

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 NOS: 22224

IN RE: CROSS BORDER RESOURCES, INC.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
December 16, 2021
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD on Thursday, December 16, 2021, through the
Webex Platform.

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A P P E A R A N C E S

For the Applicant:

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1 HEARING EXAMINER BRANCARD: The last matter on
2 the agenda is Item Number 40, Case Number 22224, in re:
3 Cross Border Resources. So we have the Oil Conservation
4 Division.

5 MR. TREMAINE: Mr. Hearing Examiner, this is
6 Jesse Tremaine on behalf of the Oil Conservation Division.

7 HEARING EXAMINER BRANCARD: And Cross Border
8 Resources?

9 MR. PADILLA: Mr. Examiner, Ernest L. Padilla for
10 Cross Border.

11 HEARING EXAMINER BRANCARD: Are we ready to have
12 a hearing today, Mr. Tremaine?

13 MR. TREMAINE: We are.

14 HEARING EXAMINER BRANCARD: Mr. Padilla?

15 MR. PADILLA: Yes, I guess so.

16 HEARING EXAMINER BRANCARD: Doesn't sound very
17 enthusiastic there.

18 MR. PADILLA: Well, if I may make a preliminary
19 statement. We have been trying to -- we have agreed to do
20 some type of stipulated order. I have had discussions with
21 Mr. Tremaine about that.

22 There is a pending sale between Cross Border and
23 another operator in Southeast New Mexico. There has been
24 some due diligence, obviously. Part of the due diligence is
25 to figure out which wells need to be plugged, which wells

1 need to be put back into production.

2 We don't have that list yet, and we may have it
3 by next week. I told Mr. Tremaine that we would probably
4 have it by next week as well as more information on the
5 bonding issues that are associated with the transfer.

6 The transfer involves all 60 some wells operated
7 by Cross Borders, but yesterday we received an amended list
8 of the inactive wells. Those wells are simply -- the
9 addition has been as a result of inactivity over a course of
10 time.

11 But Mr. Tremaine wants to go to hearing, and we
12 have Mr. Barksdale on the line, he should be on the phone.
13 He is not going to say any more than what I have already
14 proffered at this point, but he can probably go more into
15 detail in answering your questions regarding the potential
16 transfer.

17 There's no question there is some wells that need
18 to be plugged and abandoned, and even the wells on the
19 inactive list should not all be plugged and abandoned, and
20 that's, most of these transactions require some time, and we
21 can, we can come up with something in a couple of days to
22 satisfy the Division including the NOV which asks that we
23 have to plug and abandon wells within a 30-day period.

24 Mr. Tremaine agreed that that's not -- so but if
25 we must go to hearing, we must go to hearing. I don't know

1 what order would come out. The problem with some of this
2 hardball, I think, and I think that's going to be going a
3 little too far, is that while the parties are willing to
4 enter into a stipulated order to have some flexibility to
5 plan a schedule and bring the wells back into production,
6 the alternative is for Cross Borders to walk away, and
7 that's not proper when there is a willing party to take over
8 the responsibilities associated with continuing the
9 production of this property of Cross Borders.

10 HEARING EXAMINER BRANCARD: Thank you.

11 Mr. Tremaine, are you wanting to go ahead with this case at
12 this point?

13 MR. TREMAINE: In response to Mr. Padilla, Mr.
14 Hearing Examiner, I think that from his perspective, OCD may
15 be taking a strong position here, but I don't think the
16 four-month delay between notice of the NOV and proceeding to
17 hearing today represents hardball.

18 The OCD doesn't have any new information that
19 would support a stipulated final order. At this point it
20 looks like it's simply another delay. Mr. Padilla did
21 disclose some information about the sale and the individual
22 who runs the entity that would be taking on the wells, but
23 we don't have a well list, and I don't have any way of
24 verifying the bonding status of the new operator or anything
25 like that that would support a stipulated final order.

1 So given the lack of progress in the preceding
2 three and a half months, OCD feels it's in its interest to
3 move forward with the hearing. If you feel otherwise, then
4 we can respond accordingly.

5 HEARING EXAMINER BRANCARD: Thank you. I would
6 rule we go forward with hearing today and get the exhibits
7 and testimony into the record. Obviously, Mr. Padilla noted
8 there's a little bit of a time before any order would come
9 out in this case, and we have had situations, and the rules
10 do allow for the parties to come to a settlement, some sort
11 of stipulated final order during the interim.

12 So it isn't -- this hearing isn't the end of it.
13 The parties can continue to work on a resolution of this
14 matter, but at least we will have moved forward with the
15 hearing and have the evidence in the record at this point.

16 So with that, Mr. Tremaine, if you are ready to
17 move forward, tell us what your plan is for today.

18 MR. TREMAINE: Absolutely. I think a couple very
19 brief statements and then proceed with the testimony of Mr.
20 Rob Jackson.

21 HEARING EXAMINER BRANCARD: Please proceed.

22 MR. TREMAINE: So I wanted to update just
23 overall, you will be hearing testimony that OCD is
24 presenting updated numbers related to the well list and the
25 civil penalties.

1 The numbers because of the status of the wells
2 over time since the day of the NOV, it's been a moving
3 target, so the NOV lists 13 inactive wells. The prehearing
4 statement updates that to indicate 19 inactive wells. We
5 ran an updated list yesterday, which I shared with Mr.
6 Padilla and which I sent in this morning as Exhibit 11.
7 That's the updated inactive well list which includes 24
8 inactive wells.

9 So I don't like submitting those the day before
10 or the day of the hearing, but it's been a moving target
11 with the number of wells and it changed. So after our
12 conversation yesterday, I updated the civil penalties based
13 on the information or the lack of a well list.

14 We're not in a place where we can agree to a
15 stipulated order at this point, so that I think is an
16 appropriate time to update the proposed civil penalties. I
17 felt that it would be premature to do that prior to my
18 conversation with Mr. Padilla yesterday.

19 So those are the updated well lists I will
20 propose as Exhibit 11, and the updated civil penalties will
21 be Exhibit 12 and 13, and I'll address that during the
22 testimony.

23 I also just now as we were getting ready to
24 commence this hearing, I messed up something in the
25 prehearing statement, so I apologize. But for whatever

1 reason, I omitted a reference to Exhibits 8, 9 and 10 in the
2 exhibit list on the prehearing statement. I'm not sure why
3 I did that, but those were submitted at the time of the
4 prehearing statement.

5 And those were -- they are largely not relevant
6 at this point, I think, because a number of our exhibits
7 are -- were for the purpose of demonstrating the contact
8 information that was used to notice Mr. Barksdale of the
9 NOV, and they were filed before Mr. Padilla had an
10 opportunity to enter his appearance. So I think the issue
11 of notice is likely off the table, but that's what the
12 purpose of those were.

13 And then since Mr. Padilla has reached out, we
14 have had some conversations and reviewed the status of the
15 wells. OCD would be looking to update and walk back certain
16 of those proposed statements in the prehearing statement,
17 which we can do in a -- I think it would be best addressed
18 in a supplemental filing, particularly if the parties are
19 able to structure a proposed order after the hearing.

20 And with that, I would call my only witness, Mr.
21 Rob Jackson.

22 HEARING EXAMINER BRANCARD: So let me get this
23 straight, you have an NOV that was issued -- I don't have
24 the date in front of me.

25 MR. TREMAINE: August 12.

1 HEARING EXAMINER BRANCARD: Has that NOV been
2 updated?

3 MR. TREMAINE: The NOV has not been updated, no.

4 HEARING EXAMINER BRANCARD: Okay, but the items
5 that are covered in the NOV have been updated.

6 MR. TREMAINE: Yes. The well list in the NOV has
7 been updated. We provided that information, the inactive
8 wells. So the inactive wells for the purpose of 19.15.5.9.8
9 for a period of 15 months, at the time of the prehearing
10 statement, that number had increased from 13 to 19.

11 Since the time that I filed the prehearing
12 statement that number has increased from 19 to 24 inactive
13 wells. The number of inactive wells for the purposes of
14 inactive well financial assurance has not changed.

15 So the 8.9 financial assurance violations are
16 exactly the same as they are in the NOV. There is still 11
17 wells -- well, there is a blanket well financial assurance
18 deficiency that addresses -- that is for all 30 qualifying
19 wells. So 8.9(C) doesn't require an update. And 8.9(D)
20 there are no additional wells as of yesterday that have
21 fallen off with two years of inactivity, so that number
22 hasn't increased.

23 The only, the change to the 8.9 civil penalty
24 that's proposed in Exhibit 13 is, is simply the ongoing
25 violation.

1 HEARING EXAMINER BRANCARD: Okay, thank you.

2 MR. PADILLA: Mr. Examiner, if I may, he just
3 brought up a point that is pertinent to this case. It's
4 like we got this updated notice of inactive wells yesterday,
5 the NOV essentially calls for 11 or 13 wells, not sure what
6 the correct figure is.

7 If we are proceeding on those original 11, 13
8 wells, that's fine, but OCD finds itself in the same
9 position that we are in terms of due diligence and trying to
10 get something worked out with a stipulated order.

11 It makes no sense for OCD to simply come -- it's
12 a matter of due process -- to come in here and say, "Oh, by
13 the way, there's 24 wells now that should have been added to
14 the NOV."

15 The NOV should have been updated periodically as
16 we go along, but -- and in terms of figuring out which wells
17 of the 24 wells now need to be plugged, and we're, we're
18 submitting -- we're indicating that, of those 24 wells,
19 some can get put back into production, and obviously some
20 have to be plugged and abandoned.

21 There is no point in -- and I understand OCD's
22 concern that the buyer is fly-by-night person that wants to
23 take advantage or do something like that, I think we got to
24 satisfy that portion of the work. But if you're -- if
25 you're essentially amending the process of this hearing the

1 NOV and not giving any, any -- or changing as we speak
2 according to the OCD.

3 So I don't think we can move forward, and I think
4 the parties ought to be allowed to proceed with the
5 stipulated order to satisfy the OCD that we have a workable
6 plan.

7 HEARING EXAMINER BRANCARD: Thank you, Mr.
8 Padilla. That's a good point. It's a challenge with these
9 cases with operators who have a number of wells and are
10 juggling or have unsuccessfully dropping balls on term of
11 deadlines that when a case starts, by the time we get to
12 hearing, the numbers with timelines for inactive wells,
13 financial assurance often change.

14 So I think we have to have proper process, as you
15 mentioned, in these cases. So Mr. Tremaine you may move
16 forward with your case, but by the end of today I will
17 decide whether we're going to have -- or if, if you conclude
18 your case whether, we are going to have do an order just on
19 the original 13 wells, or if we can include the additional
20 wells in that order.

21 Now the advantage obviously of this coming to
22 some sort of stipulation between the parties is you can
23 address whatever issues you want in that stipulation. It
24 doesn't have to be limited to the wells that are in the NOV.
25 You can try to resolve all the issues in a one-day

1 stipulated order which would be great.

2 So why don't we move ahead, and Mr. Tremaine,
3 please go ahead with your testimony.

4 MR. TREMAINE: Do you want to swear in
5 Mr. Jackson?

6 HEARING EXAMINER BRANCARD: I certainly do.
7 Mr. Jackson, can you raise your right hand? Do you solemnly
8 swear the testimony you are about to give today is the truth
9 and nothing but the truth?

10 THE WITNESS: Yes, I do.

11 HEARING EXAMINER BRANCARD: Thank you.

12 ROB JACKSON

13 (Sworn, testified as follows:)

14 EXAMINATION

15 BY MR. TREMAINE:

16 Q. Good morning, Mr. Jackson. Can you please state
17 and spell your name for the record?

18 A. Rob Jackson, R-o-b J-a-c-k-s-o-n.

19 Q. Where do you work?

20 A. I work in the Oil Conservation Division of Energy
21 Minerals Natural Resources department for the State of New
22 Mexico.

23 Q. And what do you do for OCD?

24 A. I'm a compliance officer and bond administrator.

25 Q. And can you just briefly describe the operational

1 **structure of the administrative compliance bureau?**

2 A. The operational structure, well, I am the bond
3 administrator, so I handle the bonds. We have three
4 compliance officer positions that verify compliance with
5 inactive wells, C-115s and operate the C-145 transfer of
6 operators and make changes.

7 **Q. Are you the bonding administrator?**

8 A. Yes.

9 **Q. And can you briefly describe the bond**
10 **administrator role?**

11 A. For the bond administrator I set the bonds as
12 they come in. I verify their authenticity if they are
13 acceptable if they are using the correct form, I file them,
14 and then I also release them back after they can be released
15 to the operator.

16 **Q. And did you review the bonds provided by Cross**
17 **Border Resources in this case?**

18 A. I did.

19 **Q. Are you aware that the Oil Conservation Division**
20 **filed a prehearing statement and exhibit binder in this**
21 **case?**

22 A. Yes.

23 **Q. And have you reviewed the prehearing statement**
24 **and exhibits?**

25 A. Yes, I have.

1 Q. And in terms of the process of generating the NOV
2 and the numbers that are laid out in the NOV, who provided
3 that initial information in those numbers?

4 A. I did.

5 Q. Are you aware that there is a section labeled
6 direct testimony included in the prehearing statement?

7 A. Yes.

8 Q. Are there any necessary directions or updates to
9 the direct testimony section of the prehearing statement?

10 A. The only update would be the amount of wells in
11 that well list if we are going to go that direction.

12 Q. And do you affirm and adopt the testimony
13 section, direct testimony section of the prehearing
14 statement as the testimony that you intend to provide today?

15 A. Yes.

16 Q. I have a couple of questions for you about the
17 review of the information that's included in the NOV. Did
18 you review the numbers listed in the NOV in preparation for
19 the hearing?

20 A. Yes.

21 Q. And specifically what did you do?

22 A. The, for the numbers, ran the numbers basically
23 for the inactive wells in the 5.9 compliance.

24 Q. And, and when did you do that?

25 A. Yesterday, I believe.

1 Q. And did you, did you also check the number of
2 inactive wells pertinent to the 19.15.8.9 violation?

3 A. Yes.

4 Q. Did that number change?

5 A. 19.15.8.9, I believe, stayed the same with the 11
6 wells.

7 Q. Okay. The updated number of inactive wells, is
8 that represented in Exhibit 11? This is 5.9.

9 A. Can you share the screen or share that item with
10 me?

11 MR. TREMAINE: Mr. Examiner, do you mind if I
12 share?

13 HEARING EXAMINER BRANCARD: No problem. Marlene,
14 can you handle that?

15 MR. TREMAINE: I think I have permission to do
16 it. Looks like it.

17 A. Okay. I can see it.

18 Q. Is this the inactive well list that you ran
19 yesterday?

20 A. It is.

21 Q. Okay. And so at this point I would like to run
22 through each the Exhibits 1 through 11 and ask you about
23 them.

24 MR. TREMAINE: Mr. Hearing Examiner, would you
25 like me to -- prefer that I go through all 13 exhibits, or

1 do you want to handle them one at a time?

2 HEARING EXAMINER BRANCARD: If you can summarize
3 them, that's fine.

4 MR. TREMAINE: Okay. I was going to -- how we
5 proceeded in the past is I have asked Mr. Jackson questions
6 about, about each one, but I'm not sure if Mr. Padilla is
7 going to have an objection, so I would just ask three
8 questions about each and then move their admission and Mr.
9 Padilla can respond unless he prefers I go one at a time.

10 HEARING EXAMINER BRANCARD: That's fine. We can
11 verify who prepared the exhibits, et cetera.

12 BY MR. TREMAINE:

13 Q. All right. Mr. Jackson, we are looking at
14 Exhibit 1 here. Is this your resume?

15 A. It is.

16 Q. And did you prepare this exhibit?

17 A. I have -- I did.

18 Q. And is the information contained in this exhibit
19 true and accurate to the best of your knowledge.

20 A. It is.

21 Q. Okay.

22 MR. PADILLA: Mr. Examiner, I will stipulate to
23 Mr. Jackson being an expert.

24 HEARING EXAMINER BRANCARD: Mr. Tremaine, did you
25 want to have Mr. Jackson qualified as an expert in an area?

1 MR. TREMAINE: I was having Mr. Jackson testify
2 as a fact witness. I think he's -- I don't think it's
3 necessary to proffer him as an expert in bonds.

4 HEARING EXAMINER BRANCARD: Thank you.

5 BY MR. TREMAINE:

6 Q. Mr. Jackson, I'm going to ask you about Exhibit
7 Number 2. Is this the notice of violation issued to Cross
8 Border Resources in August?

9 A. It is.

10 Q. And did you assist in preparing this notice of
11 violation working with the Office of General Counsel?

12 A. I did.

13 Q. And did you review the content of this notice of
14 violation for accuracy at the time that it was prepared and
15 then issued?

16 A. I did.

17 Q. I'm sorry, I didn't hear that.

18 A. I did, yes.

19 Q. Okay. And is the information contained in the
20 notice of violation true and accurate to the best of your
21 knowledge as of the date it was issued?

22 A. Yes.

23 Q. Mr. Jackson, Exhibit 3, is it accurate this is
24 the Oil Conservation Division's docketing notice?

25 A. Yes.

1 Q. And this was prepared and submitted by counsel in
2 this matter?

3 A. Yes.

4 MR. TREMAINE: Okay. Mr. Hearing Examiner, I
5 would represent that this is a filing constituting Oil
6 Conservation Division's docketing notice and speaks for
7 itself.

8 BY MR. TREMAINE:

9 Q. Mr. Jackson, Exhibit Number 4, is this the
10 certified mail tracking information related to the notice of
11 violation and docketing notice served to Cross Border
12 Resources?

13 A. It is.

14 Q. And have you reviewed the content of -- or the
15 information related to the tracking information for the
16 specific green card and the receipts here.

17 A. Yes. I researched the tracking numbers and
18 verified that.

19 Q. Okay. And to your knowledge, is it true that the
20 Oil Conservation Division is experiencing delays in the
21 delivery of certified mail and return of the green cards
22 associated with the mail?

23 A. It has been an issue.

24 Q. Okay. Have you -- but you had indicated already
25 that you looked up the tracking information issued with the

1 notice of violation and the docketing notice?

2 A. Yes.

3 Q. Were you able to verify the accuracy of the
4 certified mail delivery as it was indicated in the
5 prehearing statement?

6 A. Yes.

7 Q. I'm going to ask you about Exhibit 5.
8 Mr. Jackson is this the proposed, OCD proposed civil penalty
9 related to inactive well -- the number of inactive wells
10 that were in violation as of the date of the NOV?

11 A. It is.

12 Q. And are you able to -- did you review the
13 numbers, specifically the number of wells that were listed
14 in this civil penalty proposal?

15 A. Yes, I was the one who did that.

16 Q. And were you able to verify the accuracy of those
17 numbers at the time of the NOV?

18 A. Yes.

19 Q. I want to ask you the same question for Exhibit
20 6. Is this the -- OCD's proposed civil penalty related to
21 the failure to provide financial assurance for each well?

22 A. Yes.

23 Q. And is it true that the proposed civil penalty in
24 this matter relates to both the failure to provide financial
25 assurance for active wells and failure to provide financial

1 assurance for inactive wells?

2 A. Yes.

3 Q. Were you able to verify that the numbers
4 contained in this, in this proposed civil penalty,
5 specifically the 30 qualifying wells?

6 A. Yes, yes, I did that.

7 Q. And to your knowledge, that number is true and
8 accurate.

9 A. It is.

10 MR. TREMAINE: You know, Mr. Hearing Examiner,
11 if -- I would just ask -- I can move through these very
12 quickly if notice in this matter is not contested.

13 So at this point I would request that Mr. Padilla
14 stipulate that, that Cross Border Resources did in fact
15 receive the notice of violation by certified mail. If we
16 need to get into it, we can cover each of these exhibits.

17 MR. PADILLA: No, I will stipulate to that, Mr.
18 Examiner. I'm not sure whether or not that address of 14282
19 Gillis Road -- I forget the city -- if it's accurate or not,
20 and so I won't concede that those C-103s were received by
21 Cross Border.

22 HEARING EXAMINER BRANCARD: Thank you.

23 MR. TREMAINE: The purpose of Exhibit 7, Exhibit
24 8, Exhibit 9 and Exhibit 10 were all to establish the
25 contact information for Mr. Barksdale and to demonstrate

1 that Mr. Barksdale was, was aware of the status of the
2 wells. But if Cross Border Resources is not going to
3 contest that it received notice -- so this is not for the
4 purpose of establishing that Cross Border was aware of the
5 C-103s. It was to demonstrate that OCD diligently attempted
6 to notice Cross Border Resources of the -- because at the
7 time these were generated and filed OCD hadn't received any
8 response from the operator.

9 MR. PADILLA: Mr. Examiner, if you will notice
10 the address listed on the C-103s, it's addressed to 6334
11 Maple Avenue, Suite 500, Dallas, Texas. The notice that we
12 just saw, the green card, the address is different. It's
13 14282 Gillis Road, and I didn't catch what city in Texas it
14 was at.

15 There is two different addresses, so I'm not
16 sure -- that's why I can't agree to notice in this case.
17 Now for the purpose of submitting these C-103s, I don't know
18 what the purpose in this hearing is. Certainly if it would
19 be something that would be intended to -- I don't know who
20 submitted the C-103s, if it's the OCD or who did it.

21 HEARING EXAMINER BRANCARD: Mr. Tremaine, was
22 the --

23 MR. TREMAINE: What we are trying to -- I'm
24 sorry, Mr. Hearing Examiner.

25 HEARING EXAMINER BRANCARD: Was the notice

1 provided for the NOV and for the hearing date on this C-103?

2 MR. TREMAINE: No, that's not the purpose. I'm
3 doing a poor job of explaining this. The notice of
4 violation was sent to address of record provided by Cross
5 Border Resources in OCD's permitting system. So that's why
6 the, in going back to Exhibit 2, the -- and Mr. Jackson
7 will be able to verify if we need that this is the address
8 that is presented by Cross Border Resources as
9 Mr. Barksdale's point of contact and address of record, so
10 that's why we sent there.

11 Now the notice of violation is required to be
12 sent by certified mail, so OCD sent this by certified mail
13 to the address of record. My office also e-mailed it to the
14 e-mail of record which is listed here which the rules
15 indicate that, where available, the notice of violation may
16 also be sent by e-mail.

17 The later exhibits were not submitted by Cross
18 Border Resources. The later D-4 exhibits were generated by
19 OCD in the form of exhibits because these were received by
20 my office from counsel for another operator who had been in
21 contact with Mr. Barksdale and obtained -- secured his
22 signature for the purposes of plugging and abandoning
23 different wells that are the subject of litigation.

24 So this is -- if, if Cross Border Resources was
25 going to contest that they didn't receive the notice of

1 violation, then it would become necessary for OCD to present
2 testimony to the effect that the certified mail was
3 delivered to the address of record and was also provided by
4 e-mail to the e-mail of record.

5 These indicate that Mr. Barksdale was aware of
6 the status of the wells, but they also represent that there
7 was a different address presented which were received after
8 issuance of the notice of violation. And then OCD and my
9 office's subsequent communication by e-mail to
10 Mr. Barksdale, we attempted to reach Mr. Barksdale at the
11 e-mail listed on these exhibits. That e-mail was returned
12 as undeliverable.

13 But so once OCD became aware of this updated
14 information, all of the subsequent communications were sent
15 to both e-mails. But I'm not -- I'm not hearing whether or
16 not there is a need to get into this because I -- my
17 understanding is that Cross Border did in fact receive the
18 NOV, and I don't know whether they would stipulate that they
19 received it by e-mail or not, but I think the certified mail
20 tracking information speaks for itself, and at this point
21 Cross Border's involvement in the case indicates they did in
22 fact get the NOV.

23 So I don't believe they are strictly necessary
24 because we're not talking about a default case where the
25 Division needs to present evidence that, you know, it took

1 all reasonable steps to contact Cross Border.

2 HEARING EXAMINER BRANCARD: I understand --

3 MR. PADILLA: If I'm not mistaken, these wells
4 have already been plugged, and Mr. Barksdale approved the
5 C-102, and the reason that I know that is that another
6 company's attorney, Adam Rankin, called me yesterday or sent
7 me an e-mail to have these approved and signed by
8 Mr. Barksdale.

9 Based on my recommendation, Mr. Barksdale signed
10 them and submitted the C-103s for approval. This has
11 nothing to do with any of the wells associated in the NOV.

12 HEARING EXAMINER BRANCARD: All right. But Mr.
13 Padilla even you have said there is not an issue regarding
14 notice in case; correct?

15 MR. PADILLA: As to the 11, as to the 11 original
16 wells.

17 HEARING EXAMINER BRANCARD: So the NOV and the
18 notice of this hearing?

19 MR. PADILLA: Yes.

20 MR. TREMAINE: That's what I'm trying to do, Mr.
21 Hearing Examiner. I would --

22 HEARING EXAMINER BRANCARD: Mr. Tremaine, hold
23 on.

24 MR. TREMAINE: Okay.

25 HEARING EXAMINER BRANCARD: Mr. Padilla, there is

1 no notice issue as to the original NOV or notice of this
2 hearing; correct?

3 MR. PADILLA: No.

4 HEARING EXAMINER BRANCARD: All right. So,
5 Mr. Tremaine, how about if you move Exhibits 1 through 6.

6 MR. TREMAINE: Yes. I will withdraw 7 through
7 10. Mr. Hearing Examiner, I move to admit Exhibits 1
8 through 6.

9 HEARING EXAMINER BRANCARD: Okay. Mr. Padilla?

10 MR. PADILLA: No objection.

11 HEARING EXAMINER BRANCARD: Okay. Exhibits 1
12 through 6 will be admitted. Exhibits 7 through 10 are
13 withdrawn. Correct, Mr. Tremaine?

14 MR. TREMAINE: Correct.

15 (Exhibits 1 through 6 admitted.)

16 HEARING EXAMINER BRANCARD: Thank you. Please
17 proceed.

18 BY MR. TREMAINE:

19 Q. All right. Mr. Jackson, I want to refer you to
20 Exhibit 11 which we have referred to already today. Is it
21 true that this is the inactive well list pertinent to the
22 alleged violation under 19.15.5.9 which you ran yesterday?

23 A. It is.

24 Q. How did you generate this list?

25 A. It's a report that I can run from our internal

1 website. Also operators can run themselves as well.

2 Q. And are you, to the best of your knowledge, is
3 the information contained in this exhibit true and accurate?

4 A. It is.

5 Q. Draw your attention to Exhibit 12, is this the
6 updated civil penalty violations which are proposed for the
7 19.15.5.9A violations which were updated yesterday?

8 A. It is.

9 Q. And did you work to prepare this exhibit for the
10 updated proposed civil penalties in conjunction with the
11 Office of Legal General Counsel?

12 A. I assisted, yes.

13 Q. And were you, are you able to verify the accuracy
14 of the numbers, the number of wells that are listed in this
15 exhibit?

16 A. Yes.

17 Q. Okay. And then same question for Exhibit 13. Is
18 this the updated proposed civil penalty pertinent to the
19 failure to provide financial assurance that was updated
20 yesterday?

21 A. It is.

22 Q. And again, did you, did you work to update this
23 civil, proposed civil penalty in conjunction with legal
24 counsel?

25 A. Yes, I assisted.

1 Q. Okay. And were you able to verify that the
2 accuracy of the number of wells that are listed in this
3 proposed civil penalty, that this was accurate as of
4 yesterday.

5 A. It is.

6 MR. TREMAINE: Okay. At this point, Mr. Hearing
7 Examiner, I would move admission of Exhibits 11, 12 and 13.

8 HEARING EXAMINER BRANCARD: Mr. Padilla?

9 MR. PADILLA: I'm going to have to object. For a
10 contested hearing, this exhibit should have been submitted
11 on Thursday of last week. We got it yesterday. As a matter
12 of fact, I don't think we got this exhibit. We had the
13 exhibit which had the original corrected -- the 24 well
14 list as Exhibit 11. So we didn't have proper notice of this
15 exhibit.

16 HEARING EXAMINER BRANCARD: Go ahead,
17 Mr. Tremaine.

18 MR. TREMAINE: Well, so first of all, I don't --
19 I don't think that there is a valid basis for the objection.
20 The, the nature of the violation, while the number of wells
21 have changed, the nature of the violation was listed in the
22 notice of violation. The violations were inactive wells and
23 failure to provide both active and inactive financial
24 assurance.

25 The facts have changed during the pendency of the

1 case, the nature of the violation has not. So the update
2 is, the update is simply necessary. And in terms of the
3 updated civil penalties, that's not evidence in a case,
4 these exhibits and how the exhibits were generated, it's
5 necessary to provide that foundation.

6 However the rules require, or the rules indicate
7 that the proposed civil penalties can be updated at any
8 point at which there is additional information to justify
9 updating them.

10 When we were scheduled for a hearing last -- for
11 December 2, I believe it was, Mr. Padilla represented that
12 he hadn't had enough time to prepare for this case and it
13 was continued. I represented in that hearing that the civil
14 penalties were likely going to be updated, but we waited to
15 do that, I think, quite reasonably, because Mr. Padilla was
16 getting up to speed on the case.

17 So we had already updated the number of inactive
18 wells in the prehearing statement to 19. As I indicated,
19 that's a moving target. And then as we were preparing for
20 this, I heard from Mr. Padilla this week once he was able to
21 prepare, and I think, in perfectly in good faith, he
22 indicated that Cross Border wanted to reach an agreement.

23 But there was no new information. OCD realized
24 that we weren't going to be able to reach an agreement prior
25 to the hearing, so we updated the numbers. There is not a

1 due process violation there. The nature of the violations
2 is exactly the same. It's -- and the civil penalty
3 adjustment is entirely appropriate under the rules.

4 The fact that the number of wells have changed,
5 and if there is an ongoing violation speaks to Cross
6 Border's lack of -- you know, the fact that they haven't
7 taken any corrective action during the pendency of the
8 notice of violation.

9 MR. PADILLA: Mr. Examiner, when Mr. Tremaine
10 submitted his prehearing statement, he submitted exhibits,
11 and those exhibits and the penalty calculations, we were
12 aware of those. He should have amended his prehearing
13 statement to include recalculated assessments. So to the
14 extent that penalties have been assessed, as he says, a
15 moving target, that's not due process.

16 HEARING EXAMINER BRANCARD: Mr. Tremaine, for
17 your Exhibit 12, how has the penalty calculations changed
18 from the original penalty calculation?

19 MR. TREMAINE: This is based on a number of wells
20 that have changed to the exhibits -- if I can refer back to
21 the Exhibit 5, there were 13 wells in violation. So that
22 number has changed. And then in Exhibit 12, so it's changed
23 from 13 to 22, so there is a difference of nine additional
24 wells.

25 The -- in the previous exhibit, 13 was the

1 total, the total number of wells, but you are permitted two
2 inactive wells under the rules. Based on Cross Border's
3 lack of a -- lack of any response, those civil penalties
4 were originally proposed for all 13. I think, fairly, they
5 could -- they could argue that number should be 11.

6 This number now is 22, which is 24 minus the two
7 that they're allowed under 5.9. So that has changed to a
8 base penalty subtotal of 5500. They have taken -- you will
9 hear shortly, that they have taken absolutely no action to
10 address any of the inactive wells, which also speaks to the
11 fact that that increase from the 13 to 24 in the last couple
12 of months.

13 So the effort to comply after notice of violation
14 has changed, that is from a factor of zero because at this
15 point there is no, no indication that they were or weren't
16 going to comply as of the time of the NOV. So that has
17 changed to a .6 factor, which is no cooperation or
18 compliance.

19 They received the NOV in the, in the end of
20 August and has taken no steps to address the inactive well
21 violations. This is laid out in the civil penalty
22 calculation, which is has been posted on the website for
23 over a year at this point. So that's changed.

24 The noncompliance, the outstanding conditions,
25 noncompliance specified in the notice of violation has

1 changed. That does change the daily maximum penalty from
2 2500 to \$10,000.

3 However, that has no bearing on the actual
4 proposed civil penalty amount because it still doesn't reach
5 the \$2500 threshold per day. And what OCD has proposed is
6 actually a single violation per well, not by well per day.
7 So those are the only, the only changes. The number of
8 wells, cooperation and compliance and outstanding
9 conditions.

10 The same is true for 13, however, the number of
11 wells has remained the same, 30 total wells in violation of
12 the financial assurance requirements, which are currently --
13 which are proposed as combined both 8.9C and 8.9D, but the
14 cooperation compliance has changed and outstanding
15 conditions, the change to the proposed civil penalty is
16 entirely due to the no cooperation or compliance.

17 HEARING EXAMINER BRANCARD: So there is no change
18 in the well number for the bonding violation?

19 MR. TREMAINE: Correct.

20 HEARING EXAMINER BRANCARD: And, Mr. Padilla, you
21 are objecting to all three exhibits?

22 MR. PADILLA: Yes.

23 HEARING EXAMINER BRANCARD: I'm going to hold off
24 ruling on this and let you finish your case, Mr. Tremaine,
25 and then I will rule on whether to admit these three

1 exhibits.

2 MR. TREMAINE: Thank you.

3 BY MR. TREMAINE:

4 Q. Mr. Jackson, I want to ask you about,
5 specifically about the notice of violation, and the nature
6 of the violations alleged. What is the first violation
7 alleged in the NOV?

8 A. I need to bring it up here. I don't have that in
9 front of me. Do you have that? Can you share it?

10 Q. I can share it if that would refresh your
11 recollection.

12 A. Yeah.

13 MR. TREMAINE: For the record, I'm sharing the
14 OCD's Exhibit Binder Exhibit 2, Page 2 of 5. Actually, let
15 me scroll back. Oops, it's not sharing, sorry.

16 HEARING EXAMINER BRANCARD: Okay, your screen is
17 shared, Mr. Tremaine.

18 Q. Mr. Jackson, is the first alleged violation that
19 Cross Border Resources has too many inactive wells?

20 A. Yes.

21 Q. And specifically what rule is being violated?

22 A. Rule Number 19.15.25.8.

23 Q. Specifically there are -- okay.

24 MR. TREMAINE: One second, Mr. Hearing Examiner.

25 Q. Is it also true that the alleged violation

1 includes 19.15.5.9A?

2 A. Correct.

3 Q. So in response to your earlier question, the
4 plugging timeline required for inactive wells is set forth
5 in 25.8?

6 A. Yes.

7 Q. And the, the violation in terms of the number of
8 wells that are inactive and have not been plugged, that's
9 set forth in 5.9A?

10 A. Yes.

11 Q. Is that violation ongoing, the violation --

12 A. Yes, it is.

13 Q. How many wells in total are registered to Cross
14 Border Resources as the operator.

15 A. 61 wells.

16 Q. And for an operator with 61 wells under
17 19.15.5.9A, how many wells can be inactive for more than 12
18 months plus 90 days?

19 A. Two inactive wells.

20 Q. And how many did the operator have at the time of
21 the NOV which has not produced -- which has not produced in
22 15 months?

23 A. I believe that would be 13 at the time of the
24 NOV.

25 Q. And at the time that you ran the updated report

1 when OCD filed the prehearing statement, how many were
2 there?

3 A. There were 24.

4 Q. Can I draw your attention to the prehearing
5 statement. At what point did you run the report that said
6 there were 24 inactive wells?

7 A. That was run on the 15th, so yesterday.

8 Q. But the prehearing statement was submitted on
9 November 24; correct?

10 A. Yes.

11 Q. Okay. So there was a -- was there a different
12 number of inactive wells on the 24th than there was
13 yesterday?

14 A. Yes.

15 Q. How many, how many inactive wells were there as
16 of the 24th of November?

17 A. The inactive wells at the 24 of November, I can't
18 run a historical report, so -- I can only run a current
19 report.

20 Q. That's okay. I will go back to the violation.
21 So as of yesterday, I just want to make sure, we got them
22 jumbled up here, as of yesterday how many inactive wells
23 were there?

24 A. 24 inactive wells.

25 Q. Okay. And what sanction is OCD proposing for

1 **this violation?**

2 A. Sanction for the violation, I'm not sure.

3 **Q. So we just talked about Exhibit 12, is there a --**
4 **is there a proposed civil penalty for the 19.15.5.9**
5 **violation?**

6 A. Penalty. I don't have that in front of me again
7 here.

8 **Q. I'll share.**

9 A. Okay.

10 **Q. At the time of the NOV, did you assist in**
11 **preparing a civil penalty proposal?**

12 A. Yes.

13 **Q. Okay. And is it correct that that is the Exhibit**
14 **Number 5?**

15 A. Yes.

16 **Q. And is it true that Exhibit Number 12 is the**
17 **updated civil penalty proposal?**

18 A. That would be correct, 22 wells, yes.

19 **Q. Okay. So would it also be correct that OCD's**
20 **proposed sanction as far as the proposed civil penalty is**
21 **represented in Exhibit 12?**

22 A. It is.

23 **Q. Okay. Were there also sanctions proposed in the**
24 **prehearing statement?**

25 A. In the prehearing statement, sorry, I haven't

1 read the prehearing statement in a few days, so I don't
2 recall offhand. Yes.

3 Q. So would it be true that the OCD is proposing the
4 proposed civil penalties listed in -- that were updated from
5 Exhibit 5 to Exhibit 12 and those listed in the notice of
6 violation and prehearing statement?

7 A. Yes.

8 Q. Okay. Move on to financial assurance. Is there
9 a financial assurance violation listed in the notice of
10 violation?

11 A. Notice of violation, hang on one second. Yes.

12 Q. Does Cross Border Resources have enough financial
13 assurance under the rules for their active wells, for the
14 total number of qualifying wells?

15 A. No, they do not.

16 Q. And in terms of those active wells, financial
17 assurance for active wells, specifically what rule is being
18 violated?

19 A. Rule -- active well -- I don't have the rules in
20 front of me. Hang on one second, let me get my rules.
21 19.15.8.9, I believe.

22 Q. Okay. So how many total qualifying wells does
23 Cross Border Resources have?

24 A. They have 30 qualifying wells on actual assurance
25 with us.

1 Q. And in terms of the bonding that's required under
2 19.15.8.9C, is it true that an operator may provide blanket
3 financial assurance?

4 A. Correct.

5 Q. Is it possible that they can also provide single
6 well financial assurance?

7 A. Yes, they can.

8 Q. And in terms of the blanket bonding, how many,
9 how much blanket bond is required for 30 qualifying wells?

10 A. Blanket bond of \$35,000 would be required.

11 Q. And how much blanket bonding does Cross Border
12 Resources have?

13 A. One second. They have a \$50,000 blanket bond.

14 Q. Okay. And do they have any single well bonds?

15 A. They do.

16 Q. And if, if Cross Border Resources were to provide
17 single well financial assurance for all active qualifying
18 wells, how would you calculate those single well bonds?

19 A. The math for a single well bond is 25,000 plus \$2
20 per foot of true depth.

21 Q. So each single well bond would necessarily be in
22 excess of \$25,000?

23 A. Correct.

24 Q. The single well bond that Cross Border has
25 provided, are they sufficient under 19.15.8.9C?

1 A. The three single well bonds are insufficient.
2 They are well below the 25,000 base.

3 Q. And since the date of the notice of violation, is
4 the -- is the alleged violation for failure to provide
5 sufficient financial assurance for active wells, is that
6 violation ongoing?

7 A. It is.

8 Q. Has Cross Border Resources provided any updated
9 financial assurance since the date of the NOV?

10 A. They have not.

11 Q. I want to move on to the next allegation. Did
12 the Oil Conservation Division allege a violation for failure
13 to provide inactive well financial assurance?

14 A. They did.

15 Q. And specifically what rule is being violated for
16 that allegation?

17 A. That would be 19.15.8.9D, I believe.

18 Q. And from your review is that violation ongoing?

19 A. It is.

20 Q. Okay. Under 19.15.8.9D, when is a well
21 considered, quote-unquote, inactive?

22 A. Inactive for financial assurance purposes is two
23 years.

24 Q. Okay. And how many -- at the time of the NOV,
25 how many inactive qualifying wells did Cross Border

1 **Resources have?**

2 A. I believe that would be 11.

3 Q. Okay. And has that number changed since the date
4 **of the NOV?**

5 A. It has not, still 11.

6 Q. Okay. For an operator with 11 inactive wells,
7 **how much inactive well financial assurance is required?**

8 A. Inactive, that would be \$500,000.

9 Q. How much -- how much inactive well blanket
10 **financial assurance does Cross Border Resources have?**

11 A. None for inactive wells.

12 Q. Can -- is it possible that Cross Border Resources
13 **could also provide single well financial assurance for**
14 **inactive wells?**

15 A. Yes, they can.

16 Q. Is the calculation for single well bonds, is that
17 **the same or different from active wells?**

18 A. It would be the same \$25,000, plus \$2 per foot of
19 depth.

20 Q. So for the purpose of 19.15.8.9D, are the, are
21 **the single well bonds provided by Cross Border Resources**
22 **sufficient?**

23 A. They are not.

24 Q. And what sanction is OCD seeking for the
25 **financial assurance violations?**

1 A. Can you share that again?

2 Q. I can. We talked about this a few minutes ago,
3 and this was admitted. Exhibit 6, is the original proposed
4 civil penalty -- I keep not hitting the button here, sorry.
5 This is the initial proposed civil penalty for the financial
6 assurance violations?

7 A. It is.

8 Q. Okay. And we have talked about Exhibit 13. Is
9 this the updated proposed civil penalty violation?

10 A. It is.

11 Q. Okay. Did OCD also propose, list sanctions in
12 the notice of violation and the prehearing statement?

13 A. Yes.

14 Q. Okay. Ask you some general questions about
15 what's happened since the time of the NOV. Since the date
16 of the notice of violation being issued, has the operator --
17 has Cross Border Resources taken any of the compliance
18 actions which were required under Section 3 of the NOV?

19 A. No.

20 Q. To your know, have they plugged and abandoned any
21 wells?

22 A. Not to my knowledge.

23 Q. Have they provided any additional financial
24 assurance?

25 A. No.

1 **Q. To your knowledge, has Cross Border Resources**
2 **contacted -- strike that, and go back. Did the notice of**
3 **violation list the point of contact in the Administrative**
4 **Compliance Bureau?**

5 A. Yes.

6 **Q. And to your knowledge, has Cross Border Resources**
7 **contacted anyone in the administrative compliance bureau to**
8 **discuss the NOV or potential compliance actions?**

9 A. Not to my knowledge.

10 MR. TREMAINE: Mr. Hearing Examiner, no further
11 questions.

12 HEARING EXAMINER BRANCARD: Thank you. Mr.
13 Padilla, questions of this witness?

14 MR. PADILLA: Just a couple.

15 CROSS-EXAMINATION

16 BY MR. PADILLA:

17 **Q. Mr. Jackson, you said that you hadn't reviewed**
18 **the prehearing statement since you helped prepare it. Is**
19 **that accurate.**

20 A. No, I haven't read it in a few days, so -- but it
21 was prepared well back, but I haven't read it since probably
22 last week.

23 **Q. Okay. The statements made in that prehearing**
24 **statement have changed, haven't they, from today's**
25 **testimony?**

1 A. The prehearing statement or exhibits?

2 Q. No, the prehearing statement. The factual
3 content of that prehearing statement has changed, hasn't it?

4 A. Hang on. Let me -- from when to when?

5 Q. Well, has it changed from the time that you
6 reviewed it last week whenever you did to the present time?

7 A. I do not believe it has changed in that period of
8 time.

9 Q. Well, at that time when you first -- when you
10 reviewed it the last time, you had 11 wells on that
11 prehearing statement that were inactive; correct?

12 A. Correct.

13 Q. And now you are alleging 24 inactive wells;
14 correct?

15 A. No. No, sir. There's a difference between the
16 inactive wells and inactive regarding financial assurance.
17 So the inactive regarding financial assurance stayed the
18 same, it was 11 then and it is 11 as of today.

19 Q. So, so what are you trying to do now with the 24
20 wells?

21 A. 24, that's how many inactive -- the difference
22 between inactive and financially inactive is a period of
23 about nine months. So that's why 11 didn't change, because
24 the ones that went inactive from 13 up to 24 are still in
25 that nine-month period.

1 Q. Did you at any time have the OCD or, to your
2 knowledge, did the OCD go to the -- to where the wells were
3 located to discover whether or not -- what the condition of
4 the wells were?

5 A. I would not have knowledge of that, no, sir.

6 Q. Do you know whether there was an inspection by
7 OCD regarding the wells in the field?

8 A. I do not.

9 Q. So the only sanctions that are being imposed here
10 is because the wells have been inactive; correct?

11 A. There is inactive and also the financial
12 assurance issue, the lack of financial assurance.

13 Q. But the violation, if you want to call it that,
14 is simply based on the rules for bonding and inactive
15 status?

16 A. Yes, sir, financial assurance and inactive status
17 as well.

18 Q. Okay. Have you been involved in any enforcement
19 efforts in other cases?

20 A. Yes.

21 Q. And have you worked out a resolution of those
22 issues involved in other cases that where the OCD and
23 operator were satisfied?

24 A. I have not. I'm fairly new.

25 Q. But you were aware that there had been settlement

1 **efforts with regard to issues of violations such as involved**
2 **in this case?**

3 A. I'm aware of trying to resolve issues of
4 compliance legally not so much, but just day to day in my
5 job, yes.

6 Q. **Okay. Did you work on the NOV in this case?**

7 A. I assisted with the numbers, yes, sir.

8 Q. **Did you assist with assessing or mandating the 11**
9 **wells be plugged and abandoned within 30 days?**

10 A. I assisted with the number of 11 wells. That's
11 all I have provided on that, that there are 11 that needed
12 to be financially updated.

13 Q. **Assuming that all 11 wells needed to be plugged**
14 **and abandoned, you do you have an opinion as to whether 30**
15 **days is sufficient time within which to plug and abandon 30**
16 **wells -- or 11 wells.**

17 A. I do not have an opinion on that. I wouldn't
18 know the field operations.

19 HEARING EXAMINER BRANCARD: Remember, Mr.
20 Padilla, he is not qualified as an expert.

21 MR. PADILLA: I'm sorry.

22 HEARING EXAMINER BRANCARD: -- ask opinion
23 questions in hearings.

24 MR. PADILLA: Okay. I think that's all I have.

25 EXAMINER QUESTIONS

1 HEARING EXAMINER BRANCARD: Thank you.

2 Okay, Mr. Jackson, so I'm trying to reconcile all
3 these numbers that I see in the NOV and elsewhere in here.
4 You said at several points that the operator, Cross Border,
5 is registered as an operator on 61 wells.

6 THE WITNESS: Correct.

7 HEARING EXAMINER BRANCARD: Okay. But when we
8 get to trying to figure out their bonding, it says that they
9 have a blanket bond for 30 wells?

10 THE WITNESS: They should have a blanket bond for
11 30 wells, because 30 wells would be the qualifying amount,
12 which means state and fee only. The others would be on
13 federal.

14 HEARING EXAMINER BRANCARD: Okay, okay, thank
15 you. That helps. Now, if you could just look at the notice
16 of violation and help me along here, it seems to me there
17 are three violations in here. One is having too many
18 inactive wells. Right? They should only have two, but they
19 have 13.

20 THE WITNESS: As of the NOV.

21 HEARING EXAMINER BRANCARD: As of the NOV, I'm
22 just looking at the NOV.

23 THE WITNESS: Gotcha.

24 HEARING EXAMINER BRANCARD: And then the second
25 violation appears to be, they have inadequate bonding for

1 their active wells.

2 THE WITNESS: Correct.

3 HEARING EXAMINER BRANCARD: The 30 active wells
4 covered by a blanket bond.

5 THE WITNESS: It could be covered by a blanket
6 bond or single well bond for each.

7 HEARING EXAMINER BRANCARD: But they have a
8 blanket bond of 50,000.

9 THE WITNESS: Yes, sir.

10 HEARING EXAMINER BRANCARD: For 30 wells.

11 THE WITNESS: Yes, sir.

12 HEARING EXAMINER BRANCARD: And then a third
13 violation is inactive financial assurance -- inadequate
14 financial assurance for inactive wells?

15 THE WITNESS: Yes, sir.

16 HEARING EXAMINER BRANCARD: Where they have
17 individual single well bonds that are inadequate; correct?

18 THE WITNESS: Correct. And then this is also the
19 option to have inactive blanket bond, which they don't have.

20 HEARING EXAMINER BRANCARD: Right. So to me that
21 seems like three violations, but what I'm seeing is that the
22 Division is only proposing two penalties, one for the number
23 of inactive wells, that's the 45-50.

24 And then the second one is for the active well
25 bond, and I say active well bonding because when we look at

1 the violation proposal, it says, "Number of wells, 30."

2 So am I missing something or has the Division not
3 proposed a penalty for the inadequate bonding of inactive
4 wells.

5 THE WITNESS: I don't really much do the penalty
6 assessment. I just pretty much come up with what is in
7 standing right now. So we have 30 qualifying wells. The 30
8 means they have 30 on state and fee land, 11 of which are
9 inactive to the point where they have violated their
10 financial assurance.

11 HEARING EXAMINER BRANCARD: I will ask
12 Mr. Tremaine to address that question at some point.

13 THE WITNESS: Okay.

14 HEARING EXAMINER BRANCARD: The proposed
15 Exhibit 11, the inactive well list as of yesterday --

16 THE WITNESS: Yes, sir.

17 HEARING EXAMINER BRANCARD: -- it now has how
18 many wells on that list?

19 THE WITNESS: 61 that are still -- they own 61,
20 but 24 are inactive.

21 HEARING EXAMINER BRANCARD: Okay. The question I
22 have is, does this list of 24 wells include the 13 wells
23 that were in the NOV?

24 THE WITNESS: I would have to research that to be
25 sure. I don't know offhand. I would imagine it does due to

1 inactivity, but I would have to do an API lookup for each
2 one to make sure.

3 HEARING EXAMINER BRANCARD: I mean, you have
4 stated that you didn't think any of the 13 wells came off
5 the inactive list, plugged and abandoned.

6 THE WITNESS: I do not believe they were. I do
7 not believe they were. Or that -- the only other
8 possibility is that I can see is that they were sold and
9 replaced other inactive wells, which I don't think that
10 would be the case, but that would be guessing and not
11 knowing.

12 HEARING EXAMINER BRANCARD: Or they could have
13 been put back on production?

14 THE WITNESS: Correct.

15 HEARING EXAMINER BRANCARD: All right. We can
16 check that list against the list that's in the NOV.

17 THE WITNESS: Yes, sir.

18 HEARING EXAMINER BRANCARD: All right. I think
19 that's -- that's all the questions I have. Mr. Tremaine,
20 any redirect?

21 MR. TREMAINE: No.

22 HEARING EXAMINER BRANCARD: Do you have any other
23 witnesses, Mr. Tremaine?

24 MR. TREMAINE: I do not.

25 HEARING EXAMINER BRANCARD: All right.

1 MR. PADILLA: Mr. Examiner, if I may ask one
2 question of Mr. Jackson based on your questions.

3 HEARING EXAMINER BRANCARD: Okay.

4 MR. PADILLA: Okay. It could be a couple.

5 RE-CROSS-EXAMINATION

6 BY MR. PADILLA:

7 Q. Mr. Jackson, if these wells, some of those wells
8 are put back into production, does that change the inactive
9 status to active status and therefore the bonding
10 requirement is not required?

11 A. If you -- if they come back into production, per
12 their C-115 filings, that's how I would know if they came
13 back into production, their monthly production reports, it
14 would fall off inactive status back into active status.

15 So it would still require active bonding, the
16 correct amount of active well bonding, but it would fall off
17 the inactive well issue.

18 Q. Would the bonding have to be increased per -- my
19 understanding is that all of these wells have some
20 individual bonds in the neighborhood of \$5,000 per well.
21 Would that have to be increased to meet --

22 A. Yes, sir, it would have to -- if they are doing
23 it by single well and not blanket bond, at this point they
24 can increase their blanket bond for active wells from 50,000
25 to 75,000, and it will cover any well that goes back into

1 active status.

2 Otherwise, they would have to do the
3 adjustment -- if you are talking about just the single wells
4 that they have in place, they would have to raise them up to
5 the \$25,000 plus \$2 per foot of true depth.

6 And to me it looks like we changed our, we
7 changed our amount due in 2019, so it looks to me like they
8 have the bonding in place for what the amount was prior to
9 2019, which was \$5,000 plus \$1 per foot of true depth.

10 **Q. Okay.**

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

12 HEARING EXAMINER BRANCARD: Thank you. Did you
13 have any follow-up, Mr. Tremaine.

14 MR. TREMAINE: Just one question.

15 REDIRECT EXAMINATION

16 BY MR. TREMAINE:

17 **Q. Mr. Jackson, just to be very clear, when you are**
18 **talking about the single well bonds that look like they were**
19 **based on that pre 2019 calculation, how many single well**
20 **bonds does Cross Border Resources have?**

21 A. Let me pull it up real quick, I have it. I
22 believe it's just three.

23 **Q. So in order to be compliant in terms of single**
24 **well bonds, they would need to be providing an additional 27**
25 **single well bonds and significantly increasing those**

1 **existing single well bonds?**

2 A. Yes, if they were going to go the single well
3 bond route.

4 **Q. Okay.**

5 MR. TREMAINE: No further questions.

6 FURTHER EXAMINER QUESTIONS

7 HEARING EXAMINER BRANCARD: Just so I understand
8 how this works, Mr. Jackson, when an operator puts a well
9 back on active status, okay, do they have an obligation to
10 inform you about what's being covered for their -- how
11 their financial assurance is being covered.

12 THE WITNESS: No, sir. There is no obligation to
13 inform me. It would automatically, with their filing it
14 would automatically change status from inactive to active in
15 our system, and then it would also change automatically what
16 bond is covering it. If they have a blanket bond in place,
17 it would say, "Now covered by the blanket bond."

18 HEARING EXAMINER BRANCARD: So the blanket bond
19 issue is simple, right, if they have enough room in their
20 blanket bond --

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER BRANCARD: -- if they are in a
23 50 well category and they only have 30 wells and they move
24 ten wells to active status, they can simply indicate those
25 wells are now covered by the blanket bond?

1 THE WITNESS: Yes. It would -- our system would
2 indicate that, and when I run a report the numbers would
3 change for me automatically. I wouldn't have to be notified
4 by the operator.

5 HEARING EXAMINER BRANCARD: Okay. But otherwise,
6 if some well becomes inactive, then they have an obligation
7 to increase their financial assurance?

8 THE WITNESS: Correct.

9 HEARING EXAMINER BRANCARD: And the obligation --
10 I'm trying to get at, the obligation is the operator's,
11 right --

12 THE WITNESS: It's the obligation of the
13 operator --

14 HEARING EXAMINER BRANCARD: -- to move the well
15 into the correct pot.

16 THE WITNESS: No, sir, they automatically fall in
17 the correct pots based on the reporting of the C-115. And
18 then when they fall into inactive status, the operator sees
19 the same data I can by logging in and running the same
20 reports that I run, and they will see that this is in
21 violation of the -- it will tell them the amount that they
22 need to bond with.

23 HEARING EXAMINER BRANCARD: Okay. Thank you.
24 Mr. Tremaine, I think you are done with your witnesses?

25 MR. TREMAINE: Yes.

1 HEARING EXAMINER BRANCARD: Mr. Padilla, how
2 would you like to proceed?

3 MR. PADILLA: I will call Alan Barksdale for a
4 few questions, Mr. Examiner.

5 HEARING EXAMINER BRANCARD: Okay. Mr. Barksdale
6 are you online?

7 MR. BARKSDALE: Yes, I'm here.

8 HEARING EXAMINER BRANCARD: Mr. Barksdale, if you
9 could raise your right hand, I will swear you in. Do you
10 solemnly swear the testimony you are about to give is the
11 truth and nothing but the truth.

12 THE WITNESS: I do.

13 HEARING EXAMINER BRANCARD: Thank you. Please
14 proceed, Mr. Padilla.

15 ALAN BARKSDALE

16 (Sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MR. PADILLA:

19 Q. Mr. Barksdale, please state your name?

20 A. Alan Barksdale.

21 Q. And what's your connection with Cross Border
22 Resources Inc.?

23 A. I'm a shareholder as well as a board member.

24 Q. Is it fair to say that -- well, first of all,
25 tell us a little bit about Cross Border Resources. Where

1 are you, what's the status of Cross Border? My
2 understanding is that you were in Chapter 11 bankruptcy
3 proceedings and you are now out of that. Is that right?

4 A. That is correct. Yeah, I don't really remember,
5 the years have gone together. But originally there was --
6 the parent company was a company called Red Mountain
7 Resources Incorporated, it was a publicly-traded company,
8 and it filed bankruptcy and then -- Chapter 11, and then
9 there was a plan that was submitted as a part of that.

10 And then Cross Border was the surviving entity
11 out of that. And Cross Border was a subsidiary of Red
12 Mountain Resources, a majority owned subsidiary, not a
13 wholly owned subsidiary, but Cross Border emerged from the
14 bankruptcy as part of the Chapter 11 plan.

15 Q. There were allegations that Cross Border in this
16 case has not done anything with regard to the NOV or even
17 that that resulted in inactivity in the wells that you Cross
18 Border owns. Tell us why that activity occurred and how it
19 came to be.

20 A. I think two things. First, I personally was not
21 aware of the -- or you need to remember, whenever we talked
22 originally I wasn't aware -- it was on a separate matter
23 with the State Land Office that we were -- that I was -- I
24 had received a notice of violation, personally and so I was
25 reached out to find counsel for Cross Border corporately.

1 And I personally wasn't aware of the hearing,
2 obviously we were fortunate enough to be able to figure that
3 out. Ernie now represents Cross Border. I'm familiar with
4 the, familiar with the NMOCD system, have been on it before
5 primarily associated with some clean-up that was during the
6 bankruptcy. But when Cross Border emerged from the
7 bankruptcy, NMOCD, State Land Office, every single entity
8 that was anywhere remotely associated with the assets of the
9 company were noticed of the plan, there were no objections
10 to the plan, it was unanimously approved.

11 And as part of that plan, there was a specific
12 use of cash, and I think it's important to note that in this
13 specific area, that for a two-year period Cross Border spent
14 over \$1.6 million of combining -- under stipulated orders
15 for plugging, which had been agreed to and executed
16 previously and working with the NMOCD.

17 And I'm not saying this in a negative sense, I'm
18 just telling you facts, but in working with the NMOCD, State
19 Land Office and the BLM in cleaning up some surface -- and I
20 would say Cross Border inherited these wells as part of a
21 corporate transaction, didn't drill the wells, they are
22 purely inherited.

23 So all of the clean up that was done out there
24 was not caused by Cross Border, it was inherited. So that
25 changed significantly the financial footprint of the company

1 in the bankruptcy and ultimately modified the exit plan.
2 But the previous stipulated order was done, fully complied
3 with, the wells were plugged, the surfaces reclaimed.

4 We had a tremendous amount of clean-up, again
5 that was not related to ongoing activities, it was legacy
6 stuff that was associated with the property. And it's my
7 understanding that everything was left approved on that and
8 there is nothing pending on any of that. The challenge was
9 when the exit occurred --

10 **Q. Let me interrupt you, when you say there is**
11 **nothing pending on that, that was relating to the plan in**
12 **bankruptcy; is that correct?**

13 A. I'm sorry. In regards to environmental or
14 surface issues or-clean up issues or at the time plugging of
15 wells, there was -- we basically had a laundry -- I
16 apologize, I don't have all of this in front of me -- but
17 there was a laundry list of wells that was, was of concern.

18 We plugged a bunch of those wells -- and
19 understand, too, that, that Cross Border has three separate
20 operating entities within New Mexico, one is Cross Border
21 Resources Inc., the other was Pure Energy and another one
22 was Alma Operating, so it was a consolidated bankruptcy.
23 All of those entities have separate bonds, single well and
24 blanket. And so the, the concept of the plan was to
25 consolidate that operation, basically plug the wells that

1 weren't capable of producing, which was done, remediate any
2 of the sites by the State Land Office as well as the NMOCD
3 and BLM, those were all approved.

4 So when I say my understanding is all of that, I
5 personally went out there and met with the BLM on one
6 occasion, State Land Office -- I can't remember the lady's
7 name -- on another, but, but those are for site clean-ups,
8 remediation, not active ongoing operational issues, but
9 legacy things that were noticed and of potential concern.

10 So those operations -- and again, there was \$1.6
11 million that was spent there, non-revenue generating
12 activity that was purely to essentially satisfy the
13 regulatory concerns.

14 And so with that being said, when the plan was
15 submitted, the plan there was an allocation of money.
16 Obviously a portion of the money that the company had was to
17 be paid creditors associated with the bankruptcy plan. But
18 other part was to be used for revenue-generating activity.

19 The issue with this area has always been this
20 inactive well issue and dates back to 2012. I think you
21 pulled filings and some denials of deepening of wells,
22 operation, anything that required approval was essentially
23 denied just because of the number of inactive wells.

24 So the challenge has been all along, how do you
25 get wells that are inactive back if you can't get the work

1 approved on them. So the concern in this particular
2 instance is, the company has very limited resources, if any
3 at all, and a shareholder group that's not going to be
4 willing to put up money as happened in the bankruptcy, which
5 is just money that's going to be spent and it's just going
6 to be lost.

7 And so clearly understanding the wells -- and I
8 would say, I think -- I think, as everybody has said, it's
9 an ever-changing deal out there. The 13 wells versus the
10 24, I would argue the 24 is not even accurate because the
11 Hahn 2 is producing the four State 32 wells have been
12 plugged, right?

13 So in terms of account, those wells, I mean Hahn
14 2 is producing for sure. And also Cross Border has a full
15 time employee that lives outside of Portales that manages
16 these properties. So it's not like they are just sitting
17 out there contaminating anything. It's a normal operation.

18 Cross Border is a pretty skeleton organization
19 just given the limited resources. I don't get paid, never
20 have, by Cross Border. And so, you know, I put up the money
21 personally to get the Hahn 2 back on line, not going to get
22 any money back for that. The purpose of that was to prove
23 to the purchaser that the wells are capable of production.

24 The Hahn 6, which is also on the list, it is
25 being worked over as we speak, again something I paid for,

1 not going to get any money back for that, just to were prove
2 the producing capacity of those wells, what wells exist.
3 And so as part of process, obviously you go through each of
4 the wells, identify them in terms of priority from the best
5 producer to the worst producer. And then you have that
6 additional bucket where you have some wells that are not
7 capable of production that would ultimately need to be
8 plugged.

9 And then you have a unique bucket which are some
10 of the wells that are on state property that are capable of
11 production, but the lease has expired, which the purchaser
12 could then go back and not have to nominate those
13 properties, which I'm not saying that hasn't been done, it
14 has been done on the Tom 36. For example, I personally
15 nominated those lease and paid for the leases to be, to be,
16 to be released in the bankruptcy, and that was for, for a
17 very specific reason associated with the operation.

18 And I'm not an engineer or geologist, so anything
19 that I'm relying on engineering and geology to tell me and
20 then we would both make financial-related decision and
21 anything related to more oversight.

22 But as it relates to these specific properties,
23 Cross Border is really at a, at the end of the line because
24 it doesn't have the financial resources to meet all of the
25 plugging liabilities associated with the property, and I

1 believe a large percentage of the wells shouldn't be plugged
2 because they are capable of production, they could be
3 converted to injection for pressure maintenance, and there
4 is a small portion that probably needs to be plugged,
5 however I can't tell you if those wells -- I would say from
6 my financial analysis would need to be plugged aren't viable
7 candidates for pressure maintenance. That would be
8 someone --

9 **Q. Let me interrupt you. Are you working now on all**
10 **61 wells to determine whether or not those wells, whether or**
11 **not they are on the NOV or otherwise need to be plugged and**
12 **abandoned of the ones that have been identified, the ones**
13 **that are capable of being put back into production.**

14 A. Yes. Yes, they are. For example, the NOV lists
15 the Paul LR wells, those wells are capable of production.
16 The Sunray Well obviously is capable of production, but it's
17 a state lease, and I'm pretty sure that it's expired, so it
18 needs to be renominated.

19 But, yeah, I think it's an active ongoing
20 process. In addition to that, from a corporate
21 consolidation perspective, taking the three operating
22 entities and combining them would allow them to actually
23 have extra money. And so conceptually by combining all of
24 those properties under one operator, you would ultimately
25 have more than sufficient capital to cover the blanket bond.

1 I'm not real familiar with the inactive well
2 blanket bond, I don't know that, I'm not familiar with those
3 numbers and parameters. But the short way of saying it is,
4 by executing this transaction, it would provide sufficient
5 blanket bond for the entity with these number of wells, and
6 it would also provide some extra capital to even be able to
7 plug a well or two immediately, you know, as part of that.

8 However, the challenge is, obviously no one can
9 agree to a transaction without some form of agreed upon
10 schedule and have a, a clear path forward with the bonding.

11 Q. What kind of time frame are we dealing with in
12 terms of -- I'm not, I'm not suggesting a two-year time or
13 anything like that, even less than a year, but given this
14 entity or this project of 61 wells, when would you be
15 prepared to, to have some definitive estimate? And
16 obviously there's going to be some testing that has to be
17 done in individual wells as to whether or not they need to
18 be plugged and abandoned, but -- or brought back into
19 production.

20 A. Yeah, I think we, as a company, in terms of the
21 Cross Border technical staff that was used is intimately
22 familiar with the property, so it's not really about the
23 Cross Border consultants and professionals, it's about the
24 buyer taking that information and agreeing with it.

25 So I think that Cross Border knows what wells or

1 what needs to be done, it's just a matter of the buyer
2 essentially reviewing that and confirming that and getting
3 a, you know, as I see it, it's pretty simple, I don't have a
4 specific well named, but take Well Number 1, if Well Number
5 1 is capable of production, you are going to say, "Hey, it's
6 going to be returned to production. If it's not returned to
7 production by a certain date, it has to be plugged."

8 I think that can go for every single well out
9 there that's certainly not producing, and I think there,
10 there, on an individual -- it's going to be more on a lease
11 basis because most of the leases, the wells are pretty
12 similar.

13 So if you take Lease Number 1 that has four wells
14 on it, if those are capable of production, you are going to
15 say, "Hey, Lease Number 1, good wells, capable of
16 production. Here is what they produced in their life, here
17 is what we believe they have left. And we believe we can
18 have this back on line by x date, if not, plug it."

19 So I think that's a pretty simple -- I think it's
20 a pretty simple approach, and that's kind of what the plan
21 would be for all of those wells.

22 **Q. All right. I asked you about a time frame. What**
23 **kind of time frame would it take to come up with some kind**
24 **of schedule identifying deadlines and trying to figure out**
25 **whether or not you are going to put wells back into**

1 **production?**

2 A. I mean -- I mean, I would say within a couple of
3 weeks. I can't speak for the buyer, but you know, I would
4 say that we can make -- information to them has been readily
5 provided in regards to the property. It's been demonstrated
6 that the wells that said were capable of production are
7 already producing.

8 And, you know, so we basically identified a
9 couple of wells and said we are going to pay to put these
10 back on line to prove what we are saying is accurate, and
11 that's been done, so that evidence is pretty clear.

12 And you know, for example, the Hahn Number 2 was
13 brought on on Thursday. It produced 90 barrels as of Monday
14 morning, so you know, that evidence has been provided to the
15 buyer.

16 So, I would say a couple of weeks to nail that
17 list down, and then ultimately, I guess, present that to the
18 NMOCD under some form of stipulated order in order to
19 determine a mutually agreeable time frame on those wells.

20 Again it's an area, the challenges to the area
21 are somewhat remote, and times where services are in high
22 demand, it can be a challenge to get services out there,
23 but, you know, so you may be at the back of the line as
24 opposed to the front of he line, but at the end of the day,
25 certainly you are capable of getting them out there.

1 **Q. Tell me a little bit about your -- what this --**
2 **and the first question I have about that is, is CK capable**
3 **of plugging oil and gas wells out there?**

4 A. Yeah, I mean, I haven't contracted with them
5 directly for services, but my understanding, whether it's
6 plugging and abandoning, it's a service, a well servicing
7 company that is capable of, in addition to completing most,
8 if not all of the work to recon, they are capable of
9 returning to production, but also handling the plugging and
10 abandoning of the wells.

11 **Q. Has that buyer identified a purchasing entity or**
12 **has that been decided?**

13 A. Yeah, he mentioned two separate operating
14 entities that he had to me. I think that the final, quote,
15 stipulated order or final arrangement would -- would, I
16 think, one entity versus the other would depend on the final
17 arrangement.

18 **Q. You're not, you're not opposed to a stipulated**
19 **orders of some sort; correct?**

20 A. No. I, yeah, I think that is probably the only
21 way to have a deal with the buyer is to have a stipulated
22 order in place, having an open-ended uncertainty, they are
23 not going to want to move forward without a stipulated
24 order.

25 **Q. Okay.**

1 MR. PADILLA: No further questions, Mr. Examiner.

2 HEARING EXAMINER BRANCARD: Thank you

3 Mr. Tremaine, any questions?

4 MR. TREMAINE: I have a couple.

5 CROSS-EXAMINATION

6 BY MR. TREMAINE:

7 Q. Good morning, Mr. Barksdale.

8 A. Good morning.

9 Q. You had indicated -- I don't want to make you go
10 over this again, but you kind of gave a long answer to a
11 response of Mr. Padilla's question about inactivity, so I
12 want to make sure I understood that right.

13 Why didn't Cross Border Resources take any action
14 to bring the inactive wells on line in the last 15 months?

15 Q. Number one, limited resources; number two, the
16 commodity prices and the gas challenges of that area made
17 it -- rendered it virtually impossible. We are in a
18 different commodity price environment today than we were 15
19 months ago, which is, you know, similar to what happened
20 prior to the bankruptcy. I mean, you are in a \$90 oil
21 environment, and it when went to 20-something, obviously it
22 came back and then it went back down and now it's back up
23 again.

24 So, you know, it's, obviously for a small
25 operator like this, it's a significant challenge in order to

1 try to maintain any level of viability at all. And so, I
2 mean, that would be it. I don't think it was just saying,
3 "Hey, this doesn't need to be done on this, it doesn't need
4 to be done," I mean it's -- it was -- it was, you know,
5 commodity price and availability of resources.

6 Q. Okay. So I understand your testimony that --
7 okay, so two issues, Cross Border Resources limited
8 resources and commodity prices. And I believe you just
9 indicated that commodity prices are addressed, but in terms
10 of resources, I believe in your earlier testimony you
11 indicated that Cross Border Resources does not have
12 additional resources.

13 A. That's no, I mean the -- another thing it would
14 be able to do would be to seek further investment from its
15 current shareholder, that would be the only thing to do.

16 But as of today, in terms of capital to plug and
17 abandon all of those wells and all the things that you are
18 suggesting it doesn't have the ability.

19 Q. You talked about certain of the wells being
20 capable of production. I believe you had indicated the Paul
21 LR wells and Sunray Well. Is that accurate?

22 A. Yes, some of them, yes.

23 Q. Okay. So by my count, and correct me if I'm
24 wrong here, by my count it looks like there is about seven
25 of the 24 or up to seven of the 24 that you believe

1 **currently can produce. Is that accurate, or would you have**
2 **an estimate?**

3 A. I think it's more than that, and of the 24, keep
4 in mind the State 32 wells are plugged, so I don't know if
5 that's four or five of the wells. I don't have that in
6 front of me, but the State 32 wells are already plugged.

7 So, so you really can't count those as inactive
8 wells because they are plugged already. I think they are
9 just pending the final paperwork to be submitted, so they
10 have already been witnessed -- I mean, it's already been
11 plugged, so those four wells are gone.

12 The Sunray 2 has a plugging plan pending with
13 Hedington, but I would have to see after this hearing and
14 Mr. Padilla has to, has to be involved in that. But the
15 Sunray 2 is capable of production, but I believe that -- I
16 think the lease has expired on that, so it either needs to
17 be renominated re-entered and produced, or it needs to be
18 plugged, one or the other.

19 The Paul LR wells, that's a fee lease, those
20 wells are capable of production. If you are going on your
21 24 well list, let me see if I can pull it up, the Hahn 6 is
22 capable of production, the Hahn 2 is capable of production.
23 The Hahn 2 is producing, by the way

24 Q. So can I just just clarify here? So I don't I
25 don't see Hahn 2 on OCD's Exhibit 11 the updated 24.

1 A. Hold on one second. I'm looking -- I'm sorry, I
2 said Hahn, I meant Wattam Federal Number 2. That's my
3 fault. The very last one, the Wattam Federal Number 2, that
4 well is currently producing. That's the one that produced
5 from Thursday to Monday, it produced 90 barrels.

6 The Hahn 6, I don't know about the Hahn 7, pretty
7 much all the Hahn wells have been good wells. I'm familiar
8 with some of these, like the Tom 36, I don't know about
9 those. I know there was a reason that we renominated it and
10 released it originally. I don't know, I don't really
11 remember why.

12 So but I mean I would say, you know, from my
13 direct knowledge, the two Hahn wells, the Paul LR wells, the
14 State 32 wells have been plugged, the Sunray well is capable
15 of production and the lease expired. And Tom Wells, I don't
16 know about those and the Wattam 2 is producing.

17 So the ones I wouldn't know about would be the BA
18 State 1, 3 and 4, the Lovelace, and I would have to check on
19 the Tom Wells.

20 **Q. Okay. So just make sure I understand this, the**
21 **State 32 wells you said have been plugged, were those plug**
22 **the by Cross Border Resources?**

23 A. They were -- no, North Star. I mean, I don't
24 know what entity did it. I mean I signed the paperwork
25 for -- a guy from North Star called about it. They were

1 the, they were holder of record.

2 Q. They were the lessee of record?

3 A. Yeah. Yeah.

4 Q. Okay. So then if we strike those four from the
5 list we are down to 20. Based on what you just said, the
6 Wattam federal is producing. When did that start producing?

7 A. It was last week, I think it was Thursday.

8 Q. And have you -- okay. So you will need to
9 report production on that in the following month?

10 A. Yeah, they will. I'm just going based on
11 communication that I received from the Cross Border employee
12 that works out there and lives out there.

13 Q. Okay. So back to your list, you said the Hahn
14 Federal and the Paul LR, any other ones that --

15 A. The Sunray -- yeah, the Sunray is capable of
16 production. That's one of the wells that has the lease
17 that's potentially expired, I think. I would have to look,
18 but I think.

19 Q. Okay. So I was counting through, and I'm trying
20 to, you know, be clear here. You listed off the potential
21 to produce for about ten of the wells that are on this list,
22 which you, if we can see that four of them can come off, you
23 have ten inactive wells after that, if we assume that all of
24 the wells that you have listed off could be brought on to
25 production.

1 A. Yeah, uh-huh.

2 Q. Okay. And the four that were plugged, were not
3 plugged by Cross Border Resources, they were plugged by the
4 lessee.

5 A. Yes, correct.

6 Q. So what is -- and you testified as to the
7 resource issues for Cross Border Resources, you know, tell
8 me how Cross Border Resources could, based on your limited
9 resources and remaining number of inactive wells, how could
10 you in good faith agree that Cross Border Resources could
11 commit to a plugging schedule for those ten remaining wells?

12 A. Because it would be in conjunction with the sale.

13 Q. Well, the agreement, as you have proposed it, is
14 an agreement between OCD and Cross Border Resources. Right?
15 So Cross Border Resources would have to commit to a plugging
16 schedule that the, that the buyer would accept. Right?

17 A. Also part of that would be the sale of the --
18 it's all one deal. I mean, I'm not -- you are kind of
19 splitting hairs there. I'm not, I'm not saying that Cross
20 Border is agreeing to this solely in a vacuum. I mean, it's
21 in conjunction with a transaction that everybody is going to
22 be transparent about, but obviously you guys will have to be
23 fully aware of and know who the new entity is and it will be
24 transferable.

25 Q. What if the buyer backs out? OCD's agreement is

1 not with the buyer, what if the buyer backs out of the deal?

2 A. What if the buyer doesn't. I mean, these are
3 hypotheticals, I mean, you know --

4 Q. I will move on. That's okay, I will move on. So
5 the buyer, you said they are a well servicing company?

6 A. Yes.

7 Q. Have you disclosed the entity or the entity name
8 for that company to the Oil Conservation Division?

9 A. I have not, but I haven't talked to the Oil
10 Conservation Division directly myself anyway, so, no. I'm
11 not sure what Mr. Padilla has, I'm not sure what Mr. Padilla
12 has related to them, but I haven't talked to them at all.

13 Q. Is the, is the purchasing company, the
14 prospective buyer, are they registered with the Secretary of
15 State and, and have appropriate legal authorization to do
16 business in New Mexico?

17 A. My understanding is, yes, both of the proposed
18 entities that could be used in conjunction with the purchase
19 are, yes, and both licensed bonded operators, permitted
20 operators in New Mexico.

21 Q. They kept current with the Oil Conservation
22 Division?

23 A. To my understanding, yes.

24 Q. Do you know if they have existing bonding with
25 the Oil Conservation Division?

1 A. I was told they do. I didn't look it up or not,
2 but I was told they do.

3 Q. Okay. Do you have any reason to dispute a
4 representation that the Oil Conservation Division does not
5 know who that entity is?

6 A. I have no idea. I don't know what Mr. Padilla
7 related or not, did or didn't relate to you guys.

8 Q. Do you know, do you understand that if the buyer
9 doesn't have OGRID or appropriate bonding or has compliance
10 issues for any wells that they own, that that could pose a
11 problem for OCD approving transfer of operatorship?

12 A. Understood.

13 Q. Okay. And would you also agree that OCD needs to
14 know who that entity is so that they can do their due
15 diligence to look and see if they are registered as an
16 operator, to see if they have appropriate bonding, to see if
17 there is any other outstanding issues?

18 A. Yes, understood.

19 Q. So would you also agree that OCD needs to know
20 that information before it could in good faith enter into a
21 stipulated final order that it understands Cross Border
22 Resources could not live up to the event that the buyer
23 backs out.

24 A. Yes.

25 Q. Okay.

1 A. Yeah, I think that's an understood element of
2 this, that the buyer is going to be compliant as part of the
3 transaction, post transaction subject to the stipulated
4 order.

5 Q. Okay. I want to go back to just a couple of
6 quick questions about earlier in your testimony you had
7 indicated that there was some period of time that you were
8 not aware of this issue, but you had been made aware
9 personally of the issue related to the, to some litigation
10 that resulted in the plugging and abandonment of the State
11 32 wells. Is that correct?

12 A. No, I don't think it was the State 32 Wells. No,
13 when I became aware of the NOV hearing personally? Is that
14 what you are asking?

15 Q. Yes. So my understanding from your testimony
16 earlier was that you, you said that you were not aware
17 of -- I wasn't clear what you were saying. It sounded like
18 you were saying you were unaware of the NOV for some period
19 of time?

20 A. Yeah, I wasn't aware --

21 (Overtalk.)

22 A. Well, I was aware of the State Land Office
23 because they served me personally and it hasn't been that
24 long ago, maybe, maybe two weeks ago, a month ago, I don't
25 know, I would have to go back and look to see when it was,

1 whenever, because I guess there was an issue, potentially a
2 service issue, so they served me, I signed for it, I
3 obviously contacted the lawyer that represents me in New
4 Mexico and provided it to him.

5 Obviously he can't represent me and the company,
6 so the company sought outside counsel. Mr. Padilla was kind
7 enough to take it on. And then at that time, I was made
8 aware of the NOV hearing at that time. And obviously, as
9 Mr. Padilla said, he wasn't aware of the facts, so a lot of
10 the facts I personally wasn't aware of, so I had to
11 personally try to get up to speed so we could try and
12 convene and get the issue resolved.

13 **Q. So as of today when -- strike that. When did**
14 **you become aware of the notice of violation?**

15 A. I don't know specifically the day, but I did not
16 know there was a hearing or whatever the original hearing
17 date you said earlier, December the 2nd, 6th, whatever you
18 said.

19 So whenever -- probably a few days, three to
20 seven days prior to when Mr. Padilla entered his notice of
21 appearance is whenever I found out about it.

22 **Q. You testified earlier that you are pretty**
23 **familiar with the OCD permitting system; correct?**

24 A. I will say I know how to log in and look at it.
25 As it relates to, when we had to file some things for the

1 clean-up, I guess when we had to submit a sampling plan or
2 whatever it was at the time back then I was able to log in
3 and see the status of those specific plans that had been
4 submitted, because, I guess, I don't think anything was done
5 by paper. I think it was all done electronically at the
6 time, so that's how I -- that's what I was referencing.

7 Q. And approximately what period -- I don't expect
8 you to know the exact dates, but approximately what periods
9 of time was it that you were using the OCD permitting system
10 to update that sampling plan and that other Part 29
11 compliance?

12 A. 2015, '16, '17, something like that, somewhere in
13 those years. It wasn't like a regular thing, just a few
14 times.

15 Q. Okay. When is the last time you logged into OCD
16 permitting?

17 A. Personally? I mean, probably whenever that deal
18 was done, whenever that was, '16 or '17.

19 Q. Okay. Is there anybody else that would log into
20 OCD permitting on behalf of Cross Border Resources
21 Incorporated?

22 A. Yeah, they have a few -- a couple of ladies that
23 handle the regulatory filings and the production filings,
24 and they have logged in and they handle that. I don't, I'm
25 not involved in that.

1 Q. Okay. Are you aware of the rule requirements
2 under 19.15.9.8 that require the Division have a point of
3 contact and an address of record for Cross Border Resources?

4 A. I don't really know those specific rules, but I'm
5 sure that kind of he same with the secretary of state, you
6 guys probably have the same thing, I would assume.

7 Q. Okay.
8 (Overtalk.)

9 A. Address an e-mail.

10 Q. Yeah?

11 A. I mean, yeah.

12 Q. It's reasonable for OCD to require that, to
13 register as an operator, you need to give us your e-mail
14 address and your physical address; correct?

15 A. Correct. Correct.

16 Q. Okay.

17 HEARING EXAMINER BRANCARD: Mr. Tremaine, you
18 know, we are having a wonderful session here with
19 Mr. Barksdale about his company, but if we could keep it
20 focused on the subject of today's hearing, that would be
21 helpful. I'm glad you all are having a chance to work on a
22 negotiation today during the hearing, but --

23 MR. TREMAINE: So Mr. Hearing Examiner, that's
24 not my point. My point is that I thought we reached an
25 understanding that there was no notice issue earlier in the

1 hearing, and then Mr. Barksdale testified that he was
2 unaware of the notice of violation up to approximately the
3 date of the prehearing statement deadline which would have
4 been on or around November 24. So my questions are directed
5 at that. I'm simply --

6 THE WITNESS: I'm not the only person -- I'm no
7 the -- you are acting like I'm the only person. They do
8 have other people that -- I mean, I'm a board member. I'm
9 not an officer or employee of the company, and never have
10 been. So I was telling you about me personally. I wasn't
11 speaking on behalf the company and who received it and who
12 acknowledged it, I don't even know who signed for it, I
13 don't -- I have no idea. I didn't sign for it. If I did,
14 I obviously have forgotten, but I'm not aware that I signed
15 for it. And if I had known about it, it would have been
16 addressed.

17 HEARING EXAMINER BRANCARD: Mr. Tremaine, Mr.
18 Padilla has said already that there is not a notice issue,
19 so I don't know -- I don't know that you need to create one.

20 MR. TREMAINE: Okay, I will move on.
21 Mr. Barksdale put into the record that didn't receive
22 notice, and he is the address of record in OCD's permitting
23 system, so I'm not sure who we are supposed to communicate
24 with.

25 MR. PADILLA: Let me interject, you can

1 communicate with me because I represent Cross Border at this
2 point. I think we are in this proceeding, and I would be
3 the appropriate person to communicate with concerning the
4 issues of this case.

5 MR. TREMAINE: I'm ready to move on. I was
6 simply seeking to address the reopening of the notice issue
7 by Mr. Barksdale's testimony, but if we are moving forward
8 with there being no notice issue, then I'm done with my
9 cross.

10 HEARING EXAMINER BRANCARD: Thank you. Mr.
11 Padilla, any redirect?

12 MR. PADILLA: No.

13 HEARING EXAMINER BRANCARD: All right. Mr.
14 Padilla, do you have other witnesses or other evidence you
15 want to present today?

16 MR. PADILLA: No. We're not prepared at all
17 today pending, pending some kind of listing and evaluation
18 of the wells to figure out which wells have to be plugged
19 and abandoned and which should be put back into production.
20 I think that's -- as Mr. Barksdale has testified, he
21 estimates that it's going to take about two weeks to get all
22 of that done, and that's part of due diligence in an oil and
23 gas transaction.

24 So at any rate, I think we are just here at, at
25 best, asking for delay in issuance of an order until we work

1 out something with the OCD and satisfy with the OCD with the
2 purchaser information.

3 HEARING EXAMINER BRANCARD: Yeah, Mr. Padilla,
4 just what I guess what I would like is for you to summarize
5 the position of your client, and then I will ask
6 Mr. Tremaine to summarize what his position is, and then we
7 can see where to go from here.

8 HEARING EXAMINER BRANCARD: Well, Mr. Examiner,
9 as we -- as I mentioned to begin with, Cross Border is
10 willing to enter into a stipulated agreement once we have
11 some kind of a workable schedule and something approved by
12 the OCD that's not unrealistic so that we can bring, so that
13 the buyer -- and the buyer has to agree to all of this.

14 I don't think it's that contention, I think that
15 the buyer needs to be aware that if 20 wells need to be
16 plugged and abandoned, he is going to do that. It's not
17 black and white under the rule. If you are going to take it
18 as black and white under the rule, then clearly Cross Border
19 is in violation, but I think Cross Border is here now in
20 good faith trying to comply.

21 And whether or not the, the NOV was issued in
22 August, and we are now in hearing in December, I don't want
23 to argue about the notice issues and all of that. We are in
24 this hearing and we are trying to comply, and I think we
25 need some time to come up with a plan that would satisfy the

1 Division, not only with respect to who is going to buy it,
2 what entity is going to buy it, but also with a list of
3 wells that will be brought back in and which wells are going
4 to be plugged and abandoned with some kind of a reasonable
5 time frame.

6 I'm not suggesting, and I don't think the OCD
7 would agree to some drawn-out schedule. So that's really
8 where we're at, and you know, when I had discussions with
9 Mr. Tremaine yesterday, I know he is pressured to get this
10 hearing done, but some of the testimony that was elicited
11 from Mr. Jackson, he wasn't sure in terms of what sanctions
12 were applicable and, you know, that's not his job, but -- to
13 amend prehearing statements, but I think there is some
14 notice issues or due process issues in terms of adding
15 stuff.

16 I'm sure that by next week there are going to be
17 other wells that may be on this list, but we need to take
18 all 61 wells and identify which are going to be plugged and
19 abandoned and do a schedule and then bring some it to -- as
20 well as to comply with bonding requirements. That's -- it's
21 pretty simple.

22 HEARING EXAMINER BRANCARD: All right. So let me
23 try to narrow this down here. Are you asking for a
24 continuance, are you asking for a delay in the issuance of
25 an order for a set period of time?

1 MR. PADILLA: Well, a continuance would be a good
2 idea given the uncertainty as to which wells have -- need
3 to be plugged and abandoned. We acknowledge that a lot of
4 those wells have already been identified. The buyer has to
5 make the same acknowledgement, but the transaction is
6 essentially liabilities consideration. And so I will leave
7 that to the discretion of the Division and the Examiner here
8 as to whether or not a continuance would be appropriate.

9 And I think coming back in a month would be
10 probably a wise thing to make sure that -- and probably by
11 that time we will have negotiated a stipulated order of some
12 sort.

13 HEARING EXAMINER BRANCARD: Thank you.
14 Mr. Tremaine, please sum up what your position is. I think
15 you're on mute.

16 MR. TREMAINE: Too many mute buttons, my
17 apologies. I wanted to circle back because you indicated
18 earlier you might a question for me at some point about the
19 civil penalties, and you know, the, the -- specifically the
20 financial assurance civil penalty, the bottom line there is
21 it should be two different violations and two different
22 civil penalties because they are two different provisions
23 and both the same base rate, \$250 per well, and it could be
24 applied per day.

25 But what it boils down to, this is one of the

1 first ones that we drafted, and I should have made it two
2 different civil penalties, and I didn't. I made it one
3 civil penalty when we drafted the notice of violation, so
4 they get a break.

5 And we realized that, I realized that after, and
6 we didn't change it because that's what was in the notice of
7 violation. I think that's substantively quite different
8 from a situation where we are updating the status of the
9 violations with the inactive wells. Because what happens
10 there is you've got a compliance period set forth in the
11 NOV, and then rather than attempting in any way to come into
12 compliance, they are going in the wrong direction.

13 So I think those are quite different, and that's
14 why there is not two different civil penalties proposed,
15 rather it was just escalated for the noncompliance during
16 that period.

17 The civil penalty guidelines for -- which have
18 been published by the OCD for quite some time have a
19 19.15.8.9, like a single penalty listed. I think it should,
20 it should appropriately be two, but based on that guidance
21 at the time, that's how it was drafted, and that's why it
22 wasn't change to update. And that's why, since it's
23 covering both categories, why it's listed as the 30 wells
24 for the blanket FA violation or the single well violation
25 for the total number of qualifying wells. There would be a

1 separate one for the 11 inactive wells if we had proposed
2 that originally.

3 I also want to the address the compliance period
4 in the NOV. As you're aware, the original hearing has to be
5 set within 90 days of the date of the NOV. The informal
6 resolution period is automatically for 30 days. So the
7 initial compliance period necessarily has to be less than 90
8 days, and it makes sense to make it 30 days to comport with
9 the informal resolution period. So that's why that initial
10 period of compliance for plugging and abandonment of the
11 wells was 30 days.

12 That's consistent with what OCD has done across
13 the board, and I don't think it, the argument that that is a
14 period of time that is unreasonable, I don't think that
15 that's a very weighty argument because the problem was
16 created by the operator. They had the prior 15 months to
17 bring those wells into compliance and they didn't do that.
18 So it's not strictly a 30-day period, it's 30 days after the
19 NOV during which they can come into compliance and either
20 resolve the NOV or avoid the escalated civil penalties.

21 The position of the OCD is essentially that the
22 violations that we are talking about, even though the number
23 of inactive wells under 19.15.5.9 have changed. The
24 violation is the same. Cross Border Resources is dead on
25 notice as a violation for, for a period of approximately

1 four months now. There has been no activity to address
2 that.

3 As of today, they don't have a comprehensive list
4 of the well status, what work needs to happen for each of
5 the wells in order to bring them into compliance. We have
6 heard representations that as many as ten of the inactive
7 wells could be brought into production, but there is no
8 documentation to support that.

9 And I think it's a reasonable position to be
10 skeptical that that will happen in the next week or two
11 weeks because they haven't done it in the intervening 15
12 months plus the four months under which the NOV has been
13 active.

14 OCD doesn't have any information about the
15 operator. There is some information disclosed to
16 Mr. Padilla, so I don't mean to discredit that or to
17 indicate that he is not communicating, but the individual's
18 name doesn't assist OCD in looking at the legal entities
19 which would assume operatorship.

20 And it's very difficult to reach an agreement
21 where the buyer is not involved in that agreement, at least
22 not at this stage. And the testimony that we have heard
23 today is that Cross Border Resources doesn't have the
24 ability to meet their plugging liability at this point in
25 time.

1 So while OCD will consider any additional
2 information that, that Mr. Padilla provides in regards to,
3 you know, a potential agreed final order, we will happily
4 incorporate any and all of that information but I do not
5 think that an extended delay before issuance of an order
6 would be appropriate, because while there are
7 representations to date, there is absolutely zero
8 information that would allow OCD to actually agree to terms
9 with Cross Border Resources.

10 You are muted now.

11 HEARING EXAMINER BRANCARD: I think we are at the
12 end of the hearing today, or maybe I should have stayed
13 muted, I'm not sure. I thank everyone for their
14 participation. I -- so, you know, these violations are
15 always difficult situations with operators with large
16 numbers of wells and coming in and out of bankruptcy and
17 trying to reorganize, it's a challenge.

18 I would say that the director has sufficient
19 information based on the testimony today to move forward
20 with an order on the original notice of violation. That's
21 what we here for, we are here for a hearing on that notice
22 of violation.

23 So it would be, in terms of the inactive wells,
24 it would be the 13 wells listed in that notice of violation.
25 The Division is always free to issue additional NOV's in good

1 time for further violations.

2 What I will recommend to the director is delaying
3 a decision until January 20, which is a hearing date. And
4 if there is no further action at that point from any party,
5 or I will say, more importantly, any joint action from any
6 of the parties, the director will move ahead with an order
7 at that point.

8 On the issue of the exhibits, Exhibit 11 will be
9 admitted, the inactive well list, solely for the purpose of
10 demonstrating the wells which were in the original NOV are
11 still in that.

12 Exhibits 12 and 13 are admitted, but the reality
13 is that it's the director's decision based on the evidence
14 and the testimony and the facts to determine what is an
15 adequate and reasonable penalty using the penalty guidance
16 that the Division has.

17 (Exhibits 11, 12, 13 admitted.)

18 HEARING EXAMINER BRANCARD: So the director will
19 view, essentially, these as options for penalties amounts,
20 but will make her own decision about what the adequate
21 penalties should be for the violations if she finds there
22 are violations.

23 And so that's how the director will move forward.
24 As for what can come from the parties, really, there is
25 going to be an order unless there is something jointly filed

1 by the parties. That could be stipulated by order which
2 would put all of this to an end, hopefully, or it could be a
3 request to reopen the case, or could be a request for little
4 more time to work something out, but it has to be a joint
5 request. Okay?

6 So I'm really pushing the parties, if you are
7 going to stop there being an order issued, it's got to be
8 based on working together and coming to an agreement.

9 So based on that, are there any questions?

10 MR. PADILLA: None from me.

11 MR. TREMAINE: None.

12 HEARING EXAMINER BRANCARD: Appreciate all your
13 efforts today. The enforcement hearings are new and a
14 learning experience for all us, so we will continue to work
15 through them. Thank you.

16 MR. PADILLA: Thank you.

17 HEARING EXAMINER BRANCARD: Mr. Tremaine, before
18 I let you go, I believe you were submitting proposed orders
19 from the December 1 docket; is that correct?

20 MR. TREMAINE: Yes, they are forthcoming very
21 shortly.

22 HEARING EXAMINER BRANCARD: All right. The
23 current hearing examiner will not be working on them, I will
24 be working on them, so make sure I'm copied on those
25 proposed orders?

1 MR. TREMAINE: Thank you.

2 HEARING EXAMINER BRANCARD: Anything else for the
3 good of the cause on December 16, 2021?

4 (No audible response.)

5 HEARING EXAMINER BRANCARD: If not, happy
6 holidays. In the future everyone will be required to have
7 holiday ties around this time of year, so please be aware.
8 Thank you everyone. Happy holidays.

9 (Hearing concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, PAUL BACA, New Mexico Certified Court
7 Reporter, do hereby certify that I reported the foregoing
8 virtual proceedings in stenographic shorthand and that the
9 foregoing pages are a true and correct transcript of those
10 proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
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13 and that I have no interest in the final disposition of this
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