

Case No.
13237

1

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

CONTINUED AND DISMISSED CASES

RECEIVED

APR 29 2004

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

April 15th, 2004

Santa Fe, New Mexico

These matters came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, April 15th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

I N D E X

April 15th, 2004
Continued and Dismissed Cases

	PAGE
REPORTER'S CERTIFICATE	7

* * *

1 WHEREUPON, the following proceedings were had at
2 8:18 a.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order. Please note today's date, April 15th, 2004, Docket
5 Number 11-04. I'm Michael Stogner, appointed Hearing
6 Officer for today's cases.

7 Continuances and dismissals.

8 Let's start with page 2 on top, Case 13,249, this
9 is the Application of Thunderbolt Petroleum to increase the
10 maximum surface injection pressure on a waterflood in Eddy
11 County, New Mexico. This case will be continued to June
12 10th.

13 The one below it, Case 13,232, is the Application
14 of Marbob Energy Corporation for an order authorizing the
15 drilling of a well in the potash area, Eddy County, New
16 Mexico. This case will be continued to April 29th.

17 Let's go down to the fourth one on page 2, that's
18 Case 13,245, which is the Application of Yates Petroleum
19 Corporation for compulsory pooling, Eddy County, New
20 Mexico. This case will be dismissed.

21 Down at the bottom, Case 13,236, this is the
22 Application of Preston Exploration, L.L.C., for compulsory
23 pooling, Eddy County, New Mexico. This case will be
24 continued to April 29th.

25 On page 3, this is the Application of Preston

1 Exploration, L.L.C., for compulsory pooling, Eddy County,
2 New Mexico, which is Case 13,246. This case will be
3 dismissed also.

4 The next one, Case 13,165, this is the
5 Application of the Oil Conservation Division for an order
6 requiring EnergyPro, Inc., to properly plug a certain well
7 in Lea County, New Mexico. This case will be continued to
8 May 13th.

9 Let's go over to page four. Case 13,238, this is
10 the Application of Vernon E. Faulconer and Faulconer
11 Energy, General Partner, L.L.C. This is a request for an
12 emergency order in Eddy County, New Mexico. This case will
13 be dismissed.

14 Are there any other continuances and/or
15 dismissals at this time?

16 MR. BRUCE: Mr. Examiner, on page 1 --

17 EXAMINER STOGNER: Page 1.

18 MR. BRUCE: -- the first Concho Resources case.

19 EXAMINER STOGNER: That's Case 13,218?

20 MR. BRUCE: Yes, sir. I would request that that
21 be continued for four weeks.

22 EXAMINER STOGNER: Four weeks. Okay, I didn't
23 bring my calendar. What's that going to be continued to?
24 May 13th?

25 MR. BRUCE: May 13th.

1 EXAMINER STOGNER: Okay, at the request of Concho
2 Resources, Case 13,218 will be continued May 13th.

3 MR. BRUCE: And then the next case, 13,217 --

4 EXAMINER STOGNER: Yes.

5 MR. BRUCE: -- this case has been heard. Mr.
6 Carr represented a certain interest owner, and we are
7 waiting for the final agreement between Concho, now
8 Chesapeake, and Mr. Carr's client to be signed. I'd ask
9 that the case be continued for two weeks and then be taken
10 under advisement at that time.

11 EXAMINER STOGNER: Okay, so one more time, Case
12 13,217, which is the Application of Concho Resources, Inc.,
13 for compulsory pooling. Mr. Carr's in the room. Who did
14 you represent in that case?

15 MR. CARR: I represent Derrel Melton, who is a
16 working interest owner. We have been talking with Concho.
17 We now have agreed to the terms of a term assignment, and
18 also have completed a side agreement concerning the well
19 location. The documents are just pending approval by the
20 Concho management at this time, and we are -- we believe
21 we'll have them easily signed within the next two weeks.

22 MR. BRUCE: And then in two weeks we'd ask that
23 it be taken under advisement. There were several other
24 small interest owners who still need to be pooled.

25 EXAMINER STOGNER: Okay, at the request of the

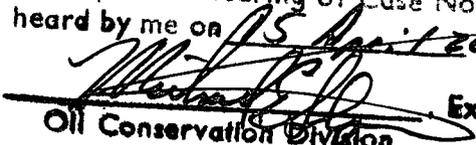
1 Application, and with the agreement of Mr. Carr's clients,
2 Case 13,217 will be continued to April 29th.

3 Any other continuances or dismissals?

4 Before I call the first case today, I had a
5 request by the Applicant in Case 13,237 -- that's over on
6 page 3 -- that they would not be here until 1:30. So
7 whatever happens this morning, we will take a recess till
8 1:30 to hear Case 13,237. So if anybody is in the room
9 just for that case, feel free to leave, and we can see you
10 at 1:30. With all the dismissals and continuances, I
11 anticipate the other cases, we will be done by this
12 morning.

13 (Thereupon, these proceedings were concluded at
14 8:21 a.m.)

15 * * *

16
17
18 I do hereby certify that the foregoing is
19 a complete record of the proceedings in
20 the Examiner hearing of Case No. 13237
21 heard by me on 15 April 2004.
22  Examiner
23 Oil Conservation Division
24
25

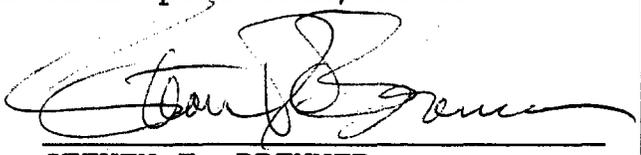
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL April 15th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006

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:)
APPLICATION OF J.C. WELL SERVICE, INC.,)
FOR AN ORDER OF THE DIVISION RESCINDING)
THE APPROVALS OF C-104A CHANGE OF)
OPERATOR FORMS ISSUED BY THE DISTRICT 3)
OFFICE ON CERTAIN WELLS IN SAN JUAN)
COUNTY, NEW MEXICO)

CASE NO. 13,237

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

RECEIVED

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

APR 29 2004

April 15th, 2004

Santa Fe, New Mexico

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, April 15th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

April 15th, 2004
 Examiner Hearing
 CASE NO. 13,237

	PAGE
EXHIBITS	3
APPEARANCES	5
OPENING STATEMENTS:	
By Mr. Hall	7
By Ms. MacQuesten	9
By Mr. Montoya	10
APPLICANT'S WITNESS:	
<u>JOHN CUNNINGHAM</u> (Owner/operator, J.C. Well Service and R&J Enterprises) Direct Examination by Mr. Hall	13
Cross-Examination by Ms. MacQuesten	29
Examination by Mr. Montoya	34
Redirect Examination by Mr. Hall	49
Recross-Examination by Ms. MacQuesten	52
Further Examination by Mr. Hall	55
Examination by Examiner Stogner	56
Further Examination by Ms. MacQuesten	58
DIVISION WITNESS:	
<u>FRANK T. CHAVEZ</u> (District Supervisor, Aztec District Office, District 3, NMOCD) Direct Examination by Ms. MacQuesten	72
Cross-Examination by Mr. Hall	100
Examination by Mr. Montoya	113
Examination by Examiner Stogner	117
Further Examination by Mr. Hall	130
Further Examination by Mr. Montoya	134
REPORTER'S CERTIFICATE	140

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	7, 16, 28	29
Exhibit 2	15, 17	29
Exhibit 3	18	29
Exhibit 4	18	29
Exhibit 5	19	29
Exhibit 6	20	29
Exhibit 7	20	29
Exhibit 8	21	29
Exhibit 9	24	29
Exhibit 10	24	29
Exhibit 11	26	29
Exhibit 12	28	-
Exhibit 23	22	29

* * *

Division	Identified	Admitted
Exhibit 1	74	100
Exhibit 2	77	100
Exhibit 3	80	100
Exhibit 4	80, 83	100
Exhibit 5	80	100
Exhibit 6	80	100
Exhibit 7	80	100
Exhibit 8	80	100
Exhibit 9	80	100
Exhibit 10	93, 94	100
Exhibit 11	93, 94	100
Exhibit 12	93, 95	100

(Continued...)

E X H I B I T S (Continued)

Division	Identified	Admitted
Exhibit 13	93, 95	100
Exhibit 14	93, 95	100
Exhibit 15	96	100
Exhibit 16	91	100

* * *

Action Oil	Identified	Admitted
Exhibit A	40	41
Exhibit B	40	41
Exhibit C	42	42
Exhibit D	42	42
Exhibit E	43	43

* * *

Additional submissions by Applicant, not offered or admitted:

	Identified
Hearing Memorandum	60
Exhibit 13	65
Exhibit 14	68
Exhibit 15	68
Exhibit 16	69
Exhibit 17	69
Exhibit 18	69
Exhibit 19	70
Exhibit 20	70
Exhibit 21	71
Exhibit 22	71
Exhibit 24	29

* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

MILLER, STRATVERT P.A.
150 Washington
Suite 300
Santa Fe, New Mexico 87501
By: J. SCOTT HALL

FOR ACTION OIL COMPANY, INC., AND CARMEN WOOD:

ATKINSON & KELSEY, P.A.
City Place Suite 2000
2155 Louisiana NE
Albuquerque, New Mexico 87110
By: THOMAS C. MONTOYA

* * *

1 WHEREUPON, the following proceedings were had at
2 1:35 p.m.:

3 EXAMINER STOGNER: This hearing will come to
4 order. We recessed at about ten o'clock this morning to
5 1:30, and at this time I'm calling Case 13,237. This is
6 the Application of J.C. Well Service, Inc., for an order of
7 the Division rescinding the approvals of C-104A Change of
8 Operator forms issued by the District III Office on certain
9 wells in San Juan County, New Mexico.

10 At this time I'll call for appearances.

11 MR. HALL: Mr. Examiner, Scott Hall, Miller
12 Stratvert, P.A., Santa Fe, on behalf of the Applicant, J.C.
13 Well Service, Inc., and I have one witness this afternoon.

14 EXAMINER STOGNER: Other appearances?

15 MS. MacQUESTEN: Mr. Examiner, Gail MacQuesten on
16 behalf of the Oil Conservation Division. I have one
17 witness.

18 EXAMINER STOGNER: Any other appearances?

19 MR. MONTOYA: Yes, good afternoon, my name is Tom
20 Montoya. I'm an attorney in Albuquerque, New Mexico, with
21 Atkinson and Kelsey, P.A. I represent Action Oil Company,
22 Inc., and Carmen Wood who is the owner of that company.

23 EXAMINER STOGNER: Okay. Do you have any
24 witnesses today, Mr. Montoya?

25 MR. MONTOYA: None that's anticipated.

1 EXAMINER STOGNER: Okay. Any other appearances?
2 Okay, I would like the two witnesses to stand at
3 this time to be sworn.

4 (Thereupon, the witnesses were sworn.)

5 EXAMINER STOGNER: Okay, before we get started,
6 is there any need for opening remarks at this time?

7 MR. HALL: Briefly, Mr. Examiner, if I might
8 proceed.

9 EXAMINER STOGNER: Please.

10 MR. HALL: Mr. Examiner, in this case we will
11 explain to you that J.C. Well Service, Incorporated, my
12 client, is the operator of those wells that are shown under
13 Exhibit Tab 1 in your exhibit notebook. There's a
14 multitude of wells that are located on three tribal leases
15 in San Juan County, New Mexico. There are two Navajo
16 leases and one Ute Mountain Ute lease.

17 We'll explain to you how J.C. Well Service and
18 its affiliates acquired title to the leases in 1997 and
19 that it has operated the leases since early 1998.

20 We'll also demonstrate to you that in about 2001-
21 2002, my client assigned the Ute Mountain Ute tribal lease
22 to BIYA Operators, Incorporated, and now they are the
23 operator of the wells located on the Ute Mountain Ute
24 lease.

25 We will also demonstrate to you that in 2002,

1 five years after my client acquired the wells and began
2 operating them, the former wife of the president of the
3 former operator of these wells and leases, Action Oil
4 Company, obtained ownership of that corporation, which had
5 zero assets, through a divorce proceeding, and subsequently
6 that individual turned around and sued my client, in the
7 11th Judicial District Court in Aztec.

8 In an attempt to have the lease assignments from
9 Action Oil, Incorporated, to R.J. Enterprises, my client's
10 affiliate company, J.C. Well Service rescinded and restored
11 in the name of action oil company.

12 We'll also demonstrate to you that while that
13 litigation in Aztec was pending, the current president of
14 Action Oil Company had the Division's District 3 Office
15 approve C-104A Change of Operating Forms to show Action Oil
16 Company as the current operator of each of the wells, even
17 though Action Oil Company on information I believe has no
18 assets, has no staff, has no technical expertise, doesn't
19 even have an office.

20 We'll establish that the C-104A's were filed
21 without the knowledge of the current operator, J.C. Well
22 Service, and without their approval. And we will argue to
23 you, Mr. Examiner, that that submission, the filing of that
24 C-104A, was improper, it was an abuse of the Division's
25 processes.

1 We will then ask you to enter an order setting
2 aside that approval and have the Division records corrected
3 to reflect that J.C. Well Service, the actual operator of
4 the wells, is the operator on the Division's records.

5 That concludes my remarks, Mr. Examiner.

6 EXAMINER STOGNER: Ms. MacQuesten?

7 MS. MacQUESTEN: Mr. Examiner, the facts that you
8 will hear today may be somewhat complex and detailed, but
9 the issue for you to decide is relatively simple. The
10 issue is, who is the appropriate operator for these wells?

11 The Division believes that they acted correctly
12 in changing the operator to Action Oil Company, for both
13 legal reasons and practical reasons.

14 The legal reasons are this: All of these leases
15 are on tribal land. By federal law, the Bureau of Indian
16 Affairs, the BIA, is responsible for leasing lands and
17 recognizing assignments of leases. They determine who the
18 operator of the lease is. And their determination is
19 recognized by other federal entities, such as the BLM and
20 the EPA. In this case, Action Oil Company is the operator
21 of record according to the BIA and is recognized as such by
22 not only the BIA but the BLM and the EPA.

23 That leads to the practical reasons for
24 recognizing Action Oil as the operator in this case. We
25 coordinate our enforcement efforts with those federal

1 agencies, the EPA and the BLM. We need to recognize the
2 same operator as those entities to enable us to coordinate
3 our enforcement efforts.

4 And another practical reason is that the BIA
5 administers the bonding or financial assurances for wells
6 that are under their jurisdiction. The bond is held in the
7 name of Action Oil Company. Again, for us to coordinate
8 our enforcement actions, all of these entities need to
9 recognize the same operator, and that is Action Oil.

10 EXAMINER STOGNER: Thank you. Mr. Montoya?

11 MR. MONTOYA: Yes, Mr. Examiner, you know, based
12 upon the statements I've provided here of Mr. Hall on
13 behalf of his client, I would ask leave of the Examiner to
14 have Carmen Wood testify in rebuttal, if I may be permitted
15 to do that, and retract the earlier statement that I made
16 that there will be no witnesses. This is just a possible
17 rebuttal.

18 EXAMINER STOGNER: Okay.

19 MR. MONTOYA: Thank you.

20 EXAMINER STOGNER: What I will do is, if you
21 still find it necessary to call Ms. Wood -- whoever your
22 person is -- as a witness, we will swear them in at that
23 time. So help me remember that. I won't swear them in at
24 this point until we get them up on the witness stand. But
25 you may do so and present that person at the appropriate

1 time.

2 MR. MONTOYA: Thank you. And probably more
3 lengthy than needed to be the case, on April the 12th,
4 which I believe was Monday, we submitted to you and to
5 counsel a position statement, or a prehearing statement,
6 that essentially contains the position of Action Oil
7 Company, Inc., and Carmen Wood. And we certainly agree
8 with Ms. MacQuesten's statements and position.

9 And I think that the key issue here is that the
10 wells and oil leases involved are all on Indian land. And
11 because they are all on Indian land, what is required for
12 approval of the operating rights on Indian land is the
13 approval of the United States Government, the approval
14 which comes through the Department of the Interior through
15 the Bureau of Indian Affairs, and the approval of the two
16 Indian tribes that are at issue. That would be the Navajo
17 Nation and the Ute Mountain Ute Tribes, because these
18 leases and wells are all -- the applicable ones -- are all
19 on Indian land.

20 And what we have provided here -- and I think
21 this is what Ms. Wood provided personally and individually,
22 it wasn't through our office -- but she provided the Oil
23 Conservation Division with the correspondences from the
24 Bureau of Indian Affairs, which are included in the
25 prehearing statement, which are to the effect that as far

1 as the Department of the Interior is concerned, that Action
2 Oil, Inc., continues to be the lessees of record of all the
3 wells and leases that are involved in this case. And we
4 feel that those are the crucial documents. That has not
5 changed.

6 The same as to the effect of the Navajo Nation
7 and with respect to the Ute Mountain Ute Tribe, there is an
8 application pending before the Ute Mountain Ute Tribe for
9 approval of assignments, which to this date has not yet
10 occurred.

11 With respect to the litigation, briefly, there is
12 litigation that is ongoing in the Eleventh Judicial
13 District, whereby Action Oil, Inc., has requested the
14 District Court to rescind the contract that is the basis of
15 the Applicant's claim to operator rights here today. The
16 court, as Mr. Hall has indicated, has denied that request
17 for rescission, and it is still pending. It's not a final
18 order, because the court has the authority right now to
19 change its position on that, and that matter is pending.
20 If the court does not change its position on that, then it
21 will become a final, appealable order, and then an appeal
22 is anticipated. So that is as far as state law is
23 concerned.

24 As far as state law is concerned, the district
25 court judge has not rescinded the contract under which Mr.

1 Cunningham derives his rights under state law. We feel
2 that because federal law is controlling here, and because
3 the matters concern leases on Indian lands, that that is
4 what is going to be controlling with respect to the
5 operation of the wells themselves.

6 The position that Action Oil has taken before the
7 court, and will take in the appellate court as well, is
8 that these leases do not become effective at all under
9 federal law until they have been approved by the Department
10 of the Interior, and we submitted authority with respect to
11 that statement as well in the prehearing statement.

12 Thank you.

13 EXAMINER STOGNER: Mr. Hall, you may call your
14 witness.

15 MR. HALL: At this time, Mr. Examiner, we call
16 John Cunningham to the stand.

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

20 DIRECT EXAMINATION

21 BY MR. HALL:

22 Q. For the record, please state your name, sir.

23 A. John Cunningham.

24 Q. And where do you live, Mr. Cunningham?

25 A. 1604 East 30th, Farmington, New Mexico.

1 Q. By whom are you employed and in what capacity?

2 A. I own and operate J.C. Well Service and R&J
3 Enterprises.

4 Q. All right. You have not testified before the
5 Division or any of its Examiners?

6 A. I don't believe I have, no.

7 Q. Okay. Are you familiar with the Application
8 that's been filed on your behalf in this case?

9 A. Yes, I am.

10 Q. And are you familiar with the lands that -- the
11 three leases that are the subject of the Application?

12 A. Yes, I am.

13 Q. And the wells?

14 A. (No response)

15 Q. First of all, if you would explain to the
16 Examiner, you've mentioned two companies, J.C. Well
17 Service, Incorporated, and R&J Enterprises. Explain each
18 one.

19 A. J.C. Well Service is a well-servicing company and
20 we do well-service work, plug wells and so forth. R&J
21 Enterprises is an operating company we operate some wells
22 under.

23 Q. All right. In this case, you've already heard
24 mention that there have been some contractual agreements
25 with Action Oil Company for the transfer and assignment of

1 some lease interests.

2 A. Yes.

3 Q. Were those lease interests assigned to R.J.
4 Enterprises, if you can recall?

5 We'll get to that. Let's look at Exhibit 2,
6 briefly.

7 A. Yes, they were.

8 Q. What is Exhibit 2? Is that an assignment?

9 A. It's an assignment and bill of sale, conveyance.

10 Q. Is that from Action Oil, Incorporated, to you
11 individually?

12 A. Yes.

13 Q. Now as lease owner, are the properties operated
14 through your company, J.C. Well Service?

15 A. That's correct.

16 Q. How long has J.C. Well Service been in existence?

17 A. Since 1975.

18 Q. All right. And how long have you worked in the
19 San Juan Basin?

20 A. Since 1968.

21 Q. Tell the Examiner what you've done over the years
22 in the San Juan Basin.

23 A. I've worked in production, drilling, plugging,
24 about all phases of the oil business.

25 Q. And have you worked on Indian lands in the past

1 as well?

2 A. Yes, I have.

3 Q. Have you worked for the OCD?

4 A. Yes.

5 Q. What have you done for them?

6 A. I've plugged some wells for the OCD.

7 Q. And BLM?

8 A. Yes.

9 Q. You've plugged wells for the BLM as well?

10 A. Under the BLM auspices. I mean, not directly for
11 BLM, but I've plugged wells that BLM was supervising.

12 Q. I see. And are you also a producer?

13 A. That is correct.

14 Q. Okay. If you'll look back under Exhibit Tab 1,
15 is that a complete list of all the wells that are on the
16 three Indian leases we're dealing with here today?

17 A. Yes, I believe it is. Yes.

18 Q. And how long have you actually been operating
19 these wells?

20 A. Since January of 1998.

21 Q. Who was the previous operator?

22 A. Action Oil.

23 Q. Explain to the Hearing Examiner how you came to
24 acquire these properties from Action Oil.

25 A. I had done a little work for Gene Burson.

1 Q. Who is Gene Burson?

2 A. He's the president of Action Oil Company.

3 Q. Okay, what work were you doing?

4 A. We were just pulling his wells. We plugged some
5 wells for him and this sort of thing, and he called me and
6 told me that they were in the process of plugging all that
7 stuff out and they wanted to get rid of it.

8 Q. And you're talking about these three leases?

9 A. These leases, yes.

10 Q. All right.

11 A. Wanted to know if I had any interest in them.

12 Q. All right.

13 A. And I evaluated the deal and told him I would try
14 to work something out.

15 Q. All right. And when you say "the deal", turn
16 back again to Exhibit Tab 2. Is this the assignment, bill
17 of sale and conveyance that resulted from your agreement to
18 purchase?

19 A. That's correct, that's correct. It is.

20 Q. Let's look under Exhibit Tab -- Oh, by the way,
21 let me ask you, is the assignment filed of record with the
22 San Juan County Clerk's Office?

23 A. It is.

24 Q. And so this is the instrument by which you
25 acquired title?

1 A. Yes.

2 Q. Let's look under Exhibit Tab 3. We've already
3 established we're talking about three tribal leases here.
4 Are those shown under Exhibit Tab 3?

5 A. Yes, they are.

6 Q. So you have a Navajo lease -- the final prefix is
7 Lease Number 639 -- followed by the lease prefixed Number
8 90 -- I'm sorry, that's the Ute lease. The second Navajo
9 lease is last prefix number 903. So it's 639, 903, and for
10 the Utes it's 90; is that correct?

11 A. That's correct, yes.

12 Q. Now, let's look under Exhibit Tab 4. Can you
13 identify that for the Hearing Examiner, please?

14 A. It's the papers I filed with the Oil Conservation
15 Division to show the transporter -- who's going to
16 transport the crude.

17 Q. All right. Is this a C-104 form?

18 A. Yes, it is.

19 Q. And was it filed in approximately August of 1998?

20 A. Yes.

21 Q. And does it also show a change of operator from
22 Action Oil, Incorporated, to J.C. Well Service?

23 A. It does.

24 Q. And at the bottom, very bottom of the form, who
25 executed that?

1 A. Gene Burson, President, Action Oil Company.

2 Q. And that was subsequently approved by the OCD on
3 August 5th, 1998; is that reflected there?

4 A. That's what -- Yes.

5 Q. And the remainder of the C-104's under that tab,
6 are these the C-104's for the remaining wells on the three
7 tribal leases we're talking about?

8 A. Yes, that's what they are.

9 Q. Now, to your knowledge, in the case of those
10 C-104's, did the OCD actually approve those change of
11 operators before the tribal lease assignments were approved
12 by the BIA?

13 A. I believe so, yes.

14 Q. Okay. Did the approval of the C-104's in 1998
15 trigger the use by the State of the OGRID number for J.C.
16 Well Service?

17 A. Yes, it did.

18 Q. All right. Now, what happened to the Ute
19 Mountain Ute lease?

20 A. It went to BIYA Operators.

21 Q. All right, let's look under Exhibit Tab 5. Is
22 that a copy of the assignment of mining lease for the
23 assignment of the Ute Mountain Ute tribal lease from you to
24 BIYA Operators?

25 A. Yes, I believe it is.

1 Q. Now, let's look at Exhibit Tab 6. Is that a copy
2 of the C-104A indicating a change of operator for the wells
3 located on the Ute Mountain Ute lease from J.C. Well
4 Service, Incorporated, to BIYA Operators?

5 A. Yes, that's what it is.

6 Q. And did you approve that change of operator?

7 A. Yes, I did.

8 Q. If you know, has this been submitted to the OCD's
9 District 3 office in Aztec?

10 A. I'm sure that it has.

11 Q. After Action Oil Company assigned the Navajo and
12 Ute leases to you in 1998, did you have any further
13 dealings with Action or Mr. Burson?

14 A. No.

15 Q. What is the status of the tribal assignment forms
16 for the Navajo leases?

17 A. They're in their possession, along with the
18 Navajos.

19 Q. Have you submitted requests to the BIA that those
20 assignments be approved?

21 A. Yes.

22 Q. And to date have they been approved?

23 A. No.

24 Q. Let's look at the exhibit under Exhibit Tab 7.
25 Is that exhibit a copy of a letter dated June 25, 2003,

1 from the BIA Navajo Agency Realty Office to you, requesting
2 additional materials for them to utilize in their approval
3 of the Navajo lease assignments?

4 A. Yes, that's what it is.

5 Q. And if you'll look under Exhibit Tab 8, is that a
6 copy of my transmittal letter of July 21, 2003, to the
7 Navajo area office for the BIA, transmitting the materials
8 that were requested for their processing of the lease
9 assignments?

10 A. Yes, it is.

11 Q. So to your knowledge, the assignments for the two
12 Navajo leases, as well as the Ute Mountain Ute lease, are
13 still pending approval by the BIA; is that correct?

14 A. To my knowledge, yes.

15 Q. You received no indication, no word, no
16 communication at all from the BIA indicating that those
17 requests for approvals have been denied, have you?

18 A. No, I have not.

19 Q. Since you've been operating the Ute Mountain Ute
20 and the Navajo lease wells, what's your relationship been
21 with the BIA, the BLM, out in the field there?

22 A. If they have anything that they want done, I just
23 do it immediately, any problems.

24 Q. So in your view has the BIA and the BLM regarded
25 you as the operator?

1 A. Oh, yes, they have in every sense.

2 Q. If there's a problem, they will call you?

3 A. That is correct.

4 Q. And you respond to those problems?

5 A. Yes.

6 Q. Has the BLM issued any notices of noncompliance?

7 A. Some minor things.

8 Q. All right, and do they go to you or to Action
9 Oil?

10 A. They came to me.

11 Q. All right. Now, have you been remitting
12 royalties and lease rentals to the MMS for these leases
13 since 1998?

14 A. Yes, I have.

15 MR. HALL: Mr. Examiner, we might skip order of
16 exhibits and go to Exhibit Tab 23.

17 Q. (By Mr. Hall) Mr. Cunningham, could you identify
18 what Exhibit Tab 23 is for the Hearing Examiner?

19 A. It's a demand for lease payment.

20 Q. All right, and that's from -- ?

21 A. The Navajo Nation.

22 Q. Is that from the Minerals Management Service,
23 Department of Interior --

24 A. Yes, it is.

25 Q. -- on behalf of the Navajo Nation?

1 A. That is correct, yes.

2 Q. And is it addressed to J.C. Well Service,
3 Incorporated?

4 A. Yes, it is.

5 Q. And is that an example of the invoices you
6 received from MMS and which you pay?

7 A. It is an example, yes.

8 Q. Have you had dealings with the Oil Conservation
9 Division with respect to lease operations out on these
10 leases?

11 A. Yes.

12 Q. Give us an example.

13 A. Well, when we converted that 20 into a water
14 disposal well, the OCD was present, you know, to see that
15 everything was all right, that the MIT test went correctly
16 and all that sort of thing.

17 Q. All right. If there's some problem, a leaky
18 valve or an open gate, that sort of thing, does the OCD
19 field staff contact you?

20 A. Yeah, in fact, they've called me a few times when
21 something was wrong and I went out and fixed it
22 immediately.

23 Q. All right, you mentioned --

24 A. Bruce Martin, mostly.

25 Q. I'm sorry, say that again?

1 A. Bruce Martin seems to work that area out there.

2 Q. Okay. Have you in fact permitted an injection
3 well with the Navajo EPA --

4 A. Yes, I --

5 Q. -- on the Navajo lease?

6 A. Yes, I have.

7 Q. And is a portion of that permit shown under
8 Exhibit Tab 9?

9 A. Yes, a portion of it.

10 Q. And let's explain again, it shows owner, name and
11 address, R&J Enterprises. In fact, is that you?

12 A. That's the same -- Yeah, that's me also.

13 Q. Okay. Earlier, you indicated you have had no
14 dealings with Action since 1998; is that correct?

15 A. Mostly, no.

16 Q. All right, and in 2002 did a miss Carmen Wood and
17 Action Oil Company file suit against you in the state
18 district court in Aztec?

19 A. Yes, they did.

20 Q. And was it your understanding that Ms. Wood was
21 asking the court to rescind the 1998 lease assignments and
22 return the Navajo and Ute properties back to her and her
23 company?

24 A. Yes, that's the way it read.

25 Q. Let's look at Exhibit 10, look at Exhibit Tab 10.

1 What is that?

2 A. Change of operator form.

3 Q. Is that a change of operator dated approximately
4 July, 2003, that was filed, to the best of your knowledge,
5 with the OCD's Division 3 Office by Carmen Wood?

6 A. Yes.

7 Q. And does it reflect that Carmen Wood is owner --

8 A. That's what it reflects --

9 Q. -- of the well?

10 A. -- yes.

11 Q. If you'll note down below in the lower left-hand
12 block, there is a portion of the form to be completed by
13 the previous operator, and it indicates "Not Available".
14 Do you know who wrote that?

15 A. No, I don't.

16 Q. Was this form filed with your knowledge?

17 A. No.

18 Q. Was it filed with your approval?

19 A. No.

20 Q. Had you known, would you have approved this?

21 A. No, I would not.

22 Q. Who is the purchaser of oil production from the
23 leases?

24 A. Giant Industries.

25 Q. Now, during the pendency of the lawsuit you just

1 mentioned, didn't the current president of Action Oil
2 Company inform Giant that she was claiming the assignments
3 from Action to you were invalid?

4 A. Yes.

5 Q. And as a result, did Giant suspend production
6 payments to you?

7 A. Yes.

8 Q. And didn't you have to go to court and get a
9 court order authorizing the release of those proceeds to
10 you?

11 A. That is correct.

12 Q. Before the lawsuit, have you ever had any
13 dealings with Ms. Wood?

14 A. No.

15 Q. Do you know anything about the current ability of
16 Ms. Wood or Action Oil Company to function as an operator
17 out in the field?

18 A. I do not.

19 Q. To your knowledge, does Action Oil Company have
20 any employees?

21 A. Not that I know of.

22 Q. Do you know if they have an office, even?

23 A. Not that I know of.

24 Q. Let's look at Exhibit 11. What is Exhibit 11?

25 A. It's from the Taxation and Revenue Department.

1 It's ad valorem equipment tax, and it was sent to Action
2 Oil in Aztec.

3 Q. If you look in the upper right-hand corner, it
4 says Date Original Issued: October 13, 2003. Do you see
5 that?

6 A. Yes, I do.

7 Q. When did you receive this?

8 A. I think it was in February -- Let's see.

9 Q. If you'll look --

10 A. Yeah.

11 Q. -- up at the top, there's a fax title block
12 there. Do you see that?

13 A. Yeah. We got it on 2-11-04. That's when we sent
14 the check and paid it.

15 Q. Okay. Again, you indicated that the notice of
16 assessment of taxes was sent to Action Oil Company at their
17 address in Aztec?

18 A. Yes.

19 Q. This appears to be a revised notice. Did you
20 ever receive the original notice, the October 13 notice?

21 A. No, I did not.

22 Q. Further on down, it shows a column of numbers on
23 the left side. It starts with assessment number. Then
24 below that it shows OGRID, OGRID number, and to the right
25 it says 25872. Is that J.C. Well Service's OGRID number?

1 A. No, it's not, I don't believe so, no.

2 Q. Now, look at the bottom of this assessment
3 notice. Does it indicate that there was interest and
4 penalty due on the assessment?

5 A. Yes.

6 Q. And that's because it was late?

7 A. Sure, yes.

8 Q. And it's not a tremendously large amount, but it
9 was late nevertheless; is that right?

10 A. That's right.

11 Q. So because there was some delay in the
12 transmission of this tax-assessment notice to you, you
13 incurred a penalty; is that right?

14 A. That is correct.

15 Q. Let's look at Exhibit 12. We've spoken briefly
16 about the litigation against you by Ms. Wood and Action Oil
17 Company. Is Exhibit 11 a copy of the District Court's
18 order dismissing Ms. Wood's lawsuit with prejudice?

19 MR. MONTOYA: Did you say Exhibit 11?

20 MR. HALL: Yes. I'm sorry, 12.

21 THE WITNESS: Yes, it is.

22 Q. (By Mr. Hall) Mr. Cunningham, is Exhibit 1 a
23 complete and accurate list of all the wells, API numbers
24 and legal descriptions for the wells on the three leases?

25 A. I believe that it is, yes.

1 Q. All right. And were Exhibits 2 through 11 and
2 then Exhibit 23, the MMS invoice, are those true and exact
3 copies of the original documents that are maintained in the
4 files of R.J. Enterprises, J.C. Well Service?

5 A. Yes, it is.

6 MR. HALL: Mr. Examiner, I would move the
7 admission of Exhibits 2 through 11 and 23, as well as
8 Exhibit 1, and ask you to take administrative notice of
9 Exhibits 13 through 22. Exhibit 24, Mr. Examiner, is also
10 our affidavit of notice in this case.

11 That concludes our direct examination of Mr.
12 Cunningham.

13 EXAMINER STOGNER: Any objections to the
14 exhibits? There being none, Exhibits 2 through 11 and 23
15 will be admitted into evidence at this time, along with
16 Exhibit Number 1. Administrative notice will be taken of
17 Exhibits 13 through 22, along with Exhibit Number 24, which
18 is the affidavit of notice.

19 At this time, Ms. MacQuesten, do you have any
20 questions?

21 CROSS-EXAMINATION

22 BY MS. MacQUESTEN:

23 Q. Mr. Cunningham, you entered into the assignment,
24 bill of sale and conveyance with Action Oil in 1997; is
25 that right?

1 A. December of 1997 --

2 Q. Okay.

3 A. -- when we signed it.

4 Q. And if you would take a look at Exhibit Number 3,
5 the assignment of mining leases, that happened shortly
6 after that in February of 1998, that those documents were
7 filled out?

8 A. Yes.

9 Q. Now, what are these? Are these documents that
10 were filed with the Bureau of Indian Affairs?

11 A. Yes, I believe they were.

12 Q. Okay. I notice there's highlighted language that
13 says that this assignment, which is supposed to be from
14 Action to you, doing business as R&J, is subject to the
15 approval of the Secretary of the Interior or his authorized
16 representative. Do you see that?

17 A. In which exhibit?

18 Q. This is Exhibit Number 3, and I'm looking at the
19 very first page.

20 A. Yes.

21 Q. And you never got that approval, did you?

22 A. No, ma'am, we haven't yet.

23 Q. And this is dated back from 1998. Do the
24 documents in Exhibit Number 3 pertain to the Navajos or the
25 Ute Mountain Utes or both?

1 A. I'm sorry.

2 Q. Do these documents in Exhibit Number 3 -- are
3 they for the Ute Mountain Ute leases, the Navajo leases, or
4 both?

5 A. Okay, one is for the Navajo, the second is for
6 the Navajo, and the Ute Mountain lease. They're for all
7 the leases.

8 Q. And you never received approval from the BIA for
9 any of those assignments of leases?

10 A. No, ma'am, we haven't yet.

11 Q. Okay. So let me get the time line straight. You
12 filed these back in 1998. Did you take subsequent action
13 to get the assignments recognized by the BIA?

14 A. They were filed with them, that's -- you know, I
15 didn't take any action.

16 Q. And nothing -- You never checked to see what was
17 happening with the requests?

18 A. Well, Tommy Roberts was looking after it, the
19 attorney there in town. I'm sure that he did.

20 Q. Did you ever post a bond with the BIA for these
21 leases?

22 A. Yes, the bonds is up now, yes, ma'am.

23 Q. Were they posted back in 1998?

24 A. No, they weren't.

25 Q. When did you post them?

1 A. They were posted in 2003, I believe.

2 Q. Okay, so a second attempt was made to get the
3 assignments recognized by the BIA and --

4 A. That is correct, yes, ma'am.

5 Q. Now, you mentioned that you converted one of the
6 wells to a disposal well; is that right?

7 A. Yes, ma'am.

8 Q. And it was recognized, according to the documents
9 you presented, by the Navajo Environmental Protection
10 Agency?

11 A. Navajo EPA, federal EPA and the Oil Conservation
12 Commission.

13 Q. The document you provided was the recognition by
14 the Navajo EPA, and I can't remember which number it was,
15 but as I recall, it --

16 MR. HALL: 9, Exhibit 9.

17 Q. (By Ms. MacQuesten) Thank you, Scott. You
18 pointed out that it showed R&J Enterprises. Is that how
19 the application read to the national EPA?

20 A. I believe so, yes, ma'am.

21 Q. That's your recollection, it wouldn't have been
22 filed under Action Oil?

23 A. I don't think so. I think it was filed under
24 R&J.

25 Q. You stated that you haven't had dealings with

1 Action Oil since 1998, other than the litigation that
2 you've been involved in?

3 A. Yes.

4 Q. At any time since 1998, have you acted as the
5 representative of Action Oil Company or the employee of
6 Action Oil Company?

7 A. Well, the papers came to me -- various papers
8 came in Action Oil to me, and whatever came I took care of.
9 If it was something, you know, like lease -- Well, the
10 lease payments were sent to me, J.C. Well Service, but
11 anything that came I took care of.

12 Q. Okay, so if something came to you and the name on
13 the document was Action Oil, you would still take care of
14 it?

15 A. I took care of whatever problem it was.

16 Q. How about documents that you had to file with
17 various agencies?

18 Did you ever file documents representing that you
19 were Action Oil or its representative?

20 A. I don't think so. I'm not -- I don't think so.

21 MS. MacQUESTEN: Thank you, Mr. Cunningham.

22 EXAMINER STOGNER: Thank you.

23 Mr. Montoya, your witness.

24 For clarification of the record, could I have you
25 scoot your chair up next to Mr. Scott Hall?

1 MR. MONTOYA: Sure.

2 EXAMINATION

3 BY MR. MONTOYA:

4 Q. Mr. Cunningham, is J.C. Well Service a
5 corporation?

6 A. Yes, it is.

7 Q. Is R. J. Enterprises a corporation?

8 A. Yes, it is.

9 Q. Okay. Has there ever been an assignment by you
10 to J.C. Well Service or R&J Enterprises of any of the oil
11 wells or gas and oil leases involved in this case?

12 A. I don't know for sure.

13 Q. Okay. You have assignment document to give to
14 the Examiner today indicating that John Cunningham
15 personally has assigned to J.C. Well Service any of the oil
16 and gas interests involved in this case; is that correct?

17 A. No, I don't think so.

18 Q. With respect to your Exhibit 2 for the Hearing
19 Examiner, you testified that this -- the Exhibit 2, which
20 is the assignment of mining leases for all of the Navajo
21 Nation leases and all of the Ute Mountain Ute leases --
22 Withdraw the question.

23 Exhibit 2 contains the assignment of mining
24 leases for the Navajo Nation leases and the Ute Mountain
25 Ute leases. Now, you previously testified here today that

1 in Exhibit 2 these assignments were to yourself
2 individually; is that correct?

3 A. Yes.

4 Q. And none of the assignments in Exhibit 2 are to
5 J.C. Well Services; is that correct?

6 A. I believe that's correct.

7 Q. Now, following on a question provided to you by
8 Ms. MacQuesten, I turn your attention to the first page of
9 Exhibit 2, the first assignment of mining lease, and did
10 Mr. Burson on behalf of Action Oil Company, Inc., sign that
11 assignment?

12 EXAMINER STOGNER: Let's make sure we're all on
13 the same page. Which one are you referring to, Mr.
14 Montoya?

15 MR. MONTOYA: It's Exhibit Number -- Oh, excuse
16 me, I've been saying 2. Okay, I misnumbered.

17 Your Honor, I withdraw my line of questioning and
18 start a new line of questioning because of the -- I was
19 referring to the wrong tab number.

20 EXAMINER STOGNER: Okay, please do.

21 Q. (By Mr. Montoya) I apologize to you, Mr.
22 Cunningham. I'm looking to Exhibit 3, the documents
23 included in Tab 3. Okay?

24 A. Okay.

25 Q. And I'll start the line of questioning again.

1 The documents included in Tab 3 are the assignment of
2 mining leases with respect to the Navajo Nation leases and
3 the Ute Mountain Ute leases; is that not correct?

4 A. That is correct.

5 Q. Okay. And none of the assignments in Tab 3 are
6 assignments to J.C. Well Service; is that correct?

7 A. That's correct.

8 Q. In Tab 3, the first page of Tab 3, is -- that
9 first assignment of mining lease that is shown, is that
10 signed by Action Oil Company, Inc., by Gene Burson?

11 A. Yes, it is.

12 Q. I want to direct your attention to the last
13 sentence before the paragraph at the end that says, "In
14 witness whereof..." and ask whether the document says this:
15 "Said assignment to be effective from the date of approval
16 hereby by the Secretary of the Interior or his authorized
17 representative."

18 A. That's what it says.

19 Q. Does the same language occur on the third page of
20 Tab 3, which shows an Exhibit 7 at the bottom?

21 A. Where, now?

22 Q. I'm looking at Tab 3 --

23 A. Okay.

24 Q. -- the third page.

25 A. Yes.

1 Q. Is that essentially the same document with
2 respect to the Navajo Nation leases, with respect to some
3 different oil leases on the Navajo Nation?

4 A. I'm sorry, one more time?

5 Q. Does this exhibit, page 3 of Tab 3 -- is that
6 related to Navajo Nation leases?

7 A. Yes, it is.

8 Q. Okay. And again, the same language appears that
9 the assignment is to be effective from the date of approval
10 hereby, by the Secretary of the Interior or his authorized
11 representative?

12 A. That's correct.

13 Q. Turn your attention to page 5 of Tab 3, and at
14 the bottom it says Exhibit 8.

15 A. Yes.

16 Q. Now, is this assignment the assignment for the
17 Ute Mountain Ute leases -- lease?

18 A. Yes, it is.

19 Q. And has that been signed by Mr. Burson on behalf
20 of Action Oil Company, Inc.?

21 A. Yes, it has.

22 Q. And does this assignment have the same language
23 that the assignment is to be effective from the date of
24 approval hereby by the Secretary of the Interior --

25 A. It does.

1 Q. You agree, Mr. Cunningham, that your rights to
2 operate these leases on Indian land, derive from the
3 assignment of these mining leases that you have included in
4 Tab Number 3?

5 MR. HALL: And I'll object to that question.
6 That calls for a legal conclusion on the part of the
7 witness.

8 EXAMINER STOGNER: Any response, Mr. Montoya?

9 MR. MONTOYA: Well, I believe that's exactly the
10 question that Counsel asked of this witness on direct.

11 MR. HALL: No, it's not.

12 EXAMINER STOGNER: I agree with Mr. Montoya. I'm
13 going to allow the question.

14 THE WITNESS: Okay, what --

15 MR. MONTOYA: Repeat the question?

16 THE WITNESS: Yes.

17 Q. (By Mr. Montoya) Sure. Isn't it true that your
18 claim to the right to operate the mining leases on Indian
19 land derives from the assignment of mining leases contained
20 in Tab 3?

21 A. Yes.

22 MR. MONTOYA: May I approach the witness?

23 EXAMINER STOGNER: Sure.

24 MR. MONTOYA: Counsel, I hand these to you,
25 Exhibits 1 and 2 to the position statement.

1 MR. MONTOYA: I'm referring to Exhibits 1 and 2
2 to the position -- prehearing statement I submitted.

3 MS. MacQUESTEN: Thank you.

4 MR. MONTOYA: Can we get these marked, or just
5 refer to them?

6 EXAMINER STOGNER: I'd prefer to have them
7 marked.

8 MR. MONTOYA: And I've put different exhibit
9 numbers, but we're going to be confusing the different --
10 yeah, I -- if I may be permitted to mark on the exhibit and
11 give it a different exhibit number.

12 EXAMINER STOGNER: Please, let's do that, and
13 those are all on the same page and we have copies. I'm
14 assuming by your comment that we all have copies, and they
15 were provided within the prehearing statement; is that --

16 MR. MONTOYA: Yes.

17 EXAMINER STOGNER: -- correct?

18 MR. MONTOYA: Yes, and what I'm referring to now
19 are Exhibits 1 and 2 to Action Oil Company, Inc.'s,
20 prehearing statement, and I'm now going to re-letter
21 these --

22 EXAMINER STOGNER: Okay.

23 MR. MONTOYA: -- to avoid confusion. And Exhibit
24 Number 1 to that prehearing statement is now Exhibit A, and
25 Exhibit Number 2 to the prehearing statement is now Exhibit

1 B.

2 Q. (By Mr. Montoya) And Mr. Cunningham, have you
3 seen Exhibits A and B before?

4 A. Have I what, now?

5 Q. Have you seen Exhibits A and B before?

6 A. I don't think so.

7 Q. Do you dispute the authenticity of Exhibits A and
8 B?

9 MR. HALL: Well, I'm going to object. I think
10 it's beyond the province of his knowledge. I'll stipulate
11 to their admissibility, if that's what Counsel is after.

12 EXAMINER STOGNER: Would that satisfy you?

13 MR. MONTOYA: It would.

14 EXAMINER STOGNER: Okay.

15 MR. MONTOYA: Okay, you can -- Do you receive
16 these there or with the position -- with the prehearing
17 statement?

18 EXAMINER STOGNER: If you would pass those to --
19 just so that we're sure -- Okay, Action Exhibit A is the
20 United States Interior Bureau of Indian Affairs document
21 dated February 4th up at the top, and that was given to us
22 in the prehearing statement -- "us" being the Division --
23 as Exhibit 1.

24 And Exhibit B of Action Oil is a Navajo Region
25 Bureau of Indian Affairs letter dated February the 11th.

1 Are we all on the same page on that? Okay, I'm going to
2 give these as official documents to the court reporter.

3 Are you admitting them to evidence at this point?

4 MR. MONTOYA: Yes.

5 EXAMINER STOGNER: Any objection?

6 MR. HALL: No objection.

7 EXAMINER STOGNER: A and B of Action Oil is so
8 admitted.

9 Q. (By Mr. Montoya) Mr. Cunningham, as far as you
10 are aware, Action Oil, Inc., is the lessee of record with
11 respect to the Bureau of Indian Affairs, as of this month;
12 is that correct?

13 MR. HALL: Again, I'll object. It calls for a
14 legal conclusion. There's a lot of import in that term,
15 "lessee of record". I think we've already established that
16 Mr. Cunningham is lessee of record by virtue of, among
17 other things, Exhibit 2 under our set of exhibits.

18 Q. (By Mr. Montoya) The question was whether the
19 witness was aware.

20 EXAMINER STOGNER: I'm going to allow the
21 questioning.

22 Q. (By Mr. Montoya) You're not aware of that?

23 A. Tell me again. Now, what do you want to know?

24 Q. Okay. Are you claiming, Mr. Cunningham, that the
25 Bureau of Indian Affairs has approved the assignment of the

1 Navajo Nation leases from Action Oil, Inc., to you?

2 A. No, I'm not claiming that. They haven't approved
3 them yet.

4 MR. MONTOYA: Exhibit 3 of the prehearing
5 statement I am now re-marking as Exhibit C, and I move its
6 admission.

7 MR. HALL: I have no objection.

8 MS. MacQUESTEN: No objection.

9 EXAMINER STOGNER: And Exhibit C of Action Oil is
10 the Department of Interior, Bureau of Indian Affairs letter
11 dated October 15th, 2002, to Carmen J. Wood. Action
12 Exhibit C will be admitted into evidence at this time.

13 Q. (By Mr. Montoya) Mr. Cunningham, you are not
14 claiming that the Bureau of Indian Affairs has approved the
15 assignment of the Ute Mountain Ute leases to you from
16 Action Oil, Inc.; is that correct?

17 A. No, I'm not claiming that.

18 MR. MONTOYA: Exhibit 4 of the prehearing
19 statement I am redesignating as Exhibit D, and I move its
20 admission.

21 MR. HALL: No objection.

22 EXAMINER STOGNER: Exhibit D, which is a letter
23 dated July 22nd, 2003, a letter on the Navajo Nation
24 letterhead, described as Exhibit D as in delta, will be
25 admitted into evidence at this time.

1 Q. (By Mr. Montoya) Mr. Cunningham, you are not
2 claiming that the Navajo Nation recognizes the assignment
3 of the Navajo Nation leases to you from Action Oil, Inc.;
4 is that correct?

5 A. They haven't yet.

6 Q. I am redesignating Exhibit 5 of the prehearing
7 statement as Exhibit E, and we move its admission.

8 EXAMINER STOGNER: Exhibit letter E as in echo,
9 which is a letter dated October 30, 2003, on Ute Mountain
10 Ute Tribal letterhead, will be admitted into evidence at
11 this time.

12 Q. (By Mr. Montoya) Mr. Cunningham, you are not
13 claiming here today that the Ute Mountain Ute Tribe
14 recognizes the assignment of mining leases to you from
15 Action Oil, Inc.; is that correct?

16 A. No.

17 Q. Now, with respect to the Ute Mountain Ute leases,
18 I believe you testified here today that you are still
19 operating those leases?

20 A. BIYA is operating now.

21 Q. Okay, do you own BIYA?

22 A. No.

23 Q. Have you assigned the Ute Mountain Ute leases to
24 BIYA?

25 A. Yes.

1 Q. You are not claiming that the Bureau of Indian
2 Affairs has approved the assignment of the Ute Mountain Ute
3 lease from you to BIYA; is that true?

4 A. Not yet.

5 Q. You're not claiming that here today?

6 A. Not as yet, they haven't approved it.

7 Q. Okay. And you're not claiming that the Ute
8 Mountain Ute Tribe has approved the assignment of the Ute
9 Mountain Ute leases to BIYA; is that correct?

10 A. That's correct.

11 Q. I turn your attention to Tab 7, which is Exhibit
12 7, and the first page. In the first paragraph of the
13 correspondence to you from the United States Department of
14 the Interior, it is true that the Bureau of Indian Affairs
15 states that the documents and your application are being
16 returned to you without action; is that correct?

17 A. Yes.

18 Q. Have you received any other correspondence from
19 the Department of the Interior with respect to the
20 application referenced in Exhibit 7 since June 25th, 2003?

21 A. I think so, yes.

22 Q. Have you included that in your exhibit list here?

23 A. I don't -- I don't --

24 MR. HALL: Could Counsel tell us what
25 documentation you might be referring to?

1 MR. MONTOYA: Well, I just wanted to know whether
2 -- the answer to the question, actually, whether there had
3 been any, any further correspondence between Mr. Cunningham
4 and the Department of the Interior with reference to --

5 THE WITNESS: I submitted a bond.

6 MR. MONTOYA: Okay, well, I'll restate the
7 question.

8 EXAMINER STOGNER: Yes, please. Let him state
9 the question, if you would, please, sir.

10 Q. (By Mr. Montoya) Now, Exhibit 7 is the June
11 25th, 2003, correspondence to you from the Department of
12 the Interior; is that correct?

13 A. Yes.

14 Q. Have you received any other correspondence from
15 the Department of the Interior related to the Application,
16 which is referenced in the June 25th, 2003, letter, since
17 June 25th, 2003?

18 A. I think we have.

19 Q. Are you relying upon that documentation for your
20 request that's being made here today to be the operator on
21 the leases that are subject to this proceeding?

22 MR. HALL: I'm going to object to the question.
23 It's awfully vague. I can't tell what documents Mr.
24 Montoya might be speculating exist, that he might be
25 relying on, and I think it's obvious from the response --

1 Mr. Cunningham's, to Mr. Montoya's questions, that he's not
2 sure what he's talking about. He is not sure whether he
3 got any further correspondence or not.

4 EXAMINER STOGNER: I agree with Mr. Hall in this
5 case, Mr. Montoya. If you're asking what other
6 correspondence, I think perhaps if you'd like to restate
7 your question --

8 MR. MONTOYA: Sure, I'll restate the question
9 because it's obviously confusing to everyone, for which I
10 apologize.

11 Q. (By Mr. Montoya) In your direct testimony, Mr.
12 Cunningham, you stated that your application for approval
13 of the mining leases that are at issue here today --

14 A. Yes.

15 Q. -- is still pending with the Department of the
16 Interior; is that correct?

17 A. That's correct.

18 Q. Okay, and one document that you submit in support
19 of your claim is Exhibit 7, the June 25th, 2003,
20 correspondence; is that correct?

21 A. I guess so, yeah.

22 Q. Okay. Now, Exhibit 7 demonstrates that the
23 documents and the application was returned to you without
24 action; that's correct?

25 A. Yes, that's correct.

1 Q. Okay. Do you have any other documentation to
2 provide to the Examiner here today that demonstrates that
3 your application for approval of the leases referenced in
4 Exhibit 7 is still pending?

5 A. It's been resubmitted, yes.

6 Q. Okay, and do you have any correspondence from the
7 Department of the Interior indicating that the application
8 is pending?

9 A. I think it's in here somewhere.

10 Q. Okay. If there is, it's in your Application that
11 you submitted here today?

12 A. I think under 8 is what you want. Is that what
13 you want?

14 Q. Okay, is Exhibit 8 the documentation that you are
15 referring to, to demonstrate that your application for
16 approval of the assignments referenced in Exhibit 7 is
17 still pending?

18 A. I'd say yes.

19 Q. Okay. And Exhibit 8 was supplied to you by the
20 Department of the Interior on July 21st, 2003?

21 A. Yes.

22 Q. Okay. Do you -- There's no indication on Exhibit
23 8 that you provided a copy of that correspondence to Action
24 Oil, Inc., or to Carmen Wood; is that correct?

25 A. I don't guess so.

1 Q. And since July 21st, 2003, have you received any
2 correspondence from the Department of the Interior with
3 respect to that correspondence?

4 A. Not that I know of.

5 Q. Now, in state court in Aztec, you submitted an
6 affidavit to the court that stated, in effect, that the
7 first time you submitted the assignments at issue to the
8 Department of the Interior was in December of 2002; is that
9 correct?

10 A. What tab is that under?

11 Q. I don't think you have included it in your tabs.

12 A. I can't answer off the top of my head, then.

13 Q. Okay. Do you dispute that the first time that
14 you submitted the assignment documents to the Department of
15 the Interior with respect to the Navajo Nation leases was
16 in December of 2002?

17 A. No, I can't dispute it, I don't think. I don't
18 have it in here.

19 Q. Do you have any documentation from the Bureau of
20 Indian Affairs that indicates that any bonds that you have
21 submitted to the Bureau of Indian Affairs have been
22 accepted by the Bureau of Indian Affairs?

23 A. No, not yet.

24 Q. The assignment documents for the Ute Mountain Ute
25 leases, were those transmitted by you to the Department of

1 the Interior, or were they transmitted by BIYA?

2 A. They were transmitted by me.

3 Q. And --

4 A. Let's back up a minute. Physically he took them
5 up there, if that's what you're talking about. But I
6 signed them, yeah.

7 Q. Okay, my question is, who presented the
8 assignment documents to the Department of the Interior with
9 respect to the Ute Mountain Ute leases that were assigned
10 to you by Action Oil, Inc.?

11 A. I did.

12 Q. And when was that?

13 A. I don't know, Tommy Roberts filed them. I don't
14 know, he filed all those papers. I don't know for sure
15 when he first got the deal.

16 Q. Do you dispute that that was in 2003?

17 MR. HALL: Well, again, I'm going to object.
18 That question has been asked and answered. He says he
19 doesn't know.

20 EXAMINER STOGNER: I concur with Mr. Hall.

21 MR. MONTROYA: Those are all the questions I have.

22 EXAMINER STOGNER: Okay, any redirect, Mr. Hall?

23 REDIRECT EXAMINATION

24 BY MR. HALL:

25 Q. Briefly, Mr. Cunningham. You were asked about

1 the bonding for the leases. Isn't it true that there has
2 always been a bond in place for the Navajo and Ute Mountain
3 Ute leases?

4 A. Yes.

5 Q. For a period, in fact -- Strike that.

6 Has the bond of Action Oil Company, Incorporated,
7 been in place on the Navajo leases subsequent to the
8 assignment of those leases to you?

9 A. Yes.

10 Q. Did you file a replacement bond with the BIA at
11 any time for those Navajo leases?

12 A. Yes, I did.

13 Q. When, approximately?

14 A. April of 2003.

15 Q. Okay. Why the delay in filing that bond, that
16 replacement bond? Let me back up again. It was --

17 A. There was a --

18 Q. Go ahead.

19 A. There was a bond in effect, Action Oil Bond was
20 in effect, and Gene told me it was paid up till 2004.

21 Q. Let me ask you, what is the size of the bond that
22 you placed for the Navajo leases? What's the bond amount?

23 A. \$75,000.

24 Q. Who determined that bond amount?

25 A. It came out of Steve Graham's office.

1 Q. All right.

2 A. Told me what amount it needed to be.

3 Q. Was there some delay on the part of the BIA in
4 indicating to you what size of bond would be required?

5 A. I just couldn't get that amount out of them. And
6 finally they came up with \$65,000, and I already went ahead
7 and bought the \$75,000, so I just submitted the \$75,000.

8 Q. Let me make sure the answer to my question is
9 clear. Was there a delay on the part of the BIA indicating
10 to you what the size of the bond would be required of you?

11 A. Yes, there was.

12 Q. Substantial delay?

13 A. Quite a while.

14 Q. All right. But it remains the case that those
15 properties have always been bonded; is that correct?

16 A. Yes.

17 Q. Refer briefly back to Exhibit 2, so there's no
18 confusion.

19 The assignment here by Action Oil Company shows
20 the assignment was made to three individuals, John
21 Cunningham, Arthur Smalley and Jim Wilson. Did you
22 subsequently acquire the Smalley and Wilson interests?

23 A. Yes.

24 Q. And so you own 100 percent of record lease title
25 and all of the operating rights to the leases; is that

1 correct?

2 A. Yes.

3 Q. And you have subsequently assigned the Ute
4 Mountain Ute lease to BIYA Operators?

5 A. Yes.

6 Q. And all of those leases on it, you have submitted
7 requests for approvals for all of the tribal lease
8 assignments; is that correct?

9 A. Yes.

10 Q. The BIA has not indicated to you that those
11 requests have been denied; isn't that right?

12 A. They have not.

13 MR. HALL: That concludes my redirect.

14 EXAMINER STOGNER: Cross-examination, Ms.
15 MacQuesten?

16 MS. MacQUESTEN: Thank you.

17 RE-CROSS-EXAMINATION

18 BY MS. MacQUESTEN:

19 Q. Mr. Cunningham, if you could turn to Tab 3,
20 please, and those are the assignment documents --

21 A. Yes, ma'am.

22 Q. -- attempting to transfer the Navajo leases and
23 the Ute Mountain Ute leases from Action to some other
24 entity?

25 A. Yes.

1 Q. And that entity is listed on these documents as
2 Johnny Cunningham -- that's you? --

3 A. Yes.

4 Q. -- doing business as R&J Enterprises?

5 A. Yes.

6 Q. So you are asking in these documents for the BIA
7 to recognize Johnny Cunningham, doing business as R&J
8 Enterprises, as the leaseholder and operator of these
9 wells?

10 A. Yes, ma'am.

11 Q. If you could turn to Exhibit Number 7, now, this
12 is the letter you received from the BIA in 2003, asking you
13 to resubmit your Application; is that right?

14 A. Yes.

15 Q. And it is to Mr. Cunningham and R&J Enterprises
16 -- now it says Incorporated. Is R&J Enterprises a
17 corporation?

18 A. It is now, yes, ma'am.

19 Q. Okay. So you are still asking the BIA to
20 recognize -- I'm a little confused. Are you asking them to
21 recognize you personally as the leaseholder and operator,
22 or R&J Enterprises, Inc., as the leaseholder and operator?

23 A. R&J, I guess.

24 Q. R&J? Okay. But you want the OCD to recognize
25 J.C. Well Service, Inc., as the operator; is that right?

1 A. That's the way it originally started out.

2 Q. And that's what we have in front of us today, all
3 the documents are J&C Well Services, Inc.; isn't that
4 right?

5 A. Yes, ma'am, I guess it is.

6 Q. As far as your request to the OCD is concerned?

7 A. (Nods)

8 Q. So you're currently asking the Bureau of Indian
9 Affairs to recognize R&J Enterprises, Inc., as the
10 operator, and you're asking us represent a different
11 corporate entity as the operator; is that right?

12 A. Not really, it's all one and the same, but maybe
13 it does look that way. It's all one and the same. I own
14 both ends of it.

15 Q. Well, the Application that's before the Examiner
16 today is from J.C. Well Services, Inc.; isn't that right?

17 A. Yes, ma'am, I believe it is.

18 Q. And the issue today is whether J.C. Well
19 Services, Inc., should be recognized as the operator; isn't
20 that right?

21 A. Yes, ma'am, I guess that's right.

22 MS. MacQUESTEN: Okay, thank you.

23 EXAMINER STOGNER: Mr. Montoya?

24 MR. MONTOYA: No further questions.

25 MR. HALL: Brief redirect on that, in view of Ms.

1 MacQuesten's question.

2 FURTHER EXAMINATION

3 BY MR. HALL:

4 Q. Mr. Cunningham, do you know of any rule of the
5 Division that prohibits a lessee of record, an owner of
6 operating rights and owner of working interest to designate
7 a third party, affiliated or not, to act as its operator?
8 Do you know of any such rule?

9 A. No, I do not.

10 MR. HALL: All right, nothing further.

11 EXAMINER STOGNER: An more questions of this
12 witness?

13 MS. MacQUESTEN: Well, just -- I'm a little
14 confused about how it works. Are -- Have you asked the BIA
15 to recognize any particular entity as the operator of these
16 wells?

17 MR. HALL: Well, I'm going to object to the
18 question. I think the questions posed to the witness
19 earlier, as made clear by the testimony, he's asking for
20 approval of assignments of record title, period. That's
21 all the assignments effect.

22 MS. MacQUESTEN: So we're still several steps
23 away from the BIA naming you as an operator under -- in
24 your individual capacity or under your capacity as R&J
25 Enterprises, Inc., or J.C. Well Services, Inc.; is that

1 correct?

2 MR. HALL: Do you want to swear me in?

3 EXAMINER STOGNER: I'm going to allow this
4 questioning, because I believe as the owner and operator of
5 whatever the entities are, I believe Mr. Cunningham could
6 speak for himself, R.J. Enterprises and J.C. Well Services.
7 I'm going to allow this question.

8 THE WITNESS: I'm sorry now. One more time,
9 please?

10 Q. (By Ms. MacQuesten) Well, if the BIA approves
11 R&J Enterprises, Inc., as the leaseholder, what would you
12 need to do then to name J.C. Well Services as the operator
13 for the BIA?

14 A. You'd just have to file a designation of
15 operator, I would assume.

16 Q. So there's another step that would be taken to
17 make J.C. the operator of record for the BIA?

18 A. I believe so, yes, ma'am.

19 MS. MacQUESTEN: Thank you.

20 EXAMINER STOGNER: Any other questions?
21 I have a couple of questions, Mr. Cunningham.

22 EXAMINATION

23 BY EXAMINER STOGNER:

24 Q. As far as R&J Enterprises, is that -- you said it
25 was a corporation?

1 A. Yes.

2 Q. And are you the sole owner?

3 A. Yes,.

4 Q. Okay, and how about J.C. Well Services? Are you
5 the sole owner of that corporation?

6 A. Yes.

7 Q. Do you have any other corporations?

8 A. No, I do not.

9 Q. So yourself, R.J. and --

10 A. J.C. --

11 Q. -- J.C. Well Services, they are to be directed to
12 you; is that correct?

13 A. That is correct.

14 Q. Okay, I see a name that keeps popping up and I
15 want to make sure I know who it is and what relationship
16 you had with this gentleman, and that is, when I see Action
17 Oil Company and there is a signature, what signature is
18 that? I believe you said Gene Burr?

19 A. Burson.

20 Q. Burson, I'm sorry, Gene Burson. Gene Burson.

21 And what was your working relationship at the
22 time that Exhibit Number 2 -- that's the assignment, bill
23 of sale and conveyance, I believe, in 1997; is that
24 correct? When this assignment was conveyed or --

25 A. Yes.

1 Q. -- assigned, what was your working relationship
2 with Mr. Burson at the time?

3 A. I had done some well service and work for him.

4 Q. So you were not an employee, you were just a --

5 A. I was not. I plugged some wells for him also.

6 EXAMINER STOGNER: I have no other questions of
7 Mr. Cunningham at this time.

8 MS. MacQUESTEN: Mr. Examiner, just one more.

9 EXAMINER STOGNER: Okay.

10 MS. MacQUESTEN: I promise, just one more.

11 FURTHER EXAMINATION

12 BY MS. MacQUESTEN:

13 Q. Mr. Cunningham, you said you recently posted a
14 bond with the BIA. What name was it posted under?

15 A. R.J. Enterprises, I believe.

16 Q. Thank you.

17 A. Yes, I think that's correct.

18 EXAMINER STOGNER: Any other questions of Mr.
19 Cunningham?

20 MR. HALL: No, sir.

21 EXAMINER STOGNER: You may be excused.

22 Let's take a 10-minute recess at this time.

23 (Thereupon, a recess was taken at 3:04 p.m.)

24 (The following proceedings had at 3:20 p.m.)

25 EXAMINER STOGNER: I apologize about that. Ten

1 minutes extended into something further. Hearing back in
2 order. Ms. MacQuesten?

3 MR. HALL: Actually, Mr. Stogner, it's still my
4 case at this point.

5 EXAMINER STOGNER: Oh, I am sorry.

6 MR. HALL: If you will allow me some latitude, I
7 have some additional exhibits to tender into evidence. All
8 of them are public-record-type documents, and I think we
9 can simply discuss them with you, if you'll allow that.

10 EXAMINER STOGNER: Yes, sir.

11 MR. HALL: I think it will save quite a bit of
12 time. I told Mr. Chavez he could keep his seat. It won't
13 take that long, I hope.

14 In addition, Mr. Examiner, I think it might be
15 helpful at this point to provide you with some information.
16 I had anticipated that the question of the succession to
17 lease title, the chain of title, the applicability of
18 federal law and the BIA and BLM regulations applicable to
19 operations on tribal lands and approvals of assignments and
20 transfer of operating rights might come up. Lo and behold,
21 it did.

22 That's part of what's unfortunate about this
23 case, that I was afraid that this might become perceived as
24 a hearing where you would be asked to determine issues of
25 federal regulations, federal statutes, Indian law, and even

1 try to adjudicate title. That's not what we're asking you
2 to do here, but I think it's a symptom of what's happened
3 in connection with the inappropriate filing of the change-
4 of-operator forms.

5 To address those questions, I'd like to present
6 you with a hearing memorandum I prepared that will --
7 rather than having me discuss at length the operation of
8 federal law in cases like this, I've tried to lay it out in
9 the brief.

10 In addition, in the brief --

11 MR. MONTOYA: I'm sorry, do you have an extra
12 copy?

13 MR. HALL: I'm sorry.

14 MR. MONTOYA: Okay, thank you.

15 MR. HALL: Because this has come up, in the brief
16 at page 3 there is a section styled Undisputed Facts.
17 These facts came out in the district court litigation,
18 pursuant to motion practice there, that were either
19 undisputed or unreputed. So they are established facts as
20 a matter of law now, and they provide you with a fairly
21 succinct summary of the succession of lease title and the
22 basic facts that are involved here with the execution of
23 the assignments, the presentation of the assignments to the
24 BIA for approval, et cetera, et cetera.

25 These undisputed facts constituted the basis for

1 the district court's order wherein it also made findings of
2 facts much like these, and they are set out in our Exhibit
3 12, which is already in evidence. So with that, I think
4 you'll have a fairly concise factual summary, upon which
5 you might be inclined to base your own findings. So I
6 offer that to you as well.

7 The legal discussion has to do with the issue of
8 the BIA approval of tribal assignments. And I can tell you
9 from personal experience, it's not a smooth practice. It's
10 a practice that takes some time.

11 You have heard questioning today that points out
12 the provisions on the tribal assignment forms that quite
13 clearly say that the assignments are not effective until
14 approved by the Secretary of the Interior. Well, I think
15 that's right only with respect to the relationships between
16 the government lessor and the assignee. The relationship
17 between the assignor, the person executing the assignment,
18 and the assignee are unaffected by that. And we've laid
19 out for you the case law, the administrative law that
20 establishes that.

21 What those cases establish, we've set out on our
22 brief, is that even though a tribal assignment is still
23 pending approval before the agency, the assignee acquires
24 the rights of a bona fide purchaser, and it can enter into
25 possession of the properties, drill the wells, operate the

1 wells and do everything to properly operate a property
2 while the assignment is pending approval. That's just the
3 reality -- the case law that's developed from the reality
4 of assignments in Indian country on tribal leases.

5 I can tell you, I have examined title and
6 rendered title opinions on more tribal Indian leases than I
7 care to admit, and I think any landman or other title
8 examining lawyer would tell you that it's the rule, rather
9 than the exception, that when you examine tribal lease
10 title you will see tremendous gaps from the time an
11 assignment is presented and it's approved. But in the
12 meantime, an operator may have taken possession and
13 operated the wells.

14 MR. MONTROYA: At this time I'm going to object,
15 unless we're at the point of argument, to a recitation here
16 in some summary form of what is being presented as facts.
17 So I would object, unless we're at the argument stage.

18 EXAMINER STOGNER: No, we're not at the argument
19 stage. Ms. MacQuesten?

20 MS. MacQUESTEN: I concur in that objection. I
21 don't object if you intend to hear legal argument. I would
22 object if this presentation was treated as testimony, as
23 evidence.

24 MR. HALL: I understand, Mr. Examiner. The
25 purpose of my comments is to provide precatory introduction

1 to some of these exhibits, provide them with context so you
2 can apply this evidentiary material to the facts at hand in
3 this case.

4 EXAMINER STOGNER: Well, Mr. Hall, I'm going to
5 -- I agree with Ms. MacQuesten and Mr. Montoya, and I will
6 accept what you submitted to me today, and with that, I
7 think what we need to do is move on.

8 MR. HALL: All right.

9 MR. MONTOYA: Well, with respect to the last
10 comment, I mean, the document called Applicant's Hearing
11 Memorandum contains -- which we just, you know, of course,
12 we just received today -- contains a number of items called
13 Undisputed Facts and so forth. I haven't had the
14 opportunity to examine what the Applicant is saying is
15 undisputed facts or not, nor an opportunity to respond to
16 the points and authorities submitted, and if it's being
17 taking as argument, I would have not objection to argument
18 if we would have some time in which to respond to the
19 argument. But I would object to the Examiner receiving
20 this document as evidence of any sort.

21 EXAMINER STOGNER: Is your intent to take this
22 back, Mr. Hall?

23 MR. HALL: No, sir, it's not. If you like, Mr.
24 Examiner, it does contain legal argument, but it does
25 contain matters of established, adjudicated fact --

1 EXAMINER STOGNER: Okay, with that, Mr. Hall,
2 then I will, subsequent to today's hearing, allow some
3 additional time for Mr. Montoya --

4 MR. HALL: Absolutely.

5 EXAMINER STOGNER: -- and Ms. MacQuesten.

6 MR. HALL: So the record is clear on this, the
7 statements of fact in here are based on the legal
8 proceedings in the 11th Judicial District Court. We can
9 incorporate by reference those proceedings, if you like,
10 and I think there's something you can take administrative
11 notice of. I just hate to burden the record to that
12 extent.

13 EXAMINER STOGNER: I'm not prepared to do that at
14 this time. What I'd like to do is hear the case at this
15 point. And then, Mr. Montoya, you and Ms. MacQuesten will
16 have additional time subsequent to today's hearing to
17 respond in written format to Mr. Hall's memorandum.

18 MR. HALL: At this point, Mr. Examiner, let's go
19 through the exhibits.

20 EXAMINER STOGNER: Okay. Now, when you say
21 Exhibits, are you talking about the additional ones?

22 MR. HALL: Yes.

23 EXAMINER STOGNER: Other than their being in here
24 and their being public record, what do you intend to say
25 about them?

1 MR. HALL: Well, a lot of them are going to be
2 self-expressing, and they contain factual material, so I
3 think you can take notice of. They are all public
4 documents. We allowed Mr. Montoya a significant amount of
5 latitude in getting in his public files as well. I think I
6 can do this in fairly short order.

7 EXAMINER STOGNER: All right, please do so.

8 MR. HALL: Mr. Examiner, if you will refer to the
9 exhibits under Tab Number 13, what these are are examples
10 of the process for approving requests for lease assignments
11 for tribal Indian leases. And what each of these simple
12 exhibits say -- and I picked these out randomly from my own
13 abstract materials, but if you go into the underlying base
14 documents, I have summarized those on the top page with an
15 index spreadsheet that's labeled "Tribal Lease
16 Assignments".

17 The first lease assignment is for a Jicarilla
18 Tribal Lease Number 417, and the evidence -- the document
19 itself shows that the assignment was executed in 1998 by
20 Burlington, and it was assignment to Taurus Exploration.
21 It's not approved until May 22nd, 2001.

22 The next assignment document is Lease Number 287,
23 also a Jicarilla tribal lease. It was executed in 1997.
24 Again, it was not approved until March 28th, 2001, as the
25 document itself indicates.

1 Again, there is a Navajo lease 733, an assignment
2 by EPX Company to El Paso Exploration Company. It was
3 executed in 1984, it was not approved by the BIA until
4 1988.

5 The following lease is 7652, executed in 1987,
6 approved in 1992.

7 Et cetera, et cetera. Those are examples, Mr.
8 Stogner, of what is customary in terms of processing tribal
9 lease assignments with the BIA.

10 MR. MONTROYA: Mr. Examiner, since the page is now
11 turned, I will object to the introduction of this exhibit,
12 because on its face it's a document prepared by counsel,
13 actually. It's not prepared by any government agency, as
14 was the prior exhibits that were not object to. So this is
15 simply counsel's recitation of what the facts are, which is
16 clearly not evidence but argument, and should not be
17 received as evidence or argument since it concerns issues
18 that are not before the Hearing Examiner.

19 MR. HALL: May I respond, Mr. Examiner?

20 EXAMINER STOGNER: Ms. MacQuesten?

21 MS. MacQUESTEN: I would also object, and my
22 objection is on the ground of relevance. I haven't had a
23 chance to look through all of the documents behind this
24 tab, but if they are, as Mr. Scott [sic] says they are,
25 examples of cases in which it took a long time for the BIA

1 to act, that is not relevant to this case. He may be able
2 to present isolated instances of other cases that took a
3 long time to resolve. He then testifies that this is
4 customary for the BIA. That is his interpretation of this.

5 We do not have any witness here to testify that
6 this is customary, and I fail to see the relevance to our
7 particular case.

8 EXAMINER STOGNER: Mr. Hall?

9 MR. HALL: Mr. Examiner, the point has been made
10 to you by opposing counsel that perhaps my client does not
11 have lease title, it has no right to be on the properties
12 at all and may not become operator and that its Application
13 in this case should be denied. Each of these exhibits is
14 probative of that question of what industry does, what my
15 client has done, what Action Oil Company has done, while
16 awaiting the approval of BIA assignments.

17 I would represent to you that each of these
18 documents are public record documents, and they are
19 admissible. I think you can take notice of the fact that
20 they come from BIA lease files. I hope I won't be required
21 to obtain affidavits of authenticity from the document
22 custodian.

23 EXAMINER STOGNER: Well, Mr. Hall, if you keep
24 presenting Exhibit Number 13 as an exhibit, then I might be
25 required to do that. If you're submitting this information

1 for information purposes only, to help educate me on some
2 wording and what the documentation should look like, then I
3 do appreciate that.

4 But any continued -- I feel any continued
5 discussion on this, I feel, will render somewhat of an
6 opinion, and I agree with Ms. MacQuesten and Mr. Montoya
7 with that. So that we can get proceeding on this, I will
8 take administrative notice of what's behind Tab Number 13
9 for the information that you have provided that for me
10 today, and only on that matter.

11 As far as what's behind 14 and through 22, other
12 than examples that are documentations that I think speak
13 for themselves -- and that was your words, if I remember
14 right -- I'd like to proceed on today.

15 MR. HALL: Okay. Let's look at the exhibit under
16 Tab 14, Mr. Examiner. It has to do with the leases that
17 are the subject of this Application. And again, these are
18 copies of public record documents. They've been presented
19 by opposing counsel in the judicial proceeding, so I can't
20 imagine --

21 EXAMINER STOGNER: So noted. How about Exhibit
22 -- How about 15?

23 MR. HALL: Exhibit 15 -- So I've discussed
24 Exhibit 14. Exhibit 15 is an assignment of a mining lease,
25 also one of the leases at issue here. It was executed on

1 February, 1995, approved on November 1st, 1995. The first
2 lease was executed 1989, not approved until 1995. These
3 are the subject lands, Mr. Examiner.

4 EXAMINER STOGNER: Okay, how about 16?

5 MR. HALL: Following that -- Mr. Examiner, you
6 will note the previous exhibits establish when Action Oil
7 Company may have acquired title to the lands. If you look
8 at this exhibit, it's a C-104. It was submitted to the Oil
9 Conservation Division in 1993. It is for one of the wells
10 that are on the Navajo lease. It was submitted by Action
11 Oil Company, signed by Action Oil Company's president at
12 the time, Mr. Burson, and it was approved November 8th,
13 1993, prior to the time that Action Oil Company acquired
14 title.

15 Now, the exhibit under Tab 17, Mr. Examiner, is
16 simply for your convenience. It is a copy of Rule 1104.E,
17 which is the Rule addressing the filing of C-104, Change of
18 Operator forms, and the language of the Rule itself notes
19 -- it's to denote a change of operator. It's not to denote
20 a change of lessee. The Rule speaks for itself in that
21 regard.

22 And under Tab 18, again for your convenience, is
23 a blank form of the current form of C-104A, in use by the
24 Division.

25 EXAMINER STOGNER: Okay, that's behind 17 on

1 mine, and 16 was the Rule 1104.E.

2 MR. HALL: Let me get you another notebook.

3 EXAMINER STOGNER: Okay. So I believe you're on
4 17 now. That's the Rule 1104.E?

5 MR. HALL: Yes, we passed by that. I'm on
6 Exhibit Tab 18, it's the 104.A form. Does that correspond,
7 Mr. Examiner?

8 EXAMINER STOGNER: Yeah.

9 MR. HALL: You can keep both those.

10 EXAMINER STOGNER: Okay.

11 MR. HALL: Under Exhibit Tab 19, Mr. Examiner, is
12 a printout from the website of the New Mexico Taxation and
13 Revenue Department discussing their oil and gas tax
14 programs and their utilization of OGRID numbers, and it
15 describes what happens on page 2 and 3 of that printout
16 when there is a failure to use the correct OGRID number,
17 indicating that it could possibly generate -- well, it
18 could adversely affect the taxpayers reporting payment
19 history, potentially leading to the issuance of a violation
20 to the taxpayer. An incorrect OGRID is used by that
21 agency.

22 Under Exhibit Tab 20, Mr. Examiner, is what you
23 get on the OCD's website when you search operator well
24 lists by OGRID number. When you search the well list for
25 J.C. Well Service under their OGRID number, there are no

1 wells listed there.

2 When you search the well list for Action Oil
3 Company Incorporated's OGRID number, 25872, it shows all of
4 the wells that are the subject of this Application.

5 There's no other indication in the OCD's website
6 or records, that I could find anyway, that indicates where
7 tax payments are made, whether Action Oil Company is
8 actually recording production, whether Action Oil Company
9 is remitting taxes and royalties. Simply not available.
10 This is all you get.

11 Finally, Mr. Examiner, under Exhibit Tab 22 is a
12 copy of Order Number R-11,335, issued in Case Number
13 12,278, Pride Energy Case, again provided for your
14 convenience. It's a similar situation as here. It's
15 something I wish the Division to take administrative notice
16 of.

17 And that concludes all the remaining exhibits in
18 the exhibit notebook, Mr. Examiner.

19 EXAMINER STOGNER: Thank you, sir.

20 MR. HALL: At this point, Mr. Examiner, I'd
21 tender into evidence or request that the Division take
22 administrative notice of Exhibits 13 through 22.

23 EXAMINER STOGNER: Any objections?

24 MR. MONTOYA: It is not a request for them to be
25 received in evidence, just to take notice of them?

1 EXAMINER STOGNER: Just to take notice.

2 MR. MONTOYA: No objection.

3 MS. MacQUESTEN: No objection.

4 EXAMINER STOGNER: Administrative notice will be
5 made of Tabs 13 through 22, provided in the J.C. Williams
6 Services, Inc., exhibit book. Thank you.

7 Anything else, Mr. Hall?

8 MR. HALL: That concludes my case on direct, Mr.
9 Examiner.

10 EXAMINER STOGNER: Okay, thank you, sir.

11 Ms. MacQuesten.

12 MS. MacQUESTEN: I call Frank Chavez.

13 FRANK T. CHAVEZ,

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

16 DIRECT EXAMINATION

17 BY MS. MacQUESTEN:

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

19 A. I am Frank T. Chavez.

20 Q. And by whom are you employed?

21 A. I'm employed by the New Mexico Oil Conservation
22 Division as District Supervisor in the Aztec District
23 Office.

24 Q. What counties are included in the Aztec District
25 Office?

1 A. San Juan County, Rio Arriba, McKinley and
2 Sandoval.

3 Q. And where are the wells located that are at issue
4 in this case?

5 A. They're in San Juan County.

6 Q. What are the District's responsibilities
7 regarding approving change of operator forms for wells
8 located within the District?

9 A. The office is responsible for verifying
10 information on any change and approving it, the operator
11 meets all the requirements of the regulations.

12 Q. Are you familiar with the general process for
13 change of operator within the OCD?

14 A. Yes, I am.

15 Q. And are you familiar with the change-of-operator
16 processes that occurred in this particular case?

17 A. Yes, I am.

18 Q. Let me start with the change of operator from
19 Action Oil, Inc., to J.C. Well Service, Inc., in 1998.
20 Have you reviewed the well files for the wells at issue in
21 this case and the change-of-operator forms that appear in
22 those files?

23 A. Yes, I have.

24 Q. I'd like you to take a look at the documents in
25 front of you. The top document is labeled Exhibit Number

1 1. And just so there's no confusion, because I
2 unfortunately also used numbers for my exhibits, ours are
3 distinguished by the antique OCD hand stamp form that will
4 indicate it's an OCD exhibit.

5 What is Exhibit Number 1?

6 A. Exhibit Number 1 is a C-104, change in
7 operatorship of the UTE Mountain B Number 10 well from
8 Action Oil Company, Incorporated, to J.C. Well Service,
9 Incorporated.

10 Q. This is the transfer of operation of a single
11 well?

12 A. Yes, it is.

13 Q. Were there similar forms for the other wells at
14 issue in this case?

15 A. Yes, they were all very, very similar, with just
16 the change for the specific well.

17 Q. All right, well, I'll use this one as an example,
18 then, and ask you to go through it. This was filed by who?

19 A. It was filed by Mr. Cunningham as J.C. Well
20 Service in our office on June 3rd, 1998.

21 Q. And if you'd look at the very bottom of the form,
22 there's an area for the prior operator to sign off on the
23 change; is that right?

24 A. That's correct, that was signed by Mr. Gene
25 Burson.

1 Q. And who was he representing?

2 A. He's the president of Action Oil Company,
3 Incorporated, at that time.

4 Q. All right. Was this change of operator approved
5 by the District?

6 A. Yes, it was, it was approved effective the same
7 date it was received.

8 Q. Now, would you have reviewed this personally?

9 A. No, our process is that the staff takes a look at
10 the document that's presented for change, validates the
11 information to be sure at this particular time that all the
12 wells within the property were changed, if it appeared to
13 be the intent. If there were questions about that, we
14 would contact the operator in case there might have been a
15 missed document, or a document may be submitted on a
16 plugged well and we don't change operators on plugged
17 wells, and once that process is complete, including
18 determination, if this was on state or fee lands, that
19 there was appropriate bonding with the State, then we
20 approve it.

21 Q. If it's not located on state or fee land, do you
22 check for bonding information?

23 A. No, we don't.

24 Q. Why is that?

25 A. We're not required to do that under our

1 regulations. Wells that are not on state or fee lands do
2 not require state plugging bonds.

3 Q. Is that Regulation 101?

4 A. That's correct.

5 Q. Is it your understanding that a bond is in place
6 for wells that are on tribal lands?

7 A. Yes, over the years our relationship with the
8 Bureau of Land Management as trustee on Indian lands, they
9 assure under their regulations that the wells and operators
10 are bonded appropriately.

11 Q. Getting back to this particular change-of-
12 operator form, if your office receives a change-of-operator
13 form like this that was signed off by the prior operator,
14 would you request any additional information regarding the
15 change?

16 A. No, we wouldn't.

17 Q. So the approval in this particular case was, as
18 far as you can tell, a standard approval?

19 A. That's correct.

20 Q. Nothing unusual about it?

21 A. Nothing unusual, no.

22 Q. And this was in June of 1998?

23 A. Yes.

24 Q. Let's move to the next event that happened
25 between these two companies. I'd like you to look at

1 Exhibit Number 2, and this is a change-of-operator form in
2 2003; is that correct?

3 A. Yes, it is.

4 Q. Changing the operator from Action -- from J.C.
5 back to Action?

6 A. That's correct.

7 Q. Now, J.C. had been the operator of the well since
8 1998, until 2003, as far as the OCD was concerned?

9 A. That's correct.

10 Q. All right. Were you personally involved in the
11 change-of-operator process in 2003 --

12 A. Yes, I was.

13 Q. -- for this well? Could you tell us how that
14 came about?

15 A. Carmen Wood came into my office, and she had
16 partially completed -- I'm just going by my recollection.
17 The form was either partially completed or just blank. And
18 we sat down in my office to go through how to fill the form
19 out, what information was needed. And for example, even at
20 the top as we were going through this, as we were passing
21 the document back and forth, it's my handwriting that shows
22 a new OGRID number, because she hadn't realized that that
23 wasn't on the documents that had already been sent to her
24 by our Santa Fe staff when she had contacted them about the
25 operator change.

1 As we went through this and we got to the bottom
2 portion of the document, back and forth filling this out, I
3 said, Well, what about the signoff from Mr. Cunningham,
4 J.C. Well Service?

5 She -- I remember -- again, exact conversation,
6 we were going through this document and she presented me
7 with some other documents, and it took a little while for
8 me to get through those, and they're further down in the
9 exhibit pile.

10 But I said, So apparently there's some contention
11 here about who's the operator of the well.

12 And she says, Well, yes, there's an issue because
13 of what had happened with her divorce and some -- and what
14 these documents showed that she presented to me.

15 And I said, So therefore Mr. Cunningham is not
16 going to sign this?

17 And I don't remember, again, the exact words, but
18 yes, basically Mr. Cunningham was not going to sign this.

19 And supporting documents that she had would
20 indicate that Action Oil should be -- convinced me that
21 Action Oil Company was the appropriate operator at that
22 time.

23 So as I had the document, I guess, I asked her,
24 Does that mean he's really, I guess, not available to sign,
25 whatever?

1 And she said, Well, I guess -- something along
2 those lines.

3 At that point, that is my handwriting. And I
4 said, Now, does that appear to be what would be
5 appropriate?

6 And she said, Well, yes, that would work.

7 I said, Okay, and are you then going to sign off
8 that this is true and correct?

9 And she said, Well, that's right.

10 And then she signed the document.

11 Q. Okay. Before we get to the supporting documents
12 that Ms. Wood presented to you, I have a couple of
13 questions about this change-of-operator form.

14 A. Okay.

15 Q. It looks different from the other form that was
16 used. Can you explain what this second form is used for?

17 A. We've changed our processes because of the amount
18 of administrative burden that was placed on us, having to
19 handle one C-104 for a lot of wells, and we're anticipating
20 more wells being -- operator change on many groups of
21 wells.

22 So in order to ease our administrative burdens in
23 handling that, we revised a new process which included a
24 C-104A by which, whenever all of the wells that are
25 operated by a certain operator is going to be changed, we

1 could use a C-104A document and then have an attached list
2 of wells that is verified by the OCD and the operator that
3 these are -- that this is correct, that it is all of the
4 wells that are included. And we use only one document
5 rather than having to process a C-104 for each well.

6 Q. Is Exhibit 3 the list of wells that was attached
7 to this Application?

8 A. Yes, it is. It was -- This list is actually
9 generated by the OCD and was sent to Carmen Wood to verify
10 that these are the wells that were intended to be used or
11 changed, and we -- as long as we all agree with the OCD and
12 OCD records and the operator records that these are
13 correct, then we can approve the 104. The process for this
14 is on our website.

15 Q. Now, this list looks a little bit shorter than
16 the list in the Application for this case today. Can you
17 explain that?

18 A. Yes, the wells that are not shown here are wells
19 that are already plugged and abandoned, and we do not
20 change the operator on plugged and abandoned wells. So the
21 list in the Application includes plugged and abandoned
22 wells.

23 Q. Let me ask you to take a look at Exhibits 4
24 through 9, and I would ask you if those are the documents
25 that Ms. Wood presented to you when she came in with her

1 application for change of operator.

2 A. Yes, these appear to be the documents that I did
3 receive at that time. However, I think some of the
4 following exhibits may also have been included in that
5 group. By the dates I'm thinking that Number 12 and 13 may
6 have been included in that group also.

7 EXAMINER STOGNER: What 12 and 13 are you --

8 THE WITNESS: Exhibit 12 and Exhibit 13, excuse
9 me.

10 EXAMINER STOGNER: Okay, now --

11 THE WITNESS: There was --

12 EXAMINER STOGNER: -- let's make sure, because
13 I've got Exhibit -- You were last talking about Exhibit 4.
14 Flip over next -- You've got Exhibit 5.

15 THE WITNESS: Yes.

16 EXAMINER STOGNER: And you proceed on, go over to
17 -- and I use the classic handstamp insignia of Exhibit 7 --

18 THE WITNESS: I'm sorry --

19 EXAMINER STOGNER: -- there's an Exhibit 12.

20 THE WITNESS: -- I see --

21 EXAMINER STOGNER: So let's make sure they're all
22 the same --

23 THE WITNESS: -- I'm sorry, I'm looking at the
24 wrong numbers. I'm confusing them, Mr. Examiner. I'm
25 sorry.

1 Q. (By Ms. MacQuesten) I'm sorry for the confusion.
2 Let me ask you this: When Ms. Wood brought in the
3 documents, were some of them already showing exhibit stamps
4 on them?

5 A. I don't recall whether they did or not, but now
6 that I am putting these back together in a certain order
7 here, this is complete, excuse me.

8 Q. Okay, and we're talking --

9 A. 4, 5, 6, 7, 8 and 9. Okay, and I'm sorry.

10 Q. Okay.

11 A. I'm sorry, what was your original question?

12 Q. First I wanted to verify if these were the
13 documents that Ms. Wood brought with her --

14 A. Yes.

15 Q. -- when she was applying for the change of
16 operatorship?

17 A. Yes, ma'am.

18 Q. Now, just to speed things up, because some of
19 these documents have already been introduced by other
20 parties in this action, rather than go through each one,
21 these documents include correspondence between Action and
22 several BIA offices and the Navajo Nation; is that right?

23 A. That's right, plus a memorandum to the BLM
24 office, San Juan Resources, from the Ute Mountain Agency.
25 So that is not between Action and the Tribe.

1 Q. Okay, which exhibit is that?

2 A. That is Exhibit Number 5.

3 Q. Okay. And to summarize, what did these documents
4 indicate to you regarding whether BIA recognized Action as
5 the operator of the wells on the Ute Mountain Ute lease and
6 the Navajo lease?

7 A. They indicated to me that Action Oil Company was
8 the appropriate operator of the wells that we approved a
9 well, that were the subject of the 104A.

10 Q. And did these documents indicate to you whether
11 BIA had a bond in place and who had that bond?

12 A. Yes they did.

13 Q. And who was that?

14 A. Action Oil.

15 Q. All right. Now, I believe the one exhibit in
16 this packet that we haven't seen in other presentations is
17 Exhibit Number 4, so I'd like to ask you some questions
18 specifically about that. Can you tell me what that
19 document is?

20 A. It's a copy of a letter sent by Mr. Tom Montoya
21 to Ms. Bancroft, who was the superintendent of the
22 Department of the Interior BIA Office of the Ute Mountain
23 Agency. And in that letter it advises Ute Mountain Agency
24 that Mr. Cunningham nor R.J. Enterprises nor Baldwin nor
25 others are authorized as employees, agents, operators or

1 representatives of Action Oil.

2 Q. At the time you approved the change of operator
3 from J.C. Well Service to Action, did you have any
4 additional information?

5 A. At that time I didn't. This -- To me, the BIA
6 letters were rather definitive as to who was the operator
7 of the well. In our relationship with the Bureau of Land
8 Management as trustee, it is important that we hold the
9 same operator responsible, as a responsible party in the
10 operation of these properties. If there's an enforcement
11 issue or violation, we have to be able to both address the
12 same responsible party for those.

13 Q. Now, I heard you mention two different entities,
14 the BIA and the BLM. Could you tell me what OCD's
15 relationship is with each agency? How does the OCD
16 interact with those two entities?

17 A. We interact mostly with the BLM, because as
18 trustee of the oil and gas leases that are issued by the
19 BIA, the BLM is responsible for approving development and
20 operation of oil and gas operations on those leases,
21 approving the permits to drill, approving other actions,
22 workovers on wells, and enforcing their regulations, even
23 taking enforcement action.

24 Our relationship with the BIA has developed a
25 little bit differently, because they are a leasing agency.

1 We've worked with them before to recover bonds that are on
2 Indian leases, for the purposes of reimbursing the
3 reclamation fund, whenever the OCD plugs wells using
4 reclamation-fund money on Indian lands. So we've worked
5 with the BIA on that.

6 Q. Could you give us an example of how you
7 coordinated enforcement activities with the BLM?

8 A. It's done on a daily basis on most issues. For
9 example, once the BLM approves a permit to drill, they send
10 a copy of that to our office for OCD review, to be sure
11 that also the approved operation is in compliance with
12 State regulations, with OCD regulations and requirements.

13 Sundry notices are handled the same way when
14 they're asking -- when an operator is requesting for
15 approval of special operation on a well.

16 When there are incidents that involve releases,
17 such as oil spills, we coordinate with the BLM quite often
18 to assure that the remediation operations are conducted in
19 accordance with both State and BLM requirements. We work
20 together quite often to establish common requirements, for
21 example, for casing and cementing of wells. We've worked
22 with the BLM when there have been enforcement activities,
23 such as a large dumping incident that occurred in San Juan
24 County, and the BLM sent an investigator and we worked
25 together on that issue.

1 On Indian lands, it's no different than on other
2 lands which the BLM is responsible for on federal lands,
3 let's say, and when issues arise we coordinate with them.
4 Currently we have a very big coordination project involving
5 the BLM office in Farmington and Durango, and both the
6 Navajo and the Ute Tribes, concerning inactive wells and
7 reclamation fund projects in the Verde-Gallup and
8 Horseshoe-Gallup fields, where there are over 100 wells
9 that cross lease lines, tribal lands, even involves some
10 federal and state leases and lands. And we've coordinated
11 together with all those entities to assure that we have a
12 program to address the inactive wells as part of an
13 enforcement program.

14 Q. When you say inactive wells, are you referring to
15 OCD Rule 201?

16 A. Yes, the 200 series, yes.

17 Q. Is there a similar series that the BLM has
18 regarding inactive wells? Who enforces inactive wells?
19 BLM or OCD?

20 A. We both do. Our requirements are significant--
21 Well, they have some differences. I hate to characterize
22 it as significant, because we're trying to accomplish the
23 same end, to assure that a well that is inactive is either
24 returned to production after a period of time, or it proves
25 mechanical integrity so that it stays -- so it can remain

1 inactive until the operator can reach a decision of what to
2 do with the well.

3 But we've been coordinating our inactive program
4 with the BLM for several years so that the operators are
5 aware tat they have to meet both State and BLM requirements
6 in their operations.

7 Q. If an operator of a well on tribal land is out of
8 compliance with 201, does the OCD take the operator to
9 hearing and an enforcement action?

10 A. Yes, we do.

11 Q. What would happen if we sought enforcement
12 against one operator, the operator we showed as record, and
13 the operator the BLM showed as the operator of record was
14 different?

15 A. It would create a significant amount of confusion
16 and might end up in a -- Well, I don't know what it would
17 end up as, but it would be a very ineffective way for us to
18 handle it. It's hard to predict exactly what would happen
19 in that case, but it wouldn't allow us to coordinate our
20 activities against a single responsible party.

21 Q. How do you coordinate the financial assurances
22 with, I suppose, the BIA in that case; is that right?

23 A. That's correct.

24 Q. How does that work?

25 A. What we've done in the past is, when we've

1 started with a reclamation-fund project on tribal lands is,
2 at the beginning we work with the BLM to be sure that the
3 plugging program that we propose to pay for out of
4 reclamation-fund money is also in compliance with their
5 regulations.

6 We work with the BIA to address the issue how we
7 are going to be reimbursed from the bonding, once the BIA
8 starts the forfeiture process or has already gone through
9 the forfeiture process to reimburse us. We even work with
10 the Navajo EPA on the Navajo wells, so we were -- several
11 agencies involved we had to coordinate with, to be sure
12 that the financial assurance was handled appropriately so
13 that the reclamation fund was reimbursed from the bond and
14 that the actual work that was done satisfied the tribal
15 entities, the federal entities and our own requirements.

16 Q. For us to plug a well, are we able to just go out
17 and plug a well, or do we need an order to allow us to do
18 it?

19 A. Under the statute we need an order to plug a
20 well.

21 Q. Then you --

22 A. Excuse me, unless it's an emergency.

23 Q. Okay. Assuming it's a nonemergency and we were
24 to obtain an order, who would we obtain it against?

25 A. We go against the operator of record that we have

1 in our records in OCD.

2 Q. What would happen if we got such an order against
3 the operator of record that we showed, and the BIA and BLM
4 had a different operator of record?

5 A. Again, it would be the same type of confusion
6 that enforcing the order would be maybe very difficult to
7 do.

8 Q. All right. We've talked about enforcement
9 matters, but I wanted to ask you about other areas where
10 the OCD and the BLM interact. Does the BLM recognize OCD
11 decisions on oil and gas spacing matters, such as the
12 setting of spacing, approval of exception locations,
13 approval of nonstandard spacing units and compulsory
14 pooling?

15 A. Yes, it does, along -- in two ways. On federal
16 lands they accept that with those special issues. On
17 Indian lands we have a memorandum of understanding under
18 which we coordinate with the BLM for those matters on
19 Indian lands.

20 Q. Would any complications arise if we were issuing
21 such orders on operators of record that we showed as
22 operators of record, while the BLM showed different
23 operators of record?

24 A. Yes, again the same confusion would arise.

25 Q. Once you decided to grant the change-of-operator

1 from J.C. back to Action, did you notify J.C.?

2 A. No, it has never been our procedure within OCD to
3 notify the previous operator when there's been an operator
4 change. We -- If the 104 had been used for a transporter
5 change in past time, we never did that either. We just
6 accept that document and don't go through a process of
7 notifying the previous operator.

8 Q. Did it give you concern that in this case there
9 obviously was a prior operator still in existence that had
10 a different view of the matter?

11 A. Not really, not with the document -- the evidence
12 that Carmen Wood brought me. We ran into the issue before
13 where there may be operators who have a difference of
14 opinion who may operate. Plus we have the issue where
15 there may be an operator who's no longer available through
16 bankruptcy, dissolution of the company, whatever, and there
17 is nobody to sign.

18 Also there's a condition that hasn't arisen in my
19 district yet, where there could be a court order that would
20 designate an operator of record that we would have to then
21 take a look at to see how we would handle the 104.

22 Q. What was your understanding as to whether J.C.
23 had notice that Ms. Wood was going to seek a change of
24 operator?

25 A. In my conversation with her -- and again, I don't

1 remember the exact wording, but it was clear to me that
2 there were some differences between her and Mr. Cunningham
3 over who was going to be operator of these wells.

4 Q. Now that approval was granted in July of 2003; is
5 that right?

6 A. Yes, it was.

7 Q. Have you received any subsequent information that
8 would lead you to change your mind about what you did with
9 that change of operator?

10 A. No, actually the information that I've since then
11 affirms and confirms that it is the -- I made the -- it was
12 the appropriate decision that I made. I have reviewed --
13 I've also reviewed the OCD records that we have for -- the
14 well files for those wells and have discovered quite a bit
15 of information that again supports my original decision.

16 If I could jump to Exhibit Number -- I don't
17 know, is this 16 or 15, an e-mail that I received from --

18 Q. 16.

19 A. Okay 16?

20 Q. It's the very last exhibit in the packet.

21 A. Okay, thank you. What this is is an e-mail where
22 I forward to you a note that I received from Mr. Jim
23 Lovato, who's a petroleum engineer for the Bureau of Land
24 Management in the Farmington office.

25 I don't know if I need to read it into the

1 record, but basically it states that Mr. -- let's see, the
2 operator of record is still Action Oil Company, under point
3 number 1.

4 Point number 2 is that although lease assignments
5 from Action to J.C. were executed in 1998, they weren't
6 filed until December of 2003 with the BIA in Window Rock.
7 Now --

8 MR. HALL: Mr. Examiner, at this point I'm going
9 to object. There is double hearsay within this exhibit.
10 They can't authenticate this. I object to its even being
11 discussed at this point.

12 MS. MacQUESTEN: Mr. Examiner, I'm not offering
13 it for the truth of the matter asserted. I'm offering it
14 as evidence of what Mr. Chavez had in front of him
15 regarding this case that led him not to change his mind
16 about the decision he made to change the operator from J.C.
17 to Action.

18 MR. HALL: Mr. Examiner, the problem still
19 remains that these are statements of a witness not making
20 himself available for cross-examination. I frankly can
21 disagree with his conclusions in here, but I don't have the
22 opportunity to discuss the applicable federal CFRs with
23 them. We can't admit this. There are statements from two
24 different unavailable witnesses. I would object to this.

25 EXAMINER STOGNER: Thank you, Mr. Hall, however

1 I'm going to overrule your objection and allow this. Many
2 times do we have to include in your applications filed with
3 me -- do I have to take what is submitted to me.

4 Please continue, Ms. MacQuesten.

5 Q. (By Ms. MacQuesten) To summarize from Exhibit
6 Number 16, nothing that you received in this e-mail from
7 the BLM led you to believe that you'd made the wrong
8 decision, or led you to believe you needed to change your
9 decision?

10 A. That's correct. I also reviewed the well files
11 for the wells in question, and I found that several times
12 Mr. Cunningham filed documents under the name Action Oil
13 Company with the Bureau of Land Management.

14 Q. Why did those documents show up in OCD files?

15 A. As a standard procedure in our cooperation with
16 the BLM, they forward to us copies of sundry notices of all
17 wells -- that they receive for any wells in New Mexico.

18 Q. I'd like you to take a look at what has been
19 marked as OCD Exhibit Number 10 --

20 A. Okay.

21 Q. -- 11, 12, 13 and 14 and ask you if those are
22 documents that you pulled from the well files on the wells
23 in this case.

24 A. Yes. In fact, these are on our imaging system,
25 and they're available as public record. Also of note is,

1 these are the only sundry notices that Mr. Cunningham has
2 filed with the BLM on any of these wells since the operator
3 change.

4 These -- The other wells, for which I do not have
5 any sundry notices, have had no documents in our records
6 since the 104 change to J.C. Well Service until the change
7 to Action Oil.

8 So all -- what I would say is, all of the
9 documents that we have, that Mr. Cunningham filed on these
10 wells, after the change of operator, show Action Oil
11 Company, not J.C. Well Service.

12 Q. When you say they show Action Oil Company, are
13 you referring to the Name of Operator line on the form?

14 A. That's correct.

15 Q. And then the signature line shows what?

16 A. It shows John Cunningham, Operator.

17 Q. In looking at Exhibit Number 10, that is dated
18 8-22 of 1999?

19 A. Yes.

20 Q. If you look at the next exhibit, Number 11, and
21 check the line number 2, the Name of Operator, what does
22 that show?

23 A. It shows Action Oil Company, Incorporated. That
24 is struck through, and J.C. Well Service is written on
25 there. But I do recognize that handwriting. Mrs. Dorothy

1 Jacquez, who works for me and handles these documents as
2 they come in, will often make corrections to the documents,
3 and as you can see there's a correction also to the API
4 number. And as we process these documents, if there needs
5 to be a correction or change she will do that.

6 Q. Now, what is the date on this document?

7 A. This one was submitted -- It's signed by Mr.
8 Cunningham on December 11th, 1998. We received it in our
9 office on December 16th, 1998. The BLM stamp of receipt is
10 at the top of that document, showing that they received it
11 December 11th, the same date that he signed it.

12 Q. Is that during the time period when we recognized
13 J.C. Well Service as the operator of record at OCD?

14 A. That's correct.

15 Q. And so the woman in your office was doing what
16 she felt was necessary to correct --

17 A. That's correct.

18 Q. -- to correct it?

19 A. A document like this, being that the type of
20 information that's on here is a matter of record, that we
21 put into the record, it doesn't require our technical
22 review or approval of the action that's on it. So this
23 type of a document, when she receives it she just passes it
24 on.

25 Q. In looking at Exhibits 12, 13 and 14, are those

1 other examples of notices that were filed by Mr. Cunningham
2 under the name of Action Oil?

3 A. That's correct.

4 Q. If you could look at Exhibit Number 15, the large
5 packet that is left, where did these documents come from?

6 A. These are in the well file for the King Kong Well
7 Number 20.

8 Q. What do they relate to?

9 A. They relate to the application for injection that
10 was filed for that particular well with the Region 9 EPA
11 office in San Francisco, which is responsible for the
12 Navajo Reservation.

13 Q. Is that the United States EPA?

14 A. Yes, it is.

15 Q. And what name is shown for the applicant?

16 A. Inside it says Johnny Cunningham. I'm sorry, the
17 top page of Exhibit 15 shows John Cunningham, Action Oil
18 Company, care of J.C. Operating Company.

19 Q. Are bonds required for injection well permits
20 through the EPA?

21 A. Yes, they are.

22 Q. Does this packet indicate whether a bond was in
23 place?

24 A. Yes, it does, it refers to it interiorly, if
25 you'll allow me to turn through here -- I'm sorry, I don't

1 know what page number it is, but interiorly a page at the
2 top says Section F, Financial Responsibility. It says the
3 applicant has furnished to BIA collective bond in the sum
4 of \$75,000.

5 Q. And what is the approximate time frame of this
6 document?

7 A. This was after Mr. Cunningham had filed his 104,
8 changing operator of this well to J.C. Well Service from
9 Action Oil Company.

10 Q. Okay. If you look at the cover page, what date
11 is that on that page?

12 A. It's dated at the top November 10th, 1999.

13 Q. So any bond that was in place at that time would
14 have been an action bond?

15 A. That's correct.

16 Q. Which would match the name of the applicant as
17 presented to the EPA?

18 A. That is correct.

19 Q. So on the issue of who the OCD should recognize
20 as the operator of the wells at issue today, you have
21 before you information that the BLM regards Action as the
22 operator for wells on the Navajo lease and the Ute Mountain
23 lease; is that correct?

24 A. That's correct.

25 Q. You have information that the BIA regards Action

1 as the operator for wells on the Navajo lease and the Ute
2 Mountain lease?

3 A. Yes, that's correct.

4 Q. And that the BIA has a bond provided by Action as
5 the operator of those leases?

6 A. That's correct.

7 Q. And you also have information that the EPA has
8 received an application from Action as operator seeking a
9 permit for an injection well, relying on Action's BIA bond?

10 A. That's correct.

11 Q. Your understanding, if the BIA recognizes a
12 particular operator, do other federal entities such as the
13 BLM and the EPA recognize the same operator?

14 A. That is my understanding, yes.

15 Q. And right now the information that we have is
16 that BIA recognizes Action. What if at some point in the
17 future the BIA recognized J.C. Well Service as the
18 operator? Would you approve the change of operator to J.C.
19 Well Service?

20 A. Well, yes. And that's an interesting question
21 because we had already approved a C-104 for J.C. Well
22 Service, and in retrospect a more appropriate action might
23 have been actually, since his assignments didn't go
24 through, to rescind the 104's that we had originally
25 approved for J.C. Well Service, rather than create a new --

1 than to have re-authorized Action Oil Company.

2 Q. If J.C. came in with a new application at some
3 point in the future, though, with evidence showing that
4 they were recognized as the operator, would you grant that
5 application?

6 A. Yes. At this time also I would also verify,
7 because of the process. This is the first time that an
8 issue like this has come up involving Indian leases, and I
9 think we will reconsider our processes to include the
10 involvement more closely with the BLM to be sure that we
11 are both holding the same person responsible for the
12 operations of those wells.

13 Q. Is it relevant to your decision that there is a
14 dispute between Action and J.C. regarding transfer of the
15 lease and assignment of the lease?

16 A. Not at this, according to the information that I
17 have.

18 Q. So you rely solely on who the BIA recognizes?

19 A. At this time, yes. Excuse me, and the BLM.

20 Q. And the BLM?

21 A. Yes.

22 Q. Do they normally recognize the same operator?

23 A. Yes.

24 Q. Have you ever known them to recognize a different
25 operator?

1 A. No, I haven't.

2 MS. MacQUESTEN: I would move to admit Exhibit 1
3 through 15.

4 EXAMINER STOGNER: Any objection?

5 MR. HALL: I just want to make sure I have the
6 right exhibit numbers. The last exhibit is --

7 EXAMINER STOGNER: Excuse me, Mr. Hall, did you
8 say 1 through 15 or 1 through 16?

9 MS. MacQUESTEN: I should have said 1 through 16.
10 We took them out of order, but yes, 1 through 16.

11 EXAMINER STOGNER: Mr. Hall?

12 MR. HALL: No objection, with the exception of
13 Exhibit 16.

14 EXAMINER STOGNER: Any objection, Mr. Montoya?

15 MR. MONTOYA: None.

16 EXAMINER STOGNER: Your objection is so noted.
17 Exhibits 1 through 16 of the OCD, as represented by the
18 classic stamp, will be admitted into evidence at this time.

19 MS. MacQUESTEN: I have no more questions of Mr.
20 Chavez at this time.

21 EXAMINER STOGNER: Mr. Hall, your witness.

22 CROSS-EXAMINATION

23 BY MR. HALL:

24 Q. Mr. Chavez, assume there's an emergency on one of
25 the wells on one of these three leases. Who are you going

1 to call? Johnny Cunningham or Carmen Wood?

2 A. Right now I would call Ms. Wood.

3 Q. Do you know anything about Ms. Wood's ability to
4 operate any of these wells?

5 A. No, I don't.

6 Q. Do you know anything about her ability to respond
7 to an emergency?

8 A. No, I don't.

9 Q. Do you know anything about her past experience as
10 an operator?

11 A. No, I don't.

12 Q. Do you know whether she has any employees?

13 A. No, I don't.

14 Q. Do you know whether she has a technical
15 background?

16 A. No, I don't.

17 Q. Do you know whether she's a petroleum engineer?

18 A. No.

19 Q. Do you know whether she has an office?

20 A. No.

21 MS. MacQUESTEN: Mr. Examiner, I would object.

22 The issue today isn't whether one operator is more capable
23 than another but whether it was appropriate for Mr. Chavez
24 to grant the change-of-operator form based on the
25 information he had before him at that time.

1 EXAMINER STOGNER: Objection so noted. Mr. Hall,
2 please continue.

3 Q. (By Mr. Hall) Mr. Chavez, from your background
4 and experience, obviously quite extensive, can you tell us
5 your understanding of the difference between a lessee and
6 an operator? What's the difference?

7 A. A lessee has a certain ownership right to develop
8 properties. Depending on how the lease is written, they
9 have certain rights to ingress, egress, to develop those
10 properties. Also, limited by the lease itself, they have
11 responsibilities for assuring that royalties are paid, that
12 certain reports that may be required are followed. It's a
13 certain property right, but it can be limited, depending on
14 how the lease is written.

15 Q. Does an operator have to have a lease right in
16 order to be operator?

17 A. No.

18 Q. Let's look at your Exhibits 5 through 9. Now, I
19 understood you to say that Exhibits 5 through 9 were what
20 you relied on. These are what Ms. Wood brought you and
21 what you relied on to make a determination that the change
22 of operator should be approved; is that right?

23 A. Well, also Carmen wood came in and she was Action
24 Oil Company, and as the lessee she told me that Mr.
25 Cunningham was not the operator, that she was. So not just

1 the document but her as operator, as lessee, the documents
2 that I had, saying that Mr. Cunningham was not operator,
3 had no operating rights, telling me that, also validated
4 that I made the correct choice.

5 Q. My question was, the documents you said you
6 reviewed in order to make the determination that Action Oil
7 Company was operator were Exhibits 5 through 9?

8 A. Yes.

9 Q. Can you show me anywhere within Exhibits 5
10 through 9 the word "operator" is used?

11 A. Oh, I'm sure it's not.

12 Q. It's not?

13 A. Well, without looking, they didn't talk about
14 operating rights in these documents, as far as I know. But
15 again, the lessee is the one who designates who the
16 operator is. And the lessee was sitting right there in my
17 office telling me that Mr. Cunningham, J.C. Well Service,
18 was not operator.

19 Q. When Ms. Wood came to see you, did she show you
20 the assignment, bill of sale and conveyance filed of record
21 with the San Juan County Clerk's Office?

22 A. No, she didn't.

23 Q. It's the Exhibit Number 2 instrument in our
24 exhibit notebook. Did she show you that?

25 A. No, she did not.

1 Q. Did you ask her whether there was a county
2 assignment for lease title?

3 A. No, I didn't.

4 Q. Any reason to believe that this assignment, our
5 Exhibit 2, is invalid in any way?

6 A. No, I don't.

7 Q. Refer briefly to your Exhibit 15. It's the EPA
8 UIC permit material. It's dated November 10th, 1999. Do
9 you know if at that time the BIA had finished processing
10 the request for approvals of the lease assignments from
11 Action Oil Company to Mr. Cunningham?

12 A. No.

13 Q. Do you know, at the time this UIC permit was
14 generated, whether the BIA had informed Mr. Cunningham the
15 amount of the bond that would be required of him?

16 A. No.

17 Q. Do you know what the process is to obtain a
18 release of the federal bond on Indian leases?

19 A. No, I don't.

20 Q. Do you know whether Action Oil Company ever
21 initiated the process to obtain a release of its bonds on
22 the leases?

23 A. No, I don't.

24 Q. Do you know if Action Oil Company even paid the
25 premiums on its bonds?

1 A. No, that's not relevant. That wasn't information
2 that I needed.

3 Q. Let's look back at your Exhibit 2. It's the
4 C-104A. Again, you know Johnny Cunningham, don't you?

5 A. Yes, I do.

6 Q. Why couldn't you have just picked up the phone
7 and asked him about this change of operator?

8 A. It didn't seem like one thing that I needed to
9 do.

10 Q. Have you processed any other C-104A's similar to
11 this, where the previous operator has not signed off on a
12 change?

13 A. Not a 104A, I haven't.

14 Q. Is your approval of this particular change of
15 operator a departure from your custom and practice in the
16 District 3 Office?

17 A. Well, the -- not for handling an exception, no,
18 because I have approved other C-104's, not 104A's, without
19 a prior operator signature, when it appears the other
20 information that we had made it appropriate. The rest of
21 the OCD does also.

22 Q. Now, Ms. MacQuesten asked you a question whether
23 or not there was any sort of notification provided to J.C.
24 that this change of operator had been submitted. You
25 didn't quite answer the question directly. Do you know

1 whether J.C. was notified that this change of operator was
2 being filed?

3 A. I didn't make a notification myself. If anybody
4 else did, I don't know.

5 Q. But did you ask Ms. Wood whether J.C. had been
6 notified that this was in the works?

7 A. I didn't ask her that. From our conversations,
8 it was obvious to me that Mr. Cunningham already knew that
9 this was occurring.

10 Q. What was the basis of your understanding there?

11 A. I don't remember the exact wording of the
12 conversation, but it had to do with the conflict arising
13 out of issues after her divorce, acquiring the Action Oil
14 Company, taking a look at the issues involved with bonding,
15 with some other things. It was quite involved.

16 Q. It was a long story, even involving a divorce
17 proceeding?

18 A. Yes, I'm sure.

19 Q. Did Ms. Wood tell you that when she acquired
20 Action Oil Company through her divorce that it had an
21 agreed value of zero?

22 A. I don't remember whether that came up at that
23 time. At some point I think we did have that conversation.
24 It may have been at that time that she said it had no
25 assets.

1 Q. Did it occur to you at the time that Mr.
2 Cunningham would object to the approval of the C-104?

3 A. Well, that was the gist of our conversation, that
4 it was going to be a contentious -- or basically that he
5 would object, yeah.

6 Q. And you went ahead and approved it anyway,
7 without asking him?

8 A. With the information that I had in front of me
9 that had been presented, supported by the BIA which said
10 that Mrs. Wood was the lessee and therefore as lessee, my
11 understanding -- and I think it's correct -- that she has a
12 right to determine who's operator. She could determine who
13 was the operator because she was the lessee of record, and
14 that's no problem to me.

15 Q. Did Ms. Wood represent to you that the
16 assignments for the leases were pending before the BIA
17 realty offices?

18 A. I don't know that she said that. She did tell me
19 that she knew that she had not filed the documents that he
20 had appropriately, that they were supposed to have been
21 filed within five days and he had not met that requirement
22 for change.

23 Q. Did she indicate to you that the request for
24 approvals of the assignments were ever denied?

25 A. I don't think that we ever got that far, no.

1 Q. Did you ever confer with Division counsel about
2 what to do about this situation in view of the pendency of
3 the approval of the assignments of BIA?

4 A. No, not --

5 Q. I don't want to know what counsel told you, I
6 just want to know if you inquired.

7 A. No, I didn't.

8 Q. Mr. Chavez, who's actually out there in the field
9 operating the Navajo wells now?

10 A. Well, my understanding, after the fact, was that
11 Mr. Cunningham actually physically maintained operation of
12 the wells out there for a certain amount of time. Who's
13 doing it right now, I don't know.

14 Q. Do you have any information that tells you that
15 that has changed?

16 A. No, I don't.

17 Q. In fact, doesn't your field staff have regular
18 involvement with Mr. Cunningham out there?

19 A. I don't know what you mean by regular. I don't
20 know the last time they were out there on that property.

21 Q. Okay. Well, insofar as you know, when your field
22 staff had had the occasion to address the matter on these
23 leases, had they dealt with Mr. Cunningham?

24 A. Up -- Yeah, I know we had up till this change. I
25 don't know -- I haven't looked at the inspection records to

1 see who they've dealt with or if anybody has been out
2 there, actually, since this change.

3 Q. Were you involved in the Division's change of the
4 format for the C-104A forms?

5 A. Yes, I was.

6 Q. Do you know why the prior operator approval
7 provision was kept on there?

8 A. Yes, that was -- at that time we thought it was
9 still helpful for us to process a 104A with the previous
10 operator signing off on it.

11 Q. Why in the past did you require the previous
12 operator to sign off?

13 A. Because of the problems that we'd had with these
14 changes.

15 Q. You're speaking of unapproved changes?

16 A. That's correct.

17 Q. What production reporting data is being supplied
18 to the OCD and the Taxation and Revenue Department by
19 Action Oil Company from these wells?

20 A. I don't know what's being supplied to the
21 Taxation and Revenue Department.

22 To the OCD, I know that we're having some issues
23 because we've had some filings, apparently, by both J.C.
24 Well Service under that OGRID, for these wells after the
25 C-104 change occurred. I know that we had a problem, we

1 weren't getting filings from Action Oil Company for a
2 period of time after the change was made. And apparently
3 now there have been some C-115's filed by BIYA company.

4 So it's -- just today, Ms. Prouty, who's in
5 charge of those particular filings and tracking the
6 production in support of the OCD, came to me and related
7 there are some real issues that need to be settled here.
8 So hopefully the outcome of this -- the final results of
9 this hearing will allow us to specifically address what
10 needs to be done with those filings.

11 Q. All right. You understand from prior testimony
12 here that BIYA Operators is now the operator of the wells
13 on the Ute Mountain Ute Tribal lease?

14 A. Well, again, maybe that might be determined by
15 this hearing.

16 Q. Well, let me rephrase that. BIYA is physically
17 operating the wells on the lease?

18 A. I'd heard that, and I don't know that any of our
19 staff has been out there to verify that, but that's what I
20 understand, yeah.

21 Q. Yeah. So Action Oil Company is not filing any
22 C-105 data with the Division, is it?

23 A. At one point I knew that they weren't. I haven't
24 checked lately to see what has or hasn't been filed.

25 Q. But are you aware that J.C. is reporting

1 production data under its OGRID number currently?

2 A. I knew that J.C. Well Service was filing C-115's.
3 I didn't know if they had stopped.

4 Q. You didn't know that they're not current?

5 A. No, I don't.

6 Q. All right. If you know, how is the Division
7 handling that production data under Mr. Cunningham's OGRID
8 number? Where is it going?

9 A. Right now it's put to the side until we can
10 determine, perhaps with the results of this hearing, how to
11 handle that data.

12 Q. Yeah. And do you know how the Taxation and
13 Revenue Department is handling that data?

14 A. No, I don't.

15 Q. Sounds like a problem, doesn't it?

16 A. Yes, it certainly does.

17 Q. Are there any penalties that may accrue to the
18 operator, whomever that might be, for failure to report
19 production data?

20 A. I don't know yet. That would be an enforcement
21 action that generally originates out of Ms. Prouty's office
22 through our counsel.

23 Q. But the Division does have the authority to seek
24 penalties and compliance, does it not?

25 A. Yes.

1 Q. Do we know if Action Oil Company is paying taxes
2 on production to anyone?

3 A. I don't know.

4 Q. And the OGRID data would not answer that, would
5 it?

6 A. I don't know.

7 Q. So the record is clear here, you're receiving no
8 OGRID data from Action Oil Company, correct?

9 A. OGRID data, you mean production --

10 Q. Production data, I'm sorry.

11 A. I don't know -- I knew that at one time we
12 weren't, and I haven't followed up to see whether that
13 Action has caught up with filing in the reports.

14 Q. So the Division does not know whether Action Oil
15 Company is paying royalties?

16 A. That's not normally information that we would
17 have.

18 Q. Neither the Division or Taxation and Revenue
19 Department would know whether Action Oil Company is
20 remitting for production taxes?

21 A. I'm not qualified to answer.

22 MS. MacQUESTEN: Objection, Mr. Examiner. Mr.
23 Chavez has explained that he doesn't know all this
24 information, he's not the right person to ask these
25 questions of. Ms. Prouty would be able to answer them, but

1 Mr. Hall didn't call Ms. Prouty as a witness. It's
2 improper to say the Division doesn't know this. Mr. Chavez
3 may or may not know this, but he's also not the right
4 person to ask.

5 EXAMINER STOGNER: I agree with Ms. MacQuesten.
6 How many times does Mr. Chavez have to say no? You want to
7 go on to the next question?

8 Q. (By Mr. Hall) Mr. Chavez, would you agree with
9 me that the practice for change of operator that the
10 Division has adopted and followed on its current C-104A's
11 requiring the signature of the new and the past operator is
12 a procedure that's easily implemented by the Division in
13 its District Offices?

14 A. I guess -- I'm sorry, I don't understand the
15 question.

16 Q. Does the Division have a hard time implementing
17 and processing C-104A forms?

18 A. No.

19 MR. HALL: No further questions, Mr. Examiner.

20 EXAMINER STOGNER: Mr. Montoya?

21 MR. MONTOYA: Just briefly, Mr. Examiner.

22 EXAMINATION

23 BY MR. MONTOYA:

24 Q. In 1998, when the operator was changed to J.C.
25 Well Service, did you know anything about J.C. Well Service

1 or Mr. Cunningham --

2 A. Yes, yes.

3 Q. -- before approving that change of operator?

4 A. Yes.

5 Q. And was -- is it the policy of the Division to
6 inquire into qualifications of operators before approving
7 operators?

8 A. The qualification that we have is, on State and
9 fee lands, is that they do have the appropriate bonding for
10 the wells and that that can only be accomplished if there's
11 other registration to do business in New Mexico.

12 So in the background, those types of
13 qualifications. But as far as -- which qualifications --
14 let me ask you, which qualifications, so I can answer that
15 appropriately.

16 Q. I just wanted to see what the policy was
17 investigating any background with respect to operators when
18 considering a change-of-operator request.

19 A. We have a memorandum issued by Director LeMay a
20 few years ago that does allow us to consider certain other
21 qualifications, yes, but it didn't apply to this particular
22 change.

23 Q. And prior to J.C. Well Service, Inc., being the
24 operator, the prior operator was Action Oil, Inc.; is that
25 correct?

1 A. Yes.

2 Q. Okay. And do you understand Action Oil, Inc., to
3 be a corporation?

4 A. Yes.

5 Q. And is it -- in your view or estimation, is it
6 possible for a corporation to hire operators to perform
7 functions for a corporation?

8 A. Yes.

9 Q. Exhibit 3 submitted by the Applicant here is the
10 assignment of the mining leases that are at issue here, and
11 do you feel that it's your responsibility to determine
12 whether assignments of mining leases are valid or invalid?

13 A. No.

14 Q. Exhibit 2 provided by the Applicant is the
15 assignment, bill of sale and conveyance reported by Action
16 Oil, Inc., assigned to a number of individuals, including
17 Mr. Cunningham, the oil and gas leases that are the subject
18 of this hearing. Did you feel that it is your
19 responsibility to inquire into the validity of such
20 assignment, bill and conveyance before making your decision
21 in this case?

22 A. No.

23 Q. Now that you have had some opportunity to
24 consider Exhibit 2, which is the assignment, bill of sale
25 and conveyance, do you consider that having this document

1 before you would change your decision with respect to the
2 change-of-operator decision that you made?

3 A. No, it wouldn't.

4 Q. Is it the policy of the Oil Conservation Division
5 to recognize the same operator of the wells and leases at
6 issue that are recognized by the federal government and by
7 the respective Indian tribes?

8 A. When you say "policy", we have a way of handling
9 that here and our interpretation of what a policy is. It's
10 our practice to do that, because -- It's not a written
11 policy, if you ask along those lines, and all that we have
12 -- a policy is what we kind of call a written policy. But
13 it's our practice to do that, because that is the best way
14 to assure we can get compliance with our rules and
15 regulations.

16 Q. How long has that practice or policy been in
17 place?

18 A. I don't know when it originated. It was there
19 when I came to work for the Division in 1978.

20 Q. Has there been any challenge anywhere that you
21 were aware of, that the practice or policy of the Division
22 in recognizing the same operator of the wells and leases at
23 issue that are recognized by the government agencies and
24 the tribes that may be affected?

25 A. I can't think of whether there's ever been a

1 difference.

2 Q. I'm sorry, I didn't --

3 A. I can't think of whether there's ever been a
4 difference between our recognition and the federal, BLM
5 recognition of an operator. Maybe I didn't understand your
6 question.

7 Q. No, no, you answered the question.

8 A. Okay.

9 Q. And to your knowledge -- you may have asked this
10 before, but has there ever been a case involving the
11 Division whereby the Division recognized a different
12 operator for a well or lease at issue than is recognized by
13 the federal government or affected Indian tribes?

14 A. I can't think of any.

15 MR. MONTOYA: That's all I have.

16 EXAMINER STOGNER: Any redirect, Ms. MacQuesten?

17 MS. MacQUESTEN: No, thank you.

18 EXAMINATION

19 BY EXAMINER STOGNER:

20 Q. Okay, let's see. Mr. Chavez, I want to make sure
21 on my exhibits here. Exhibit Number 2 is the C-104A, and
22 is it my understanding that Exhibits 3 back through 9 were
23 brought in to substantiate that change? Is that correct,
24 or am I missing something?

25 A. I think that's correct. Hold on a second, let me

1 get this right. Ms. Wood brought in Exhibit 2, 3 through
2 9, as best as I can recollect, yes.

3 Q. Okay, let's go to Exhibit Number 9 here. Would
4 this be on the image as what was accepted into the well
5 file, or would the 104 and the listing be the only thing
6 that would be accepted in the OCD well file?

7 A. In the well file all we put is the 104A document.

8 Q. Okay. Look closely at Exhibit Number 9. Could
9 this have been brought to you subsequent to the C-104A
10 and --

11 A. Oh, yes.

12 Q. -- this documentation?

13 A. Yes, that's correct.

14 Q. Okay.

15 A. I'm sorry, that Exhibit Number 9, by its date,
16 would indicate that it was not brought at the same time
17 that I -- Mrs. Carmen Wood brought me the other documents.

18 Q. Okay, so maybe perhaps this came in subsequent to
19 this, to help substantiate. Was that brought by --

20 A. I don't --

21 Q. Did you seek that information?

22 A. No, I never sought any of this information that
23 was brought to me.

24 Q. Okay. Now, I'm going to refer to Exhibit Number
25 1, and let's go back in history a little bit here.

1 A. Okay.

2 Q. The change in operator, since you have been OCD
3 supervisor at District 3, which was back in what, 1980 --

4 A. 1980 is when I became supervisor.

5 Q. Okay, so let's go back just to 1980. How would
6 an operator change in -- Was that Form C-104?

7 A. Yes, it was.

8 Q. Okay. Was there a place for the old operator to
9 sign on the old 1980 C-104s?

10 A. No, there wasn't.

11 Q. Okay. When did that practice get adopted, to
12 your recollection?

13 A. My recollection is, at the same time that we
14 revised the forms to match or to be useable for the ONGARD
15 system, to include OGRIDs, POD numbers and other
16 information on here that we could put into the ONGARD
17 system.

18 Q. Or the computer system?

19 A. Yes, excuse me, our ONGARD data computer system.

20 Q. Okay. Now, that practice, was that in the rule,
21 or was it on the form with instructions on the back to
22 obtain the previous operator's signature?

23 A. I don't think that we made a rule change, because
24 if I recollect correctly the OCD practice was to write a
25 rule for the operator to submit a form, but at one point we

1 determined that it was unnecessary to take every form
2 change to hearing, and therefore we could change a form,
3 and the operators could still comply with the rule by
4 filling out the information required on the form.

5 Q. So that was a practice that was instructed on the
6 back of the form to obtain the --

7 A. Yes, we came up with a new set of instructions
8 with this document, yes.

9 Q. Okay. And as far as those set of instructions,
10 what did it say if the original operator would not, could
11 not sign?

12 A. I'm sorry, Mr. Examiner, I don't recall.

13 Q. Were you involved when that practice -- Well, let
14 me rephrase that.

15 When that practice was adopted, was there a
16 committee to study the possible changes in the form or
17 change in operator, rule? Were you involved in those
18 discussions?

19 A. I know I was involved in the change. I don't
20 recall the entire process that was used. But it was -- it
21 did involve considerable OCD staff when we did make these
22 changes, I recall that. But I don't remember whether we
23 formed a committee or whether we just went around in
24 informal discussions to come up with some kind of a
25 consensus that this was necessary.

1 Q. Why did the Division start -- and I'm not going
2 to use the word -- I'm going to say require, and I know
3 that it's not a requirement, but when did we start seeking
4 this, and what was some of the reasons that was discussed
5 in those committees or when that was adopted?

6 A. There was occasionally a problem, because more
7 than -- an operator would claim that they should -- one
8 person would claim that they should be operator of the well
9 and then another would.

10 In fact, I recall a specific reference from one
11 of our southeastern districts where one of the staff
12 members -- I don't recall who it was -- told us that they
13 had appeared at a time when an operator would file a 104
14 one day, and the next day the other operator wanted to
15 continue for several days, and it just created a lot of
16 problems.

17 Q. Was there other -- can you remember some of the
18 other reasons? That was one example.

19 A. Oh, well -- No, I'm sorry, I don't recall them
20 all, the discussions that we had.

21 Q. But there were other --

22 A. Like as far as I recall, I think there were some
23 other reasons that made this very appropriate.

24 Q. What percentage, roughly, do you see or have seen
25 at your office, at the District Office, where the original

1 signature was not obtained? What percentage of the change
2 of operators?

3 A. It would be hard -- the percentage would be so
4 low, of course, it's less than one percent.

5 Q. But whenever they do come in, what has been your
6 practice or the Division's practice to substantiate or at
7 least get some sort of verification or reasoning?

8 A. Well, we always need some other information, you
9 know, why didn't -- or why isn't there a previous operator
10 signature on the document? And the new operator would have
11 to show us something that would substantiate why they
12 should be the operator.

13 In this particular case I had the lessee of
14 record right there in front of me, who would determine who
15 the operator is in their -- when you have the person who
16 owns the lease, who determines who the operator is, right
17 there in front of you and they tell you, that pretty much
18 is black and white.

19 Q. And of the ones that you do not see a signature
20 from the previous operator, what has been the reason in the
21 majority of those cases?

22 A. The majority of the cases have been where the
23 previous operator is no longer in existence through
24 bankruptcy, abandonment of the properties, things like
25 that.

1 Q. So that practice has worked out fairly well?

2 A. Yes, it has. We haven't -- this is -- In all my
3 years in the Aztec District, this is the first time there's
4 been a challenge to one of these.

5 Q. Were you hoping to retire without seeing disputes
6 such as this?

7 A. Absolutely.

8 Q. The OCD, State of New Mexico, has no rules and
9 regulations to license an operator; is that your
10 understanding?

11 A. Yes, we don't have a type of licensure except
12 only as is required for us to approve a bond for an
13 operator so that they be licensed to do business in the
14 State of New Mexico through regulatory licensing, along
15 those lines, but no particular OCD licensure or
16 qualifications are required for an operator.

17 Q. Now, under -- Help me understand the procedure.
18 Generally speaking, when there's a change of operator, do
19 you see it as a form, or do you start seeing it -- I say
20 "you": the District. Perhaps somebody is filing -- Let's
21 say company A -- drilled it, operated it, produced it --
22 now has been sold to company B. Do you see that change
23 generally come in with a C-104 file or somebody else filing
24 a C-105, or the plugging bond whenever it's state and fee
25 acreage, or do you see it all happen simultaneously, or is

1 there some sort of time period before everything gels out.

2 A. Generally, everything happens simultaneously on
3 federal lands. At the same time we're receiving the C-104,
4 we'll generally be receiving a sundry notice through the
5 BLM office of the same change of operator through the
6 process that they use on the lands that they have trust
7 responsibility for.

8 There have been a few times when, for whatever
9 reason, an operator has not executed a change with us, and
10 it's a rarity but it has happened. They may have already
11 started filing some other kind of paperwork with our
12 agency.

13 A couple of years or three or four years ago, we
14 had an operator who had acquired an OGRID and started
15 filing C-115s without having processed the 104's. And when
16 that was brought to our attention and we contacted the
17 operator they said, Oh, I didn't realize we had to do that,
18 and they immediately complied with the filing requirement.

19 But it is a rarity when all this is not done
20 simultaneously.

21 Q. Okay. What's in your authority as the District
22 Supervisor, on state and fee lands when a -- an instance
23 where the operator and the party filing a C-105 monthly
24 production report, if it has not got to a point where they
25 are the same --

1 A. I --

2 Q. -- what are some of the other things you as a
3 supervisor could do to assure that this has occurred?

4 A. Well, I guess I don't understand the question.

5 Q. Could you shut the well in until everybody got
6 their act together?

7 A. That is a -- That's a very big possibility, we
8 could do that. As far as doing that, it's generally not
9 helpful to do that in some ways, and on this particular
10 property it actually would not be helpful, the reason being
11 that many of these leases, if they don't produce for a
12 month, expire.

13 And we've worked with the BLM before to allow
14 property to continue to produce which might otherwise have
15 been shut in due to proration reasons, but in a limited way
16 -- allowed to produce limitedly so that the lease would not
17 expire, and in that case the property would be preserved.

18 So as far as shutting in these wells, I would
19 prefer not to do that, or at least work through the BLM to
20 assure that the -- whatever needed to be done to track
21 royalties and all were continued.

22 Q. Okay, one other question. Exhibit Number 2 --

23 A. Yes.

24 Q. -- there is another hand -- Well, let me go
25 through some other things, because I was marking here what

1 you had told me, as I understood, were your additions in
2 this form --

3 A. Yes.

4 Q. -- and I understood you marked the new OGRID.
5 How about the old OGRID? Is that your handwriting?

6 A. No, that's not mine.

7 Q. Okay, so you filled in the new one, OGRID?

8 A. Yes.

9 Q. And the word "Not Available"?

10 A. Yes, I did that.

11 Q. And then your scribble that I assume is your
12 signature?

13 A. Yes.

14 Q. Those are the three markings that you have made
15 on this form?

16 A. Yes.

17 Q. Okay, what's that up there on the top, above the
18 Change of Operator, "done 8-26"?

19 A. That is written by Monica Kuehling from my
20 office. After this is processed, that's her note that she
21 had processed the C-104 through our imaging system.

22 Q. Now, let's go back down here to the new operator.
23 When you put that new ONGRID [sic] number down, did you
24 check and see if all the information in the computer that
25 corresponded with that OGRID, that number, corresponded

1 with the address as shown for Action Oil Company, Inc.?

2 A. I guess I don't understand your --

3 Q. Okay.

4 A. -- question.

5 Q. You have the new OGRID. That number was not
6 assigned. That was our -- assigned by you of that day, but
7 that was already in the system?

8 A. Yes. What had happened is, Exhibit Number 3
9 includes new operator OGRID number. That particular number
10 -- It's my understanding that that was written by one of
11 our staff, OCD staff in Santa Fe, whenever this was sent to
12 Carmen Wood.

13 Q. Okay, when was that OGRID number assigned to
14 Action Oil Company, Inc.?

15 A. This particular document, Exhibit Number 3, is
16 dated July 10th in the top right, and Ms. Dorothy Phillips
17 is usually the one who generates this document when there's
18 a C-104A change at the request of the new operator. I'm
19 not real sure about this at the top, whether this fax
20 number on the left side of the document indicates that Mrs.
21 Phillips faxed this to Carmen Wood or how Ms. Woods got it.

22 Q. Okay, what if I go to Exhibit Number 1 and look
23 at the bottom of the page? When Action Oil had signed it,
24 it asked for an OGRID number. How come it wasn't put in at
25 that time?

1 A. On the 104A?

2 Q. The 104. This is Exhibit Number 1.

3 A. Oh, I'm sorry.

4 Q. Okay now, I'm switching back here. And if you
5 look down at the bottom where Mr. Burson signed for Action
6 Oil Company, in the instructions it says, "If this is a
7 change of operator fill in the OGRID number and the name of
8 the previous operator". Is the OGRID number there?

9 A. No, it's not.

10 Q. Okay. Was it because it wasn't assigned at that
11 time or --

12 A. I don't know.

13 Q. Okay. I guess what I'm getting at, did you check
14 the validity of the rest of this information when it came
15 to the address?

16 A. No, because when Carmen Wood presented this
17 document I was -- basically, like I said, I don't remember
18 how much was filled out. Not very much was filled out, but
19 we went through the process of my instructing her how to
20 fill it out.

21 Q. Okay.

22 A. So I did not verify this with any information
23 that we might have in our ONGARD system already concerning
24 Action Oil.

25 As happens quite often, the addresses that are

1 submitted on some documents don't always match the OGRID
2 addresses, because they're submitted from a different
3 office than what is registered under our OGRID system, or
4 the response that the operator would like for us to supply
5 to them on the basis of the document is to a different
6 address than is the official OGRID address. So that's not
7 necessarily a critical item for us.

8 Q. Okay. Essentially that's what I'm getting at in
9 some ways, is that it may appear somewhat antiquated. It's
10 a self-policing type of a --

11 A. Yes, it is. We can't always verify. I didn't
12 even go through the process of verifying J.C. Well Service,
13 Incorporated, address. This is just information that's
14 required on this document. I didn't verify that -- or --
15 Ms. Wood got her own address correct or her phone number.
16 This is information that she had to fill out.

17 Q. And as you stated, this is the first time that
18 you have seen such a dispute since you've been --

19 A. Yeah, the first time that a 104 approval has been
20 disputed that we've done in my district.

21 Q. And I would assume or certainly hope that such a
22 dispute would not lead to certain rules and regulations
23 being adopted where we would have to do searches on
24 ownership, leasees, such as that.

25 A. No, we don't have the resources, and what happens

1 sometimes is misunderstanding of the document. As was
2 stated earlier, this 104 does not in any way verify,
3 validate ownership or leasehold. The 104 document is the
4 one by which an operator declares to us that they are
5 responsible for being sure that the wells that are subject
6 to this document are in compliance with NMOCD Rules and
7 Regulations. They are -- claim that they are the
8 responsible party.

9 And Ms. Carmen Wood was -- or Action Oil was the
10 leaseholder. They could claim or designate whoever would
11 be the responsible party for these particular wells.

12 EXAMINER STOGNER: That's all the questions I
13 have of Mr. Chavez.

14 Any other questions of this witness?

15 MR. HALL: One question, Mr. Examiner.

16 EXAMINER STOGNER: Mr. Hall?

17 EXAMINATION

18 BY MR. HALL:

19 Q. A question asked by Mr. Montoya, you indicated
20 that it was the Division's policy to regard the designation
21 of operator by the BIA and the BLM as the appropriate
22 operator for purposes of processing the C-104.

23 A. I don't know that I stated it that way, no.

24 Q. Is that generally correct, though?

25 A. Generally, yes.

1 Q. And I understand you to say -- I agree with you
2 that the Division does not have the time or the resources
3 to conduct title searches to verify some of the statements
4 that new operators make to the Division. Let's look at one
5 circumstance, though, in view of the testimony here today.

6 If you would look at the exhibit under Exhibit
7 Tab 16, it's a C-104, one of the wells we're talking about
8 here, and if you'll note at the bottom -- Do you have that
9 in front of you?

10 A. Yes, I do.

11 Q. It was approved by you November 8th, 1993. But
12 then if you look back under Exhibits 14 and 15, you see the
13 assignments of title into Action Oil Company. Action Oil
14 Company did not receive record title until 1995. If you'll
15 look at the second page of those assignment forms --

16 A. I'm sorry, second page of which exhibit? Which
17 tab?

18 Q. 14 or 15, those are both assignment forms. If
19 you look at the second page of either one of those --

20 A. Okay.

21 Q. -- bottom right-hand corner, it indicates the
22 approval date. See that there?

23 A. Yes, I do.

24 Q. In each case they were dated 1995, and yet the
25 C-104 for one of the wells that are involved here was

1 approved -- change of operator into Action Oil Company from
2 Chase Energy, 1993. How did that happen?

3 A. Well, there was no challenge to that approval,
4 and there was no information that would indicate to us that
5 that approval shouldn't be made.

6 Q. So you rely upon the representations that are
7 made to you by any operator, any person filing a C-104 to
8 be processed by the Division, that they're authorized to do
9 so, that they have lease title, that they are the
10 designated operator insofar as the BLM or BIA might be
11 concerned?

12 A. Yes, and that's -- for example, that's what I did
13 to approve what we have as Exhibit Number 1, Mr.
14 Cunningham's original 104.

15 Q. And so the Division must take it upon faith that
16 the records of the BIA or the BLM are current and that they
17 are correct?

18 A. Yes, unless an issue would be raised by some
19 information that we would have to go and do some other kind
20 of verification.

21 Q. And the only way that a question would be raised,
22 if the prior operator, as in this case, were not notified
23 that someone was filing a change-of-operator form?

24 A. Start that again? The only --

25 Q. You said you rely upon the BIA and BLM records to

1 determine who has the authority to file the C-104's --

2 A. When it's necessary, yes.

3 Q. Yes, and you also indicated you have to rely upon
4 the representations made to the Division by the person or
5 the operator filing the C-104 that they are so authorized?

6 A. That's right.

7 Q. And you said you don't question that unless
8 someone raises a question about it. Isn't it the case that
9 the only way a question would have been raised in this case
10 is for there to have been some notification to J.C. Well
11 Service?

12 A. No, not necessarily, because the information that
13 I had in front of me at that time, from -- notices from the
14 BIA, like I said, showed that the lease title holder, Ms.
15 Carmen Wood, who's right there in front of me, and then she
16 told me who the operator was going to be -- with that
17 information, I don't see that there's much else that would
18 be necessary.

19 Q. All right. And so insofar as the District Office
20 is able to process these things, the fact that in 1993
21 Action Oil Company did not have title to these leases does
22 not render their C-104 invalid in 1993; is that correct?

23 A. To go back that far, I don't know that I would
24 say -- I would have to agree with you, that it doesn't
25 render it invalid, that approval that we did at that time,

1 because I don't have information that would to me indicate
2 otherwise what would -- I don't know without exploring this
3 further if the BLM approved an assignment of operator and
4 sundry notices, except from Action Oil. Without
5 researching the well files I wouldn't -- There's a lot of
6 other information that I probably would have to look at to
7 see -- to fully answer your question.

8 MR. HALL: Okay. Thank you, Mr. Examiner, that's
9 all I have.

10 EXAMINER STOGNER: Mr. Montoya?

11 MR. MONTOYA: I note the hour. Just one.

12 FURTHER EXAMINATION

13 BY MR. MONTOYA:

14 Q. Mr. Chavez, have you received any information
15 through today's date, from the date of your decision
16 forward, including all of the exhibits and documents in
17 evidence that the Applicant has submitted, that would
18 change your decision even today with respect to the change
19 of operator?

20 A. No, I haven't.

21 Q. With respect -- With respect to any prior
22 application involving the Division --

23 A. With respect to what again?

24 Q. With respect to any prior application in which
25 the Division approved the change of operator -- in

1 particular, reference was made to Exhibit 16 -- was there a
2 dispute concerning whether the Bureau of Land Management or
3 the Bureau of Indian Affairs or the various Indian tribes
4 recognize or do not recognize the leaseholder with respect
5 to that particular application? Was that before the
6 Division at that time?

7 A. No.

8 Q. As I understand your testimony here today, the
9 Bureau of Land Management recognizes Action Oil, Inc., as
10 the lessee of record for the leases and wells that are at
11 issue?

12 A. Yes, that's the information that I have.

13 Q. And the information that you have is, the Bureau
14 of Indian Affairs recognizes Action Oil, Inc., as the
15 lessee of record for the leases and wells that are at
16 issue?

17 A. Yes.

18 Q. And the information that you have before you
19 today is that the Indian tribes at issue recognizes Action
20 Oil, Inc., as the lessee of record with respect to the
21 leases and oil wells that are at issue?

22 A. Yes.

23 MR. MONTOYA: That's all I have.

24 EXAMINER STOGNER: So noted, the hour. However,
25 I'm going to take a 10-minute recess, and my intent to

1 finish this up this evening. I do have a phone call that
2 will require me not to be here tomorrow.

3 With that, with my 10-minute recess, Mr. Montoya,
4 if you feel it necessary to present your witness, we will
5 hear your witness

6 MR. MONTOYA: Oh, no. No, it's not going to be
7 necessary.

8 EXAMINER STOGNER: You do not, okay. Well, I do
9 want to take a 10-minute recess so I can make a phone call,
10 and then I'll hear closing arguments, and then we will
11 decide additional time, if it's needed, for additional
12 documentation to Mr. Scott Hall's written memorandum.

13 And so with that, let's take a 10-minute recess.
14 Mr. Chavez, you may be excused.

15 MR. CHAVEZ: Thank you.

16 (Thereupon, a recess was taken at 5:20 p.m.)

17 (The following proceedings had at 5:36 p.m.)

18 EXAMINER STOGNER: Hearing will resume order. Is
19 there any need to call any other witnesses at this time?

20 MR. HALL: Mr. Examiner, I don't think so. And
21 all counsel have conferred, and we're all agreeable to
22 waiving closing statements. Up to you. We'll give them to
23 you if you like. I've submitted a written brief. Be glad
24 to have the other parties submit responses to that.

25 EXAMINER STOGNER: Is that okay with you, Mr.

1 Montoya and Ms. MacQuesten?

2 MR. MONTOYA: I didn't mention to waive a
3 closing, but I --

4 EXAMINER STOGNER: Would you like me to leave the
5 room so you all can discuss it a little more?

6 MR. MONTOYA: No, but I thought what we agreed to
7 do was just simply submit any closing in writing, and that
8 would also permit opportunity to respond to the memorandum
9 that was submitted.

10 EXAMINER STOGNER: Okay, how much time is needed?
11 Was that discussed? What would you like? Two weeks?

12 MR. MONTOYA: Two weeks?

13 EXAMINER STOGNER: Next hearing date, which would
14 be April 29th?

15 MR. HALL: They're the ones doing it, not me.

16 MS. MacQUESTEN: I'd like to ask for a little
17 more time, if possible.

18 EXAMINER STOGNER: Three weeks?

19 MS. MacQUESTEN: Three weeks or a month.

20 EXAMINER STOGNER: Okay, how about -- Let's go to
21 the next hearing date, which would be May 13th.

22 MS. MacQUESTEN: Okay.

23 EXAMINER STOGNER: May 13th for responses,
24 written responses.

25 Also, with the written responses, I would like a

1 suggested rough-draft order. So we're looking at May 13th
2 deadline. And I'll accept it beforehand too.

3 MR. MONTOYA: And is that -- I mean, would the
4 written responses include a written summation as well?

5 EXAMINER STOGNER: No, it does not. If you feel
6 you must respond, then ask for additional time.

7 MR. MONTOYA: No, I'm saying that a closing
8 argument --

9 EXAMINER STOGNER: That includes the closing
10 argument. So anything that you want to present to me in
11 writing is closing argument or rebuttal to the memorandum
12 and a rough-draft order.

13 MR. MONTOYA: That's right.

14 EXAMINER STOGNER: Okay. As you see, we're a
15 little informal here. It's probably what you're used to,
16 but it seems to work.

17 Okay, anything further in this matter at this
18 time.

19 Then the hearing will be adjourned and the record
20 will be left open pending the submittal of the
21 documentation.

22 Ms. MacQuesten, I have talked to Cheryl -- What's
23 Cheryl's last name upstairs?

24 MS. MacQUESTEN: Bada, B-a-d-a?

25 EXAMINER STOGNER: I may need some advice from

1 her expertise. Please refrain from discussing this matter
2 with her. She is a legal counsel for the Department. She
3 usually works with Forestry, but she does have some
4 expertise that I think might be useful to me.

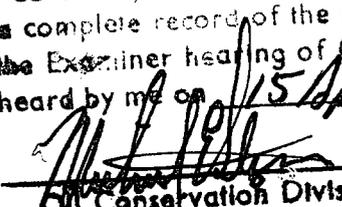
5 You probably haven't noticed it, Mr. Montoya, I'm
6 not an attorney, I'm an engineer. That sounds like a thing
7 from Star Trek.

8 With that, then today's case is adjourned. Have
9 a safe trip back, ladies and gentlemen. Thank you.

10 MR. MONTOYA: Thank you.

11 (Thereupon, these proceedings were concluded at
12 5:40 p.m.)

13 * * *

14
15
16
17
18 I do hereby certify that the foregoing is
19 a complete record of the proceedings in
20 the Examiner hearing of Case No. 13237
21 heard by me on 15 April 2004.
22  , Examiner
23 of Conservation Division
24
25

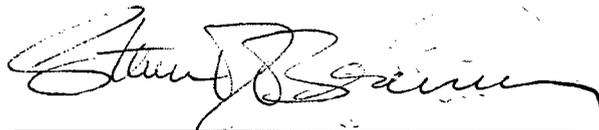
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL April 23rd, 2004.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006