

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING N. DALE NICHOLS TO BRING)
EIGHT WELLS INTO COMPLIANCE WITH RULE)
201.B AND ASSESSING APPROPRIATE CIVIL)
PENALTIES, CHAVES COUNTY, NEW MEXICO)
)

CASE NO. 12,862

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Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

March 20th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, March 20th, 2003, 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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March 20th, 2003
 Commission Hearing
 CASE NO. 12,862

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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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* * *

1 WHEREUPON, the following proceedings were had at
2 1:03 p.m.:

3
4 CHAIRMAN WROTENBERY: I'll go ahead and call Case
5 12,862. This is the Application of the New Mexico Oil
6 Conservation Division for an order requiring N. Dale
7 Nichols to bring eight wells into compliance with Rule
8 201.B and assessing appropriate civil penalties, in Chaves
9 County, New Mexico.

10 And this case was continued from the Commission's
11 hearing on February 27th. And I believe we heard the
12 Division's case in this matter, but Mr. Brooks, you've
13 handed me some additional exhibits. Do you want to
14 supplement?

15 MR. BROOKS: Yes, ma'am. And I see my witness
16 has come in.

17 Madame Chairman, honorable Commissioners, I'm
18 David Brooks, Energy, Minerals and Natural Resources
19 Department of the State of New Mexico, appearing for the
20 New Mexico Oil Conservation Division.

21 We did present our case at the previous hearing.
22 Mr. Gum has requested to present some additional
23 information, partly by way of response to some questions
24 that were raised by the Commissioners at the previous
25 hearing.

1 We will either supplement at the beginning or
2 present our material together with any rebuttal at the
3 conclusion of the Respondent's presentation, as the
4 Commission pleases.

5 CHAIRMAN WROTENBERY: Mr. Bruce, do you have any
6 objection if we go ahead and hear --

7 MR. BRUCE: None at all --

8 CHAIRMAN WROTENBERY: -- additional evidence from
9 Mr. Gum?

10 MR. BRUCE: -- no.

11 CHAIRMAN WROTENBERY: Mr. Gum, would you please
12 come to the witness stand?

13 And --

14 MR. BRUCE: Oh, I do have one witness, madame
15 Chair, I'm sorry.

16 CHAIRMAN WROTENBERY: Okay, thank you.

17 Can we consider Mr. Gum still sworn? We're in
18 the same proceeding. What's the usual procedure?

19 COURT REPORTER: Usually it's done anew each
20 meeting.

21 CHAIRMAN WROTENBERY: Okay. Well, let's do that
22 again.

23 And Mr. Bruce, if your witness could stand, we'll
24 swear both in at the same time.

25 (Thereupon, the witnesses were sworn.)

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TIM W. GUM,

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

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Good afternoon, Mr. Gum.

A. Good afternoon.

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

A. Tim W. Gum.

Q. And by whom are you employed?

A. The State of New Mexico, the Oil Conservation Division.

Q. In what office?

A. The Artesia District Office.

Q. And what is your capacity?

A. District Supervisor.

Q. Now, did you testify at the previous hearing in this case?

A. I did.

Q. And I believe your credentials were accepted and made a matter of record at that time?

A. That's correct.

Q. Mr. Gum, I have called you this afternoon again in this case for the purpose of presenting some additional evidence that is not -- I think is really just a little bit

1 more graphic or clearer presentation of what we presented
2 at the previous hearing. I will first call your attention
3 to what has been marked as OCD Exhibit Number 10, a copy of
4 which is in front of you --

5 A. Yes, sir.

6 Q. -- and ask you to describe what that exhibit
7 depicts.

8 A. This is a spreadsheet listing of the wells that
9 were actually included as Exhibit Number 6 in the hearing
10 last month. The only additions that were made to this
11 particular attachment was the two rightmost columns. These
12 two columns indicate the date that the wells actually came
13 into compliance and the type of work that was performed to
14 bring the wells into compliance.

15 And from this particular attachment or exhibit,
16 you might note that the next column to the left was the
17 operator's work plan as when he had projected that he would
18 have the wells into compliance. And all of those dates
19 were in the year 2001, whereas actual wells were actually
20 brought into compliance -- the majority of the wells were
21 not brought into compliance until much later than the
22 January 1, '02, deadline.

23 Q. Very good. This exhibit lists a number of wells
24 in addition to the wells that are actually at issue in this
25 proceeding, correct?

1 A. That's correct.

2 Q. But it is correct and complete as to the wells
3 that are at issue in this proceeding?

4 A. That is correct.

5 Q. I'll call your attention to one thing because
6 it's something of a discrepancy between what I had
7 presented and what I presented last month. In connection
8 with the Standard State Number 6Y, the date resolved is
9 stated as being 12-17 of '02?

10 A. That's correct.

11 Q. Now, I believe we established, did we not, at the
12 last hearing that actually the physical plugging of that
13 well occurred in June of '02; is that correct?

14 A. That's correct. But perhaps, if I may take a
15 moment, Mr. Brooks --

16 Q. Yes, please do.

17 A. -- and madame Chairman, to kind of clarify the
18 process which we have undertaken in the inactive well
19 project.

20 Once a well is determined to be inactive from our
21 run against the ONGARD system, it is the District 2's
22 policy and procedure that a physical field inspection is
23 made on every well on that list prior to the time that it
24 is brought to hearing. If the operator has documentation
25 to show that that well has been brought into compliance

1 prior to the hearing date, that well particularly is
2 stricken from the list that's brought to hearing.

3 Also, once the inactive wells are brought to
4 hearing, Mr. Brooks and/or the Hearing Examiner will ask us
5 to verify again what the status is of those particular
6 wells which are on the list. And if they are in
7 compliance, they are also stricken from the order or so
8 noted in the order itself before it's finally drafted and
9 signed.

10 For example, the initial inactive well hearing
11 that we had back last year, there were several wells that
12 were stricken from the original list as I was walking from
13 the seats in the back, coming to the witness stand to be
14 sworn in.

15 Again, the process was, as long as an operator
16 would provide us documentation that the well was in
17 compliance, we would strike it from the hearing list.

18 And also that goes back to the question that the
19 Chairman had last month about the findings in Number 9, the
20 October 29th date. At that point in time, all of those
21 wells listed were still in noncompliance, because we had no
22 additional documentation to state that they were in
23 compliance.

24 Q. Okay.

25 A. Now, back to your particular question on the

1 Standard 6Y, the well was physically plugged in June, as I
2 recall. But we did not receive any notification that the
3 well had been plugged until much later than that time, and
4 it was past this October 28th or 29th date. No
5 documentation.

6 Now, the process that is followed in a P-and-A
7 well is, once the well is plugged and abandoned the
8 operator notifies us that it has been plugged. We send out
9 another letter that says, well, has the location been
10 completed and cleaned up?

11 Once that letter is received, a second inspection
12 is made of that well location. If it meets the
13 requirements of the regulation, then that wellbore is
14 released as being plugged and abandoned.

15 At that point, it is entered into ONGARD system
16 as being plugged and abandoned. Therefore you get the date
17 of December 17th, '02, as the official date that that well
18 was plugged. And the reason that this process is conducted
19 in this manner is that the bond is not released until the
20 final cleanup and the location is approved for P-and-A.

21 Q. The actual date of physical plugging of that well
22 was in June of '02, correct?

23 A. That's correct.

24 Q. Now, that well, the Standard State 6Y, was
25 included, I believe we established in the last hearing, in

1 the inactive well notice that was given on May the 11th of
2 '02; is that correct?

3 A. That's correct.

4 Q. So whether you look to June of '02 when it was
5 plugged, or December 17 of '02 when the location apparently
6 was finally released, it's still true that there was two
7 full years elapsed from the date that notification of the
8 inactive status of that well was given until it was
9 plugged, correct?

10 A. That is correct.

11 MR. BROOKS: And so if I inadvertently said that
12 it was only one year at the last hearing, which I believe I
13 may have said, that was incorrect; it was actually two-
14 years-plus, regardless of which date you use.

15 CHAIRMAN WROTENBERY: Because the notice was
16 originally given in May of 2000; is that right?

17 MR. BROOKS: Correct.

18 Q. (By Mr. Brooks) Okay, I'll now call your
19 attention to what has been marked as OCD Exhibit Number 11.

20 COMMISSIONER BAILEY: Before we leave this
21 exhibit could we have clarification, please?

22 MR. BROOKS: Okay.

23 COMMISSIONER BAILEY: Lewis Neff Number 3, the
24 date resolved, I'm assuming that's just a typo for the
25 year?

1 CHAIRMAN WROTENBERY: Uh-huh.

2 THE WITNESS: Lewis Neff Number 3 was a typo for
3 which now?

4 COMMISSIONER BAILEY: The date resolved.

5 CHAIRMAN WROTENBERY: It says December 3rd of
6 '03, which we haven't reached yet, so --

7 THE WITNESS: That definitely is a typo.

8 CHAIRMAN WROTENBERY: Yeah.

9 COMMISSIONER BAILEY: Okay, so we'll put '02 for
10 that one?

11 THE WITNESS: That is correct.

12 COMMISSIONER BAILEY: Okay.

13 THE WITNESS: And I am the responsible party for
14 that typo.

15 CHAIRMAN WROTENBERY: And then let me just ask
16 one more question, since we're talking about discrepancies
17 here.

18 I believe you had testified that all of the
19 operators' proposed actions were in '01, but the very first
20 one has an '02 date. Is that --

21 THE WITNESS: That is correct, yes.

22 CHAIRMAN WROTENBERY: The '02 date is correct?

23 THE WITNESS: Yes, ma'am.

24 CHAIRMAN WROTENBERY: Okay.

25 MR. BROOKS: Are we ready to move on to Exhibit

1 11?

2 CHAIRMAN WROTENBERY: (Nods)

3 Q. (By Mr. Brooks) Okay. Is Exhibit 11 a summary
4 with respect to certain of these wells of the discrepancies
5 in the dates and the reason why the Examiner might have
6 concluded that these were not resolved at the date of the
7 issuance of the Division Order?

8 A. Yes, Mr. Brooks, and one primary purpose of this
9 exhibit was to help the Chairman understand why wells were
10 listed in Finding Number 9 as being inactive when, in fact,
11 that they were in compliance.

12 Q. Now, the Division Hearing took place on May 2nd
13 of '02, correct?

14 A. That's correct.

15 Q. And the Division Order was actually signed on
16 November 5 of '02?

17 A. That's correct.

18 Q. But it appears that some of the information that
19 the Examiner had, the Director had, may have been a few
20 days old at the time that that was signed?

21 A. That's correct, the information that we received
22 that these wells were in compliance was received after the
23 October 29th date.

24 Q. Okay. Is there anything else you would like to
25 comment on about Exhibit 11, or just let it speak for

1 itself?

2 A. Just to answer a previous question that Mr. Bruce
3 had last month was, the last paragraph on the last page --
4 I made the comment that seven of the wells out of 14 had
5 been brought into compliance during this particular time,
6 and I was in error. It was only five, five wells out of
7 the 14, for 36 percent of the total wells.

8 Q. Were brought into compliance prior to January 1
9 of '02?

10 A. Yes.

11 Q. And that is material to you because you had in
12 previous correspondence indicated that that was the
13 deadline that this operator had to bring his wells into
14 compliance?

15 A. That is correct, and it is also in line with his
16 proposed work plan that he presented.

17 Q. Okay. Now, it remains true, I take it, as it was
18 last month, that all of the wells that are now in
19 compliance except for the Lynx Number 1?

20 A. That is correct.

21 Q. Okay.

22 A. I have one additional comment I would like to
23 offer --

24 Q. Proceed.

25 A. -- on the Lynx, and this is for Commissioner

1 Bailey's benefit. She posed a question about the
2 mechanical condition last month. Additional review of the
3 well file indicates that the well does not have casing
4 collapsed, so therefore it's not as severe a problem as I
5 had indicated at that time.

6 The information in the file now states that there
7 is a packer stuck with 31 joints of tubing cut off above
8 the packer. This is still a problem, but it is much easier
9 to deal with than having a casing collapse that you have to
10 repair before you get down to your fish. And it is very
11 important that this fish be removed at least down to the
12 packer, in order that the well can be properly plugged to
13 protect the environment and meet our guidelines.

14 Q. Mr. Gum, is there anything further you feel the
15 Commissioners should be advised about this case?

16 A. Not at this point.

17 Q. Very good. Were Exhibits 10 and 11 prepared by
18 you in the ordinary course of business?

19 A. Yes.

20 MR. BROOKS: We'll offer Exhibits 10 and 11 at
21 this time.

22 CHAIRMAN WROTENBERY: Any objection, Mr. Bruce?

23 MR. BRUCE: No objection.

24 CHAIRMAN WROTENBERY: Okay, Exhibits 10 and 11
25 for the OCD are admitted into evidence.

1 MR. BROOKS: Pass the witness.

2 MR. BRUCE: I don't have any questions.

3 CHAIRMAN WROTENBERY: Commissioners?

4 Thank you for your testimony, Mr. Gum.

5 MR. BROOKS: That concludes our presentation at
6 this time, madame Chairman.

7 CHAIRMAN WROTENBERY: Thank you.

8 Mr. Bruce?

9 JIM L. PIERCE,

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

12 DIRECT EXAMINATION

13 BY MR. BRUCE:

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

16 A. Jim Lee Pierce, Roswell, New Mexico.

17 Q. What's your occupation?

18 A. I'm an oil and gas landman.

19 Q. Okay. Have you worked for Mr. Nichols on and off
20 for a number of years?

21 A. Yes.

22 Q. What has been your experience with Mr. Nichols?

23 A. He's hired me -- we've known each other about ten
24 years -- to clean up title and problems that he has that
25 come up from time to time on these leases and whatnot that

1 he owns and operates north of Roswell.

2 Q. Okay. And have you been familiar with the
3 matters related to bringing these wells into compliance
4 with the OCD?

5 A. Somewhat.

6 Q. Now, Mr. Nichols did try to get these wells in
7 compliance, did he not?

8 A. Yes, has been since before the hearings last
9 year, this time last year.

10 Q. And he was admittedly late on getting some of
11 these?

12 A. Yes, he -- It's a father-son outfit. The two of
13 them do this by themselves, with some hired help from time
14 to time. They've run into some health problems the last
15 year and a half, which has been the major reason for not
16 being able to get things done as they intended, which has
17 been provided as part of the testimony and the exhibits
18 today, I believe.

19 Q. I haven't submitted the testimony yet --

20 A. Oh.

21 Q. -- but we'll get into that.

22 A. All right.

23 Q. Is there another matter that you've worked on for
24 Mr. Nichols that has slowed him down in getting some of
25 these wells in compliance?

1 A. He was involved with -- It's called the Ard lease
2 or the Acme lease. In fact, the Commission issued an order
3 against Julian Ard, or the operator, out of Fort Worth, on
4 an offsetting lease that Mr. Nichols was involved with. He
5 got saddled with this problem. He has taken it upon
6 himself to clean up that matter, which he has done, and it
7 had to do with some noncompliant wells.

8 And the State had contended, I believe, that
9 there was an expired lease. Again it went to hearing. The
10 State made a decision and issued an order that there was an
11 increase in royalty and a timetable that Mr. Ard was
12 supposed to adhere to, which he wasn't. Mr. Nichols, being
13 involved with the lease and so forth, took it upon himself
14 to do this and has complied, and I believe the State's very
15 happy with him in this scenario.

16 Q. Okay, so that -- He took on a problem that the
17 State was aware of --

18 A. Yes.

19 Q. -- and satisfied the Division with cleaning up
20 that lease?

21 A. That's correct.

22 Q. Now, regarding the Lynx Number 1 there were some
23 problems. Have you informed Mr. Nichols that he has to
24 deal with the State on that matter?

25 A. Yes. As Mr. Gum mentioned, there's very bad

1 mechanical problems downhole which made them unable,
2 especially with the problems that they've incurred over the
3 last year or whatnot, to get in there and do it as they had
4 scheduled to plug and abandon this well.

5 But all the work has been done, and I believe a
6 C-103 has been provided to the OCD District Office in
7 Artesia, that all that they're waiting for on this Lynx
8 well is a dryhole marker, and they've made arrangements
9 with the surface owner for cleanup.

10 Q. Okay. Now, you don't dispute Mr. Gum that Mr.
11 Nichols was given an extension until January 1 of 2002 and
12 did start working on those wells to bring them into
13 compliance?

14 A. Yes, again he started bringing -- I believe it
15 was a total of 15 wells, as I recall -- he started bringing
16 those wells into compliance in 2001, prior to the hearings
17 that we had at this time last year.

18 Q. And has he been slowed down by health problems in
19 getting this done?

20 A. Yes.

21 Q. I've handed you what's been marked Nichols
22 Exhibit 1 -- or 2 -- yeah, Nichols Exhibit 1, excuse me.
23 Could you just briefly describe the health problems? You
24 do know Mr. Nichols fairly well, do you not?

25 A. Well enough. He's been in the hospital three

1 times in the last year and some odd months, and when he
2 hasn't been thrown in the hospital he's been out on this
3 lease work. His most recent visit was the end of last
4 week, he was rushed by air ambulance and whatnot for health
5 problems.

6 Q. Okay. What is Mr. Nichols here for today? He
7 will bring the final well into compliance, will he not?

8 A. Yes. Again, I think I've provided you with a
9 copy of the C-103 that he provided me before I came up here
10 to Santa Fe yesterday. I was told that that was being
11 provided to the OCD District Office in Artesia. And again,
12 I've read that, and it said that all that they're waiting
13 for is a dryhole marker and surface cleanup.

14 Q. Would Mr. Nichols like either the penalty
15 eliminated or reduced, based on his circumstances?

16 A. Yes, they can't afford \$11,000 again. It's a
17 father-and-son outfit like -- There are hundreds of those
18 in the State of New Mexico that handle these small,
19 marginal leases. They have been out there working
20 diligently. And again, they had 15 wells in noncompliance
21 and at this point they have not -- and as Mr. Gum alluded,
22 they had most of the wells, or a good portion of the wells,
23 in compliance in June of last year.

24 Q. Which was later than the hearing?

25 A. Yes.

1 Q. It wasn't by deliberate aim that he missed the
2 deadline?

3 A. No.

4 Q. What is Exhibit 2, briefly, Mr. -- excuse me,
5 Exhibit 1, Mr. Pierce?

6 A. I called and asked -- And that's one reason I'm
7 here, is because neither he nor his son could be here
8 because of health problems. He faxed me this information
9 and I told him to get everything in order as far as his
10 hospital visits and hospital stays over the last year and
11 some odd months. This is what he's sent to me. The
12 physician dated this one 7-3-02, and it has to do with a
13 Stent implant in his heart, or someplace. This is Greek to
14 me.

15 MR. BRUCE: That's all I have, madame Chair. I
16 move the admission of Nichols Exhibit 1.

17 CHAIRMAN WROTENBERY: Any objection?

18 MR. BROOKS: No objection.

19 CHAIRMAN WROTENBERY: Okay, Nichols Exhibit 1 is
20 introduced into evidence.

21 Mr. Brooks, do you have any questions?

22 CROSS-EXAMINATION

23 BY MR. BROOKS:

24 Q. Mr. Pierce, this C-103 that was allegedly filed
25 with the OCD, do you have a copy of it?

1 MR. BRUCE: Yes, we do.

2 THE WITNESS: Yes, sir, I do.

3 Q. (By Mr. Brooks) Okay, are you familiar with the
4 way a C-103 form -- with how it's constructed?

5 A. I'm not really -- I know how to fill one out to a
6 point.

7 MR. BROOKS: Okay, I would like to mark this as
8 an exhibit. And since Mr. Bruce did not mark it --

9 MR. BRUCE: I've marked it Exhibit N-2, Mr.
10 Brooks.

11 MR. BROOKS: Oh, okay. N-2, very good. We will
12 then -- I will leave it marked in that manner, then.

13 Q. (By Mr. Brooks) If you will look at the middle
14 portion of that C-103 you will notice there are two
15 parallel boxes. One reads in all cap letters above the
16 box, "NOTICE OF INTENTION TO:", and the other one to the
17 right reads in capital letters, "SUBSEQUENT REPORT OF:"
18 Correct?

19 A. Yes, sir.

20 Q. Now, under which one of those titles is there a
21 checkmark or an X?

22 A. Under "NOTICE OF INTENTION TO:", "PLUG AND
23 ABANDON" is marked.

24 Q. Okay. Now, would you construe that as meaning
25 that this work has actually been done, or simply that he

1 has notified the OCD that he intends to do this work?

2 A. Well, moving on down further into "Described
3 Proposed or Completed Operations", the dates indicate to me
4 that this is still ongoing, on into the first week of April
5 of this year.

6 Q. Okay. Now, I notice that this says the well is
7 currently plugged. However, it says it's a notice of
8 intent and it does not say it's a subsequent report,
9 correct?

10 A. Yes, sir.

11 Q. So there seems to be some degree about whether
12 this is something that they actually have done or something
13 they intend to do. At least it would seem that way to me.

14 A. Well, it states that he just only needs to "Clean
15 up location" and "Install dry hole marker".

16 MR. BROOKS: Okay, thank you. I think the
17 exhibit will speak for itself, though, so I will offer
18 Exhibit Number 2 at this time, Nichols 2.

19 CHAIRMAN WROTENBERY: Any objection to Exhibit
20 N-2?

21 MR. BRUCE: No objection.

22 CHAIRMAN WROTENBERY: It's admitted into
23 evidence.

24 MR. BROOKS: Okay, very good. Thank you.

25 Q. (By Mr. Brooks) Mr. Pierce, are you familiar

1 with the correspondence that's gone back and forth between
2 the OCD's Artesia District Office and Mr. Nichols and his
3 son previous to the previous hearing?

4 A. No, sir, not really. I did vaguely or briefly
5 look at a file that Mr. Bruce has that had copies of that,
6 and that was just this morning.

7 Q. Yeah, so --

8 A. I did not get involved with this. Like I said,
9 the only reason I'm here has been impromptu, because of
10 their health.

11 Q. You don't propose, then, to offer any further
12 evidence of anything in rebuttal to or in supplementation
13 of the notice of the evidence concerning notices that were
14 sent and Mr. Nichols' previous responses to those notices?

15 A. Apparently he didn't file an outline, prior to
16 the hearings last year from what I understand thus far,
17 of what he was going to get done and the time frame in
18 which he was going to try to do it.

19 Q. Okay. Very good. I notice that this Nichols
20 Exhibit Number 2 does not have a file stamp on it. Do you
21 know on what date it was filed with the OCD?

22 A. Again, this was provided to me yesterday before I
23 left Roswell to come up here.

24 Q. And I notice it has a date in the lower right-
25 hand corner. It says 3-19 of '03.

1 A. Which was yesterday, yes, sir.

2 MR. BROOKS: Okay, thank you. I believe that's
3 all of my questions.

4 CHAIRMAN WROTENBERY: Thank you.

5 Commissioners, any questions?

6 Thank you, Mr. Pierce, for your testimony.

7 Do we have anything further in this matter,
8 gentlemen?

9 MR. BRUCE: I have nothing further, just a short
10 statement.

11 MR. BROOKS: Madame Chairman, honorable
12 Commissioners, I would like to recall Mr. Gum to ask him
13 one question.

14 CHAIRMAN WROTENBERY: Okay.

15 MR. BROOKS: Well, I guess two questions.

16 TIM W. GUM (Recalled),
17 the witness herein, having been previously duly sworn upon
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q. Have you been notified that Mr. Nichols has
22 allegedly plugged this well?

23 A. No, I have not.

24 Q. Looking at Nichols Exhibit 2, can you tell if
25 that has been properly accomplished from the procedure set

1 forth there?

2 A. Based on the information I have on this C-103,
3 no, it was not properly accomplished. for two reasons. As
4 I recall what the data contained in the well file was,
5 prior to the hearing, to this hearing, there was an
6 approved P-and-A intent, approved by our office, of which
7 Mr. Nichols had a copy. That outlined the proper
8 procedure. He attempted to plug the well at that time,
9 utilizing that procedure, and it was determined that he had
10 this downhole mechanical problem with the stuck packer and
11 31 joints of tubing above the packer. We have had not
12 other documentation or notification that any additional
13 work has been done.

14 Now, based on this C-103, the normal procedure is
15 that he's asking for plugging approval because it is an
16 intention; it is not the subsequent report that says that
17 the work was done. Now, it could be that there was an
18 error in the fact that the X was in the wrong box on the
19 wrong side.

20 But however, if this work actually was done, it
21 was not done in accordance with the approved P-and-A
22 procedure, because the fish was not recovered. And as I
23 stated earlier, this fish needed to be removed and
24 recovered, at least down to the packer, because there was
25 at least one or two other plugs that needed to be set in

1 that interval.

2 MR. BROOKS: Pass the witness.

3 MR. BRUCE: I have nothing else, madame Chair.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Gum.

5 Mr. Brooks, do you want to make a closing
6 statement?

7 MR. BROOKS: I think that will not be necessary.
8 I believe I made a closing statement at the time of last
9 hearing and accepted that one correction with regard to the
10 penalty recommendation on one well.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

12 Mr. Bruce?

13 MR. BRUCE: Madame Chair, I believe Mr. Brooks
14 did make a penalty recommendation. I think the final
15 number he came up with was \$14,000.

16 MR. BROOKS: That is correct, and with that
17 correction it would then be \$15,000.

18 MR. BRUCE: \$15,000. I recognize what the
19 Division is trying to do in these matters and provide a
20 deterrent effect so that when the Division asks these
21 operators to do something, they should go out and do that.
22 And I recognize what the Division is doing and why it is
23 doing it. They're asking for \$15,000 in this case.

24 We believe Mr. Nichols has worked in good faith
25 through his health problems to bring these wells into

1 compliance, and ask that if the Lynx Number 1 is properly
2 P-and-A'd the penalty be waived.

3 In the alternative, Mr. Nichols was granted until
4 January 1, 2002, to bring the wells into compliance. And
5 as to wells which were not in compliance by that date, we'd
6 ask that to be the starting date for the penalty, rather
7 than the May 11th, 2000, date.

8 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

9 If there's nothing else at this point, we'll take
10 this case under advisement.

11 MR. BROOKS: Thank you.

12 (Thereupon, these proceedings were concluded at
13 1:35 p.m.)

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING N. DALE NICHOLS TO BRING)
EIGHT WELLS INTO COMPLIANCE WITH)
RULE 201.B AND ASSESSING APPROPRIATE)
CIVIL PENALTIES, CHAVES COUNTY,)
NEW MEXICO)

CASE NO. 12,862

RECEIVED

MAR 13 2003

Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

February 27th, 2003
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, February 27th, 2003, 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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February 27th, 2003
 Commission Hearing
 CASE NO. 12,862

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* * *

Additional submission by the Division, not offered or admitted:

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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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* * *

ALSO PRESENT:

JOANNA PRUKOP
Secretary
Department of Energy, Minerals and Natural Resources
State of New Mexico

PATRICK LYONS
Land Commissioner
State of New Mexico

* * *

1 WHEREUPON, the following proceedings were had at
2 9:22 a.m.:

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5 CHAIRMAN WROTENBERY: Okay, the next case, then,
6 is Case 12,862, the Application of the New Mexico Oil
7 Conservation Division for an order requiring N. Dale
8 Nichols to bring eight wells into compliance with Rule
9 201.B and assessing appropriate civil penalties, Chaves
10 County, New Mexico.

11 Appearances?

12 MR. BROOKS: I'm David Brooks, Energy, Minerals
13 and Natural Resources Department of the State of New
14 Mexico, appearing for the New Mexico Oil Conservation
15 Division.

16 I have three witnesses. Two of them are up in
17 the office, one of them is here in the room.

18 CHAIRMAN WROTENBERY: Okay, how are we going to
19 get the two up in the office down here?

20 MR. BROOKS: If I may send Mr. Gum up to request
21 that Ms. Prouty -- No, we don't need Ms. Phillips on this,
22 I have only two witnesses. That would be Ms. Prouty and
23 Mr. Gum.

24 I would ask Mr. Gum to go upstairs. I believe
25 she is in a meeting, but she can be interrupted to give her

1 testimony.

2 MR. GUM: In the conference room?

3 MR. BROOKS: I think probably so, if you could
4 ask her to come down here, please.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Gum.

6 Okay, Mr. Brooks, anything that you wanted to say
7 as a preliminary matter?

8 MR. BROOKS: Well, I believe that Mr. Baxter, who
9 is here -- Well, do you want to go ahead and enter your
10 appearance, Jim?

11 MR. BRUCE: Sure.

12 Madame Chair, James Bruce of Santa Fe,
13 representing the *de novo* Applicant, N. Dale Nichols.

14 I understand Mr. Brooks is going to put on his
15 case and I, of course, have no objection to that.

16 I would at the end of the hearing request that
17 the matter be continued to the next Commission hearing. I
18 had fully intended to present my side of the case, and I
19 have been in touch with my witness, but over the last few
20 days I have been -- I'm throwing myself on the mercy of the
21 Commission.

22 I found out that he is in the early throes of a
23 divorce, and he has been very difficult to get hold of.
24 And so I would request at the end of the case that it be
25 continued for four weeks or to the next docket, so that I

1 can present my witness.

2 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

3 MR. BROOKS: Madame Chairman, subject to the fact
4 that we brought our witness up here from Artesia and would
5 like to present his testimony today, we would have no
6 objection to continuing the hearing to receive testimony
7 from Mr. Nichols at a subsequent date.

8 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

9 Do you have opening statements?

10 MR. BROOKS: Well, since we have some time here,
11 I can make a very brief one to explain what the situation
12 is.

13 This is going to be a little bit complicated
14 because there has been a number of changes of situation in
15 this case since the Division hearing. This case was
16 originally brought to secure the plugging and abandonment
17 of eight wells -- actually not the plugging and abandonment
18 necessarily.

19 This is not a plugging case, this is an inactive
20 well case, and it's to get Mr. Nichols to bring these wells
21 into compliance either by plugging, temporarily abandoning
22 or placing wells back on production.

23 Of those eight wells, one was -- there was a
24 mistake in the name of that well on the notice, and
25 therefore the Division dismissed that Application. So that

1 well is not before us.

2 That leaves seven wells. Six of those seven are
3 now in compliance, which leaves only one well which is not
4 in compliance.

5 Now, there is a discrepancy here that's of a
6 procedural character. The well that is still not in
7 compliance, according to our records, is the Lynx Number 1.
8 Now, at the Division hearing, the Hearing Officer found
9 that the Lynx Number 1 was in compliance, was back on
10 production, and dismissed the case as to the Lynx Number 1.

11 I do not recall the hearing, and I do not recall
12 exactly why that occurred, but according to the information
13 we have at this time, that was incorrect. The Lynx Number
14 1 is not on production and is still out of compliance.
15 Subject to that, the remaining wells in the proceeding are
16 all now in compliance.

17 However, there was a civil penalty of \$11,000 set
18 in the Order entered by the Division, and I assume that is
19 the principal focus of the *de novo* appeal, so we intend to
20 offer evidence in support of that portion of the order.

21 Thank you.

22 CHAIRMAN WROTENBERY: Mr. Bruce, would you like
23 to --

24 MR. BRUCE: Just very briefly, madame Chair.

25 CHAIRMAN WROTENBERY: -- make a statement?

1 MR. BRUCE: I was not involved in the original
2 Division case, so I'm kind of handicapped having not been
3 -- I might have been physically present, but I was not
4 representing N. Dale Nichols in this matter, and because of
5 the unavailability of my witness I'm kind of short-handed,
6 so I would like to see what Mr. Gum and the other witness
7 present.

8 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

9 MR. BRUCE: Off the record, madame Chair.

10 (Off the record)

11 CHAIRMAN WROTENBERY: Okay, back on the record,
12 then.

13 MR. BROOKS: Madame Chairman, honorable
14 Commissioners, I have two witnesses to be sworn at this
15 time.

16 (Thereupon, the witnesses were sworn.)

17 CHAIRMAN WROTENBERY: Who would you like to call
18 first?

19 MR. BROOKS: I would like to call Ms. Prouty.

20 MR. BRUCE: David, is there another set?

21 MR. BROOKS: Oh, okay. Yeah, let me -- I will
22 give you this set and I will take the set I gave to Steve
23 and give it to him at the conclusion of the hearing.

24 May I proceed?

25 CHAIRMAN WROTENBERY: Yes, sir.

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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 for the record please?

A. Jane Prouty.

Q. Ms. Prouty, by whom are you employed?

A. The Oil Conservation Division.

Q. And at what location?

A. Santa Fe.

Q. And in what capacity?

A. I manage the group that processes the monthly production reports.

Q. Did you at my request prepare a summary of the monthly production reports related to the wells operated by N. Dale Nichols covering the last five years of reports?

A. Yes.

Q. Call your attention to what has been marked as OCD Exhibit Number 1 in this case and ask you, is that the report that you prepared?

A. Yes.

Q. Ms. Prouty, is this a true summary or true reflection of what is shown in the ONGARD system with regard to the production reports on the wells operated by

1 N. Dale Nichols?

2 A. Yes, by these specific wells, yes.

3 Q. Okay. The only one of these wells which I want
4 to call your attention to specifically, because it's the
5 only one the status of which may be in controversy, I
6 believe, at this time in this proceeding, and that would be
7 on page number 6, the Lynx Number 1 well --

8 A. Yes.

9 Q. -- and does that -- up through November of 2002,
10 does that reflect that there's been any production from the
11 Lynx Number 1 well?

12 A. No, nor injection.

13 Q. Does it indicate, in fact, that there has not
14 been any production reported on that well, up through and
15 including November of 2002?

16 A. Right, it indicates that the operator sent us a
17 C-115 with this well on it, with a zero for production or
18 injection.

19 MR. BROOKS: Okay, thank you.

20 We'll tender in evidence OCD Exhibit Number 1.

21 CHAIRMAN WROTENBERY: Any objection?

22 MR. BRUCE: No objection.

23 CHAIRMAN WROTENBERY: Okay, OCD Exhibit Number 1
24 is admitted into the record.

25 Any questions, Commissioners?

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN WROTENBERY: Mr. Bruce?

3 MR. BRUCE: No, I do not have any questions.

4 MR. BROOKS: Very good, I have nothing further of
5 this witness.

6 CHAIRMAN WROTENBERY: Thank you for your
7 testimony, Ms. Prouty.

8 MR. BROOKS: Now, we will need Ms. Prouty for the
9 next case. Do you want --

10 CHAIRMAN WROTENBERY: She should stay here, yes.
11 Thank you.

12 MR. BROOKS: Call Tim Gum.

13 CHAIRMAN WROTENBERY: While Mr. Gum is making his
14 way up here, I'd like to note that Secretary Prukop joined
15 us. Very pleased to have you.

16 SECRETARY PRUKOP: Thank you. Good morning,
17 everyone. I wanted to come down and say hello to everyone
18 and let you know that I am very interested in the work that
19 you all do here and keep me very well informed of what the
20 Commission is involved in. So very glad to meet you all.

21 CHAIRMAN WROTENBERY: Thank you. A great day,
22 because we've got our Secretary and our Land Commissioner
23 both attending the Commission. Very pleased to have you
24 all.

25 Okay, Mr. Brooks?

1 MR. BROOKS: Good morning, Mr. Gum.

2 MR. GUM: Good morning.

3 TIM W. GUM,

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. BROOKS:

8 Q. State your name for the record, please.

9 A. Tim W. Gum.

10 Q. Mr. Gum, by whom are you employed?

11 A. The New Mexico Oil Conservation Division.

12 Q. At what location?

13 A. Artesia, New Mexico.

14 Q. And in what capacity?

15 A. My official title is Chief Oil and Gas Inspector
16 and Manager of District 2, however my working title is
17 District Supervisor.

18 Q. And how long have you occupied that position?

19 A. Approximately nine years.

20 Q. In that position, have you had a role in the
21 inactive well program that's been conducted by the
22 Division?

23 A. Yes, sir, I've had a very active role.

24 Q. Can you describe to us how the inactive well
25 program well program has been conducted?

1 A. Basically, it was initiated March 11th in 2000,
2 in which a statewide mailout was made to all operators
3 within the State of New Mexico. On this mailout it
4 indicated what our records indicated to be inactive wells.
5 In this mailout it asks for the operators to respond to
6 this mailout, if they had records to indicate a different
7 status of the wells, to provide documentation for that.

8 Also in this mailout it was indicated that the
9 inactive well program was governed by the 200-series Rules
10 and that we would be pursuing this particular Rule, and it
11 indicated that any well that was inactive more than one
12 year would be considered inactive.

13 Following this major mailout, approximately in
14 September --

15 Q. Well, let me ask you to hold right there. Would
16 you look at what's been marked as OCD Exhibit Number 3 in
17 this proceeding, in the exhibit stack in front of you?

18 A. Let's see, Exhibit Number 3. Okay, Exhibit
19 Number 3 is that particular mailout I was referring to.

20 Q. Okay. You may continue then.

21 A. Then in September following this mailout, a
22 second mailout was made depending on how the operators
23 responded to this original mailout. This mailout asks for
24 an operator to provide the OCD offices with a work plan,
25 how they would -- to address their current inactive wells.

1 Q. And this was the letter dated September the 8th,
2 2000; is that correct?

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

4 Q. Okay, would you look at OCD Exhibit Number 4?

5 A. This is the letter, yes.

6 Q. And this is the letter addressed to N. Dale
7 Nichols?

8 A. That's correct.

9 Q. You may continue.

10 A. And then depending on how the operators responded
11 to that original mailout was the type of letter that they
12 received. And they were asked to provide a work plan. If
13 they did not provide the work plan, they were given 60 days
14 in order to bring the well into compliance.

15 Q. Okay. Now, look at OCD Exhibit Number 5, and ask
16 you to identify it.

17 A. This is a letter that I received from Mr. Nichols
18 regarding our discussions about how he was going to bring
19 his wells into compliance.

20 And I believe at this particular point in time,
21 based on the information he provided, we did extend his
22 time in order to bring the wells into compliance, another
23 six months.

24 Q. Okay, and then we'll look at OCD Exhibit Number
25 6, which appears to be a copy of a letter that you sent to

1 Mr. Nichols in response to his letter to you?

2 A. Yes, this is a letter that I did send to Mr.
3 Nichols confirming our timetable and extension up to an
4 additional six months, which would end at the first of the
5 year 2002.

6 Q. Okay. Now, let me go back here and look again at
7 OCD Exhibit Number 2. I want to verify -- point out to the
8 Commission that each of the wells listed in this case is
9 also listed on OCD Exhibit Number 2.

10 Now, let me add one thing. Is there anything on
11 this copy of the May 11, 2000, letter that has been offered
12 as OCD -- or will be offered -- I'm sorry, I said OCD
13 Exhibit Number 2. Looking at OCD Exhibit Number 3, OCD
14 Exhibit Number 3 is a copy of the May 11th, 2000, letter
15 that you've discussed, correct?

16 A. Yes.

17 Q. Now, is there anything on this copy that
18 indicates to you that, in fact, Mr. Nichols did receive and
19 give some attention to this letter, a copy of which is OCD
20 Exhibit Number 3?

21 A. Yes, he did make a typewritten note on the first
22 page referencing his comments on each of the wells, so he
23 did receive the notice and did respond.

24 Q. And that was the way that this notice was
25 designed, that the operators were to fill out the

1 information about the wells and return it to OCD, correct?

2 A. That's correct.

3 Q. Now, I want to point out to the Commission that
4 each of the wells that's the subject of this proceeding is
5 shown on this notice. If you will look at the second page
6 of the notice, the first well there, is that the Avalanche
7 Journal State Number 4?

8 A. Yes.

9 Q. Okay. Now, the next well that's on the notice
10 list for this proceeding was the Lewis Neff Well Number 3.
11 It appears, does it not, that that well is on page 2 of
12 this notice, Exhibit 3, about halfway down the middle of
13 the page?

14 A. Yes.

15 Q. And right above it is the Lewis Neff Number 4,
16 correct?

17 A. Yes.

18 Q. Now, the Lynx Number 1 appears right below the
19 Lewis Neff Number 3 on page 2 of Exhibit 3, correct?

20 A. Yes.

21 Q. The Standard State Number 3 appears directly
22 below the Lynx Number 1, correct?

23 A. Yes.

24 Q. And the Standard State Number 6Y appears at the
25 bottom of that page, correct?

1 A. Yes.

2 Q. And the State A Number 2 appears at the bottom of
3 the third page of Exhibit Number 3, correct?

4 A. Yes.

5 Q. Okay. So each one of those seven wells was
6 specifically referenced in the notice sent to Mr. Nichols
7 on May 11th, 2000, as being out of compliance?

8 A. That's correct.

9 Q. Now I will take you back to what's been marked as
10 OCD Exhibit Number 2. It bears the date at the top
11 November 5th, 1997. Is this a copy of a letter that you
12 sent to Mr. Nichols at or about the date of that letter?

13 A. That is correct.

14 Q. Now, this letter points out that certain wells
15 are inactive, correct?

16 A. That's correct.

17 Q. Now, one of the wells listed on this letter is
18 the Lewis Neff Number 3, correct?

19 A. Correct.

20 Q. And the Lewis Neff Number 3 is one of the wells
21 that was noticed in this proceeding?

22 A. That is correct.

23 Q. Now, none of the other wells listed on Exhibit 2
24 is at issue in this proceeding, correct?

25 A. That's correct.

1 Q. Okay. Now, I want to go over with you the
2 current status of each of the wells in this proceeding, and
3 we don't have documentation of this, other than OCD Exhibit
4 Number 1 for the wells that are on production, so I will be
5 asking you to state what you have ascertained from an
6 inspection of the Division's records.

7 A. If I may, I need to get --

8 Q. Okay. Going down the list in the same order I
9 did previously, beginning with the Avalanche Journal State
10 Number 4, I would first point out to the Commission that
11 OCD Exhibit Number 1 previously admitted, on page 3 thereof
12 reflects that the Avalanche Journal State Number 4 well was
13 placed back on production in July of 2002.

14 Now, Mr. Gum, I will ask you about the Lewis Neff
15 Number 3. What is the current status of that well?

16 A. That well is currently TA'd. It was TA'd
17 officially December the 3rd, '02.

18 Q. And by "TA'd", that means temporarily abandoned
19 pursuant to OCD Rule 203. Remember which was 202 and which
20 was 203.

21 Okay. And it was as of what date?

22 A. December the 3rd, '02.

23 CHAIRMAN WROTENBERY: And I'm sorry, which well
24 was that?

25 MR. BROOKS: The Lewis Neff Number 3.

1 Q. (By Mr. Brooks) Okay. Now, the Lewis Neff
2 Number 4, I would call the Commission's attention to page 6
3 of OCD Exhibit Number 1, which reflects that the Lewis Neff
4 Well Number 4 was placed on production in April of 2002.

5 Now, the Lynx Number 1, we pointed out previously
6 that OCD Exhibit Number 1 shows that well is not on
7 production. Do you have any information as to compliance
8 status of the Lynx Number 1?

9 A. Research of the well file indicated that that
10 well had an attempt to P-and-A November 28th, '01. A
11 follow-up C-103 indicated that there were well problems,
12 and that was in December of '01. The well is in an
13 unofficial TA status.

14 Q. What do you mean by an unofficial TA status, Mr.
15 Gum?

16 A. It was not mechanically tested, pressure-tested
17 with a proper chart and recording.

18 Q. In your opinion -- and I apologize to the
19 Commission for this, but we investigated this just this
20 morning and I've not had a chance to go over these
21 questions with Mr. Gum since he looked at the file. In
22 your opinion, is this well in compliance now?

23 A. No, it is not.

24 Q. Okay, that's what I thought but I wanted to
25 verify. Okay.

1 Now, I will then go to the Standard State Number
2 3 and will call the Commission's attention to page number 9
3 of Exhibit -- of OCD Exhibit Number 1, which reflects that
4 the Standard State Number 3 is on production as of August
5 of 2002.

6 Next one is the Standard State Number 6Y, and can
7 you tell me, Mr. Gum, what is the current status of the
8 Standard State Number 6Y?

9 A. That is plugged and abandoned.

10 Q. As of what date?

11 A. I do not have that date.

12 Q. Okay. Someone has written on here 12-17 of '02,
13 but I don't know --

14 A. That's probably the correct time.

15 Q. I don't have information to verify that. I think
16 I may have to recall Ms. Prouty for that testimony.

17 Now, we had some confusion about the State A
18 Number 2, and I believe it does not appear anywhere on
19 Exhibit A, and I do not know the reason for that. I have a
20 note that it is on production, but that's my own note and I
21 don't know why I put that there. So I will have to say
22 that I just got confused here.

23 MR. ROSS: The State A Number 2, Mr. Brooks?

24 MR. BROOKS: The State A Number 2, yes.

25 MR. ROSS: Look at page pages 9 and 10 --

1 CHAIRMAN WROTENBERY: Page 11 is where --

2 MR. BROOKS: Oh, I'm sorry, I have a copy that
3 doesn't have page 11.

4 MR. BRUCE: Neither do I.

5 THE WITNESS: It does show that there is
6 production as of March, 2002.

7 MR. BROOKS: Okay, that's what my note indicates,
8 and I must have been looking at a copy when I made that,
9 so --

10 CHAIRMAN WROTENBERY: Or April, 2002?

11 THE WITNESS: March.

12 MR. BROOKS: Now, I had April, 2002.

13 THE WITNESS: Okay, yes, it is, I believe my
14 slant eyes --

15 CHAIRMAN WROTENBERY: Okay.

16 MR. BROOKS: Okay, very good.

17 CHAIRMAN WROTENBERY: Now, excuse me, I may have
18 missed this. For the Standard State Well Number 6Y, what
19 was the date of the plugging?

20 MR. BROOKS: I have a note here on -- I don't
21 believe I have any admissible evidence of that at this
22 time. I think I can recall Ms. Prouty and get that
23 evidence, because Mr. Gum said he didn't know, and I have a
24 note on my cheat sheet here which is in Jane's handwriting,
25 so I assume she can verify.

1 THE WITNESS: Based on my -- My note here, it
2 says it was 8-3rd-02.

3 CHAIRMAN WROTENBERY: The third day of August,
4 2002?

5 THE WITNESS: Yes. Well, maybe -- The typing is
6 very poor here. Let's make that 6: June 3rd, '02, pardon
7 me.

8 MR. BROOKS: Okay, that covers all the wells that
9 Mr. Nichols had that are in this proceeding. I will now
10 call the Commissioners' attention to OCD Exhibit Number 9,
11 and I did not have all the data I now have at the time I
12 constructed OCD Exhibit Number 9.

13 COMMISSIONER BAILEY: Mr. Brooks, before you go
14 on --

15 MR. BROOKS: Yes, ma'am.

16 COMMISSIONER BAILEY: -- the docket lists Alma
17 Shields Number 4.

18 MR. BROOKS: Yes, that was the proceeding,
19 Commissioner Bailey that -- that was the well as to which I
20 made a mistake in the notice that I had published for this
21 proceeding when we filed it at the Division level. It
22 listed the Alma Shields Number 4 but included the API
23 number for the Alma Shields Number 7. And because the
24 notice was defective, the Division Examiner dismissed that
25 well from the proceeding, and in my opinion that was a

1 correct decision by the Division Examiner and I don't ask
2 the Commission to review it.

3 Going on to Exhibit Number 9, Exhibit Number 9
4 was prepared to give a summary for purposes of determining
5 the propriety of the penalty of \$11,000 which was assessed
6 by the Examiner in this case. I did not have all of the
7 information I now have at the time that I filled this out.
8 However, I do not believe it makes any difference.

9 The formula which the Division has been urging in
10 previous cases has been that for each year from the date
11 that the operator was -- Well, I'm sorry, I probably should
12 -- Let me ask the Commission's pleasure. Should I submit
13 Mr. Gum for examination now and then go through this?
14 Because this is just essentially argument?

15 CHAIRMAN WROTENBERY: Yes, let's go ahead and do
16 that.

17 MR. BROOKS: Okay.

18 CHAIRMAN WROTENBERY: And Mr. Bruce --

19 THE WITNESS: I would like to make one comment --

20 CHAIRMAN WROTENBERY: Let -- Mr. Bruce has an
21 opportunity here to cross-examine you.

22 THE WITNESS: Well, but I want to correct a date
23 here, is all I want to --

24 CHAIRMAN WROTENBERY: Oh.

25 MR. BROOKS: Okay.

1 CHAIRMAN WROTENBERY: Okay, go ahead.

2 THE WITNESS: Okay, on Exhibit Number 9 for the
3 Standard State 6Y the PA date of 12-17-02, that's the date
4 that it was actually officially P-and-A'd, in other words
5 that the well site was inspected and it was finally
6 released. The well physically was plugged 6-3-02.

7 MR. BROOKS: Okay.

8 THE WITNESS: I wanted to correct that difference
9 in the --

10 MR. BROOKS: Yeah, thank you. Okay, because that
11 is testimony.

12 THE WITNESS: Yes.

13 MR. BROOKS: Okay. With that, I will offer into
14 evidence Exhibits 2 through 8 inclusive.

15 MR. BRUCE: No objection.

16 Mr. Gum, just --

17 CHAIRMAN WROTENBERY: Just one second here, I
18 just -- make sure I had those in order myself. Okay, yes.

19 OCD Exhibits Number 2 through 8 are admitted into
20 evidence.

21 MR. BROOKS: Pass the witness.

22 CHAIRMAN WROTENBERY: Mr. Bruce?

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. Just a couple of questions, Mr. Gum. On your

1 Exhibit -- Let's get Exhibits 3 and 6 in front of you
2 there.

3 A. Okay.

4 Q. My review shows that the wells listed on your
5 Exhibit 3 and Exhibit 6 are the same wells; is that
6 correct?

7 A. Yes.

8 Q. Okay. And we're here today for -- regarding
9 seven wells, I believe?

10 A. I believe that those are being resolved on, yes,
11 sir.

12 Q. Okay. So before the hearing was filed in this
13 case, Mr. Nichols did bring into compliance seven wells?

14 A. No, the wells actually were brought into
15 compliance after the hearing order.

16 Q. No, no, no, no. I mean, we're here today for
17 seven wells, but there's 14 --

18 A. Oh, okay, yes --

19 Q. -- on your --

20 A. -- yes --

21 Q. -- list?

22 A. -- yes.

23 Q. Okay. So from the time -- let's just start --
24 you know, May, 2000, is when you began this --

25 A. Yes.

1 Q. -- process. And so -- But before Mr. Brooks
2 filed this case, seven wells were brought into
3 compliance --

4 A. Yes.

5 Q. -- I presume. Okay. So we don't have to worry
6 about the other seven wells on these listings?

7 A. No.

8 Q. And then on Exhibit 3, going through your
9 testimony, at this point the only well that is not in
10 compliance is the Lynx Number 1?

11 A. That's correct.

12 Q. At this time?

13 A. At this time, yes.

14 Q. And am I correct in reading your testimony or
15 interpreting your testimony that that well needs to be
16 mechanically pressure-tested with a chart to show that it's
17 in compliance?

18 A. No, sir, I believe it was the operator's plan to
19 P-and-A the well, but he ran into mechanical problems with
20 the well, and no further work was done.

21 Q. So it would either need to be fully P-and-A'd or
22 properly TA'd --

23 A. That's correct.

24 Q. -- at this time?

25 A. Yes.

1 Q. Okay. And did Mr. Nichols meet with you, or Mr.
2 Nichols' representative, ever?

3 A. Yes.

4 Q. Okay. So they were doing the work, but they
5 always said they needed more time; is that in essence what
6 they told you?

7 A. That's what they told me. And based on his
8 comments at the time of our conversation I did agree to
9 allow an additional six-month extension for him to do that.
10 And based on his comments that he would pursue that kind of
11 activity, I felt in my own opinion that that additional
12 six-month time would be more than sufficient time in order
13 to allow him to accomplish the work.

14 Q. The seven wells that we're not here for today,
15 the ones that were brought into compliance before the case
16 was filed, were they taken care of during that six-month
17 time frame?

18 A. The first six-month time frame.

19 MR. BRUCE: Okay, that's all I have, madame
20 Chair.

21 CHAIRMAN WROTENBERY: Thank you.

22 Commissioner Bailey?

23 EXAMINATION

24 BY COMMISSIONER BAILEY:

25 Q. You said that he attempted to plug the well but

1 ran into mechanical problems, and so that plugging attempt
2 was incomplete. Now he needs to do certain remedial work
3 in order to either have it withstand the pressure test or
4 to plug it again. Could you please give me a better feel
5 on exactly what needs to be done to that wellbore?

6 A. Madame Commissioner, this is a situation in which
7 you always get involved with when you have old wellbores in
8 which you try to re-enter that has casing problems. In
9 other words, the casing there is in such a shape that you
10 cannot get down to the bottom, to where you need to start
11 setting your first plugs.

12 So an attempt was made to pull the tubing. That
13 was not successful, and it indicates that casing collapses
14 around the tubing. It is a serious mechanical situation,
15 in order to have the well properly plugged.

16 After the attempt was made to enter the wellbore,
17 to get to the TD, they ran into additional mechanical
18 difficulty, submitted an additional C-103 and it said this
19 well was TA'd.

20 So no, the well is not in compliance. It will
21 take a significant amount of work in order to get it into
22 condition to properly plug.

23 Q. Just for my own information, what kind of work
24 will they need to do in order to get that tubing from the
25 collapsed casing?

1 A. First of all, they'll have to have proper tools
2 in order to be able to recover the tubing. Then depending
3 on what kind of situation the casing is in, it will have to
4 be milled, it will have to be swaged or anything in order
5 to extend it back to its original size so they can go in
6 and get proper tools to the bottom.

7 Q. Is that going to require specialized equipment
8 for rigs? See, I'm trying to get to the time frame that's
9 reasonable here.

10 A. Okay. It will require equipment that Mr. Nichols
11 does not have in his own operations. Mr. Nichols does
12 prefer to do as much of the well work with his own
13 equipment and crews that he has on occasion.

14 But in this particular case, yes, it will take
15 different equipment and different personnel.

16 COMMISSIONER BAILEY: Thank you.

17 CHAIRMAN WROTENBERY: Commissioner Lee?

18 COMMISSIONER LEE: (Shakes head)

19 EXAMINATION

20 BY CHAIRMAN WROTENBERY:

21 Q. Mr. Gum, I just wanted to make sure I had some
22 dates right. I was referring back to the Division Order in
23 this matter, which contained Finding Number 9 that stated,
24 As of October 29th, 2002, the above-described Lewis Neff
25 Well Number 3, Avalanche Journal State Well Number 4 and

1 Standard State Wells Number 3 and 6Y are still not in
2 compliance with Division Rule Number 201.B.

3 And then in the next finding there was a
4 statement that penalties should be assessed against the
5 operator because of the noncompliance of those wells.

6 The Lewis Neff Well Number 1 was brought into
7 compliance -- I mean, sorry, Lewis Neff Well Number 3 was
8 brought into compliance on December 3rd, 2002 --

9 A. Yes.

10 Q. -- if I recall your testimony correctly --

11 A. That's correct.

12 Q. -- and that was by --

13 A. Properly --

14 Q. -- testing and properly --

15 A. Yes.

16 Q. -- temporarily abandoning --

17 A. Right.

18 Q. -- the well?

19 So it is true that that well was not in
20 compliance as of October 29th, 2002?

21 A. That's correct.

22 Q. The Avalanche Journal State Well Number 4,
23 though, I believe, was put back on production in July of
24 2002?

25 A. That's what the production reports indicate, yes.

1 Q. So in fact, that well was in compliance as of
2 October 29th, 2002?

3 A. As of the statement on Finding Number 9, that's
4 correct.

5 Q. Okay. And then the Standard State Well Number 3
6 was brought back into production in August of 2002; is that
7 correct?

8 A. That's based on the production reports, yes.

9 Q. So again, the finding in Number 9 about the
10 status of the well as of October 29th, 2002, was
11 incorrect --

12 A. That's correct.

13 Q. -- for that well?

14 And then finally the Standard State Well Number
15 6Y was P-and-A'd in June of 2002?

16 A. That was physically, but it's not officially
17 until December.

18 Q. Okay, explain to me again what you mean by --

19 A. Okay, the --

20 Q. -- physically but not officially.

21 A. -- the official -- Physically plugging a well is
22 when the dryhole marker is finally installed. Now, from
23 the time that that work is done, there's a period of time
24 in which inspections have to be made to see whether or not
25 the location is cleaned up and the final work is done.

1 So it's my opinion at this point in time that the
2 well was physically plugged in June, but because of some
3 reason it was not officially plugged until December, when
4 the --

5 Q. Okay, isn't it true that once you plug a well you
6 have up to a year at that point to complete the surface
7 remediation work?

8 A. That's correct.

9 Q. So at the time that the well was actually
10 plugged, isn't it fair to say that the well was brought
11 back into compliance with our Rules at that point?

12 A. Yes.

13 Q. Thank you.

14 A. But now, I believe that our assessment of the
15 penalties -- and you correct me if I'm wrong -- is based on
16 the fact that the wells were not brought into compliance
17 January 1, '02, all of these wells had not been brought
18 into compliance at that point in time, not --

19 Q. Okay.

20 A. -- after January '02.

21 CHAIRMAN WROTENBERY: Thank you, Mr. Gum.

22 And then the information available to the
23 Examiner at the time of the Division Hearing led the
24 Examiner to believe that the Lynx Well Number 1 was in
25 compliance at the time the Division Order was issued, but

1 what we're hearing today is that's not the case.

2 Okay. Thank you, I just wanted to make sure I
3 understood.

4 Okay, Mr. Brooks?

5 MR. BROOKS: One correction in what was said a
6 moment ago with regard to the Standard State Number 3. I
7 believe that you indicated that it was put on production in
8 August of 2002. Unless I have an incorrect exhibit here,
9 it appears that it was actually September, on page 9 of
10 Exhibit Number 1.

11 The Standard State Number 3. I don't think it's
12 a material difference.

13 MR. BRUCE: Could I ask --

14 CHAIRMAN WROTENBERY: Yes.

15 MR. BRUCE: -- a couple of follow-up questions,
16 madame Chair?

17 CHAIRMAN WROTENBERY: Certainly, Mr. Bruce.

18 FURTHER EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Gum, since I wasn't there at the original,
21 when was the original hearing in this matter,
22 approximately?

23 A. May the 2nd, '02, I believe --

24 Q. Okay, so it was a --

25 A. -- if my memory serves. But the order did not

1 come out until November -- is that the date on the -- I
2 believe November is when the --

3 Q. I believe that's correct, Mr. Gum.

4 A. -- order was actually issued.

5 Q. And again, I just wanted to get the date on the
6 Lynx well. The P-and-A attempt on the Lynx well was in
7 November of 2001, not 2002; is that correct?

8 A. '01, yeah.

9 Q. '01?

10 A. Yeah.

11 Q. The attempt?

12 A. Yeah, the attempt. Yeah.

13 MR. BRUCE: Okay, thank you, madame Chair.

14 CHAIRMAN WROTENBERY: Mr. Brooks?

15 MR. BROOKS: Do you have anything further from
16 the witness?

17 CHAIRMAN WROTENBERY: I don't believe so.

18 Thank you, Mr. Gum, for your testimony.

19 MR. BROOKS: We'd like to make a statement.

20 CHAIRMAN WROTENBERY: Mr. Brooks?

21 MR. BROOKS: Madame Chairman, honorable
22 Commissioners, I will call your attention to what has been
23 marked as OCD Exhibit Number 9. I did not offer this
24 exhibit in evidence because it was prepared by me from the
25 other evidence that's being offered and therefore it's not

1 evidentiary in nature, and there are going to be some
2 changes on it in light of the testimony, but this is for
3 the purpose of defending and computing the penalty that we
4 propose in this case.

5 The Division has urged in these inactive well
6 cases that penalties be assessed on those operators who
7 have not promptly complied with the inactive well program
8 based on the computation of \$1000 per year from the date
9 the operator was notified that a particular well was
10 inactive until the date that well was brought into
11 compliance.

12 For the seven wells in this proceeding, the dates
13 of the notice are shown in the first column, and it was
14 Exhibit Number 3, the May 11th, 2000, letter for each of
15 the wells, except for the Lewis Neff Number 3, which was
16 the subject of Exhibit Number 2, the letter in 1997.

17 The dates that the wells were brought into
18 compliance are shown on here. There will be a couple of
19 changes, but only one of which is material to the
20 computation, so I will take you through this.

21 The Avalanche Journal Number 4 was put on
22 production 7 of '02. That is correct, per Exhibit 1. It
23 was two years after the date of notice, so we propose a
24 penalty of \$2000.

25 The Lewis Neff Number 3 is not shown as being

1 brought into compliance. Testimony today, however, shows
2 that it was TA'd as of 12-3 of '02. That was, however,
3 five years after the 1997 notice, so it does not change our
4 proposal for the penalty for that well, remains \$5000.

5 The Lewis Neff Number 4 was placed on production
6 in April of '02. While that's close to two years, it is
7 actually less than two years, so we propose a penalty of
8 \$1000.

9 The Lynx Number 1, the subject of the 5-11-00
10 notice, is still not in compliance with the proposed
11 penalty of \$2000.

12 The Standard State Number 3, you can see the
13 dates. We propose a penalty of \$2000.

14 The Standard State Number 6Y, in view of Mr.
15 Gum's testimony that the wellbore was actually plugged on
16 6-3 of '02, we would modify our proposal as stated in
17 Exhibit Number 9 and propose at this time a penalty of
18 \$1000 as to that well.

19 The State A Number 2 was placed on production in
20 4 of '02. And I did not have that information when I
21 prepared this computation, so again we would modify the
22 proposal to \$1000.

23 That would make the total \$14,000, if I haven't
24 made a mistake in arithmetic here, and that would still be
25 larger than the \$11,000 penalty that was assessed by the

1 Division Examiner.

2 We do not need an order of compliance in this
3 case except for the Lynx Number 1. We believe that the
4 Division Examiner must have misinterpreted the record, or
5 the record was incomplete in some manner, but his
6 conclusion that the Lynx Number 1 was in compliance at the
7 time of the Division Hearing appears to be incorrect, so we
8 would urge a compliance order to bring the Lynx Number 1
9 into compliance.

10 Thank you.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

12 Mr. Bruce?

13 MR. BRUCE: Madame Chair, again I would request
14 that this matter be continued to the next Commission
15 Hearing, and I would like to review this and reserve my
16 statement for that time.

17 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

18 Commissioners, if you're amenable we will
19 continue this case for one more month to the Commission's
20 Hearing on March 20th, and at that time we would hope Mr.
21 Nichols can be present.

22 MR. BROOKS: One more matter, madame Chairman.
23 Although I did not offer Exhibit Number 9 into evidence,
24 for purposes of completing the record I would request that
25 it be made a part of the record as a demonstrative aid.

1 MR. BRUCE: No objection.

2 CHAIRMAN WROTENBERY: It will be done, then.

3 Thank you, Mr. Brooks, and we'll take this matter
4 up again on March 20th.

5 (Thereupon, these proceedings were concluded at
6 10:11 a.m.)

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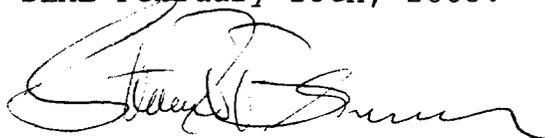
CERTIFICATE OF REPORTER

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 Commission 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 February 28th, 2003.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006