

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:) CASE NO. 12,733
)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING OPERATORS TO BRING NINETY-FIVE)
(95) WELLS INTO COMPLIANCE WITH RULE)
201.B AND ASSESSING APPROPRIATE CIVIL)
PENALTIES, EDDY AND CHAVES COUNTIES,)
NEW MEXICO)

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

October 4th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, October 4th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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 Examiner Hearing
 CASE NO. 12,733

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* * *

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A P P E A R A N C E S

FOR THE DIVISION:

DAVID BROOKS
Attorney at Law
Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR JULIAN ARD:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

FOR EXXON MOBIL CORPORATION and WISER OIL COMPANY:

JAMES G. BRUCE, Attorney at Law
3304 Camino Lisa
Santa Fe, New Mexico 87501
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 8:20 a.m.:

3
4
5 EXAMINER CATANACH: Okay, I'll call the hearing
6 to order this morning for Docket Number 32-01.

7 I'm going to call the continuances and dismissals
8 at this time.

9 (Off the record)

10 EXAMINER CATANACH: At this time I'll call Case
11 12,733, which is the Application of the New Mexico Oil
12 Conservation Division for an order requiring operators to
13 bring ninety-five (95) wells into compliance with Rule
14 201.B and assessing appropriate civil penalties, Eddy and
15 Chaves Counties, New Mexico.

16 I will call for appearances in this case.

17 MR. BROOKS: May it please the Examiner, I'm
18 David Brooks, New Mexico Energy, Minerals and Natural
19 Resources Department, Assistant General Counsel, appearing
20 for the New Mexico Oil Conservation Division. I have two
21 witnesses.

22 MR. CARR: May it please the Examiner, my name is
23 William F. Carr with the Santa Fe office of Holland and
24 Hart, L.L.P. We represent Julian Ard in this matter. I
25 have one witness.

1 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe.
2 I'm representing Exxon Mobil Corporation, and I have one
3 witness for them, and also the Wiser Oil Company, and I
4 have one witness for Wiser.

5 EXAMINER CATANACH: Any additional appearances?

6 Okay, can I get all the witnesses to please stand
7 up and be sworn in?

8 (Thereupon, the witnesses were sworn.)

9 MR. BROOKS: Before proceeding, Mr. Examiner, I
10 would like to make a brief explanatory statement.

11 May it please the Examiner, this is a somewhat
12 novel proceeding for the New Mexico Oil Conservation
13 Division. In the past the Division has been, in the main,
14 reactive in terms of dealing with abandoned wells. We have
15 moved in response to principally surface owner complaints.
16 The Division staff has decided in this instance, this
17 project that the present hearing is a part of, to become
18 proactive and to embark on a program of systematically
19 determining which wells are in need of attention and
20 getting those attended to in one way or another.

21 Now, the project is necessarily somewhat
22 experimental since we haven't done it before or certainly
23 haven't done it in a long time. We have decided to proceed
24 by districts and to use our present computer facilities,
25 first off, to isolate those wells in each district which

1 are not in compliance with Rule 201.B, which requires that
2 they be either plugged or temporarily abandoned if they're
3 not in production or being utilized for injection.

4 Once those wells were isolated on the computer,
5 we then notified the operators to bring them into
6 compliance. Most of the operators did so, however some of
7 the operators did not respond to either our first or our
8 second, and in some cases third and fourth notifications,
9 and those operators from whom we could not get response
10 without bringing them to hearing, we did bring them to
11 hearing, and that is what this hearing is about this
12 morning.

13 Now, the determination has been made by the staff
14 to recommend the following procedure. First of all,
15 there's one operator on our list who has one well and has
16 restored that well to production, and that is Roy E.
17 Kimsey, Jr., and at this time the Division moves to dismiss
18 this case as to Respondent Roy E. Kimsey, Jr.

19 Second category of respondents are those who have
20 contacted our district office and have submitted a plan
21 satisfactory to our district supervisor to bring their
22 wells into compliance within the next 30 to 60 days. For
23 those wells, after conferring with the District Supervisor,
24 Mr. Gum, I have concluded to recommend on behalf of the
25 Division that this proceeding be continued until the first

1 hearing docket in the year 2002. That will give
2 approximately 90 days for the Division to monitor the
3 compliance of these operators with the plans they have
4 submitted. And we will proceed to hearing if they do not,
5 in fact, follow through. That would be our recommendation.

6 This will entail a severance of this case into
7 two separate cases, because we would like to go on and get
8 a compliance order entered as to those operators who either
9 did not appear in this proceeding at all, and therefore are
10 in default, and those operators with whom satisfactory
11 compliance plans are not worked out, either previously or
12 in this proceeding.

13 Now, I will at this time state the names of the
14 operators as to which we are requesting that this
15 proceeding be continued, because they have submitted plans
16 to bring their wells into compliance that have been
17 approved by the District Supervisor. Those are the
18 following:

19 Aceco Petroleum, Amtex Energy, Bird Creek
20 Resources -- and I realize I'm going too fast for you, so
21 I'll slow down.

22 EXAMINER CATANACH: Okay, I'm sorry, Aceco,
23 Amtex...

24 MR. BROOKS: Aceco Petroleum, Amtex Energy, Bird
25 Creek Resources, Burnett Oil Company, Dinero Operating -- I

1 suppose they found there's more dinero in complying than in
2 not complying -- Lindenmuth and Associates, Mar Oil and
3 Gas, NGX, and Read and Stevens, Inc.

4 Now, I will further explain, before I proceed,
5 that there are two categories of wells as to each operator
6 we've listed in our Application, as set out in the
7 Application, the Exhibit A wells and the Exhibit B wells.

8 The Exhibit A wells are the wells that were not
9 in compliance, that we isolated as being not in compliance
10 when we started this project and as to which in most cases,
11 hopefully in all, although the documentary record is not as
12 totally complete, but generally speaking those are the
13 wells as to which the operators have been previously
14 specifically notified to bring them into compliance.

15 Because we were filing this proceeding, we also
16 ran a second computer run to determine other wells that the
17 same operators might have that were now not in compliance,
18 and those are the Exhibit B wells.

19 With that statement, I am now prepared to proceed
20 against the remaining operators, if it please the Examiner.

21 EXAMINER CATANACH: You may proceed, Mr. Brooks.

22 MR. BROOKS: Very good, at this time the Division
23 calls Jane Prouty.

24 Good morning, Ms. Prouty.

25 MS. PROUTY: Good morning.

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JANE E. PROUTY,

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

DIRECT EXAMINATION

BY MR. BROOKS:

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

A. Jane Prouty.

Q. And how are you employed?

A. With the Oil Conservation Division.

Q. And where do you reside --

A. In --

Q. -- in just the town. You don't --

A. Santa Fe.

Q. Yeah, I just wanted to point out you don't have
to give your street address.

And what is your position with the New Mexico Oil
Conservation Division?

A. My working title is Technology Master 2, I work
with the computers.

Q. And are you the person who is in charge of the
monitoring of production reports, production reporting and
the entry into and maintenance on the computer of the
production reports in the ONGARD system of the production
reports that are filed with the Division?

1 A. Yes, we have a staff of about seven people, and
2 they work through me.

3 Q. Have you been very much involved in the inactive
4 well project?

5 A. Yes.

6 Q. And would you explain to the honorable Examiner
7 how this first originated, not in terms of who started it
8 or what you were told to do exactly, but what did you do
9 originally, and when did this start and what was the first
10 step that you were instructed to take in connection with
11 the inactive well project?

12 A. Okay, the District Supervisors and I worked
13 together to develop a criteria for what might constitute an
14 inactive well, and we decided that that -- That was in
15 approximately April of 2000, and we came up with a standard
16 criteria. It involved mainly wells that had not produced
17 or injected for a period of two years, but the wells did
18 have completions in our computer, according to the last
19 record we'd entered.

20 So if they hadn't produced and if they did look
21 like they should be either producing or injecting, we put
22 them on a list and sent that out in May, 2000, to all the
23 operators, asking them if we had any error in our system or
24 what type of well it was, and asking them to get in touch
25 with us.

1 Q. Okay, and did you furnish the results of that
2 work to each of the district supervisors for the wells in
3 their district?

4 A. Yes, we -- Each district mailed the letters
5 themselves, they were created by Ben Stone with data that I
6 provided, and...

7 Q. Okay. Now, during the past several months, were
8 you instructed to narrow this down to specific operators,
9 wells of specific operators?

10 A. Yes. Mr. Gum had a list of operators that I
11 believe had not responded to prior notification, so I was
12 asked to go through and make sure all of those wells still
13 applied, and then also to broaden it to one year of
14 inactivity, just to be sure we were catching everything.

15 Q. Okay --

16 A. Does that answer your question?

17 Q. Yes, it does.

18 A. Okay.

19 Q. Now, if you will open the folder that's in front
20 of you, you will find the first document is entitled Index
21 to Exhibits. You'll want to turn that one over.

22 And the next document in there is entitled OCD
23 Exhibit 1. Are you familiar with this document?

24 A. Yes.

25 Q. Did you cause the ONGARD computer system to

1 generate this document?

2 A. Yes.

3 Q. Now, can you tell us what were the criteria used
4 to generate the data that is incorporated in OCD Exhibit 1?

5 A. Okay, yes. You had given me a list of the
6 specific wells that were determined to be pursued, and I
7 did a computer query, listing those wells specifically
8 against all of the production data and injection data that
9 we had received since January 1st, 1997 -- Excuse me, I
10 shouldn't say that. For the reporting months of January,
11 1997, forward. So I queried whether those wells had
12 produced or injected for that time period, and the results
13 are printed here.

14 Q. Okay. Now, this is a very lengthy exhibit. I
15 don't even know how many pages it is but I believe it has
16 numbers, so it appears to be 93 pages in length.

17 Summarizing this exhibit for the benefit of the
18 Examiner, were there any wells on this list which showed
19 that the operator had reported either production or
20 injection within 15 months prior to the filing of this
21 proceeding? That would be beginning with the month of June
22 of 2000 and continuing through the month of August of 2001.

23 A. Excuse me, I can't exactly answer that. I did
24 not review it that -- I believe the way they appeared on
25 the criteria in the first place was that they had not, once

1 I ran this report, other than noting that one well from
2 Exxon had been reported for July, that data had just come
3 in last week. I didn't go back through and review every
4 single well, sorry.

5 Q. Okay, thank you. I didn't ask you to, so that's
6 understandable.

7 Mr. Examiner, the exhibit will speak for itself,
8 but for the record I did go through this exhibit and review
9 every single well, and there are no wells for which
10 production or injection were reported during the period I
11 indicated. Now, it is true that there is one Exxon well
12 for which production has been reported subsequent to that
13 period, and Ms. Prouty, could you tell us what month was
14 that and what well that was?

15 A. It was for July, 2001. It just came into our
16 office and was put into our system last week. It is --

17 Q. There are 40 Exxon wells --

18 A. Right.

19 Q. -- and they're on about page 18, 19 and 20 of
20 this exhibit.

21 A. It's the one on page 18, the Avalon Delaware Unit
22 364. You'll see that Exxon reported that well with zero
23 production or injection from 1-97 through 6 of 2001, if you
24 go to page 19, but for July they did report water
25 production.

1 Q. Okay. Now, will you explain one thing about this
2 exhibit? You and I discussed this yesterday. There are
3 numbers for production for some months back in 1999 and
4 1998 and 1997 on some of these wells, and there are a lot
5 of months for which there are simply no numbers. Did you
6 intentionally prepare this exhibit in such a way that there
7 are no zeroes showing on it?

8 A. Yes, just for ease of reading usually I take out
9 zeros, and that's what I did. I put a little note at the
10 bottom. If you look at the very first well for Aceco, for
11 the month of July, 1998, they did report volumes, so
12 they're on the report. But for August, September, et
13 cetera, they met the C-115 rule, they sent in a report with
14 zeros, and I just suppressed them on the list so that you
15 could clearly see the amounts. But they did report to us
16 the zero amount.

17 If the month doesn't appear at all -- for example
18 in this case, July of 2001 isn't on here; that means that
19 month was not yet reported in the case of July, 2001. But
20 if there's one skipped in here, that would mean that month
21 wasn't reported at all.

22 But if the month and year appear, they did send a
23 C-115 with that well on the C-115.

24 Q. If the operator did not report that well at all
25 and did not include it on their C-115, then that month

1 would not appear on Exhibit 1; is that correct?

2 A. Yes.

3 Q. And if it does appear, that means that the
4 operator did include that well on the C-115 and reported
5 zero production of oil, gas and water for that month?

6 A. Or injection, yes.

7 Q. Yes, okay. Very good. And we've already
8 established that Exhibit 1 was prepared by you or under
9 your direction, correct?

10 A. Yes.

11 MR. BROOKS: Okay, at this time the Division will
12 move the admission of OCD Exhibit Number 1.

13 EXAMINER CATANACH: Any objections?

14 MR. CARR: No objection.

15 EXAMINER CATANACH: Exhibit Number 1 will be
16 admitted as evidence.

17 MR. BROOKS: Very good, I will pass the witness.

18 EXAMINER CATANACH: Are there any questions of
19 this witness?

20 EXAMINATION

21 BY MR. CARR:

22 Q. Ms. Prouty, have you compared Exhibit 1 to the
23 docket for today's hearing?

24 A. No, I --

25 Q. Are you aware that the description in the docket

1 for the Julian Ard Acme Number 1 is incorrect?

2 A. Is what, please?

3 Q. Is incorrect.

4 A. I'm sorry, I don't have a copy of the docket,
5 that I know of.

6 Q. I'm just pointing that out, just because if we
7 take any further action it is incorrect in the docket, it
8 is correct in Exhibit Number 1. And when I looked for the
9 well I had a hard time finding it working off the docket,
10 and in any future documentation on this matter...

11 MR. BROOKS: Mr. Carr, would you be so kind as to
12 specify the error that appears --

13 MR. CARR: It's listed as being in Section 36 of
14 19 South, 24 East. It's actually in Section 4 of 8 South,
15 27 East.

16 MR. BROOKS: Okay.

17 MR. CARR: It's correct in the exhibit, it is in
18 error on the docket.

19 MR. BROOKS: Is the API number correct --

20 MR. CARR: The API number --

21 MR. BROOKS: -- on the docket?

22 MR. CARR: -- is correct.

23 MR. BROOKS: Thank you for that clarification,
24 Mr. Carr?

25 Mr. Bruce?

EXAMINATION

1
2 BY MR. BRUCE:

3 Q. The only question I have, Ms. Prouty, is, are all
4 the wells on your exhibit listed on the docket sheet here
5 today?

6 A. I'm sorry, I don't -- Is this the docket sheet?

7 Q. Yes. Well --

8 A. I don't know if I have a copy of it. I don't
9 think I have a copy of the docket sheet, do I? Or is this
10 it?

11 EXAMINER CATANACH: This is the docket sheet, Ms.
12 Prouty.

13 THE WITNESS: Okay. It -- Yes, I was looking
14 from an earlier copy. Yes, I believe they are. I
15 brought -- yes, that's the -- I was working from just a
16 different formatted copy, but yes. And for example, that
17 Julian Ard well, page 35, if there was never a C-115
18 reported for that well, my report just says "No C-115
19 filed".

20 And there are a few, maybe ten or so, that come
21 in that category.

22 MR. BRUCE: Okay, thank you. That's all I have,
23 Mr. Examiner.

24 EXAMINER CATANACH: I just have a couple
25 questions, Ms. Prouty.

EXAMINATION

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BY EXAMINER CATANACH:

Q. The criteria that you initially used was, I believe you said, two years of nonactivity when you first generated the list of wells?

A. Uh-huh.

Q. And then you said subsequently that you reduced that to one year?

A. Well, the intention was -- The first time we were trying to be -- to get a working set of wells that totally had not been reported, so the first one we tried to be cautious and did two years. Then -- And we've always done two years of no production for our inactive project.

But just to see if there were any additional wells out there that would come into the real time frame that our Rules require, which is the one year --

Q. Uh-huh.

A. -- we broadened it. But I believe -- Is that what Mr. Brooks was saying were the Exhibit B wells?

MR. BROOKS: I believe that is correct.

THE WITNESS: So they were not ones that -- the inactive definition for our purposes of monitoring is looser than the Rules so that we can be generous and sure that we're not missing something in a paperwork delay or something like that. But I believe all the wells on this

1 list, the operators were notified in May of 2001.

2 MR. BROOKS: Okay, we will be -- Mr. Examiner, we
3 will be --

4 THE WITNESS: Excuse me, 2000.

5 MR. BROOKS: -- offering specific proof regarding
6 notice to each of the operators.

7 Q. (By Examiner Catanach) Okay. So the list that
8 you've compiled, Exhibit A represents all of the wells in
9 District 2 that you feel are not in compliance with the
10 rule at this point?

11 A. More than -- There are, I believe, some wells
12 that are not in compliance that are not on this list,
13 because this list is more comprehensive than the rule. It
14 allows more months. Is that correct?

15 MR. BROOKS: Well, I'm not on the witness stand,
16 but --

17 THE WITNESS: Oh, I'm sorry.

18 MR. BROOKS: -- if you wish me to respond, Mr.
19 Examiner, I will do so.

20 EXAMINER CATANACH: If you would, please, Mr.
21 Brooks.

22 MR. BROOKS: Yes, the Exhibit 1 includes only
23 those wells that are operated by operators whose wells were
24 on the first list. Now, there may be other wells, and
25 there probably are other wells that are now noncompliant,

1 that are operated by operators who had no noncompliant
2 wells at the time the notices were sent out.

3 Because this proceeding is designed to deal with
4 operators who had not responded to the District's
5 correspondence, we did not go back and include other
6 operators who had not been subject to the prior notice.
7 And those operators who were subject to the original notice
8 had wells which were noncompliant for a period of two
9 years.

10 Now, the rule requires that if a well is not
11 produced or used in a beneficial use for a period of one
12 year, then the operator has 90 days to bring it into
13 compliance, either by temporary abandonment, permanent
14 abandonment or restoring it to production or injection.

15 So there is actually a period of 15 months.
16 After that 15-months period has expired, the entry of a
17 compliance order would be appropriate. Well, we began with
18 people who had one or more wells that had been off of
19 production or injection for two years as of May of 2000,
20 which has been about 18 months ago, 17 months ago. The
21 operators that didn't have any wells on that first list,
22 they're not on here at all. And so these operators are the
23 only people that are included.

24 Now, we did go back and pick up any wells that
25 were deemed to be noncompliant as of when we started

1 getting ready for this hearing, which was in early
2 September. So it should be all wells that have been off
3 production since beginning with June of 2000, for these
4 operators only.

5 Thank you.

6 EXAMINER CATANACH: I have no further questions
7 of this witness.

8 MR. BRUCE: Mr. Examiner, could I just ask
9 another question?

10 EXAMINER CATANACH: Sure.

11 FURTHER EXAMINATION

12 BY MR. BRUCE:

13 Q. Ms. Prouty, what you're saying is that these
14 wells on this list are where the Division's records reflect
15 that these wells are not in compliance with Rule 201; is
16 that correct?

17 A. Yes.

18 Q. Okay.

19 A. Well, excuse me, I'm not familiar with Rule 201,
20 so I don't know whether I should say that. In compliance
21 with the rule that Mr. Brooks just stated, yes.

22 Q. Now, from your initial mailing or whatever the
23 notices were sent out, have a number of wells been taken
24 off the list then?

25 A. Oh, yes. There were responses, is that what you

1 mean?

2 Q. Yes.

3 A. Yes, there were responses on many.

4 MR. BRUCE: Thank you.

5 EXAMINER CATANACH: Anything further?

6 MR. BROOKS: Nothing further.

7 EXAMINER CATANACH: This witness may be excused.

8 MR. BROOKS: At this time the Division will call
9 Mr. Tim W. Gum.

10 Good morning.

11 MR. GUM: Good morning.

12 TIM W. GUM,

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

15 DIRECT EXAMINATION

16 BY MR. BROOKS:

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

19 A. My name is Tim W. Gum.

20 Q. And how are you employed?

21 A. I'm currently employed with the Oil Conservation
22 Division, State of New Mexico, Artesia, New Mexico.

23 Q. And what is your capacity with the Division?

24 A. Currently I hold the position of District
25 Supervisor.

1 Q. And in that position are you generally in charge
2 of the operational and the Division's work in those
3 counties which are included in your District?

4 A. Yes, I am.

5 Q. And what counties are those?

6 A. There are ten southernmost counties of the State
7 of New Mexico. Primary production is in Chaves, Eddy,
8 Otero, Dona Ana, Luna, Sierra and -- just two or three
9 more, and I do not remember -- There's no production there,
10 so we really don't have --

11 Q. Eddy's the big one, isn't it?

12 A. Eddy's the biggest, yes.

13 Q. Okay, this proceeding includes Eddy and Chaves,
14 correct?

15 A. That's correct.

16 Q. Mr. Gum, Mr. Prouty -- Ms. Prouty has explained
17 what she did in the beginning of the inactive well project
18 back in early 2000. Would you explain what you did in that
19 project?

20 A. Basically, this project started with a mass
21 notice to all operators in May of 2000. There were two
22 intents of this particular mail-out.

23 One intent was to notify the operators that our
24 records indicated that the wells listed on this mail-out
25 were in noncompliance.

1 The second part of this mail-out was to ask the
2 operators, what did your records indicate for these wells?
3 And if your records indicated a different status to provide
4 documentation to show that -- and as Ms. Prouty indicated,
5 there was a large number of wells on this first mail-out,
6 there was a lot of them taken off on subsequent runs
7 because of the correction of the data from one operator to
8 our records.

9 Q. And what do you mean in terms of correction of
10 data? What kind of --

11 A. Just correction of the data in which the ONGARD
12 system, which is the master system in which this project is
13 being controlled by, the data there was actually corrected
14 with -- where it was incorrect in ONGARD.

15 Q. Well, for example, was it determined in some
16 instances that the wells were not, in fact, operated by the
17 people whom we had shown to be operated by?

18 A. That's one case. Another case was, there were a
19 lot of wells that were not shown properly TA'd or PA'd in
20 the ONGARD system.

21 Q. And were there some in which it was shown that
22 they actually were on production, but the production was
23 not reflected in our system for whatever reason?

24 A. There was a few, but that was the minor case.

25 Q. Okay. And when those errors were reported to you

1 by the operators, did you check them out to be sure that
2 their reports were correct, and not ours?

3 A. Yes, we utilized our files and the documentation
4 that was provided by the operators and had made the
5 necessary correction into ONGARD.

6 Q. And if it appeared after you and your staff
7 reviewed these that our information was not correct, did
8 you remove those wells from the inactive well list?

9 A. Yes. They would automatically be removed on the
10 next run, since they did not meet the criteria for inactive
11 wells.

12 Q. Okay. Now, were there some of the operators that
13 did not respond to your correspondence?

14 A. Yes, sir.

15 Q. And in September -- August or September of 2001,
16 did you prepare a list for me of operators that, according
17 to your records and files that are in Artesia, had not
18 responded to your previous inquiries?

19 A. Yes, this was based on the data that was
20 requested for in the May, 2000, letter. And the letter was
21 sent out in September, and based on how the operators did
22 or did not respond was the context of the letter in
23 September.

24 Q. Okay. Now, I have -- Since you and I talked on
25 Tuesday in Artesia, I have been through your correspondence

1 files, and I know there were several letters sent out.
2 We're going to go over the correspondence that was in your
3 files, by operators, in just a minute. But in certain
4 instances these form letters, I believe, were sent out to
5 all of the operators that appeared on the inactive well
6 list; is that correct?

7 A. That's correct.

8 Q. And in some cases, copies of those letters with
9 specific well lists appear in these files, and in some
10 cases they do not, but would the absence of copies of those
11 letters in a specific operator's file mean that that
12 operator was not sent that letter?

13 A. Not necessarily. It would mean that there was no
14 record of it for that file.

15 MR. BROOKS: Okay, very good. We will be going
16 over those. I did not -- I remember -- I want to provide
17 copies of the exhibits that refer to specific operators to
18 the attorneys who have appeared for those operators, and I
19 believe, Mr. Carr, that you appear for Exxon Mobil and
20 Wiser; is that --

21 MR. CARR: No, I appear for Julian Ard.

22 MR. BROOKS: Oh, and you appeared for Exxon
23 Mobil --

24 MR. BRUCE: Yes, sir.

25 MR. BROOKS: -- and Wiser, and you are for Julian

1 Ard only, Mr. Carr?

2 MR. CARR: Yes, sir, I am.

3 MR. BROOKS: Okay. Exhibits Number 6 and 7
4 relate to Exxon Mobil, and here are copies of those
5 exhibits, Mr. Bruce.

6 And Exhibit Numbers 25 and 26 relate to the Wiser
7 Oil Company. And there are copies of those exhibits, Mr.
8 Bruce.

9 Exhibit Number 13 relates to Julian Ard, and here
10 is a copy of that exhibit, Mr. Carr.

11 Okay. Now, we've already gone over Exhibit 1
12 with Mr. Prouty -- with Ms. Prouty. I'm sorry, I keep
13 calling you Mr. Prouty.

14 And Exhibit 2 is an affidavit that I will be
15 offering at the conclusion of the testimony, so I will
16 bring your attention now, Mr. Gum, to Exhibit 3.

17 Q. (By Mr. Brooks) Now, Exhibit 3, would you look
18 at Exhibit 3 and identify it for us?

19 A. Yes, this is a letter that was prepared under my
20 signature to Mr. Schelling. The date of this was February
21 7th, 1997.

22 Q. Okay --

23 A. Now --

24 Q. Go ahead.

25 A. -- the reason I assume that this -- which is an

1 exhibit that was in the file that is currently maintained
2 for this particular operator --

3 Q. It was, and also if you will note, it refers to
4 the Mahun State Number 1, which is one of the wells that's
5 subject to this proceeding.

6 A. That's correct.

7 Q. Okay. Now, does this reflect that Mr. Schelling
8 -- or I believe his name is actually Schellinger, is it
9 not?

10 A. I believe that's correct, yes.

11 Q. Does this reflect that he was advised as of
12 February 7th, 1997, that the Mahun State Number 1 needed to
13 be brought into compliance?

14 A. Yes, he was.

15 Q. Okay. I will next ask you to look at what has
16 been marked as Exhibit Number 4, OCD Exhibit Number 4, and
17 ask you to identify it.

18 A. This is a form letter that was prepared in the
19 Santa Fe legal department to go under our signature, the
20 District Supervisors, to operators that not respond to the
21 May 11th, 2000 letter.

22 Q. And did you, in fact, send this letter to Mr.
23 Schellinger?

24 A. Yes, I did.

25 Q. Now, I will represent to you that your file that

1 you supplied me did not contain any copy of the May, 2000,
2 letter directed to Mr. Schellinger. Would it be fair or
3 not to infer that Mr. Schellinger did not receive the May
4 letter, or is it probable that he did, given the procedures
5 in your office?

6 A. It's my opinion that he did receive the May
7 letter; he failed to respond, and that is why this
8 particular letter was sent.

9 Q. And based on the procedures in your office that
10 were used in this project, do you believe that despite the
11 fact that there is not a copy of the May letter in the
12 Schellinger file, in your file, for Carl Schellinger?

13 A. The reason that there is not a copy there, we did
14 not receive his reply.

15 Q. Okay, thank you. Mr. Examiner, I will ask you to
16 note that the Exhibit 4 -- Well, let me ask the witness
17 this.

18 You will note also that Exhibit 4 is a Xerox copy
19 which also includes a copy of a return receipt from the
20 United States Postal Service. Were those receipts received
21 by your office in Artesia and, as a part of office routine,
22 filed with the letters to which they pertained?

23 A. Yes, sir.

24 Q. Very good. And I will next call your attention
25 to OCD Exhibit Number 5 that has the bold underlined

1 statement "Final Notice" on the top of it, and ask you to
2 identify it.

3 A. This is a letter that was prepared under -- by
4 myself in order to continue this inactive well project,
5 trying to get response from operators, and trying to work
6 with operators as best we could in order to have work plans
7 provided to bring this issue to a close.

8 MR. BROOKS: Okay. I believe that covers the
9 situation with regard to Carl Schellinger, and I also
10 believe that no one is here appearing for Carl Schellinger;
11 is that correct?

12 EXAMINER CATANACH: That's correct, Mr. Brooks.

13 MR. BROOKS: Okay. Mr. Examiner, would you
14 prefer that I allow you to -- or that I interrupt the
15 examination and you pose your questions as to each operator
16 separately, or would you prefer that I go through all the
17 operators prior to tendering the witness?

18 EXAMINER CATANACH: I think if we're generally
19 submitting letters that were issued on the same date, we
20 could just hold off our questions till the last.

21 MR. BROOKS: Very good, I will proceed through
22 the operators and then tender the witness.

23 Q. (By Mr. Brooks) Mr. Gum, I call your attention
24 to OCD Exhibit Number 6, which I believe appears to be a
25 copy of the same form letter as OCD Exhibit Number 4, only

1 it's directed to a different operator. I'll ask you to
2 once again identify OCD Exhibit Number 6.

3 A. Yes, this is the form letter that was sent out of
4 our office during this stated matter.

5 Q. Now, and is there again a certified mail receipt
6 indicating that this was received by Exxon Mobil
7 Corporation?

8 A. Yes, they are.

9 Q. Now, Exhibit Number 6 does not have a well list
10 attached to it; is that correct?

11 A. That's correct.

12 Q. Now, is that because it refers back to the May
13 correspondence?

14 A. That's right.

15 Q. Now, once again there is not a copy of the May
16 letter in the file as to Exxon Mobil. Can you again state
17 to us, based on your office routine, whether or not you
18 believe that Exxon Mobil, in fact, did -- that the May
19 letter was, in fact, sent to Exxon Mobil Corporation?

20 A. To the best of my recollection, the letter was
21 sent to Exxon, and we did not receive any reply.

22 Q. And would there have been a well list attached to
23 that letter?

24 A. Yes, sir.

25 Q. Very good.

1 A. Once again, on the May mail-out, the wells in
2 question at that point in time was attached as part of the
3 letter.

4 Q. Very good. I will now call your attention to OCD
5 Exhibit Number 7 and ask you to identify it.

6 A. Yes, this is a letter that was sent under my
7 signature in regard to the ongoing process of trying to get
8 a work plan to bring these wells into compliance.

9 Q. Now, we had stated at the time that we filed this
10 Application that there were no responses from any of the
11 operators except NGX. Now, does this Exhibit Number 7
12 reflect your recollection that, in fact, there was some
13 character of response from Tuyet Ngo on behalf of Exxon --

14 A. Yes.

15 Q. -- Corporation?

16 Okay. Now, the computer printout that is
17 attached to Exhibit 7, was that sent out with this letter?

18 A. Yes, it was.

19 Q. And --

20 A. As you will note on the top there, it was
21 November the 16th of 2000, and that was the run that was
22 made specifically at that date, and it may or may not have
23 been the same well on the May letter.

24 MR. BROOKS: Yes, I will call your attention, Mr.
25 Examiner, to the fact that the document attached to Exhibit

1 Number 7 lists all of the Exhibit A wells for Exxon, and
2 Exxon has no Exhibit B wells, but it also includes one
3 other well, the Avalon Delaware Number 914, that is not a
4 part of this proceeding.

5 EXAMINER CATANACH: Mr. Brooks, before you
6 proceed, I think it might be better, on second thought, to
7 ask questions as we go along. That might make it better.

8 MR. BROOKS: You are the judge, so...

9 EXAMINER CATANACH: And I think I'll ask Mr.
10 Bruce at this time if he has any questions regarding the
11 Exxon.

12 MR. BRUCE: Yeah, Mr. Gum, just a couple.

13 EXAMINATION

14 BY MR. BRUCE:

15 Q. In your January, 2001, letter, Mr. Brooks just
16 mentioned the 914, the Avalon Delaware Unit 914 well. Is
17 that well in compliance?

18 A. Based on this letter, at this time it was not in
19 compliance.

20 Q. Is it now?

21 A. I do not know if it is in compliance now or not.

22 Q. But it's not on the docket for today's hearing?

23 A. Okay, so it must have met the criteria to be
24 active and in compliance.

25 Q. Okay. One other thing is, did you say that a

1 May, 2000, letter was not sent to Exxon or was?

2 A. It was sent, but it was not received by us.

3 Q. You mean you didn't get a green card back or --

4 A. No, this was not sent certified mail, it was by
5 regular mail.

6 Q. Do you know what address that was sent to?

7 A. I do not have it in front of me, but I could
8 provide it, yes. I believe that it was going to be sent to
9 the same address as the January 1 -- or 11th letter is.

10 Q. The reason I ask, Mr. Gum, is that there's two
11 different addresses on Exhibits 6 and 7 for Exxon Mobil
12 Corporation, and I would like to know where that May letter
13 was sent, trying to deal with it internally, Mr. Gum. I
14 don't need it right now, but I would like to have that
15 information.

16 A. Mr. Examiner, I can provide that at a later time
17 after this hearing.

18 EXAMINER CATANACH: That would be fine, Mr. Gum.

19 THE WITNESS: Okay.

20 MR. BRUCE: I think that's all I have, Mr.
21 Examiner. If I could, I would like to get a copy of that
22 May letter, that May, 2000, letter.

23 EXAMINER CATANACH: Okay, we'll try and provide
24 that. Do we have that, Mr. Gum, a copy of the May --

25 THE WITNESS: Yes, sir.

1 EXAMINER CATANACH: -- letter? Okay, we can
2 provide that to you.

3 And Mr. Gum, do you know why these addresses are
4 different, or where did you get your mailing lists from?

5 THE WITNESS: My best recollection is, the letter
6 in September was sent to the same address as the May
7 letter. Then a call from this particular gentleman on the
8 January 11th letter indicated that the correspondence
9 needed to be sent to him personally at that particular
10 address. That's why they're different than these two
11 letters are.

12 EXAMINER CATANACH: Okay. You may proceed, Mr.
13 Brooks.

14 MR. BROOKS: Thank you.

15 DIRECT EXAMINATION (Resumed)

16 BY MR. BROOKS:

17 Q. Mr. Gum, I call your attention to what has been
18 marked as OCD Exhibit Number 8 and ask you to identify it.

19 A. Yes, this is another form letter, the September
20 8th, 2000, mail-out, that it was sent to General Minerals
21 Corp. at this particular address.

22 Q. And is this the same form letter as OCD Exhibit 6
23 that was just discussed in connection with Exxon and Mobil?

24 A. Yes, sir.

25 Q. Now once again, your file for General Minerals

1 Corp. does not reflect -- does not contain a copy of the
2 May, 2000, letter. Based on the fact that the September,
3 2000, letter was sent to General Minerals Corp. and a copy
4 is in the file, would it be a fair assumption that the May,
5 2000, letter was previously sent to General Minerals Corp.?

6 A. Yes, sir.

7 Q. And once again there is a copy of a return
8 receipt on the copy of Exhibit 8 that is being offered, and
9 would that indicate that a return receipt was received in
10 Artesia and filed with the correspondence to which it
11 related?

12 A. Yes, sir.

13 Q. I next call your attention to what is marked as
14 OCD Exhibit Number 9 and ask you to identify it.

15 A. This is a follow-up letter for the December 26th,
16 2000, mail-out to General Minerals at the same address as
17 the prior letter was sent to, with one exception: It was
18 not accepted at this point in time at the same address.

19 Q. And did this -- was this letter returned to the
20 Artesia Office of the Division?

21 A. Yes, sir.

22 Q. And the third page -- I call your attention to
23 the third page of Exhibit Number 9. Is that a copy of the
24 envelope that was returned to the Artesia Division and
25 filed with the correspondence --

1 A. Yes, sir.

2 Q. -- which it originally contained?

3 A. Right.

4 Q. Now, I will call your attention to the second
5 page of OCD Exhibit Number 9 and ask you if that was a
6 document that was attached to Exhibit Number 9 when it was
7 mailed to General Minerals Corp.

8 A. Yes, sir.

9 MR. BROOKS: And Mr. Examiner, I will ask that --
10 I will suggest the record reflects that the well listed on
11 the second page of Exhibit Number 9 is the one and only
12 well of General Minerals Corp. which is the subject of this
13 proceeding.

14 EXAMINER CATANACH: Okay. I do have a question
15 on this, Mr. -- If you're done.

16 MR. BROOKS: Go ahead, pass the witness.

17 EXAMINATION

18 BY EXAMINER CATANACH:

19 Q. Mr. Gum, I notice on Exhibit Number 8, the
20 mailing address is not quite the same as it is on Exhibit
21 Number 9.

22 And I don't know -- Do you have an opinion as to
23 why -- whether that had any bearing on whether the second
24 notice was not received by the Applicant or by the company?
25 The first one says 4133 North Lincoln Boulevard, the second

1 letter says 413 North Lincoln Boulevard.

2 A. Mr. Examiner, that may have been a typo on the
3 letter.

4 I do not see the address that it was sent to on
5 the envelope. I could not answer the question
6 specifically.

7 EXAMINER CATANACH: Okay.

8 MR. BROOKS: It would appear, Mr. Examiner, that
9 the address on the envelope was blocked out by a sticker
10 that was placed on the envelope by the Postal Service.

11 Q. (By Examiner Catanach) You've had no further
12 correspondence with this company after this final notice?

13 A. No.

14 MR. BROOKS: May I proceed?

15 EXAMINER CATANACH: Please.

16 DIRECT EXAMINATION (Resumed)

17 BY MR. BROOKS:

18 Q. Okay, the next is Guadalupe Operating Company,
19 LLP, and I will call your attention, in connection with
20 that operator, to OCD Exhibit Number 10 and ask you to
21 identify it.

22 A. Yes, this again is a form letter mailed out
23 September 8th, 2000, to all of the operators that did not
24 respond to the May 11th, 2000, letter.

25 Q. And would the fact that Exhibit Number 10 was

1 sent to Guadalupe Operating Company, LLP, indicate that a
2 copy of -- that, in fact, the May, 2000, letter was sent to
3 that operator also?

4 A. (Nods)

5 Q. I call your attention to what is marked as OCD
6 Exhibit Number 11 and ask you to identify it.

7 A. Yes, this is a follow-up letter that was prepared
8 August the 6th, 2001, still trying to get a response from
9 the operator in order to provide a work plan in order to
10 bring these wells into compliance.

11 MR. BROOKS: Okay. That is all of the exhibits
12 we're offering in regard to Guadalupe Operating Company,
13 Mr. Examiner.

14 EXAMINATION

15 BY EXAMINER CATANACH:

16 Q. Okay, Mr. Gum, there are no return receipts
17 associated with this particular operator. Does that mean
18 that they did not receive it, or --

19 A. We do not have record of having that, so I could
20 not produce that.

21 Q. So it's your opinion they did not receive this
22 notice?

23 A. It's my opinion that they did, but we just do not
24 have record that they did.

25 EXAMINER CATANACH: Okay.

1 DIRECT EXAMINATION (Resumed)

2 BY MR. BROOKS:

3 Q. Following up on the Examiner's question, if these
4 mailings to any of these particular operators had been
5 returned to the Artesia office, based on the routine of
6 your office, would the return correspondence have been
7 placed in the file?

8 A. Yes, it would.

9 Q. Thank you. I will now call your attention to --
10 The next operator is Herman V. Wallis, and I will now call
11 your attention to OCD Exhibit Number 12 and ask you to
12 identify it.

13 A. This is the form mailed out that was sent May the
14 11th, 2000, and this was the response from Mr. Wallis.

15 Q. And once again, while we stated in the
16 Application that we received no responses except from NGX,
17 does this reflect your recollection that, in fact, you did
18 receive a response from Herman V. Wallis?

19 A. This is a response, but the response was not in
20 the form of a work plan.

21 Q. I understand that, but this does reflect your
22 recollection --

23 A. Yes, sir.

24 Q. -- of the fact he did respond?

25 A. Yes, sir.

1 Q. Now, did you have any further communication with
2 regard to a work plan with Mr. Wallis after that letter was
3 sent out?

4 A. Based on the file data, no.

5 Q. So Mr. Wallis never did -- while he states here,
6 "Waiting on market", he never did tell you when he was
7 going to do anything or what he was going to do?

8 A. That's right.

9 MR. BROOKS: Okay, thank you. That is the only
10 exhibit we have to present in regard to Herman V. Wallis,
11 Mr. Examiner.

12 EXAMINATION

13 BY EXAMINER CATANACH:

14 Q. Mr. Gum, were subsequent letters sent to this
15 operator?

16 A. Apparently not, the file does not reflect that.

17 Q. So you did not send them a final notice like you
18 did the others?

19 A. No, sir.

20 Q. And they do have what looks like four wells on
21 your list of wells on the docket sheet today that you're
22 going to try to get back into compliance?

23 A. And based on the May 11th letter that -- it
24 indicates that the well had been shut in four years plus.

25 Q. Okay, so the docket sheet is accurate with

1 respect to four wells --

2 A. Yes.

3 Q. -- for this operator, okay.

4 MR. BROOKS: Mr. Examiner, I believe the docket
5 will reflect that the wells identified on OCD Exhibit
6 Number 12 are the same wells that are included in this
7 Application for Herman V. Wallis.

8 EXAMINER CATANACH: Okay.

9 MR. BROOKS: The next operator is Julian Ard, and
10 the only exhibit being offered in connection with Julian
11 Ard, Mr. Carr, is Exhibit Number 13. I believe we've
12 furnished you with a copy of that.

13 MR. CARR: (Nods)

14 DIRECT EXAMINATION (Resumed)

15 BY MR. BROOKS:

16 Q. And Mr. Gum, would you identify OCD Exhibit
17 Number 13?

18 A. Yes, this is a letter that was generated July
19 25th, 2001, again asking for a plan to bring a noncompliant
20 well into compliance.

21 Q. Now, Mr. Gum, no copy of the May, 2000, or
22 September 2000 well file -- letters, appears in the file
23 with reference to Julian Ard. What inference would you
24 draw from that?

25 A. That we did not receive a copy that would be able

1 to be put in the file of the May mail-out. That's why it
2 would not be in the file.

3 Now, why the September letter would not be there,
4 the only thing I can say is that it was just overlooked on
5 the September mail-out.

6 Q. Based on the procedures in your office, would OCD
7 Exhibit 13 have been sent to Mr. Ard, were he not on the
8 list that had -- to whom you had sent the previous
9 correspondence?

10 A. Would it have been sent if he hasn't --

11 Q. Yes, if he were not on the list?

12 A. No, no, this is indicated inactive well.

13 Q. So the fact that you sent Exhibit Number 13 to
14 Julian Ard indicates you probably -- your office probably
15 sent the previous letters to --

16 A. Yes, sir.

17 Q. -- Mr. Ard also?

18 MR. BROOKS: Very good. Because Mr. Carr is
19 here, I will state for the record that as to those
20 operators -- and Julian Ard is one -- for which the
21 Division is not able to furnish documentary evidence that
22 they were notified of the status of specific wells at a
23 particular time, the Division will not ask for a civil
24 penalty.

25 And with that, I'll pass the witness.

EXAMINATION

BY MR. CARR:

Q. Mr. Gum, if I understood your testimony, you have no evidence that any letter other than this was actually sent to Mr. Ard; is that correct?

A. That's correct, sir.

Q. When I look at the letter that's marked Exhibit Number 13, is this the entire letter that was sent to Mr. Ard, or were there attachments and other documents?

A. No, this was the entire letter.

Q. If I look at this, can you show me any place on this letter where it identifies the well that you're talking about?

A. It does not.

Q. So it doesn't identify a well. Do you know if Mr. Ard was ever notified prior to this time or prior to being notified of the hearing as to the particular well you were concerned about?

A. Specifically on this particular well, I cannot state that.

Q. If I go to the second page of this exhibit and I go to the second paragraph, it starts out by saying, "A show cause hearing will be set for all wells not in compliance with OCD rules as of November 1, 2001." That's four weeks from now; is that right?

1 A. That's correct.

2 Q. Does this mean that we still have four weeks to
3 bring the well into compliance?

4 A. Yes.

5 MR. CARR: That's all I have.

6 MR. BROOKS: May we proceed?

7 EXAMINER CATANACH: Please.

8 MR. BROOKS: The next operator on the list is SWR
9 Operating Company, and at this time I will state, Mr.
10 Examiner, that Exhibits Numbers 14 and 15 relate to NGX, or
11 Energex, and that is one of the ones as to which we are
12 asking the proceeding be continued because they have now
13 submitted a work plan.

14 Exhibits Number 16 and 17 and 18 and 19 relate to
15 Read and Stevens, Inc., which is another one who has now
16 committed to work plan. So that brings us to Exhibit
17 Number 20.

18 DIRECT EXAMINATION (Resumed)

19 BY MR. BROOKS:

20 Q. Mr. Gum, would you identify Exhibit Number 20?

21 A. Yes, again this is a form letter that was sent
22 out by certified mail on September the 8th, 2000.

23 Q. Okay. And does the return receipt reflect that
24 it was received by SWR Operating Company?

25 A. Yes.

1 Q. Now, Mr. Gum, I will call your attention to OCD
2 Exhibit Number 21, and before I say anything further about
3 this, this exhibit appears to be a copy of the same form
4 that was used in the May, 2000, mailout. However this one,
5 if you will look in the upper left-hand portion of the
6 exhibit above the address, it appears to be dated December
7 14, 2000.

8 A. That is correct, Mr. Brooks, this particular form
9 letter is on the computer, and the time that this
10 particular printout was made was December the 14th, 2000.

11 Q. Now, the normal procedure was that the May, 2000,
12 form letter went out first, and then those who did not
13 respond received the September 8th, 2000, letter; is that
14 correct?

15 A. That's correct.

16 Q. Now, do you remember any reason why that might
17 have been reversed in connection with SWR?

18 A. It was not reversed, other than the fact that
19 this was generated to provide a form for the file.

20 Q. Now, was a copy of Exhibit Number 21 sent to SWR?

21 A. Yes, sir.

22 Q. But that was not sent by certified mail, correct?

23 A. No.

24 Q. So you would not have a record in your office of
25 whether or not it was received?

1 A. That's correct.

2 Q. However, if it had been returned to the office,
3 would the envelope have been placed in the file?

4 A. Yes, sir.

5 Q. Now, normally in the May correspondence you did
6 not apparently keep file copies of those letters that were
7 sent out that were not returned. That was why the
8 questionnaire was not returned; is that correct?

9 A. That's correct.

10 Q. But since nothing is filled in on Exhibit Number
11 21, would it be fair to infer that that is a file copy and
12 not a response that was returned from SWR?

13 A. Yes, it definitely is a file copy because of the
14 date that it was generated on December the 14th.

15 Q. And by that time you had narrowed down the list
16 considerably --

17 A. Yes.

18 Q. -- and you knew you had potential problems with
19 these people that you were dealing with at that time,
20 correct?

21 A. Yes, SWR did not respond in any way.

22 Q. Okay. Call your attention to what has been
23 marked Exhibit Number 22.

24 A. Yes, sir.

25 EXAMINER CATANACH: Excuse me, before you go on,

1 I do have a question, I'm going to backtrack a little bit
2 and go back to Exhibit Number 20.

3 MR. BROOKS: Yes, sir.

4 EXAMINATION

5 BY EXAMINER CATANACH:

6 Q. And I have a question on the form that letter --
7 The form of that letter is different from some of the other
8 final notices that you've sent to the operators. Is there
9 a reason why this letter is not the same kind of letter
10 that other operators were sent?

11 A. Yes, this particular letter was based upon the
12 fact that they did not respond to the May 11th letter. The
13 following correspondence was actually another attempt to
14 get response from these operators, trying to state to them
15 the ramifications of them not bringing these wells into
16 compliance. But again, it was another effort to get
17 operators to respond, to bring wells into compliance.

18 Q. Now, according to this, this operator did receive
19 this correspondence. There is a signed return receipt
20 card.

21 A. Yes, sir.

22 Q. You just had no response from them?

23 A. No response at all.

24 Q. And just -- Why wasn't a final notice sent to
25 this operator, Mr. Gum?

1 A. The decision was -- I assume that you're
2 referring to a final notice of the December 26th version.

3 MR. BROOKS: If I may interrupt at this point,
4 Exhibit Number 22, which we've not yet identified, may
5 answer that question.

6 EXAMINER CATANACH: 22, okay, I'm sorry, go
7 ahead.

8 MR. BROOKS: Now, Mr. Examiner, the record will
9 reflect, I believe, that the wells specifically identified
10 in OCD Exhibit Number 21 are the same wells as those
11 included on Exhibit A to the Application in this case with
12 reference to SWR Operating Company. They do not include
13 the one well listed on Exhibit B.

14 DIRECT EXAMINATION (Resumed)
15 BY MR. BROOKS:

16 Q. Now, Mr. Gum, I will call your attention to OCD
17 Exhibit Number 22 that I just mentioned to the Examiner and
18 ask you to identify it.

19 A. Yes, again this is a letter that went out on
20 January the 11th, 2001, still trying to get the operators
21 to bring the wells into compliance.

22 Q. And in this case that was about a month after
23 Exhibit Number 21 --

24 A. Yes.

25 Q. -- was sent out?

1 Now, the second page that is attached to Exhibit
2 Number 22 that appears to be a computer printout, was that
3 attached to Exhibit Number 22 as it was mailed to SWR
4 Operating Company?

5 A. That's correct.

6 Q. And Mr. Examiner, I believe the record will
7 reflect that Exhibit Number 22, the second page, includes
8 all of the wells that are the subject of this proceeding as
9 to SWR, including the Shugart B Number 1, which is listed
10 on Exhibit B.

11 EXAMINER CATANACH: Okay.

12 MR. BROOKS: That concludes our offers as to SWR
13 -- Oh, well, one --

14 Q. (By Mr. Brooks) Did you at any time ever receive
15 any response to your numerous contacts with SWR Operating
16 Company?

17 A. No.

18 MR. BROOKS: That will conclude our presentation
19 as to SWR Operating Company.

20 Do you have any further questions?

21 EXAMINER CATANACH: No, I don't, you may proceed.

22 MR. BROOKS: Very good. At this time I will
23 note, which, Mr. Examiner, I failed to note in my opening,
24 there is one other operator as to which we at this time
25 will dismiss the proceeding, and that is Stevens Operating

1 Corp.

2 The reason we are dismissing as to Stevens
3 Operating Corp. is that the Division has been notified that
4 Stevens Operating Corp. is in bankruptcy. We've been
5 advised of a name and address of a trustee in bankruptcy,
6 but we have not given notice to the trustee in bankruptcy,
7 consequently we believe the Division would not have
8 jurisdiction to proceed, both because we don't know what
9 the status of the automatic stay is and also because the
10 trustee has not been notified.

11 EXAMINER CATANACH: Okay. Mr. Brooks, is that
12 going to be the last dismissal?

13 MR. BROOKS: That will be the last dismissal.
14 That was inadvertently not noted within my opening
15 statement.

16 EXAMINER CATANACH: Okay.

17 Q. (By Mr. Brooks) We will now proceed to Thornton
18 Hopper, and at this time I will ask you to identify Exhibit
19 Number 23, Mr. Gum.

20 A. Again, this is a copy of the May 11th, 2000, form
21 letter that was mailed out to the operator.

22 Q. And does this, in fact, refresh your recollection
23 that you did, in fact, receive a response to your May 11th
24 correspondence from Thornton Hopper?

25 A. That's correct.

1 Q. However, there is nothing in this response to
2 indicate what Mr. Hopper plans to do about these
3 noncompliant wells; is that correct?

4 A. That's correct.

5 Q. Okay, as to Thornton Hopper, I believe the record
6 will reflect that the four wells identified on Exhibit 23
7 are the same four wells that are identified on Exhibit A to
8 the Application in this proceeding. They do not include
9 the one well, the Bradley Federal Number 6, that is
10 identified on Exhibit B as to Mr. Hopper.

11 And I will next call your attention, Mr. Gum, to
12 OCD Exhibit Number 24.

13 A. This again is a letter that was mailed certified,
14 December 26th, 2000, again asking for a specific work plan
15 for the wells that we had indicated to be inactive on the
16 November 16th, 2000, list attached.

17 Q. And I will call your attention to the second page
18 of that exhibit. Disregarding the fact that in the
19 interest of saving the Division's paper, we copied the
20 return receipt and postal receipt on the same page, but
21 everything else on that page, is that a copy of an exhibit
22 that was sent to Thornton Hopper, enclosed with the
23 December 26th, 2000, letter that is Exhibit Number 24?

24 A. That's correct.

25 MR. BROOKS: And the record will reflect that the

1 attachment to Exhibit Number 24 lists all of the wells of
2 Thornton Hopper that are the subject of this Application,
3 Mr. Examiner.

4 And we have only one more.

5 EXAMINER CATANACH: One question. The Number 6
6 well for the Thornton Hopper is not a subject of this case?

7 MR. BROOKS: It is, I believe, and I believe it
8 is on the attachment to Exhibit 24, the third well on that
9 attachment, although it is not on Exhibit 23.

10 EXAMINER CATANACH: It's also not on the docket
11 sheet, Mr. Brooks.

12 MR. BROOKS: It's not on the --

13 EXAMINER CATANACH: I'm sorry, it is on the
14 docket sheet, but it's in a different place.

15 MR. BROOKS: The Exhibit B wells are in a
16 different place, Mr. Examiner.

17 EXAMINER CATANACH: Okay.

18 MR. BROOKS: It's just the way it was prepared.

19 EXAMINER CATANACH: Okay.

20 MR. BROOKS: We'll try to correct that on the
21 next docket.

22 Any further questions?

23 EXAMINER CATANACH: That's it.

24 MR. BROOKS: Okay. And Mr. Bruce, I believe
25 you're appearing for the Wiser Oil Company --

1 MR. BRUCE: Yes, sir.

2 MR. BROOKS: -- and you've been furnished copies
3 of Exhibits 25 and 26; is that correct?

4 MR. BRUCE: Yes.

5 Q. (By Mr. Brooks) Okay, Mr. Gum, I'll ask you to
6 identify Exhibit Number 25.

7 A. Again, this is a copy of a form letter sent out
8 September the 8th, 2000, and it was sent certified mail,
9 indicating that it was received.

10 Q. And once again, as I've asked with regard to each
11 of the other operators, would the fact that the Wiser Oil
12 Company was sent the September 8th, 2000, letter by your
13 office indicate that they were also sent the May, 2000,
14 form letter?

15 A. Yes, sir.

16 Q. Would it also indicate that they did not respond
17 to that --

18 A. That's correct.

19 Q. -- 2000 form letter?

20 Next I will call your attention to OCD Exhibit
21 Number 26 and ask you to identify it.

22 A. Again, this is a Final Notice letter dated
23 January 22nd, 2001, again asking for a work plan to be
24 provided to bring these wells into compliance.

25 Q. And I will call your attention to the second page

1 of Exhibit Number 26, and ask you if that computer printout
2 was included with Exhibit Number 26 as it was mailed to the
3 Wiser Oil Company.

4 A. Yes, it was.

5 Q. And I will call your attention to the third page
6 of Exhibit 26 and ask you what that reflects.

7 A. This is return receipts of the certified mail.

8 MR. BROOKS: Very good. Mr. Examiner, with
9 regard -- well, one other before I say that.

10 Q. (By Mr. Brooks) Have you received any response
11 or contact from the Wiser Oil Company regarding this
12 correspondence?

13 A. No.

14 MR. BROOKS: Mr. Examiner, I will ask you to note
15 that the record reflects that the page attached to Exhibit
16 Number 26 includes all of the five wells on Exhibit A for
17 the Wiser Oil Company, and it includes some of the wells on
18 Exhibit B. It does not include all. Unless my comparisons
19 are faulty, the following wells are not included, the
20 following wells which are the subject of this Application
21 are not included on Exhibit 26: Those would be the Skelly
22 Unit Numbers 47, 67, 72, 85, 103 and 105. All of the other
23 wells that are included in this Application for the Wiser
24 Oil Company are, I believe, listed on Exhibit 26.

25 Q. (By Mr. Brooks) Mr. Gum -- and since this is the

1 last one, with the leave of the Examiner I'll go ahead and
2 ask my concluding questions of Mr. Gum and then tender him
3 to Mr. Bruce; is that acceptable?

4 EXAMINER CATANACH: Uh-huh.

5 MR. BROOKS: Very good.

6 Q. (By Mr. Brooks) Mr. Gum, if you had received any
7 written response from any of these operators in reply to
8 this correspondence, would it have been included in the
9 files in which this correspondence was maintained?

10 A. That's correct.

11 Q. And can you state from your recollection that as
12 to each of the operators with regard to whom you've been
13 examined today that you received no responses other than,
14 in a few cases, the printed forms back as they are
15 reflected in the files?

16 A. That's correct.

17 MR. BROOKS: Very good. With that I will tender
18 the witness.

19 MR. BRUCE: Just a couple questions, Mr. Gum.

20 EXAMINATION

21 BY MR. BRUCE:

22 Q. Mr. Gum, what is the Division's mailing address,
23 post office box address in Artesia?

24 A. We have a residence address, it's 1301 West Grand
25 Avenue.

1 Q. Is there a post office box?

2 A. No, there has not been a post office box for a
3 number of years.

4 Q. How many years was that?

5 A. Seven to eight years.

6 MR. BRUCE: That's all I have, Mr. Examiner.

7 EXAMINER CATANACH: Okay, just one.

8 EXAMINATION

9 BY EXAMINER CATANACH:

10 Q. Mr. Gum, your attorney stated that some of the
11 wells that are on the docket sheet for today are not on
12 Exhibit 26?

13 A. That's correct.

14 Q. So is it your testimony that you did not notify
15 the operators that these wells were included?

16 A. No, at the time that they were noted, again,
17 referring back to Exhibit Number 26 --

18 Q. Uh-huh.

19 A. This list of wells were the wells that were
20 indicated on the criteria of being inactive as of November
21 the 16th, 2000. The wells that were included in the docket
22 were made up of a subsequent run right prior to the mailout
23 of the docket.

24 So those -- The difference in the wells were the
25 change of the categories of the wells between November and

1 the mailout of the docket.

2 Q. But you've had no correspondence with Wiser
3 regarding the additional wells that you've placed on the
4 docket today --

5 A. No, sir.

6 Q. -- is that correct?

7 A. No, have not.

8 Q. So you've not directed them to do anything with
9 those wells?

10 A. No.

11 EXAMINER CATANACH: Okay.

12 MR. BROOKS: Does that conclude your questions,
13 Mr. Examiner?

14 EXAMINER CATANACH: It does.

15 MR. BRUCE: Mr. -- could I just ask one --

16 MR. BROOKS: You may.

17 EXAMINER CATANACH: Yes.

18 MR. BRUCE: -- just a follow-up, Mr. Gum.

19 FURTHER EXAMINATION

20 BY MR. BRUCE:

21 Q. What is the Division Street address?

22 A. 1301 West Grand Avenue. That's the current
23 address.

24 Q. Did it used to be on South 1st Street?

25 A. Yes, it was 811 South 1st prior to July the 1st

1 of this year.

2 Q. And when you had a P.O. box, what was that P.O.
3 box?

4 A. I do not recall the exact number. It was a P.O.
5 drawer box.

6 MR. BRUCE: That's fine. That's all I have of
7 Mr. Gum.

8 FURTHER EXAMINATION

9 BY MR. BROOKS:

10 Q. Following up on Mr. Bruce's question, if -- Is
11 the mail from the 1st Street address being routinely
12 forwarded to your current address by the postal service?

13 A. Yes, sir.

14 MR. BROOKS: If there's nothing further of this
15 witness, I want to tender my exhibits, Mr. Examiner. At
16 this time the Division will move the admission of Exhibits
17 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 20, 21, 22, 23, 24, 25
18 and 26.

19 MR. BRUCE: I have no objection.

20 EXAMINER CATANACH: Okay, Exhibits Number 3, 4,
21 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 [sic], 20, 21, 22, 23,
22 24, 25 and 26 will be admitted as evidence.

23 MR. BROOKS: Okay. And further, Mr. Examiner, I
24 wish to tender into evidence OCD Exhibit Number 2, which is
25 an affidavit prepared by myself, to which are attached

1 copies of the notice -- a copy of the form of notification
2 for this proceeding and copies of the return receipts,
3 postal receipts, and return receipts for each of the
4 operators as to this proceeding, and also a copy of the
5 affidavit of publication by the *Artesia Daily Press*.

6 I believe Exhibit Number 2 reflects that return
7 receipts were received from all but two of the operators,
8 and the two operators that did not return receipts were
9 General Minerals Corp. and SWR Operating Company.

10 With regard to General Minerals Corp., a copy of
11 the postal receipt is attached to Exhibit 2. The
12 Division's records do not reflect either the receipt of a
13 return receipt or the receipt of the return correspondence.

14 With regard to SWR Operating Company, the
15 Division's records reflect the receipt of the returned
16 correspondence by the Division.

17 And with that, Mr. Examiner, I will close my
18 evidentiary presentation. I do wish to make a statement
19 about the disposition the Division is going to recommend in
20 regard to this matter.

21 EXAMINER CATANACH: Let me ask you, Mr. Brooks,
22 the General Minerals Corporation, you said that was not
23 received by that company?

24 MR. BROOKS: We have no record that it was
25 received. We also have no record that it returned to the

1 Division.

2 EXAMINER CATANACH: And I show on my exhibit that
3 you did mail that to the address that was originally
4 accepted by that company?

5 MR. BROOKS: That is correct, Mr. Examiner.

6 EXAMINER CATANACH: Okay, and SWR also did not
7 receive notice; is that correct? Or you just haven't
8 received --

9 MR. BROOKS: The notice with SWR reflects that we
10 received the return receipt mailed separately from the
11 returned correspondence. The return receipt had a
12 signature on it, the signature was lined out, and the
13 correspondence was returned separately with the postal
14 stamp, or what appeared to be a postal stamp, stating
15 "attempted, undeliverable".

16 Now, I can only speculate as to what may have
17 happened, and my speculation would be that the postal
18 service appeared at the office suite of that address and
19 someone there attempted -- someone there signed for it and
20 them immediately recognized that it was addressed to
21 someone other than the person who occupies that office
22 suite and therefore lined out their signature and returned
23 it to the postman, but that's all speculation. What the
24 record reflects is what I just said.

25 EXAMINER CATANACH: Okay, thank you, Mr. Brooks.

1 And you wish to --

2 MR. BROOKS: I wish to sum up as to what the
3 Division recommends. Mr. Gum may stand down.

4 MR. CARR: And Mr. Catanach, I also have a
5 statement, and it might be ahead to go ahead of Mr. Brooks
6 because he may want to respond to what I say.

7 MR. BROOKS: That will be acceptable, Mr.
8 Examiner.

9 EXAMINER CATANACH: Go ahead, Mr. Carr.

10 MR. CARR: Mr. Catanach, I'd like it to be clear
11 that Julian Ard appreciates the effort you're trying to --
12 the effort you are making to bring wells into compliance
13 with rules, and to tell you that we will work with the Oil
14 Conservation Division as it relates to the Julian Ard Acme
15 Well Number 1.

16 As you're aware, earlier this week on behalf of
17 Mr. Ard I requested that this case as it relates to the
18 Acme State Well Number 1 be continued, and we would now
19 again request that it be continued to the first of the
20 year, with those other for which the operator had contacted
21 the Division with a plan.

22 In my letter I explain the reason for that
23 request. And as you may recall, this well was completed
24 back in 1983. It's a very old well, it has been shut in
25 and it is capable of production but at low rates. It is on

1 a state lease, and also on the state lease is the Acme Well
2 Number 2.

3 We were contacted in April, 1999, by the
4 Commissioner of Public Lands and were advised that the
5 lease had expired of its own terms.

6 Following that, we met with the Commissioner of
7 Public Lands, and they extended the lease and gave Mr. Ard
8 through sometime late this summer the opportunity to go
9 back and attempt to establish commercial production on that
10 well -- on that tract.

11 In June of this year the Acme was drilled. It
12 was not successful in the Wolfcamp or the Montoya
13 formation, but there have been shows in the Abo.

14 We have requested an extension from the
15 Commissioner of Public Lands for an additional 270 days to
16 attempt to establish production on that property. And
17 while this relates to other wells in terms of the
18 development, the issue isn't that the well, the Acme Number
19 1, won't produce; it is, there is no way to get the gas to
20 market, there is no line into the area. To extend a line
21 into this area we would have to incur a cost of
22 approximately \$200,000. If we're successful in
23 establishing production on the lease within the next few
24 months, then we could justify the line and we could return
25 the well to production.

1 For that reason -- And we wrote the Commissioner
2 of Public Lands in August, we have not received a response
3 to that, and for that reason we've requested the extension,
4 and we do so again.

5 I'm a little bit concerned about the time frames
6 in this matter. We are anxious to work with the Division.
7 When we look at the record made, nothing shows that the
8 well was identified in a correspondence to Mr. Ard. We
9 have two descriptions before you, one in the docket and a
10 different one in the exhibits. And the only letter that we
11 did receive gave us until November the 1st to be in
12 compliance, which is four weeks from now, and I understand
13 we still have four weeks.

14 We don't want to get in the position of having an
15 order and having to go *de novo* to protect ourselves,
16 because we really don't want to fight this, we don't want
17 to square off with the Division. We'd like to pursue this
18 with the Land Office, see if they will give us the
19 extension of time if they will get out there and attempt to
20 do something with it and, if not, bring this property into
21 compliance with the Rules of the Division.

22 If we're continued to the first of the year with
23 other wells, we commit to stay in close communication with
24 you and attempt to get to a point by that time that we're
25 either in compliance or we're plugging and abandoning the

1 wells, and for that reason I renew the request for
2 continuance.

3 MR. BROOKS: Mr. Bruce, do you --

4 EXAMINER CATANACH: Mr. Bruce, would you like to
5 make any statement?

6 MR. BRUCE: I plan on presenting a witness for
7 each of my clients, so I would not make a statement at this
8 time.

9 EXAMINER CATANACH: Okay.

10 MR. BROOKS: Okay, Mr. Examiner, do you wish me
11 to postpone my recommendations until after I've had the
12 opportunity to hear Mr. Bruce's presentation, or do you
13 wish me to postpone it only as to Mr. Bruce's clients?

14 EXAMINER CATANACH: Why don't you go ahead and
15 give your whole summary.

16 MR. BROOKS: Okay. May I have an opportunity to
17 confer with my client with regard to Julian Ard?

18 (Off the record)

19 MR. BROOKS: Mr. Examiner, when I do make my
20 closing presentation with regard to Mr. Ard, I will ask for
21 a brief continuance to speak with Mr. Carr before I make a
22 recommendation as to Julian Ard.

23 At this time, in deference to what you said --
24 I'm not sure I recall. Do you want me to go ahead and make
25 my recommendations as to the other operators, or do you

1 want me to wait till Mr. Bruce has made his presentation?

2 EXAMINER CATANACH: Why don't you go ahead and do
3 the whole recommendation, Mr. Brooks?

4 MR. BROOKS: Okay. As to Carl Schellinger, we
5 believe that Exhibit Number 3 and Exhibit Number 5 reflect
6 that Mr. Schellinger was advised of a problem with a
7 specific well. Exhibits Numbers 4 and 5 reflect that he
8 did receive our correspondence. Mr. Schellinger has not
9 responded to the Division and has not appeared in this
10 proceeding.

11 We therefore ask for, in the case of Mr.
12 Schellinger, a compliance order as to the Mahun State
13 Number 1 and as to the Exxon Federal Number 1, although we
14 have not advised him specifically as to the Exxon Federal
15 Number 1, other than by the filing of this Application.

16 But as to the Mahun State Number 1, because he
17 was advised in 1997 and again in 2000 and again in 2001, we
18 ask for an administrative penalty, civil penalty, not to
19 exceed \$4000, which would be \$1000 for each year that he
20 has ignored the Division's correspondence with regard to
21 that one well.

22 We do not ask for a penalty with regard to the
23 Exxon Federal Number 1, because he had no prior notice of
24 that prior to the filing of this Application. He was,
25 however, notified of it by the filing of this Application.

1 The record reflects that he received actual notice of this
2 Application.

3 As to Exxon Mobil Corporation, we will postpone
4 our recommendation till Mr. Bruce has made his
5 presentation.

6 As to General Minerals Corp., we ask for a
7 compliance order. We further ask for a civil penalty with
8 regard to the only well they have, the Federal CC [sic]
9 Number 1. Inasmuch as Exhibit Number 9 reflects that Mr.
10 -- that General Minerals Corp. was specifically advised of
11 the problem with that well in December 26th of 2000,
12 because that's been only one year the penalty we would
13 request would be only \$1000 and a compliance order with
14 regard to the Federal CCC Number 1.

15 With regard to Guadalupe Operating Company,
16 Guadalupe Operating Company has five wells on Exhibit A,
17 three wells on Exhibit B. However, our correspondence and
18 our exhibits do not document that Guadalupe Operating
19 Company was advised of the specific wells with which there
20 were problems. We believe that they were, but since we
21 cannot document that we will not ask for a penalty as to
22 Guadalupe Operating Company.

23 We will, however, ask for a compliance order as
24 to all -- one, two, three, four, five wells on Exhibit A
25 and the one well on Exhibit B, the reason being, we believe

1 they were notified of the problems with those wells by the
2 notice of this Application, although the previous
3 correspondence does not document they were advised of the
4 specific wells.

5 Herman V. Wallis has four wells on Exhibit A,
6 none on Exhibit B. Exhibit 12, admitted into evidence,
7 indicates that he was advised of the specific wells in May
8 of 2000. We will accordingly ask for a compliance order as
9 to those four wells, and a civil penalty of \$4000, being
10 \$1000 for each well that has been out of compliance for one
11 year.

12 As to --

13 EXAMINER CATANACH: Hang on a second, Mr. Brooks.

14 MR. BROOKS: Yes.

15 EXAMINER CATANACH: Herman Wallis is the operator
16 that, as I recall the testimony, did not receive a final
17 notice in this case; is that your understanding?

18 MR. BROOKS: There is not a copy of the final
19 notice form letter that was sent to the other operators in
20 the file. I cannot tell you whether he did -- whether it
21 was sent or not.

22 EXAMINER CATANACH: I believe it was Mr. Gum's
23 testimony that he did not know either for sure whether or
24 not a final notice was sent to Mr. --

25 MR. BROOKS: I believe you're correct as to what

1 the record reflects, Mr. Examiner.

2 EXAMINER CATANACH: Would it be appropriate, Mr.
3 Brooks, to maybe continue that, to offer the final notice
4 to that operator, or do you think that has been satisfied
5 by the hearing notice?

6 MR. BROOKS: I believe, Mr. Examiner, that that
7 has been satisfied by the fact that he did receive actual
8 notice of this Application, as reflected on Exhibit 2, and
9 that the wells are specifically listed on the Application,
10 as well as in the previous Exhibit 12.

11 EXAMINER CATANACH: Okay.

12 MR. BROOKS: With regard to Julian Ard, once
13 again, I will defer making a recommendation until I've had
14 an opportunity to confer with Mr. Carr.

15 With regard to SWR Operating Company, Exhibit 21
16 reflects that they were notified 12-14 of 2000 as to the
17 Exhibit A wells. Exhibit 22 reflects that they were
18 notified 1-11 of '01 as to both the Exhibit A and Exhibit B
19 wells. Now, the only correspondence on which we have a
20 return receipt in the file is the September 8th, 2000,
21 correspondence, which does not contain an identification of
22 the specific wells. And therefore, we will not recommend a
23 penalty as to SWR at this time.

24 We will further notice that SWR did not receive,
25 apparently, the notice of the -- mailed notice of this

1 hearing. They are charged with notice by virtue of the
2 published notice, and we believe that operator has
3 disappeared, and we would therefore, although we're not
4 asking for a penalty, ask for a compliance order to be
5 entered as to those wells.

6 EXAMINER CATANACH: How many wells are there, Mr.
7 Brooks?

8 MR. BROOKS: One, two, three, four, five, six,
9 seven, eight, nine, ten, eleven, twelve, thirteen --
10 Fourteen wells.

11 EXAMINER CATANACH: Fourteen Exhibit A wells?

12 MR. BROOKS: Thirteen Exhibit A wells and one
13 Exhibit B well.

14 EXAMINER CATANACH: Okay.

15 MR. BROOKS: As to Thornton Hopper, Mr. Hopper
16 has four Exhibit A wells, one Exhibit B well. The record
17 will reflect that he was notified specifically as to all of
18 those wells by Exhibit Number 24, of which a return receipt
19 is in the file.

20 He was also -- received personal notice of this
21 hearing, did not appear, did not submit anything. We
22 therefore ask for, in the case of Mr. Hopper, a civil
23 penalty in the amount of \$5000 for five wells out of
24 compliance for one year, approximately one year anyway, out
25 of compliance for longer but out of compliance for nine

1 months now since he was notified and return receipts were
2 received by us, and a compliance order as to those five
3 wells.

4 As to the Wiser Oil Company, I will defer the
5 Commission's recommendation until Mr. Bruce has completed
6 his presentation.

7 Thank you, Mr. Examiner.

8 EXAMINER CATANACH: Okay, just a couple points of
9 clarification. We want to dismiss those operators -- Roy
10 Kimsey?

11 MR. BROOKS: Roy E. Kimsey, Jr., the Division is
12 requesting that he be dismissed.

13 EXAMINER CATANACH: We want to dismiss that, and
14 we want to dismiss --

15 MR. BROOKS: -- Stevens Operating.

16 EXAMINER CATANACH: Now, Stevens Operating I show
17 to have four wells? Five wells.

18 MR. BROOKS: Whatever the -- no -- Yeah, they
19 have five Exhibit A wells and two Exhibit B wells, your
20 Honor.

21 EXAMINER CATANACH: And we want to dismiss them
22 entirely from this proceeding?

23 MR. BROOKS: Yes, because of the bankruptcy.

24 EXAMINER CATANACH: Okay.

25 MR. BROOKS: And the Division will probably move

1 again -- we will probably file a subsequent application as
2 to this operator, but we believe that administratively it
3 would be easier to just dismiss them out of this, because
4 we're going to be probably doing a severance into two
5 groups here, and rather than doing a severance into a third
6 group, once we've ascertained the status of the automatic
7 stay and given notice to the trustee in bankruptcy, we will
8 file a separate application as to Stevens.

9 EXAMINER CATANACH: Okay. Now, when you say, Mr.
10 Brooks, that you want a compliance order, you want an order
11 from the Division directing these operators to bring the
12 wells into compliance?

13 MR. BROOKS: Yes, within a specific time by
14 either causing those wells to be plugged and abandoned or
15 applying to the Division for temporary abandonment status
16 or renewal of temporary abandonment status if they've
17 formerly been in temporary abandonment status, or restoring
18 them to production or injection as the case may be.

19 EXAMINER CATANACH: Do you have a certain time
20 period in mind, Mr. Brooks?

21 MR. BROOKS: Thirty days would seem to be
22 reasonable. Now, your Honor may want to take into
23 consideration the fact that these notice letters said they
24 had till November the 1st. Thirty days from when this
25 order would be shortly after November 1st. If your Honor

1 feels it's appropriate, you might want to give them 30 days
2 after the November 1st deadline that they were previously
3 given to bring their wells into compliance.

4 I would note, however, that the Division has a
5 practice of imposing 30-day deadlines and then not
6 following up on them, and it is not our intention to
7 continue that practice with regard to this proceeding.

8 EXAMINER CATANACH: Okay. Mr. Brooks, just again
9 to verify, the continuances -- you would like to continue a
10 portion of these operators until the first hearing in
11 2002 --

12 MR. BROOKS: That's correct.

13 EXAMINER CATANACH: -- to give them additional
14 time?

15 MR. BROOKS: These people have communicated with
16 Mr. Gum and announced a plan for bringing these wells into
17 compliance, which Mr. Gum has found to be satisfactory if
18 it is pursued. And the purpose of the continuance would
19 be, before we present a case and ask for an order as to
20 these operators, allow them to do what they told Tim they
21 were going to do.

22 EXAMINER CATANACH: Let me go down that list of
23 operators. Aceco Petroleum -- is it Amtex?

24 MR. BROOKS: Amtex. You may have some difficulty
25 by virtue of the fact that the operators are not on the

1 Application in alphabetical order, are not in the exhibits
2 to the Application in alphabetical order. I apologize for
3 that, and that is being corrected in regard to the
4 subsequent proceedings.

5 EXAMINER CATANACH: Okay, Bird Creek Resources,
6 Burnett Oil, Dinero Operating, Lindermuth --

7 MR. BROOKS: Lindenmuth.

8 EXAMINER CATANACH: Lindenmuth, Mar Oil and Gas,
9 NGX, and Read and Stevens.

10 MR. BROOKS: That is correct, your Honor.

11 EXAMINER CATANACH: Is that the entire list?

12 MR. BROOKS: That is.

13 EXAMINER CATANACH: Okay. With regards to the
14 entry of an order, Mr. Brooks, in this case, I'm a little
15 confused as to how the Division would enter an order in a
16 case that has still not been taken under advisement. Do
17 you have a recommendation with regards to that?

18 MR. BROOKS: What I'm going to recommend, Mr.
19 Examiner, is a procedure I don't believe the Division has
20 ever followed before, but I'm going to recommend it on the
21 basis of my judicial experience. It's a procedure that was
22 followed routinely in the courts and is provided for in
23 judicial proceedings under our Rules of Civil Procedure,
24 and that would be to sever this case and make it two cases,
25 12,733 and 12,733-A, and in one of those cases keep all

1 those operators who are being continued, whose presentation
2 is being continued, and request the Division to take under
3 advisement the case as to -- the case involving the
4 operators as to whom we've made specific recommendations
5 for an order.

6 EXAMINER CATANACH: And do you believe that's
7 within our power and authority to do something like that,
8 Mr. Brooks?

9 MR. BROOKS: There is nothing specific in our
10 Rules or in the statute that says one way or another. I
11 believe there is a general statement that says the Rules of
12 Civil Procedure apply to Division proceedings to the extent
13 that exceptions are not made to them, and I will mention
14 that I have discussed this possibility with the Director of
15 the Division.

16 EXAMINER CATANACH: Okay. Anything else, Mr.
17 Brooks?

18 MR. BROOKS: No, your Honor.

19 EXAMINER CATANACH: Okay, let's take a break here
20 before we start on the Exxon and Julian Ard.

21 (Thereupon, a recess was taken at 10:01 a.m.)

22 (The following proceedings had at 10:27 a.m.)

23 EXAMINER CATANACH: Okay, are we ready? Call the
24 hearing back to order, and at this time I will turn it over
25 to Mr. Bruce.

1 MR. BRUCE: Mr. Examiner, I'd like first to
2 present Exxon's witness in this matter.

3 WILLIAM T. DUNCAN, JR.,
4 the witness herein, after having been first duly sworn upon
5 his oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRUCE:

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

9 A. William Thomas Duncan, Jr.

10 Q. Where do you reside?

11 A. In Houston, Texas.

12 Q. Who do you work for?

13 A. Exxon Mobil Corporation.

14 Q. What's your job with Exxon Mobil?

15 A. I'm a reservoir engineer that works regulatory
16 compliance issues in the western United States, in the
17 regulatory compliance group.

18 Q. And are you familiar with matters related to the
19 Avalon Delaware Unit?

20 A. Yes, I am.

21 Q. Have you been involved with that unit for a
22 number of years?

23 A. A great number of years, yes, I have.

24 Q. And we'll get into this in more detail later, but
25 when did you first become aware of Case 12,733?

1 A. Last Thursday afternoon.

2 Q. And how did you become aware of it?

3 A. You called me and said that you had gotten a copy
4 of the hearing docket and that we were shown on there.

5 Q. Okay, and that was the first notice that you were
6 aware of in the regulatory compliance division of Exxon
7 Mobil; is that correct?

8 A. Yes, that's correct.

9 Q. What did you do or what materials did you review
10 after you received notice of this case, to prepare for this
11 hearing?

12 A. I reviewed our internal well files for each of
13 the wells that were listed on that particular case, I
14 reviewed the Commission's well files upstairs in this
15 building, and I reviewed the public data that we subscribe
16 to from *PI*, *Dwight's*, and I also reviewed -- I made
17 inquiries of our accountants and our reservoir engineer
18 that is assigned directly to the Avalon Delaware Unit.

19 Q. Okay. And --

20 A. Oh, excuse me, and I also reviewed some land
21 records.

22 Q. Okay, and the land records that were reviewed
23 were with respect to the Carl Schellinger Exxon Federal
24 Number 1 well which is the subject of this case also?

25 A. That is correct.

1 Q. Okay. And let's get this opinion up front. Is
2 it your opinion that the wells that we're here for today
3 are in compliance with Division Rules?

4 A. The Avalon Delaware Unit wells are, yes, that is
5 my opinion.

6 Q. Okay. Now with respect to reservoir engineering,
7 have you previously qualified before the Division as a
8 reservoir engineer?

9 A. Yes, I have.

10 Q. And were your credentials accepted as a matter of
11 record?

12 A. Yes, they were.

13 MR. BRUCE: Mr. Examiner, I would tender Mr.
14 Duncan as an expert petroleum engineer.

15 EXAMINER CATANACH: Any objection?

16 MR. BROOKS: No objection, your Honor.

17 EXAMINER CATANACH: Mr. Duncan is so qualified.

18 Q. (By Mr. Bruce) Mr. Duncan, could you identify
19 Exhibit 1 for the Examiner and tell him a little bit about
20 the Avalon Delaware Unit?

21 A. Exhibit 1 is a copy of an exhibit that was listed
22 as Exhibit Number 13 and presented in Case Number 12,512 on
23 October 19th of last year in a hearing to consider the
24 response of the secondary recovery project in the Avalon
25 Delaware Unit.

1 Q. The positive production response in the unit?

2 A. That is correct.

3 Q. And the Avalon Delaware Unit is an active,
4 ongoing waterflood unit at this time?

5 A. Yes, it is, it's a waterflood unit that was
6 formed in October of 1995 and has been developed and
7 operated as a waterflood since that time.

8 Shown on Exhibit Number 1 is the pattern for the
9 waterflood. As you can see, the interior wells are in a
10 waterflood pattern connected by the lines, and in fact the
11 producing wells are shown in green dots and connected by
12 lines, and the injection wells are in the interior of each
13 one of those patterns.

14 The waterflood area is in the central portion of
15 the unit. The unit includes an additional row of producers
16 or of well locations outside of the waterflood area because
17 of the potential for CO₂-flooding this unit in a greater
18 area than there is waterflood potential.

19 And included here and highlighted in yellow are
20 the three wells that are listed on the docket call for this
21 hearing for the Avalon Delaware Unit, Wells 364, 562 and
22 916. Each of those wells is currently active and is a
23 water source well for the unit. The unit produces and is
24 being waterflooded in the Delaware formation, the Delaware
25 Mountain Group, and is primarily producing from the Brushy

1 Canyon, the upper Brushy Canyon and the Cherry Canyon
2 formations.

3 The lower Brushy Canyon is also a portion of the
4 Delaware Mountain Group, but is not in direct communication
5 with the oil-productive portions of the interval, and
6 therefore is being used to supply source water or makeup
7 water for the waterflood. And in fact, these three wells
8 that are highlighted in yellow are completed in the lower
9 Brushy Canyon and produce primarily water used in the
10 waterflood.

11 Q. Now, Mr. Duncan, just as a matter of historical
12 note, I think the Avalon Delaware Unit was formed in 1995?

13 A. Yes, it was.

14 Q. But the matter was in litigation for about four
15 or five years thereafter?

16 A. Yes, it was.

17 Q. And the Well Number 364, which was owned by a
18 non-Exxon company, is -- the owner of that well is why this
19 matter was in litigation for several years?

20 A. That's correct.

21 Q. Okay.

22 A. And in fact, that litigation was just settled in
23 the last -- not settled but concluded --

24 Q. Finally resolved.

25 A. -- with the past two years.

1 Q. Okay. Why don't you move on to your Exhibit 2
2 and discuss a little bit about the water source and, in
3 particular, the Wells 562 and 916?

4 A. Exhibit Number 2 is a copy of an exhibit also
5 presented in the October 19th hearing, Case 12,512, as
6 Exhibit 12D. This exhibit shows the injection to
7 withdrawal -- excuse me, the total unit water injection in
8 barrels of water per day since the unit came into being
9 through the time -- approximately the middle of the year
10 2000. And this also shows with annotations when each one
11 of our water source wells, and other milestones, occurred
12 on that path.

13 As you can see from looking at the exhibit, the
14 field was unitized in October of 1995. We had some
15 difficulty obtaining significant amounts and sufficient
16 amounts of makeup water for the waterflood. In fact, the
17 Yates 22 and 562 wells were completed in 1997 but did not
18 produce in the quantities that we needed for the
19 waterflood. And then in 1998 the Yates 816 was added, and
20 the 916 was added also, later in 1998.

21 Not shown on this plot is the 364 well, that was
22 added and actually became active in July of 2001. But as
23 you can see, these water source wells came on over time as
24 we were unable to meet our source water needs with the
25 existing wells. Additional wells were added.

1 The wells that are the subject of this hearing
2 are the 562 which has been active since 1997 as a water
3 source well, and the 916 which has been active since 1998
4 as a water source well, and the 364 which has been active
5 since July of 2001 as a water source well.

6 Q. Let's discuss the Number 364 well first, Mr.
7 Duncan. What is Exhibit -- Maybe refer to Exhibits 3
8 through 5 together and discuss a little of the activity on
9 this well?

10 A. Exhibits 3 through 5 are the filings of notice of
11 intention to convert the well to water source well in
12 Exhibit 3. Exhibit 4 and Exhibit 5 are forms which reflect
13 the actual completion of the work, completing that well as
14 a water source well in July of 2001 and installing
15 artificial lift and actually bringing the well on as a
16 water source well.

17 And as Ms. Prouty noted earlier, this is a well
18 that in July did reflect, in our July production records,
19 that the well was producing water. And that is correct, it
20 should be just producing water. It doesn't produce much of
21 anything else.

22 Q. Now, the Exhibits 4 and 5, they were just
23 recently filed; is that correct?

24 A. That's correct.

25 Q. Okay. But this well is active and is in

1 compliance with Division Rules?

2 A. That is correct, it is.

3 Q. Let's move on to the Number 562 well. Could you
4 identify Exhibit 6 and describe its current status?

5 A. Exhibit Number 6 is the notice of intent to
6 convert Well 562 to water source well. There's actually a
7 hand annotation on this form that the well's classification
8 was changed from water source to oil well because of a
9 small amount of oil production that was coming along with a
10 significant amount of water being produced. But this is
11 our notice of intent.

12 I did not find in our records the notice of
13 completion that it was converted, and that's something that
14 I do have to check up on and find out if we have filed the
15 correct records to reflect that that well has been
16 completed. But as you can see on Exhibit Number 2, this
17 well has been active as a water source well since 1997.

18 Q. So it has been a water -- It continues to be a
19 water source well, does it not?

20 A. That's correct.

21 Q. And so it has been a water source well for four
22 years, except its status, I guess, at the BLM, has changed
23 because it is producing a small amount of oil?

24 A. That's correct.

25 Q. Now, what about the Exxon accounting? Has

1 Exxon's internal accounting accurately reflected the
2 production for this well?

3 A. I don't know that. I don't know whether our
4 internal accounting accurately reflected a production from
5 this well or not.

6 Q. But it should have been reported to the Division,
7 and if it wasn't, that would just be a mistake; is that
8 correct?

9 A. That's correct, but I have not reviewed to see
10 whether our internal accounting has the correct values for
11 each month of production for this well. I did review with
12 our reservoir engineer that closely monitors our source
13 water or make-up water, and he said that all three of these
14 are actively producing now and have been since they each
15 came on.

16 So I think there may be some problems with our
17 carrying through and accurately reporting the water
18 production for these wells, but I don't know, I haven't
19 checked those, and in talking to Ms. Prouty yesterday she
20 said that there may be some problem in translating that
21 through to the Commission's records with respect to the
22 wells, except for the 364, which appears to be correct at
23 this time.

24 Q. Okay, and if there is some internal problem, you
25 will follow through on that?

1 A. Absolutely.

2 Q. Okay. Let's move on to you Exhibit 7. What does
3 that show? And discuss the current status of the Number
4 916 well.

5 A. Exhibit 7 is again labeled as a notice of intent
6 to convert the well from a water source well to an oil
7 well. The well had been producing as a water source well
8 since mid-1998, and again began producing a small amount of
9 oil, and because of that this form was filed to reflect
10 that it was producing a small amount of oil, or could --
11 did occasionally produce a small amount of oil.

12 Q. Okay. And to the best of your knowledge these
13 three wells are properly completed, and there's no
14 integrity problems with the wells?

15 A. That is correct.

16 Q. Okay. And again, is it your opinion that all of
17 these three wells are in compliance with Division Rules?

18 A. Yes.

19 Q. And if there is a paperwork error, does Exxon
20 Mobil request a reasonable period of time to comply with
21 any filing requirements that may be necessary?

22 A. Yes, we do.

23 Q. And does Exxon Mobil request that no civil
24 penalty be assessed against it for these wells?

25 A. Yes, we do.

1 Q. Now, just a couple more matters. We've mentioned
2 the Carl Schellinger Exxon Federal well. That well, you
3 contacted your land department about that particular well,
4 did you not?

5 A. Yes, I did.

6 Q. And what do Exxon Mobil's records reflect with
7 respect to that well?

8 A. Our records reflect that Exxon did farm out that
9 acreage where that well was drilled to, Mr. Schellinger,
10 and that the farmout -- we retain no working interest in
11 the farmout or in that well, and that it's basically not
12 our operated or working interest well.

13 Q. Okay. So Exxon has no working interest in that
14 well?

15 A. That's correct.

16 Q. And Exxon has never operated that well?

17 A. That's correct.

18 Q. And Exxon assigned the specific depths to Mr.
19 Schellinger in that well?

20 A. That's correct.

21 Q. And we mention this simply because Exxon Mobil
22 does not want to be liable for that well, does it?

23 A. That's correct.

24 Q. Okay. One final thing, Mr. Duncan. You have in
25 front of you the Division Exhibit 6 and 7, correct?

1 A. Yes, I do.

2 Q. Where were those notices sent?

3 A. Exhibit 6 is a letter that was sent to Exxon
4 Mobil Corporation, P.O. Box 4496, which I believe is an
5 Exxon Mobil accounting P.O. box in one of the buildings we
6 occupy in Houston, in the Brook Hollow Building, actually,
7 in the western part of Houston.

8 Q. Exxon occupies a number of buildings in Houston?

9 A. I actually don't even know how many. There are a
10 great number, several buildings.

11 But the Exhibit Number 7 was sent to Exxon Mobil
12 Upstream Business Services, P.O. Box 4721, which is a
13 subset of the accounting group that the first letter was
14 sent to. So both of these went to Exxon's accounting
15 group, which should be filing the production records for
16 these wells.

17 Q. But you never saw those letters contemporaneously
18 with when they were delivered to Exxon?

19 A. Not until this morning did I see these letters.

20 Q. Okay.

21 A. The portion of our company that works the
22 regulatory compliance issues and permitting issues uses a
23 mailing address of P.O. Box 4358, as shown on our Exhibits
24 3 through 7. That's the address that was shown on all of
25 the filings made for the three wells that were the subject

1 of this hearing.

2 Q. Does Exxon Mobil request that any and all future
3 mailings regarding, frankly, any wells in New Mexico be
4 sent to this P.O. Box 4358 in Houston?

5 A. Especially matters of a compliance nature, it
6 would be very helpful.

7 Q. Because the accounting department isn't concerned
8 with well compliance?

9 A. They are, in fairness, they are concerned, but
10 they may not feel the same ownership.

11 Q. And well compliance is more with respect to the
12 regulatory compliance division that you work for?

13 A. Yes.

14 Q. Okay. Mr. Duncan, were Exhibits 1 through 7
15 prepared by you or compiled from company records?

16 A. Yes, they were.

17 Q. And in your opinion is the granting of Exxon's
18 request in this matter in the interests of conservation?

19 A. Yes.

20 MR. BRUCE: Mr. Examiner, I'd move the admission
21 of Exxon Exhibits 1 through 7.

22 MR. BROOKS: No objection.

23 EXAMINER CATANACH: Exhibits 1 through 7 will be
24 admitted as evidence.

25 Mr. Brooks, do you have any questions?

EXAMINATION

BY MR. BROOKS:

Q. Yes, just reviewing your testimony, it's my understanding of your testimony that the Avalon Delaware Unit Number 364, the Avalon Delaware Unit Number 562 and the Avalon Delaware Unit Number 916 are each currently producing water --

A. That's correct.

Q. -- that's used in Exxon's waterflood program?

A. Yes, they are.

Q. And do I understand that you have no knowledge of why this production has not been reported to the Division?

A. I actually have no knowledge of what has been accurately reported, or actually reported to the Commission. I took the records that I was able to get from our accountant yesterday to Ms. Prouty and reviewed those with her, and she informed me that these were not the filings that we were making to the Commission, that they must have been an internal step that goes into the filings that go to the Commission. So in fact, I don't know what we are filing with you.

Q. Well, the Division is -- Exxon is undoubtedly, of course, an electronic filer?

A. I believe so.

Q. So there would not actually be any paper C-115

1 that would reflect what you have reported. The only
2 reflection would be what is in the ONGARD system; do you
3 understand that?

4 A. Not necessarily, I can't say that I totally
5 understand that, but I'll trust what you say.

6 Q. Okay. But notwithstanding what the records
7 reflect, you're testifying that you're familiar with the
8 wells and if the records do not production, the Division's
9 records do not reflect production, then the Division's
10 records are wrong?

11 A. That is correct. The wells are active, and in
12 fact these three wells are monitored on a monthly basis,
13 because our sourcewater needs for this waterflood are so
14 great, and they directly affect our ability to produce the
15 waterflood.

16 MR. BROOKS: Thank you, no further questions.

17 EXAMINATION

18 BY EXAMINER CATANACH:

19 Q. Mr. Duncan, do you know if these wells are
20 metered for water production?

21 A. I do not know whether they're metered
22 individually, whether they're metered on a test basis or
23 whether there is some other method of estimating the
24 production from the well. Since they're being pumped, they
25 can be estimated relatively accurately based on pump speed,

1 so I do not know how those numbers are obtained.

2 Q. When do you anticipate CO₂ injection to commence
3 in this unit?

4 A. I have no -- absolutely no idea. That has not
5 been proposed to the owners of the unit.

6 Q. Do you know at that time whether or not these
7 wells will be switched over and utilized for -- maybe as
8 production wells, or do you have any idea?

9 A. Based upon the patterns that were studied in the
10 original plan for CO₂, which would be again studied and
11 implemented, you know, based on a new study before it's
12 implemented, but based on the original plan Well Number 364
13 would probably be an injection well and Well Number 562
14 would probably be an injection well, I believe, and 916
15 might also be an injection well.

16 So they may change functions under a CO₂-flood
17 scenario.

18 Q. So you definitely have plans to use these wells
19 in the future for CO₂ operations?

20 A. Absolutely. In fact -- now, I can't -- I need to
21 retract that. A CO₂ flood would be studied again before
22 it's implemented, and an economic CO₂ flood may not include
23 the entire field. The original study for this unit
24 anticipated a CO₂ flood that would cover the area that
25 would include these wells. And since it has not been

1 restudied with the purpose of implementation, for the
2 purpose of implementation, I don't know what we actually
3 would do at the time a CO₂ flood would be implemented.

4 EXAMINER CATANACH: Okay, I have nothing further
5 of this witness.

6 Anything further?

7 MR. BROOKS: Nothing, your Honor.

8 MR. BRUCE: Nothing further.

9 EXAMINER CATANACH: Okay, do you have anything
10 else with regards to Exxon?

11 MR. BRUCE: I have nothing else with respect to
12 Exxon.

13 EXAMINER CATANACH: Mr. Brooks, are you prepared
14 to make a recommendation with regards to Exxon, or would
15 you like to wait till we've finished with the other
16 testimony?

17 MR. BROOKS: Your Honor, I've heard the testimony
18 of this witness, and I am not inclined to make a
19 recommendation. Your Honor has heard the evidence, and
20 you're much more familiar with these things than I am, and
21 I will rely on you to evaluate the evidence and make
22 appropriate recommendation.

23 I would add that there's apparently been a
24 failure to properly report, if indeed the testimony of
25 Exxon be accepted, and that our rules do require that all

1 production be reported.

2 However, as there is no evidence to the reasons
3 for failure to report, I cannot assert to your Honor that
4 the failure was intentional, and our statutes governing
5 civil penalties require that a violation be intentional in
6 order for the Division to be allowed to assess a civil
7 penalty. Therefore I can't recommend a civil penalty for
8 not reporting at this time.

9 Of course if it continues, then the Division
10 might take some other action.

11 Thank you.

12 EXAMINER CATANACH: Thank you, Mr. Brooks.

13 MR. BRUCE: I think Mr. Duncan has stated our
14 position.

15 EXAMINER CATANACH: Okay. This witness may be
16 excused.

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

20 DIRECT EXAMINATION

21 BY MR. BRUCE:

22 Q. Would you please state your name and city of
23 residence for the record?

24 A. My name is Mike Jones, I live in Lovington, New
25 Mexico.

1 Q. Who do you work for?

2 A. The Wiser Oil Company.

3 Q. What is your job with Wiser?

4 A. I'm the operations manager.

5 Q. Okay, and do your duties as operations manager
6 include compliance of the subject wells with Division
7 Rules?

8 A. Yes, sir, they do.

9 Q. And are you familiar with the wells, Wiser's
10 wells involved in this case?

11 A. Yes, sir, I am.

12 Q. Mr. Jones, just briefly, could you identify
13 Exhibit 1 for the Examiner?

14 A. Exhibit 1 is a map of the Skelly Unit and the Lea
15 "C" Unit in Eddy County. The black dots indicate the wells
16 that were listed on the order as in noncompliance.

17 Q. Okay. What types of wells are involved in this
18 case?

19 A. With the exception of the Skelly Unit 264, all
20 the wells on the Skelly Unit were injection wells, or are
21 injection wells. The two wells on the Lea "C" are both
22 producing -- were producing wells.

23 Q. Okay. Could you just give a brief history of the
24 wells in this area?

25 A. On the Lea "C", when we bought the properties,

1 they were -- both of these wells were TA'd and as far as I
2 know have casing integrity. The wells on the Skelly Unit,
3 we did an extensive drilling and workover project from
4 about 1997 through 1999. Some of these wells were existing
5 injection wells, some of them were converted to injection.

6 The Well Number 264 was drilled as a producing
7 well, but we encountered a waterflow so we plugged it back.
8 And they were shut in, most of them, in 1998 due to not
9 being in a strategic point in the waterflood, and with oil
10 prices being low -- we buy our water there, so we did not
11 want to put any more water in the ground than we had to.

12 Q. Okay. So some of these wells were shut in due to
13 economic reasons?

14 A. Some of them economic reasons, some of them
15 facility problems, surface facility problems at our
16 waterflood station.

17 Q. Okay. Now, since 1998 have these wells,
18 excluding the Lea "C" wells, have they been put back on
19 injection or production, or have they been TA'd?

20 A. No, all of the wells have been either TA'd or put
21 back on injection since that time.

22 Q. Okay. Now, have the proper filings been made
23 with the Division?

24 A. Up until this week they have not.

25 Q. Okay. Could you describe a couple of the reasons

1 for that?

2 A. The main reason, the lady that does that, our
3 production tech, had to be gone for an extended period of
4 time due to some surgery, and we really just didn't have
5 anybody else to do it. We did some, but -- And then when
6 she came back, she started catching up with Eddy County as
7 well as Lea County, and BLM.

8 Q. And that's not offered as an excuse, it's just
9 what happened?

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

11 Q. Okay. Have steps been taken to ensure that
12 proper filings will be made in a timely manner in the
13 future?

14 A. Yes, sir, they have. We have hired another lady,
15 and they -- all of the filings should be caught up at this
16 time.

17 Q. Okay. Let's go over a timeline of the contacts
18 between you and the Division. Could you identify Exhibit 2
19 for the Examiner and just very briefly discuss its
20 contents?

21 A. Exhibit 2 is a timeline of events. We got a
22 notice of noncompliant wells, and we -- at that time we
23 sent a letter to the OCD. And then in September we were
24 sent another letter.

25 Q. And that letter went to the Dallas office?

1 A. And that letter went to the Dallas office. I did
2 not receive that letter.

3 Q. Okay. What happened later that year?

4 A. In December of that year I met with Tim Gum in
5 his office and discussed the list of wells and told him at
6 that time that we would -- as equipment was available, that
7 we would start to get into compliance with all the wells,
8 and --

9 Q. Okay.

10 A. Go ahead.

11 Q. Okay, and then Mr. Gum sent you a letter dated
12 January 22nd, I believe?

13 A. That's correct.

14 Q. And you did receive that letter in Hobbs?

15 A. I did receive that letter.

16 Q. And what did you do in response to that letter?

17 A. I sent another letter back to him on January the
18 25th. That would be --

19 Q. Is that letter marked Exhibit 4, Mr. Jones?

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

21 Q. Okay. Now, before we get into that, now, that
22 was sent to a P.O. drawer in Artesia; is that correct?

23 A. That's correct.

24 Q. And Mr. Gum testified today that that P.O. drawer
25 no longer takes mail for the Division; is that correct?

1 A. That's correct.

2 Q. Did you receive this letter back in the mail?

3 A. Not, to my knowledge, no, sir.

4 Q. Okay, but go on. This letter did outline a plan,
5 did it not?

6 A. Yes, sir, it did. It outlined a plan of all the
7 wells listed. We started working on those wells, but --
8 and then some of the paperwork was submitted, but most of
9 it was not.

10 Q. Okay. Now, does Exhibit 3 reflect the work that
11 was done on the bulk of the wells that we are here today
12 for?

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

14 Q. And there are various times on it, but you did
15 start working on these wells in early 2001, did you not?

16 A. Yes, sir. Actually, we started in December of
17 2000 when we plugged a couple of wells.

18 Q. Okay. So you have been plugging wells --
19 plugging and abandoning wells on an ongoing basis in this
20 area, have you not?

21 A. Yes, sir, in Eddy County as well as Lea County.

22 Q. Okay. Now, this work was done; it wasn't always
23 done quickly. Was that due to availability of equipment
24 crews, in part?

25 A. In part, yes, sir, that's correct. In part it's

1 due to the availability of equipment and people and in part
2 when oil prices got better, we tried to step it up.

3 Q. Okay. Now, the type of crews who do this work,
4 have they been in very tight supply over the last year and
5 a half, two years?

6 A. Yes, sir, the plugging crews typically have
7 anywhere from six to 12 weeks after you get the deal done
8 to plug your well before they can actually start.

9 Q. Okay. And do you prefer to use -- Does Wiser
10 prefer to use crews that are experienced in this type of
11 work?

12 A. Yes, we do, that's all they do. Is plugging.

13 Q. Okay. And as you said, at this point hopefully
14 the Division should have received the necessary -- and/or
15 the Bureau of Land Management, should have received the
16 necessary filings regarding the work done on these wells?

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

18 Q. At this point, are there any wells that are not
19 strictly in compliance with Division Rules?

20 A. Lea "C" 3 and Lea "C" 14.

21 Q. Okay. And what is the status of these wells and
22 what are Wiser's plans?

23 A. The status of these wells are TA'd, and as far as
24 I know they have casing integrity, and we have made
25 arrangements with a clearing house to sell this lease. It

1 was actually supposed to have been done in November, but
2 they moved a bunch of -- they moved a lot of that around
3 due to the -- they had one in October, and they moved a lot
4 of it around.

5 Q. Okay. The wells were in a TA status?

6 A. Yes, sir.

7 Q. But it was probably extended beyond the time
8 where a well should be TA'd?

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

10 Q. At this point do you request that an extension of
11 that TA be allowed so that the wells could be sold?

12 A. Yes, sir, I do.

13 Q. You don't want to plug them at this time before
14 you sell them?

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

16 Q. The purchaser could desire to do something with
17 those wells?

18 A. Uh-huh.

19 Q. Now, with respect to those wells, did you write
20 to the Division requesting some forbearance of activity on
21 the Lea "C" lease?

22 A. Well, yes, in the letter, Number 5 --

23 Q. Exhibit 5?

24 A. -- Exhibit 5, we did -- we had a well that failed
25 casing integrity, the Lea "C" Number 2. We repaired that

1 well and recompleted it -- Well, we actually recompleted it
2 and made a producing well out of it. And as we stated, if
3 the well showed potential enough, then we would develop the
4 lease. Well, it did not. So by this letter, you know,
5 we -- then at that point we decided to sell the lease.

6 Q. Okay. Now, this letter was mailed to the
7 Division. Did Wiser receive this letter back?

8 A. No, sir, we did not.

9 Q. Okay. Other than the two Lea "C" wells, which
10 you ask an extension of the TA status for, are -- when the
11 filings by Wiser, the paperwork filings or the electronic
12 filings are made, are the wells, the Skelly Unit wells, in
13 compliance with Division Rules?

14 A. As far as I know, yes, sir.

15 Q. Okay. And you ask that no civil penalty be
16 assessed against Wiser?

17 A. Yes, sir. Yes, sir.

18 Q. Were Exhibits 1 through 5 prepared by you or
19 compiled from company business records?

20 A. Part of them were compiled by me and part of them
21 from company records.

22 Q. Okay. And in your opinion will the granting of
23 Wiser's request prevent waste?

24 A. Yes, sir, I think that it will.

25 MR. BRUCE: Mr. Examiner, I move the admission of

1 Wiser's Exhibits 1 through 5.

2 EXAMINER CATANACH: Any objection?

3 MR. BROOKS: No objection.

4 EXAMINER CATANACH: Exhibits 1 through 5 will be
5 admitted as evidence.

6 Mr. Brooks?

7 EXAMINATION

8 BY MR. BROOKS:

9 Q. Looking at Wiser Exhibit Number 1, I want to
10 clarify something. I understood you said the black dots
11 were the subject wells, and I see black dots all over this
12 map.

13 A. Blue dots --

14 Q. I was wondering --

15 A. -- I meant to say --

16 Q. -- if you meant blue dots.

17 A. -- I'm sorry if I said black dots, but I --

18 Q. Okay, well --

19 A. -- I meant blue dots.

20 Q. -- the record will reflect whether I misheard or
21 you misspoke, but I just wanted to clarify that, because I
22 thought you were referring to the blue dots.

23 My understanding of your testimony, the green
24 area is the Lea "C" Unit; is that correct?

25 A. Yes, sir.

1 Q. And the yellow area is the Skelly Unit?

2 A. Yes, sir.

3 Q. And is it your testimony that all of the subject
4 wells in the Skelly Unit are in use as injection wells?

5 A. No, sir, all the wells in the Skelly Unit have
6 either been TA'd, PA'd, or are active.

7 Q. Okay. Now, are those temporary abandonments --
8 can you represent to us that those temporary abandonments
9 are current?

10 A. As far as I know, yes, sir.

11 Q. Do you know?

12 A. I know probably as well as anybody. Some of them
13 we've done in the last month.

14 Q. Okay. But you would agree that the well files
15 would reflect that information --

16 A. Yes, sir.

17 Q. -- as far as the Division is concerned?

18 A. Well, they should once the -- We Fed Ex'd a lot
19 of information Tuesday.

20 Q. That would be Tuesday of this week?

21 A. Yes, sir.

22 Q. The day before yesterday?

23 A. Yes, sir.

24 Q. Now, the Lea "C" wells you conceded were not in
25 compliance?

1 A. The two wells, no, sir.

2 Q. Okay. Now, you also said that so far as you knew
3 they had mechanical integrity --

4 A. Yes, sir.

5 Q. -- and I will ask you the same thing I asked you
6 about temporary abandonment. Do you know?

7 A. Well, in the first quarter -- or the first of
8 this year, a casing integrity test was done on those wells,
9 and the only one that failed was Number 2.

10 Q. Okay, was there -- And what was done about that?

11 A. We recompleted it into a -- made it into a
12 producer. It was originally an injector, and we
13 recompleted it as a producer, up the hole.

14 MR. BROOKS: Very good. I think that concludes
15 my examination.

16 MR. BRUCE: I have no cross- -- recross.

17 EXAMINATION

18 BY EXAMINER CATANACH:

19 Q. Mr. Jones, the Lea "C" wells, you say those are
20 TA'd at this time?

21 A. Yes, sir, those two are.

22 Q. Do you know, do they have bridge plugs in the
23 well or --

24 A. Yes, sir, they do.

25 Q. They are with bridge plugs --

1 A. Yes, sir.

2 Q. -- above the perforations?

3 A. Uh-huh.

4 Q. And the casing, you said you did do a test
5 January of this year?

6 A. Well, I don't know exactly what month it was, but
7 in the first six months of this year, I believe that's
8 right, Mr. Examiner --

9 Q. Okay.

10 A. -- because the Number 2 well failed.

11 Q. Do you know how long those wells have been TA'd?

12 A. No, sir, I don't.

13 EXAMINER CATANACH: That's all I have of the
14 witness.

15 MR. BROOKS: Well, I want to clarify, because of
16 the Examiner's questions.

17 FURTHER EXAMINATION

18 BY MR. BROOKS:

19 Q. I understood you to say that the TA status was
20 not current as to those two wells?

21 A. Those two wells, they're not current, I don't
22 think. We didn't do them. They were done when we bought
23 the lease.

24 Q. And you understand that the TA status expires if
25 it is not renewed by application --

1 A. Yes, sir.

2 Q. -- or by filing appropriate notice?

3 A. Yes, sir.

4 Q. Okay. And so when you testified that those wells
5 were temporarily abandoned in response to the Examiner's
6 questions, what you're actually telling us is that those
7 wells were at one time temporarily abandoned?

8 A. That's correct.

9 MR. BROOKS: Okay. I just wanted to clarify
10 that. No further questions.

11 FURTHER EXAMINATION

12 BY EXAMINER CATANACH:

13 Q. Mr. Jones, to get those two wells back into
14 compliance, would it be simply a matter of filing for an
15 extension of the TA status?

16 A. Yes, sir.

17 Q. Is that your understanding?

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

19 Q. Have you done that?

20 A. No, sir, we have not.

21 EXAMINER CATANACH: Okay. I have nothing
22 further.

23 FURTHER EXAMINATION

24 BY MR. BRUCE:

25 Q. The only question I have is, when you mentioned

1 the Number 2 well, the casing and integrity test failed,
2 that's not the subject of the hearing?

3 A. No, sir, I don't think it is.

4 MR. BRUCE: Okay. I have nothing further, Mr.
5 Examiner.

6 EXAMINER CATANACH: Okay, this witness may be
7 excused.

8 So, Mr. Bruce, you're done with your clients?

9 MR. BRUCE: I'm done with my version

10 MR. BROOKS: Do you want to make a closing
11 statement?

12 MR. BRUCE: Just briefly, Mr. Examiner. I
13 believe, as the witnesses have discussed, other than the
14 two Lea "C" wells, the wells are in compliance. There have
15 been some paperwork problems which the parties have cured
16 or will soon work to cure, and we ask that we be given
17 additional time if necessary, a reasonable period of time
18 to cure any paperwork deficiencies with respect to both
19 corporations, that no civil penalties be assessed against
20 either corporation, and I will discuss with Mr. Jones
21 bringing the Lea "C" wells, at least filing an application
22 to extend the TA status so that those wells can be sold as
23 is.

24 EXAMINER CATANACH: Mr. Brooks?

25 MR. BROOKS: Okay. Well, with regard to Julian

1 Ard, after conversation with Mr. Ard's counsel, no specific
2 commitment has been made by Julian Ard to do anything in
3 any specific time period. Therefore we're not recommending
4 that the case be continued as to Julian Ard.

5 However, because Julian Ard's lease is -- the
6 status of his lease is in question, we would recommend that
7 in addition to the options otherwise given in the
8 compliance order, that he be allowed the option of filing a
9 one-well bond pursuant to the statute.

10 Now, I do not know if the Division actually has
11 authority to order that, other than in connection with the
12 temporary abandonment. My suggestion -- My belief is that
13 they do not. The Division has authority to require a one-
14 well bond, but I do not believe the Division has the
15 authority to allow a person to leave a well out of
16 compliance on the basis of a one-well bond.

17 Therefore it would seem to me that the compliance
18 order would have to state that he would apply for a
19 temporary abandonment and file a one-well bond. But
20 there's some suggestion Mr. Ard might be willing to file a
21 one-well bond on that, and of course we do have the
22 authority to require that.

23 With regard to Exxon, I've stated in my position
24 previously.

25 With regard to Wiser, once again, Wiser has

1 testified or offered testimony to the effect that many of
2 these wells are injecting or producing, even though it has
3 not been reported to the Division in accordance with the
4 Division Rules.

5 Because of the nature of this proceeding -- and
6 we didn't know what testimony was to be offered, we have
7 not had an opportunity to check that out and see if that
8 tallies with other information that might be available to
9 the Division, and therefore we will not make a
10 recommendation as to those wells as to which that testimony
11 has been made.

12 We believe that the overall thrust of the Wiser
13 testimony is that it reflects that there has been a
14 considerable scurrying to bring these wells into compliance
15 since they received the notice of this hearing. And of
16 course we appreciate those efforts. At the same time,
17 there are two wells that are out of compliance, and as your
18 Honor noted they could very easily be brought into
19 compliance.

20 We therefore request that a compliance order be
21 entered against Wiser Oil Company, at least as to the two
22 wells that are still out of compliance, according to the
23 evidence.

24 We would further leave it to your Honor's
25 discretion as to what civil penalties, if any, ought to be

1 assessed against the Wiser Oil Company, because we believe
2 we have made a recommendation that they were given notice
3 as to many of these wells -- as to all of these wells, I
4 believe, with certain exceptions that I noted in the
5 presentation of my case, and that there has been a
6 considerable delay in attending to this matter during a
7 period of time in which they were also neglecting their
8 reporting responsibilities, and therefore we leave it to
9 your Honor's discretion as to what civil penalty, if any,
10 you feel should be recommended in this case.

11 Thank you very much.

12 EXAMINER CATANACH: Mr. Brooks, may I get you to
13 submit to me a document that lists your recommendations for
14 the operators that we've talked about today?

15 MR. BROOKS: Your Honor, I'll be happy to do
16 that. I'll just provide copies to Mr. Carr and Mr. Bruce.

17 EXAMINER CATANACH: The other thing is, is it
18 your opinion, Mr. Brooks, that -- after you've spoken to
19 Julian Ard, that they have not committed to making an
20 effort towards getting the well into compliance?

21 MR. BROOKS: I have not spoken to Julian Ard, Mr.
22 Examiner. I've spoken to Mr. Carr, and it is my opinion
23 that they have not made any commitment as to exactly what
24 they will do. They've simply asked for more time and
25 they've not made any commitment. That is my understanding

1 of the situation.

2 EXAMINER CATANACH: I believe that -- Mr. Carr,
3 would you like to address that and make a statement?

4 MR. CARR: Well, what we're prepared to do is, if
5 the lease is in place, we intend to attempt to establish
6 production in the Abo. And at that time we'll be able --
7 if we can obtain production in sufficient quantities, we
8 can justify a pipeline and then hopefully connect all three
9 wells on the tract.

10 But the threshold question is the status of the
11 lease. Now, we have a letter pending requesting an
12 extension of the lease. It's now before the Commissioner
13 of Public Lands. If that is denied, the lease is gone and
14 the wells will have to be plugged and abandoned, and that's
15 what we --

16 EXAMINER CATANACH: If the lease is denied,
17 will --

18 MR. CARR: If the lease extension is denied, then
19 the lease is gone, and then we've got three wells and a
20 plugging obligation.

21 EXAMINER CATANACH: Well, will Ard be responsible
22 for plugging those wells if the lease is gone?

23 MR. CARR: As far as I understand. He was out
24 there drilling in June.

25 EXAMINER CATANACH: Do you know when you might

1 receive an answer to your request from the Land Office?

2 MR. CARR: It was dated in August, and we're
3 surprised we haven't received it yet. We're following up
4 on that with them now. Mr. Keogh is out of town. That's
5 who I contacted.

6 EXAMINER CATANACH: And you're requesting a
7 continuance of the Ard portion of the case until --

8 MR. CARR: Till January.

9 MR. BROOKS: Mr. Examiner, in response to that,
10 this is the reason that we suggested that Mr. Ard be
11 required to file a bond if the matter is to be continued or
12 if he is to dispose of it otherwise than by plugging these
13 wells, because it appears that if his lease has expired he
14 would have -- he would be -- I think Mr. Carr correctly
15 states he would be responsible for plugging those wells,
16 unless the Commission or the Land Office for some reason
17 wanted to keep those wells open.

18 And on the other hand, he would have no
19 particular financial incentive to want to plug those wells,
20 because he doesn't have to lease anymore. And for that
21 reason we would recommend that he be required, if he wants
22 to keep those wells open at this time, to file a one-well
23 bond.

24 EXAMINER CATANACH: I believe, Mr. Carr, you're
25 not authorized to make that commitment?

1 MR. CARR: I'm not authorized to commit to that,
2 but I have advised Mr. Brooks and can advise you that I
3 will recommend that we immediately attempt to secure a bond
4 to cover the well.

5 EXAMINER CATANACH: Let's do that. If you can
6 obtain a bond within the next two weeks --

7 MR. CARR: We'll try and do that.

8 EXAMINER CATANACH: If you can do that for that
9 well, then I would continue your portion of the case until
10 January. If you cannot secure a bond within two weeks, I
11 would probably be inclined to include that in a compliance
12 order that we issue.

13 MR. CARR: The conversations I have had
14 concerning this matter are not with Mr. Ard but with the
15 land manager that works for him, and I can tell you that
16 there is no interest in squaring off or trying to fight
17 with the OCD while we resolve this with the State Land
18 Office, and I can commit to you that I will attempt to have
19 this in place.

20 EXAMINER CATANACH: Please keep us advised of the
21 status of that, Mr. Carr.

22 Okay, is there anything else in this case?

23 MR. BROOKS: No, your Honor.

24 EXAMINER CATANACH: At the recommendation of
25 Division counsel, I would guess that we will probably sever

1 this case as recommended and issue -- probably issue a base
2 order and then possibly an "A" order.

3 MR. BROOKS: Correct.

4 EXAMINER CATANACH: And with that, I will
5 continue that portion of the case until the first hearing
6 in 2002, which I don't have a date for that.

7 MR. BROOKS: I do not either.

8 EXAMINER CATANACH: Okay. I don't know if the
9 schedule has been put together yet, but --

10 MR. BROOKS: I don't either, I have not inquired
11 about that.

12 EXAMINER CATANACH: -- we'll continue that to the
13 first hearing in January as to those that you've requested
14 continuances for, and the rest of the operators we will
15 take under advisement at this time.

16 MR. BROOKS: Thank you very much, your Honor.

17 EXAMINER CATANACH: Thank you, Mr. Brooks.

18 (Thereupon, these proceedings were concluded at
19 11:13 a.m.)

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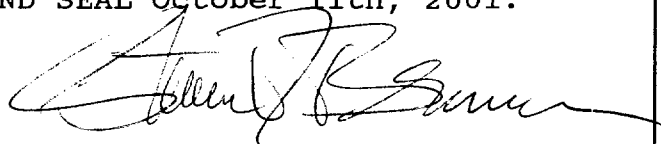
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 11th, 2001.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002