or 7, or
18 whatever. I don't believe any wells were changed to zero,
19 they were actually changed from zero to an amount to show
20 that they were producing.

21 Q. With respect to the Saunders and the Scott
22 federal wells, were there any changes with regard to oil
23 production, say, from July of 2008 through your latest
24 figures?

25 A. I don't believe I can tell you that now. Let me

1 see if I -- I have all the reports, so let me look for
2 those. Do you have a particular month you want to --

3 Q. I'm just looking for that period from July 2008
4 to your last figures, probably May 2009.

5 A. Okay. From looking at the Saunders for July
6 2008, that was currently at zero, and it was initially
7 reported, as far as I know, at zero. In most cases, I
8 have both copies of the reports with me.

9 So that is 22348. It was reported zero both
10 times for that month. If you want to name another month,
11 I can look, I just have copies of the first and the
12 second.

13 Q. And you're looking at what now?

14 A. I was comparing the C-115 received on March 27,
15 2009, which was the first time July 2008 was reported, and
16 then I was comparing that to what was received on May
17 20th. It was actually amended twice on May 18th and on
18 May 20th.

19 So I was comparing those two, and they both had
20 zero reported. And those were the only reports we ever
21 received for the month of July 2008.

22 Q. Does the production on these balancing reports
23 that have been evidenced by, say, Exhibit 27 or through
24 62, if we amend, say, in May of 2009, is that -- and it
25 shows zero production, and there had been prior production

1 reported, does that turn everything to zero as far as the
2 amended?

3 A. Only on the copy -- it does replace the data and
4 that's what you see on the web. But we, for audit
5 purposes, have all the files, and they're available to you
6 as well if you go under "Permit Status."

7 And a month was submitted three times. You can
8 see the data that was submitted every single time. And I
9 printed some of that in preparation for this to be able to
10 tell you how the wells changed.

11 And it is unusual that they changed. But when I
12 was talking about looking unusual that they changed, I was
13 talking more about the disposition side. So the answer is
14 yes, that becomes what we're taking as record, but we have
15 all the old files.

16 Q. Do you have information now that would show
17 whether there was any production from, say, July of 2008
18 through May of 2009 for the Scott federal and the Saunders
19 federal wells?

20 A. Okay. Excuse me, you just asked me for those
21 months, and did you -- you were asking me if there ever
22 was any production?

23 Q. Reported, yes.

24 A. Okay. It would take me some time to go through
25 these and compare them. I can do that if you want to wait

1 for me.

2 Q. Well, let's -- Do you have a C-115 for September
3 2008 for information that would show us what was on the
4 C-115?

5 A. I have September 2008. Currently for the
6 Saunders, it's reporting zero. And that is 22348. So let
7 me look at this. So that file is zero. They were both
8 reported zero.

9 So there was never production reported for
10 September 2008. And those two files I looked at, the
11 initial file was submitted on March 26, 2009, and the
12 amended file was May 18th.

13 So that's the only two reports we received for
14 September and both of them showed zero for the Saunders
15 well.

16 Q. That doesn't show 135 MCF on the Saunders as
17 production in that March report?

18 A. No. And it has a code of S, which means
19 shut-in. So if you have a C-115 that you think has
20 production, do you have the S on there as the status?
21 Because that's what you reported to us, that it was
22 shut-in.

23 And would you tell me that amount again and I'll
24 see if any other well had that reported if there was --

25 Q. 135 MCF.

1 A. I don't see that. So I don't think there is
2 any -- I don't know if we're talking about the wrong well
3 or anything, but I'm talking about 3001522348.

4 Q. Let me see. We're talking about 301409?

5 A. That is the one I just looked at.

6 Q. Ms. Prouty, one other question, when you say "on
7 there detailed balancing reports," what does the word
8 "balancing" stand for? It throws me off.

9 A. We created this report as an internal report to
10 make sure that when an operator reported production, that
11 the disposition matched, that they told us exactly what
12 happened on the production.

13 So there are two balance columns on this report,
14 one, there is a gas variance column right in the middle of
15 the report, and there is an oil variance column on the far
16 right. And those should be zeroes, and they are zeroes.

17 So if you produced 5 MCF of gas, we're looking
18 for 5 to be transported, or one to be gas lift and four to
19 be transported, and that would come out to a zero
20 variance. That's what the intention of this report is.

21 MR. PADILLA: That's all I have, Mr. Examiner.

22 CHAIRMAN FESMIRE: Mr. Swazo, redirect?

23 REDIRECT EXAMINATION

24 BY MR. SWAZO:

25 Q. So if I understand this correctly, C&D

1 Management has filed C-115s for the reporting periods of
2 January 2008 through April 2009?

3 A. Yes.

4 Q. And on those C-115s, they reported no production
5 for the Scott federal or the Saunders 12 wells?

6 A. For the Scott federal, none. And the Saunders
7 12, the last time that well had any production reported
8 was 2002.

9 Q. And going back to the history of C&D Management,
10 the OCD has had meetings with them on how to prepare the
11 C-115s?

12 A. Yes. I had meetings with Darla before. I
13 didn't ever speak with Tom. Karen, as far as I know,
14 worked with Tom. But I had phone meetings with Darla,
15 plus Steven Bradshaw on my staff had a phone meeting with
16 Darla on how to file the amended.

17 Q. So the OCD has had meetings with C&D Management?

18 A. Many, yes.

19 Q. Plus, there's tools available to operators which
20 helps them understand how to file the C-115s?

21 A. Right. The last time it was not introduced into
22 evidence, but these are all the different C-115
23 instructions that we have on the web for people to use.

24 Q. Could you briefly just go over the tools again?

25 A. How people file, or what the --

1 Q. The tools available. If I understand it,
2 there's manuals that provide instructions to operators on
3 how to file a C-115?

4 A. Right. Yes, there's a -- just in brief, there's
5 a manual -- there's a little piece of Excel code called a
6 macro that they download to put the file into the format
7 that our computer needs to read it. So they can download
8 that.

9 There are instructions on how to download that,
10 then how to type up the C-115s for different
11 circumstances. An example shows if you have oil stolen,
12 here is how you code it. If you have oil transported,
13 here's how you code it.

14 So there's sample C-115s to reference showing,
15 "Be sure to put the hyphen in the API number" and some
16 format things like that.

17 Then there is also a flow chart showing if you
18 get an error, what you do is read the error, then go back
19 to your C-115 and change it. Let's say you typed the API
20 number wrong and it shows you fixed it on your Excel
21 spreadsheet, then resubmit, it revalidated it, and now
22 you'll see no error.

23 And then there are two other little manuals, one
24 is how to create the C-115, what the error codes mean,
25 what the codes within it -- like I just said, the S for

1 shut-in, P for producing, you know, so it describes those
2 codes.

3 And then there is a separate little manual for
4 once you get your C-115 finished, when you sign on to the
5 web, here's how you do it, and you press the Validate
6 button and it tells you whether there are any errors.

7 And if you get any errors, print the report and
8 call the district office or call us, depending on the type
9 of error. So those are the manuals.

10 MR. SWAZO: I don't have any other questions.

11 MR. PADILLA: I don't have any other questions.

12 CHAIRMAN FESMIRE: Commissioner Bailey?

13 COMMISSIONER BAILEY: I don't have any
14 questions.

15 CHAIRMAN FESMIRE: Commissioner Olson?

16 COMMISSIONER OLSON: I have no questions.

17 CHAIRMAN FESMIRE: Ms. Prouty, in response to
18 one of Mr. Padilla's questions, you said that there are
19 many operators who have trouble filing C-115s; is that
20 correct?

21 THE WITNESS: I think he was asking me about
22 late filing. I think. But I'm not positive. I don't
23 remember correctly. So would you like me to address the
24 issue of several operators with late filings or operators
25 that have trouble filing?

1 CHAIRMAN FESMIRE: Why don't you start with
2 both. Are there several operators -- why don't you start
3 with the late filers. Are there several operators that
4 have problems with late filings?

5 THE WITNESS: Well, problems would be -- I'll
6 let you categorize that, but every month we do send --
7 actually, every two months because of the 60 day
8 requirement, so we put two months together to save
9 postage.

10 So every two months, we send letters to
11 operators who haven't submitted C-115s by the due date.
12 And on those, I'm just guessing, but I'm thinking maybe 40
13 letters may go out.

14 CHAIRMAN FESMIRE: In a two month period?

15 THE WITNESS: And then typically, they call us
16 and say, "Oh, my gosh, we accidentally sent the September
17 with the July date on it. We'll send you the September
18 again and we'll send you the July again because you
19 apparently -- we accidentally amended it." So they'll
20 call us and then they send it in and correct it.

21 So then, after many months pass we get -- if
22 they still haven't filed, then we get into the revocation
23 of authority situation. So usually the 50 letters turns
24 into one per month revocation of authority, something
25 along that line. That's late filing.

1 Then as far as difficulties filing, usually --
2 there might be five new people a month who haven't done it
3 before. And they'll call and we'll refer them to the
4 instructions. The instructions are on the web as you get
5 into OCD online, so you can see them sitting there. A lot
6 of times they don't even call us, they just start filing
7 and figure it out.

8 If they already have a C-115 set up, which C&D
9 did with Debbie McElvey, usually they use that so they
10 don't have any reason to call us. They get a user ID,
11 sign on to the web, and the errors guide them through if
12 they have any errors.

13 So usually, there aren't too many problems. But
14 there might be maybe three people a month I consult with
15 on the whole process, and maybe an additional two people
16 who get a different -- well, usually, the issue is they
17 are trying to import a well completion but we haven't
18 approved the permits yet, so they're getting an error and
19 they're asking me why they're getting an error.

20 And it's usually an issue of they shouldn't have
21 been producing that well yet and the system is trying to
22 tell them that. So they will need to come into the
23 district to get it registered. So those are the kinds of
24 problems we have, maybe five a month.

25 CHAIRMAN FESMIRE: Okay. And how many operators

1 report a month, individual operators?

2 THE WITNESS: Usually 600 to 700 depending on
3 the operator changes.

4 CHAIRMAN FESMIRE: Okay.

5 THE WITNESS: And actually, that's how many
6 operators we have. We usually get 1,200 C-115s, because
7 there's a lot of amendments.

8 CHAIRMAN FESMIRE: Okay. Mr. Padilla, do you
9 have any other questions?

10 MR. PADILLA: Just one.

11 RECROSS-EXAMINATION

12 BY MR. PADILLA:

13 Q. Ms. Prouty, how many software applications are
14 used in reporting the C-115s?

15 A. To report, you just use Excel.

16 Q. And how does that dovetail into your system?

17 A. The macro that I mentioned generates a file of
18 data, and that's what's sent up to our system. So when
19 you say how does it integrates, it creates a file that our
20 system reads.

21 Q. But all you need is Excel and then read the
22 instructions as to how to get it into your system?

23 A. You need Excel, you need the little macro that
24 generates the file. It just turns it into data in a
25 certain format, and then our system reads the rest. And

1 you do that from the web, because our system reads it from
2 the web and presents you with the errors.

3 You don't have to have Excel. Companies that
4 are larger that have their own accounting systems, I would
5 say maybe -- I don't really know because the file comes
6 out the same, but let's say 50 companies don't use Excel,
7 they use other software that generates the same file I'm
8 talking about that -- For people who don't have other
9 systems, the macro creates that file. Other companies
10 have their own software that generates the same file.

11 Q. Who is Darla?

12 A. Darla Jeffries from C&D.

13 Q. How long since you've talked to Darla Jeffries?

14 A. Probably 2004, 2005, I don't know. Actually,
15 let me see if I have those. I don't really know. They
16 did an operator change greatly retroactively and then we
17 noticed we weren't getting C-115s, so we called her.

18 I say "we," I called her and spoke with her, and
19 then David Bradshaw worked with her on how to get the
20 C-115s set up. And I know that Daniel and David Bradshaw
21 had at least one conversation together, I believe, on the
22 C-115s.

23 Q. And that was way back in 2004, 2005?

24 A. I don't know the years but I know it was before
25 we knew that Mr. Kiser was involved with C&D.

1 Q. Did you become aware that Mr. Kiser bought C&D
2 at some point?

3 A. Only through the hearing last July.

4 MR. PADILLA: No further questions.

5 CHAIRMAN FESMIRE: Mr. Swazo, anything else from
6 this witness?

7 MR. SWAZO: No further questions.

8 CHAIRMAN FESMIRE: Okay. Ms. Prouty, thank you
9 very much. Mr. Swazo, do you have another witness?

10 MR. SWAZO: I do. I have Mr. David Brooks.

11 CHAIRMAN FESMIRE: Mr. Brooks, have you been
12 sworn in this case, sir?

13 MR. BROOKS: I believe I was sworn in the first
14 hearing. This is a continuation.

15 CHAIRMAN FESMIRE: Yes. Why don't we go ahead
16 and reswear you just to be sure?

17 DAVID BROOKS,
18 the witness herein, after first being duly sworn
19 upon his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SWAZO:

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

24 A. David Brooks.

25 Q. And you're employed with the Oil Conservation

1 Division?

2 A. Yes.

3 Q. And what is your current title?

4 A. Legal Examiner.

5 Q. And do your duties include enforcing OCD orders
6 that require wells to be plugged?

7 A. Well, I don't know that it includes enforcing
8 it. My duty includes certain responsibilities with
9 respect to the well plugging program.

10 Q. Could you explain what those duties are?

11 A. Well, I analyze and review the orders of the
12 Division or Commission directing that wells be plugged and
13 determine if a determination has been made that particular
14 wells should be plugged by the Division.

15 If I determine that that has been ordered, then
16 I put them on a list of wells which are to be plugged by
17 the Division.

18 I also am responsible for making contracts with
19 plugging contractors to plug wells. And I am responsible
20 for when a plugging contractor has plugged a well for the
21 Oil Conservation Division and has been paid for it, I'm
22 then responsible for undertaking to recover the monies
23 expended by the Division in that connection, the surety or
24 whatever financial assurance has been posted by the
25 operator, and if possible, from the operator if the

1 financial assurance is inadequate.

2 Q. Are you familiar with the Order in this case?

3 A. I have reviewed it, yes.

4 Q. And that's Exhibit No. 94. And so you reviewed
5 this Order when you were making a determination as far as
6 which wells to plug?

7 A. I did.

8 Q. And Ordering Paragraph No. 3 requires C&D
9 Management to file C-115s, correct?

10 A. Well, the period from January '08 through and
11 including May 2008, yes.

12 Q. And it required C&D Management to file those
13 reports by September 14, 2008?

14 A. That's what it says, yes, sir.

15 Q. And if you look at Paragraph 5, that paragraph
16 states that in the event that C&D Management Company fails
17 to comply with the Order in Ordering Paragraphs 1 through
18 3 within the time provided, the Division may proceed to
19 plug and abandon any other of C&D Management Company's
20 wells?

21 A. I believe you are reading from Paragraph 4, not
22 Paragraph 5.

23 Q. I'm sorry, you're right. That's what
24 Paragraph 4 says.

25 A. Okay, that's correct.

1 Q. Now, in this case, the operator did not file any
2 C-115 reports for those reporting periods by the reporting
3 deadline. So how come the wells requiring C-115s were not
4 plugged?

5 A. I'm not sure which wells you're referring to
6 exactly. My interpretation of the Order is that
7 Paragraphs 1 and 2 direct C&D Management to properly plug
8 and abandon certain wells.

9 The statement in Paragraph 4, that if they fail
10 to comply within the times provided in Paragraphs 1
11 through 3, the Division shall proceed to plug and abandon
12 any or all wells of C&D Management, et cetera, in my
13 opinion did not comply with the terms and provisions of --
14 the provision of the Oil and Gas Act, which I believe is
15 Section 70-2-14.

16 I don't have the Oil and Gas Act in front of me
17 to refresh my recollection of the section number, but
18 anyway, the provision regarding financial assurance. It
19 states that wells may be plugged and abandoned, but it
20 does not state that -- Well, let me put it this way. What
21 it says is that if there is a violation -- this is
22 paraphrasing, I don't remember the exact language, but it
23 says that if there is a violation of any provision of the
24 Oil and Gas Act, or any rule or order adopted pursuant to
25 it, the Division may order the operator to plug wells.

1 That then it says, "within a time provided."

2 And if the operator fails to comply, then the bonds may be
3 forfeited -- financial assurance may be forfeited. It
4 does not say that if there is a violation of an order, the
5 Division may plug wells, it must.

6 My interpretation of that statute is, the
7 Division or the Commission must first direct an order to
8 the operator to plug particular wells, and then other
9 entities come into play if the operator does not comply
10 within the time provided in the Order. This Paragraph 4
11 does not conform to what seems to me to be required by the
12 terms of the Oil and Gas Act.

13 Q. I want to go back to the well that you had
14 mentioned. If you would turn to Paragraph 3, Paragraph 3
15 requires C&D Management to file C-115s for, quote, "all of
16 its wells."

17 A. That is correct.

18 Q. And if you look at Paragraph 3, doesn't that
19 list all of C&D Management's wells?

20 A. Well, I don't know that, because Paragraph 3
21 merely says, "C&D Management Company is the operator of
22 the following oil and gas wells." That does not say
23 whether or not they are the operator of any other wells,
24 it does not say.

25 Q. But it does list the wells that are not included

1 in Ordering Paragraphs 1 or 2, correct?

2 A. Yes, it does, that's correct.

3 Q. And those wells are the Hasties Nos. 16, 17, 18,
4 19, 20 and 21?

5 A. Well, without line by line comparing the two
6 provisions -- I think it's clear there are no Hasties
7 wells listed in Ordering Paragraphs 1 and 2. So the
8 answer is yes.

9 Q. And Ordering Paragraphs 1 and 2 do not include
10 the Amoco No. 1 or the Michael State No. 1; is that
11 correct?

12 A. That appears to be correct, yes, sir.

13 Q. So C&D Management would have had to file C-115s
14 for those wells that we just -- for all the Hasties, as
15 well as the Amoco No. 1 and the Michael State No. 1 wells?

16 A. That's correct.

17 Q. So Mr. Brooks, could you explain again why the
18 wells that operator failed to file C-115s for by the
19 September 14, 2008 deadline were not plugged?

20 A. By the OCD?

21 Q. By the OCD, yes, correct.

22 A. They were not plugged by the OCD because I
23 advised that this Order does not authorize them to be
24 plugged by the OCD.

25 The reason I gave that advice was that no

1 provision of this Order directs C&D Management to plug any
2 wells by a date certain other than those wells
3 specifically identified in Ordering Paragraphs 1 and 2 of
4 the Order.

5 My interpretation of the relevant statutes is
6 that in order for the OCD to be authorized to plug a well
7 and forfeit the financial assurance, it must first enter
8 an Order directing the operator to plug the particular
9 well that OCD will thereafter plug, and give them a
10 specific time to do it and if the operator does not do it
11 within that period of time.

12 All those things must occur before the statutory
13 authorization for the Division to plug the well comes into
14 play, in my interpretation.

15 MR. SWAZO: I don't have any further questions,
16 Mr. Chair.

17 CHAIRMAN FESMIRE: Mr. Padilla?

18 CROSS-EXAMINATION

19 BY MR. PADILLA:

20 Q. Mr. Brooks, you testified that you were in
21 charge of issuing contracts for plugging oil and gas
22 wells, and specifically, the wells that were plugged by
23 the OCD belonging to C&D Management?

24 A. Well the word "issuing" is somewhat an ambiguous
25 word. I think that, actually, the State Purchasing

1 Division issues those contracts, but I'm in charge of
2 causing it to be done.

3 Q. Do you know how the State Purchasing Division
4 goes about contracting for plugging oil and gas wells?

5 A. Yes, I do.

6 Q. What is that process?

7 A. The Oil Conservation Division, pursuant to the
8 State Purchasing Division's rules and policies, prepares a
9 list of specifications which consists of items of labor
10 and equipment that are needed to plug a well, and it
11 delivers those along with a request for the establishment
12 of a contract to the State Purchasing Division.

13 The State Purchasing Division then puts out an
14 invitation for bids in which the various contractors bid a
15 price schedule, or bids specific prices according to the
16 price schedule that's formulated by the Oil Conservation
17 Division.

18 When the State Purchasing Division receives the
19 bids, then they award the bids to the lowest bidder or
20 bidders. I put it that way because the Oil Conservation
21 Division has the authority to and has the option to, in
22 fact, specify that we want more than one contractor.

23 So we are not bound to use the lowest bidder in
24 every case, we can select, in case one contractor doesn't
25 have a rig available, which was often the case over the

1 last several years. Probably not so much now.

2 In any event, we now have two contractors. But
3 once State Purchasing receives the bids, then they
4 determine the contractor or contractors to whom contracts
5 will be awarded. They prepare the contracts, they obtain
6 the signatures of the contractors and the appropriate
7 state officials on those contracts, and then they notify
8 us.

9 Q. In this case, do you know whether a separate bid
10 was submitted for each of the wells plugged by the OCD?

11 A. As a bid, it was not. Because we were analyzing
12 price contracts. We did not utilize the bidding procedure
13 for a specific project under the procurement code.

14 Q. Who determines the specifications for plugging a
15 well?

16 A. The Oil Conservation Division does. Are you
17 asking who within the Oil Conservation Division makes that
18 determination?

19 Q. Yes.

20 A. That is one of the responsibilities of the
21 district supervisor.

22 Q. So they determine, for example, where plugs are
23 going to be placed down along a well?

24 A. That is correct.

25 Q. And what work has to be done on the surface?

1 A. Yes, sir. Although, in the interest of clarity,
2 on the terms of the surface, that would also involve the
3 district environmental technician. I'm not sure what his
4 precise title is, but there is one in each district.

5 Q. But that's determined by the OCD as to what
6 needs to be done at the surface or down hole?

7 A. That's correct.

8 Q. OCD does that. From there, it goes to the State
9 Purchasing office?

10 A. Well, yeah, the Oil Conservation Division
11 prepares a list of specifications, and that is for the
12 purpose of bidding on a price contract. Then when a
13 particular well needs to be plugged, the Oil Conservation
14 Division prepares a plugging procedure which directs the
15 contractor what specific actions are to be done on that
16 particular well.

17 Q. Okay. So in this case, as I understand your
18 testimony, the wells that were plugged by the OCD through
19 the State Purchasing office, there was not a separate bid
20 on each well?

21 A. That is correct, sir.

22 Q. Now, how do you go after the excess if it cost
23 more than what the financial security -- if it cost more
24 for the plugging, how do you go after the excess that
25 is --

1 A. Well, we have to bring a lawsuit in district
2 court against the operator. And of course, before doing
3 that, we make some effort to determine if there are
4 possible assets from the operator that we can use should
5 we get a judgment.

6 Q. Have you filed any lawsuits to recover excess
7 costs?

8 A. Yes.

9 Q. Can you tell me in what cases you've done that?

10 A. At this point, we've only filed one. And the
11 operator in that case was a Mr. Chen. I'm trying to think
12 of his first name. I'm not sure. He did business as IT
13 Properties, but it was a sole proprietorship. Mr. Cheng
14 is now deceased, but we filed that case before his death.

15 Q. Have you filed a claim in the probate
16 proceeding?

17 A. We have.

18 Q. Mr. Brooks, you testified that you weren't clear
19 what statute you were involved with?

20 A. Well, I have the statute definitely in mind, I
21 could not necessarily remember the number of the section.

22 Q. I'm not holding you to that, but you testified
23 that the Oil and Gas Act allows the Oil Conservation
24 Division to proceed with plugging oil and gas wells?

25 A. That is my interpretation, yes, sir.

1 Q. Okay. But as I understand your testimony, there
2 is no specific direction in the statute saying that the
3 OCD is authorized to plug and abandon wells?

4 A. Well, sir, I'm being asked to say things about a
5 statute without the statute in front of me. But if I
6 recall -- Well, let me ask, if I may, if anyone has a copy
7 of the statute, I would appreciate being given an
8 opportunity to look at the statute itself in order to --
9 if I'm going to be asked specific questions about its
10 language. Is that acceptable, Mr. Chairman?

11 CHAIRMAN FESMIRE: Does anybody have a copy?

12 MR. SWAZO: I think it may actually be in the
13 Order if you look at Page 4.

14 THE WITNESS: That refers to the section number,
15 but it doesn't -- Mr. Padilla was asking me about some
16 specific language.

17 CHAIRMAN FESMIRE: The record should reflect
18 that the witness is being given a copy of the statutes.
19 In which statute is the Order cited?

20 THE WITNESS: It is Section 14, as I thought it
21 was. Well, reviewing the language of the statute confirms
22 what I thought was the answer to your question. And I
23 believe the answer to your question is, that there is no
24 provision in this section that in so many words authorizes
25 the Oil Conservation Division to plug any well under any

1 circumstances.

2 Q. And you're looking at 70-2-14; is that right?

3 A. That is correct. It is still my interpretation,
4 however, that that is what it authorizes.

5 Q. Have you relied on any case authority that would
6 support your interpretation?

7 A. No. I'm aware of no case authority.

8 Q. Hypothetically, if the well is capable of
9 production and the well is plugged by the OCD, would that
10 constitute waste?

11 A. That could be argued.

12 Q. Mr. Brooks, would failure to file C-115s in and
13 of itself require the plugging of oil and gas wells?

14 A. You mean absent an Order of the Division?

15 Q. With an Order of the Division -- let's just say
16 that failure to file C-115s was found, would that allow
17 the Division or the operator -- require the operator to
18 plug and abandon the wells?

19 A. If the Division so ordered.

20 Q. But failure to file C-115s would be enough to
21 issue that Order?

22 A. Under the terms of this section, Section
23 70-2-14, in Subsection B, it states that if any of the
24 requirements of the Oil and Gas Act or the rules
25 promulgated pursuant to the Act have not been complied

1 with, the Oil Conservation Division, after notice and
2 hearing, may order any well plugged and abandoned,
3 et cetera.

4 The requirement to file C-115s is a requirement
5 of a rule promulgated pursuant to the Act, so therefore,
6 my answer is yes.

7 Q. Even on a producing well?

8 A. The statute makes no distinction.

9 Q. Mr. Brooks, in your examination of whether or
10 not the well should be plugged, or once you start your
11 analysis of whether or not a well should be plugged
12 pursuant to an Order, do you look at federal requirements
13 if the well is a federal well, it's drilled on a federal
14 gas and oil lease?

15 A. No, sir, we don't. We do consult the United
16 States Bureau of Land Management before we plug the well
17 if it's on a federal -- that penetrates federal lands.

18 Q. Do you obtain anything in writing from the
19 Bureau of Land Management or federal authority in
20 jurisdiction to put in your file?

21 A. No, we do not. To my knowledge. I'm no longer
22 responsible for the administration of that phase of the
23 operation, however.

24 MR. PADILLA: That's all I have, Mr. Chairman.

25 CHAIRMAN FESMIRE: Any redirect, Mr. Swazo?

1 MR. SWAZO: Yes, Mr. Chair.

2 REDIRECT EXAMINATION

3 BY MR. SWAZO:

4 Q. The Oil and Gas Act does give the OCD the
5 authorization to collect data and to provide for the
6 keeping of records and making reports for checking of the
7 accuracy of the reports, correct?

8 A. My interpretation is that it does.

9 MR. SWAZO: I have no further questions.

10 CHAIRMAN FESMIRE: Commissioner Bailey?

11 COMMISSIONER BAILEY: I have no questions.

12 CHAIRMAN FESMIRE: Commissioner Olson?

13 COMMISSIONER OLSON: I just have one line of
14 questioning to make sure I understand what your testimony
15 is, Mr. Brooks. So you're saying that under 70-2-14,
16 there is no explicit allowance for the Division to plug
17 wells, is that what you're --

18 THE WITNESS: There is no language in that
19 section which says that the Division -- in so many words,
20 that the Division may plug wells; it's my interpretation
21 that that's what it allows.

22 COMMISSIONER OLSON: And is that even -- because
23 I look at 70-2-14E, and it talks about when the bonds are
24 insufficient to cover the cost of plugging.

25 It goes on further that the Division is

1 authorized to bring suit against the operator in the
2 district court in which the well is located for
3 indemnification for all costs incurred by the Oil
4 Conservation Division in plugging the well. I guess that
5 seems to --

6 THE WITNESS: That's the basis of my
7 interpretation that this section allows the plugging of
8 the wells that have been ordered plugged.

9 COMMISSIONER OLSON: Okay, that's what I was
10 reading, as well. So I just wanted to clarify that.

11 THE WITNESS: My father use to say, "Great minds
12 run on the same channel."

13 COMMISSIONER OLSON: Okay. Thank you, that's
14 the only thing I had.

15 CHAIRMAN FESMIRE: Mr. Brooks, the wells that
16 have been plugged, how long had it been since any of those
17 had been producing?

18 THE WITNESS: I don't have that information
19 available to me.

20 CHAIRMAN FESMIRE: Okay. Did you hear
21 Ms. Prouty's testimony?

22 THE WITNESS: I probably did, but I don't recall
23 it.

24 CHAIRMAN FESMIRE: Is it waste to plug a well
25 that is not producing?

1 THE WITNESS: If the well is not capable of
2 producing, I would say that unquestionably it is not.

3 CHAIRMAN FESMIRE: Would you elaborate on the
4 phrase "capable of producing"?

5 THE WITNESS: Well, that's always a fact
6 question and one that could be subject to many different
7 opinions. A petroleum engineer would be the person who
8 would normally be asked to give an opinion on that
9 subject.

10 CHAIRMAN FESMIRE: Okay. If a well is not
11 economically capable of producing, is it capable of
12 producing under the law?

13 THE WITNESS: For the purposes for which the
14 courts have addressed that issue, no, in my -- to the
15 extent of my knowledge.

16 CHAIRMAN FESMIRE: Okay. Now, the reason that
17 the OCD collects the information that you've testified
18 that it's supposed to and allowed to collect under the
19 law, specifically the C-115s, is one of those reasons to
20 determine which wells are producing and which wells
21 aren't?

22 THE WITNESS: I would assume so.

23 CHAIRMAN FESMIRE: And if those wells aren't
24 producing, there is some requirement for -- for instance,
25 for temporary abandonment under the law?

1 THE WITNESS: That's correct.

2 CHAIRMAN FESMIRE: And those requirements are
3 under the law and the rules?

4 THE WITNESS: Yes. And there is also a
5 provision in the OCD rules that under certain
6 circumstances, a well may be deemed abandoned.

7 CHAIRMAN FESMIRE: Okay. Now, you made some
8 statements about the Order in this case that I need to
9 clear up just a little bit. Order No. 129193A, which is
10 Exhibit 94 --

11 THE WITNESS: Yes, sir.

12 CHAIRMAN FESMIRE: You said something that
13 the -- Did I understand correctly, did you make the
14 implication that the Order did not comply completely with
15 the law?

16 THE WITNESS: The Order does not contain a
17 provision, which in my opinion would be necessary for it
18 to contain, in order for it to be construed as authorizing
19 the Oil Conservation Division to plug wells operated by
20 C&D other than those specifically enumerated in Ordering
21 Paragraphs 1 and 2.

22 CHAIRMAN FESMIRE: And has the OCD plugged or
23 attempted to plug any of the wells not enumerated on that
24 list?

25 THE WITNESS: Not enumerated on that list?

1 CHAIRMAN FESMIRE: Yes.

2 THE WITNESS: No, it has not, to my knowledge.

3 CHAIRMAN FESMIRE: So the OCD has complied with
4 the law, you're not contending it hasn't?

5 THE WITNESS: No, I'm not. I believe Mr. Swazo
6 asked me why the OCD has not plugged the wells not listed
7 in Ordering Paragraphs 1 and 2.

8 CHAIRMAN FESMIRE: Okay, and nobody is claiming
9 that any of the wells that the OCD has plugged have not
10 been plugged pursuant to the law?

11 THE WITNESS: Well, I don't know what anyone is
12 claiming. The wells that I believe are not authorized by
13 this Order to be plugged have not been plugged.

14 CHAIRMAN FESMIRE: Okay. I have no further
15 questions. Mr. Swazo, anything pertaining to the
16 Commissioner's questions?

17 MR. SWAZO: Yes, just one question.

18 REDIRECT EXAMINATION

19 BY MR. SWAZO:

20 Q. Had this Order contained the magic language that
21 you referred to, would the OCD have the authorization to
22 plug the wells?

23 A. If this Order, instead of saying -- referring
24 here to Paragraph 4, instead of saying, "In the event that
25 C&D fails to comply with Paragraphs 1 through 3, the

1 Division may proceed to plug and abandon all of C&D's
2 wells," if instead, this Order had said, "In the event
3 that C&D Management Company fails to comply with Ordering
4 Paragraphs 1 through 3, C&D Management shall plug all of
5 its wells not later than," a certain date, and that date
6 had passed and C&D Management had not plugged all of its
7 wells, then in my opinion, the Division would have been
8 authorized to plug any of its wells that it had not
9 plugged by that date.

10 MR. SWAZO: No further questions.

11 CHAIRMAN FESMIRE: Mr. Padilla, anything else on
12 that subject?

13 MR. PADILLA: No.

14 CHAIRMAN FESMIRE: Mr. Brooks, thank you very
15 much. Mr. Swazo, that was the last of your witnesses?

16 MR. SWAZO: That's correct. The OCD rests its
17 case.

18 CHAIRMAN FESMIRE: Why don't we take a ten
19 minute break. And Mr. Padilla, I can't remember, have you
20 given an opening statement?

21 MR. PADILLA: No, I haven't, but I don't think I
22 will because I think the issues are clear enough here.

23 CHAIRMAN FESMIRE: Okay. So when we reconvene,
24 why don't you be prepared to call your first witness?

25 (Note: A break was taken.)

1 CHAIRMAN FESMIRE: We're back on the record.
 2 The record should reflect that this is the continuation of
 3 Case No. 14055, the De Novo Application of the New Mexico
 4 Oil Conservation Division through the Enforcement and
 5 Compliance Manager for a Compliance Order Against C&D
 6 Management Company Doing Business as Freedom Ventures
 7 Company.

8 Mr. Padilla, I believe you were going to present
 9 your first witness?

10 MR. PADILLA: We'll call Mr. Kizer to the stand.

11 CHAIRMAN FESMIRE: Mr. Kizer, please take the
 12 stand. Mr. Kizer, I can't remember whether you've been
 13 sworn in this case or not.

14 MR. KIZER: I have not.

15 CHAIRMAN FESMIRE: Okay, would you raise your
 16 right hand, please, and be sworn in?

17 TOM KIZER,
 18 the witness herein, after first being duly sworn
 19 upon his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PADILLA:

22 Q. Mr. Kizer, please state your full name.

23 A. Tom Kizer, President C&D Management Company.

24 Q. Mr. Kizer, you've been at this hearing before,
 25 correct?

1 A. Yes, sir.

2 Q. The first part of this hearing in this case?

3 A. The one here in July?

4 Q. Yes.

5 A. Yes.

6 Q. And before that. We were here as a result of a
7 hearing in which Order No. R-12918 was issued, correct?

8 A. Yes.

9 Q. Mr. Kizer, this Order of the Commission issued
10 in August of 2008 required you to plug five wells,
11 correct?

12 A. Yes, five wells.

13 Q. They were the Muncy Federal No. 1, and the Muncy
14 Federal No. 2?

15 A. No, just to plug the Shearn wells.

16 Q. The Shearn wells?

17 A. The Shearn wells.

18 Q. Were those plugged?

19 A. The Shearn Becky was plugged before September
20 14th. The Shearn Freedom was plugged before September
21 14th. The Shearn Samantha was plugged before September
22 14th. And then on September 11th, we started plugging the
23 Shearn Shilo.

24 These were wells that the Commission had
25 determined that I had to plug. We commenced plugging --

1 to tag the well and we encountered an obstacle.

2 Q. When you say you were tagging the well, what
3 does that mean?

4 A. They were going down to determine the depth of
5 the well to determine what's down the hole, to determine
6 the depth of the well. And we ran into an obstacle in the
7 well and we couldn't knock it loose. And we brought a
8 backhoe out and we dug down about six feet and dug the
9 dirt around it.

10 The well core came out and he cut the casing and
11 we thought that the obstacle might have been in that area
12 or we were getting closer to it. And it was determined
13 that the obstacle was even further down. So we brought an
14 excavator out and we dug 20 feet down in the hole and we
15 cut the pipe again. And the obstacle was still below
16 that. And that was about into the third day with that.

17 And at that time, Mr. Jerry Blakely with the
18 Bureau of Land Management was there. He said, "You're
19 going to need -- you're going to have to come in and drill
20 it out. And you have to get a drilling unit out here to
21 do it on that." And he said, "That's going to take you
22 some time. So what I'm going to do is, I'm going to
23 extend your time to finish the Shilo."

24 And I said, "I've got a deadline date to get
25 this thing done." And he said, "Well, you can't finish it."

1 But what you can do is this. You have another well on
2 this lease, the Shearn Saranda, that was not on the Order.
3 That's a well that we show you as an operator. I don't
4 even show that well anywhere. We show it on our records
5 on here. And since you have your crew out here sitting
6 here waiting and that you're paying to plug a well, why
7 don't you have them pull that well and go ahead and do
8 it."

9 I said, "It's not on the Order, I didn't
10 budget for it." And he says, "Well, you'd get a lot of
11 good will from the OCD if you did." So. And I said,
12 "Well, if I'm out here, got the crew here, I'm going to
13 have to probably plug it," so we went ahead and plugged it
14 without the Order.

15 And then we came back later to the Shilo. We
16 came to the Shilo, and at that time, we had run
17 considerably over expense, but we had excavators and
18 everything else with plugging that other well. The
19 driller came out and was able to drill that out and get
20 through the hole there. This was probably in December, I
21 think, is when we completed that.

22 Q. Let's talk about the timetable. The Order was
23 issued on August 14, 2008. And under Ordering Paragraph
24 1, you were required to plug these four wells by September
25 14, 2008?

1 A. Yes.

2 Q. So did you plug and abandon three of those wells
3 within that time frame?

4 A. Yes, we did. We had done -- at the time when we
5 went out and got -- When the Order came out -- We had to
6 obtain temporary permits from the OCD. And if I recall,
7 the form that they had issued was issued on July 21st to
8 get the permit to get the pit. And --

9 Q. You lost me a little bit. What form are you
10 talking about?

11 A. I don't really know. It's a temporary permit
12 form that the State requires that we get a permit.

13 Q. For what?

14 A. Oh. It's for the water -- When we drill -- when
15 we plugged the well, if there's any water, there may be
16 some overflow that comes out. So we have to set up a pit,
17 drill a pit, 15 by 8, line it, put it in so that the water
18 can go into that. And that's -- the State is the one that
19 issues the permit on that.

20 And at that time, the OCD was going through some
21 changes on their pit rules and they issued a form -- I
22 believe on July 21st is the form that you had issued. And
23 it's a four page form that needs to be completed for each
24 well.

25 And I went to the -- I tried to determine how

1 that form was to be submitted on there, and we had to go
2 to various departments, Department of Hydrology, pull out
3 the old records to find out where all the old water wells
4 were and everything else and the like on it. Because when
5 I took them to the OCD, they said they weren't exactly
6 sure -- You guys were still trying to work out the
7 requirements for it.

8 But I was told, "Submit everything you can with
9 it." So it turned out to be a 24 page permit that we
10 ended up submitting on each of the wells. It was accepted
11 and --

12 Q. How long did that take to process?

13 A. The preparation was the time, because the
14 guidelines were kind of changing. On the website, they
15 told you how to do it, but they weren't sure how they were
16 going to interpret the information, is what I understood
17 from the OCD in Artesia on it.

18 So they said, "Just give us everything that you
19 can on that." And it turned out to be, as I say, a 24
20 page permit just to run some water out there. But that
21 was on -- that form came out on July 21st on there. So
22 not being really familiar with it -- We did get it in on
23 time and we complied with that.

24 Q. When did you yourself get this Order, on August
25 14th, or when did you get it?

1 A. On August 18th I got the Order.

2 Q. So you had less than a month to actually --

3 A. We had about 20 working days, 18 working days,
4 19 working days to plug the wells. And that was -- if you
5 recall, that was also over the Labor Day holiday, as well.

6 Q. Did you complete the wells by September 14th?
7 Well, let me ask this. What wells did you complete by
8 September 14th?

9 A. That included the Shearn Becky, the Shearn
10 Federal, and the Shearn Samantha. And we started to work
11 on the Shearn Shilo on September 11th.

12 Q. Did you ultimately plug and abandon the Shilo?

13 A. Yes we did. The Bureau of Land Management gave
14 us an extension until April 20, 2009 to get that well
15 plugged. And we plugged it, we started when their crew
16 was out there.

17 Q. What crew was out there?

18 A. Oh, their -- dismiss that. We had it plugged by
19 the 18th or the 19th of April.

20 Q. The Shilo?

21 A. Yes, sir.

22 Q. How did you go about getting an extension from
23 the BLM?

24 A. Well, had he originally granted me one extension
25 until -- it was September 28, 2008. And he had

1 extended -- he knew that we were having --

2 Q. When you say "he," who are you talking about?

3 A. Jerry Blakely with the BLM. He knew what we had
4 gone through out there with it. And we were running a
5 little short, because, as you all know, oil and everything
6 else, the economy and everything dropped, and we had a
7 little bit of a funding issue. And then I got funded in
8 March. And he said that he could extend it for me until
9 April 20th.

10 Q. Was Mr. Blakely aware that you were under order
11 by the Oil Conservation Commission to plug and abandon the
12 Shilo?

13 A. I believe he was, yeah. Yes, he was.

14 Q. Did you have any conversations with Mr. Blakely
15 about the conflict between the Oil Conservation Commission
16 Order and his extension?

17 CHAIRMAN FESMIRE: Mr. Padilla, normally we're
18 pretty lenient about hearsay testimony. I'll allow you to
19 go a little further, but be warned, this is getting to the
20 point that we're stretching the credibility.

21 Q. How did he go about giving you an extension?

22 A. On March 23rd, sent out extensions on -- for
23 compliance on all of the wells that I had. And it was a
24 packet that I received from him. And he said that, "All
25 the wells that you have out there, I want them all brought

1 into compliance, whatever has to be done, by April 30,
2 2009, with the exception of the Shilo." He said, "I want
3 that done by the 20th of April."

4 Q. And did you get that done by the 20th?

5 A. Yes.

6 Q. How about the two Muncy federal wells, the
7 Saunders, the Schneider, and the Scott Federal well?

8 A. The Saunders was producing gas. It was
9 producing gas, it was going through a meter. And I had
10 advised him in August -- I'd sent a sundry notice, BLM
11 Sundry Notice 3160 to the BLM.

12 And we told them on the Saunders, that what we
13 had to do was, is to get a meter put on that well to
14 determine what gas was coming out of it. And that was in
15 August of 2008. Because it was in production, Saunders
16 was producing gas. But it was being manifested in another
17 meter. It was being manifested in the Amoco meter, that's
18 where it was being manifested.

19 Q. Was the Amoco well a federal oil and gas well?

20 A. The Amoco Federal No. 1 is a federal well, the
21 Saunders is a federal well, and they were both going into
22 what we call the Amoco meter. That was one that was
23 placed by DCP Mainstream Gas and Electric Service. And he
24 had told me that I should get a meter on it. I
25 contacted --

1 Q. Who told you?

2 A. Jerry Blakely -- to get a meter on it. And I
3 had sent him a sundry notice in August of 2008 that we
4 would be putting a meter on it. We did have graphs on the
5 well, but we contacted DCP Mainstream, the purchasers, and
6 they said that the well production that was with it didn't
7 have enough for them to come out and put a meter on, and
8 basically said, "Continue running it through your Amoco
9 and then break it down to -- determine what it is and
10 break it down."

11 Q. How did you determine -- did you make a
12 breakdown of production?

13 A. Well, what we had on there, we had graphs that
14 were running on the meter on that, and what we did is, we
15 had taken Mr. Shipley -- We had taken and disconnected the
16 Saunders well and took it off the meter, and then we could
17 see that there was a drop that was in production on it.

18 And then when we hooked it back up, the
19 production went back up on it. And we had determined that
20 it was probably running -- it varies, anywhere from about
21 40 to maybe 50 percent of the production on that meter off
22 of the Saunders well.

23 And after the well was plugged, the production
24 dropped 50 percent, which was ironic that the plugging
25 proved that there was production on the well despite the

1 volume statements we had received from the -- the daily
2 volume statements we received from DCP.

3 Q. Okay. Exhibit No. 68, which is in the book in
4 front of you there, do you have that there?

5 A. Yes. This is the Form 3160 that I sent in
6 August 2008 that -- well, I said the Saunders is a
7 producing natural gas well. The production is manifesting
8 in the Amoco well meter. Both the wells are owned by C&D
9 Management, and that we would be putting a meter on it to
10 determine -- for the allocation of the production that was
11 on it.

12 Q. That form is saying at the bottom in the
13 narrative, "Accounting for well production will be
14 done --" Now, you filed this yourself; is that right?

15 A. Right. I had sent it, yes.

16 Q. And you said in there in the last line,
17 "Accounting for well production will be done and continued
18 in all future -- during the month of August 2008."

19 A. Right.

20 Q. How were you accounting for production from this
21 well?

22 A. I wasn't -- I didn't have any qualitative ways
23 to determine it before. And this is why the C-115s were
24 at zero because it showed up on the Amoco meter. I didn't
25 have any way of determining how much was coming out of

1 that well.

2 Q. Where were you recording production?

3 A. Well, the production was being recorded on the
4 Amoco meter that was there.

5 Q. How did you determine what the production was
6 from the Amoco?

7 A. From the Amoco? Well, what we did was, we
8 pulled the Saunders off and we could see what had dropped,
9 the production on it for a few days on there, and we saw
10 that it dropped about 40 percent on there. So that's the
11 way that we allocated it on there.

12 Q. Do you have to ask permission to allocate
13 production that way?

14 A. I don't know.

15 Q. Did you ever report any production for the
16 Sanders Federal No. 12?

17 A. Yes. On March 26th when I submitted the C-115s,
18 and we submitted about 10 or 12 of them, I went back and
19 took that from that period, took the statements that I had
20 from the daily volume statements, monthly volume
21 statements that we had from DCP, and they assumed gas
22 purchase on there, we took a percentage allocation and put
23 it to the Sanders and part to the Amoco so that we could
24 show that there was production on the two wells that was
25 going into that meter.

1 And I showed that back from February 2008,
2 March, all the way through February that they have the
3 records for.

4 Q. What was the production -- did you yourself
5 report the production on the Saunders?

6 A. On those C-115s?

7 Q. Yes.

8 A. Yes.

9 Q. And what did you report for them for that well?

10 A. What was the amount?

11 Q. Yes.

12 A. The two wells together, they averaged anywhere
13 from maybe 320 to maybe 360 MCF.

14 CHAIRMAN FESMIRE: For what period?

15 A. For about a 30 day period. And the Saunders
16 produced 40 percent, 45 percent of that, and that's how we
17 allocated what we had when I submitted those forms.

18 Q. Was Mr. Blakely aware of what you were doing
19 with regard to commingling this production on this surface
20 from both of these wells?

21 A. Yeah, they were -- he was aware of where it was
22 going. He Said, "Your Amaco, your federal, and your
23 Saunders are coming in to the meter. You're going to have
24 to allocate that well. Because what I show is that it's
25 not producing and we know it's producing but you got to

1 show -- give me some paperwork that shows it's producing.
2 I need numbers on it. We can see that it is, there's a
3 graft that was printed and we have those, as well." But
4 he says, "You got to get some allocation on it and bring
5 two of them up for federal purposes."

6 Q. Was there a time that you changed the production
7 on the Saunders to zero?

8 A. The production on the Saunders was at zero
9 before February 2008, and that's when I started putting
10 them in numerical percentages for it. And then the
11 filings that we had in March, then in May, what I did was,
12 we went back to --

13 Q. May when?

14 A. May 2009. We went back -- I went back to the
15 reporting log that I had and we reported it as zero.

16 Q. Who was that?

17 A. Debbie McElvey.

18 Q. Why did you go back to zero?

19 A. I was told -- and it was a poor decision, that
20 the records all have to match from the front and the back.
21 And I told them, "This is -- I got to show that I have
22 production to keep this well open on it, and it is
23 producing and it is actually giving the gas."

24 They said, "You had zeroes before. You're going
25 to get in trouble on the federal well if you all of a

1 sudden show up with gas. So you have to take it to zero
2 on that to show the Saunders at zero so it goes all the
3 way across." I explained to her, "That shows no
4 production that's on it."

5 Well, in May, it doesn't much matter, it's
6 plugged, it's gone, you know. So, you know, I didn't know
7 what to do at that time. I had -- when they were
8 submitted in March in there, that was a truthful statement
9 with the way we broke it down. But when it came for that
10 time, they said, "You have to go ahead --" because they
11 didn't match from the original one, they said, "The
12 records don't match." And I said, "Well, this is a
13 truthful allocation we have on it there."

14 Q. What had you reported for the Saunders as far as
15 production?

16 A. It was about -- what was on the meter, it was
17 about 40 percent allocation that we had on it.

18 Q. And when did you show production on your C-115s?

19 A. The production was shown on the C-115s when I
20 filed them on March 26th.

21 Q. Of when?

22 A. Of 2008. Excuse me, March 26, 2009. I went
23 back and showed the production. It was almost a one year
24 period.

25 Q. So, more or less how much production did you

1 show in March?

2 A. In March?

3 Q. Yes.

4 A. I think it was maybe about -- in March overall,
5 it was about maybe 259, maybe 300 MCF total, and we had
6 allocated probably about 130 or something of what it was
7 to the Saunders.

8 Q. When was the well plugged, the Saunders?

9 A. The Saunders well was plugged -- there was a --
10 the OCD received a -- submitted a plugging permit to the
11 BLM on March 30 of 2009, and they received the approval
12 from the BLM on April 2nd. I had -- and the well was
13 plugged, I believe, on April 15th.

14 Q. What was on file, if you know, at the OCD as far
15 as production from the Saunders well before -- well, in
16 March of 2009?

17 A. In March 2009 -- I submitted on March 26th --
18 they approved them on March 26th those 12 months before on
19 the Saunders. They received those production records on
20 March 26th.

21 Q. And how much production, more or less, had you
22 shown?

23 A. It was about 140 a month on those on the
24 Saunders.

25 Q. What were your intentions with regard to the

1 Saunders well?

2 A. Well, the Saunders well was a -- it's a well
3 that has been connected to that meter for some time before
4 I even purchased the property.

5 Q. Let me go back. Remind us when you purchased
6 the property?

7 A. Well, according to what we have here, it was
8 2007 when we had made the -- that was the date that we had
9 determined that was when I was responsible for many of the
10 things that were on the --

11 Q. And Darla Jeffries was the prior owner, or --

12 A. Darla Jeffries was the president of the company,
13 of C&D Management before, and they had purchased it, I
14 think, in 2005 -- I think 2004, and then the OCD approved
15 it in 2005, the transfer.

16 But prior to that time, that well was still
17 showing up in the Amoco. That's how long it had been
18 running. That's why nobody reported any numbers on it.
19 Nobody reported any numbers on it before that time on
20 that.

21 Q. Physically on the well, was there some
22 indication that there was production coming from that
23 well?

24 A. Yes. We had on there charts. There was a chart
25 thing that was spun around, and it was charts that you

1 could see what was going around on that that there was
2 production on it. The needles were going around showing
3 there was production.

4 Secondly, you could smell it, you could hear it.
5 Just the well head. There's no electricity or anything
6 that was connected to it, it was just being pushed out by
7 natural pressure on there. So. But you could see from
8 the chart that there was production on there.

9 Q. You didn't have any compression facilities?

10 A. No. On that well we didn't have any compressor
11 facilities at all, no.

12 Q. Were there any other wells that were similarly
13 situated as the Saunders that -- of the five wells that
14 were plugged by the OCD that you felt were capable of
15 producing?

16 A. Yes.

17 Q. Which was that?

18 A. The other well was the Scott Federal No. 1.

19 Q. And tell us about that well.

20 A. The Scott Federal No. 1 was a well that had been
21 sitting dormant for about four years. And when I received
22 the Order on the 18th there, I went out to Artesia, and I
23 was -- At that time, I had my pumper, because I don't
24 think we had electrical panels on it.

25 The plumbing was bad on the well and we had to

1 bring a lot of things in. We had to bring electricity to
2 the well on that. I had the electricity activated on
3 August 6, 2008. And my pumper at the time who had been
4 working there for a number of years, he was inadequate,
5 and there were other issues.

6 And I was -- a gentleman came in, George Shipley
7 came in, and he's kind of a troubleshooter. He came in.
8 And he was -- I told him that my pumper had walked off on
9 the thing. I told him the deadlines that we had with it
10 to get everything done.

11 He said he'd get to work on it. This is what he
12 enjoys doing. Kind of like a lawyer that likes to win the
13 case. He likes to bring wells into production, and then
14 that's what he can go tell somebody else. So he took it
15 on. And I said, "Then we'll go do all the wells."

16 On the Scott Federal at that time, we bought in
17 an electrical panel, we brought in electrical motors. He
18 went to work on the outside on the plumbing with it, the
19 separators, made sure the tanks on that were there.

20 And he put the well into production -- he turned
21 the well on and we started producing that. It came off
22 with water initially. Water started generating from the
23 well. And that was prior to September 14th.

24 Q. What kind of production did you report?

25 A. We did not report any production on the well. I

1 didn't submit anything that was on the well on there. I
2 was under the impression at the time that that well had a
3 depth of probably about 1,200 feet. And I had the
4 operating rights from the surface down to about 1,500,
5 1,600.

6 So we started working it based on that
7 assumption that it was about 1,200 feet. As it turns out,
8 the well was only 400 and maybe 25, 30 feet. That was
9 after we determined -- From the plugging on that. And we
10 didn't report anything, we didn't -- we had produced from
11 that pool.

12 CHAIRMAN FESMIRE: Which well is this?

13 THE WITNESS: This is from the Scott Federal,
14 sir.

15 A. The transport records, the C-104 records that
16 were filed before showed that the well was producing from
17 the Queens, the Grayburg and the San Andres. And that's
18 what we thought we were looking at with the well. And as
19 it was, after it was finished plugging, we were only at
20 425 feet on that well. That's a completely different
21 pool.

22 Q. What pool is that?

23 A. That's the Seven Rivers pool. That's about 425.
24 And that would require us to submit a C-104 to the OCD for
25 approval, and then we could file a C-115. Prior to filing

1 that C-104 -- and my reading of the statute says that no
2 C-115s are filed until they approve it. And we were
3 just -- we were pumping the water off the well --

4 Q. Did you file a C-104?

5 A. No. I was there in April, we came out in April.
6 What we did was, we were going to pull -- We had two tanks
7 of water and oil that were there, an oil storage tank.
8 And there was an auxiliary tank of about 210 gallons.
9 They had both water -- probably salt water, and -- with
10 the oil that was in there. Because there was pre-existing
11 oil in that tank.

12 Q. Did you hear Mr. Sanchez' testimony in the first
13 part of this hearing?

14 A. Yes, I did.

15 Q. And did you hear him say that there was no oil
16 in that storage facility?

17 A. Yes, I did.

18 Q. And is that accurate?

19 A. No, it's not accurate at all. It's a
20 disingenuous statement there.

21 Q. How much oil was there?

22 A. Based on what we had on there before, according
23 to the pumper, Mr. Shipley, we had oil in that tank that
24 had been sitting there for that period of time. We
25 started pumping the well that was on there and he started

1 cutting -- there was a small cut, we got primarily water,
2 and then we got a small cut of oil on there.

3 And what he did was, he kept a jar next to the
4 tank that showed the cut of the water. And we filled up
5 the axillary tank with water, and we had the storage tank
6 full of oil and water. There was only probably maybe
7 about 70, 80 barrels that were in there.

8 Q. Barrels of what?

9 A. Oil. The rest we had was water. But in
10 speaking with Mr. Shipley, he says we can't be -- we do a
11 color cut. It's not an exact science in terms of what
12 they have on there because the oil can be mixed in.

13 And the color cut, what they do is, when we drop
14 the measurement stick down, they put a chemical on it
15 which shows how much oil there is on it, and water. But
16 if there's a mix on it, that can throw it off on there.

17 But in April, when they came to plug the well --
18 I was there. I went out -- I saw -- we took pictures of
19 the facility. We took pictures of the federal pump. We
20 took pictures of the Scott Federal, of the two storage
21 tanks, the old storage tank, as well as the water tank
22 that were there.

23 But we did not have pictures of the oil in the
24 tank on there. And that is because Mr. Shipley tells me
25 you don't open a hatch and take a picture of the oil

1 because the flash can cause the HS2 to blow up. And they
2 don't use flashlights down the hole for it at all to look
3 down into the thing. That's why we didn't take pictures
4 of the oil that was, you know, from the top of the tank
5 down. But we do have pictures of all the things that were
6 in the exhibit before.

7 Q. Were you going to simulate the well in any
8 manner?

9 A. What we did was, George had shut it down out
10 there. And I was coming out in April because I had just
11 gotten the funding to come out. And what we were going to
12 do with that well is, well, take off all the -- well,
13 dispose of the water. And we were going to go in and
14 determine if we were going to pull the well, simulate it,
15 acidized or use hot water -- hot oil on it to bring up the
16 oil production.

17 The pumper, George, had determined that now was
18 the time to do it. He thought that he had enough of the
19 water off of it that we should maybe go to the next step
20 on there, as it was giving him -- it was producing oil for
21 him on it. So it was -- he thought it would be a good
22 time to do it.

23 So that's why -- That particular well had a lot
24 of salt in it, and he thought it would be a good time to
25 run down it and start cleaning it out since we got a lot

1 of the water that was off of it.

2 Q. How about the Schneider No. 1 well?

3 A. The Schneider No. 1 well? Mr. Sanchez here said
4 that the Schneider No. 1 was connected to the Amoco meter.
5 The Schneider is a state well, the Amoco meter is a
6 federal well. The Amoco meter has the Amoco one and the
7 Saunders that go into it.

8 The Schneider well is located in Section 24, I
9 think it is, and it's mile and a half -- almost two miles
10 from where the federal well is. And Mr. Sanchez says that
11 we had that line running from the Schneider well to that
12 Amoco well, and implied that we were commingling.

13 That well was capped, it wasn't even functioning
14 with the Schneider well on it. And the Amoco meter is
15 located up in Section 13. They're a good mile and a half
16 -- almost two miles away from each other. The Schneider
17 was not connected to anything on there.

18 We had come out there in April on -- We had the
19 same issue with the Schneider well as we had with the
20 Saunders well. The DCP said -- because it was a gas
21 producing well -- that if you're going to produce on it --
22 "We don't now how much you're going to produce it before
23 we put a meter on it."

24 So we were going to pull it and get the
25 production off it -- I didn't have a place to put it, the

1 gas that would come out on that. Because all the other
2 wells around there are federal -- federal wells that I
3 have, and I had no place to actually market that gas that
4 would come out. So.

5 Q. Was it capable of producing --

6 A. Yes. That well -- at the time, that well --we
7 determined that we had to put a pump jack back over it and
8 pull off the water from the well on it. We would have to
9 pull the well and pull the water out and -- Because I was
10 running a little low on funds then, I decided to go ahead
11 and finish up the other things -- It was a matter of just
12 prioritizing. And because I didn't have a market to get
13 -- to put that gas, we pulled it on there.

14 Q. Did you file anything with regard to the
15 Schneider well with the BLM?

16 A. No. It's a state well. No, I did not supply
17 them with any detail on that, no.

18 Q. You didn't file any --

19 A. Not with the BLM, no.

20 Q. To indicate what your plans were?

21 CHAIRMAN FESMIRE: Was the question, did he file
22 anything with the BLM or with the OCD?

23 MR. PADILLA: With the BLM or the OCD.

24 A. No. What we were doing, in April -- May or
25 April, we came out, we were going to probably pull that

1 well, determine what we were going to do with it, either
2 plug it or to get it into production. But I didn't have a
3 market for the -- anything. I was out there discussing to
4 find out where I could go with the gas if it came out. It
5 was state gas on there. I didn't have any place to run it
6 to.

7 Q. How about the two Muncy wells?

8 A. The two Muncy wells. There was the Muncy No. 1
9 that was completely inoperable. It didn't even have a
10 pump jack on it. The Muncy 2 had the pump jack. And what
11 we did in September is, we brought out -- again, we ran
12 wire to the facility, we got the electrical pump.

13 Q. When you say "wire," what do you mean?

14 A. Oh, we had a problem out there with pilferage.
15 And for as small as my lease is out there, there seems to
16 be a lot of things that are -- there's some people pulling
17 wire out of the ground. I removed the electrical pumps
18 and the electrical motors that I have. And we put one on
19 one week, and the next week, somebody had taken it off, or
20 they had vandalized the electrical panels that were out
21 there that we had with that.

22 But we put that on and we activated that well.
23 And we pumped it and we came out and shot water down with
24 it. And -- but we were going to have to do a lot more
25 work with that well on it. It just didn't -- didn't

1 respond as we had hoped that it would.

2 CHAIRMAN FESMIRE: You shot water down with it?

3 THE WITNESS: What we did after -- Daryl Finney
4 came over -- He had a big pump. At the time we were
5 plugging the wells, he came over and he had a large
6 pump -- water -- and he went down -- He was trying to
7 force water down in it to try to get something going to
8 see if it had any activity. It was just more or less a
9 test that he was trying to do with it. Daryl Finney
10 brought over his truck, his water truck, and we were out
11 there working on it and we got the electrical and that
12 hooked up that was on it.

13 CHAIRMAN FESMIRE: Was that fresh water, or
14 produced water, or what was he --

15 A. I don't know what he had in the tank. I don't
16 know what Daryl had in the tank. I assume it was fresh.
17 I don't know what he had with it. So it didn't -- the
18 well didn't respond on there. So I took the funds -- We
19 were doing other things with it.

20 And then in April, the OCD plugged in the two
21 wells. And during the plugging, there were some questions
22 that were asked of me out in the field on those two wells,
23 which I went to the county recorder's office and pulled my
24 operating rights that are recorded there.

25 That well is -- I have operating rights on the

1 Muncy 1 and the Muncy 2 for 1,000 feet to 2,455 feet.
2 That well was operating before. They had it plugged and
3 it was operating at 425 feet. I did not have operating
4 rights at those depths. Had I gone in and operated it,
5 and if I had produced anything, I probably would be in a
6 little bit of trouble on that.

7 Q. But you were listed as the operator of the well?

8 A. Yeah. When they -- I looked back on the way
9 that it was submitted to the OCD at the time, and when
10 Darla Jeffries and Chris Jeffries purchased the property,
11 there was the conveyance that was filed with the county
12 recorder which said the Muncy 1 and the Muncy 2, the
13 operating rights ran from 1,000 to 2,400 feet. But the
14 Jeffries and those fellows, they took it -- it was listed
15 on the records, the OCD records, that C&D was the operator
16 of the well.

17 CHAIRMAN FESMIRE: What were the perforations
18 listed on the OCD records?

19 THE WITNESS: I'm sorry?

20 CHAIRMAN FESMIRE: Where was the producing
21 interval on the OCD record?

22 THE WITNESS: On the OCD? 425. But there was a
23 plug that was put in there -- Originally, it was drilled
24 down to, I think, about 1,200, and then somebody came
25 in and -- at some point somebody put a bridge plug in

1 there.

2 CHAIRMAN FESMIRE: And we're talking about both
3 Muncy wells?

4 THE WITNESS: Both Muncy wells, the same thing,
5 exactly the same thing.

6 CHAIRMAN FESMIRE: Okay. Did the OCD records
7 record the bridge plug, and the plug back, and the new
8 perforations?

9 THE WITNESS: That I don't know. That I don't
10 know if that was on there. But I still only had the
11 rights from 1,000 to 2,500 feet on those wells. And I
12 had -- at the time when I found that out, I went to your
13 agent at the OCD -- Agent Bob Hoskins, is it, that works
14 for the OCD out there in Artesia, the field agent?

15 CHAIRMAN FESMIRE: I know of nobody named Bob
16 Hoskins that works for the OCD out there.

17 THE WITNESS: Your fellow that was monitoring
18 the plugging of the wells out there. Mark? Mark Hoskins,
19 is it? Mark Hoskins, I think it is. Yeah. Yeah, Mark
20 Hoskins. I went to Mark before they plugged the wells
21 and -- In fact, it was when you were out there. I met
22 with you out there. And I had told Mark that -- I don't
23 think I have -- "I don't have the operating rights on
24 these wells." And he says, "I don't care who has the
25 operating rights, we're plugging them." And I said,

1 "Okay. I just wanted to let you know I don't think I have
2 the operating rights on these wells at that depth, at 425
3 feet."

4 And who had the operating rights at that time?
5 They are either retained by Mr. Matthews or they were
6 owned by the master leaseholder, but they were not given
7 to me on there. So it was either a fraudulent conveyance
8 or -- C&D, at the time, took over them, it was listed as a
9 well that we -- that C&D was the operator of, but we were
10 operator from 1,000 to 2,500 feet. We did do some work on
11 there, on the well, but we thought the well was to 1,200
12 feet.

13 And I, you know -- I asked, "What due diligence
14 do you do with it when you purchase, you know, the
15 property out there?" We did our due diligence that we had
16 with it on there, but we thought the well was at 1,200
17 feet, and we didn't pull the well up with our due
18 diligence to check the depth on all the wells on there.

19 Q. Mr. Kizer, were you asked by Mr. Hoskins for any
20 information as to the depth of the well?

21 A. Yeah, both Hoskins and Jerry Blakely asked me at
22 that time -- And that's where all of a sudden -- brought
23 my curiosity as to what the depth of these wells was at
24 the time. They're only -- they're a lot shallower than --
25 we thought we were going down to 1,200. They're only 425.

1 And at that time, I -- Mr. Blakely asked me, "Do you even
2 have the operating rights at that depth?" And I said, "I
3 don't know." And that's when I went to the county
4 recorder's and pulled the records out at that time. I
5 found out that I didn't -- I saw what was conveyed to us.
6 And that is -- I subsequently -- That conveyance Report --
7 Do you see that --

8 Q. It's not in those exhibits you're looking at.

9 A. Oh, it's not in those exhibits? Okay. In our
10 exhibits, I had sent a sundry report to the BLM notifying
11 them that we did not have those operating rights at 425
12 feet. I sent them a copy of the conveyance that was made
13 that we only had the rights from 1,000 down to 2,455.

14 MR. PADILLA: I pass the witness, Mr. Chairman.

15 CHAIRMAN FESMIRE: Mr. Swazo?

16 CROSS-EXAMINATION

17 BY MR. SWAZO:

18 Q. Mr. Kizer, you testified at the July 30, 2008
19 hearing that you knew that that well would appear inactive
20 until and unless a C-115 had been filed, correct?

21 A. I don't recall.

22 Q. And you also testified at that hearing that
23 Debbie McElvey had all the necessary information for all
24 the C-115s up to that current reporting period?

25 A. Uh-huh.

1 Q. Is that a yes?

2 A. I probably said that, uh-huh.

3 Q. You also testified that you had to pay Debbie
4 McElvey up front for the C-115s because she required --
5 because C&D Management had written her some bum checks,
6 correct?

7 A. No, we never gave her a bum check.

8 Q. You didn't testify --

9 A. No. I didn't, Chris Jeffries did.

10 Q. But you had to pay her upfront for those C-115s?

11 A. Yeah, I paid her up front. Of course.

12 Q. And you also testified that the C-115s would be
13 filed once Debbie returned from vacation?

14 A. Right.

15 Q. Now, you got a copy of the Order, right?

16 A. Yes.

17 Q. And you knew that the Order required C-115s to
18 be filed by September 14, 2008?

19 A. Yeah.

20 Q. So how come you didn't file any C-115s by the
21 September 14, 2008 deadline?

22 A. I filed with the BLM on August 8th. The
23 statement that I was going to -- For the Saunders well,
24 for example, the Order that you have there says all of my
25 wells. I don't know -- What am I supposed to, send in

1 part of the information that's wrong, part of it that's
2 correct? I couldn't give anything definitively on the
3 Saunders until we were able to determine which way we were
4 going to go with it, which well. So -- and with that
5 system, I can't get anything in the system unless I report
6 on all the wells, I can't just leave one well out on it.

7 It says true and accuracy on all wells on it. I
8 couldn't report all five of them at one time because they
9 didn't have all the stuff available to me, and I had not
10 been able to determine -- I had to show that Saunders was
11 producing on there. And it was producing. It was
12 accurate. It was producing. And I wanted to show you a
13 truthful and accurate statement that was on it, but I
14 didn't have -- I wasn't able to determine -- quantify what
15 was coming from that well.

16 Q. So when you told the -- when you testified to
17 the Commission that Debbie had all the necessary
18 information to file those C-115s, that was inaccurate?

19 A. No, it wasn't. She had the information that was
20 there, but I had wanted to make certain that when we did
21 it, it was -- at that time, it was still showing zero. I
22 had told her to stop what she was doing, because I have to
23 show that Saunders well, the production. I had to
24 determine how am I going to quantify it and how much gas
25 is coming from that well on there.

1 Q. But you didn't testify to the Commission about
2 that last July, did you?

3 A. In July?

4 Q. July 2008.

5 A. I didn't know at that time. I didn't know what
6 I had to do.

7 Q. How come you didn't file the reports until March
8 2009?

9 A. Until March? Well, we got carried away with a
10 lot of the stuff that was on there. I was trying to --
11 Economically in life, things were kind of tough on me and
12 everything, and I wanted to get Debbie in and -- and I had
13 wanted to truly learn how to do it myself. It seems like
14 it -- I don't have -- There's not that much production
15 that comes from it, and I wanted to determine -- to figure
16 out how to do it myself so I wouldn't be dependant on
17 somebody on there. And I wanted to put in the correct
18 records, and that was it. I finally -- we finally
19 determined that what we had on that Saunders was about 40
20 percent that was on it, and let's go ahead and get the
21 things filed.

22 Q. But you knew you had a September 14, 2008
23 deadline.

24 A. I couldn't meet that deadline. I didn't have
25 the information to make a true and accurate statement. It

1 says, "All true and accurate statements." I take that
2 very seriously. You know, you had said before that I kind
3 of take you guys kind of -- I don't. I don't, I take it
4 very seriously.

5 Q. And so we also sent you some subsequent letters
6 with regard to your nonfiling of C-115s for subsequent
7 reporting periods, correct?

8 A. Yeah.

9 Q. How come you didn't file the C-115s at that
10 time?

11 A. I didn't have enough information to put it in.
12 I had not determined -- how to determine -- how to get
13 that Saunders thing worked out on there. And this is why
14 I sent the BLM this in August, telling them I was getting
15 a meter to put on there. And then the DCP left -- they
16 didn't -- I decided they weren't going to put a meter on
17 it, so I had to have some way to quantify what was coming
18 out of that well so it wouldn't be plugged.

19 Q. So when did you find out about the Saunders
20 situation?

21 A. When did I find out?

22 Q. Yes.

23 A. Well, it was -- The reports had been reporting
24 zero, okay? They were reporting zero before February 2008
25 on that. And after we had our hearing, I was asked to put

1 a true and accurate statement. And I know that the
2 Saunders was producing. So I wanted to try and get a true
3 and accurate statement provided and submit it. But I
4 couldn't get the information, I didn't know how to get it
5 out of the well. I could see what the gross amount was,
6 but I didn't know how much was being allocated to that
7 well.

8 Q. I want to go to Exhibit No. 77, which is your
9 e-mail to me, an April 2, 2009 e-mail that you had sent to
10 me indicating that the C-115s that you had filed were
11 inaccurate, correct?

12 A. That was on what?

13 Q. April 2, 2009.

14 A. Yeah. Yeah, we had sent -- I had sent the ones
15 in there on the 25th that were in there, and I had it -- I
16 got a little concerned. This was April 2nd, okay?

17 Let me tell you the events that occurred just
18 the day before. I had learned from somebody out in the
19 field that the OCD had plugged the Schneider well on
20 there. And I had contacted you folks to please stop --
21 You had a hearing scheduled for the 9th. I asked you guys
22 to please wait until the 9th. I have all the records and
23 stuff that I can show you so that you don't go plugging
24 those wells on there, so we could save ourselves all a lot
25 of time and expense on there.

1 But you went ahead anyway and plugged them. If
2 you could have waited just five days -- five days, you
3 know, and you didn't -- you know, I tried to contact
4 Daniel, left him a lot of calls, sent you guys e-mails,
5 sent you copies of everything that I had done on there
6 with the wells to comply with it, and also with those
7 C-115s on March 26th, and nobody even returned my call.
8 Nobody called.

9 You guys went for a de novo, but why didn't you
10 jump over the de novo and -- in plugging the wells? You
11 guys filed the plugging order on March 30th. You had all
12 this other information on March 26th, and you had the
13 order for the extension from the BLM from March 23rd that
14 said I had until April 30th. So I said, "Why don't you
15 just wait for the hearing?" It was five days. And the
16 wells weren't leaking, there was no environmental threat
17 with them.

18 Q. Now, is it your testimony that the Order only
19 required you to plug the Shearn wells?

20 A. I'm sorry?

21 Q. Is it your testimony that the Order only
22 required you to plug those Shearn wells?

23 A. Well, I had --

24 Q. Is that a yes or a no?

25 A. Ask me the question again.

1 Q. Is it your testimony that the Order only
2 required you to plug the Shearn wells?

3 A. Is that what it says on the top? I don't know
4 what it said. Does it say the Muncy? Does it also
5 include the Muncy in there?

6 Q. I don't know, I'm asking you.

7 A. Let me get a copy of the Order.

8 Q. It's Exhibit No. 94 in that packet.

9 A. Okay, here you go. Yes. Yes, No. 1 on the
10 Order say the Shearn Becky, the Shearn Freedom, the Shearn
11 Samantha, and the Shearn Shilo, yes.

12 Q. Now, if you look at Ordering Paragraph No. 2, it
13 states,

14 "C&D Management Company shall
15 properly plug and abandon the wells listed
16 below in accordance with 19-15-4-202 and
17 with the plugging procedure approved by the
18 Division's Artesia district office, or shall
19 otherwise bring each such well into compliance
20 with 19-15-4-201 by placing them in approved,
21 temporary abandonment status pursuant to
22 19-15-4-203, or return them into production
23 on or before September 14, 2008."

24 And then it lists the Muncy wells, Muncy Federal
25 No. 1, Muncy Federal No. 2, Saunders No. 12, Schneider

1 No. 1, and Scott Federal No. 1.

2 A. Uh-huh.

3 Q. Doesn't that require C&D Management to bring
4 those wells into compliance by September 14th --

5 A. I didn't have the operating --

6 Q. Let me finish the question. Doesn't that
7 provision require C&D Management to bring those wells into
8 compliance by September 14, 2008 which would include
9 plugging those wells by that deadline?

10 A. For those wells that I had the operating rights
11 on, yes.

12 Q. And so I want to go back to your e-mail of
13 April 2, 2009 to me.

14 A. Uh-huh.

15 Q. Which C-115s are incorrect, because you do not
16 indicate that in your e-mail. Which C-115s had C&D
17 Management filed that were inaccurate?

18 A. I don't know if we had it on the -- I didn't do
19 the allocation of the gas that was on the Hasties wells.

20 Q. All Hasties wells?

21 A. I think it had to do with some of the Hasties,
22 yeah.

23 Q. Which Hasties wells?

24 A. The 16, 17, 18, 19 and 21. By inaccurate, it
25 could be one number, okay? One MCF off. So.

1 Q. Okay. So when you're talking about inaccurate
2 C-115s, you're talking about Hasties Wells 16, 17, 18, 19,
3 and 21, correct?

4 A. That's where we get that -- Some of the numbers
5 were off, yeah.

6 Q. And for what periods?

7 A. Oh. I just read that we -- I was going back
8 through it to see what they were.

9 Q. Which reporting periods?

10 A. For all of them.

11 Q. Starting from what reporting period to --

12 A. Well, we can go back to 2008.

13 Q. When in 2008?

14 A. I don't remember right now.

15 Q. 2008 to what reporting period?

16 A. There was a couple of them that were reported
17 towards the end that I know the figure was wrong. I'm a
18 little dyslexic and I had put the numbers in the wrong
19 place on your disposition. You see how I added them up on
20 there? And I put them in the wrong spot. But it didn't
21 have anything to do with the production with it, it had
22 primarily to do with the totals that I had with -- on the
23 numbers on that.

24 Q. Well, the purpose of this hearing is to get C&D
25 Management to file true and accurate C-115s. You're

1 indicating to me that you had filed inaccurate C-115s, and
2 I'm trying to determine which periods are you talking
3 about.

4 A. I'd have to look at each one to tell you.

5 Q. Can you do that now?

6 A. I don't have the statements, the C-115s.

7 Q. You don't have the C-115s --

8 A. What it was, it was in numerical -- it was in
9 numerical -- and it wasn't anything that was major, it was
10 maybe one No. 2 -- The wells were only doing maybe about
11 15, 20 MCF that were on there. And it had to do with the
12 addition that I had on the disposition that was on it.

13 Q. And when you filled out these C-115s that you
14 filed and started filing them in March, didn't you put the
15 wrong oil transporter?

16 A. I was informed at this last hearing, I heard
17 that the transporter number was incorrect. That
18 transporter number has been on the C-115s since before the
19 date that I had purchased the property and we were using
20 the same transporter number. We were just taking -- In
21 other words, Debbie did it wrong, Darla did it wrong, and
22 they didn't know it was wrong before, they had the wrong
23 transporter number on there.

24 I contacted -- after the hearing, I contacted
25 DCP and they have two transporter numbers, one out of

1 Denver, one out of Houston, and they gave me the correct
2 number that was to be used on it.

3 Q. Well, didn't you send an e-mail to Karen Allison
4 indicating that the spread sheet was being sent to
5 "confirm that I had inserted the transportation of the
6 well incorrectly"?

7 A. Yeah. That's what I said in the e-mail, yeah.

8 Q. And didn't you also put the wrong API when you
9 were filing your C-115s?

10 A. That's where I transposed the numbers. Yeah.
11 This is where I transposed the numbers wrong.

12 Q. And you put the wrong well, you put the Shearn
13 Samantha?

14 A. I put the Shearn Samantha as what?

15 Q. Didn't you put the wrong well when you were
16 filling out the --

17 A. The Shearn Samantha --

18 Q. Would you please let me finish my question --

19 A. Yeah.

20 Q. -- and then you can go ahead and answer it.
21 Didn't you put the wrong well when you were filling out
22 these C-115s?

23 A. I included the well that had never been put on
24 that form. The C-115, when I tried to put in the
25 Shearn -- Because the -- the Samantha was never listed.

1 It isn't even listed on your things now, the Samantha.

2 It's not listed on the C-115s.

3 And I tried then to put it in as a well that we
4 had as an operator. And their unit kicked it out. And I
5 said, "But I'm the operator on that well." And they said,
6 "Well, if it's not on there now, it doesn't matter." And
7 that was it. It's not one that's listed on there. So I
8 couldn't get it into your system. I couldn't get it into
9 your system. It's not a wrong well. You know. It's a
10 well that I have that's not listed on -- I couldn't get it
11 into your system.

12 Q. And you also put the wrong operator identity
13 information, correct?

14 A. What do you mean? You mean like my name or
15 address?

16 Q. The -- the operator identity information for C&D
17 Management? Let's see.

18 CHAIRMAN FESMIRE: Mr. Swazo, I think you made
19 your point. Unless that's foundation for some questions,
20 I think it's time to move on.

21 Q. And you had also told Karen that there was a
22 computer problem on your side?

23 A. Yeah. Yeah. There was. I had a computer with
24 the -- we had to get the Excel program put into the
25 computer, and then downloading the micros [sic] or

1 whatever they have with it, and then setting the computer
2 up on it. I mean, I didn't know that you guys -- At the
3 time, I didn't understand what -- the add-ins and all the
4 things that you had on there.

5 And then, if your lines are just off a little
6 bit and you move them over, or something is a little
7 different in terms of the way you have it set up, it kicks
8 it back out on there. And I thought it was -- I didn't
9 know what was wrong with the things. All the numbers
10 there were correct on it. I had the things that were -- I
11 just couldn't get the thing through the way that I had it
12 lined up. Maybe rather than writing "92009," I put
13 "3252009," I mean, the way that it was being set up.
14 There were a lot of little things that I didn't know
15 how -- I was getting them wrong on it.

16 Q. And in your exhibit packet, you said you would
17 provide actual records to substantiate the production for
18 these wells, but I haven't seen them filed with me or with
19 the Commission. What records are you talking about?

20 A. Oh, I have them here.

21 Q. But you haven't filed them with the Commission.

22 A. Well, I -- we have them. You want me to file
23 them?

24 Q. What records are you talking about?

25 A. Oh, we have -- I have the actual production

1 records from DCP and everything else that said -- it
2 showed those wells were in production. Yeah.

3 Q. And so these are records from DCP?

4 A. Yeah.

5 Q. Are they solely from DCP?

6 A. Solely from DCP? Well, those are the records
7 that I had on the gas production that was in there. On
8 oil production, I have them from the Navajo Group, shows
9 the --

10 Q. Are those records also there?

11 A. They're available, if you want, sure.

12 Q. Okay, so we're talking DCP for what wells?

13 A. Oh, on the wells? That would be for the Amoco,
14 for the Saunders, the Saunders -- the Amoco No. 1, the
15 Saunders No. 12, the Hasties 16, 17, 18, 19, and 21.

16 Q. Now, I want to go to your prehearing statement.
17 Actually, you filed two prehearing statements in this
18 case, and you indicated that you realized in February 2009
19 that some of your reported production may have been
20 inaccurate and voluntarily asked that the reports be
21 withdrawn until corrected reports could be filed --

22 A. What day was that?

23 Q. Those were your prehearing statements. That was
24 your prehearing statement that you filed last month and
25 the one that you filed last week.

1 A. Uh-huh.

2 Q. You heard Ms. Prouty's testimony last month
3 where she testified that none of those reports for the
4 periods that were indicated on this prehearing statement
5 had been amended. Have they been amended?

6 A. Yeah.

7 Q. When?

8 A. The ones that I submitted in March, they were
9 amended in May.

10 Q. Okay, but according to your prehearing
11 statement, you indicated that you realized it in February
12 of 2009, which would have been before you started filing
13 those reports for March 26, 2009 --

14 A. Would you tell me that again?

15 Q. You indicated in your prehearing statement that
16 you realized in February 2009 that the reports that you
17 had filed up to that point were inaccurate.

18 A. I hadn't filed any in February.

19 Q. You had filed reports up to -- we had gone to
20 hearing last July, you remember?

21 A. Yeah.

22 Q. You had filed reports prior to that hearing.
23 And you indicated that you realized in February 2009 that
24 the reports that -- that some of your production may have
25 been inaccurate --

1 A. Well--

2 Q. Let me finish the question. That would not have
3 applied to the reports you started filing in March 26,
4 2009. Did you ever amend those reports?

5 A. I didn't amend -- That would go back to the
6 years before that were there. No.

7 Q. So you haven't corrected those reports?

8 A. No, I haven't corrected those yet.

9 Q. And so your statement in your prehearing
10 statement that it has now filed correct and accurate
11 reports for May 2009 is inaccurate?

12 A. I don't follow.

13 Q. Your statement -- in your prehearing statements
14 that you have now filed correct and accurate reports
15 through May --

16 A. From my knowledge that I had at that time.

17 Q. Let me ask the question and let me finish.

18 A. All right.

19 Q. Your prehearing statement says that it has now
20 filed correct and accurate reports from May 2009. That's
21 an inaccurate statement?

22 A. No, it's not. To my knowledge, that statement,
23 what it means, true and accurate -- Define it for me. I
24 don't understand what you mean by true and accurate.

25 CHAIRMAN FESMIRE: Mr. Swazo, let me ask a

1 question here. If you did not correct the reports that
2 you notified the OCD were inaccurate in February 2009, how
3 can you make the statement now that the records are
4 correct?

5 THE WITNESS: Is this -- did -- is this one that
6 we prepared?

7 Q. That's your prehearing statement.

8 A. Oh, that didn't get corrected.

9 CHAIRMAN FESMIRE: So the pre-February 2009
10 records contained inaccuracies that you're aware of that
11 haven't been corrected yet?

12 THE WITNESS: Well, it goes back to -- that
13 2009, that would be February 2008 that they would have.
14 Because if we were going to go back and amend them, for
15 example, for the Saunders wells, where we've always said
16 "allocated" on it, we would have to go back and get those
17 reports for back to 2007 --

18 CHAIRMAN FESMIRE: And is Mr. Sanchez correct in
19 his testimony on the Schneider well, the way it's plumbed,
20 you would have to file amended records on the Schneider
21 well and the well that it is tied into; is that correct?

22 THE WITNESS: The Schneider is not tied into
23 anything. The Schneider well wasn't producing, wasn't
24 hooked into anything.

25 CHAIRMAN FESMIRE: Okay.

1 THE WITNESS: It was -- we basically capped the
2 well that was on there.

3 CHAIRMAN FESMIRE: Didn't you testify -- The
4 Schneider is the state well, correct?

5 THE WITNESS: Yes, sir.

6 CHAIRMAN FESMIRE: And didn't you testify that
7 it was flowing into another line during that period?

8 THE WITNESS: No. He said that. He said that
9 it was flowing into another line.

10 CHAIRMAN FESMIRE: You testified that it was
11 flowing into another federal line.

12 THE WITNESS: No, I didn't.

13 CHAIRMAN FESMIRE: Okay.

14 THE WITNESS: I said -- He testified it was
15 going into a federal line. I said no, those -- The deal
16 that he said it was going into, those are two federal
17 wells going into a federal meter.

18 CHAIRMAN FESMIRE: So it was producing into a
19 federal meter? The Schneider well was producing into a
20 federal meter during that time?

21 THE WITNESS: No, it was not hooked up at all.

22 CHAIRMAN FESMIRE: Okay, it has no production?

23 THE WITNESS: No. It was sitting down -- as I
24 say, all isolated down in this area. The closest meter to
25 it that we have is almost two miles away that we all --

1 No, it was not, it was not producing. It filled
2 up with water. It was not producing. No, that's what he
3 said, that it was hooked into a federal line on the -- And
4 he said it was at the Amoco. The only two wells that were
5 going was the Amoco 1 and the Saunders 12, the two federal
6 wells. There was no commingling.

7 CHAIRMAN FESMIRE: Okay.

8 Q. So when do you plan on filing correct and
9 accurate C-115s?

10 A. As soon as possible.

11 Q. Can you give us a date?

12 A. I got to get a hold of -- What I'll probably do
13 is go back to the statements that we had before that were
14 on there that were the correct ones before I was advised
15 about the -- about changing them to zero.

16 Q. You had indicated that you had voluntarily asked
17 that the reports be withdrawn until corrected reports
18 could be filed. Who did you ask?

19 A. I'm sorry?

20 Q. According to your prehearing -- what you said in
21 your prehearing statements is that you realized in
22 February 2009 that some of your reported production may
23 have been inaccurate and voluntarily asked that the
24 reports be withdrawn until corrected reports could be
25 filed. Who did you ask?

1 A. I don't recall. I don't know.

2 Q. When did you ask them for it?

3 A. I don't recollect. I received your notice of
4 the hearing, but that was -- You had filed that February
5 20th? I think you filed it February 20th for the hearing
6 for April 9th. And so it was before that. I have no
7 recollection.

8 Q. And both of your prehearing statements indicate
9 that the OCD superceded your efforts -- superceded C&D
10 Management's efforts to plug the wells by commencing its
11 own plugging operation. Which wells were C&D Management
12 going to plug of the five wells that the OCD plugged?

13 A. Well, I didn't have the Muncy 1 and the Muncy 2,
14 number one. Those operating rights belong to somebody
15 else. So those I would not have plugged. I don't have
16 the operating rights for those.

17 The Saunders was in production. So that one was
18 not going to be plugged. That was in production. And it
19 was showing that on April 9th on there. And the Scott
20 Federal, we were -- produced. There was water and oil
21 that was being cut from that on there. So we were ready
22 to go in and get that well pulled and determine what we
23 were going to do on the next step with it.

24 The other well that was left is the Schneider
25 well. That was going to be a problem -- an issue on --

1 with that well because of the -- If we did pull it and get
2 it into producing, we didn't have a market to sell it. I
3 didn't have a meter on it, I didn't have anywhere to put
4 it on there. So that would have been probably the one
5 that we would have -- we would have worked on to plug,
6 because the other two, I didn't have the operating rights,
7 and the other two were not in production. That's what I
8 was coming to tell you guys that. That's what I was
9 trying to tell you on the -- when you went out and plugged
10 them.

11 Q. And you had testified that there was a September
12 14, 2008 deadline for you to bring those wells into
13 compliance, and the OCD did not start plugging those wells
14 until March 2009.

15 A. Well, I had plugged all the wells. I plugged
16 all the Shearn wells, and I commenced on the one. And
17 that was completed by the 14th of September. And so far
18 as the two Muncies are concerned, I didn't have the
19 operating rights at that level, and the Saunders was in
20 production on September -- No.

21 You know what, you are right. It was not in
22 production on September 14th. You are right. And there
23 is a reason why there is. It was -- Hurricane Ike came in
24 and they shut down the wells for ten days before, and five
25 days afterwards. But prior to that time, it was in

1 production.

2 And DCP came in and shut down all of the wells
3 on there. They shut them in for the gas because that gas
4 goes into Houston on that, because of the hurricane. It
5 was producing. It was producing before that and after
6 that.

7 And the Scott that was producing, that's the
8 same thing. Just the Schneider that left me with. And as
9 I wrote to you also in the letter there and I told you --
10 I asked you -- I told you that I was having some issues
11 with funding and I would get it within ten days. And I
12 got it on the 11th day. I said, "Give me just -- a couple
13 times, I'm just trying to get the paperwork, that I got
14 the funding, I'm coming out there to work on it." And you
15 guys jumped the gun and started plugging.

16 Q. All right, I'm going to ask the question
17 again --

18 A. Sure.

19 Q. -- because you didn't answer my question.

20 A. All right.

21 Q. My question was, it's true that the OCD didn't
22 start plugging those wells until March 2009?

23 A. Didn't start plugging?

24 Q. Plugging the five wells --

25 A. Yeah, okay.

1 Q. Is that a yes?

2 A. You started plugging them in March, right. But
3 I was in compliance before with -- they were in
4 production. You didn't have your C-115s that were filed.
5 You filed your Order to plug those wells, the Saunders and
6 the Scott, on March 30th. You had an abundance of
7 information before that those wells were in production.
8 Somebody could just walk out there with it and saw it.
9 So.

10 Q. The five wells that the OCD plugged, those wells
11 weren't actually producing, were they?

12 A. Yes, they were.

13 Q. But in your prehearing statement --

14 A. Two other wells were, the Saunders and the
15 Scott. The two Muncies, I didn't have the operating
16 rights for. How can I produce in a zone that's not even
17 mine?

18 Q. But don't you indicate in your prehearing
19 statement that the wells that the OCD plugged were, quote,
20 "capable of production"?

21 A. Yeah. You plugged the Saunders and you plugged
22 the Scott. They were capable of production, yes. They
23 were producing.

24 Q. Your prehearing statement does not say that they
25 were actually producing, correct?

1 A. I don't know what it says.

2 Q. Would it help you if you reviewed your
3 prehearing statement? Or both prehearing statements?

4 A. Okay.

5 Q. Actually, I think I'll move on because I think I
6 made my point. You are aware that the information that we
7 have regarding an operator's production comes directly
8 from the operator, correct?

9 A. Of course.

10 Q. I want you to take a look at Exhibits 47 through
11 Exhibit 62, and those are the detailed balancing reports
12 for the reporting periods of January 2008 through April
13 2009. And when you look at the Muncy Federal Nos. 1 and
14 2, the Saunders, Schneider and Scott Federal, there is no
15 production reported in those periods.

16 A. On what --

17 Q. For the five wells that the OCD plugged, there
18 was no production reported for those wells since at least
19 January 2008.

20 A. No, the Muncy there wasn't. The Muncy 1, there
21 wasn't any production. The Muncy 2, there was no
22 production that was on there. But this is the report that
23 was filed on -- what was it, May 18th? Mr. Sanchez didn't
24 rely on the May 18th to plug a well in March. He had the
25 March reports that I sent him on the 26th that he could

1 have relied on, and that showed that the Saunders showed
2 production. That's what he had in front of him at the
3 time.

4 Q. But these reports show that the most recent
5 amendments, which I believe were May 18, 2009, still
6 showed zero for production.

7 A. Yeah, that's what -- I told you that earlier on
8 my direct with Swazo, is that -- You made that statement
9 earlier. I was told to take these things to zero. They
10 were zero before that were on there. But on the Saunders,
11 it was a key well, it was on the Saunders.

12 Q. And you had testified that the BLM had actually
13 issued you compliance orders for C&D Management for their
14 inactivity?

15 A. Sorry?

16 Q. Isn't it true that BLM had issued compliance
17 orders --

18 A. The BLM --

19 Q. Let me go ahead and finish first.

20 A. Okay.

21 Q. The BLM had issued you compliance orders for
22 C&D's inactivity for these wells, right?

23 A. It was a notice of -- it was a written order
24 notice, I think, is what it's termed. And what it was was
25 not to bring them into compliance, whatever had to be done

1 with them on them. You sent me -- there was a blanket one
2 on every well.

3 Q. Well, let's go to Exhibit No. 78, the document
4 you provided me.

5 A. Uh-huh.

6 Q. And these written orders were issued by BLM for
7 the wells that the OCD plugged, and these orders were
8 issued on March 23, 2009, and the notice of written
9 orders, these compliance orders, were issued for
10 inactivity of these wells, correct?

11 A. That's what they're saying, yeah. What they're
12 asking here is to make certain that they were capable of
13 production. In addition to the issue that you folks have
14 with the C-115s, that also translates over into the
15 federal things, because they're filed at the same time. I
16 had to bring that paperwork up, as well, with their
17 records, as well.

18 And that had to do with -- Jerry knew that the
19 wells were in production. He says, "You got to get your
20 reports in to show that we have it." He says, "You can
21 give me a --" I sent Jerry a monitoring report because he
22 wanted me to give him a weekly statement of what I was
23 doing out there. He says, "You're going to have to bring
24 these things up, submit the paperwork and bring those up
25 to date with them on it." And what they did was, they

1 submitted me -- gave me this thing, just a blanket order
2 for all the wells.

3 Q. And didn't you actually send an e-mail to Jerry
4 Blakely asking him to stop the plugging of the wells?

5 A. Yes, I did.

6 Q. And that was April 2, 2009?

7 A. It was either April 2nd or April 1st. I heard
8 about -- you were plugging the wells on April 1st, so yes,
9 it was on April 2nd. Yes, I did ask -- to ask you to stop
10 plugging the wells.

11 Q. And isn't his response,

12 "Tom, your issues at this point are
13 strictly with the OCD and the Commission.
14 My order ares a completely separate issue
15 and by no means have any bearing on the
16 State's actions. I have issued written
17 orders on the wells we show no production
18 on since last April. When the abatement
19 date of these orders expires, I will issue
20 an incident of noncompliance as I have
21 already done on the Shearn Shilo. I have
22 made a field inspection of these leases and
23 have found no significant production on any
24 of these wells and found no electrical
25 services to any of these wells. Most are

1 not capable of producing as they are now.

2 We work as closely as possible with the
3 OCD but our actions are separate."

4 Isn't that what he said?

5 A. He said no significant production, but he did
6 not have any reports that were filed, is why that
7 statement is in there. He knows that we were -- he was
8 checking the tanks for oil in there, so he knew that there
9 was -- What he was concerned -- he didn't have any of the
10 paperwork that was filed on that.

11 Insofar as the electrical, we had had a number
12 of items that were taken. And -- with the motors that I
13 set up, with the electrical motors and that. And what we
14 did was, is we linked it to -- we elected to shut things
15 down.

16 Because George had said that because of the
17 stuff that's out there, we could potentially cause some
18 trouble with the stuff that's electrical. We shut it
19 down. "Let's get all this stuff that's there in order
20 with them. And then we'll put everything back on with the
21 electrical." Because there was some exposure. So.
22 However, those wells were still producing gas. All the
23 Hasties. All the Hasties produced gas. And they don't
24 need electricity to produce.

25 Q. So you were also not providing records to BLM as

1 well?

2 A. Sorry?

3 Q. You also were --

4 A. They usually go in conjunction with yours. They
5 have their records. They have their records.

6 Q. So my question again is -- It's a yes or no
7 answer --

8 A. Yeah, they were --

9 Q. Let me ask -- You weren't filing them?

10 A. We weren't filing them? Debbie was the one that
11 was filing them, Debbie McElvey. I don't know what date
12 she had gotten them filed on there, but from what Jerry
13 had told me, he said we didn't show any production on the
14 paperwork that's on it.

15 And -- but -- Jerry was also -- that I had to
16 break that bond. I had to be able to show that that well
17 existed. Because he said, "As far as the BLM is
18 concerned, unless you get something that's on it, then we
19 don't have a showing of it being in production," although
20 he could physically see that it was.

21 Q. And didn't the BLM issue a written compliance
22 order in June 16, 2008 for the inactivity and nonreporting
23 regarding these wells during that --

24 A. I don't recall. On what well?

25 Q. Regarding the five wells that the OCD plugged.

1 A. I don't know if that's -- They may have.

2 Q. Didn't you file sundry notices in response to
3 their written order?

4 A. Oh yeah, I filed the sundry notices. Those are
5 the August sundry notices that I filed that we were doing.

6 Q. And that was in response to their June 16th --

7 A. Yeah, that was probably in response to their
8 June 16th. That's why I sent the sundry notices in about
9 the Scott and the Saunders and the like. So I did respond
10 to those.

11 Q. And in your statement, you said that the
12 Muncy -- in your Exhibit No. 78, the document that you had
13 sent me, you had indicated that the Muncy wells, "These
14 wells have been dormant."

15 A. Uh-huh.

16 Q. Correct?

17 A. Yeah.

18 Q. Mr. Kaiser, you're an attorney. Are you
19 familiar with what a stay is?

20 A. Somewhat familiar. I haven't practiced in 20
21 years.

22 Q. Have you looked at OCD's rules concerning stays
23 of orders?

24 A. I've read them. Why? Yes, I have. I'm sorry.

25 Q. Then how come you didn't file a motion to stay

1 the Order in this case?

2 A. I heard about it on the -- In the afternoon -- I
3 thought we had a hearing scheduled. We had a hearing
4 scheduled for the 9th, and I had send you all the
5 information, and I was giving the information to you.

6 And I was getting ready to get in the car and
7 head down to go work on the wells and make sure all this
8 stuff was in order so I could show it at that hearing that
9 was on there. And I was -- and then you guys -- I heard
10 that you were plugging wells and that. And I sent you the
11 stuff that -- The BLM was -- had send that Order on the
12 23rd that extended it out to April 30th. And we had filed
13 the C-115s that were on there on it.

14 And I showed you all the things that we had done
15 in terms of plugging the wells, and that. And as far as
16 August was concerned, I wasn't even thinking in terms of
17 that, I was asking you, "Can you just wait five days so we
18 can just sit down and go over the thing?" That's all I
19 was asking you to do was wait five days.

20 Q. You knew you had a September 14, 2008 deadline;
21 how come you didn't bring this matter before the
22 Commission?

23 A. I'm sorry?

24 Q. You knew that you had a deadline of September
25 14, 2008 to bring these wells into compliance; how come

1 you did not bring this matter in front of the Commission?

2 A. Well, we filed all the BLM reports, and as you
3 stated in your -- I think your things, that we can use
4 their forms to file things. You guys post them on your
5 site, you know. And you guys get copies of the things
6 that I'm doing with the wells.

7 That guy Michael Blanchard out there, he was the
8 one giving me the approvals and one day to plug the well.
9 He was fine with what I was doing out there at that time.
10 And -- Why would I -- I didn't see any reason to bring
11 one. I was trying to finish the other things that were
12 needing to be done.

13 Q. But you're an attorney and you knew that there
14 was an Order in effect, right?

15 A. Yeah.

16 Q. And you had legal representation --

17 A. Sorry?

18 Q. You had legal representation, so why didn't you
19 bring the matter before the Commission?

20 A. I don't know how to answer that.

21 Q. And you had testified that the Shearn Freedom
22 Federal was brought into compliance by the September 14th
23 deadline; is that correct?

24 A. Yeah. You have the BLM filing on it, yeah.

25 Q. You had testified during direct examination that

1 you had brought that well into compliance by September
2 14th.

3 A. Yes.

4 Q. I want to go to your exhibit and -- I know I
5 have it in my exhibits but I don't know the number. But
6 this is your own plug-in report concerning the Shearn
7 wells. And you indicate for the Shearn Freedom Federal,
8 that was plugged on September 16, 2008?

9 A. That was the date we put the marker on it.

10 Q. You said that the wells were plugged on
11 September 16th.

12 A. Like I said, we probably put the marker on it --
13 that's the date that we put the marker on the well.

14 Q. And if I recall correctly, you testified that --

15 CHAIRMAN FESMIRE: Hang on, Mr. Swazo. Which
16 document were you referring to in that question?

17 MR. SWAZO: Let me go ahead and find it, because
18 I do have that document. Please bear with me.

19 CHAIRMAN FESMIRE: Was it the Shearn Shilo or
20 the Freedom Federal?

21 MR. SWAZO: The Shearn Freedom Federal.

22 THE WITNESS: I think it's under Exhibit 76 in
23 the exhibits I have here.

24 MR. SWAZO: Yes, it's Exhibit No. 76, first
25 page.

1 CHAIRMAN FESMIRE: Now, you were referring to a
2 form in that question?

3 MR. SWAZO: My question was, this is a document
4 that he provided us, and I was just pointing out that in
5 his own document, he had indicated that he had plugged the
6 well, the Shearn Freedom Federal well on September 16,
7 2008.

8 CHAIRMAN FESMIRE: Okay.

9 MR. SWAZO: That was my question.

10 CHAIRMAN FESMIRE: Okay. Proceed.

11 MR. SWAZO: Thank you.

12 Q. Mr. Kizer, if I -- You testified during direct
13 that part of the reason for the delay in you plugging --
14 in C&D Management plugging those Shearn wells was because
15 the Order was issued -- You got the Order in August -- Is
16 that --

17 A. I didn't say that was when it was issued, I just
18 said that was the date we got -- I got the Order. And I
19 had 20 working days from that 18th to the 14th to get
20 everything --

21 At that time in September, the field was still
22 pretty busy out there. And to get a plugging crew and
23 that to do the five wells -- you know, five wells, four
24 wells there, and then make certain that all the temporary
25 permits that I thought was in order to --

1 Q. So you waited until -- I'm sorry, go ahead.

2 A. That's it.

3 Q. So you waited until you actually got the Order
4 before you started plugging --

5 A. No, we file before for the -- I started with the
6 permits before. I started with the permits in July, and
7 then I -- and I had already -- the BLM permits, I already
8 got those. And I really started with the -- your
9 temporary plugging permit, and that we got. So. But I
10 still had to get a crew together that I could commit a
11 date to start doing it.

12 Q. And your testimony at the July 2008 hearing was
13 that the wells would be plugged within 30 days, and the
14 hearing date on that date was July 2008?

15 A. I'm sorry?

16 Q. Your testimony at the hearing on July 30, 2008,
17 last year's hearing, was that you had plugged the wells --
18 plugged the Shearn wells within 30 days.

19 A. When was the date again?

20 Q. July 30, 2008.

21 A. Yeah, July 30th. Yeah. I did -- I don't think
22 I realized the problems I was going to have getting that
23 permit thing with the temporary that was on there. So.
24 But we got them plugged.

25 Q. And didn't the BLM actually issue a written --

1 Didn't the BLM issue a compliance order because you failed
2 to plug the Shearn Shilo within their time period?

3 A. Say what?

4 Q. Didn't the BLM issue you a written compliance
5 order because you had failed to plug --

6 A. When he --

7 Q. Let me go ahead and finish.

8 A. Okay.

9 Q. Didn't the BLM issue you a -- didn't the BLM
10 issue a written compliance order to C&D Management because
11 C&D Management had not plugged the Shearn Shilo well
12 within their time period?

13 A. Right. As I said, when we went out there, he
14 told me to plug another well at that time. He verbally
15 says, "I want you to plug this other. I'll get you the
16 permits for the Shearn wells." And so I plugged another
17 well that was out there. And he said, "I'll give you to
18 December 28th or so to get the Shilo plugged."

19 And we went through additional expense with the
20 drilling and everything that was there. And I just
21 couldn't get the things together to get -- to get it
22 completed there by the date that he had. And so what he
23 did is, he extended it out there with his notice there
24 until April 20th on it.

25 Q. And didn't he issue you a written compliance

1 order because you had failed to meet that April 20th
2 deadline?

3 A. I plugged it before the 20th. There was no
4 order -- That was going -- I plugged it before the date.
5 Yeah, I plugged it on the 18th or 19th of April that it
6 was plugged.

7 Q. Didn't he issue you a -- didn't Jerry Blakely --
8 didn't BLM issue you a written -- didn't the BLM issue you
9 a notice of incident of noncompliance on March 20, 2009
10 for the Shearn Shilo for your failure to comply with the
11 plugging order?

12 MR. PADILLA: Mr. Swazo, are you referring to an
13 exhibit?

14 MR. SWAZO: I'm sorry?

15 MR. PADILLA: Are you referring to an exhibit?

16 MR. SWAZO: No, I'm not.

17 MR. PADILLA: Okay.

18 Q. Didn't the BLM issue you a notice of incidence
19 of noncompliance on March 20, 2009 for the Shearn Shilo
20 for your failure to comply with the plugging order that
21 they had?

22 A. On March 2009?

23 Q. March 20, 2009.

24 A. No, he gave me -- On March 23rd, he sent me --
25 that I had until April 20th on the Shilo. He said -- On

1 March 23rd, he sent the other -- on the other wells --

2 CHAIRMAN FESMIRE: Was that notification in the
3 form of a compliance order?

4 THE WITNESS: It was a notice of a written
5 order to do it. It was an order that I had by 4/20. And
6 I had plugged the well before that.

7 Q. Did you report the oil that was for the Scott
8 Federal?

9 A. Did we report it, the one that was for the Scott
10 Federal? For what period? There was oil that was in the
11 tank that we had on there. And from what Mr. Shipley
12 was -- pointed out there, no.

13 Q. You did not report that oil?

14 A. No, not from the Shilo.

15 CHAIRMAN FESMIRE: Mr. Kizer, what happened to
16 that oil?

17 THE WITNESS: That's my question to you guys. I
18 wasn't allowed on the lease. I don't know what happened
19 to that oil.

20 CHAIRMAN FESMIRE: You weren't allowed on the
21 lease?

22 THE WITNESS: I was told not to go on any of
23 those state leases at all when we went out there.

24 CHAIRMAN FESMIRE: Who told you that?

25 THE WITNESS: Mark Hoskins says, "You're not

1 allowed on any of these leases and on here." And our --
2 my pumper had been out there just a few days before. He
3 saw what was in that tank, and the tank next to it on
4 there.

5 And I said, "There's oil in that." And Mark
6 Hoskins says, "That's not yours. Whatever's in those
7 tanks is ours. Whatever is in that tank is ours. What we
8 do with it, that's up to us. Whatever is in those tanks
9 is ours."

10 I don't know what happened to it, where it -- if
11 it was taken to a disposal facility. It clearly didn't
12 leak. That was 420 gallons of fluids. It didn't leak.
13 Somebody would have noticed that. The only other place
14 they could have done, is ditch it down the hole. That's
15 all they could have done, and then they could have
16 reported there was nothing.

17 CHAIRMAN FESMIRE: Mr. Swazo?

18 THE WITNESS: Saved themselves some money.

19 Q. On the first page of your exhibit packet, the
20 very last sentence, you wrote, "Can we work out an
21 agreement to maintain the \$25,000 bond, that C&D make
22 payments on the plugging expenses insured by the OCD?"

23 A. Uh-huh.

24 Q. What do you mean with that?

25 A. Oh, that was the letter that was written to

1 counsel. And I realized that you may come out -- I want
2 to -- I held -- My whole purpose of purchasing that lease
3 was not for necessarily the wells that were on there, but
4 was to have the leases there so I could develop -- to
5 drill some new wells. I didn't know that the entire
6 property was plagued with problems, you know, with
7 different levels and -- you know.

8 Other people had agreed to plug the wells and
9 they didn't. And so I got -- I had to take that up. And
10 then with these other things that came up -- And my whole
11 intention was to drill additional wells.

12 And so what I wanted -- I went out and I had
13 filed -- I went out and I submitted for four drilling
14 permits. And I was -- Because I was in the same area.
15 And then they had the \$4,000 application fee now, the
16 processing fee. I thought it would be a little wiser to
17 give them \$4,000 on the one well rather than \$4,000 on
18 each one, than have them all thrown out on there.

19 So we got all our ducks in a row there. And I
20 also sent the OCD a request in May for a temporary permit.
21 They haven't approved it, given me anything on it. I was
22 told it's sitting on the corner of somebody's desk. And
23 the BLM is pursuing the -- we're going through with the
24 application as far as possible.

25 These are shallow wells -- a shallow well on

1 this. That's what I wanted to do was develop the
2 property. And in order to do that, I need my bond, I need
3 my federal bond. I need my federal bond, and that was it.
4 And at the time that was written, I thought there might be
5 some exposure to it on there. And I wasn't planning on
6 getting up and high tailing it. You know. I tried to
7 work something out. That was the case.

8 If something came up where that was exposed, and
9 it wouldn't impede me from pursuing what I would -- the
10 livelihood that I opted to try -- My intention was to just
11 develop and drill some wells. I didn't intend to come out
12 and have ten wells plugged, you know, when I started.
13 That's for darn sure.

14 Q. Do you intend to reimburse the OCD for the
15 plugging expenses that it paid for the five wells that it
16 plugged?

17 A. Well, as of to date, Mr. Swazo, I've never
18 received an invoice from you. I've never received
19 anything from you other than any statement that you
20 made -- a number in terms of what was owed on there.

21 Q. So if I provide that invoice to you, will you
22 pay the -- would you pay --

23 A. I have to take the advice of my counsel on that
24 with it. I have no clue as to what's even on it.

25 CHAIRMAN FESMIRE: Mr. Swazo, are you going to

1 be much longer?

2 MR. SWAZO: I'm almost done.

3 Q. Last year we had a meeting with regard to the
4 compliance issue when you met with Daniel and I back in
5 March of 2008. Do you remember that?

6 A. Was it 2008? I thought it was 2007 we met.

7 Q. Well, we had spoken to you about the -- The
8 Schneider well needed additional financial assurance
9 posted on it.

10 A. Oh, yeah. Right.

11 Q. To date, the financial assurance hasn't been
12 posted. When we were here before the Commission last July
13 30, 2008, again, we told you that the additional financial
14 assurance needed to be posted on the Schneider No. 1, and
15 that hasn't been posted. Why?

16 A. Well, my understanding is, that the bond for the
17 single well is \$5,000, plus a dollar a foot Is that right.
18 That's what the bonding is?

19 Q. I don't have to answer questions.

20 A. Oh, okay. My understanding is, is it's \$5,000
21 per well, plus \$1 per foot. The well, to my knowledge --
22 I know we haven't pulled it yet -- They said it's about --
23 was about 1,300, to 14,000 feet. Which would mean the
24 funds that they would want is --

25 The additional financial assurance, even the

1 speculated depth of it would be \$6,700. There was a bond
2 with a letter of credit with First National for \$10,000
3 that was put in place.

4 Q. But you still haven't cleared that up. I mean,
5 we've been here for at least a couple years --

6 A. I have a bond for \$10,000. I only need to put
7 \$6,700.

8 Q. Have you posted any additional financial
9 assurance on the Schneider Federal No. 1 well?

10 A. The bond that I have is for \$10,000. You know.
11 We have it in the statute for \$6,700. What's the
12 additional amount? The additional amount that you guys
13 had posted was that extra dollar per foot.

14 Q. When did you come to that conclusion?

15 A. From just reading -- The way I interpreted that.

16 Q. What caused you to come to --

17 CHAIRMAN FESMIRE: Mr. Swazo, we're going to
18 take a break here. You can continue this line of
19 questioning at 1:30 when we return from lunch, okay?

20 MR. SWAZO: All right.

21 (Note: A break was taken.)

22 CHAIRMAN FESMIRE: The record should reflect
23 that this is the continuation of Case No. 14055. The
24 record should also reflect that all three commissioners
25 are present. We therefore have a quorum.

1 I believe, Mr. Swazo, you were in the process of
2 finishing up your cross-examination of Mr. Kizer.

3 MR. SWAZO: That's correct, Mr. Chair.

4 Q. Mr. Kizer, when we last were talking, we were on
5 the financial assurance for the Schneider No. 1 well. And
6 my question to you was, the well still needs financial
7 assurance posted. We talked to you about this for about
8 at least two years. Why hasn't the additional financial
9 assurance been posted for this well?

10 MR. PADILLA: Asked and answered.

11 CHAIRMAN FESMIRE: I'll overrule the objection.
12 Go ahead and answer.

13 A. I -- my understanding was the well requires a
14 \$5,000 bond on it. Plus, that they had changed the rules
15 on it. It was a dollar a foot. Which would bring it to
16 about \$6,700. And the letter of credit that we had with
17 First National was for \$10,000, and payable to the OCD.

18 Q. Doesn't that letter of credit cover two wells at
19 \$5,000 each for the Schneider No. 1 and the Muncy Federal
20 No. 1?

21 A. The Schneider is a state well, the Muncy is a
22 Federal well. The federal well -- the Muncy is covered by
23 the federal bond that's filed with the BLM. The Schneider
24 well has its own bond for ten thousand, and there's
25 another well that -- that you have, the Michael, but

1 there's another letter of credit that's with the bank in
2 Kentucky.

3 Q. According to our records, the additional bonding
4 amount required for the Schneider No. 1 well is \$6,725.
5 The bond that you posted was only \$5,000 for the Schneider
6 No. 1.

7 A. The bond -- the letter of credit that's with the
8 First Artesia Bank, which is now American Bank, is for
9 \$10,000. You guys -- the OCD just filed for it, because
10 they called me about the letter of credit for the 10,000.
11 Apparently, you submitted for it for the full \$10,000.
12 It's only on the Schneider.

13 COMMISSIONER BAILEY: Are you sure you're not
14 talking about the land office bond which is \$10,000 for
15 wells on state lands?

16 MR. SWAZO: Well, if you look at the affidavit
17 that was supplied by our Financial Assurance personnel,
18 she indicates that a \$10,000 irrevocable letter of credit
19 for the Schneider No. 1 and the Muncy Federal No. 1 --
20 \$5,000 on the Schneider No. 1 and \$5,000 on the Muncy
21 Federal No. 1 were deposited with the First National Bank
22 of Artesia.

23 A. Well, the Muncy is a federal well, and I have a
24 separate bond for that, a blanket bond, filed with the
25 BLM. There's a separate bond for only federal wells.

1 Q. I'll pass on this question, I'll just have
2 Dorothy Philips explain that. So you haven't filed any
3 additional financial assurance amounts other than what
4 you --

5 A. I didn't have to. There was plenty of money
6 there. There's a \$10,000 letter of credit that is there
7 to cover \$6,700.

8 CHAIRMAN FESMIRE: Mr. Kizer, are you saying
9 that there's no state bond required on the active federal
10 well, is that your --

11 THE WITNESS: Yeah, there was --

12 CHAIRMAN FESMIRE: And so the \$10,000 bond that
13 you have in place is enough to cover the one nonfederal
14 well?

15 THE WITNESS: Yes, sir. And there's also one
16 other state well that I have, which is the Michael. And
17 there's also another letter of credit for 10,000 that's
18 filed with the bank in Kennedy that was originally by
19 Mr. Jeffries for that -- on the Michael. There are two
20 separate letters of credit.

21 Q. Mr. Kizer, you haven't advised the hearing
22 officials about this before, have you?

23 A. I haven't? It was -- it was \$10,000.

24 Q. Did you ever tell the OCD officials before that
25 you had enough bond to recover the amount?

1 A. On your site that you have there, you show the
2 amount that's required.

3 Q. Okay, my question is, did you ever tell the OCD
4 officials that?

5 A. I don't know if I've ever spoken to anybody
6 about it. But you guys have a copy of the \$10,000 letter
7 of credit. Somebody's pursuing it. Somebody's getting
8 that \$10,000, or they've already gotten it. I was called
9 three weeks ago from the bank for release on it. So...

10 Q. I have a list of questions here if you would
11 give me just a few minutes. And you also indicated you
12 filed sundries with the BLM. This says that C&D
13 Management is planning on drilling other wells?

14 A. Well, that's what I got the leases for. Like I
15 say, I didn't come out to plug ten wells, I got the leases
16 to try to develop the property.

17 Q. Now, C&D Management has owned these wells since
18 at least 2004, right?

19 A. Okay.

20 Q. Is that a yes?

21 A. Since I took over them, it was in 2007, but I
22 think it's 2004 or 2005 when you finally approved them. I
23 don't remember the exact date.

24 Q. So C&D Management has operated these wells since
25 at least 2004?

1 A. It was Chris Jeffries that had them. Chris
2 Jeffries had them, and I took them over in 2007, or
3 something like that.

4 CHAIRMAN FESMIRE: Mr. Kizer, that wasn't the
5 question. Has C&D Management owned these wells since
6 2004?

7 THE WITNESS: Yeah, but -- Yes.

8 Q. Now, if any of the records are incorrect or
9 inaccurate for periods prior to 2007, do you have any
10 intention of correcting those C-115s?

11 A. I don't know what to do with it, how to get
12 those corrected. I need to talk to somebody to get those
13 things straightened out.

14 Q. If any of the records -- since C&D Management
15 has operated these wells since 2004, if any of those
16 records prior to 2007 are inaccurate, is it your intention
17 to correct the inaccuracies?

18 A. Yes. I did acquire the records, yes. I can do
19 that, yes.

20 Q. And let me see if I understand your testimony.
21 You said that Debbie McElvey had told you -- Now, this is
22 with regard to the Saunders well, and you're reporting
23 zeroes for that well, right?

24 A. On March 26th we had -- in March 2008 to
25 February 2008, up until February 2009 when we went through

1 and determined that we needed to split that, determine --
2 you know, allocate something to the Saunders, that's when
3 I had submitted those on that.

4 Q. Is that the well that Debbie told you to report
5 zeroes on?

6 A. Well, they said that -- with the way the
7 reporting things are, I should report them -- I should
8 report them at zero, that I shouldn't be changing them,
9 that it was going to cause problems. And I said it was --
10 I was putting in the correct things that -- I thought I
11 was doing what I supposed to. So I showed production on
12 it, trying to be truthful on it, and then they tell me to
13 put zero. They told me to put zero on there.

14 Q. And you had testified she told you to put zeroes
15 because that would get you in trouble with the BLM?

16 A. With the BLM?

17 Q. With the --

18 A. Well, everybody was bringing up issues regarding
19 reporting on things on them, yeah.

20 Q. So let me see if I understand this correctly.
21 You were filing reports that had inaccuracies? Yes or no?

22 A. When?

23 Q. You were filing reports --

24 A. Just any time?

25 Q. You were filing reports that had inaccuracies,

1 yes or no?

2 A. There may have been some numerical inaccuracies
3 on them, yeah.

4 Q. And you were -- you testified that you were
5 dumping water -- unknown substances down one of your
6 wells?

7 A. What well --.

8 Q. Well you testified that you were injecting
9 fluids down one of your wells to get it to -- to
10 reactivate it?

11 A. No. I didn't -- I was using the wrong term.
12 No. On the Muncy well, what we did was, is we brought out
13 somebody to test it on there. And that's what they were
14 doing with it, they were shooting a lot of water down into
15 the thing there. Daryl Finney at the time, he brought
16 over a tank -- We were trying to get the thing load tested
17 to see if we could get it activated. But that was it.

18 Q. But you did inject water down that well?

19 A. Maybe about ten gallons. We couldn't get
20 anything down it. The well is only like 400 feet.

21 Q. And you're the operator of record for the -- for
22 all these wells -- for all the wells that -- for the five
23 wells that the OCD plugged, you're the operator of record,
24 right?

25 A. Well, I mean, I have some issues with that, but

1 the operator of record that is shown on with the -- with
2 the OCD, yeah, I'm shown.

3 Q. And if I understand correctly, you're also
4 producing a well where you haven't filed a C-104?

5 A. That's the Scott. That's the Scott. We just
6 found out when you plugged the well that it's up in the
7 Seven Rivers pool. And that's something -- We had a
8 transport on it, a C-104 approval on it. So it was -- And
9 we had to file and get that approval before we can file
10 C-115s on it.

11 Q. And since we were here last month, last July of
12 2009, have you done anything with regard to the
13 C-115s, have you filed a notice to correct the C-115s?

14 A. Correct what part?

15 Q. Have you made any amendments to the C-115s since
16 we were here last month in July 2009?

17 A. Have I done anything to amend them?

18 Q. Yes.

19 A. No. I submitted two of them last week for May
20 and June. I was just talking to Jane about that and --
21 She said they must have gone into draft. So I was -- I
22 assume the C-115s remain in June.

23 MR. SWAZO: I don't have any other questions,
24 Mr. Chair.

25 CHAIRMAN FESMIRE: Mr. Padilla?

1 MR. PADILLA: Just a couple.

2 REDIRECT EXAMINATION

3 BY MR. PADILLA:

4 Q. Mr. Kizer, Mr. Swazo seems to be making a case
5 that you didn't comply with the Order with respect to the
6 Freedom Federal well, that you plugged it on September
7 16th instead of by September 14th?

8 A. September 14th fell on a Sunday on there. And
9 we had done everything there was -- We had reported the CF
10 and we were letting it settle on there. And then when
11 they finally put the marker on -- We were working on
12 Saturday on there, as well, to get it done. And then they
13 did put the marker on. I reported it to the BLM on the
14 16th. So it was the 16th. Yeah, it was the 16th.

15 Q. When had you completed the major plugging
16 operations?

17 A. The major plugging operations were done before
18 that. But when -- I said it was plugged and abandoned on
19 the 16th, we had commenced them before that.

20 MR. PADILLA: That's all I have.

21 CHAIRMAN FESMIRE: Commissioner Bailey?

22 COMMISSIONER BAILEY: Let's talk about the
23 Saunders well going into the Amoco meter. How long did
24 that situation occur?

25 THE WITNESS: Well, I'll tell you, I didn't --

1 That has been going on before I had the wells, I believe.

2 COMMISSIONER BAILEY: So sometime prior to 2007?

3 THE WITNESS: Well, before 2004. Yeah. That
4 well was -- He must have hooked it up there. Mr. Matthews
5 must have hooked it to that meter at that time. Because
6 he had also tried to get the gas company to put a meter on
7 it.

8 COMMISSIONER BAILEY: Was there ever a
9 commingling order approved by the BLM for commingling
10 those two wells?

11 THE WITNESS: That I don't know. That I don't
12 know. I haven't come across one.

13 COMMISSIONER BAILEY: So you do not have one and
14 you did not apply for one?

15 THE WITNESS: I did not apply for one, no. I
16 have not applied for one, no.

17 COMMISSIONER BAILEY: Are you aware that
18 commingling orders are required?

19 THE WITNESS: I wasn't -- No, I wasn't aware
20 that orders were required to be on there. With the BLM?

21 COMMISSIONER BAILEY: Yes.

22 THE WITNESS: Yeah.

23 COMMISSIONER BAILEY: You talk about oil sitting
24 in the tanks at the Scott Federal No. 1.

25 THE WITNESS: Yes, ma'am.

1 COMMISSIONER BAILEY: And you mentioned 420
2 gallons were in those tanks -- of oil, 420 gallons of oil
3 were in those tanks.

4 THE WITNESS: Oh. I think the tanks are 210
5 gallon tanks that are there. There are two of them, and
6 they were both full.

7 COMMISSIONER BAILEY: Was it marketable or was
8 it emulsion?

9 THE WITNESS: That you'd have to ask -- I really
10 haven't had it chemically tested on it. But I believe it
11 was -- there was marketable oil that was in there. He did
12 the color cut, you know, the pumpers there. We had oil.
13 I did have a chemical tester.

14 COMMISSIONER BAILEY: But he didn't say it was
15 marketable oil, because color cut would also show
16 emulsion, wouldn't it?

17 THE WITNESS: That I don't know. I'm not
18 qualified to answer that.

19 COMMISSIONER BAILEY: At times, it sounds as
20 though the Schneider No. 1 is still unplugged, at times it
21 sounds like Schneider No. 1 has been plugged. Could you
22 please clarify, is it plugged or not?

23 THE WITNESS: The Schneider No. 1, it's a state
24 well, it's plugged. If was plugged, I think, on
25 January -- March 30th.

1 COMMISSIONER BAILEY: When was the last time it
2 produced?

3 THE WITNESS: I don't know. I haven't gotten
4 any production since I've had it.

5 COMMISSIONER BAILEY: So since sometime prior
6 to --

7 THE WITNESS: I haven't had any production at
8 all since I had it, because we had -- It wasn't hooked up.
9 We had a pump jack that was on it and we metered it up on
10 there to get it going. But the fellow there said there
11 was too much water in it, that we were going to have to go
12 in and rework the well.

13 COMMISSIONER BAILEY: An issue occurs to me that
14 if you have long delays -- put it that way -- in reporting
15 production accurately in the wells, how do you report or
16 pay any royalties?

17 THE WITNESS: Royalties? As each month that --
18 for gas, for example, comes in, at the 30th of the
19 month -- from the 1st to the 30th, the DCP Mainstream
20 purchaser, they give us our volume statement which came
21 through the meter, and they give us the amount less -- the
22 amount there.

23 And what they do is, is they have already on
24 file a breakdown for royalties, severance taxes to the
25 state, everything that goes out, and we just end up with

1 it after everything is paid out. Royalties, the state,
2 the federal, and any overrides that are on the well, and
3 we end up with a net on it. We only end up with about --
4 probably about 75 percent.

5 CHAIRMAN FESMIRE: So the purchaser makes
6 distribution --

7 THE WITNESS: They make the distribution, yes.

8 COMMISSIONER BAILEY: If you get these printouts
9 every 30 days, or monthly, why is it difficult for you to
10 take the production that's reported to you from DCP to
11 transfer onto C-115s within that month?

12 THE WITNESS: It's not that difficult. I didn't
13 know they were available. They never sent them to us. I
14 didn't become aware that they had all these -- What they
15 would do each month is send me a check. On there what
16 they would do, is have a number of the amount of your
17 total MCF in each of the meters on there.

18 And when we were -- We were doing some
19 compliance matters with the BLM on it with -- and they
20 required a lot of other information. And that's when the
21 DCP came up with the whole pile of the daily reports. And
22 that was just -- This was last year that I was able to get
23 those on there. So.

24 COMMISSIONER BAILEY: So that you've had them
25 since this year --

1 THE WITNESS: Uh-huh.

2 COMMISSIONER BAILEY: I repeat, why is it so
3 difficult to take those figures and transfer them to the
4 C-115s?

5 THE WITNESS: Because at the time we had it, it
6 only shows the Amoco meter, the total amount, for example,
7 on the Amoco meter. And I had the two -- the Amoco
8 Federal and the Saunders coming in. I didn't know how
9 much to calibrate -- how much that Sanders was producing
10 on there.

11 COMMISSIONER BAILEY: I'm talking about all the
12 other wells that you are supposed to be reporting on your
13 C-115s.

14 THE WITNESS: The report says I got to report
15 all of them at one time. But I can't report -- I didn't
16 have any way to calibrate Saunders that was in there.
17 So -- It won't take it unless I put something in it for
18 that category, and I didn't know how to calibrate it to
19 get it in there.

20 COMMISSIONER BAILEY: I have no other questions.

21 CHAIRMAN FESMIRE: Commissioner Olson?

22 COMMISSIONER OLSON: Let me follow up on that to
23 make sure I understand. So you're saying that because you
24 couldn't figure out how much gas was coming from the
25 Saunders well, that you didn't file anything because you

1 couldn't account for that one --

2 THE WITNESS: Well, if you --

3 COMMISSIONER OLSON: -- before all the other
4 wells?

5 THE WITNESS: If you try to file it through your
6 system, it kicks it out unless you have something in it.
7 You have to account for each of the wells that are listed
8 on there. And just -- For example, when it asked the
9 others, if you try to put in those others wells, that's an
10 actual well, but the system won't accept it. That's a
11 well that I have out there, the Samantha, you guys --
12 trying to put the well in there, but the system won't
13 accept it.

14 And what I was told by Accounting at the time,
15 Allison, was that eventually -- I said, "What happens to
16 those wells that I have plugged, do I just keep reporting
17 them over and over?" She said, "Eventually, they'll just
18 come up off on there, they'll eventually come off." I
19 said, "How do I get rid of them on there? How do I get
20 rid of them? Because they're plugged, they don't do
21 anything." And I couldn't get anything in there with that
22 system if I didn't have a number to put in on it, if I
23 left it blank.

24 COMMISSIONER OLSON: But are you saying that you
25 couldn't file reports on other wells because you couldn't

1 figure out how to --

2 THE WITNESS: Not electronically, no. I
3 couldn't get it in electronically. Your system will kick
4 it out.

5 COMMISSIONER OLSON: Because that's what your
6 testimony is, that you didn't file for any of the other
7 wells just because you couldn't correct what's going on
8 with the Saunders.

9 THE WITNESS: Yes. The Saunders was the issue.
10 The other wells, I know that I had to put the production
11 on it. I knew I had -- I had to show production to show
12 the Saunders so that it wouldn't be plugged so I could
13 show production that was on it. But I couldn't get
14 it into --

15 First of all, I had to calibrate it, which I
16 didn't know how to do on there. And then we -- they
17 couldn't read the grafts. They took the grafts with them.
18 Some guys couldn't read -- they couldn't read the grafts
19 that were on there. And then putting the stuff into your
20 system that you have with -- your system, it will kick it
21 back on the errors -- with the errors. And to -- So I
22 tried to report them all, you know, accurately and --

23 CHAIRMAN FESMIRE: They couldn't read the
24 graphs, they couldn't integrate the gas charts? You know
25 there are services that do that?

1 THE WITNESS: Yeah. They're located out of
2 state. But they said they -- they said they thought
3 that -- I think the pins -- or it wasn't calibrated
4 properly. But they said you really -- It's considerable
5 expense. You can take your meter, take your total amount
6 of your meter, unhook your one well and let it sit for a
7 couple days and see what you got on your production that
8 goes down on it, and take your percentage that you have on
9 there.

10 CHAIRMAN FESMIRE: So you did have a -- I'm
11 sorry.

12 COMMISSIONER OLSON: No, no, go ahead.

13 CHAIRMAN FESMIRE: You did have a meter on that
14 well, you'd just taken it out of the loop?

15 THE WITNESS: It was a graph meter, one of those
16 ones that runs around with the little red thing that was
17 on there, yeah.

18 CHAIRMAN FESMIRE: So you did have one, you just
19 didn't maintain it, and that's why you weren't getting the
20 measurement on the --

21 THE WITNESS: Well, to maintain it -- We had a
22 meter with the Amoco, which is much more accurate.

23 CHAIRMAN FESMIRE: But which -- I'm sorry,
24 commissioner Olson --

25 COMMISSIONER OLSON: No, no, that's fine.

1 You're doing fine. Because I'm trying to understand it,
2 too.

3 CHAIRMAN FESMIRE: You've got a meter on the
4 well, what you don't have is a meter service or a chart
5 integrator on contract, right?

6 THE WITNESS: No, I don't, no.

7 CHAIRMAN FESMIRE: Okay. The Amoco Federal had
8 a meter that was working, that's what you were diverting
9 both gas streams through, right?

10 THE WITNESS: It's the Amoco meter that we had.

11 CHAIRMAN FESMIRE: Yes. Okay --

12 THE WITNESS: Both of them were reading out of
13 the --

14 CHAIRMAN FESMIRE: But the other well that you
15 were diverting through the Amoco meter, what was the name
16 of that well?

17 THE WITNESS: The Amoco Federal.

18 CHAIRMAN FESMIRE: No, what was the other well?

19 THE WITNESS: The Saunders.

20 CHAIRMAN FESMIRE: The Saunders. The Saunders
21 had a meter on the well, correct?

22 THE WITNESS: It had -- we had the grafts that
23 were on it.

24 CHAIRMAN FESMIRE: Okay. You had a chart
25 integrator and a meter that was reading to that

1 chart integrator to make that chart?

2 THE WITNESS: Yeah. But we didn't keep the
3 thing hooked up to it because we had the actual reading
4 from the daily readings.

5 CHAIRMAN FESMIRE: So when you tell us you
6 didn't have a meter on the well, that's not correct, you
7 didn't have a meter that had been maintained on the well?

8 THE WITNESS: I don't know if it was -- I had a
9 pumper that was working on the well. I don't know that he
10 maintained it properly, no.

11 CHAIRMAN FESMIRE: Okay. The skills to maintain
12 that are generally kind of specialized. They're a lot of
13 contractors in southeast New Mexico who know how to do it,
14 although they're getting to be fewer because we're going
15 to electronics. But that meter simply wasn't maintained,
16 and so somebody, instead of maintaining the meter, they
17 diverted the well through the Amoco meter, right?

18 THE WITNESS: That's the only gas -- sales gas
19 line there was, yeah. It had to go through the -- to the
20 Amoco meter.

21 CHAIRMAN FESMIRE: It wasn't going through the
22 Amoco meter -- it wasn't registering on the Saunders meter
23 and the Amoco meter at any time, was it? Because you
24 would have had to pay double royalty, double taxes.

25 THE WITNESS: Oh, no. No, no, it was coming out

1 of --

2 CHAIRMAN FESMIRE: So at one time, it was going
3 from there to the sales line on its own, right?

4 THE WITNESS: I don't follow your question.

5 CHAIRMAN FESMIRE: At one time, the Saunders was
6 connected through the meter that had become inoperative to
7 the sales line and not through the Amoco meter?

8 THE WITNESS: I don't know. When the -- it was
9 acquired by -- the property was -- the lease was acquired
10 by C&D. You can look back through the records there and
11 you can see that Matthews and those folks also had had
12 issues with the Saunders on -- where they were putting the
13 gas.

14 CHAIRMAN FESMIRE: Commissioner Olson, I
15 apologize. Go ahead and finish your questions.

16 COMMISSIONER OLSON: No, no, that's fine. I was
17 trying to understand that myself. So. But I guess I'm
18 still back to the original question which I'm a little
19 confused on. So because you couldn't account for one
20 well, you didn't submit C-115s for any of the other wells?

21 THE WITNESS: I couldn't -- The system won't
22 take them.

23 COMMISSIONER OLSON: Wouldn't it just give you
24 an error report for the one well and not for the others?

25 THE WITNESS: But -- It would show the error

1 report but it still won't be accepted into your system. I
2 can shoot it through as a draft or something, but it's not
3 going to go through as accepted.

4 COMMISSIONER OLSON: Right, but what's not going
5 to be accepted is the one well that has the problem,
6 correct?

7 THE WITNESS: No. You throw out the -- the
8 entire thing comes out. It all comes back to me on that
9 with the error on it. It doesn't accept anything on it.

10 COMMISSIONER OLSON: Okay. And then I guess
11 maybe this is something that Ms. Prouty needs to answer,
12 too. In looking at some of these documents in the OCD --
13 these gas balance reports or -- just the balancing
14 reports -- I guess the detailed balancing reports, when I
15 look at the Muncy Federal, for example, say, Exhibit 47,
16 it shows an oil BLM -- I guess maybe that's what -- I'm
17 not exactly sure what the BLM stands for, but it's showing
18 26. Is that showing production from the well?

19 THE WITNESS: No. No, what that was, when -- it
20 was -- there was oil -- when we had -- we didn't ever
21 produce anything on it. From the records we had before on
22 there, is there was oil -- there was -- something was in
23 that tank on there, and they claimed that it was oil that
24 was on there with the 26. That number hasn't changed.

25 COMMISSIONER OLSON: So is that -- what is that

1 representing, is that representing just oil sitting in a
2 tank?

3 THE WITNESS: Yeah, the oil sitting in the tank
4 that's not enough to be even transported.

5 COMMISSIONER OLSON: Okay.

6 THE WITNESS: The BLM, at the beginning of the
7 month -- They had the end of the month, the beginning of
8 the month.

9 COMMISSIONER OLSON: Oh, okay. Okay. Thanks.
10 That was confusing to me. Well, I guess, when I come back
11 to OCD Exhibit 77 that came up on this e-mail that you had
12 send to the OCD, is it your opinion that because the BLM
13 gave you an extension to -- I guess April 30th, 20th,
14 whatever the date was, of 2009, that that takes precedence
15 over the Commission's order that ordered this to be done
16 by September 14th?

17 THE WITNESS: Well, I had received the notice of
18 the de novo on about February 20th that there was a de
19 novo hearing that was scheduled on here that you were
20 having on there.

21 COMMISSIONER OLSON: Well, did the BLM issue the
22 Order that you're subject to from --

23 THE WITNESS: Excuse me?

24 COMMISSIONER OLSON: Did the BLM have any
25 authority over the Order that's issued by this Commission?

1 THE WITNESS: I don't know. That's a legal
2 question that I guess my attorney will address on that.

3 COMMISSIONER OLSON: But you did not comply with
4 the Order of the Commission to have it plugged by -- or to
5 have the work completed by the 14th of September 14th,
6 2008?

7 THE WITNESS: We got them -- the four wells that
8 were plugged, I plugged an additional one that was
9 supposed to bring me good will, all right? We got those,
10 we got the other two wells, the Saunders and the Scott
11 that were -- brought those into production.

12 The other wells -- all the other Hasties wells
13 and all the ones that were punched in, the ones that we
14 could not bring in at that time were the two Muncies and
15 the Schneider, we couldn't get those within that time
16 period at all.

17 COMMISSIONER OLSON: So why would you not seek
18 something from this Commission to -- The Order you're
19 subject to is not an Order of the BLM, it's an Order of
20 this Commission.

21 THE WITNESS: Why didn't I? I just didn't -- I
22 was filing paperwork that I just got -- I was working on
23 the things. It was just an oversight. It wasn't anything
24 that was -- I was trying to hide or anything like that on
25 it.

1 COMMISSIONER OLSON: I guess what concerns me is
2 that you were making a statement in your testimony that
3 you, you know, take seriously the submission of true and
4 accurate information, but you don't seem to take the
5 deadlines of this Commission seriously.

6 THE WITNESS: I ran out of funds to get the
7 things done that were there by the 14th. I had 20 days.
8 I had 20 days to try to get everything that was done
9 there. We had over the holiday, as well. That was over
10 the Labor Day holiday that was there. I had 20 days to
11 get all that stuff done.

12 I complied with a lot of the things in there. I
13 don't know which -- What's more important, production or
14 compliance? You know. I was trying to bring the wells
15 that were there and get them plugged that potentially
16 could cause any problems. The other ones were functioning
17 that were there on there.

18 COMMISSIONER OLSON: But you saw no need to seek
19 anything from the Commission, then, for an extension of
20 the deadlines if you had a problem?

21 THE WITNESS: Commissioner Olson, I wasn't
22 even -- my thought wasn't even in that direction, no. It
23 was an oversight. In hindsight, it was something that
24 could have been done.

25 COMMISSIONER OLSON: I guess another issue on

1 that same e-mail in Exhibit 77, the last line of that, you
2 say, "I'm willing to abide by the Commission's
3 determination after review of the facts." Well, didn't
4 we have a review of the facts at a full-blown hearing a
5 year ago last summer?

6 THE WITNESS: Yeah, but you had scheduled a
7 de novo for another hearing on April 9th that I was
8 waiting for.

9 COMMISSIONER OLSON: I guess my question --

10 THE WITNESS: I was considering --

11 COMMISSIONER OLSON: My question is, didn't we
12 have a review of the facts in this case back last summer
13 when we had a hearing on this matter?

14 THE WITNESS: We went over the -- we were
15 working on the Shearns -- on the Shearn wells at that time
16 when you determined that I was responsible for them.

17 COMMISSIONER OLSON: But we did have a review of
18 the facts during the hearing last year, correct, last
19 summer, last July?

20 THE WITNESS: Of all the facts? I don't know if
21 it was all the facts. We covered a lot of area. I don't
22 know what you're --

23 COMMISSIONER OLSON: And the Commission made a
24 determination based upon a review of the facts, correct?

25 THE WITNESS: They issued an Order, yes.

1 COMMISSIONER OLSON: And you didn't abide by the
2 Order, correct?

3 THE WITNESS: I felt it was substantial
4 compliance.

5 COMMISSIONER OLSON: But you didn't abide by the
6 Order --

7 THE WITNESS: I could not meet every letter of
8 it, no.

9 COMMISSIONER OLSON: Okay.

10 THE WITNESS: Within the time period there was.

11 COMMISSIONER OLSON: I think that's all I have.

12 CHAIRMAN FESMIRE: Mr. Kizer, you said that Jim
13 Blakely with the BLM told you that if you plugged the
14 extra well, you'd get good will from the OCD?

15 THE WITNESS: Yeah.

16 CHAIRMAN FESMIRE: Why did he tell you that?

17 THE WITNESS: Well, because I said I didn't want
18 to plug it, I didn't think it would -- First of all, I
19 didn't know if it was my well. He says, "I'm here to
20 tell you that it is your well."

21 CHAIRMAN FESMIRE: Okay.

22 THE WITNESS: And I said, "It doesn't show up
23 anywhere on any of the records that I have. He says,
24 "It's your well. And you've got a crew out here that's
25 here to do it, and eventually we're going to come after

1 you to plug it."

2 CHAIRMAN FESMIRE: Okay, so the BLM was going to
3 come after you, so you plugged it to get good will from
4 the OCD?

5 THE WITNESS: Well he, said, "You'll get some
6 good will from the OCD from it because you're taking care
7 of things out here."

8 CHAIRMAN FESMIRE: So -- and when was that,
9 what --

10 THE WITNESS: The date?

11 CHAIRMAN FESMIRE: The date, about.

12 THE WITNESS: Probably about the 13th, I think.

13 CHAIRMAN FESMIRE: The 13th of --

14 THE WITNESS: The 13th of September. It was
15 probably about the 11th or so, 11th or 12th, just a couple
16 days.

17 CHAIRMAN FESMIRE: A little less than a year
18 ago?

19 THE WITNESS: Yeah.

20 CHAIRMAN FESMIRE: Okay. And you plugged the
21 well; did you have any records on it? How did you know
22 how deep it was and what --

23 THE WITNESS: Well, at the time I had -- Mr.
24 Finney was assisting me plugging the wells, he had
25 experience plugging them. And Jerry -- I think he and

1 Jerry communicated, probably got together. I they talked
2 together. He was the one responsible --

3 CHAIRMAN FESMIRE: Jerry who?

4 THE WITNESS: Jerry Blakely.

5 CHAIRMAN FESMIRE: Jerry Blakely?

6 THE WITNESS: Yeah. And Gerald, they were
7 communicating on the one well in terms of -- I think I --
8 I had told him what the depths were, the information he
9 had on record from --

10 CHAIRMAN FESMIRE: Who, he, Blakely?

11 THE WITNESS: Yeah, Blakely.

12 CHAIRMAN FESMIRE: Okay. Did the OCD have a
13 record of that well?

14 THE WITNESS: The OCD has a record, but the
15 record is under JMK.

16 CHAIRMAN FESMIRE: It's under JMK as the
17 operator?

18 THE WITNESS: Yeah.

19 CHAIRMAN FESMIRE: Okay. And so it was an open
20 well, because JMK -- I don't think they exist anymore, do
21 they?

22 THE WITNESS: Is it -- it's Jack Matthews.
23 Yeah, he's still out there, I think, yeah.

24 CHAIRMAN FESMIRE: Okay. So he told you to plug
25 a well that was carried in somebody else's name?

1 THE WITNESS: Yep.

2 CHAIRMAN FESMIRE: Okay. What does it cost you
3 to operate the Saunders on a monthly basis?

4 THE WITNESS: The Saunders well cost relatively
5 nothing.

6 CHAIRMAN FESMIRE: Well, let's think about what
7 it costs. How many wells do you have out there that are
8 active?

9 THE WITNESS: Presently?

10 CHAIRMAN FESMIRE: Yeah, that are producing.

11 THE WITNESS: Right now we've got six Hasties,
12 we've got one Amoco, and we've got one Michael.

13 CHAIRMAN FESMIRE: So you've got eight wells.
14 And you hire a pumper?

15 THE WITNESS: Yes, sir.

16 CHAIRMAN FESMIRE: And does he pump more than
17 those eight wells for you?

18 THE WITNESS: Does he --

19 CHAIRMAN FESMIRE: Does he pump more than the
20 eight wells?

21 THE WITNESS: For me?

22 CHAIRMAN FESMIRE: Yes.

23 THE WITNESS: Oh, no.

24 CHAIRMAN FESMIRE: Okay. So what do you pay
25 him?

1 THE WITNESS: \$1,200.

2 CHAIRMAN FESMIRE: \$1,200 a month?

3 THE WITNESS: Uh-huh.

4 CHAIRMAN FESMIRE: So in pumper's costs, you've
5 got -- that's \$150 per well. Okay. And then you paid
6 to have -- or will pay to have the OCD forms filed and the
7 BLM forms filed, right?

8 THE WITNESS: Uh-huh.

9 CHAIRMAN FESMIRE: What does that cost you?

10 THE WITNESS: She said -- right now she said
11 it's \$75.

12 CHAIRMAN FESMIRE: \$75 a month per well?

13 THE WITNESS: No.

14 CHAIRMAN FESMIRE: Just \$75.

15 THE WITNESS: Yeah. That's -- she's
16 renegotiated, it's \$75.

17 CHAIRMAN FESMIRE: Okay, \$75 to do it on all
18 eight wells.

19 THE WITNESS: Yeah, on eight wells, but that's
20 also including the BLM.

21 CHAIRMAN FESMIRE: Okay, so that's about \$10 a
22 well. Do you pay your pumper's expenses or just the
23 \$1,200 flat?

24 THE WITNESS: The expenses that we have that
25 are -- if it needs fittings, fixtures, anything like that,

1 that averages maybe about a hundred and a quarter a month.

2 CHAIRMAN FESMIRE: For all eight wells?

3 THE WITNESS: Yeah.

4 CHAIRMAN FESMIRE: So that's, say, another \$15.

5 THE WITNESS: Uh-huh.

6 CHAIRMAN FESMIRE: And you have to lift the
7 water on these, right?

8 THE WITNESS: Yeah.

9 CHAIRMAN FESMIRE: What does your power bill run
10 out there?

11 THE WITNESS: Power bill, they have it out
12 there, it runs about -- we just got it. I'd say it's
13 about \$400, I think.

14 CHAIRMAN FESMIRE: \$400 a month per well or
15 total?

16 THE WITNESS: Total.

17 CHAIRMAN FESMIRE: Okay, so that's about another
18 \$50 a well, right?

19 THE WITNESS: Uh-huh.

20 CHAIRMAN FESMIRE: And you've got chemical
21 expenses, don't you?

22 THE WITNESS: No, I don't have any --

23 CHAIRMAN FESMIRE: You don't do a corrosion
24 inhibitor program?

25 THE WITNESS: I'm sorry?

1 CHAIRMAN FESMIRE: You don't do a corrosion
2 inhibitor program or anything like that?

3 THE WITNESS: When we had gone in there before
4 with that, I'll usually come up with a lump sum and I'll
5 work all the wells at once. But it's not something on a
6 monthly --

7 CHAIRMAN FESMIRE: On a monthly average, what
8 would that run you?

9 THE WITNESS: I don't think I have anything.
10 You'd have to ask the pumper on that, I don't know. I
11 don't think we have anything that is on a monthly basis on
12 that.

13 CHAIRMAN FESMIRE: Okay, but your occasional
14 expenses can be divided by the number of months between
15 those expenses, right?

16 THE WITNESS: Yeah.

17 CHAIRMAN FESMIRE: And how much would that run?

18 THE WITNESS: We have -- for the last six
19 months, for the last seven months, we shot that -- we
20 probably did a total of maybe \$700.

21 CHAIRMAN FESMIRE: So that's \$100 a month. So
22 that's running about, again, \$15 a month per well, right?

23 THE WITNESS: Okay.

24 CHAIRMAN FESMIRE: No, you answer the questions,
25 I'm asking.

1 THE WITNESS: Oh. If you say that's what it is.

2 CHAIRMAN FESMIRE: Okay. What other -- Well,
3 you've got -- you know, do you pay the pumper's gasoline
4 or anything like that?

5 THE WITNESS: No.

6 CHAIRMAN FESMIRE: He pays that out of --

7 THE WITNESS: The wells are located -- are -- He
8 has other routes and stuff, and mine are, like, on his way
9 home. He lives right outside of town about 8 miles or so.
10 They're the first ones he runs into. And he's usually
11 coming back and forth, so he usually takes them in on the
12 way.

13 CHAIRMAN FESMIRE: Okay. So that's in the
14 \$1,200 a month?

15 THE WITNESS: Yes.

16 CHAIRMAN FESMIRE: Okay. What other expenses do
17 you have?

18 THE WITNESS: That's pretty much about it.

19 CHAIRMAN FESMIRE: Okay. Now, what's your
20 working interest in the Saunders lease?

21 THE WITNESS: Saunders lease, I think it's about
22 76 percent -- 75, 76 percent.

23 CHAIRMAN FESMIRE: 76 percent working interest?

24 THE WITNESS: Yeah. Well, my net interest on --
25 yeah, my working interest that I end up with after all the

1 royalties --

2 CHAIRMAN FESMIRE: I'm talking about the working
3 interest.

4 THE WITNESS: I own 100 percent working
5 interest.

6 CHAIRMAN FESMIRE: 100 percent working interest.
7 And your net revenue interest is about 76 percent?

8 THE WITNESS: 76 percent.

9 CHAIRMAN FESMIRE: Okay. Now, you did some
10 disconnecting and came up with some allocations. How much
11 gas was the Saunders well producing when it was plugged?

12 THE WITNESS: I would say about 150.

13 CHAIRMAN FESMIRE: 150 a month?

14 THE WITNESS: Yeah, about 150.

15 CHAIRMAN FESMIRE: Did you testify a little
16 earlier that it might be about 120?

17 THE WITNESS: Actually, when we -- we were just
18 looking over lunch there, they both averaged about --
19 together it was about 300 and something. But anywhere
20 from -- it will shoot anywhere from 120 up to 160 out
21 there depending on what it is.

22 CHAIRMAN FESMIRE: Okay, so maybe 140 average?

23 THE WITNESS: Okay.

24 CHAIRMAN FESMIRE: How much are you getting for
25 that gas now, net?

1 THE WITNESS: Net? We're getting it -- Right
2 now it's at three forty, probably about two sixty -- about
3 two sixty-five, two seventy-five on it because it has a
4 nitrogen content.

5 CHAIRMAN FESMIRE: Are you getting any liquids
6 out of it?

7 THE WITNESS: Am I getting any revenue from
8 liquids?

9 CHAIRMAN FESMIRE: Are you getting any liquids
10 out of it, yeah.

11 THE WITNESS: No, I'm not making any revenues on
12 any of that. No.

13 CHAIRMAN FESMIRE: Okay. Are there any other --
14 I'm assuming since you're not selling liquids, the gas is
15 the only thing, and you're getting about two seventy-five,
16 and you're making about 140 a month. If you multiply the
17 140, times the two seventy-five, times .76, what does that
18 amount to? That amounts to less than \$300 a month, right?

19 THE WITNESS: Okay.

20 CHAIRMAN FESMIRE: No, that's --

21 THE WITNESS: Yeah. It's generating...

22 CHAIRMAN FESMIRE: Somewhere around \$300 a
23 month. And by my calculations, it's costing you about
24 \$285 a month to operate.

25 THE WITNESS: Well, that well doesn't cost -- I

1 don't have any electrical on the Saunders.

2 CHAIRMAN FESMIRE: You don't have any electrical
3 on the Saunders?

4 THE WITNESS: No electrical at all on the
5 Saunders.

6 CHAIRMAN FESMIRE: Didn't you testify that you
7 had to run a box out there and some lines that you -- all
8 your --

9 THE WITNESS: No, that was to the Muncy. No.
10 The Saunders doesn't have any electrical at all.

11 CHAIRMAN FESMIRE: Okay. So we take off \$50,
12 that's still, you know, somewhere in the neighborhood of
13 \$200, \$250 a month.

14 THE WITNESS: Well, the pumper does the Saunders
15 when he's out there. What he does with the Saunders, he
16 basically just -- has -- it's a meter reading that he has
17 on it.

18 CHAIRMAN FESMIRE: Okay, so --

19 THE WITNESS: It's a very low maintenance well.

20 CHAIRMAN FESMIRE: Okay, so it doesn't carry its
21 share --

22 THE WITNESS: No, it doesn't really carry its
23 share.

24 CHAIRMAN FESMIRE: Okay. What about maintaining
25 the meter at the Amoco Federal, how much does that run?

1 THE WITNESS: It doesn't cost me anything.

2 CHAIRMAN FESMIRE: Oh, DCP does that?

3 THE WITNESS: Yes.

4 CHAIRMAN FESMIRE: How come they did it at that
5 well and they didn't do it at this one?

6 THE WITNESS: Well, they had it -- At that well?
7 What do you mean?

8 CHAIRMAN FESMIRE: At the Amoco Federal. They
9 do it at the Amoco Federal --

10 THE WITNESS: They go in there, there's stuff on
11 it, on the -- They determined that it was okay to have it
12 there that way.

13 CHAIRMAN FESMIRE: Now, you said you had to pull
14 the Saunders well, if I understood correctly. I may have
15 been confused --

16 THE WITNESS: No, we never pulled the Saunders.

17 CHAIRMAN FESMIRE: Okay. Are you going to have
18 to pull the Saunders well in the near future?

19 THE WITNESS: It's plugged. You plugged it.

20 CHAIRMAN FESMIRE: Oh, that's right. I'm
21 sorry. How often did you have to pull that well?

22 THE WITNESS: We had never pulled it.

23 CHAIRMAN FESMIRE: You had never pulled it in
24 how many years?

25 THE WITNESS: From the time that I've had it, I

1 haven't pulled it, no.

2 CHAIRMAN FESMIRE: And how long before that had
3 it been since it had been pulled?

4 THE WITNESS: I don't know.

5 CHAIRMAN FESMIRE: Do you think it would have
6 been about time they were going to have to do something?

7 THE WITNESS: Oh, yeah, we were -- I was looking
8 forward to pulling it. What we were looking at doing is,
9 we had a lot of success over on the Hasties wells by
10 putting in a compressor.

11 Out there, they had been changing a lot of the
12 lines there. And the line pressure has been off quite a
13 bit, so it's really depressed our production. And my
14 pumper, George, we brought in a new compressor on that and
15 he increased the production on the Hasties by eight times
16 on there. So we're looking at doing --

17 CHAIRMAN FESMIRE: But that's a different zone,
18 a different production history, right?

19 THE WITNESS: Right. I think that it would
20 probably do just as well or better.

21 CHAIRMAN FESMIRE: Why do you think that?

22 THE WITNESS: Those wells have always been
23 coming through consistently. And just recently that we
24 had, we saw that the -- when the main line had dropped in
25 there, the pressure on it, our oil shot up -- our gas

1 production shot up.

2 CHAIRMAN FESMIRE: In which well?

3 THE WITNESS: Well, right now it was the Amoco.
4 But we saw that they would shoot up. We would have all of
5 a sudden these spurts where it would go from maybe a seven
6 day production up to a 26 in one day.

7 CHAIRMAN FESMIRE: Okay. So you were going to
8 buy the compressor?

9 THE WITNESS: I was going to purchase it?

10 CHAIRMAN FESMIRE: That's a question.

11 THE WITNESS: Either I was going to buy it or I
12 was going to rent it.

13 CHAIRMAN FESMIRE: How much would it cost you to
14 buy or rent it?

15 THE WITNESS: The one that I just bought on the
16 other was about \$4,000. And to rent it, depending on who
17 you talk to out there, you can get them from maybe
18 anywhere from \$500, maybe \$650.

19 CHAIRMAN FESMIRE: How much would it cost you to
20 run it?

21 THE WITNESS: That's what we were trying to --
22 we were going about determining in terms of what the
23 expense -- if it was going to offset it, and we were going
24 to see if the price -- the commodity price on natural gas
25 was going to move on it. We were waiting to see if gas

1 went back up.

2 CHAIRMAN FESMIRE: So in essence, you were
3 waiting to see what happened?

4 THE WITNESS: Sorry?

5 CHAIRMAN FESMIRE: In essence, you were waiting
6 to see what happened?

7 THE WITNESS: Well, when you're out there, you
8 got to make those commercial determinations --

9 CHAIRMAN FESMIRE: But you weren't making any
10 money at it -- or hardly any money at it, and you were
11 just waiting to see what was going to happen?

12 THE WITNESS: Well, we didn't have the funds
13 that we were going to be throwing at it to see what there
14 was with it yet. We had some other things that we were
15 going to do, but we had been talking about getting a
16 compressor for -- we ought to get a compressor for the
17 other wells.

18 CHAIRMAN FESMIRE: And did you talk to a
19 petroleum engineer and ask him what putting a compressor
20 on it would do?

21 THE WITNESS: Yeah. We've been talking with
22 Hill Engine Supply.

23 CHAIRMAN FESMIRE: Hill Engine Supply? That's a
24 petroleum engineer?

25 THE WITNESS: Well, no, it's not a petroleum --

1 he's a supplier of it.

2 CHAIRMAN FESMIRE: Okay. So you didn't talk to
3 a reservoir engineer to tell you what would happen if you
4 put a compressor on it?

5 THE WITNESS: No.

6 CHAIRMAN FESMIRE: Are there compressors on any
7 of the other -- you said you purchased one compressor,
8 which one was that?

9 THE WITNESS: What?

10 CHAIRMAN FESMIRE: You said you'd put a
11 compressor on one of your wells, which one was that?

12 THE WITNESS: Oh, we put a -- It's on the
13 Hasties 16, 17, 18, 19, 21, 20.

14 CHAIRMAN FESMIRE: So on all of them?

15 THE WITNESS: Yeah, we put it on all of them.

16 CHAIRMAN FESMIRE: And that increased the
17 production on those wells eight times?

18 THE WITNESS: Oh, yeah.

19 CHAIRMAN FESMIRE: If I were to check those
20 records --

21 THE WITNESS: You bet. I got them here if you
22 want to see them.

23 CHAIRMAN FESMIRE: I'd like to see them. Did
24 the production hold up?

25 THE WITNESS: It's holding up.

1 CHAIRMAN FESMIRE: It's holding up at eight
2 times what it was producing before?

3 THE WITNESS: Right. We were doing probably, I
4 think about -- Collectively what it was doing at the time
5 it had dropped on there, because -- The pumper that we
6 had, he had --

7 CHAIRMAN FESMIRE: What were those wells -- And
8 which ones were they again?

9 THE WITNESS: These were the Hasties 19, 20 --

10 CHAIRMAN FESMIRE: The Hasties what?

11 THE WITNESS: 16, 17, 18, 19, 21.

12 CHAIRMAN FESMIRE: So the Hasties 16 through 21
13 less 20?

14 THE WITNESS: Less 20?

15 CHAIRMAN FESMIRE: No. 20 you didn't list.

16 THE WITNESS: Oh, no, they all -- 16, 17, 18,
17 19, 20 and 21 --

18 CHAIRMAN FESMIRE: Okay, so that's six wells?

19 THE WITNESS: That's six wells.

20 CHAIRMAN FESMIRE: Okay. And what were those
21 six wells producing before -- And when did you put the
22 compressor on it?

23 THE WITNESS: We put the compressor on it -- we
24 just put it on in April.

25 CHAIRMAN FESMIRE: Okay. What were they

1 producing together before the compression?

2 THE WITNESS: I'll have to tell you what
3 occurred before so you understand what we're doing. The
4 wells that were producing, they were doing -- the wells
5 were doing okay before.

6 CHAIRMAN FESMIRE: What were they producing
7 together before?

8 THE WITNESS: I don't remember. They were
9 doing probably about 1,500 -- maybe about 1,500 --

10 CHAIRMAN FESMIRE: 1,500 a day?

11 THE WITNESS: No, on a monthly basis.

12 CHAIRMAN FESMIRE: Okay.

13 THE WITNESS: And then what occurred is, was
14 there was a continuing drop on that. And the pumper that
15 I had, Mr. Larry Ivans, he had come over from the
16 gentleman that we had purchased the well from. And he
17 continued with them, he had identified himself as a pumper
18 on that.

19 And he misconfigured the lines and he blew my
20 compressor out a couple times on there. So we weren't
21 getting a pull from the wells on it. So it's basically --
22 we weren't meeting -- Yeah, the line pressure was always
23 blowing us out all the time, so we couldn't get into the
24 line on it. It was harder and harder and it got to be
25 less and less. And when we repaired the lines, then the

1 pressure went up on it. So we dropped -- the production
2 on those wells dropped.

3 CHAIRMAN FESMIRE: Okay.

4 THE WITNESS: And then when George came out,
5 when he came out in September, he went out and he looked
6 at all the stuff, and he said, "Tom, your wells over there
7 with the gas, I can increase your gas production." He
8 goes, "I think what you have here with the pressures and
9 everything are incorrect. I can help you out with that."

10 So he put together a shopping list on it, and he
11 went out and put all the stuff in. And since April, those
12 wells have been doing about -- they're up to about 800 or
13 900 -- went up to 800 or 900.

14 CHAIRMAN FESMIRE: So you went from 1,500 to 800
15 or 900?

16 THE WITNESS: No, they originally were at 15.
17 That's why we knew they would go back up. But then --
18 WITH the pumper that I had there for the four years, he
19 was slowly beating those things up. He was doing things
20 that were wrong with them. The production was falling.
21 We had to replace two compressors. When we got them in,
22 he blew them out, because he --

23 CHAIRMAN FESMIRE: I thought they were on one
24 compressor, all six wells were on one compressor? You
25 said --

1 THE WITNESS: Yeah, but he blew -- I had to
2 get --

3 CHAIRMAN FESMIRE: You replaced two compressors
4 on --

5 THE WITNESS: I replaced two compressors and
6 this was the third one that we were putting in. And he
7 kept blowing out the -- And my understanding of it was
8 that there was water that was going into the compressor --
9 something about the way he had it was -- had it
10 misconfigured on there.

11 And he couldn't figure out what it was. And I
12 thought the wells were declining. I thought they were
13 just -- that was about it on them. So -- But then George
14 came along and he says, "I think that I can -- Give me a
15 little bit of time with them, I can do a few things with
16 them."

17 CHAIRMAN FESMIRE: Okay. Let me ask you a
18 couple of questions about that. At the height, they were
19 producing 1,500 MCF per month on a six well lease?

20 THE WITNESS: Uh-huh.

21 CHAIRMAN FESMIRE: What does that work out to
22 per day, 50 MCF per day on a six well lease?

23 THE WITNESS: Is that what it is? Yeah.

24 CHAIRMAN FESMIRE: That's a question.

25 THE WITNESS: Yeah. Yeah, it comes out to

1 about -- I guess, what is it --

2 CHAIRMAN FESMIRE: So about 8 MCF per day per
3 well?

4 THE WITNESS: Yeah. I'm being paid for it. And
5 also keep in mind that three of those wells, of those
6 Hasties, the 16, 17 and 18, also produce oil, there's also
7 oil production.

8 CHAIRMAN FESMIRE: And how much is that?

9 THE WITNESS: About every -- I'd say about every
10 45 days we had -- we can get a load out. It will vary.
11 But it will run about every 45 days, it will do about 75
12 on those three wells, 75 barrels.

13 CHAIRMAN FESMIRE: So 75 barrels over a 45 day
14 period?

15 THE WITNESS: Uh-huh.

16 CHAIRMAN FESMIRE: So that's about 1 3/4 barrels
17 per day per three wells. Okay. Let's get back from this
18 excursion. You were making how much gas just before you
19 installed the compressors?

20 THE WITNESS: We had dropped down -- I can -- I
21 have the records over there. But on those Hasties wells
22 or --

23 CHAIRMAN FESMIRE: Yeah, the six Hasties wells
24 that you put on compression. And --

25 THE WITNESS: I don't remember. I'm trying to

1 think now what it was.

2 CHAIRMAN FESMIRE: Well, you just testified
3 that --

4 THE WITNESS: I could be wrong.

5 CHAIRMAN FESMIRE: Maybe a hundred?

6 THE WITNESS: I don't know, I'd have to look at
7 the records.

8 CHAIRMAN FESMIRE: A hundred for a month?

9 THE WITNESS: I don't know. I'll withdraw my
10 answer. I don't know. I'll have to look at the records.
11 I can't think of what it is right offhand.

12 CHAIRMAN FESMIRE: Well, you testified, you
13 know, to --

14 THE WITNESS: I may have got the number wrong.
15 I'll have to look at the records. I have them right here.

16 CHAIRMAN FESMIRE: Mr. Padilla, would you
17 mind --

18 THE WITNESS: Can I see them?

19 CHAIRMAN FESMIRE: You put the compressors on
20 the six -- or compressor, although I'm not sure it's
21 compressor yet -- you put the compressor on the Hasties
22 wells in April. What was the monthly gas production prior
23 to putting the compressors on it?

24 THE WITNESS: We have here in February on the
25 Hasties there, we got about -- it was about 118 that we

1 had.

2 CHAIRMAN FESMIRE: 118 for the entire month for
3 all six wells?

4 THE WITNESS: Yeah.

5 CHAIRMAN FESMIRE: So that's about two-thirds of
6 an MCF a day?

7 THE WITNESS: Yeah. It dropped down
8 significantly, right.

9 CHAIRMAN FESMIRE: Okay. And after you put the
10 compression on, what did it go to?

11 THE WITNESS: We're up to about -- between 850
12 and 925, 930 for the last three months.

13 CHAIRMAN FESMIRE: Is that what you reported to
14 the OCD?

15 THE WITNESS: You bet.

16 CHAIRMAN FESMIRE: And what did it do this month
17 -- the last month that you --

18 THE WITNESS: We just had the records, I just
19 did -- I think it was -- the Hasties, they came in -- I
20 think it was about 700.

21 CHAIRMAN FESMIRE: So it's falling quick?

22 THE WITNESS: Huh?

23 CHAIRMAN FESMIRE: It's falling quick?

24 THE WITNESS: No. We had four months that they
25 were -- that it was up over -- it was almost 900. And

1 then this last month, it just came to seven, seven and
2 some change.

3 CHAIRMAN FESMIRE: Okay.

4 THE WITNESS: But the way those wells work,
5 depends on whatever line pressure is on there, and George
6 manipulated -- he was working it to push it through.

7 CHAIRMAN FESMIRE: Okay. So if you had put a
8 compressor on the Saunders well, what would it do?

9 THE WITNESS: What would it do?

10 CHAIRMAN FESMIRE: What would it have done?

11 THE WITNESS: I don't know. I would have
12 rented one initially, to work -- to do both the Amoco and
13 the Saunders. But we have bursts up to 25, 30 MCFs --
14 just on one of the wells there'd be bursts up there. So
15 it has something to do with the line pressure that we're
16 working with.

17 CHAIRMAN FESMIRE: Okay. But this isn't the --
18 the Saunders was not completed in the same zone as the
19 Hasties, right? The Saunders didn't produce any oil --

20 THE WITNESS: The Saunders wasn't --

21 CHAIRMAN FESMIRE: Didn't produce any oil?

22 THE WITNESS: No.

23 CHAIRMAN FESMIRE: So it's a different type of
24 production environment?

25 THE WITNESS: I think initially when it was

1 originally drilled, there was oil and gas, but now it's
2 just gas, it's a gas well.

3 CHAIRMAN FESMIRE: Okay. Now, I can't remember
4 who it was that asked you the question, but you never
5 sought the authority from the OCD or the BLM to surface
6 commingle the Amoco Federal and the Saunders well, did
7 you?

8 THE WITNESS: I did not, no.

9 CHAIRMAN FESMIRE: And as far as you know, it
10 was never approved, never applied for?

11 THE WITNESS: I don't know if it was or not.

12 CHAIRMAN FESMIRE: Okay.

13 THE WITNESS: I don't know if it was or not with
14 JMK or some other people.

15 CHAIRMAN FESMIRE: Okay. Now, you made the
16 statement when you we were talking about how much the
17 Saunders was producing in your testimony itself, that you
18 disconnected the Saunders and that the two wells together
19 were making between 300 and 360 MCF a month, and that the
20 Saunders -- by the subtraction of the Saunders well when
21 it was taken offline, that it was making 40 to 45 percent
22 of the production; is that correct?

23 THE WITNESS: Uh-huh.

24 CHAIRMAN FESMIRE: And, you know, 40 percent
25 of -- Why -- You didn't use a definite number. How many

1 times did you perform that test?

2 THE WITNESS: Well, we just did it once.

3 CHAIRMAN FESMIRE: And it was making 40 to 45
4 percent. That's -- you know, that's a hard number to
5 apply to production numbers.

6 THE WITNESS: Well, after the well was plugged,
7 the numbers -- Since we dropped the production that's on
8 it, it was only, like, 43 percent.

9 CHAIRMAN FESMIRE: So it was 43 percent that
10 you --

11 THE WITNESS: Yes, after -- From plugging the
12 wells, that proved that there was production, because
13 there was a drop in the production, and it was about 43
14 percent that we had on there.

15 CHAIRMAN FESMIRE: Okay. Now, you're a 100
16 percent working interest owner in the Amoco Federal,
17 right?

18 THE WITNESS: Yes, sir.

19 CHAIRMAN FESMIRE: And what's your net revenue
20 interest in that well?

21 THE WITNESS: I think it runs about 75, 76.

22 CHAIRMAN FESMIRE: And in the Saunders, it's the
23 same thing?

24 THE WITNESS: Yeah.

25 CHAIRMAN FESMIRE: There's no difference?

1 THE WITNESS: Yeah, it's 75, 76.

2 CHAIRMAN FESMIRE: Now, is there a difference --
3 I'm asking the question, is there a difference in your net
4 revenue percentage in the Saunders and the Amoco Federal?

5 THE WITNESS: I don't have the breakdown of it.
6 I don't know what those -- I mean, with the lease that
7 they have on it, what the lease figures on it. But my
8 recollection is that -- what I asked for with Chris on
9 those, it was 75, 76.

10 CHAIRMAN FESMIRE: Okay, and they're both
11 straight federal leases, right?

12 THE WITNESS: Yes, sir.

13 CHAIRMAN FESMIRE: And I assume there's somebody
14 in the chain of title between you and the Feds -- Because
15 I think the federal leases in those days were an eighth,
16 weren't they?

17 THE WITNESS: The Feds get -- they still get
18 their eighth.

19 CHAIRMAN FESMIRE: Right, but there are other
20 interests in there.

21 THE WITNESS: Oh, yeah. There are other
22 interests that are in there, yeah.

23 CHAIRMAN FESMIRE: And they're paid -- the
24 division order is held by the purchaser, DCP?

25 THE WITNESS: Right. And they're paid off the

1 top.

2 CHAIRMAN FESMIRE: And I think we've already
3 covered this, but I want to cover it in the order of my
4 notes here. You said that on the Saunders well, you knew
5 there was production because there was a chart and a meter
6 there. And we've already talked about why you didn't
7 report it, it's because the meter just wasn't functioning
8 or calibrated, right?

9 THE WITNESS: I don't think it was -- It
10 probably wasn't calibrated properly. It was going around
11 and -- My pumper at the time just took the chart out and
12 threw a new one in and that was it and --

13 CHAIRMAN FESMIRE: Why would he go to the
14 problem of winding the chart and taking the chart if it
15 wasn't measuring anything?

16 THE WITNESS: It was measuring. The chart was
17 measuring, we just didn't have it analyzed. We didn't
18 have it sent out for analyzation that was on it.

19 CHAIRMAN FESMIRE: So your pumper every day came
20 in, wound the recorder --

21 THE WITNESS: He just puts a chart in, a piece
22 of paper in. I think it was a seven or ten day chart
23 that he had in there. And he just takes it, puts it
24 in -- There are a couple of things that spin around on it.
25 I have a photograph of it if you'd like to see it.

1 CHAIRMAN FESMIRE: No, I'm pretty familiar with
2 them.

3 THE WITNESS: Okay. All right.

4 CHAIRMAN FESMIRE: But he went through that
5 effort every day -- every week and then just threw the
6 chart away?

7 THE WITNESS: I have the charts. I have the
8 chart right here.

9 CHAIRMAN FESMIRE: You just said he'd take them
10 off and threw them away.

11 THE WITNESS: No, he just took it. I didn't
12 say he threw them away, he just took the charts out and
13 put in another chart that was there.

14 CHAIRMAN FESMIRE: Okay now, we're talking about
15 the Sanders well, not the Amoco well, right?

16 THE WITNESS: Right.

17 CHAIRMAN FESMIRE: So your pumper would go by
18 there every day and take the chart off the Sanders well --

19 THE WITNESS: It was a seven day, ten day chart,
20 I think it was, that he had on there. I doubt if he even
21 went by it except maybe every ten days to change the
22 chart, not on a daily basis.

23 CHAIRMAN FESMIRE: Okay. You were talking about
24 the Scott Federal No. 1 and that you had to run
25 electricity to the well to pump the water, right? That

1 that well had been dormant for four years?

2 THE WITNESS: Yeah.

3 CHAIRMAN FESMIRE: And you're aware that that
4 was a violation of OCD rules, weren't you?

5 THE WITNESS: I didn't know it was a violation,
6 I know we have to get them into production.

7 CHAIRMAN FESMIRE: Yeah, and that well wasn't?

8 THE WITNESS: No, the well was there. That was
9 it, it was sitting dormant.

10 CHAIRMAN FESMIRE: Okay, when you say dormant,
11 it still had a pumping unit?

12 THE WITNESS: I had a pump jack on it, I had --
13 we had the tanks there, the separators and that.

14 CHAIRMAN FESMIRE: Was there a pump in the hole?

15 THE WITNESS: Yeah.

16 CHAIRMAN FESMIRE: Was it connected to the sales
17 line?

18 THE WITNESS: It would go into the tank.

19 CHAIRMAN FESMIRE: Okay. And then you would
20 truck it from the tank?

21 THE WITNESS: We didn't truck anything, we never
22 made a shipment from it. That's why it was full, the
23 water and the oil.

24 CHAIRMAN FESMIRE: Okay. And you said
25 Mr. Shipley brought the Scott into production?

1 THE WITNESS: Yes.

2 CHAIRMAN FESMIRE: I'm assuming Mr. Shipley is
3 going to testify today?

4 THE WITNESS: Yeah.

5 CHAIRMAN FESMIRE: Okay. When you say he
6 brought it into production, what do you mean?

7 THE WITNESS: Well, he -- I'll tell you my --
8 what I saw of him. At the time, we were over plugging the
9 wells, the Shearns wells. And that other pumper walked
10 off. And I was introduced to Shipley and -- He's kind of
11 a troubleshooter guy. He says, "I'll get to work." He
12 knew what the deadlines were. "I can take care of it.
13 Don't worry, I'll get it done."

14 He went out, he got the -- I said, "I got the
15 electrical hooked up. We need panels, we need --" He
16 says, "We need the motors. I need to do some plumbing on
17 the thing that we need to get with it. I'll get it
18 running for you." And he had to do a few other things
19 with the tanks to make certain they weren't leaking. He
20 checked just to make sure.

21 CHAIRMAN FESMIRE: Is the Scott the only well on
22 the plugging list that you brought back into production?

23 THE WITNESS: On the plugging list that you had?

24 CHAIRMAN FESMIRE: Yes.

25 THE WITNESS: Well, the Saunders was already in

1 production, so that wasn't necessary. The two Muncies, we
2 worked briefly on, and it didn't look like anything was
3 going to fly with those. The one -- it just didn't appear
4 to be anything that was worth -- those Muncies on there.

5 CHAIRMAN FESMIRE: I thought the Muncies were
6 the ones that you didn't have the operating rights on?

7 THE WITNESS: Yeah. We didn't know that at the
8 time, but we went and we started working on them. We went
9 out and we worked on them on there. I put the things and
10 everything that was on there to go ahead and work -- You
11 know. I was working on a deadline. I said, "Let's just
12 get the things done."

13 CHAIRMAN FESMIRE: When you bought C&D from your
14 predecessors -- What was their name?

15 THE WITNESS: The Jeffries.

16 CHAIRMAN FESMIRE: The Jeffries -- did you buy
17 the Muncy wells?

18 THE WITNESS: The Muncy -- what I did was bought
19 the company.

20 CHAIRMAN FESMIRE: You bought the company?

21 THE WITNESS: Yeah. And the Muncy wells that
22 they had with it, that was included.

23 CHAIRMAN FESMIRE: They were listed as an asset
24 of the company?

25 THE WITNESS: Yeah. It was listed, yeah.

1 CHAIRMAN FESMIRE: Okay. Now, when you went to
2 the courthouse and checked the county clerk's records, you
3 found out that you did not own the mineral rights?

4 THE WITNESS: Operating rights.

5 CHAIRMAN FESMIRE: Operating rights. Okay. And
6 what are operating rights?

7 THE WITNESS: What we were doing to work the
8 wells to have them produce, to go down and pump that well
9 to bring out the hydrocarbons that are -- The wells didn't
10 even go down to a thousand feet.

11 CHAIRMAN FESMIRE: How does that differ from a
12 working interest?

13 THE WITNESS: Sorry?

14 CHAIRMAN FESMIRE: How do the operating rights
15 differ from the --

16 THE WITNESS: Well, my rights that I have on it,
17 the bonds and the like that I have cover my operating
18 rights that I have. And my operating rights, I had 100
19 percent working interest from 1,000 feet to 2,455.

20 CHAIRMAN FESMIRE: Okay, but the question is,
21 how do the operating rights differ from the working
22 interest?

23 THE WITNESS: I don't know. I couldn't define
24 it, tell you what that difference is.

25 CHAIRMAN FESMIRE: Okay. Now, the well we

1 plugged that had the oil in the tanks you think, you have
2 no idea what happened to that oil?

3 THE WITNESS: Or the water.

4 CHAIRMAN FESMIRE: Or water, you have no idea
5 what happened to it?

6 THE WITNESS: It was sitting out there days
7 before. It was in a tank that was there. And until --
8 Sanchez says there was nothing in it, those tanks were
9 empty. Those tanks, when we purchased -- we acquired --
10 You see on our C-115, it shows there was something in
11 those tanks when we got them.

12 George had added more to those tanks, and those
13 two tanks were full. They were full. Because I was out
14 there to get them to pull the water off, so we were going
15 to go in and determine what we were going to do with that
16 well.

17 And what happened with the contents of that with
18 the plugging crew that was there? I assumed that they had
19 taken them off to a disposal facility. That's what I
20 assumed.

21 CHAIRMAN FESMIRE: Why would they take oil to a
22 disposal facility?

23 THE WITNESS: There was water also that came
24 off.

25 CHAIRMAN FESMIRE: Okay. Well, why would they

1 take the oil that was there to a disposal facility?

2 THE WITNESS: I may be using the wrong
3 terminology. They were taking it to dispose of -- to sell
4 it, to do whatever there was with it. I don't know what
5 they were going to be doing with it. I was told to stay
6 away from the -- stay off the lease. I wasn't out there
7 monitoring them.

8 CHAIRMAN FESMIRE: Okay. Let's talk about the
9 state well, the Schneider. You said it was capped, not
10 even functioning, didn't have a market, but it had
11 produced, hadn't it?

12 THE WITNESS: The well had produced before,
13 yeah.

14 CHAIRMAN FESMIRE: Do you know how much it had
15 produced?

16 THE WITNESS: No. I think it had dropped. From
17 the records that I saw, it had produced before.

18 CHAIRMAN FESMIRE: Did it produce gas?

19 THE WITNESS: Yeah, gas.

20 CHAIRMAN FESMIRE: It was a gas well?

21 THE WITNESS: Yeah.

22 CHAIRMAN FESMIRE: So it did have a gas sales
23 line somewhere?

24 THE WITNESS: It had it somewhere, but they
25 were -- I don't know what Matthews and those fellows,

1 where they were putting it before.

2 CHAIRMAN FESMIRE: Who is Daryl Finney?

3 THE WITNESS: Daryl Finney?

4 CHAIRMAN FESMIRE: Yeah.

5 THE WITNESS: Daryl Finney is a gentleman that
6 lives in Artesia. He's an operator. He has Finney Oil
7 and JDR, two companies, where he operates about, I don't
8 know, about 30 wells. And his lease is right adjacent to
9 mine. He was introduced to me by Chris Jeffries.

10 CHAIRMAN FESMIRE: Okay. This is going to be a
11 little bit redundant, but I too am interested in what you
12 meant when he said he shot it with water.

13 THE WITNESS: Oh. I think I used -- I think
14 George may be a little better -- What we did is, we went
15 over and -- They shot down about -- We were trying to load
16 test the thing to see if we could do a --

17 CHAIRMAN FESMIRE: What do you mean load test?

18 THE WITNESS: Well, he had a pressure -- I don't
19 know exactly what he was doing, okay? He brought a big
20 pumping unit over there -- not pumping unit, but water
21 unit with a pump on it, and he hooked up the -- the water
22 thing up to the side of it and --

23 CHAIRMAN FESMIRE: Was it a vacuum truck or --

24 THE WITNESS: It was just a water truck. We
25 were using the water when we were plugging the wells.

1 CHAIRMAN FESMIRE: Okay.

2 THE WITNESS: And when we finished there, he
3 came over and he said, "Let's see if we can get this well
4 in operation here." And so he came in and he hooked the
5 water up on it, built up the pressure --

6 CHAIRMAN FESMIRE: Did he hook up to the back
7 side or --

8 THE WITNESS: No, it's just a pumping unit, it's
9 a water pumping unit.

10 CHAIRMAN FESMIRE: Was the pump still in
11 the hole?

12 THE WITNESS: I'm sorry?

13 CHAIRMAN FESMIRE: I'm having a hard time
14 visualizing --

15 THE WITNESS: Nothing was removed at all from --
16 He hooked it right on with the pump jack --

17 CHAIRMAN FESMIRE: Okay, he hooked up to the
18 annulus?

19 THE WITNESS: He hooked up to the what?

20 CHAIRMAN FESMIRE: To the back side, to the
21 annulus.

22 THE WITNESS: I don't know what the terminology
23 is.

24 CHAIRMAN FESMIRE: He didn't hook up to the flow
25 line, did he?

1 THE WITNESS: No. No, he brought it to the --
2 it went right over the hole. As you're coming out of the
3 hole, the pipes, the pump jack there, the flow line was on
4 the other side. There was a flow line that was on the
5 other side, and on the other side there's like a "T." He
6 hooked on one side, cut the flow line off so that you
7 could shoot it --

8 CHAIRMAN FESMIRE: Okay, and there was a pump
9 jack on one side -- you just testified that there was a
10 pump jack on the --

11 THE WITNESS: There was a pump jack.

12 CHAIRMAN FESMIRE: And there were rods in the
13 hole?

14 THE WITNESS: Yeah. There was everything that
15 was in there.

16 CHAIRMAN FESMIRE: And I assume on the end of
17 the rods is a pump?

18 THE WITNESS: I assume -- I don't -- You guys
19 had pulled it there. I didn't think there was a pump
20 jack there pumping that, so...

21 CHAIRMAN FESMIRE: You were describing how he
22 shot it with water. Go ahead with the description.

23 THE WITNESS: What he did is, he built up
24 pressure on the water, and then he popped it and he shot
25 it through, he shot it -- to shoot it through on there.

1 And then it went on just about, what, 20 seconds on there.

2 And then he -- because he closed everything off,
3 opened up the value, and then sucked up there to see if he
4 could get the water up whatever he shot down there just to
5 see if he could get it going.

6 CHAIRMAN FESMIRE: So it started pumping?

7 THE WITNESS: Oh, yeah. The well did pump. It
8 pumped.

9 CHAIRMAN FESMIRE: So the well is actually
10 capable of producing as it sat there, it had power, it
11 had --

12 THE WITNESS: Well -- Yeah. What we had at
13 that time was -- and George can explain it to you, when he
14 went out to pump it later, we did get some water, and then
15 it just kind of went flat. But he'll be able to explain
16 it to you in more detail.

17 CHAIRMAN FESMIRE: Do you happen to know who
18 owns the operating rights in the Muncy wells?

19 THE WITNESS: Yeah. I was taking a look at that
20 with the federal things on there, and it's -- I think it's
21 HS, HS has the master of that lease on it. That's one
22 thing I could see on there. It's shallow.

23 Unless Jack Matthews had them and retained them
24 on there. I know that he retained -- Because we also
25 bought the Hasties wells from him. And he retained those

1 shallow rights on those Hasties wells on there. He only
2 gave me the deeper rights on those wells. But he retained
3 all that shallow rights.

4 CHAIRMAN FESMIRE: Okay. Let's talk about the
5 August 2008 Order individually. There are five ordering
6 paragraphs on there. The first one ordered you to plug
7 four wells; is that correct?

8 THE WITNESS: Is this August 14th?

9 CHAIRMAN FESMIRE: Yes.

10 THE WITNESS: Yes, sir.

11 CHAIRMAN FESMIRE: And it gave you until
12 September 14, 2008. Did you plug all those wells before
13 September 14, 2008?

14 THE WITNESS: I guess -- one of them I didn't
15 get done until the 16th. The other one, the Shilo, was
16 commenced on the 11th, and we could not --

17 CHAIRMAN FESMIRE: So the answer to that yes or
18 no question is almost, huh?

19 THE WITNESS: Close.

20 CHAIRMAN FESMIRE: Close.

21 THE WITNESS: We went and --

22 CHAIRMAN FESMIRE: But Ordering Paragraph No. 2
23 ordered you to do some stuff that you didn't do, right?

24 THE WITNESS: Paragraph 2?

25 CHAIRMAN FESMIRE: Yeah.

1 THE WITNESS: With regards to --

2 CHAIRMAN FESMIRE: For instance, did you plug
3 the Saunders well?

4 THE WITNESS: No, it was in production, it was
5 producing.

6 CHAIRMAN FESMIRE: The Order didn't say plug it
7 if it is not producing, the Order said that you would plug
8 that well by September --

9 THE WITNESS: Doesn't it say we have to bring
10 them into production or something on there, or issue a TA
11 or --

12 CHAIRMAN FESMIRE: Bring it into compliance.

13 THE WITNESS: Yeah.

14 CHAIRMAN FESMIRE: What about the Muncy Federal
15 No. 1, that's one of them that you didn't have the
16 operating rights so you ignored the Order.

17 THE WITNESS: No, I didn't ignore the Order, I
18 still have to work on it. We went to work on it.
19 That's what we did with the -- on the -- the Muncy No. 1,
20 there was nothing -- I couldn't do anything. Didn't have
21 a pump jack, we didn't know we were going to have to do a
22 lot of work on it, so we immediately went over to the
23 Muncy No. 2.

24 CHAIRMAN FESMIRE: Okay.

25 THE WITNESS: And that's when he lined it up and

1 that's the one Daryl Finney worked on.

2 CHAIRMAN FESMIRE: And what about the Schneider
3 No. 1?

4 THE WITNESS: The Schneider No. 1, no, that was
5 the one that was going -- at that depth -- we figured on
6 the depth on there to pull -- to do the work that we were
7 probably going to have to do with it and get a pump jack
8 and everything, it was going to run into --

9 CHAIRMAN FESMIRE: So you didn't comply with the
10 Order with respect to that one?

11 THE WITNESS: No, I did not.

12 CHAIRMAN FESMIRE: What about the Scott Federal
13 No. 1?

14 THE WITNESS: Scott Federal, yes, we --

15 CHAIRMAN FESMIRE: You did plug it or bring it
16 back into compliance?

17 THE WITNESS: We brought it back -- we got it so
18 it was producing, we hooked all the electrical on it. We
19 had it lined it up and it was pumping water. It sat there
20 because there was a lot of water in the hole.

21 CHAIRMAN FESMIRE: Okay. And what's it making
22 now?

23 THE WITNESS: It's plugged.

24 CHAIRMAN FESMIRE: Okay. And did you file true
25 an accurate forms electronically on Form C-115 for all of

1 your wells for all of the months from January through May
2 2008?

3 THE WITNESS: From when?

4 CHAIRMAN FESMIRE: According to the Order, from
5 January 2008 through and including May 2008.

6 THE WITNESS: At the time when I had filed the
7 ones on May -- March 25, yeah, I -- to the best of my
8 knowledge at that time, it was true and accurate on March
9 25th.

10 CHAIRMAN FESMIRE: Okay, but they weren't true
11 and accurate, right?

12 THE WITNESS: They weren't true and accurate?
13 There were a few numbers that were off on the -- as I say,
14 with the -- just the addition stuff that was on there.
15 But, yeah, they were true and accurate.

16 CHAIRMAN FESMIRE: Commissioner?

17 COMMISSIONER OLSON: But you say you filed them
18 by March of 2009, correct?

19 THE WITNESS: Yeah, 2009.

20 COMMISSIONER OLSON: So you didn't file them by
21 September 14th of 2008?

22 THE WITNESS: No.

23 CHAIRMAN FESMIRE: So you didn't comply with the
24 Order?

25 THE WITNESS: No. I couldn't file all -- it

1 says all -- for all wells, but I can't get it into your
2 system.

3 CHAIRMAN FESMIRE: Okay, but the question is,
4 you did not comply with the Order; is that correct?

5 THE WITNESS: No, I couldn't file true and
6 accurate statements at that time, I was not capable of it.

7 CHAIRMAN FESMIRE: Okay now, the Order says that
8 the Division may proceed to plug and abandon and/or all of
9 C&D Management's wells; is that correct?

10 THE WITNESS: Okay.

11 CHAIRMAN FESMIRE: So if you didn't comply with
12 the Order, you were subject to that penalty; is that
13 correct?

14 THE WITNESS: If that's what it says, yeah.

15 CHAIRMAN FESMIRE: And it also ordered you to
16 pay an assessed penalty which you did or didn't pay?

17 THE WITNESS: The assessed penalty of \$5,000?

18 CHAIRMAN FESMIRE: It says \$16,000.

19 THE WITNESS: \$16,000? That was a penalty that
20 was -- I think because of the Marbob case, or whatever,
21 that's been dismissed or whatever.

22 CHAIRMAN FESMIRE: Who told you that?

23 THE WITNESS: Legal counsel.

24 CHAIRMAN FESMIRE: Okay, so your counsel advised
25 you not to pay that?

1 THE WITNESS: Because you had a hearing that was
2 on it. So I didn't have to pay it because of the Supreme
3 Court case.

4 CHAIRMAN FESMIRE: Okay. But you were ordered
5 to pay that prior to September 15th, 2008. Do you know
6 when the Supreme Court decisions was?

7 THE WITNESS: Yeah, it was in March.

8 CHAIRMAN FESMIRE: Of what year?

9 THE WITNESS: This year.

10 CHAIRMAN FESMIRE: Okay. So it wasn't prior to
11 September 15, 2008?

12 THE WITNESS: Sorry?

13 CHAIRMAN FESMIRE: So it wasn't prior to
14 September 15, 2008?

15 THE WITNESS: You're asking me to pay something
16 that potentially --

17 CHAIRMAN FESMIRE: No, I'm asking you if you
18 complied with the Order, sir, and you did not comply with
19 the Order, did you?

20 THE WITNESS: Not with that portion, no.

21 CHAIRMAN FESMIRE: Okay. And so you got on your
22 crystal ball and found out that the Supreme Court would
23 make its ruling and failed to pay that based on your view
24 of the future?

25 THE WITNESS: I don't think that's a right --

1 What, I get out a crystal ball --

2 CHAIRMAN FESMIRE: You did not -- Okay, then
3 answer this question.

4 THE WITNESS: I did not get out a crystal ball
5 and I did not look at the thing as --

6 CHAIRMAN FESMIRE: Then answer this question.
7 On September 15, 2008, was this a lawful order?

8 THE WITNESS: Was that a lawful order?

9 CHAIRMAN FESMIRE: Was this a lawful order?

10 THE WITNESS: I don't know because -- I can't
11 answer you on that.

12 CHAIRMAN FESMIRE: On or before 5:00 p.m. on
13 September 15, 2008, did you pay the \$16,000 penalty?

14 THE WITNESS: No, I did not.

15 CHAIRMAN FESMIRE: Now, you said something that
16 was a little bit curious. You said for the five wells
17 that were plugged, that you had some issues about being
18 called the operator of record; why is that?

19 THE WITNESS: Oh, that had to do with the five
20 wells -- had to do with the two wells -- the Muncies.

21 CHAIRMAN FESMIRE: Okay. And that's the same
22 problem that we were talking about, the separation of --

23 THE WITNESS: Yes. I remember, yeah, that had
24 to do with the Muncies.

25 CHAIRMAN FESMIRE: Okay. Now, you said you've

1 been affiliated with C&D since 2007 -- or you've been the
2 owner of C&D since 2007; is that correct?

3 THE WITNESS: Yeah, about.

4 CHAIRMAN FESMIRE: How long have you been
5 affiliated with C&D?

6 THE WITNESS: Before that?

7 CHAIRMAN FESMIRE: Yes.

8 THE WITNESS: I knew Chris and those guys before
9 that period of time.

10 CHAIRMAN FESMIRE: Did you have an interest in
11 the company before that period?

12 THE WITNESS: No.

13 CHAIRMAN FESMIRE: Before 2007, you had no
14 financial interest or no ownership interest in C&D --

15 THE WITNESS: I didn't have any ownership
16 interest, no.

17 CHAIRMAN FESMIRE: Okay. Did you have an
18 employment-type interest with C&D?

19 THE WITNESS: No. I didn't work with anyone for
20 that.

21 CHAIRMAN FESMIRE: I get the idea that you're
22 not telling me everything I'm asking. Were you -- did you
23 have any business with C&D before 2007 when you acquired
24 the ownership interest?

25 THE WITNESS: Well, when I came out, what we did

1 was -- and this is the same thing I testified to you guys
2 when, what, back in July was, I was taking some time to
3 try to learn what was going on with what was -- what was
4 C&D. And then we had started a payment program at that
5 time. But I didn't take ownership of it.

6 CHAIRMAN FESMIRE: Okay, you had started a
7 payment program?

8 THE WITNESS: Well, I paid them a down payment
9 to hold -- you know --

10 CHAIRMAN FESMIRE: When did you make that down
11 payment?

12 THE WITNESS: I don't recall.

13 CHAIRMAN FESMIRE: Was it years ahead of 2007
14 or --

15 THE WITNESS: No, it was months, maybe six
16 months.

17 CHAIRMAN FESMIRE: As far back as 2006, perhaps?

18 THE WITNESS: Sorry?

19 CHAIRMAN FESMIRE: As far back as 2006?

20 THE WITNESS: No, I don't think it was that --
21 I'm not sure. I don't recall.

22 CHAIRMAN FESMIRE: I've got no further
23 questions. Why don't we go ahead and take a ten minute
24 break and we'll reconvene at 3:15.

25 (Note: A break was taken.)

1 CHAIRMAN FESMIRE: The record should reflect
2 that we've returned from break, that we're still in Case
3 No. 14055. The record should also reflect that all three
4 commissioners are present, we therefore have a quorum.
5 And I believe we were finishing up the cross-examination
6 of Mr. Kizer by Mr. Swazo; is that correct?

7 MR. SWAZO: Yes.

8 RECROSS-EXAMINATION

9 BY MR. SWAZO:

10 Q. Mr. Kizer, in Ordering Paragraph No. 2, the last
11 sentence states:

12 "No well shall be deemed in
13 compliance with Rule 19-15-4-201 NMAC
14 or this Order until C&D Management Company
15 shall have filed true and accurate pro-
16 duction reports Form C-115 with the
17 Division with respect to such well for
18 all months for which such reports are due."

19 MR. PADILLA: What exhibit is that?

20 MR. SWAZO: That's Exhibit 94.

21 Q. Ordering Paragraph No. 2 on Page 7, last
22 sentence.

23 A. And you're starting --

24 Q. It lists the two Muncy wells, the Saunders, the
25 Schneider, the Scott Federal, the sentence immediately

1 before that.

2 A. "No well shall be deemed"?

3 Q. Right.

4 A. Uh-huh.

5 Q. So, in order for a well to be in compliance with
6 this Order and also with Rule 201, C&D Management had to
7 file true and accurate production reports, C-115s, by
8 September 14, 2008, right?

9 A. Correct.

10 Q. And so you said that some of these wells were
11 producing, but none of the C-115s were filed by
12 September 14, 2008, were they?

13 A. I couldn't. I couldn't file them.

14 Q. Did you try?

15 A. We tried to get the thing --

16 Q. When did you try?

17 A. It was back -- it had to be back in -- when we
18 originally got the things in there. We couldn't put the
19 Saunders in because I hadn't got the information on the
20 wells to determine which ones went to the Saunders.

21 On the other wells that are here, the Muncy
22 wasn't producing, so there wasn't anything there. The
23 Muncy 2 wasn't producing. The Schneider 1 wasn't
24 producing. And the Scott had just gone into production
25 here lately.

1 So on that Order for that day by September 14th,
2 I think we were only running the thing for maybe a day,
3 you know, a few days -- on the Scott. I mean, we just
4 came right under that time period there on the 14th on the
5 Scott, and on the Saunders, we had not yet determined what
6 the allocations were for that well on that. I was trying
7 to get the DCP to come out and put a darned meter on it.

8 CHAIRMAN FESMIRE: Mr. Swazo, I think between
9 the two of us, we may have beaten this subject to death.

10 MR. SWAZO: I just have one other question
11 related to this.

12 Q. So your testimony is that you tried to file
13 C-115s with the OCD for these wells prior to September 14,
14 2008?

15 A. Yeah.

16 Q. Okay.

17 A. Prior to what date?

18 Q. September 14, 2008.

19 A. No, not before two thousand -- No. No, I
20 couldn't get -- I only informed the BLM in August that we
21 were putting that -- we were going to have to get a meter
22 on. So no, it wasn't until sometime in, I believe January
23 or something, in 2009. Because I didn't have any -- I
24 didn't have any way to determine which -- what the wells
25 were doing -- what the Saunders was, I had no way to

1 calibrate it on there.

2 Q. And you testified that you plugged a well that
3 didn't appear in your records as being owned by C&D
4 Management?

5 A. Right.

6 Q. And so you paid the expenses for plugging that
7 well?

8 A. Yes.

9 Q. And didn't you testify at the July 30, 2008
10 hearing that you had the resources to get the job done?

11 A. When is that?

12 Q. July 30, 2008.

13 A. Yeah.

14 Q. And didn't you testify that, "I will get the job
15 done for you fellows here. I'll get the job done. We'll
16 have it done. I've never told you people I was going to
17 do something and not do it." Isn't that what you
18 testified?

19 A. And we went out to -- and we went out to go do
20 it. And then we ran into the escalating costs on that --
21 on the one well, and I took on one well that I shouldn't
22 have that was there, and it left me with the Muncies and
23 the Schneider that were there on there.

24 And what we did was, we ran -- we started
25 working on some of the other wells, and we used up the

1 funds that were available on there, because we -- the
2 Schneider was going to take a lot of money to do all the
3 work with -- to get that well into operation.

4 And then -- That was in September. You know
5 what happened in September? All the banks -- everybody
6 went kaput. You know. By March we were down to \$38 oil.
7 The capital sources and bank lines of credit, they didn't
8 extend any credit with it. The fellows that I had that
9 were coming in with the additional capital, they decided
10 to wait until the price of oil somewhat stabilized. But
11 it kept declining on there.

12 And then it got worse towards December. In
13 January -- in February, we decided to come back around and
14 let's go back to work on it and let's get things back in
15 order. We felt comfortable enough with the economic
16 climate to do it.

17 Q. Right now you're seeking APDs for five
18 additional wells?

19 A. Yes, sir.

20 Q. And that would involve drilling costs, as well?

21 A. Yes, it does.

22 Q. And you had testified that you had issues with
23 being considered the operator of record with regard to the
24 two Muncy wells?

25 A. Yeah. That's what we've been discussing before.

1 Q. What were your issues?

2 MR. PADILLA: Asked and answered, Mr. Chairman.
3 I think we've gone over this many times.

4 CHAIRMAN FESMIRE: Sustained.

5 Q. Did you ever seek counsel to try to rectify your
6 issues with being the operator of record for those two
7 wells?

8 A. We were going to meet -- You said we would in
9 April. I was going to address it with you folks on there.
10 And then -- I don't know how you're going to rule on it,
11 whether you're going to go after the fellows that actually
12 have the rights that have the upper -- the upper rights on
13 that. That's their operating rights up there on their
14 well that was there. They're going to assign it -- you
15 know, have me be responsible for it, and I have to go
16 after them.

17 Q. And when did you start having these issues?

18 A. Sorry?

19 Q. When did you start having issues with the
20 ownership of -- C&D Management's ownership of the Muncy
21 wells?

22 A. Well, when I learned that it was the well that I
23 had that had the 100 percent operating rights from 1,000
24 to 2,400 there and the well was only 420 feet.

25 Q. When was that?

1 A. When they plugged it.

2 Q. And so you didn't bring that to the attention of
3 the Commission? Because that would have been part of the
4 Order that they issued.

5 A. When? I just knew in April -- they plugged it
6 April 7th.

7 Q. And so let me get this correct. All those
8 records over there are -- those are all the records that
9 you have for all the production that you have for C&D
10 Management's wells, those are all the records related to
11 the production?

12 A. No. I have other stuff that's at home. Yeah, I
13 have a lot of records there.

14 Q. But you had in your possession all the records
15 that you need to file the C-115s; is that correct?

16 A. For the back ones? Or for all the --

17 Q. For all the C-115s that you're saying are
18 inaccurate.

19 A. Yeah.

20 MR. SWAZO: I have no other questions.

21 CHAIRMAN FESMIRE: Mr. Padilla, anything else?

22 MR. PADILLA: Yes.

23 CHAIRMAN FESMIRE: On the subject we've been
24 discussing.

25 MR. PADILLA: Well, on the questions that you

1 asked.

2 CHAIRMAN FESMIRE: Anything that's come up since
3 the last time you had a chance to ask.

4 MR. PADILLA: One question.

5 CHAIRMAN FESMIRE: Okay.

6 REDIRECT EXAMINATION

7 BY MR. PADILLA:

8 Q. Mr. Kizer, did the BLM ever tell you that any of
9 the federal wells were not capable of production?

10 A. No.

11 MR. PADILLA: That's all I have.

12 CHAIRMAN FESMIRE: Anything else from the
13 Commission?

14 COMMISSIONER BAILEY: Is it the practice of the
15 BLM to inform operators that their wells are not capable
16 of production?

17 THE WITNESS: I don't know. I don't know what
18 their practice is.

19 COMMISSIONER BAILEY: That's all I have.

20 COMMISSIONER OLSON: No questions.

21 CHAIRMAN FESMIRE: With that, I think we're done
22 with Mr. Kizer for the time being. Mr. Padilla, you had
23 another witness?

24 MR. PADILLA: I'd call George Shipley to the
25 stand.

1 GEORGE SHIPLEY,
2 the witness herein, after first being duly sworn
3 upon his oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PADILLA:

6 Q. Would you please state your full name?

7 A. George Lee Shipley.

8 Q. Where do you live?

9 A. Artesia, New Mexico.

10 Q. What do you do for a living?

11 A. I got my own pumping service, S&S Pumping
12 Service.

13 Q. Do you do work for C&D Management?

14 A. Yes, sir.

15 Q. Since when have you done work for C&D
16 Management?

17 A. Starting in September '08 to January 5th, and
18 April 4th to today.

19 Q. Okay. And how long have you been pumping wells?

20 A. Since 2003. I started with Lopium Oil.

21 Q. And what else -- what other -- do you just pump
22 wells or do you do other things out in the oil fields?

23 A. No, sir. When I first started, I was an
24 electrician, journeyman electrician. I was wiring up
25 jacks and then doing all the electrical work.

1 And then the company got in a bind, so they was
2 needing pumpers, and I said, "Well, hey, I can do it," you
3 know. I knew how to pressure up wells and pump and make
4 them pump. My wife's a pumper too. My son's a pumper
5 and -- I started pumping wells for them when people needed
6 days off, and do the electrical work too.

7 Q. Do you do pumping work out there on wells?

8 A. Yes, sir.

9 Q. And how much of your work is related to pumping
10 and doing other things?

11 A. How much of it?

12 Q. Yeah. I mean, do you --

13 A. Well, basically, Tri-Tech Energy right now uses
14 me to troubleshoot their wells, help them getting them
15 going. If a pumper has problems, they call me and ask me
16 if I would come and check their wells out, troubleshoot it
17 for them. I do -- you know, I change out check valves,
18 pump valves, I mean, whatever it takes to make the wells
19 pump.

20 Q. And what else is involved in troubleshooting the
21 wells?

22 A. Troubleshooting? Well, there's a lot of things.
23 Finding your fluid level, your pump accuracy. Is your
24 pumps pumping? You know, load testing your well. You got
25 to load your tubing up, pressure up on it. Stop your

1 jack, see if it's holding pressure. If it starts bleeding
2 off, you know you got a hole in your tubing, or you got to
3 check valve bypass it. And so then -- you know, you got
4 to diagnose it down to what's causing your problem.

5 And that's like on his wells, a lot of them
6 just --

7 Q. When you say "his wells," what are you -- do you
8 mean Mr. Kizer's wells?

9 A. Yes, sir.

10 Q. C&D Management's wells?

11 A. Yes, sir.

12 Q. Can you tell us which wells of C&D Management's
13 you've worked on?

14 A. I've worked on Hasties 16, Hasties 17, Hasties
15 18, all the Hasties, 19, 20, 21. Scott Federal 1, Muncy
16 Federal 2, Amoco 1. I think that's it.

17 Q. What kind of work did you do on the Amoco No. 1
18 well?

19 A. Well, someone had run a wire to it across the
20 ground. They buried a lot of it. But what they done,
21 they run a big type cable, and then they went too small a
22 cable, and then back up, and I had to dig all of it up.
23 It was a quarter of a mile, but I had to dig and find
24 where that small link fuse was, dig it all out, add new
25 wire. Had a bad coil on it --

1 Q. When you're talking about wire, you're talking
2 about what kind of wire?

3 A. Well, it had a three horsepower motor, so it was
4 pulling --

5 Q. You're talking about electrical wire; is that
6 right?

7 A. Yes, sir, conductor wire.

8 Q. All right. Go on.

9 A. Okay. Well, what I did, I went to the jack, had
10 three horsepower motor pulling about five amps. So you
11 calibrate what size wire you need. And then you measure
12 your distance, get the size of wire, and that's what --
13 They started out right, and I guess someone run out of
14 money or just -- you do something else, you know, it's
15 wire. So they put too small wire in.

16 Q. Were you involved -- You've been here throughout
17 the hearing today, right?

18 A. Yes, sir.

19 Q. And you heard testimony relating to the
20 allocation of production between the Saunders Federal well
21 and the Amoco No. 1?

22 A. Yes.

23 Q. All right. Were you involved in trying to
24 determine how much production was coming out of each well?

25 A. Yes, sir. And I --

1 Q. How did you do that?

2 A. Well, he had -- Before I got started pumping it,
3 there was some Jolly graph chart put in there. And the
4 Saunders had a Jolly graph chart coming off of that well.
5 The Muncy had -- or the Amoco had one coming off it.

6 And in doing it, they went to the Muncy -- or
7 Amoco sale line, which what I did, I went to the chart --
8 I've never used those types of charts. So I went, took it
9 to Wildcat -- it was their meters, and they showed me how
10 to read the charts.

11 Well, you can get, you know, kind of one reading
12 on one and -- you know, it's a hard -- fine line, you can
13 go in between them, you know. And the way I come out with
14 it, what they was doing at the time, it was about 16 MCF a
15 day. Well, when your line pressure went up, it'd go down
16 to 14. Because line pressure totes you out on your small
17 gas wells like that.

18 And what I do, I measured it out -- And I was in
19 doubt, because I come up with like 4, 5 MCF on it, and
20 then this one a little more, but the next day I'd come up
21 more on the Saunders.

22 So I took it to Wildcat and I told them, you
23 know, "How do you do this and make it correct?" Because I
24 was told he needs to know --

25 Q. What's Wildcat?

1 A. It's Wildcat Measurement in Artesia, New Mexico.

2 Q. And they were helping you do that?

3 A. Yes, sir. It was their equipment. I think Tom
4 had rented it from them. And I went down there and I
5 quizzed them on it, because I wanted to know. Because I'm
6 pumping the wells and he needed the answer. So. And
7 that's what they told me.

8 Q. Did you reach the conclusion at some point that
9 the Saunders Federal well was productive in gas?

10 A. Oh, yes, sir, it was definitely productive in
11 gas. I could say -- my word -- that it was doing from 5
12 to 8 MCFs a day. And I almost had it pinpointed down
13 to -- you know, 5 a day, and this one was doing, you know,
14 11, or this one was -- The Saunders would do 8 and 9, and
15 then it would do, you know, 7 or 8. It was pretty close --
16 almost 50/50, but it wasn't. The Saunders was a little
17 weaker than the Muncy.

18 Q. Were there any plans to increase the production
19 in that well through compression or anything like that?

20 A. Well, on the Saunders, you didn't have no jacks,
21 but on the Amoco, you had a jack. And it was, again, just
22 like the Muncy well, they run the cable wrong. And I had
23 to go and trace it all out and get it -- you know, sized
24 up where it would run the jack.

25 Q. When you say jack, I don't understand that.

1 A. The pump jack.

2 Q. The pump jack?

3 A. The pumping unit, yes.

4 Q. And the Amoco was a gas well?

5 A. Well, it produced water, too, it would pump
6 water. That's what I told Tom, "You get your water
7 pumping off, sometimes your gas can come back more."

8 And the thing is -- and then it would quit
9 pumping on me. I'd load and test it and I'd come up with
10 salt, it was salting up. So then, you can hot water it,
11 fresh water it, you know, clean the well out, get the salt
12 loose and the gas would come through.

13 Sometimes the hot water, it kept going back into
14 the formations, and sometimes it will swell up and choke
15 you out. But then after two or three weeks, then it
16 converts right back, you know.

17 Q. Can you tell us about Mr. Kizer's knowledge of
18 all this kind of stuff that you're talking about?

19 CHAIRMAN FESMIRE: Do we need to?

20 A. To be honest, he doesn't know much. I'll be
21 honest with you.

22 Q. Does he know anything about what you're talking
23 about in terms of --

24 MR. SWAZO: I'm going to object, because he's
25 talking about Mr. Kizer's state of mind. I don't know how

1 he can --

2 CHAIRMAN FESMIRE: I think he's, you know, an
3 experienced oil field man. He's been around Mr. Kizer.
4 So I think he can -- I'll overrule the objection.

5 A. Like I say, it blew me away the first time I met
6 him. I'm loading up a -- I'm pressuring up on a well, I'm
7 greasing my pipe, and he immediately, "What are you
8 doing?" I said, "Well, you got to grease your well, for
9 one thing, or your packing will dry out and you'll have a
10 mess. Or you'll loose your gas, your MCF will fall down.
11 So you pressure up on it to see what the well is doing."

12 You can time a well out. And every well is
13 different. Just like these people in the room. You're
14 different, you're difficult, everybody's different. And
15 you got to figure out what the well can do. There's
16 potential, you know, to get it -- Some wells can pump 15
17 minutes and give you everything they can. Some can pump
18 one hour, off four hours -- you know, you just got to
19 figure out the personality of the wells. And that's what
20 I was trying to do, figure out what --

21 But then I got into problems -- They had -- and
22 I didn't know it at the time, someone had a compressor
23 there, and that's when he was talking about Larry had a
24 compressor there, and I didn't know that they'd burned it
25 up and moved it and burned another one.

1 But that's when I came -- When I got back out
2 there in April, I went to walking the line. I said, "This
3 ain't right." And what they've done, they'd tied gas
4 lines into oil lines. And so I went and separated
5 everything out, got all their gases, all their oils -- And
6 that way the compressor -- and then when I was in the
7 process of doing that, they had moved the compressor from
8 one location to another location.

9 Q. Now, you're talking about the Hasties wells or
10 which wells?

11 A. Yes, the Hasties wells. And when they done
12 that, they forgot when they moved the compressor up, these
13 wells over here that's bringing gas this way, they're
14 wells going up, and then coming down.

15 Well, they forgot about it when they moved the
16 compressor up here to change their check valves. So,
17 these three wells over here, 16, 17, and 18, never could
18 sell gas because their -- you know --

19 CHAIRMAN FESMIRE: Nobody gets the check valve?

20 A. And there was a lot of stupidity. I mean, I
21 ain't saying it on nobody, I'm not going to say who done
22 it, but before I pumped his, I was pumping 272 wells. I
23 had four employees. I was making 30,000 a month, and then
24 I broke the contract with them because -- kind of like,
25 you know, people don't like to listen to people, they

1 think they know more. And I felt like that I pumped these
2 wells five years, I know what they're doing, and -- So I
3 just broke the contract and that's when I picked up Tom's
4 lease and --

5 Q. Now, Mr. Kizer testified that on the Hasties
6 wells, you increased the production of those wells?

7 A. Yes.

8 Q. How much did you increase the production?

9 A. Well, in April when I went back out there, they
10 was doing 3 to 4 MCFs a day. The first week after I
11 changed the check valves and got the pressure right, I was
12 doing 44 to 50. But after a week, like he was saying,
13 they would drop down. And it did. And I've been
14 maintaining them at 28 plus -- I'd say 26 to 28 the last
15 month or two.

16 The last -- At the end of July, I did have a
17 couple of down days, low production, but it's because my
18 compression was down. We had some rain, lightning, broken
19 compressor, I had to fix it.

20 When the compressor is down, the way the system
21 is hooked up, then you're working on gas. Well, you're
22 free folding -- just like with you garden hose out here,
23 it just runs out. Well, because the pressure has been so
24 strong lately -- because that day it wouldn't let it bust
25 it, you know, because it -- All the other wells, the wells

1 had to the pressure up to at least 80 pounds to bust their
2 line pressure. And it didn't do it.

3 And I phoned him the next day, kind of got it
4 fixed and everything, I had to tap and drill out the
5 casing, run it a bit, because the gas inside the
6 compressor was locking it up. And I had to prevent that
7 to get it pressured back to stay running again. But as of
8 right now, it should do at least 28 MCF a day.

9 Q. From all the wells?

10 A. From the six wells, the Hasties wells.

11 Q. How much oil are you getting from those?

12 A. Right now, on the Hasties 16, 17, 18 -- When I
13 first got them going, the pump changed out on 16, I was
14 doing 4 to 8 barrels a day. But it's dropped down to --
15 right now I'm doing about 3, 3 1/4 a day. But if I run
16 hot water, I can get it to pump back up right now. So I
17 got a lot of paraffin problems in those wells.

18 Now, the 19, 20, and 21 has never produced oil
19 that I know of. But I've got the 20 -- it's doing about 4
20 barrels a day now. I've got it pumping.

21 Because everyone told me there wasn't nothing --
22 them three wells wouldn't -- I like trying to do something
23 that they tell me it can't, you know. And it is making
24 production.

25 Q. Now, what kind of equipment is on these wells?

1 A. What kind of equipment?

2 Q. Yeah. Pump jacks or --

3 A. Yes, sir, pump jacks.

4 Q. All of them have pump jacks?

5 A. Yes. All of them except the Schneider, and the
6 Saunders, they're plugged. And --

7 Q. We're talking about the Hasties wells.

8 CHAIRMAN FESMIRE: Wait a minute, he just said
9 something. The Saunders doesn't have a pump jack and the
10 Schneider is plugged?

11 THE WITNESS: The Saunders, they plugged it, and
12 the Schneider is plugged.

13 CHAIRMAN FESMIRE: Okay.

14 THE WITNESS: They plugged both of those, yes.
15 The Schneider never had a pump jack -- or the Schneider
16 had a pump jack setting over there, a unit, but it wasn't
17 on the well. It wasn't on the well, because they wasn't
18 running it. Because they had a water tank, and I think
19 two oil tanks, a small separator there. I know there was
20 one fairly good pump jack they could be using. And I
21 think there was a frame there, too, of a pump jack. I
22 won't swear to that, but I'm pretty sure it was a frame.

23 Q. So let's go back and let me ask you
24 specifically, what kind of equipment was on the Saunders
25 well?

1 A. On the Sanders? It's just -- you know, you got
2 your well head and then your T, and this is running --
3 What it is, it's running, really, basically, poly pipe,
4 two inch poly pipe to the check valve. Then it runs
5 through the meter and then comes out the meter and then
6 runs over to the Amoco well, run right behind it. And
7 then at the Amoco well -- get's to the Amoco well, comes
8 out into its meter. Then they tied it together on the
9 other side of it, and then it's into the Muncy Federal.

10 Q. Okay.

11 CHAIRMAN FESMIRE: Wait a minute. It's on the
12 back side -- I mean, on the downstream side of the sales
13 meter at the Amoco well?

14 THE WITNESS: No, no. See, they had some Jolly
15 graph -- had a Jolly graph chart on the Saunders and a
16 Jolly graph chart on the Amoco. The Saunders is down
17 here, and it run up, and it run -- well, it went behind
18 the jack -- I mean, the jack -- the pumping unit. And
19 then where it come off the two inch on the well, on the
20 Amoco, it had a Jolly graph chart and it T'ed right there.
21 And then it went --

22 CHAIRMAN FESMIRE: So the Amoco Federal was not
23 measuring the gas from the Schneider -- I mean, from
24 the --

25 THE WITNESS: No, no. They had separate meters

1 -- Jolly graph charts. They only had one sale meter.

2 CHAIRMAN FESMIRE: Okay, well, let's get this
3 clear. The well that we plugged, the Saunders --

4 THE WITNESS: Yes.

5 CHAIRMAN FESMIRE: Okay, that's the well we're
6 talking about.

7 THE WITNESS: Yes, sir.

8 CHAIRMAN FESMIRE: And it came through its
9 meter --

10 THE WITNESS: Yes, sir.

11 CHAIRMAN FESMIRE: -- and then tied into the
12 sales line downstream of the Amoco Federal meter?

13 THE WITNESS: Yes.

14 CHAIRMAN FESMIRE: So it wasn't being measured
15 by the Amoco Federal meter?

16 THE WITNESS: Not the Jolly graph charts, it was
17 -- Actually, the Muncy meter both were being sold through
18 -- Isn't that right, wasn't the Muncy --

19 CHAIRMAN FESMIRE: No, no, you're answering the
20 questions here. So it was not going through the Amoco
21 Federal meter like we were led to believe?

22 THE WITNESS: Well, see, I get confused on that,
23 because the Amoco -- The Muncy battery -- The meter is
24 right by it. So yeah, it was the Amoco meter that -- it
25 was going through the Amoco meter. Because the Muncy

1 never sold gas. That's right, yes.

2 CHAIRMAN FESMIRE: But if it tied in downstream,
3 how was it going through the meter?

4 THE WITNESS: Well, see, that's what I'm saying,
5 then they both went to the meter.

6 CHAIRMAN FESMIRE: They went to the Muncy meter
7 where it was being sold through the Muncy meter?

8 THE WITNESS: See, he had a check valve on it so
9 it couldn't back up. And that's what I got, I got the
10 charts on both of them. I can tell you how much each one
11 was running.

12 CHAIRMAN FESMIRE: So they weren't integrating
13 and selling by the Amoco chart or the Schneider -- not
14 Schneider, Saunders chart, neither one of those charts
15 were being integrated?

16 THE WITNESS: No.

17 CHAIRMAN FESMIRE: So it was all going out to
18 the Muncy meter?

19 THE WITNESS: It was all going out -- The Amoco
20 had its own meter, and it went to the -- what I call the
21 Muncy sale meter, because before we called it the Amoco
22 line.

23 CHAIRMAN FESMIRE: Okay. Are there any other
24 wells going through the Muncy sales meter?

25 THE WITNESS: No, just them two. See, the

1 Muncy, they didn't have no gas lines on them, and they
2 didn't even have flow lines, they'd been busted or rotted
3 out and -- Because I had to put a line on Muncy No. 2 to
4 get it over there just to see if I could make it pump.

5 CHAIRMAN FESMIRE: So the sales point was not
6 at -- I'm just being clear here, the sales point was not
7 at the Amoco meter, it was at the Muncy meter?

8 THE WITNESS: Actually on the Muncy meter. I'm
9 pretty sure that's where that -- Because if I remember
10 right, that's what it said on the lease, the Muncy.

11 CHAIRMAN FESMIRE: Okay.

12 THE WITNESS: That's what I'm trying to remember
13 in my mind, because I know -- it always confused me --
14 well, it's coming off here, it's coming off here. So I
15 walked all the lines out and identified them, know where
16 they come from, which is oil, which is gas, so I would
17 know, you know -- because I got told it was it and it
18 wasn't, you know. So I just followed them all out.

19 And they said they had the Jolly graph charts on
20 the Saunders and it was running a flow line up past the
21 Amoco well. And the Amoco come out, it's got a chart
22 right there, a Jolly graph chart, it came out, it came
23 together, and went to the -- due south.

24 CHAIRMAN FESMIRE: Okay, so you were changing
25 both of these charts every eight dates, right?

1 THE WITNESS: Yes, sir.

2 CHAIRMAN FESMIRE: Why?

3 THE WITNESS: So I could figure out which -- how
4 much -- does Tom know -- he needs to know what --

5 CHAIRMAN FESMIRE: But they were never
6 integrated, you said. They were never calculated, you
7 didn't take them down to Wildcat and get them to calculate
8 them, did you?

9 THE WITNESS: They showed me how.

10 CHAIRMAN FESMIRE: So we actually had a good
11 number to make a real allocation on before we did this
12 business about shutting one in and then --

13 THE WITNESS: Yes.

14 CHAIRMAN FESMIRE: Okay.

15 Q. What equipment was on the Scott Federal well?

16 A. Now, the Scott Federal, it had a pumping jack
17 unit on it, and it had an oil tank, and it had a water
18 tank. And when I got there, you could see before someone
19 had sold gas on it, and it had been years ago. But that
20 was all busted. So I changed it out. It had power
21 lines -- or power cable running on the ground. It was
22 chewed up by the rats and stuff. I fixed it. I think I
23 put a holding pull and a starter. I got the well to run.
24 I pressured up on one, patched up two strokes, two fifty,
25 so I shut it off because the separator was leaking and I

1 had to bypass it.

2 I went and threw the fluid into the tank just
3 so, you know, I could get it pumping. I pumped it, I
4 filled the tank totally up. I bled it down into the water
5 tank, filled the water tank totally, pumped it, filled the
6 oil tank again, shut the unit off because I had no place
7 to put the fluids.

8 But I made probably a quarter -- Because I was
9 starting to get cut off on it. Because I got eight ounce
10 jars I keep, and when I take a cut of the sample, I
11 close my -- open my two inch -- my one inch -- I got a
12 hose. I hooked it to it and I ran it back to the casing.
13 I opened it, let the fluid go through it, dumped some of
14 the casing. I closed it, take it loose, catch a sample,
15 shut it, and then, you know, send it back down.

16 But I leave it there and let it sit, and then by
17 the next day I can kind of see if I'm getting a cut of oil
18 on it, what it's going to do, and it was starting to get a
19 cut. But I sold one load of water -- or had one load of
20 water hauled off, filled the tank back up.

21 And then that's when kind of financial problems,
22 I guess, happened, and I had to shut it down because it
23 was pulling fluids on it.

24 CHAIRMAN FESMIRE: For as long as you pumped it,
25 you never sold any oil off of it, though?

1 THE WITNESS: No, sir, I never sold no oil. But
2 that was the thing, I was trying -- I think the well
3 really has potential, because it was pumping water. And I
4 didn't know at the time it had been sitting there for a
5 year -- or two years, you know, I didn't know. I could
6 tell by looking at it, you know, that it had been
7 neglected.

8 And that's when I thought, you know, well, maybe
9 I got a chance here too. Because I have got one of the
10 Hasties wells doing -- pumping the oil that they say it
11 won't. And I got the production reports too, if you guys
12 don't believe me, but I got them.

13 Q. Mr. Shipley, in your opinion, based on what you
14 saw and how you worked the -- reworked that well, was that
15 well capable of production?

16 A. I believe, honestly, yes. I believe it was
17 capable. Because that's the thing, if I could have got
18 the water pumped off it, then I would know, you know --
19 You got to get the water off it before you go to your oil.
20 And once I could have done that -- It was getting a little
21 bit of cut, but it was a lot like paraffin, too, you know.
22 But once I could have got it pumped out, I could have
23 maybe fresh watered it, you know, hot watered it and then
24 start playing with the wells. One of them I had to lower
25 it to make that tag, so, you know.

1 Q. Can you tell us if there was any oil in those
2 tanks?

3 A. Yes. I'd have to look in my books, but there
4 was already oil in the oil tank before I even started
5 pumping it.

6 Q. Do you have an estimate as to how much oil was
7 in the tanks?

8 A. I want to say two seven, because I color cut it.
9 Because I had to keep color cutting because it was pumping
10 water and I didn't know -- If you run a tank over, that's
11 going to be the first thing on the ground is your oil. So
12 once I got up to about 14 foot, I let it down until I got
13 my water tank full. Because I had to hook the line up to
14 bring it over to the water tank because there was no line
15 there at all. I mean, I --

16 CHAIRMAN FESMIRE: So you had 2.7 inches of oil
17 in a 210 barrel tank?

18 THE WITNESS: Two foot, seven.

19 CHAIRMAN FESMIRE: Two foot, seven?

20 THE WITNESS: It's 210 barrels.

21 CHAIRMAN FESMIRE: Okay. And what does that
22 calculate out to?

23 THE WITNESS: Okay, let me -- 2 foot, 7. Let's
24 say 24, 7, 31, times 1.6. That would be -- I'd say around
25 35 barrels. And that's what I color cut. It had actually

1 more, but a lot of it -- My color cut -- you know how at
2 the bottom you're mixing them together or showing, so I'd
3 say 2 point -- safe, 4 to 7.

4 CHAIRMAN FESMIRE: Four to seven? Okay.

5 Q. Mr. Shipley, Commissioner Bailey asked a
6 question about emulsion. Is there any emulsion in those
7 tanks?

8 A. Well, yes, probably so, because it's been
9 sitting there so long, you know. I don't know how long --
10 or -- like he said, he told me that the tanks needed to be
11 up to code. And that's why it didn't have no numbers on
12 it for -- like he was saying, for Navajo to sell, no well
13 numbers or nothing like that on it.

14 And that's what -- you know, I was starting to
15 stress, well, if I do get a load, how do I get it ready,
16 you know? Just call Navajo and ask for a hauling number,
17 is what I was taught. Because they're the only ones that
18 can put the numbers on the tank, the buyer. And it's
19 Navajo in that area.

20 Q. How many tanks were at the well site, two?

21 A. There was one oil tank and one water tank.

22 Q. And what was the condition of the tanks?

23 A. They was the better tanks, I can tell you that
24 much. I would say average, you know, for the age of them
25 and stuff. And they didn't leak. I know that much. And

1 that's a plus for, you know, older tanks. Because that's
2 one thing you got to watch for is leaks, you walk around
3 them.

4 Q. Do you have an estimate as to what the value of
5 those tanks were?

6 A. You could get probably \$3,500 a piece for them.

7 Q. How about the pump jack?

8 A. Pump jack, it was a smaller unit. It's worth at
9 least \$2,500.

10 Q. How about the -- any other well equipment there?

11 A. The separator was in kind of bad shape. There
12 was one separator that -- they had two, I believe, there.
13 One was pretty good, because I was thinking about moving
14 it over to the Hasties to get more off the Hasties 16, 17,
15 and 18. Because it's just a total fluid and I could put a
16 separator on there and a cam ray, and pull the gas coming
17 off from that sale side, you know, that's going to the oil
18 tank, and that would give you some more -- That's my
19 theory.

20 I like to try -- You know, when someone says you
21 can't -- "Those are no good," 'I'm going to make them good
22 if I can. I'll try everything I can to make them work.
23 And if they won't, I'll tell you, too.

24 Q. Did you ever tell Mr. Kizer not to spend any
25 money on that well because it wasn't any good?

1 A. I told him, "We got to get it pumped off and
2 then, you know, if you can afford it, try fresh water in
3 it first. Pump 30 barrels of fresh water down the
4 backside and see if that does --" The stock in it, it was
5 salty, it was real salty there.

6 Q. Mr. Shipley, do you know what happened to the
7 oil that was in that tank?

8 A. No. Because I -- he called me back on it -- it
9 was April the 4th or 5th that I went back out there. I
10 went over there. And Hoskins was over there. And I know
11 him personally. And he just told me, "No, don't go down
12 there." So I never went down there. But it was -- And I
13 shut it off, it was --

14 Q. Do you know what happened to the water that was
15 in the tanks?

16 A. No.

17 Q. Do you know what happened to the equipment on
18 the wells?

19 A. I was told they could get it for pulling the
20 well. That's what they told me. I asked them if they
21 would sell the jack, and they said they would.

22 Q. Who did?

23 A. I don't -- I can't remember the guy's name. He
24 was the one doing the -- cleaning the locations off and
25 pulling the jacks and the tanks and stuff. Because I

1 wanted to put one of them in my front yard. And he said,
2 "Sure, I'll bring you one." Well, the next day I was
3 supposed to be out there, but that afternoon I was
4 changing out the pump valve on the separator and it
5 stabbed me in the chest and I punched a rib. So I didn't
6 catch him the next day. I was down for about three days
7 there.

8 Q. Okay. How about the equipment on the Muncy
9 wells, was there any equipment on the Muncy wells?

10 A. Yes. They both had jacks. The No. 1 in the
11 corner, the jack wasn't sitting on the oil well, it was
12 kind of pulled back. It was missing the bridle and -- I
13 don't believe there was no rods and tubing in the hole on
14 that well. The other one had a small jack there. Like he
15 was saying, Daryl Finney put the bridle on, but was -- it
16 was going to be short 12 inches -- And it had a jack. And
17 I had to put -- fix the starter on that one. Flow line, I
18 put a check valve -- two inch check valve, two inch valve,
19 one inch nipple, one inch valve, and a pressure gauge on
20 it so I could pressure up on it, try to make it --

21 Q. And that was the Muncy 1 or the Muncy 2?

22 A. Two.

23 Q. Okay. Did you do anything to the Muncy 1?

24 A. No. There was nothing there to work with.

25 Q. Okay. There was some testimony here, and I

1 believe it involved the Muncy No. 2 well, about pouring
2 water down to try and get it to produce?

3 A. Yes -- Oh, that's where --

4 Q. Would you explain that?

5 A. Yes. I was loading up the tubing -- you load up
6 your tubing, build pressure -- you load it first with
7 fresh water, and you take the jack off and pressure it up
8 good to see if it will pressure up. And if it will
9 pressure up, up you shut the jack off and watch it and see
10 if it will hold. And if it will hold, you know you're
11 getting fluid. And you take it off and pump that water,
12 and I'd put in tubing, and then it never pumped again.

13 And that's when I learned -- you know, after
14 they had plugged the well, well, the pump only had 440,
15 and it was a 1,200 foot well. So I told them, "You'll
16 need 800 more feet of tubing and rod to get down that --"

17 CHAIRMAN FESMIRE: Which well was that?

18 THE WITNESS: That Muncy No. 2.

19 Q. Were there any tanks on that well?

20 A. The Muncy? Yes, there was an oil tank, water
21 tank, and a separator -- no, gun barrel, that had a gun
22 barrel on it.

23 Q. What would you say that equipment was worth?

24 A. I know that oil tank was rotten bad in the
25 bottom of it. The oil tank really wasn't worth nothing.

1 The separator would probably be worth \$1,200, \$1,500. The
2 water tank, it would have been another good water tank. I
3 don't know what they would give for it. I'd say at least
4 \$2,500 for the water tank, because it was a 220, too.

5 Q. And the pump jack?

6 A. The pump jack, pretty cratered on it. But the
7 little jack on the Muncy No. 2 was a good jack. That was
8 the one I wanted to buy.

9 Q. Okay. How about on the Schneider well, was
10 there any equipment on the Schneider well?

11 A. There wasn't nothing on the well, except the
12 well had -- you know, on your connections to run the flow
13 lines. And the jack was sitting there. It had -- I
14 believe that one had two oil tanks and a water tank.
15 There was one separator on the side mount lying on the
16 ground separate. But I think it was kind of rusted up.
17 It wasn't in too good a shape. But none of the equipment
18 was hooked up to the Schneider.

19 Q. What would you say the value of that equipment
20 was?

21 A. That jack had, I think, one bad pin on it. I'd
22 say it was worth at least 1,500 bucks. And that had a
23 good oil tank on the Schneider. Because I was mentioning
24 to Tom, he ought to try to get that up there at the
25 Hasties because he's got one bad one over there.

1 MR. PADILLA: That's all I have, Mr. Chairman.

2 CHAIRMAN FESMIRE: Mr. Swazo?

3 CROSS-EXAMINATION

4 BY MR. SWAZO:

5 Q. Mr. Shipley, I want to talk about the five wells
6 that were plugged by the OCD. Those are the Muncy Federal
7 No. 1, the No. 2, the Saunders No. 12, the Schneider
8 No. 1, and the Scott Federal No. 1. When did you start
9 working on those wells?

10 A. The first time was September 4th. If I had my
11 book I could tell you the exact date. It was Daryl Finney
12 again -- That's how I met Tom, is Daryl Finney. I knew
13 him because he had worked for Lopium when I worked for
14 Lopium. And we had fired him. I knew him. He told me
15 about Tom, that he needed some help over there. And at
16 the time, I'd just quit pumping them 272 wells.

17 I kind of took me a two month break, because I'd
18 done that for a year, me and my wife, and we were wore
19 out. I mean, you try to pump 272 wells, seven days a
20 week, it's hard. And then that's how I met him. And
21 that's when I come to the conclusion he'd really been
22 buffaloed pretty hard.

23 Q. And when did you complete your work on those
24 wells, on those five wells?

25 A. I got them all running within -- I'm going to

1 say three days, might have been four at the most. I got
2 them running. He needed them running, is what he told me.
3 So I got them running. And then that's when I started
4 giving him a shopping list of how to get -- That's when I
5 first initially noticed, "Well these flow lines ain't
6 right," and stuff. I just didn't have the time that day
7 to get out there and walk every one of them.

8 The next weekend, I got my wife out there with
9 me, and she started on one end and I started on the other
10 and we started walking the lines down. There was
11 abandoned lines lying out there that wasn't being used,
12 and it was T'ed to -- The flow lines, the valves was
13 closed. Anyone can turn it on. They can go out there and
14 pump it on the ground. So I went and just identified
15 them, identified them and stuff.

16 Q. And that was back in September 2008?

17 A. Yes, sir.

18 Q. And the reason why you worked on those wells was
19 to bring them into production?

20 A. Yes. He said he needed them running and
21 everything, and that's what I went over there for.

22 CHAIRMAN FESMIRE: And you said that was
23 September of last year?

24 THE WITNESS: Yes, sir.

25 CHAIRMAN FESMIRE: What day in September?

1 THE WITNESS: It was right at the start of
2 September. Because another man, Kurt Ferris, which was
3 the superintendent for Tri-Tech Energy, was going to pump
4 them. He told me, "Hey, George, you want to pump these?
5 I got too much." You know, he was loading his pocket too
6 heavy. And I said, "Sure, I'll do them for you." And
7 that's how I got them.

8 Q. And so if I understand your testimony, some of
9 the equipment that was associated with these five wells
10 was in pretty bad shape?

11 A. Yes.

12 Q. Some of the wells were missing equipment?

13 A. Yes. I'd say two years, there's probably copper
14 tubing and stuff, you know.

15 MR. SWAZO: I don't have any other questions,
16 Mr. Chair.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 COMMISSIONER BAILEY: How often would you report
19 to Mr. Kizer what you were doing?

20 THE WITNESS: How often?

21 COMMISSIONER BAILEY: Uh-huh.

22 THE WITNESS: He called me six, eight times a
23 day.

24 COMMISSIONER BAILEY: Were you ever in charge of
25 reporting your activities to the OCD or anything like

1 that?

2 THE WITNESS: (Indicating.)

3 COMMISSIONER BAILEY: But he was constantly
4 aware of what was going on, and the reports to the OCD
5 could have been made at any time, then?

6 THE WITNESS: Yeah -- Well, he was trying -- you
7 know -- And that's what I didn't know, what all he knew --
8 I knew from my experience working with other companies,
9 you know, something's going on here. Because he was
10 having a hard time with the OCD. And that's not -- I
11 pictured -- I could tell something was happening, you
12 know. I didn't know at that time until really just here
13 recently what was going on. I didn't know. I just knew
14 his wells needed to be up and running, and I got them up
15 and running. It got to where he was going to have to
16 spend some money, you know, to get them all the way.

17 COMMISSIONER BAILEY: That's all I have to ask.

18 CHAIRMAN FESMIRE: Commissioner Olson?

19 COMMISSIONER OLSON: No questions.

20 CHAIRMAN FESMIRE: Mr. Shipley, you said
21 something, I think, although I'm sometimes getting
22 confused with which well we're talking about, you were
23 talking about having to replace the power line on the
24 Saunders, is that correct, when you first --

25 THE WITNESS: No, not the Saunders, because it

1 don't have no power.

2 CHAIRMAN FESMIRE: It doesn't have any power?

3 THE WITNESS: Unless we're talking about the
4 Muncy No. 2 and the Amoco. Because, see, they was coming
5 off the meter way down in the valley. So when -- To me,
6 this is a no-no no matter what; if you're going across
7 country like that, you don't go bury your power lines,
8 because you can't find them.

9 And that's what had happened, somebody had put
10 the wrong cable in -- They had 12/4 here, went down to
11 14/4, and then it went back up to 8. Well, that little
12 piece in there was like a resistor or a fuse, you know.
13 It melted. And the way I actually found it, I was
14 sniffing the ground, I went, "There's something black." I
15 got my shovel and went to digging in the ground.

16 I got all that corrected, and then I -- the
17 Muncy up there -- or the Amoco up there, it was the same
18 way, they'd gotten the wire and -- I don't know -- Whoever
19 was doing the wiring didn't know what they were doing, to
20 be honest with you. You don't run smaller wire
21 underground like that.

22 CHAIRMAN FESMIRE: Okay. On the Saunders,
23 though, talking about that well, there was a windup chart
24 on the Jolly graph?

25 THE WITNESS: Yes, sir.

1 CHAIRMAN FESMIRE: Okay. And do you know how
2 long it had been since anybody had calibrated it or --

3 THE WITNESS: I'd asked Wildcat when I took the
4 charts down there, because -- Well, initially, they was
5 gone. And I think that's --

6 CHAIRMAN FESMIRE: The charts were gone or
7 the --

8 THE WITNESS: He took them, yes. And I went
9 down there and I told them, "Hey --" You know, I'd never
10 done Jolly graph charts and I was just having -- Meters
11 read it out and you know everything. And he said, "Well,
12 bring one to me." And I said, "Well, there ain't one."
13 And I told him, "Well, it's got your sticker on it, it
14 says 'Wildcat.'" And they told me, "Well, you need this
15 chart. Which one do you want?" I said, "Well, does it
16 matter?" He said, "No. I'll give you an eight day
17 chart."

18 So he gave them to me, he gave me the pins, I
19 put the pins in them. And I set them up and then I
20 started monitoring them.

21 CHAIRMAN FESMIRE: Okay. And you took it down
22 to -- when did you take it down to Wildcat to be
23 integrated?

24 THE WITNESS: To be honest, I'm going to say
25 about October 15th, about the middle of October.

1 CHAIRMAN FESMIRE: Okay. And you took both
2 charts, one from the Amoco Fed and the Saunders?

3 THE WITNESS: Well, they gave me some charts
4 to -- I didn't even know what size charts they took or
5 nothing, because there wasn't nothing in them.

6 CHAIRMAN FESMIRE: Okay, you installed the
7 charts, wound up the clock and --

8 THE WITNESS: And got her going.

9 CHAIRMAN FESMIRE: -- got her going and --

10 THE WITNESS: And that's when I took them -- I
11 let them run eight days. And then I pulled them back out
12 because -- At first it was -- Yeah, after eight days --

13 CHAIRMAN FESMIRE: Okay, so you let them run
14 that first eight day period. Did you put them back in?

15 THE WITNESS: Yes, sir. I went out there and
16 put new ones.

17 CHAIRMAN FESMIRE: Yeah, new charts back in.
18 And were you still doing that up until the time they
19 plugged the Saunders?

20 THE WITNESS: Well see, we kind of had a run-in
21 in January. I never was out there from January until
22 April.

23 CHAIRMAN FESMIRE: Kind of had a run-in? You
24 and --

25 THE WITNESS: Tom.

1 CHAIRMAN FESMIRE: Okay, Mr. Kizer. And that
2 accounts for your gap in employment with C&D?

3 THE WITNESS: Yes.

4 CHAIRMAN FESMIRE: Okay. Can you tell me what
5 the run-in was about?

6 THE WITNESS: Oh, he was having financial
7 problems, and I had never been paid.

8 CHAIRMAN FESMIRE: Okay.

9 THE WITNESS: But he did -- When he asked me --
10 I told him -- Because I kind of backed off of him, I
11 didn't bother him, because I was so busy -- I give
12 everybody a chance. I mean, I know everybody has
13 problems. And he told me he would make it right. And I
14 said, "Okay, Tom, but I'm not going to do it no more,
15 though, until you make it right." But he made it right
16 before then. And I said, "Okay, I'll go back."

17 CHAIRMAN FESMIRE: Okay. So you had a way of --
18 probably a pretty accurate way, considering both --
19 neither chart had been calibrated in probably the same
20 amount of time, right?

21 THE WITNESS: Right.

22 CHAIRMAN FESMIRE: You had a pretty accurate way
23 of distributing the production between the two wells?

24 THE WITNESS: Yes, sir.

25 CHAIRMAN FESMIRE: And is that where we got the

1 43 percent?

2 THE WITNESS: Yes, sir.

3 CHAIRMAN FESMIRE: Okay.

4 THE WITNESS: Well, no, the 43 percent he got
5 off of the sales -- what he got on the sales. I got it
6 off -- I took the paper down to Wildcat and he explained
7 to me -- And you know how that chart moves, it's hard to
8 tell exactly where it's moving? And that's where he
9 explained to me and he showed -- I got it wrote down in my
10 truck how to do one. And I'll probably never do another
11 one, but I still got it wrote down.

12 And he said, "You're so close there, George," he
13 said. "One day this well --" And he showed me, "If it's
14 over on one side, give it 8, and then give this one 7, and
15 --" you know. And he told me, he said, "As long as they
16 stay pretty close -- You can't be perfect, perfect."

17 I and always stress because I know -- If I turn
18 in false reports to the BLM, I'm in trouble, they'll come
19 after me. I went through it with Tandum Energy. And when
20 Lopium sold to Tandum Energy, they claimed I lost 11,000
21 barrels of oil. And what it ended up being -- It was
22 water and stuff in the oil, but we was cut off -- I could
23 not call the chemical man out, I could not --

24 So what I was doing, I was selling about 30 to
25 40 loads of oil a month. But the only way I could roll

1 them and sell them was bleed the water off by compressing,
2 wait 30 minutes, come back the next day, leave that water
3 off it, you know, color cut it, and then I'd sell it.

4 Well, when I went with -- Lopium bought Tandum,
5 and they tried to sue me for 11,000 barrels. And when we
6 went up there -- I lucked out. The OCD was having a test,
7 you know, the inspection. You know how the state is going
8 to be there selling oil to Navajo? Well, I was one of the
9 three that got tested. Their chemical guys said, "It's
10 ready," and two of them failed. And I said, "All right."
11 You know. It saved me the -- It is hard, you know,
12 because that oil -- your water will set up in there.
13 Depends on the gravity of your oil -- You color cut it
14 and, "Oh, I'm good." But it ain't. That's what I
15 learned. You make certain you're sure.

16 CHAIRMAN FESMIRE: So the Saunders was making --
17 what did you say, between 4 and 8 MCF a day?

18 THE WITNESS: It stayed -- I'd call it 4 to the
19 lowest, 8 average, because it will go higher -- Because
20 that's another thing, you know. That's what I told him,
21 "We get a small compressor on here, we'll probably get a
22 lot more line pressure going." It's going at 50, 60
23 pounds so, you know, it chokes them wells down.

24 CHAIRMAN FESMIRE: How long had it been shut in
25 before you first started experimenting with it?

1 THE WITNESS: I don't really know how long they
2 had it closed in. I know them Hasties wells, they had to
3 be choked back because them checks valves were backwards.
4 So I know that them wells was choking. Because that's
5 what I thought in my own mind, hey, I'm going to turn a
6 miracle over right here right quick just for the fact that
7 they was hooked up wrong.

8 CHAIRMAN FESMIRE: Okay. And -- but I'm
9 thinking specifically about the Saunders well. It was
10 making 4 to 8 MFC a day?

11 THE WITNESS: Yes. And it bursts every once in
12 a while, you know. Like I was saying, it depends on the
13 gas flow. But I would say -- I'd just about lay money on
14 it, just about through the 30 day period, I'd say it
15 made -- average it out to 18 MCF a day.

16 CHAIRMAN FESMIRE: Okay.

17 THE WITNESS: Because I was doing 16 to 18 MCFs
18 a day on both of them.

19 CHAIRMAN FESMIRE: Okay. You heard the
20 discussion we had about the operating expenses, was that
21 accurate?

22 THE WITNESS: Yeah. Because really, it was
23 higher, but I gave him a break and dropped it. Because it
24 was actually -- The pumper that was pumping before me was
25 making a thousand dollars a month more than me.

1 CHAIRMAN FESMIRE: Okay. And that's about what
2 it cost him to replace you, huh?

3 THE WITNESS: Yes.

4 CHAIRMAN FESMIRE: Okay. I don't think I have
5 any further questions. Anything else?

6 MR. SMITH: May I ask one question?

7 CHAIRMAN FESMIRE: Sure.

8 MR. SMITH: This has to do with the allocation
9 of production between the Saunders and the Amoco. Now, as
10 I appreciate and I could have this balled up for sure, but
11 one way is to use the Jolly charts -- Is that what you
12 referred to them as?

13 THE WITNESS: Yes.

14 MR. SMITH: All right. And then the other way
15 was to go to the sales meter, and you shot one in, and you
16 see how much you're selling, and subtract and figure
17 out --

18 THE WITNESS: There you go.

19 MR. SMITH: Which of those two methods is the
20 most accurate?

21 THE WITNESS: Well, really, shutting it in can
22 be the most accurate, but you run in -- you're building
23 pressure again. Sometimes you can build pressure against
24 a well, open it up, and boom, you're going to sell a lot
25 of gas. Sometimes you can choke it out, too, and build

1 that pressure, and then it won't come back.

2 That's -- I don't like to do that, to be honest.
3 The chart, to me, is the best. That way -- Sometimes if
4 you have a problem, then you have to shut it in. But
5 these wells being as old as they are, they didn't have
6 enough pressure -- Because I'd stick a two inch gauge on
7 my casing, just put a gauge in there, leave it open, that
8 way you can kind of monitor up what my oil pressure is
9 compared to my line pressure.

10 CHAIRMAN FESMIRE: Which leads me to a real
11 quick question. You had never had those meters
12 calibrated, though?

13 THE WITNESS: No. That was one thing I never --
14 No, sir. Because they was already there. And Wildcat had
15 told me they're responsible for them. So. They should
16 have -- to be honest on that, they should have gone out
17 and checked them.

18 CHAIRMAN FESMIRE: But they never did, that you
19 know of?

20 THE WITNESS: Not that I know of.

21 CHAIRMAN FESMIRE: Okay. Mr. Padilla, I think
22 that's all the questions we have of this witness.

23 MR. PADILLA: That's all I have.

24 CHAIRMAN FESMIRE: Thank you, Mr. Shipley.

25 MR. SWAZO: Mr. Chairman, I'd like to call some

1 rebuttal witnesses.

2 CHAIRMAN FESMIRE: Okay. Witnesses, plural?

3 MR. SWAZO: Yes.

4 CHAIRMAN FESMIRE: Okay.

5 MR. SWAZO: The first one will be Daniel
6 Sanchez.

7 DANIEL SANCHEZ,
8 the witness herein, after first being duly sworn
9 upon his oath, was examined and testified as follows:

10 REBUTTAL DIRECT EXAMINATION

11 BY MR. SWAZO:

12 Q. Mr. Sanchez, you heard Mr. Kizer testify that
13 you were being disingenuous with regard to your testimony
14 concerning the Schneider well running into the Amoco
15 meter?

16 A. Yes.

17 Q. Would you look at the exhibit that I just handed
18 you, Exhibit No. 96? And that's the meter for the Amoco
19 well?

20 A. Yes, that's what it's supposed to be.

21 Q. And what does it indicate on that picture?

22 A. It shows that it is the Schneider State No. 1.

23 Q. And the first page, that's -- we had gone over
24 this before in the July 2008 hearing with regard to the
25 well inspection history. This is the well inspection

1 history for the Amoco No. 1 well?

2 A. Yes.

3 Q. And this inspection history for July 9, 2009,
4 that would have been the date that that well was inspected
5 by an OCD compliance officer?

6 A. That's correct.

7 Q. And it indicates that the flow line from the
8 casing goes to a meter that has a card saying "Schneider
9 No. 1," and then a flow line off location?

10 A. Yes.

11 Q. So you weren't being disingenuous with regard to
12 your testimony?

13 A. No. I was taking this directly from an
14 inspection that had taken place prior to that hearing.

15 Q. There has also been some mention about Mark
16 Hoskins?

17 A. Yes.

18 Q. Can you explain who Mark Hoskins is?

19 A. Mr. Mark Hoskins is the plugger that OCD uses
20 for its wells in that area. We have two different
21 contractors, one, I believe, is BS&W, or BMW, or one of
22 those. We haven't used them for very long so I don't know
23 the names. But Mark Hoskins is with Mayo-Marrs, and they
24 do most of our pluggings for us.

25 Q. So he's not an OCD employee?

1 A. No, he's not.

2 Q. And what was in those tanks?

3 A. I had sent out a message about that. And what I
4 finally got from the Artesia district supervisor was that
5 when they got there, there was no oil in the tanks. There
6 were tank -- bottoms of water in the tanks. So when
7 the -- Okaay cleaned the tanks and hauled them away,
8 that's what they reported to us as being inside those
9 tanks.

10 Q. And you talked to Jerry Blakely?

11 A. Yes, I did.

12 Q. What was his position with regard to OCD
13 plugging these wells?

14 A. They were all for our efforts in plugging the
15 wells.

16 Q. They never told you to stop plugging the wells?

17 A. No, they haven't.

18 MR. SWAZO: Those are all my questions.

19 CHAIRMAN FESMIRE: Mr. Padilla?

20 CROSS-EXAMINATION

21 BY MR. PADILLA:

22 Q. Mr. Sanchez, this Exhibit No. 96, did you
23 prepare this exhibit?

24 A. No, I did not. This is the information that was
25 given to us by our field staff out of our Artesia office.

1 Q. When did you get the second page showing the
2 chart?

3 A. I believe it was the same day as the inspection,
4 July 9, 2009.

5 Q. Which inspection?

6 A. The inspection of that one well that was
7 performed on July 9th. That's on the very first page,
8 top.

9 Q. Okay. The first one listed there?

10 A. Yes.

11 Q. So as I understand your testimony, you're saying
12 based upon this exhibit, that the Schneider well is tied
13 to the Amoco well?

14 A. That was my understanding from the field
15 inspector who did the inspection on that day.

16 Q. Who took the picture?

17 A. I believe it was Richard Inge, one of our
18 compliance officers out of Artesia.

19 Q. Do you know whether there was a meter on the
20 Schneider well?

21 A. I do not know that.

22 Q. What is the purpose for introducing this
23 exhibit, as far as you know?

24 MR. SWAZO: I'm going to object, because I think
25 I'm the person who makes that decision.

1 MR. PADILLA: Mr. Chairman, I'm trying to find
2 out what the purpose is, what it's intended to show, if he
3 knows. He's testifying about it.

4 CHAIRMAN FESMIRE: I'll overrule the objection.
5 I accept the precedent for the exhibit.

6 A. I believe there was a question as to whether or
7 not I was being forthright in my testimony back in July as
8 to that well, what was on there. And I needed to clarify
9 that, I guess. And that's what I believe this does. The
10 inspection report that day and the picture just verifies
11 my testimony stated on that day.

12 Q. What does the -- what is the length of the flow
13 line?

14 A. I do not know.

15 Q. You don't know?

16 A. No.

17 Q. Do you know the location of the Saunders well?

18 A. No, I've not been out there.

19 Q. Do you know the location of the Amoco well?

20 A. No, I've not been out there. I rely on my field
21 inspectors out of the district offices to get that
22 information.

23 Q. Do you know the location of the Schneider well?

24 A. No, I do not. I have not been out to any of
25 these leases.

1 Q. Do you know that there is a distance of a mile
2 between the Schneider well and the Amoco well?

3 A. No, I do not know that.

4 Q. Do you know whether there's any confusion
5 between this report of July 9, 2009 between the Saunders
6 12 and the Schneider No. 1 well?

7 A. I couldn't say that. That would have to be a
8 question asked of the compliance officer who was doing the
9 inspection at the time.

10 Q. This was testified to, I believe, last month and
11 again today about whether -- you know, whether the
12 Saunders and the Amoco were commingled together. Have you
13 talked to your field inspector about that?

14 A. Yes. And that was the reason for the picture,
15 and the inspection was to verify that. And according to
16 his inspection and the picture he took, it appears to be
17 commingled.

18 Q. Was Wildcat Measuring Service out there at the
19 time with your field inspector?

20 A. Not that I'm aware of.

21 Q. You don't know?

22 A. I do not know.

23 Q. Now, on the second page of that, there is some
24 dates there that say -- on the left-hand side on Wildcat
25 Measuring Service, it's a -- one is 10/17/05, the other is

1 1/23/06, and the other appears to be the same date

2 1/23/06. Do you see that?

3 A. Yes.

4 Q. Did you verify whether or not there has been any
5 recent inspections -- I mean, you're saying that on
6 July 9, 2009, the Schneider well was tied up with the
7 Amoco, that's your testimony, right?

8 A. No, what my testimony is, is that during that
9 inspection, the picture was taken of the well site, and it
10 showed this meter with the Schneider State No. 1 on it,
11 that's what I'm saying.

12 And I'm also stating that from the inspection,
13 it shows that according to the compliance officer, it
14 looked like the flow line was going to another location,
15 that's what I'm saying.

16 MR. PADILLA: Nothing further.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 COMMISSIONER BAILEY: Why don't you take this
19 one?

20 CHAIRMAN FESMIRE: Mr. Sanchez, the well
21 inspection history has an API number of 301524738. That
22 doesn't match either the Schneider, or the Amoco, or the
23 Saunders, at least on the list in the Order.

24 COMMISSIONER BAILEY: That's the Amoco.

25 COMMISSIONER OLSON: It matches the Amoco.

1 CHAIRMAN FESMIRE: So this chart, is it on the
2 Amoco line or the Saunders line, do we know?

3 THE WITNESS: Apparently, it was on the Amoco
4 line. And the reason it was brought up was, because when
5 they did the initial inspection, they weren't sure why
6 they would have a meter for the Schneider at that location
7 since it was an Amoco location. And when we followed out
8 the flow line, it continued on for quite some distance to
9 another location.

10 So at the time, I called Mr. Inge and talked to
11 him to find out why they made that call exactly, why that
12 was. But like I said, the reason for the inconsistency
13 between the actual site and what the meters were showing
14 is the -- the meter for that -- for different locations.

15 CHAIRMAN FESMIRE: Okay, so this is an
16 inspection of the Amoco showing a gas meter labeled
17 "Schneider"?

18 THE WITNESS: Yes.

19 CHAIRMAN FESMIRE: But it was the Saunders well
20 that was supposed to be connected to this?

21 THE WITNESS: There was a comment made about it
22 being more than a mile away. I have been out in the field
23 where I have followed out flow lines for another inspector
24 and they were more than a mile away. So it's not like it
25 hasn't happened before. That's what it was meant to show,

1 that there was an inconsistency there.

2 CHAIRMAN FESMIRE: Okay. Well, it does show an
3 inconsistency. Okay. Any further questions,
4 Commissioners?

5 COMMISSIONER BAILEY: No.

6 COMMISSIONER OLSON: No.

7 CHAIRMAN FESMIRE: Any redirect?

8 MR. SWAZO: No more questions.

9 CHAIRMAN FESMIRE: Okay. Thank you,
10 Mr. Sanchez.

11 MR. PADILLA: I'm a little confused now. If I
12 may ask a question.

13 RECROSS-EXAMINATION

14 BY MR. PADILLA:

15 Q. Mr. Sanchez, are you saying that the meter from
16 the Schneider wound up at the Amoco well?

17 A. I'm saying that at the Amoco well site, there
18 was a meter there listing it as the Schneider 1 meter.

19 CHAIRMAN FESMIRE: Labeled "Schneider."

20 A. Labeled "Schneider 1." That's what we're
21 showing on this exhibit.

22 Q. Okay. But you're not saying that the Schneider
23 well and the Amoco No. 1 well are tied together on a flow
24 line?

25 A. I'm saying that during that inspection, that

1 flow line was traced out and it went back and it did
2 connect to that line. Now, if there was a mistake
3 somewhere along there -- probably part of it was buried, I
4 don't know, I didn't do the inspection.

5 What I was showing on this was there was an
6 inconsistency between the actual well site and what meter
7 was showing as production.

8 Q. So what's right here -- I mean --

9 A. I don't know what's right. This is your
10 client's case right here.

11 Q. Well, I understand --

12 A. And that's what we're trying to show, is that
13 there are some inconsistencies with what's going on out
14 there.

15 Q. I'm not trying to argue with you, I'm just
16 trying to figure out what you're trying to say.

17 A. And I told you two or three times already that
18 it was to show an inconsistency between the actual site
19 and what we found out there on that meter.

20 CHAIRMAN FESMIRE: Mr. Sanchez, let me see if I
21 can clarify it. What he's saying is, that there is a
22 meter at the Amoco site labeled "Schneider," and that they
23 followed the line out to the Schneider line to the
24 Schneider well; is that correct?

25 THE WITNESS: That was my understanding from

1 what went on in that inspection.

2 MR. PADILLA: I don't have any further
3 questions. I may want to recall Mr. Shipley now.

4 CHAIRMAN FESMIRE: Okay.

5 MR. SWAZO: No further questions. I'd like to
6 call Jane Prouty to the stand briefly.

7 CHAIRMAN FESMIRE: Okay. Ms. Prouty, you've
8 been previously sworn in this matter?

9 MS. PROUTY: Yes.

10 JANE PROUTY,
11 the witness herein, after first being duly sworn
12 upon his oath, was examined and testified as follows:

13 REBUTTAL DIRECT EXAMINATION

14 BY MR. SWAZO:

15 Q. Ms. Prouty, you heard Mr. Kizer testify that the
16 two Muncy wells, the Saunders well, the Schneider well,
17 and the Scott Federal well, were producing wells, correct?

18 A. Yes.

19 Q. And Exhibit 95 is a document that you prepared
20 with regard to production?

21 A. Yes.

22 Q. And how far back does the production history for
23 these wells go?

24 A. To the time production began -- excuse me, that
25 we have.

1 CHAIRMAN FESMIRE: Sounds religious.

2 A. Well, it is, it's the beginning and ongoing.
3 It's -- in this case, the first one is 1995. If there's
4 anything from 1992 in here, yes. As you can see on the
5 third well, the Saunders, it has a 1992 cumulative. So
6 that's production. I can't tell you when that production
7 occurred, it occurred prior to '92.

8 Q. So you pulled all the -- this contains all the
9 production records back into the '90s?

10 A. It contains all the production records we have,
11 period. There could still be some from the '70s or '80s
12 if it was affiliated with this well.

13 Q. And C&D Management acquired these wells in 2004.
14 Can you show -- I mean, going to the Muncy Federal No. 1
15 well, has there been any production reported from this
16 well from 2004 to the present time?

17 A. No.

18 Q. And for the Muncy Federal No. 2 well, going back
19 to 2004, has there been any production reported for this
20 well since 2004 to the present time?

21 A. No.

22 Q. Going to the Saunders No. 12 well, has there
23 been any production reported from 2004 to the current
24 reporting period?

25 A. No.

1 Q. And for the Schneider No. 1 well, has there been
2 any production reported from 2004 to the current reporting
3 period?

4 A. No.

5 Q. And for the Scott Federal No. 2 well, has there
6 been any production reported from 2004 to the current
7 reporting period?

8 A. No.

9 Q. And gas was required to be reported on C-115s?

10 A. Yes.

11 Q. And just for clarification, because I think it
12 would be helpful, what does "BOM" stand for?

13 A. Beginning of the month.

14 Q. And do you have anything to say in response to
15 the testimony that you heard from Mr. Kizer regarding
16 production data, or the computer system, or anything else?

17 A. Sure. All right. One of his points, I couldn't
18 tell whether he was -- Currently, we have all C-115s from
19 C&D through April of 2009. We don't have anything after
20 that. So when he was saying he couldn't submit because of
21 the Saunders, I don't know if he meant after the April
22 report or what, but it seemed like you were saying --

23 CHAIRMAN FESMIRE: Seemed like he was saying.

24 A. Mr. Kizer was saying that he couldn't submit any
25 C-115s for this whole period because he didn't know what

1 the Saunders produced. And we have zeroes for the
2 Saunders, so I don't know -- that couldn't have been part
3 of the delay. I don't understand that.

4 And we do have a letter from March saying it was
5 just -- he was working on the tools. He didn't mention
6 that he didn't know what to report for one well. If he
7 had said that he didn't know how to split out the
8 production from one well, we would have said, well, let's
9 check into surface commingling and get that approved and
10 we can get you what percentage you should be reporting
11 with your help.

12 So, as far as not being able to file due to not
13 knowing the production of that well, I wasn't aware of
14 that.

15 Then as far as his point of you cannot file a
16 C-115 without all the wells, that is correct, and
17 Mr. Kizer had filed all the wells, and Debbie McElvey had,
18 as well. So I wasn't aware of any issue.

19 The reason is because the rules say you must
20 file a C-115, singular, for all wells that you operate
21 that have nonplugged well completions or for approved
22 injection of the rest of your wells. So we have the
23 entire C-115 come in.

24 If there is any question on a certain well
25 that's holding things up, our practice is that they

1 indicate a note in Comments with some kind of difficulty.

2 So he was correct in saying that all the wells
3 have to be on there, however, we already had all the wells
4 reported through April 2009. So I don't know what got
5 delayed on that. Because zero was reported and we weren't
6 aware that that was not the correct number.

7 Then, just on -- I'll let you stop me on this,
8 but there were discussions about the Hasties and the
9 Saunders wells with some projection numbers, and they
10 didn't match. For one, there was a lot of talk about what
11 the Hasties wells did produce, and that's part of the
12 exhibits already.

13 Those balancing reports that Mr. Padilla pointed
14 out first, they showed the Hasties wells' production. So,
15 we were looking for that and we didn't have it to refer
16 to. But those wells produced -- last November they
17 produced 348, then in April they produced 422, and that
18 was the month that the compressor was added.

19 So just -- I think there was a discussion that
20 the production was more in the 1,500 range, but they were
21 fairly low. So those numbers were here.

22 CHAIRMAN FESMIRE: Do we have the June
23 production number with the full month?

24 THE WITNESS: No, the May and June C-115s have
25 not been submitted to the OCD. Mr. Kizer today says he

1 thinks he's done them, but we haven't had them submitted.

2 So I don't have any other numbers.

3 CHAIRMAN FESMIRE: Okay.

4 A. And that's -- about systems, you know, when you
5 create a permit or a form, you submit it. And this has
6 been done on all the other C-115s that have been turned
7 in. So there can't be a surprise on the day of the
8 hearing that a C-115 that was delinquent at the last
9 hearing would still be delinquent today, and there --
10 which was the May one, it was due by the time of the last
11 hearing if it hadn't been submitted.

12 So maybe it's an example of how difficult
13 Mr. Kizer finds it to file forms, I don't know. And I
14 don't know if Debbie McElvey is filing them or you, I'm
15 not sure.

16 CHAIRMAN FESMIRE: Address the Commission when
17 you testify.

18 THE WITNESS: Sorry. Sorry.

19 A. So I think those -- one question about the April
20 2009 C-115 was that initially it was reported with zero in
21 the tanks, two of the tanks, the one for the Muncy Federal
22 and the Scott Federal.

23 And there was a note on that C-115 that said
24 that the OCD disposed of the oil. And then a subsequent
25 C-115 was filed the next day by Debbie McElvey that showed

1 26 in the Muncy Federal, 26 barrels of oil in the Muncy
2 Federal tank, and 78 barrels of oil in the Scott Federal
3 tank.

4 So that's the last report we received, shows
5 product in the tank, and yet there was a lot of discussion
6 today about the tanks are empty. So, I don't know what
7 the balance in the tanks are. So that type of thing, I
8 think those are the same questions.

9 MR. SWAZO: I don't have anything further.

10 CHAIRMAN FESMIRE: Mr. Padilla?

11 CROSS-EXAMINATION

12 BY MR. PADILLA:

13 Q. Ms. Prouty, on this Exhibit No. 95, what's new
14 on this exhibit that you didn't testify to this morning?

15 A. I think a copy of it so that you can see it. I
16 don't know.

17 Q. I mean, is there anything different from what
18 you testified that's shown on this exhibit?

19 A. Not to my knowledge, other than to give you a
20 copy.

21 Q. When you first testified now, you said that
22 Mr. Kizer had said that there was production from the
23 Muncy 1 and the Muncy 2. And he had testified there was
24 production from the Muncy 1 and the No. 2.

25 A. I'm not following you.

1 Q. In answer to one of Mr. Swazo's questions, he
2 said -- I don't want to mischaracterize his question, as I
3 understood his question, he said that Mr. Kizer had
4 testified that there had been production from the Muncy
5 No. 1 and the Muncy No. 2, or that they were capable of
6 producing. Is that your understanding?

7 A. I'm very sorry, but I don't recall that
8 particular question. Someone will have to help me if that
9 was asked. We talked about the Saunders, but I don't
10 recall anyone talking about production from the Muncy.

11 Q. Well, let me ask you this. You've been sitting
12 here pretty much the whole day. Do you recall hearing
13 Mr. Kizer testifying that there was production from the
14 Muncy No. 1 and Muncy No. 2?

15 A. I don't recall that, no. I was taking some
16 notes. I don't, I'm sorry. I'm not --

17 Q. Well, I'm just asking if you heard
18 him, Mr. Kizer, say that?

19 A. All I really recall today is talking about
20 production from the Saunders.

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

22 CHAIRMAN FESMIRE: Commissioner?

23 COMMISSIONER BAILEY: No questions.

24 COMMISSIONER OLSON: No questions.

25 CHAIRMAN FESMIRE: No questions either.

1 MR. SWAZO: I have no further witnesses.

2 CHAIRMAN FESMIRE: Mr. Padilla, do you want to
3 call a rebuttal witness?

4 MR. PADILLA: I'll call Mr. Shipley real quick.

5 CHAIRMAN FESMIRE: Okay. Mr. Shipley, would you
6 take the stand again? You understand that you've been
7 previously sworn in this case?

8 THE WITNESS: Yes.

9 CHAIRMAN FESMIRE: Mr. Swazo, before you close,
10 you might want to -- Do you want those exhibits to be
11 admitted into the record?

12 MR. SWAZO: That's correct. Yes, I would move
13 for the admission of -- I was going to do it later but I
14 can do it now. I move for the admission of Exhibits 95
15 and 96.

16 CHAIRMAN FESMIRE: Mr. Padilla?

17 MR. PADILLA: I don't have any objections.

18 CHAIRMAN FESMIRE: Okay, Exhibits 95 and 96 are
19 admitted. Okay, Mr. Padilla?

20 GEORGE SHIPLEY,
21 the witness herein, after first being duly sworn
22 upon his oath, was examined and testified as follows:

23 REBUTTAL DIRECT EXAMINATION

24 BY MR. PADILLA:

25 Q. Mr. Shipley, let me hand you Exhibit No. 96 of

1 the Oil Conservation Division. That has some inspection
2 dates there. One is July 9, 2009. Do you see that?

3 A. Yes.

4 Q. As I understand the testimony on this exhibit,
5 it affects the Amoco No. 1 well. And the testimony, as I
6 understand from Mr. Sanchez, was that the field inspection
7 that was made that is evidenced in the first entry there,
8 is that the Schneider No. 1 flow line is tied to the Amoco
9 well?

10 A. The Schneider 1?

11 Q. Do you see that?

12 A. I read this, but I got one question. The
13 Schneider well is the first well farther south?

14 Q. You're jumping ahead of me here.

15 A. I just want to make sure I'm on the right well,
16 because --

17 Q. You see there where it refers to the Schneider
18 No. 1 well? Can you tell the Commission where the
19 Schneider No. 1 well is located?

20 A. It's on the south side of the road, and the road
21 is Chase Road. And it's on the south side, the Schneider
22 well. The Saunders and the Amoco, they're on the north
23 side.

24 Q. And how far away are the Amoco well and the
25 Schneider No. 1 well?

1 A. I'd say right at a mile and a half.

2 Q. And is there a flow line connecting those two
3 wells?

4 A. I've never seen it, and I've walked them all.

5 MR. PADILLA: That's all I have.

6 CHAIRMAN FESMIRE: Mr. Swazo?

7 MR. SWAZO: I don't have any questions.

8 CHAIRMAN FESMIRE: Commissioners?

9 COMMISSIONER BAILEY: No.

10 COMMISSIONER OLSON: No questions.

11 CHAIRMAN FESMIRE: Mr. Shipley, the report says
12 that the flow line goes to this meter on location. The
13 calibration report shows that the meter was last
14 calibrated in January 2006. Does that look like one of
15 your charts?

16 THE WITNESS: No, sir. That's not my
17 handwriting, I can prove that.

18 CHAIRMAN FESMIRE: Well, that's on the meter
19 itself, that's not on the chart. Have you ever collected
20 a chart like that on that meter?

21 THE WITNESS: No, sir. There is a chart that
22 looked about like that on the Amoco meter when I come back
23 in January -- or in April, I mean. I came back April 4th.

24 CHAIRMAN FESMIRE: No, it's been on there until
25 the clock ran down.

1 THE WITNESS: Yes.

2 CHAIRMAN FESMIRE: Is there any label like this
3 on the Amoco meter? I mean, you would notice.

4 THE WITNESS: I know. I know how I got the
5 information on how to read the meters and calibrate them
6 is from wildcat Measurement, but I don't recall seeing
7 that paper in there. Because I know the Amoco said the
8 "Amoco," the Schneider said the "Schneider," and they both
9 had the sign there.

10 CHAIRMAN FESMIRE: When was the last time you
11 changed the meter at the Amoco location?

12 THE WITNESS: December 24th, I believe, or 23rd.
13 It might have been Christmas Eve.

14 CHAIRMAN FESMIRE: So in July of this year, this
15 could be the last meter at the Amoco location that you
16 replaced, huh? You're not collecting those charts now?

17 THE WITNESS: No, sir. Well, I don't need to,
18 those wells are capped. They have been ever since I came
19 back, so I don't need to, waste of money.

20 CHAIRMAN FESMIRE: Right, I'm sorry. But the
21 Amoco --

22 THE WITNESS: It goes to its own -- the Muncy
23 meter. So. And the gas well's coming off the Muncy, so
24 again, it's only one well, one meter. I got two meters
25 out there but only need one.

1 CHAIRMAN FESMIRE: No further questions.

2 Mr. Padilla, do you have anything on that?

3 MR. PADILLA: Nothing further.

4 CHAIRMAN FESMIRE: Thank you very much,
5 Mr. Shipley. Closing arguments?

6 MR. SWAZO: Yes, briefly. Section 70-2-14,
7 Subsection B of the Oil and Gas Acts states,

8 "If any of the requirements of the
9 Oil and Gas Act or the rules promulgated
10 to that Act have not been complied with,
11 the OCD, after notice and hearing, may
12 order any well plugged and abandoned by
13 the operator or surety, or both, in
14 accordance with the provision or rules."

15 You heard testimony that C&D Management is
16 currently in noncompliance with Rule -- And they've
17 changed the rule number, so I'm sorry. I think it's
18 19-15-7-24, which was originally numbered -- well,
19 originally referred to as Rule 1115, which was the
20 original basis for this compliance action.

21 Not only is C&D Management not reporting true
22 and accurate production in accordance with that rule, it's
23 also filing inaccurate reports. And we've been here
24 several times.

25 You've heard testimony regarding the compliance

1 efforts that OCD has gone through over several years with
2 C&D Management to get them to file their C-115s, and they
3 still have not done so to date.

4 The OCD is asking for the Commission to issue an
5 order requiring C&D Management to plug its wells because
6 they are in noncompliance with the reporting requirements.

7 The evidence indicates that these wells are
8 inactive, so there would be no waste issue.

9 CHAIRMAN FESMIRE: When you say "these wells,"
10 which ones are you talking about?

11 MR. SWAZO: I'm sorry. Actually, let me go
12 ahead and strike that. What I want to say is that I would
13 submit to the Commission that when the Legislatures enacts
14 our statutes, that they are fully aware of the situation
15 concerning the specific field that they're enacting
16 statutes for.

17 I would submit to you that the Legislature is
18 well aware of the waste issue, but has nonetheless decided
19 to enact this statute. So I think that we have the
20 statutory authority to go ahead and plug these wells.

21 Back in July 2008, you heard Mr. Kizer testify
22 that C&D Management was going to get the job done, that
23 they had the resources to bring these wells into
24 compliance, and now he's testifying that they don't have
25 the resources, but yet, you hear testimony about them

1 drilling new wells or pursuing new welts.

2 You've also heard testimony about them plugging
3 a well which was not one of their wells, so they obviously
4 have resources to bring these wells into compliance.

5 I don't know why C&D Management has not filed
6 C-115s. We've been through this many times. We've also
7 had discussions with them. This was testified to at last
8 year's hearing.

9 I'm also asking for a Rule 19.15.9 order with
10 regard to C&D's noncompliance with the provision requiring
11 it to bring -- I believe it's Ordering Paragraph No. 2,
12 requiring it to bring into compliance the Muncy Federal
13 No. 1, the Muncy Federal No. 2, the Saunders well, the
14 Schneider well, and the Scott Federal well.

15 CHAIRMAN FESMIRE: You want to go through that
16 list again?

17 MR. SWAZO: Sure. The Muncy Federal No. 1, the
18 Muncy Federal No. 2, the Schneider well, the Saunders
19 well, and the Scott Federal well.

20 CHAIRMAN FESMIRE: And these wells have already
21 been plugged.

22 MR. SWAZO: That's correct. The testimony was
23 that these wells have been plugged by OCD because C&D
24 Management did not comply with the Order of the Commission
25 requiring it to bring these wells into compliance with

1 OCD's inactive well rule by September 14, 2008.

2 The OCD did not begin plugging these wells until
3 six months after that deadline, plenty of time for C&D
4 Management to bring these wells into compliance.
5 Nonetheless, the OCD paid the cost for plugging these
6 wells.

7 So I don't think because the OCD plugged these
8 wells that that means C&D Management is in compliance,
9 because as far as -- I think that C&D Management needs
10 to -- I'm asking for the 15.9 order, because I don't
11 believe C&D Management is in compliance at least until
12 they have reimbursed the OCD for the plugging costs
13 associated with the five wells that OCD plugged.

14 That concludes my closing statement. Oh,
15 actually, I do have one other thing. If the Commission
16 decides not to order C&D Management to plug its wells,
17 then I would ask that the Commission recall this case
18 within six months to verify -- or to monitor the
19 compliance, C&D Management's compliance with the reporting
20 requirements.

21 Because my feeling is, is that six months down
22 the line, a year down the line, we're going to go through
23 the same old situation, and we're going to be back to
24 where we are right now.

25 So I would request that the Commission, in the

1 event that it decides not to order C&D Management to plug
2 its wells, that the Commission recall this case within a
3 six month period so that we could revisit operator's
4 compliance with the reporting requirements.

5 CHAIRMAN FESMIRE: Mr. Swazo, you're asking for
6 an order to plug five wells that have already been
7 plugged.

8 MR. SWAZO: No, what I'm asking for is -- I
9 don't think I've explained this really well.
10 Rule 19.15.5.9 states:

11 "An operator is in compliance with
12 Subsection A of Rule 19.15.5.9 if the
13 operator is not subject to a Division or
14 Commission order issued after notice and
15 hearing finding the operator to be in
16 violation of an order requiring corrective
17 action."

18 I submit to you that C&D Management is in
19 violation of your Order requiring it to bring those five
20 wells into compliance by the September 14, 2008. The OCD
21 paid the costs to plug those wells.

22 And so what I'm asking for is a 5.9 order. And
23 under the rules, C&D Management can go ahead and file, I
24 believe, a motion after it has come into compliance with
25 that provision of the rule, and I believe that that would

1 be once they have paid OCD the cost for plugging its
2 wells, "its" being C&D Management's wells.

3 CHAIRMAN FESMIRE: Okay. So what you want from
4 the Commission is an order ordering them to pay the costs
5 of the -- on the well, but there's no --

6 MR. SWAZO: I'm asking the Commission to issue
7 an order finding them in noncompliance with your Order.
8 Because the OCD plugged these wells and they have not paid
9 the costs for the OCD's plugging of their wells.

10 CHAIRMAN FESMIRE: Okay.

11 MR. SWAZO: Once they have reimbursed the OCD
12 for those plugging costs, then they can go ahead and file
13 a motion with the Commission showing that they have
14 satisfied the Commission's Order.

15 CHAIRMAN FESMIRE: Okay. Mr. Padilla?

16 MR. PADILLA: Mr. Chairman, members of the
17 Commission, now I'm really confused as to what the purpose
18 of this hearing is. We've been here all day long, and
19 Mr. Swazo wants plugged wells to be plugged again.

20 MR. SWAZO: That's a --

21 MR. PADILLA: I don't know how you could kick a
22 dead horse any more than that. I mean, it's obvious that
23 the wells were plugged by the OCD. We had no issue there.
24 I mean, what we have argued here is that the Saunders and
25 the Scott Federal wells were capable of production.

1 The Chairman asked questions trying to verify
2 whether or not the costs exceeded the production or the
3 income from the wells. Those are issues that may be
4 pertinent, but in reopening this case, I don't know where
5 Mr. Swazo is going, especially following his closing
6 argument.

7 The evidence here -- He wants C&D to pay. There
8 has been no introduction of any type of invoices, any well
9 costs, anything, and I don't -- I'm lost. I just don't
10 understand how in the world he can ask for an order -- And
11 it's a 5.9 order. I don't know what that is, really.
12 Because he hasn't explained to the Commission what that is
13 and what effect that would have.

14 And then somehow, at some point or another
15 procedurally, we file a motion for C&D to -- I presume for
16 something, we don't know what that is.

17 But the evidence is clear that the Hasties wells
18 and all those wells are productive of oil and gas. The
19 paramount purpose of the Oil and Gas Act is to prevent
20 waste.

21 I know that over the years that's changed to
22 have environmental concerns taken care of, and I think a
23 greater emphasis has been on environmental matters, but
24 there's been no testimony here that these wells are
25 affecting the environment in a detrimental manner by

1 today's testimony, by the OCD's testimony here today.

2 Now, I've got to concede that C&D Management's
3 filing of its C-115s is poor. They've done a terrible job
4 of doing that. And I think that the Commission's Order
5 has to address that in terms of saying, "Okay, C&D
6 Management, you have X amount of time within which to
7 correct all your reporting."

8 I think it's confusing for Mr. Kizer to come up
9 here and say, well, you know, I tried to report the right
10 thing, but his own contractor for filing C-115s
11 essentially said, "That's not going to balance, that's not
12 going to work with the transporter's requirements."

13 In other words, the transporter was not
14 transporting, and neither is he reporting the correct
15 amounts. And it's clear that the zero reporting is
16 inaccurate.

17 But I think when you argue the Oil and Gas Act,
18 that the waste of shutting down producing wells in this
19 economy in dwindling revenues of the state, I think that's
20 wrong. When you have shortfalls in state government
21 because royalties and severance taxes are not being paid,
22 I don't think you go around shutting down oil and gas
23 wells if they're productive. So.

24 Finally, I just think -- I don't know what
25 purpose the OCD is seeking here. I mean, the wells have

1 been plugged and abandoned, there's no judgment, there's
2 nothing, there's no billing, no demand on C&D Management
3 to pay any excess -- and we don't know what that figure
4 is.

5 Mr. Kizer testified to that. He said in answer
6 to questions, you know, he said, "I haven't been billed."
7 So he took no position on whether or not he would pay
8 given that -- without knowing what his exposure is.

9 His desire here, as he testified, is to drill
10 additional wells. He wants to stay in business. He made
11 a terrible mistake by not doing enough due diligence here
12 in having to plug ten wells.

13 But as Mr. Shipley says, Mr. Kizer doesn't know
14 a lot about the oil and gas business, and he probably has
15 learned that in the future, he's going to have to do due
16 diligence on the wells that he's buying.

17 CHAIRMAN FESMIRE: Mr. Kizer, it probably would
18 have been cheaper to get a degree in petroleum
19 engineering, huh?

20 MR. PADILLA: But in any event, I don't think it
21 serves any purpose to plug producing oil and gas wells in
22 this case.

23 I think something has to be done about Mr. Kizer
24 not following the Commission's or the Division's rules
25 about filing C-115s, and I think he has to hire somebody.

1 And that's one thing that he knows that he can do, or what
2 the Commission can do is order him to pay someone to do it
3 right and not have Mr. Kizer trying to do it and calling
4 Ms. Prouty every two minutes with how to file a C-115.
5 Thank you.

6 CHAIRMAN FESMIRE: Okay. At this time, I think
7 we're going to go into a short executive session to
8 discuss this case. I would suggest nobody leave. We're
9 not done with the day. And I would suggest you and your
10 client not leave yet either, Mr. Padilla.

11 (Note: Executive session took place.)

12 CHAIRMAN FESMIRE: Let's go back on the record
13 in Case No. 14055. The record should reflect that during
14 the interim, the Commission met in closed session to
15 discuss Case No. 14055, and nothing more than Case
16 No. 14055.

17 And at this time, we're going to continue Case
18 No. 14055 until the next regularly scheduled meeting of
19 the OCC, which is September 9th, at which time we will
20 take evidence with respect to the costs incurred by the
21 OCD in plugging the five wells and testing that evidence.

22 And I'm instructing the OCD two weeks prior to
23 that Commission meeting to provide Mr. Padilla with all
24 the receipts and documents that will be presented. Are
25 there any questions from the attorneys?

1 MR. SMITH: I have a question. On findings and
2 conclusions, do you want to wait until after that to ask
3 them for them?

4 CHAIRMAN FESMIRE: No. During the same period,
5 notwithstanding the total amount, we're going to ask the
6 attorneys to prepare findings and conclusions. The
7 transcript is due two weeks from today and will be
8 available to the attorneys in Secretary Davidson's office,
9 and by the next Commission meeting, we would ask the
10 attorneys to draft their proposed findings and
11 conclusions.

12 Are there any questions from any attorneys who
13 aren't the Commission's? Okay. With that --

14 MR. SWAZO: I do have a question. So our
15 proposed findings of fact and conclusions of law, we don't
16 have to file them in advance of the Commission's next
17 hearing date, we can bring them at that time?

18 CHAIRMAN FESMIRE: Right, they are due at the
19 Commission's next meeting. Any other questions? With
20 that, we'll adjourn Case No. 14055 and continue it to the
21 next regularly scheduled Commission meeting.

22 The next piece of business before the Commission
23 is the continuation of Case No. 13957. It's the De Novo
24 Application of Energen Resources Corporation to Amend the
25 Cost Recovery Provisions of Compulsory Pooling Order