

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION COMMISSION FOR THE)
PURPOSE OF CONSIDERING:)

IN THE MATTER OF THE PROPOSAL OF THE OIL)
CONSERVATION DIVISION ON ITS OWN MOTION)
TO AMEND RULE 7 OF 19.15.1 NMAC; RULES)
101 AND 102 OF 19.15.3 NMAC; RULES 201)
AND 203 OF 19.15.4 NMAC; RULE 701 OF)
19.15.9 NMAC; RULES 1101, 1103, 1104 AND)
1115 OF 19.15.13 NMAC; AND THE ADOPTION)
OF RULES 37 AND 38 OF 19.15.1 NMAC; RULE)
100 OF 19.15.3 NMAC; AND RULE 1227 OF)
19.15.14 NMAC)

CASE NO. 13,564

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
WILLIAM C. OLSON, COMMISSIONER

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Volume I - October 13th, 2005

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on October 13th, 14th and 17th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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Additional submission by Applicant, not offered or admitted:

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A P P E A R A N C E S

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(Continued...)

A P P E A R A N C E S (Continued)

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* * *

ALSO PRESENT:

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JOHNNY C. GRAY
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(Continued...)

ALSO PRESENT (Continued):

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KRISTEN HOWELL
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PAUL R. OWEN
Attorney at Law

YOLANDA PEREZ
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DENNIS R. STENGER
Deputy State Director, Minerals and Lands
BLM

* * *

1 WHEREUPON, the following proceedings were had at
2 9:05 a.m.:

3 CHAIRMAN FESMIRE: The next case on the docket is
4 13,564, in the matter of the proposal of the Oil
5 Conservation Division on its own motion to amend Rule 7 of
6 19.15.1 NMAC; Rules 101 and 102 of 19.15.3 NMAC; Rules 201
7 and 203 of 19.15.4 NMAC; Rule 701 of 19.15.9 NMAC; Rules
8 1101, 1103, 1104 and 1115 of 19.15.13 NMAC; and the
9 adoption of Rules 37 and 38 of 19.15.1 NMAC; Rule 100 of
10 19.15.3 NMAC; and Rule 1227 of 19.15.4 [sic] NMAC.

11 At this time the Commission will entertain the
12 introduction and presentation of counsel.

13 MS. MacQUESTEN: May it please the Commission, my
14 name is Gail MacQuesten. I represent the Oil Conservation
15 Division in this case.

16 MR. CARR: May it please the Commission, my name
17 is William F. Carr. I'm with the Santa Fe office of
18 Holland and Hart. Appearing with me today is the brains
19 of our operation, Ocean Munds-Dry.

20 We would like to enter our appearance today for
21 the New Mexico Oil and Gas Association; the Independent
22 Petroleum Association of New Mexico; Chevron North America
23 Exploration and Production Company; Marbob Energy Company;
24 Yates Petroleum Corporation; Burlington Resources Oil and
25 Gas Company, LP; and BP America Production Company.

1 Burlington and BP, incidentally, filed their own
2 comments in this matter.

3 We will have two witnesses.

4 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe.
5 I'm entering an appearance on behalf of Devon Energy
6 Corporation and its related companies: Devon Energy
7 Production Company, LP; and Devon Louisiana Corporation.

8 I have no witnesses. I would like to make a
9 brief statement at the appropriate time.

10 CHAIRMAN FESMIRE: Okay.

11 MS. BUSH-IVIE: Mr. Commissioner, I'm Elizabeth
12 Bush-Ivie with Occidental Permian. We also submitted some
13 written comments. I have no witnesses, and I may present.

14 DR. NEEPER: Donald Neeper, I'm with New Mexico
15 Citizens for Clean Air and Water. I have authorization to
16 speak for that organization. I will be the witness
17 appearing *pro se*. I have filed a prehearing statement.

18 CHAIRMAN FESMIRE: Dr. Neeper, that statement and
19 your authorization are part of the record.

20 MS. PEREZ: Yolanda Perez with ConocoPhillips
21 Company. We also submitted comments.

22 MS. LACHELT: Gwen Lachelt with the Oil and Gas
23 Accountability Project. We also submitted comments.

24 CHAIRMAN FESMIRE: Anybody else?

25 MR. OWEN: Paul Owen on behalf of Chevron USA.

1 We submitted comments.

2 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, you had
3 some witnesses and Mr. Carr had some witnesses. At this
4 time would you ask those witnesses to stand to be sworn?

5 MS. MacQUESTEN: Yes, please.

6 (Thereupon, the witnesses were sworn.)

7 CHAIRMAN FESMIRE: Ms. MacQuesten, did you have
8 an opening statement?

9 MS. MacQUESTEN: I have a proposal.

10 CHAIRMAN FESMIRE: Okay.

11 MS. MacQUESTEN: Mr. Chairman, we are here today
12 to consider the OCD's proposed enforcement and compliance
13 rules. The focus of these is legal and procedural, rather
14 than technical. The witnesses that I have today will be
15 presenting primarily background factual information for the
16 Commission to show why we need these rules and what our
17 current enforcement practices are. The heart of the
18 matter, though, will be the rules themselves.

19 For that reason, with the Commission's permission
20 I would like to proceed as follows: I would like to begin
21 by going through the proposed rules and address some of the
22 comments that we received. This will serve two purposes.
23 It will be an introduction to the Commission to the rules,
24 so that we have the background of what we are proposing,
25 and it will also allow us to address the comments that we

1 received.

2 Due to the timeline, under the new rules for
3 rulemaking, the OCD has not yet had the opportunity to
4 address those comments. If we could address them now, up
5 front, I believe it would help both the participants in the
6 hearing and the Commission to understand what our position
7 is.

8 After that, I would like to present the testimony
9 of the witnesses so that the Commission can hear from the
10 OCD staff about the extent of OCD's enforcement and
11 compliance duties, how they've been handled in the past and
12 how they'd be handled under the new proposed rules. This
13 testimony would include discussion of the inactive well
14 list that has generated so much comment.

15 Finally, I would ask for an opportunity to
16 address, myself, any questions that the Commission has
17 about the rules and the specific language in the rules. I
18 would ask that we do this either at the close of OCD's
19 testimony or at the close of the entire proceeding,
20 whichever would be more helpful to the Commission, and do
21 that in lieu of a closing argument.

22 Is that procedure acceptable to the Commission?

23 CHAIRMAN FESMIRE: Personally with having the --
24 no objection. Would the Commission have no objection?

25 COMMISSIONER OLSON: No.

1 COMMISSIONER BAILEY: (Shakes head)

2 CHAIRMAN FESMIRE: Would any of the participants
3 have an objection to proceeding in that manner?

4 MR. CARR: No objection.

5 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, at this
6 time I'm going to ask the participants and those who have
7 entered an appearance if they would like to make an opening
8 statement. Then I would proceed to your presentation and
9 your question-and-answer period, and then rebuttal. Is
10 there any objection to that procedure? Mr. Carr?

11 MR. CARR: (Shakes head)

12 CHAIRMAN FESMIRE: Mr. Carr, would you like to
13 make an opening statement?

14 MR. CARR: Yes, I would.

15 May it please the Commission, I appear here today
16 principally for the New Mexico Oil and Gas Association and
17 the Independent Petroleum Association of New Mexico. Other
18 operators have asked us to enter their appearance, and they
19 may be making their comments as we go through the day.

20 I think it's important at the outset to tell you
21 that we do not disagree with the objective of today's
22 rules. If the objective is compliance with the rules of
23 the rules of the Division, we support that. If the
24 objective is the protection of groundwater, we support
25 that.

1 But we are concerned with how the rules are
2 drafted and certain provisions in those rules.

3 I think you should know that when we were first
4 presented with the draft of these rules, we really took a
5 two-prong approach. We analyzed the rules as proposed, but
6 at the same time we directed our members to look at the
7 inactive well list, start checking the information on that
8 list and doing what they could to be certain they were in
9 compliance and the data on the list was accurate.

10 We have also, as you know, had some concern with
11 the process. We're all on a very fast time line. I mean,
12 that's evidenced by the fact that we're going to receive
13 the Division's response for our comments today.

14 Being first on this tight time frame, we really
15 are concerned that we haven't had the kind of meaningful
16 dialogue that in the past, we think, has been the hallmark
17 of your rulemaking proceedings, and we're concerned that
18 the product that may come from this process may force
19 operators in certain circumstances to have to challenge the
20 rules. That's not, though, why we're here today.

21 And we also want you to know as we start -- we
22 want you to remember that NMOGA has aggressively pursued
23 practices and policies to assure that as we conduct our
24 business we are good neighbors, to assure that industry
25 activities are conducted with utmost concern for the

1 environment and others who are impacted by our activities.

2 And we have felt like we were working in a
3 fashion consistent with this agency and this Commission.
4 The OCD has stated its goal is to make it easy for good
5 companies to do business in New Mexico. We're concerned
6 that the rules, as written, while directed at bad actors,
7 will make it difficult for good operators to work here.

8 NMOGA and IPA filed joint comments, and we
9 address several issues in those comments that we believe
10 must be corrected. And the way we approach this is, our
11 comments are focused on matters that we believe will pose a
12 threat to our members the day the rules are adopted, if
13 these things are changed. And all of them, you're not
14 surprised, even if you haven't seen the comments, relate to
15 good standing.

16 I want you to know in regard to good standing,
17 our real concern is the good -- the inactive well list.
18 We're not concerned with the list as a list of inactive
19 wells based on the data that you have to work with; we're
20 concerned with the use of the list as a compliance tool.
21 And we believe that as the rule was originally proposed, it
22 discriminates against small and large operators and that it
23 creates a situation where without notice an operator could
24 lose his right to do business or to develop his properties
25 in this state.

1 And so what we have simply proposed really are
2 three things.

3 The first is, we believe when you look at a list,
4 an inactive well list, and if you're going to use that to
5 determine whether or not an operator is in good standing,
6 you shouldn't have a set number of wells as you do in the
7 current rule; it should be tied to a percentage of the
8 total number of wells operated in this state by an
9 operator. Because by using a set number you discriminate
10 against the company. The larger the company, the greater
11 the percentage of wells it must have in compliance. One
12 operator could be in compliance 99.9 percent of the time
13 and still be a bad actor, if you strictly apply that. And
14 very small operators also would have a problem dealing with
15 a set number of wells. So we think you should tie that
16 part of the rule to a percentage of the total wells
17 operated.

18 We also see that these rules are going to cause
19 operators to be contacting the agency and working with the
20 agency on your data as well as ours. We believe the rules
21 should define an inactive well, telling us what it is and
22 also making clear what it is not. It is not a dewatering
23 coal gas well or approved injection well or a well where
24 everything is in compliance but surface issues are
25 preventing the production of the well.

1 And finally, and I think most importantly to us,
2 we believe that before an operator is listed as a bad
3 operator, loses his good standing, that it is imperative
4 that we have 30 days' notice, that you tell us, based on
5 your data, we are at risk of losing our good standing. We
6 believe that with the best effort you can make and the best
7 data we get in, the list still contains errors.

8 And we think that if you can tell us you think we
9 are out of compliance, we at least should have an
10 opportunity to tell you if we are not and should not suffer
11 the consequences of losing our standing because the data is
12 in error. If your goal is compliance, we believe this is
13 reasonable.

14 And I also will tell you that I believe if you
15 don't have a notice provision in this rule, you simply will
16 not be able to defend them.

17 Without these three changes, we think the day the
18 rules go into effect operators we represent will be at
19 risk, will be at risk of losing their right to do business,
20 possibly only because the data is not good.

21 And those are the three things, those are the
22 objectives of the NMOGA and IPA testimony, and those are
23 the three central things we're going to ask you to consider
24 as you deliberate these rules.

25 CHAIRMAN FESMIRE: Mr. Bruce, did you have an

1 opening statement? Is Mr. Bruce still here? I'll take
2 that as a no.

3 Ms. Bush-Ivie, did you have an opening statement?

4 MS. BUSH-IVIE: No, thank you.

5 CHAIRMAN FESMIRE: Dr. Neeper, did you have an
6 opening statement that you'd like to make at this time?

7 DR. NEEPER: No.

8 CHAIRMAN FESMIRE: Ms. Perez?

9 MS. PEREZ: No, not now.

10 CHAIRMAN FESMIRE: Ms. Lachelt?

11 MS. LACHELT: No, thank you.

12 CHAIRMAN FESMIRE: And Mr. Owen, did you --

13 MR. OWEN: No, thank you.

14 CHAIRMAN FESMIRE: -- have anything you wanted to
15 say? Okay.

16 Let the record reflect that there have been a
17 substantial number of comments received on this rule.
18 Those comments have been scanned, read and posted on the
19 Web. I'm not going to take the time now to read the list
20 into the record, but they have been received and have been
21 made part of the record.

22 With that, Ms. MacQuesten, are you ready to go?

23 MS. MacQUESTEN: Yes, sir.

24 First I'd like to ask the Commission, you should
25 have two binders. The smaller binder contains the proposed

1 rules and is tabbed so that you can find each rule easily.
2 The larger binder has the documentary exhibits that we will
3 be discussing today.

4 I've brought extras, if people in the audience
5 would like copies of these exhibits. These contain the
6 contents of both notebooks.

7 The OCD received several general comments that I
8 would like to address before going through the rules
9 themselves and addressing comments particular to specific
10 rules. The general comments relate to the power of the OCD
11 to enact enforcement and compliance rules such as the ones
12 we are proposing today.

13 We received a comment from the Hinkle firm that
14 in proposing these rules the OCD was stepping out of its
15 role, which the Hinkle firm viewed as being limited to
16 preventing waste and protecting correlative rights.

17 Yates commented that in particular, the good-
18 standing concept goes beyond the Oil and Gas Act and is not
19 reasonably related to the OCD's legislative purpose.

20 I would like to start by addressing these
21 comments about the OCD's role.

22 I have a PowerPoint presentation to help with the
23 language of some of the statutes and rules that I'll be
24 referring to today.

25 This first slide is the language of 70-2-6(A),

1 which sets out the OCD's statutory responsibilities with
2 regard to conservation. And note that it gives us
3 jurisdiction, authority and control of and over all
4 persons, matters and things necessary or proper to enforce
5 effectively the provisions of this act or any other law of
6 this state relating to conservation of oil or gas.

7 And I would point out and ask the Commission to
8 take administrative notice of the fact that this language
9 is virtually identical to the language that appeared in the
10 original statutes in 1935, with the exception of the potash
11 language. So this has been the OCD's -- one of OCD's
12 responsibilities since the creation of the Commission.

13 Go to slide 2, please.

14 Here again is another responsibility that dates
15 back to 1935. The Division is empowered, and it is its
16 duty, to prevent waste prohibited by this act and to
17 protect correlative rights. To that end, the Division is
18 empowered to make and enforce rules, regulations and orders
19 and do whatever may be reasonably necessary to carry out
20 the purpose of this act, whether or not indicated or
21 specified in any section hereof.

22 What is interesting to us here today is that the
23 1935 original Act also talked about well plugging.

24 Ed, if you could turn to the next slide.

25 Here's the laws of 1935, and our duties were to

1 require dry or abandoned wells to be plugged so as to
2 confine crude petroleum oil, natural gas and water in the
3 strata in which they are found.

4 And again, there's a second section there to
5 prevent crude petroleum oil, natural gas and water from
6 escaping from the strata.

7 So these concerns originated with the creation of
8 the Commission. Now, they may have been addressing waste
9 and correlative rights at that time and had less concern
10 about environmental issues. Those arose later. But these
11 duties to deal with inactive wells and properly plug them
12 has -- is an original duty of the Commission, dating back
13 to 1935.

14 And Ed, if you could go to the next, this is a
15 comparison. This is the current statutory language, which
16 again is virtually identical to the 1935 language. The one
17 obvious change is that the blanket bond amount has gone up
18 from \$10,000 to \$50,000. But our duties have remained the
19 same.

20 As you will hear in testimony today, the goal of
21 our inactive well rules and the temporary abandonment rules
22 is to prevent the escape of oil, water and gas from the
23 strata in which it's found to other strata.

24 So it's OCD's position today that we are not
25 stepping away from our traditional duties by creating rules

1 to enforce our inactive well rules; we are carrying out our
2 traditional duties.

3 It's also important to note that our duties have
4 expanded since 1935. The Legislature has added
5 environmental duties. This appears in our enumeration of
6 powers section.

7 Ed, if you could go to slide 5. Back, please.

8 MR. MARTIN: Is that the right one?

9 MS. MacQUESTEN: Yes, thank you. This is the
10 section of the Statute that refers to our statutory -- our
11 enumeration of powers, and this is the introductory
12 paragraph.

13 Apart from any authority, express or implied,
14 elsewhere given, the Division is authorized to make rules,
15 regulations and orders for the purposes and with respect to
16 the subject matter stated in this subsection.

17 The first two points under this subsection are
18 the ones that we just looked at, the ones related to the
19 plugging of abandoned wells and assuring that oil, gas and
20 water doesn't escape from one strata to another. But this
21 is also the section that contains our environmental
22 responsibilities.

23 Ed, if you could go to 6.

24 We have the responsibility to regulate the
25 disposition of produced water, and here the language

1 appears that we need to do it in a manner that will afford
2 reasonable protection against contamination of fresh water.

3 I can't tell you when this language first
4 appeared. I can tell you I did not see it in the 1949
5 version of the Statute. It appears in the 1978 version of
6 the Statute. I don't have access to the 1953 version, so I
7 don't know exactly when it was adopted.

8 Ed, if you could turn to slide 7.

9 We also have two responsibilities with regard to
10 non-domestic wastes. And here again, the goal is to
11 protect public health and the environment. So we're
12 turning to environmental concerns, as well as waste and
13 correlative-rights issues.

14 You'll note that 70-2-12(B)(23) also references
15 the Water Quality Act and states that we do have
16 responsibilities of enforcement under that Act as well.

17 Now, note that when we look at these more recent
18 Statutes, they don't tell us how to go about protecting the
19 environment from produced water or waste; they tell us to
20 enact rules to do so. We have been given a broad mandate
21 to meet these statutory requirements, and what we are
22 proposing today is rules that will help us meet that
23 mandate.

24 That brings us to a second general comment that I
25 would like to address.

1 According to Yates and according to other
2 commentors, the Statutes give the OCD only one enforcement
3 tool, and that is to have the AG file a lawsuit in district
4 court for penalties. The OCD disagrees with that comment.

5 Ed, if you could turn to slide 8.

6 Here is the penalty provision at issue. It's
7 70-2-31(A). The OCD reads this provision to allow the OCD
8 to assess penalties administratively. It is a common
9 provision to have an administrative agency which is given
10 the task of making rules because of its specialized
11 expertise in an area the first opportunity to interpret and
12 apply those rules. The provision in the Statute about
13 recovering penalties in a civil suit is necessary, because
14 we can't give an administrative penalty order to a sheriff
15 and have him enforce it. We have to go to district court
16 to get an order that can be enforced.

17 We also suggest it's an absurd reading to require
18 an administrative agency to do its enforcement exclusively
19 through the court system. To take a mundane case as an
20 example, let's say an operator won't put up well signs
21 after being told repeatedly to do so. Under the
22 interpretation of some members of industry, we would not be
23 able to do anything administratively about that; we would
24 have to file a district court lawsuit.

25 Apparently the Commission agrees that penalties

1 can be assessed administratively because it has done so in
2 the past.

3 I would also say that the battle over the ability
4 to assess penalties will have to be fought in the appellate
5 courts or the Legislature. I don't think it is necessary
6 for the Commission to decide it at this proceeding.

7 I'd also like to point out that I disagree with
8 the position that the only enforcement mechanism recognized
9 in the Statutes is imposition of penalties, whether it's
10 administrative penalties or through the courts. That
11 statement simply isn't true. We've already seen that the
12 Statutes give the OCD broad powers to create rules and
13 enforce those rules.

14 But it also -- the Statutes have also given us
15 other specific enforcement tools in addition to penalties.
16 70-2-31 -- Could you go to slide 9, please?

17 MR. MARTIN: The one before that one?

18 MS. MacQUESTEN: No, I'm sorry, I think you were
19 right, Ed. No, the next, please. Here we go.

20 70-2-14(B). Here's another enforcement tool. If
21 any of the requirements of the Oil and Gas Act or the rules
22 promulgated pursuant to the Act have not been complied
23 with, the Oil Conservation Division, after notice and
24 hearing, may order any well plugged and abandoned by the
25 operator or surety or both in accordance with Division

1 rules. If the order is not complied with in the time
2 period set out in the order, the financial assurance shall
3 be forfeited.

4 I'd like to make a couple of points here.
5 Notice, unlike the penalty rule, this rule doesn't talk
6 about willful and knowing violations; it talks about
7 violations. It says that if there is a violation we may
8 plug any well. We interpret that to include productive
9 wells.

10 Notice this is a very severe enforcement tool.
11 The OCD would prefer not to use such a heavy enforcement
12 tool. Many violations should be handled with a lighter
13 touch. However, if the only alternative, as some members
14 of industry suggest, is that we file lawsuits in district
15 court for \$1000 penalties and meet a standard of knowing
16 and willful that they interpret to require the most severe
17 of criminal mental states, this may be the alternative.

18 Ed, if you could go to the next slide.

19 I just wanted to point out that there other
20 enforcement tools in the Statutes. The Statutes recognize
21 that the OCD or acting through the Attorney General could
22 go to district court for injunctions. Injunctions can also
23 be brought by private parties, the court can appoint a
24 receiver if its orders are disobeyed, there are provisions
25 for criminal prosecution, and there are also rules on the

1 seizure of illegal oil, gas and product.

2 So the argument that all we can do is penalties
3 simply is not accurate.

4 Ed, if you could go to the next slide.

5 This slide shows examples of rules that the OCD
6 currently has, using its broad powers, and I wanted to give
7 these examples to show that the OCD has in fact exercised
8 its broad powers and has exercised them in a manner in
9 which it is able to deny APDs or cancel allowables
10 restricting injection volume and pressure, require wells to
11 be shut in, et cetera, similar to what we are asking for
12 today, except that these provisions have been adopted
13 piecemeal in particular rules. And the ones I'm citing
14 here are 118.D.5, Rule 306, Rule 703.E, 1104.D, 1105.A and
15 1115.

16 The point is, we're already doing some of the
17 things we're asking to be done in the rules we're
18 proposing, but we're proposing them today in a more
19 comprehensive and complete enforcement package.

20 With that, I'd like to go through the rules that
21 we are proposing and address the specific comments that we
22 received on those rules. And the rules themselves are in
23 that small binder.

24 I'd like to go through them in the order that
25 they've been presented in the Application and in the brief.

1 I set them up in that order because I tried to group the
2 rules according to what they covered and what they were
3 hoping to accomplish.

4 The first set of proposed rules are general
5 enforcement rules. The procedural rule sets out how such
6 cases would be handled, the definition of knowing and
7 willful and the rule about enforceability.

8 The first of those rules is Rule 1227. This is a
9 new rule that we are proposing to provide procedures for
10 compliance proceedings.

11 We received a comment from OXY about this rule.
12 They were disappointed that it did not set out other
13 processes besides hearings. I wanted to say that that's
14 not because the OCD won't be using other procedures, it's
15 because this 1200 series of the rules is a set of rules
16 specifically for hearings, and that is what we are
17 proposing with Rule 1227.

18 Mr. Daniel Sanchez will be testifying later
19 regarding the types of steps the OCD now takes and will
20 continue to take before it reaches the more extreme level
21 of going to an administrative hearing.

22 The adoption of Rule 1227 is important because we
23 have not had hearing rules for compliance proceedings
24 before. There was one comment about the procedures that I
25 wanted to address specifically. It's actually an indirect

1 comment, but many of the comments that we received went to
2 the idea of notice, specifically with the good-standing
3 requirement, and many of those comments said please give us
4 notice by certified mail, return receipt requested.

5 And I wanted to address that here because the
6 proposed Rule 1227 contains a notice requirement for
7 compliance hearings that would allow us to use the address
8 provided by the operator in accordance with another rule
9 we're proposing, and would allow us to send notice by
10 regular mail instead of certified mail. So I wanted to
11 make a comment now on why we believe that we should move to
12 that sort of notice, wherever notice is required by the
13 OCD.

14 Notice by regular mail to an address of record
15 that's provided by an operator in accordance with the rule
16 is sufficient legal notice even for hearings, and I cited a
17 Texas case in the brief in support of the Application.
18 This significantly eases our administrative burden in
19 finding and notifying operators. And while the OCD takes
20 the notice provisions very seriously, notice provisions
21 only work if you have a good address. And we need the
22 operators to share in this responsibility by providing
23 accurate addresses so that we can notify them. If they do
24 provide that address, the OCD's position is that regular
25 mail should be sufficient.

1 The next proposed rule in the general enforcement
2 rule series is the definition of knowing and willful, and
3 that would be an amendment to Rule 7, the general
4 definition rule. We received a great deal of comment on
5 the knowing and willful proposal.

6 First of all let me say, we need some definition
7 because currently we don't have one, and obviously what
8 knowing and willful means is of great importance if we're
9 trying to enforce our penalty rules which require knowing
10 and willful conduct.

11 It is especially important that we have a
12 definition because there are many definitions available in
13 case law. This expression is used in both civil and
14 criminal contexts and is used differently in each context.
15 So there will always be disputes about what knowing and
16 willful mean unless we provide a definition appropriate to
17 our context.

18 What the OCD has proposed is to use a definition
19 that is currently being used by another agency, the BLM,
20 and being applied in civil violations.

21 The key point about the definition of knowing and
22 willful that the OCD is proposing is that the intent that
23 we look at is the intent to do the act itself or
24 consciously failing to do the act itself. From the
25 comments we received, we saw a request from industry to

1 change the nature of the intent from intent to do the act
2 to an intent to violate the act.

3 If this were criminal law, you would make the
4 distinction between a general-intent crime, intent to do
5 the act, versus a specific-intent crime, an intent to do
6 the act in order to do something else. And we have had
7 comments from industry that they want a more specific
8 intent requirement, intent to do the act to violate OCD's
9 rules.

10 Now, even the criminal law limits specific intent
11 to very narrow circumstances. The OCD does not feel that
12 that sort of intent is appropriate in the context of civil
13 penalties by an administrative agency.

14 There was also a comment requesting that we
15 delete the final sentence of the proposed definition. Let
16 me read that to you. It says, "Conduct that is otherwise
17 regarded as being knowing and willful is rendered neither
18 accidental nor mitigated in character by the belief that
19 the conduct is reasonable or legal."

20 The OCD is concerned about dropping that last
21 sentence because it suggests that the operators can
22 substitute their judgment for that of the Commission. They
23 can look at a rule and say, Well, the Commission may have
24 felt that this particular act was required, but I don't
25 think it's reasonable. Therefore my defense to a charge

1 that I've violated the rule is to say that is -- I feel
2 it's reasonable. And then we can litigate whether the rule
3 applies in their particular situation.

4 I also believe that taking that sentence out
5 would make ignorance an excuse. But in a regulated
6 industry, operators should be aware of the rules.

7 I'm concerned as we go through the proposed
8 changes to the OCD's proposed definition of knowing and
9 willful that what will happen is that certain defenses will
10 be created. And if raised, the OCD would have to rebut
11 those defenses in a case. The operator could say, I didn't
12 know the rule, I wasn't acting trying to violate the rule,
13 or, I believe the rule is unreasonable; I believe my
14 conduct was reasonable. In any of those situations it
15 would elevate a rather straightforward violation hearing
16 into a detailed examination of those defenses.

17 Now, there was one comment, and this came from
18 the Hinkle firm, that was concerned that the definition the
19 OCD was proposing would also apply to the criminal statute,
20 because if you look at the Statute, there are civil
21 penalties and there's also a criminal provision, and the
22 criminal provision also uses the language "knowingly and
23 willfully".

24 And Ed, if you could go to the next slide.

25 It was not our intent, in providing a definition

1 for knowing and willful, to affect to the criminal statute
2 regarding knowing and willful. And I'm not sure that we
3 could do that, even if we wanted to. But to clarify that
4 the definition that we are proposing is exclusively for
5 civil penalty cases, the OCD would suggest that the
6 Commission could add language into the proposed definition
7 so that it is specifically limited to the civil penalty
8 provision.

9 The last proposed rule in the general enforcement
10 group is Rule 38, regarding enforceability of certain
11 permits and administrative orders. In our comments -- We
12 didn't receive any comments from industry, as I recall, but
13 we did receive positive comments from OGAP on this
14 provision.

15 I just wanted to mention in this provision, it
16 simply states, "Any person who conducts any activity
17 pursuant to a permit, administrative order or other written
18 authorization or approval from the division shall comply
19 with every term, condition and provision..."

20 The reason we are proposing this rule is that
21 there are some situations in which an operator's actions
22 are permissible only because they are acting under specific
23 written approval of the OCD. An example would be the terms
24 of a permit or the terms of an administrative order.
25 Another example would be an operator acting under the terms

1 of an approved abatement plan or remediation plan.

2 Now by statute, as we've seen before, we can
3 impose penalties only for violations of statutes, rules and
4 orders, and the Oil and Gas Act only talks about orders
5 issued after notice and hearing, so we may not be able to
6 call administrative orders or permits "orders" for purposes
7 of penalties.

8 So it is important, and it was the goal of
9 proposed Rule 38, that we clarify that if an operator is
10 acting under written authority of OCD, he has to act within
11 the scope of that written authority.

12 The second set of rules that the OCD is proposing
13 are tied to the concept of good standing, and we have also
14 asked for the creation of an enforcement tool with regard
15 to the filing of monthly reports. But I'd like to address
16 good standing first.

17 In a nutshell, what the collection of good-
18 standing rules is intended to do is to say that if an
19 operator -- an operator cannot drill, produce or acquire
20 new wells until the wells he already has are in compliance
21 with OCD Rules, or that the operator agrees to come into
22 compliance with OCD Rules.

23 Ed, if you could go to Slide 13.

24 Slide 13 is a summary of the good-standing rules
25 that we're proposing. If an operator is not in good

1 standing -- and this is the way the rules are written, the
2 proposed rules are written, right now -- OCD may deny APDs.
3 It's permissive, they don't have to. But they may say, I'm
4 sorry, operator, you're not in good standing, we're not
5 going to give you an APD.

6 The OCD shall refuse to assign an allowable.
7 Right now the rule is written in mandatory language.

8 Shall deny injection permit applications. Again,
9 mandatory.

10 May, after notice and hearing, revoke an
11 injection permit. So note that that is permissive, and
12 that is only after notice and hearing.

13 And may deny registration or change of operator.
14 Again, permissive.

15 Now, note that the remedies under the good-
16 standing rule are all remedies that would apply to well
17 operators but not to the other folks that OCD regulates.
18 The good-standing rules are addressed to well operators.
19 It's not that other operators don't need enforcement and
20 compliance rules. Compliance is important for them too,
21 but they are going to be dealt with through rules unique to
22 them. The good-standing rules today deal with well
23 operators.

24 And note that the primary effect of the good-
25 standing rule is on the ability to get new wells. We heard

1 in the stakeholders' meeting that OCD was imposing a death
2 sentence on operators for minor infractions with the good-
3 standing rule. I disagree that the infractions are minor.
4 Also disagree that the good-standing is a death sentence.
5 The rule should not affect directly existing operations.
6 In this sense it's less drastic than some of the
7 enforcement procedures that the Statute expressly allows,
8 such as the plugging of producing wells or injunctions to
9 put someone out of business. Here we are simply saying you
10 don't get new wells until you take care of the ones you
11 have.

12 Now, that's a partial answer to many of the
13 comments on due process. These rules are not taking away
14 things that people have. They're saying you can't get more
15 wells until you comply. It's the equivalent of rewriting
16 our APD rules, our permit rules, our allowable rules, to
17 say, before we give you an APD, a permit, an allowable, it
18 us up to you, Mr. Operator, to show us that you're in
19 compliance with our rules. Otherwise, we may deny you.
20 That's the equivalent of what we are doing with the good-
21 standing rule.

22 There's one exception, and that is for injection
23 permits. As you'll see when we get to other permitted
24 entities and future rule proposals, the way to obtain
25 compliance from a permitted entity is through the permit

1 itself. You can revoke or suspend that permit.

2 Now, our good-standing rule does contain a
3 provision that would allow us to revoke an existing
4 injection permit. Now in that case, we would be taking
5 away something that had already been granted. That's why
6 we have the provision in the rule for that, that it could
7 only be done after notice and hearing.

8 But there's no question we have the right to
9 revoke permits.

10 Ed, if you could go to slide 14.

11 This is a quotation from a very recent New Mexico
12 Supreme Court Case, *Cerrillos Gravel Products, Inc.*, in
13 which a party challenged the County Commissioners' ability
14 to revoke a permit, said you don't have authority to do
15 that. And the Supreme Court did not accept that argument.
16 The Supreme Court wrote, "We agree that the power to revoke
17 a permit is necessarily implied from the power to approve a
18 permit."

19 We should have the ability in a permitting
20 situation to deny a permit to operators who aren't in
21 compliance and to revoke permits already granted to
22 operators if they're not in compliance.

23 Now, Rule 37 is the rule that defines good
24 standing, and we received many, many comments on the
25 definition of good standing.

1 Dugan commented that the factors were arbitrary,
2 and several commentators were concerned with arbitrary
3 enforcement by the Districts. The OCD's position is that
4 the definitions that we use for good standing are objective
5 definitions, not subjective definitions, and that the good-
6 standing rule has the effect of taking away a lot of the
7 discretion from the Districts and applying an enforcement
8 tool uniformly across the state.

9 The first element of the definition of good
10 standing is that it requires operators to keep up with
11 financial assurance requirements. We don't currently allow
12 operators to operate without financial assurance, and we
13 won't allow transfers of wells if the new operator doesn't
14 have financial assurance. Financial assurance is mandated
15 by the Statutes.

16 Now, we'll get to the specifics of the additional
17 financial assurance requirements in the proposed rules
18 later, but I would like right now to point out that we do
19 right now impose additional bonding requirements on
20 inactive wells, we just do it in a very subjective manner.
21 What we are proposing is to apply it across the board in a
22 very objective manner.

23 Ms. Prouty, Ms. Jane Prouty, will be testifying
24 on what the OCD intends to do to provide a well list that
25 will track the need for bonding, similar to the inactive

1 well list, so that operators can monitor their bonding
2 status to make sure that they're in compliance with the
3 bonding requirements and can preserve their good standing.

4 The second element of good standing is that the
5 operator must be in compliance with orders requiring
6 corrective action. And I draw your attention to the
7 language we used in writing this section, because there's a
8 double protection for the operator.

9 First, the Division needs to obtain an order
10 requiring corrective action. We could do that through a
11 hearing, or we could do it through agreement with the
12 operator in an agreed compliance order. But either way, we
13 have to get an order requiring corrective action.

14 Then if the operator doesn't comply, he doesn't
15 immediately go onto the bad standing list or lose his good
16 standing. The Division would then have to bring a case
17 before the Division, before the Commission if necessary,
18 and prove that the operator is in violation of an existing
19 order requiring corrective action. It's that second order,
20 after notice and hearing, that could result in the operator
21 losing good standing.

22 And note that the operator would have the right
23 to appeal. The operator would have the opportunity to
24 obtain a stay of that order until the issue is resolved.

25 There was a comment we received that it's very --

1 the way the rule is written, it would be very hard for an
2 operator to get back into good standing once he lost good
3 standing under this provision.

4 Well, the OCD's response is, it's very hard to
5 lose good standing under this provision, first of all. If
6 an operator does, it's because he's in violation of two
7 orders requiring corrective action. The provision that we
8 put in for an operator to regain good standing after that
9 happens is to go back to the body that determined he was
10 out of compliance and convince that body that he is now
11 back in compliance. That could be the Commission or the
12 Division.

13 If the Commission issues an order, for example,
14 to an operator saying, You are in violation of a prior
15 order requiring you to clean up this well site, once the
16 operator did that, he would then have to come back to the
17 Commission and say, I have done what you wanted me to do.
18 Again, we are eliminating district discretion in this. If
19 it's a Hearing Examiner or the Commissioner requiring
20 cleanup, they get to determine whether that cleanup has
21 been done or not.

22 The next part of the definition is of good
23 standing is penalty assessments unpaid. Note that this
24 could be a penalty from the Division, the Commission or the
25 District Court. Again, penalties are issued after notice

1 and hearing or after an agreed compliance order. Notice
2 again, the operator could appeal a hearing order imposing a
3 penalty, could obtain a stay of that order until it's
4 finally resolved.

5 But the point of including the penalty provision
6 in good standing is that an operator should have to do
7 something when a penalty is assessed. Right now, operators
8 tend to simply ignore them. And unless we're willing to
9 take every thousand-dollar penalty case to court, we can't
10 get them enforced.

11 What the good-standing rule would do is require
12 the operator to take some action. Challenge it or pay it,
13 but don't ignore it.

14 The last part of the definition on good standing
15 concerns inactive wells, and we will have considerable
16 testimony about inactive wells and that list. But I would
17 like to address here the comments that we received that we
18 would be violating due process by using an inactive well
19 list and saying that that is *prima facie* evidence that an
20 operator has certain wells out of compliance.

21 Note that the information on that list originates
22 from the operator himself. It's the operator's production
23 reports, their filings regarding plugging and temporary
24 abandonment and the use of that well that form the basis
25 for whether a well gets on that list or not.

1 The list is on our website. What's very
2 interesting about that list is that you can search not only
3 for wells that are out of compliance, wells that have been
4 inactive for 15 months or more, but you can also search for
5 what wells will fall out of compliance if nothing is done.
6 You can search by whatever time period you like.

7 So if I am an operator and I'm concerned that I
8 may lose my good standing, it would be in my interest to
9 get to that well list and search for wells, say, that have
10 been inactive for six months. I can pull up that list, I
11 can see how long those wells have been out of activity, and
12 I can plan and make sure that those wells are back on
13 production, that they are temporarily abandoned, that they
14 are plugged. If none of those options works and I need
15 more time than I can -- than I will have, I can arrange for
16 an agreed compliance order to give me the time I need to
17 come into compliance. So an operator can protect himself
18 by going to that list.

19 The list we have now, and the list we posted when
20 we first began, was set up this way. And it's interesting
21 that NMOGA's comments requested such a list. That list is
22 there, that list has been there, that is what we hope
23 operators will do, is use the list as a management tool.

24 Now, many of the commentors asked that the
25 Division provide separate notice when an operator is losing

1 his good standing, particularly because of the inactive
2 wells; they seem very concerned about them. The suggestion
3 was, and a number of the comments, that the OCD send a
4 letter by certified mail 30 days before an operator loses
5 good standing.

6 I would suggest we're doing better than that,
7 because an operator right now, today, can go and see what
8 wells will be out of compliance over the next 15 months.

9 But if the Commission decides that we need to
10 send written notice to the operators that they're about to
11 fall out of good standing, then I would suggest the
12 following. Well, first of all, what we'll be doing is
13 printing out the very same screen that they can look at
14 right now on the web.

15 But what I would suggest is that instead of
16 requiring notice 30 days ahead of calling someone out of
17 good standing, I would strongly suggest that you require
18 the OCD to provide notice after a well has been inactive
19 for a shorter period of time, say 12 months. That would
20 give the operator three months in which to correct the
21 problem, to make sure that well isn't out of compliance at
22 15 months, which is the magic time limit under the rule
23 that a well can remain inactive.

24 If you only give him 30 days' notice, it's
25 unlikely that he's going to be able to return the well to

1 production, plug it or TA it in the 30-day period. What he
2 will probably do is rush in and try to get an agreed
3 compliance order. I would rather we provide notice earlier
4 and encourage operators to do what it takes to get the well
5 into compliance before the 15-month period passes.

6 If what we say is, we will give you a notice once
7 you have fallen out of compliance, once the 15 months have
8 passed, and then give 30 days to cure any problem, what
9 we're doing is, we're saying, We don't really have a 15-
10 month deadline, we have a 16-month deadline. And I would
11 prefer that we stay with the 15-month and just give
12 adequate notice and have operators come into compliance
13 within the time period already recognized by the rules.

14 We had a suggested amendment from NMOGA proposing
15 to define what it means to have an inactive well.

16 And Ed, if you could go to slide 15 for me,
17 please.

18 I've summarized the proposals that NMOGA had.
19 The definition that NMOGA was proposing, the way they wrote
20 it, it would be put in the general definition section of
21 the rules, in Rule 7. If we define inactive wells the way
22 NMOGA proposes and put that definition in Rule 7, that
23 definition will affect the meaning of the term "inactive"
24 in all rules, not just the good-standing rule, and it will
25 have unintended consequences.

1 For example, if you look at the word "inactive",
2 it appears in Rule 201. That's our inactive-well rule, and
3 that requires operators to plug or TA a well after it's
4 been inactive for 15 months. NMOGA's definition says a
5 well isn't inactive at all until it hasn't been used for 15
6 months.

7 I would suggest the way the rule -- NMOGA's
8 proposing to define inactive wells constitutes a double-
9 dipping of sorts. A well has to be unused for 15 months
10 under their definition before you can even call it
11 inactive. Then under Rule 201 it has to stay inactive for
12 another 15 months before it's out of compliance. So all of
13 a sudden you're talking 30 months instead of 15, which is
14 the way the rule is now. So that's one of my concerns
15 about putting this definition in the general definition
16 section.

17 But the OCD also has some concerns about the
18 definition itself, even if it is limited to defining
19 inactive for purposes of good standing.

20 The first part of the definition is that they
21 want to say a well isn't inactive if it's a dewatering coal
22 gas well. OCD suggests the solution is that a dewatering
23 coal gas well should be reporting water produced. And if
24 it is, it's not going to be inactive under our current
25 rules. And if that's not clear to operators, that they

1 need to be reporting that water production, then that's the
2 rule we need to change.

3 Wells that are producing, oil, gas or water, or
4 injecting, are not on the inactive well list, should not be
5 on the inactive well list.

6 That brings us to the second, an approved
7 injection well. Again, injection wells should be reporting
8 water injected, if they're active. And if that's not
9 clear, then that's what we need to clarify. Active
10 injection wells should not be on the inactive well list
11 now; we don't need a definition to exclude them.

12 The third point, they would ask that a well not
13 be considered inactive if it's not producing because of
14 delays in obtaining surface access to the well. The OCD
15 has some administrative problems with that. How are we
16 going to know whether a well is inactive because of
17 surface-access issues or it's simply not a producing well?
18 We recognize that this is a problem, but we suggest it
19 could be handled under the agreed compliance order system.

20 If an operator has a well that's not producing
21 because of surface access problems, it should be up to the
22 operator to come and tell us that's what the problem is.
23 Then we can deal with it in an ACO. But there's no way for
24 us to eliminate wells from our well list right now because
25 of this situation. We are not going to know about it.

1 And again, note the drafting problem with this
2 proposal, especially if you put it in the general
3 definitions section. It's saying that these wells cannot
4 be inactive, you can never have an inactive dewatering coal
5 gas well, you can never have an injection well that's
6 inactive.

7 What happens if there's delays in obtaining
8 surface access? Is it permanently then off the list? How
9 does it get back on the list?

10 If a well is not considered inactive because it's
11 a dewatering coal gas well or an approved injection well,
12 then under our current rules if it's not inactive we can't
13 require it to be TA'd, we can't do anything to it. They'd
14 basically just take it out of the regulatory system. And I
15 don't think that's the way to handle the problem.

16 Again, I think we can handle dewatering coal gas
17 wells and approved injection wells by making sure that ones
18 that are active and being used are reporting. Then they're
19 not on the list. Access issues should be handled through
20 agreed compliance orders.

21 There were comments that we received on a
22 proposed rule for operator registration, operator change,
23 and change of name. The primary comment that we received
24 had to do with a provision that would allow the Division to
25 deny registration to an operator if its business relatives

1 were not in good standing. What we were trying to do was
2 to prevent the situation of operators simply changing their
3 names or their entity type in order to avoid the good-
4 standing requirements.

5 The concern seemed to center on the five-percent
6 ownership provision. There were two provisions in the rule
7 that would allow the Division to deny registration to an
8 operator in certain situations where an officer, director,
9 partner in the applicant or person with an interest
10 exceeding five percent in the applicant is or was an
11 officer, director or person with an interest exceeding five
12 percent in another entity that wasn't in good standing.
13 And there's a similar provision, the applicant itself is or
14 was within the past five years an officer, director,
15 partner or person with an interest exceeding five percent
16 in another entity that's not in good standing.

17 We took this language from an Illinois rule, the
18 entire language, not just the five-percent interest. The
19 reason that the OCD would like to have ownership interest
20 considered is that the entity in control of another entity
21 may not be -- may not appear as the officer, director or
22 partner; it may be the owner.

23 I'd like to draw the Commission's attention to
24 the Saba case, which was Case 13,163. That was an inactive
25 well case centered around Saba Energy of Texas. It went

1 all the way up to the Commission, and the Commission
2 imposed a large penalty on Saba.

3 If you research Saba on the Internet, you'll find
4 that it is a subsidiary of another company, and I believe
5 the name is Greka International, or Greka something. Greka
6 has many subsidiaries. Saba is one who operated in New
7 Mexico. Another one who operated in New Mexico is another
8 Greka entity.

9 Well, after the Commission imposed a penalty on
10 Saba for its inactive wells, Saba left the state. We
11 haven't seen hide nor hair of Saba. I don't believe Greka
12 is here either anymore, the Greka sub. But if we have
13 another Greka-owned company come into New Mexico and
14 propose to become a well operator, what the proposed rule
15 would do, it would give us the opportunity -- it wouldn't
16 require us to deny this new entity, but it would give us
17 the opportunity to say, No, we don't want you in New
18 Mexico. It would also give us a reason to sit down and
19 have a heart-to-heart talk with that entity as to what its
20 intentions were in New Mexico before we allowed it to come
21 back in.

22 And again, unless we have an ownership interest
23 as part of this rule, we may not be able to exclude the
24 next Greka that comes by, because the officers and
25 directors may not match the ones that we saw in the other

1 companies, but we know darn well that they're all owned by
2 the same multinational corporation.

3 Another potential problem, the Commission may
4 recall the Maralo case. We eventually received an order
5 requiring Maralo to do some cleanup. Well, we recently
6 received correspondence from Maralo's attorney when we
7 wrote to them to say how is that cleanup proceed, have you
8 -- do you have a plan for us? We got a letter back from
9 Maralo's attorney saying they've left the state, and they
10 gave us a forwarding address.

11 When I was preparing the Maralo case I did a web
12 check, and my recollection is, there were a couple of
13 Maralo-related entities out there, not necessarily in New
14 Mexico. If Maralo doesn't follow through on that cleanup
15 order, we would like the opportunity when the next Maralo
16 entity comes to New Mexico to say, What about that cleanup
17 order? and have the opportunity to say, We don't want you
18 back if you're going to act like the first Maralo entity
19 we've dealt with.

20 The next rule in this series is Rule 1115, and
21 we're proposing some amendments to the rule regarding
22 operator's monthly reports. We did not receive many
23 comments on this rule, so I won't be addressing it. Ms.
24 Prouty will be addressing it in her testimony.

25 The next set of rules deals with financial

1 assurances, and here we did receive many comments.

2 One comment we received was from OGAP, and they
3 were disappointed that we were not proposing to raise the
4 blanket bond amount. We can't, it's set by statute. The
5 Statute tells us that the blanket bond has to be \$50,000,
6 but allows us to set the single well amounts. So that is
7 why our proposal centers on the single well amounts.

8 Now Yates filed a comment saying that requiring
9 bonding on wells on federal land is an impermissible
10 conflict with federal law. The OCD does not believe there
11 is a conflict. The federal entities can have their bonds,
12 and we can have our bonds.

13 By the way, we already require single-well bonds
14 on some inactive wells located on federal and tribal lands.

15 It's important to note that when we do have
16 bonds, or when we are able to get reimbursement from other
17 entities who hold bonds, we only collect what we need to
18 reimburse us for our actual costs in plugging. So the
19 operator will never end up paying more than the actual cost
20 to plug his wells.

21 We received a comment late yesterday from the
22 BLM. The BLM stated that the state does not need bonds on
23 wells on federal land, because they will be able to take
24 care of their wells now under the Energy Policy Act of
25 2005.

1 I went on the Internet last night to find that
2 new Energy Policy Act. I would like the Commission to take
3 administrative notice of the Act itself. It is not clear
4 to me when or how the federal agencies will have the
5 ability to require -- to be able to take care of their own
6 wells on federal land under this program.

7 The section that I found of the Act was Section
8 349, and it talks about establishing a program not later
9 than a year after this -- the date of enactment, in order
10 to do various things. And one of the things it does
11 promise is some money to help out with the plugging of
12 wells. But it's not clear to me that the responsibility
13 will be taken over by the feds entirely and whether it
14 affects all wells on federal and tribal land or just the
15 BLM wells. I'm not sure at this point, and we may not know
16 for a while.

17 We know right now, and we'll have some testimony
18 to the effect, that we are plugging federal wells whether
19 or not they're covered by bonds, and we have done so for
20 some time. Frankly, we have been the agency plugging those
21 wells, and it would be much more efficient for us to have
22 our own bonds and have some control over that if we are the
23 entity doing the work.

24 If it works out that the federal agencies can, in
25 fact, take over the wells, that would be wonderful. In

1 that case, then, we don't need to have the federal bonding.
2 But again, at this point I'm not sure that we can say that
3 this problem is solved by the Energy Policy Act of 2005.
4 And I do have copies of that section of the Act available
5 for the Commission.

6 In connection with the federal bonding, NMOGA
7 asked for joint bonds. In other words, would it be
8 possible for the federal bonds that are already out there
9 to run to the state as well as to the federal entities? If
10 that can be done, that's an excellent solution. What we
11 are trying to prevent is a situation where we cannot get
12 our hands on the money easily if we have to plug the wells.
13 So if the bonds can be rewritten so that we have access to
14 that money directly, that would certainly solve any
15 problem.

16 Interestingly, OXY filed a comment saying that
17 they didn't think we should increase the bond amount to
18 reflect actual plugging costs. They said it was a
19 performance bond and it didn't need to have the same amount
20 as the actual plugging costs.

21 In fact, it is our statutory duty under 70-2-14
22 to set amounts for one-well financial assurances in amounts
23 determined sufficient to reasonably pay the cost of
24 plugging the wells covered by the financial assurance.
25 That is why in our proposal today we're looking at the

1 actual costs.

2 OXY also commented that imposing additional
3 bonding on inactive wells goes beyond the Statute.

4 Ed, if you could go to slide 16.

5 This is Statute 70-2-14(A). The Legislature
6 specifically granted us the authority to require one-well
7 financial assurances on wells that have been held in a
8 temporarily abandoned status for more than two years, so it
9 is a statutory authority we're invoking when we're seeking
10 to impose single-well bonds on inactive wells.

11 Several commentors noted that under the proposed
12 rule it looks like releases of financial assurances is
13 discretionary. They would request that releases be
14 mandatory as long as the wells are plugged and released or
15 covered by another bond. And the OCD agrees with that
16 suggested change, because the Statutes say that a bond must
17 be released under those circumstances, if you look at
18 70-2-14(A).

19 So Ed, could you go to slide 17 please?

20 This shows -- the italics are the current
21 language in our proposed rule, and we're saying we may
22 release a financial assurance document upon a certain
23 showing. We suggest that we delete the "may" and put
24 "shall" in its place to clarify to everyone that it is
25 mandatory. Down at the bottom of that I've put the

1 statutory language, and the statutory language on release
2 does use the word "shall", so we should match it. So I
3 propose we make that change to proposed Rule 101.G(1)

4 Now there's another release provision in 101 that
5 I would not want to change, and Ed, could you go to the
6 next slide?

7 This is 101.B. We included a provision that if
8 we require a one-well financial assurance because the well
9 is inactive for two years or more, we said we may release
10 it if the well is returned to production or as long as a
11 blanket financial assurance covers the well. The OCD would
12 ask that this provision remain permissive rather than
13 mandatory.

14 As you will see, there was a memorandum issued by
15 Division Directory LeMay regarding requiring single-well
16 financial assurances. That memo said that once a single-
17 well bond was required because of inactivity, it could
18 never be released. Under that memo, they never wanted it
19 released. And the theory was that the well, if it's been
20 inactive for two years, is probably going to require
21 plugging soon. It's probably towards the end of its
22 natural life. So under the LeMay memo we wouldn't -- once
23 a single-well bond was required because of inactivity, we
24 would release it.

25 So what we're proposing is actually lightening up

1 on the requirements in the LeMay memo. We're asking that
2 we have the discretion to release such bonds. There may
3 reasons where we want to keep them, and the LeMay memo was
4 right in that. If the well's to the end of its active
5 life, if the only reason it's back on production is it's
6 being swabbed once a year, we probably want to keep that
7 single-well bond in place.

8 But there are certainly other situations where a
9 well that is inactive has been returned to productive use
10 and will probably remain in productive use for a long time.
11 Think of a well that used to produce oil or gas and is now
12 being used for some other purpose. There's no reason in
13 that case to require the single-well bond. So we would ask
14 that we be able to retain the discretion to determine when
15 it's appropriate and when it isn't.

16 We received several comments that the proposed
17 rules add location restoration to plugging requirements.

18 Ed, if you could go to slide 19, please.

19 Actually, location restoration is part of the
20 current plugging rule. It appears in the current rule at
21 101.L. Bonds are for plugging and location cleanup. What
22 they are not for is to secure payment for damages to
23 livestock, range, water, crops, tangible improvements, nor
24 any other purpose.

25 The OCD believes that that language was intended

1 to distinguish between plugging and cleanup that was the
2 responsibility of the OCD and the kind of restoration that
3 a be requested by a surface owner. That sort of
4 restoration the OCD did not enforce. That is between the
5 operator and the surface owner, and we certainly don't want
6 the plugging bond to be a battleground for that sort of
7 cleanup.

8 But the plugging bond should be available to do
9 what the OCD is responsible to do, and one of the things we
10 are responsible for is water. So the proposed language
11 keeps the general language that's already there, but it
12 says location, restoration and remediation, which is the
13 language that we use in our rules now to talk about what
14 the OCD is responsible to do, and it excludes water. So it
15 would allow us to use the plugging bond if water is
16 contaminated.

17 Now, there was a lot of confusion and a lot of
18 comments about our proposed changes to the definitions of
19 temporary abandonment and approved temporary abandonment,
20 and if you will bear with me I would like to go through
21 this. The reason we're proposing changing those definition
22 is all tied to our proposed requirement for single-well
23 financial assurances.

24 Ed, if you could go to slide 20.

25 70-2-14(A) is the Statute that allows us to

1 require one-well financial assurances on certain wells.
2 But look at how it describes those wells: "any well that
3 has been held in a temporarily abandoned status for more
4 than two years". That's the language we have to work with.
5 That's in the Statute, we can't change it.

6 What is below that is the language in our current
7 definition section. This is by rule, this is something we
8 did to ourselves. And it defines temporary abandonment as
9 "the status of a well which is inactive and has been
10 approved for temporary abandonment in accordance with the
11 provisions of these rules". That means that the bridge
12 plug has been set, an MIT test has been done, the OCD has
13 approved that well for temporary abandonment status.

14 Now, if you read those two provisions together,
15 the Statute and the current definition of the rule, it
16 could be interpreted to say that we can only impose single-
17 well financial assurance requirements on wells that are in
18 compliance with our TA rules, but we can't impose it on
19 wells that are not in compliance with our TA rules. That
20 would be all the rules on the inactive well list that
21 you'll be seeing later.

22 The OCD believes that the Legislature did not
23 write this provision with the intent to reward noncompliant
24 well operators. The noncompliant well operators, the ones
25 who haven't TA'd their wells, are probably the most

1 important operators to require additional bonding of.
2 They're the most likely to violate the plugging rules as
3 well and leave the plugging to the State.

4 So our solution to this anomaly, which the OCD
5 created itself with that definition of temporary
6 abandonment, is to change the definitions of temporary
7 abandonment.

8 Ed, if you could go to the next slide.

9 Here are the proposed definitions that we think
10 would solve this problem. We would propose temporary
11 abandonment to just be the status of a well that is
12 inactive. That way, if you read it in conjunction with the
13 Statute, if it's been inactive for more than two years we
14 can require additional bonding for it, whether it has been
15 properly it has been properly TA'd with a bridge plug and
16 an MIT test or not.

17 We would propose a brand-new definition and start
18 using the term "approved temporary abandonment" to mean
19 wells that are inactive and have gone through the TA
20 process. Those are wells that are inactive, but they're on
21 approved status because we say it's okay for them to be
22 inactive. They've passed the MIT test, they've set the
23 bridge plugs, et cetera.

24 If we adopt these proposed definitions, then we
25 will be able to apply the statute that says we can require

1 single-well bonds on wells that are on temporary
2 abandonment status and mean wells that are inactive, and
3 not just wells that are inactive and in compliance, but all
4 wells that are inactive.

5 If you go through the remaining changes in Rules
6 203, 201 and 1103, those rules were changed primarily to
7 reflect this new language.

8 Now, there were also substantive changes that
9 we're proposing to the temporary abandonment rule itself,
10 and we'll have Mr. Wayne Price address those because those
11 are more technical changes.

12 That concludes the discussion of the comments
13 that OCD received on the rules.

14 CHAIRMAN FESMIRE: Ms. MacQuesten, I assume
15 you're going to present testimony next?

16 MS. MacQUESTEN: Yes, Mr. Chairman, the OCD has
17 five witnesses.

18 CHAIRMAN FESMIRE: Okay. Why don't we take a 14-
19 minute recess and reconvene at 20 minutes till 11:00?
20 Thank you.

21 (Thereupon, a recess was taken at 10:26 a.m.)

22 (The following proceedings had at 10:45 a.m.)

23 CHAIRMAN FESMIRE: Are we ready? Let's go back
24 on the record.

25 I believe Ms. MacQuesten, you were getting ready

1 to call your first witness?

2 MS. MacQUESTEN: Yes, the OCD calls Daniel
3 Sanchez.

4 CHAIRMAN FESMIRE: Mr. Sanchez, you've been
5 previously sworn?

6 MR. SANCHEZ: Yes, sir.

7 JOSÉ DANIEL SANCHEZ,

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

10 DIRECT EXAMINATION

11 BY MS. MacQUESTEN:

12 Q. Mr. Sanchez, would you state your full name for
13 the record?

14 A. José Daniel Sanchez.

15 Q. And where do you work?

16 A. For the Oil Conservation Division.

17 Q. Is that in the Santa Fe office?

18 A. Yes, it is.

19 Q. What is your title?

20 A. Compliance and Enforcement Manager.

21 Q. What do you do as Compliance and Enforcement
22 Manager?

23 A. I supervise the four district offices, the
24 Environmental Bureau, in compliance and enforcement issues.

25 Q. All right. Do you have duties regarding the UIC?

1 A. Yes, I'm also the UIC Director.

2 Q. And what is the UIC?

3 A. It's a federally mandated EPA program that
4 regulates injection wells.

5 Q. Now, how long have you been the compliance and
6 enforcement manager?

7 A. For close to 11 months now.

8 Q. All right. Could you tell the Commission a bit
9 about your educational and employment background?

10 A. Yes, I have a bachelor's of science in mechanical
11 engineering from New Mexico State University. I started
12 working for Westinghouse Electric Corporation out of
13 college, worked for them from 1988 through 1992, at which
14 time I started with the State in 1992, April, with the
15 Public Regulation Commission as a public utility engineer.

16 Q. All right. Mr. Sanchez, I'd like to have you
17 tell us a bit about OCD's enforcement duties and the
18 resources it has to carry out those duties, and I'd like to
19 start by asking you, how many well operators do we have in
20 New Mexico that have active wells? And by that I mean
21 wells that are not plugged. The could be producing or not
22 producing, but they are not plugged?

23 A. We have 787.

24 Q. Okay. And those are the operators?

25 A. Yes.

- 1 Q. How many unplugged wells are there in New Mexico?
- 2 A. 53,334.
- 3 Q. Okay. Does that number include state, fee,
4 federal and tribal wells?
- 5 A. Yes, it does.
- 6 Q. Does the OCD inspect wells on federal or tribal
7 land?
- 8 A. Yes.
- 9 Q. And what are our plugging responsibilities for
10 federal and tribal wells? Do we do pluggings?
- 11 A. Yes, we do them on both when we're requested.
- 12 Q. Okay. Now, for those 53,334 wells, how many
13 field inspectors do we have, total, statewide?
- 14 A. Fifteen.
- 15 Q. What do field inspectors do?
- 16 A. They do -- they have a number of
17 responsibilities. They inspect well sites, tank batteries,
18 pits, they look for leaks on valves and -- you know, they
19 look for spills, they witness plugging and abandonment
20 operations, they schedule and witness MITs and Bradenhead
21 tests. It goes on and on. They have a number of
22 responsibilities.
- 23 Q. Okay. Well, how many wells would each OCD field
24 inspector be responsible for, then?
- 25 A. That varies from district to district. In

1 District 1 we have six inspectors, and their duties would
2 be 3113 per inspector. They have a total of 18,075 wells
3 in that district that they're responsible for. Out of
4 District 2 they have 13,825, with four inspectors. That's
5 3,456 per inspector. In District 3 we have 20,442 wells
6 with four inspectors, for 5111 wells that they're
7 responsible for. And out of District 4, Santa Fe, we have
8 one inspector, and he's responsible for 992 wells.

9 Q. And that one inspector in the Santa Fe District,
10 he is that district, isn't he?

11 A. He is the district, yes.

12 Q. Only one employee for that district, so he has
13 more duties than just inspecting wells?

14 A. Yes.

15 Q. Now, does the OCD regulate other entities in
16 addition to well operators?

17 A. Yes, we do.

18 Q. Could you give us some examples?

19 A. We regulate water transporters, waste facility
20 operators, refineries, brine wells, compressor stations,
21 crude oil, pump stations, natural gas plants, gas storage
22 facilities and oilfield service companies.

23 Q. Are those entities regulated under the Oil and
24 Gas Act or the Water Quality Act?

25 A. Water transporters and waste facility operators

1 are governed under the Oil and Gas Act, the rest are Water
2 Quality Act.

3 Q. Now, you mentioned that you supervise the
4 Environmental Bureau?

5 A. Yes.

6 Q. How many people are in the Santa Fe office of the
7 Environmental Bureau?

8 A. We have five.

9 Q. Okay. And how many inspectors in the districts?

10 A. We have two in District 1 and one each in
11 Districts 2 and 3, for a total of nine.

12 Q. Nine people total for the Environmental Bureau.
13 What does the Environmental Bureau and its inspectors do?

14 A. Okay, the OCD Environmental Bureau administers
15 several wide-ranging water quality protection programs,
16 some of which have been developed and remain separate from
17 the state Water Quality Act, and they control discharge to
18 groundwater.

19 Among the types of discharges permitted and
20 regulated by the OCD are surface and underground disposal
21 water produced concurrently with oil, natural gas and
22 carbon dioxide, waste drilling fluids and muds, waste
23 fluids at crude oil recovery facilities, oilfield service
24 companies, refineries and natural gas plants and compressor
25 stations, and discharges to groundwater at these facilities

1 are controlled under the Water Quality Control Commission
2 regulations.

3 Q. Now, if the Environmental Bureau discovers
4 contamination, do they play a role in remediation?

5 A. Yes, they do, they usually oversee that
6 remediation.

7 Q. How many remediation sites, active remediaton
8 sites, are there in New Mexico right now?

9 A. We have 1082.

10 Q. That this nine-person bureau supervises and
11 monitors?

12 A. Yes.

13 Q. How many attorneys are there in the OCD?

14 A. Three.

15 Q. How many of those attorneys are available to take
16 enforcement actions under the Oil and Gas Act?

17 A. Two.

18 Q. Why only two of the three?

19 A. One of the attorneys acts as counsel to the
20 Commission, and there's a concern for being -- having a
21 conflict of interest, acting on those cases. But he is
22 available for cases involving the Water Quality Act and to
23 go to district court if necessary.

24 Q. Okay. Now, of the two attorneys who can do Oil
25 and Gas Act enforcement actions, is enforcement their only

1 duty with the OCD?

2 A. No, they have several duties, some of which are
3 writing new rules, such as for this rulemaking here,
4 sitting in with Hearing Examiners during administrative
5 hearings. They review Commission orders, notice of
6 violation, they prepare agreed compliance orders, several
7 other...

8 Q. So the two attorneys who can do Oil and Gas Act
9 enforcement aren't able to do it a hundred percent of their
10 time?

11 A. No.

12 Q. Okay. Now, your position as the Compliance and
13 Enforcement Manager, is that a relatively new position with
14 the OCD?

15 A. Yes, it is.

16 Q. When was that created?

17 A. I believe it was created in March of 2004.

18 Q. Was that created by the Legislature, or was that
19 something that the OCD did on its own?

20 A. The OCD did that on its own. There was an
21 engineering tech, I believe, position that came available,
22 and they upgraded it to make the manager position.

23 Q. Okay. And these OCD attorney positions, have
24 there been three attorneys for some time?

25 A. No, there were two until, I believe, August of

1 this last year.

2 Q. And again, was that something that the
3 Legislature gave us, or was that something that the OCD had
4 to create?

5 A. The OCD created that position. We had a vacant
6 Environmental Bureau position that we used to fill that
7 one.

8 Q. So in the past year or so there's been some
9 reorganization in terms of priorities for enforcement?

10 A. Yes.

11 Q. I'd like you to discuss some of the tools that
12 the OCD uses right now in order to try and obtain
13 compliance. There's a binder in front of you that contains
14 the exhibits for this hearing. I'd like you to turn to
15 Exhibit Number 6.

16 A. Okay.

17 Q. Can you tell me what this is?

18 A. Yeah, Exhibit Number 6 is a letter generated
19 through our RBDMS system after an inspection of a site.

20 Q. What is RBDMS?

21 A. It's our risk-based data management system. It's
22 our way of tracking compliance and enforcement. It does a
23 number of things. We're able to put in inspection issues
24 that are found out in the field. Each of our inspectors
25 has a computer on-site when he goes out into the field.

1 Whenever he comes upon something that could be a violation
2 he inputs it into the system, and that system tracks the
3 violations or alleged violations. It also has a number of
4 other features that assist the inspectors, how they use it.

5 Q. How do letters such as this letter in Exhibit 6
6 get generated?

7 A. Okay, an inspector -- In this case, an inspector
8 went out to a site, and he found that the well was shut in
9 and they had no sign, no sign posted on it. What he does
10 is, he goes ahead and inputs the location of the site, the
11 wellsite name, the date and the violations that he's
12 alleging, and that information is put into a letter that's
13 developed through RBDMS, and it goes out to the operator.

14 Q. Let's take a look at the letters that we have in
15 Exhibit Number 6. Now, actually there are several letters
16 in this exhibit, are there not?

17 A. Yes.

18 Q. Some six letters --

19 A. Yes.

20 Q. -- all generated by RBDMS?

21 A. Yes.

22 Q. And these all went to the same operator?

23 A. Yeah, they did.

24 Q. Over a period of approximately a year and a half
25 or so?

1 A. Yes.

2 Q. Let's look at the first one as an example. When
3 the operator receives this, could you go through the kind
4 of information it provides about the violation on a --

5 A. Okay. The comments on the inspection were, no
6 well sign, well is well is shut in, install a sign, return
7 the well to production, TA or plug the well. And that's
8 listed as a second notice of violation, so that indicates
9 that there was another -- there was a previous violation of
10 the same issues.

11 And below that, on the other well that was on the
12 same date, the inspection was on the same date, he had
13 pretty much the same issues, the well sign, install a well
14 sign, the first notice of noncompliance.

15 Q. Okay.

16 A. So each one of them had a different -- well, the
17 same issues, but one of them was generating a second letter
18 for noncompliance.

19 Q. Okay, and for each of these alleged violations
20 there's a column that says "Corrective Action Due By"?

21 A. Yes.

22 Q. And it's asking the operator to take some action
23 on this violation by a certain date?

24 A. (Nods)

25 Q. Okay. Now, I notice there are some handwritten

1 notations on this particular document. The computer
2 wouldn't have done that, right?

3 A. No, the inspector would have put that in on a
4 follow-up inspection.

5 Q. Okay. And in fact, do you know why those
6 handwritten comments appear on this document?

7 A. Yes, on one of them, apparently the operator
8 installed the sign like he was asked to do, but it was with
9 the wrong operator name on it.

10 Q. Okay. But I mean why there are handwritten
11 comments. What was this document going to be used for?

12 A. For additional compliance. They would have
13 developed another letter explaining what the noncompliance
14 issue was.

15 Q. Okay. Now, behind this first letter there are
16 similar letters. Some of them have to do with the same
17 wells in the first letter, some have other wells where
18 there are problems; is that right?

19 A. Yes.

20 Q. Now, can you tell us what happened in this
21 particular case with this particular operator? Did the
22 Division obtain compliance through sending these RBDMS
23 letters?

24 A. No.

25 Q. What did they do?

1 A. They kept sending out letters requiring
2 compliance, and I believe there was an administrative
3 conference that was requested to deal with it at that
4 point.

5 Q. Okay. Were hearing applications filed?

6 A. Yes.

7 Q. Okay. How was it ultimately resolved?

8 A. The operator agreed to an agreed compliance order
9 to come into compliance --

10 Q. Okay.

11 A. -- and I believe there was a \$1000 fine issued in
12 this case --

13 Q. Okay.

14 A. -- if I have the right one.

15 Q. Okay. Is this operator in compliance now as to
16 the wells that are listed here?

17 A. As far as I know, they are. I believe we looked
18 at one other wells that should have come into compliance,
19 and it's now outstanding as an abandoned well at this
20 point --

21 Q. Okay, so --

22 A. -- or an inactive well, I'm sorry.

23 Q. Now, the date on the first letter we have here is
24 in January of '03; is that right?

25 A. Yes.

1 Q. And it refers to this being -- at least one of
2 these being a second notice of violation, so there may be
3 even more history to this than what we have in front of us?

4 A. Yes.

5 Q. But even assuming from January of '03, we're now
6 in '05, and we still have some questions about whether
7 these wells are in compliance?

8 A. Yes, that's true.

9 Q. Let's look at another tool that the OCD uses. If
10 you could turn to Exhibit Number 7, can you tell us what
11 this is?

12 A. Yes, Number 7 -- Exhibit Number 7 is a letter of
13 violation, and the letter of violation would go out when an
14 inspector would find a violation that's fairly minor, and
15 that letter would state what the violation was and request
16 a time frame -- well, request action taking care of that
17 issue and a time frame to do it.

18 Q. Does a letter of violation normally request
19 penalties also, or is it --

20 A. No.

21 Q. -- simply a notice?

22 A. It's simply a notice.

23 Q. And in this case, the OCD was asking for a spill
24 report and corrective action plan?

25 A. Yes.

1 Q. If you could turn to Exhibit Number 8 and tell us
2 what that is.

3 A. Exhibit Number 8 is a notice of violation. A
4 notice of violation would go out in the case of a more
5 extreme violation or if the letter of violation wasn't
6 addressed. Notice of violation usually will go out with a
7 penalty and a time frame to respond to the letter as well.

8 Q. Okay. And this particular example involves a
9 spill of produced water?

10 A. Yes.

11 Q. Now, how would a notice of violation such as this
12 one be resolved? What would happen after a notice of
13 violation is issued?

14 A. After the notice of violation is issued, the
15 District Office would request an administrative conference
16 with the operator, at which time they would either agree to
17 pay the penalty through an agreed compliance order and come
18 into compliance, or they could request an administrative
19 hearing.

20 Q. Okay. Now, in this case, if you look at the
21 second page of Exhibit 8, they've asked for penalties, but
22 they've also cited one of the Statutes that we talked about
23 earlier today. That's 70-2-14(B).

24 A. Yes.

25 Q. So what was the Division asking for by citing

1 that Statute?

2 A. We were just letting the operator know that if
3 they decided not to come into compliance, that we had a --
4 like a larger hammer to go after them with on compliance.

5 Q. So the sanctions that could be sought after this,
6 they were warning the company that it could be penalties or
7 it could be asking for wells to be --

8 A. -- to be shut in, yes.

9 Q. -- shut in. Okay. If you could turn to Exhibit
10 Number 9 and tell us what that is.

11 A. Exhibit 9 is an agreed order directing compliance
12 or an agreed compliance order. And what that does is, when
13 an operator and the District or through the Director come
14 to an agreement on paying a fine or actually address the
15 alleged violations, that will be written up, it will be
16 signed by the Director as an official document. It also
17 waives the operator's right to a hearing or for -- to --
18 can't think of the word, I'm sorry -- to appeal.

19 Q. Okay. So this would be an alternative to the
20 hearing process. If an operator --

21 A. Yes.

22 Q. -- agreed to such an order, then they wouldn't go
23 through the hearing process?

24 A. That's right.

25 Q. Now, in this case, this is -- all the documents

1 that we've seen so far are from actual cases?

2 A. Yes.

3 Q. Sometimes we've eliminated the identifying
4 information, but otherwise, they are taken from actual
5 cases. In this particular case, it involved a transporter
6 of produced water who dumped the water into someone else's
7 production pit?

8 A. That's right.

9 Q. What sort of sanction was the Division asking for
10 in this order?

11 A. \$1000, and I believe we issued an order to --
12 to -- what do you call it? I'm sorry, I'm having a -- to
13 suspend their permit for a 30-day period.

14 Q. Okay. Why only \$1000?

15 A. That's all by statute that we're allowed to issue
16 on a one-time penalty.

17 Q. One-time --

18 A. One-time offense.

19 Q. And since we only had evidence of one dumping --

20 A. That was it, that was all we could fine them.

21 Q. Okay. Now, if the operator had not been willing
22 to enter into this agreed compliance order, what other
23 action would the Division have taken?

24 A. It would have gone to administrative hearing at
25 that point, or taken to district court.

1 Q. Okay. I'd like to ask you some questions about
2 how our current system works versus what we could do if the
3 proposed rules were adopted, and I'd like you to consider a
4 particular case. It's the Saba case that I referred to in
5 the opening, Case 13,163. What kind of case was that?

6 A. It was a case where we asked the operator to
7 plug, I believe, six wells.

8 Q. Did we have difficulties in getting notice to the
9 operator in that case?

10 A. Yes, we did.

11 Q. What happened with --

12 A. The addresses that we had were not accurate, and
13 it was just a matter of digging until we got the
14 appropriate address.

15 Q. So eventually we were able to contact them?

16 A. Yes.

17 Q. Did we obtain a Division order?

18 A. Yes, we did.

19 Q. Was it appealed?

20 A. Yes, it was.

21 Q. Up to the Commission?

22 A. Up to the Commission, yes.

23 Q. So we had a *de novo* hearing at the Commission
24 level?

25 A. Yes, we did.

1 Q. And the Commission issued an order?

2 A. Yes, they did.

3 Q. Those six wells, did Saba ever plug the wells?

4 A. No.

5 Q. And did the Commission impose a penalty in that
6 case?

7 A. Yes, there was a penalty of \$270,000 for
8 noncompliance.

9 Q. Has Saba paid any of the penalty?

10 A. No.

11 Q. Does anyone know where Saba is?

12 A. No, not at this time.

13 Q. If the new rules were in place, would we have the
14 same notice problems?

15 A. No, we wouldn't.

16 Q. They would be required to provide us with notice
17 -- with an address for notice?

18 A. Yes.

19 Q. If the new rules took effect, would Saba be
20 considered in good standing?

21 A. No, they would not.

22 Q. So they have six wells out of compliance?

23 A. Yes.

24 Q. So if one of Saba's corporate relatives came to
25 New Mexico and tried to become an operator here, we would

1 have the opportunity to deny them registration if we
2 wished?

3 A. Yes, we would.

4 Q. And under the new rules also, if another operator
5 came to us and asked to become operator of those Saba
6 wells, would we have the opportunity to require them to
7 sign an agreed compliance order telling us what they plan
8 to do with those wells?

9 A. Yes, we would.

10 Q. And right now, somebody could come in and we'd
11 have a new operator with six wells out of compliance,
12 right?

13 A. That's right.

14 Q. And we'd have to start the process all over
15 again, of more hearings?

16 A. Yes.

17 MS. MacQUESTEN: Ed, if you could show us slide
18 22.

19 MR. MARTIN: Farther?

20 MS. MacQUESTEN: The next slide. It should be
21 proposed rule 701. There you go.

22 Q. (By Ms. MacQuesten) Mr. Sanchez, I'd like to ask
23 you about the proposed changes to Rule 701. One of the
24 proposed changes would be that the OCD would not be able to
25 issue injection permits to operators who are out of good

1 standing. And the way the language is written right now,
2 it appears to be mandatory. We just wouldn't be able to
3 give them permits.

4 A. That's right.

5 Q. Most of the other provisions are permissive
6 rather than mandatory. Why the concern about injection
7 permits?

8 A. Injection permits are regulated more under the
9 EPA -- under the UIC program. And the EPA has actually
10 expressed their concern over some of the issues that we've
11 had down in the south on injection wells, and usually those
12 concerns are over pressure, overpressuring of those wells.
13 And the reason for those concerns are the possibility of
14 fracturing the formation that they're in, potential for
15 movement up and down and out of that injection zone, and
16 even the potential for contaminated fresh water zones.

17 Q. Has the OCD contacted operators who are injecting
18 over pressure and tried to obtain compliance?

19 A. Yes, we have.

20 Q. And how has that worked out?

21 A. In some cases they've been cooperative. In other
22 cases -- most of the cases, they have not been cooperative.

23 MS. MacQUESTEN: Those are all the questions I
24 have of Mr. Sanchez at this time.

25 I would move for the admission of Exhibits 6, 7,

1 8 and 9. Those are the sample enforcement documents that
2 Mr. Sanchez testified to.

3 For the Commission's information, I will not be
4 asking for the admission of Exhibits 3, 4 and 5. Those
5 were charts that Mr. Sanchez prepared for the hearing, but
6 there were some errors in those charts. And rather than go
7 through the charts and explain it, we decided to use the
8 testimony instead, so I will not be asking for admission of
9 3, 4 and 5, and I'd caution the Commission not to pay
10 attention to the information on those slides, because they
11 could be confusing.

12 CHAIRMAN FESMIRE: Okay. Mr. Carr, any
13 objection?

14 MR. CARR: No objection.

15 CHAIRMAN FESMIRE: Any objection from the
16 Commission?

17 COMMISSIONER BAILEY: No.

18 COMMISSIONER OLSON: No.

19 CHAIRMAN FESMIRE: Or any other participants?
20 Okay, Exhibits 6, 7, 8 and 9 will be admitted.
21 Mr. Carr, did you have a cross-examination?

22 MR. CARR: Just a couple of questions.

23 CROSS-EXAMINATION

24 BY MR. CARR:

25 Q. Mr. Sanchez, if we look at Exhibit Number 6, the

1 documents that were sent to KC Resources, Inc., this is one
2 of those operators that you have trouble bringing them into
3 compliance; is that right?

4 A. That was one of them, yes.

5 Q. If the rules that are proposed today were
6 enacted, how would this be different? I mean, you do have
7 an address for them --

8 A. Yes, we have.

9 Q. -- correct? And they ignore fines and letters.
10 Do you believe that telling them that they're no longer in
11 good standing would change anything?

12 A. In this case, probably not.

13 Q. They've -- already would have been registered?

14 A. Yes, sir.

15 Q. Do your rules provide that you can terminate a
16 registration?

17 A. Not that I'm aware of.

18 Q. Do you know that -- if maybe they have acquired
19 some new investors that were also officers, directors or
20 partners in another entity that was not in good standing,
21 would you know that?

22 A. I'm not sure that we would.

23 MR. CARR: That's all I have. Thank you.

24 CHAIRMAN FESMIRE: Any other cross-examination by
25 the participants?

1 Commissioner Bailey?

2 EXAMINATION

3 BY COMMISSIONER BAILEY:

4 Q. Mr. Sanchez, why was there a departure from the
5 standard process of working with the different stakeholders
6 for these rules?

7 A. I believe that when the Commission or the OCD
8 decided that we needed to make these rules or change these
9 rules, that we needed to work within our own confines.
10 Working with the District Offices and the Environmental
11 Bureau, I found that there were a number of issues out
12 there that we weren't looking at on the same level within
13 the OCD. And there was a difference in the way some of the
14 rules were being read, I believe.

15 And I felt that in order for all of us to be on
16 the same page and coming together, knowing what everyone
17 did from the different districts on how these rules would
18 affect the industry, that we would be better off, for lack
19 of better terms, I guess, in developing those rules
20 ourselves, so that we know that they work within the OCD.
21 At that time we figured that we could go ahead and put them
22 together, and we would still have time to go and put them
23 out for comment. And since all the Districts would be
24 involved in that process, they already had a pretty good
25 idea from the industry, you know, from the operators that

1 they worked with, what some of those concerns would be, and
2 we were able to develop those within the proposed rules.

3 Q. Honestly, I'm really concerned about the lack of
4 coordination with the BLM. I mean, the letter from the BLM
5 indicates some very strong problems in coordination between
6 the OCD and the BLM. And then with the Land Office I'm
7 finding some areas of the ONGARD SMT for registration. I
8 mean, there are lots of different areas that my opinion is,
9 it would have been a lot better not to rush to rule but to
10 at least get some input from agencies that are not
11 adversaries in any way at all.

12 Which means that I also want some assurance that
13 -- we've had these slides on the responsibilities given to
14 the OCD by Statute, by the Legislature. Very helpful
15 slides they were. But last session, weren't there some OCD
16 initiatives that were killed by the Legislature? What I'm
17 looking for is assurance that this rulemaking is not a way
18 to get around some of that opposition shown by the
19 Legislature.

20 A. I don't believe that we're trying to do an end
21 run with these rules as opposed to what was proposed in the
22 Legislature last year.

23 Q. So you can assure me that enactment of these is
24 not going to duplicate any of those bills?

25 A. Personally, I don't think they will.

1 Q. I'm just concerned about the lack of coordination
2 with other agencies --

3 A. Yes, ma'am.

4 Q. -- that obviously have an important aspect of
5 operators in New Mexico, because I really hate to see
6 operators caught between differing rules of different
7 agencies, and I always try to promote coordination so that
8 we don't have these situations arise.

9 A. Yes, ma'am.

10 Q. And I'll address those when we talk about the
11 individual rules.

12 A. Okay.

13 COMMISSIONER BAILEY: Okay.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: I don't have any questions.

16 EXAMINATION

17 BY CHAIRMAN FESMIRE:

18 Q. Mr. Sanchez, the Commissioner raised an issue of
19 basically rushing and lack of coordination. Are you
20 familiar with the last major rulemaking that the OCD did,
21 the pit rule?

22 A. Yes, sir.

23 Q. Do you know how long that took?

24 A. I believe the process was a year and a half to
25 two years.

1 Q. The product that resulted, did that make
2 everybody happy?

3 A. I don't believe too many people were very happy
4 with it.

5 Q. Could you, in your own words, state for the
6 Commission why you think we need to make these changes?

7 A. Like I tried to explain before, the changes that
8 we're making are to help the OCD with the enforcement and
9 compliance that we feel is necessary. What we feel is
10 necessary might not be what everyone else thinks is
11 necessary.

12 We felt that we're without our bounds to do so.
13 By getting everybody within the Districts involved in this
14 process and knowing that they had a feel for what was going
15 on outside and in the industry, we felt that we could come
16 up with some rules that would affect everybody, but in a
17 positive way.

18 Q. Now, Mr. Carr asked you about the letters to KC.
19 Does KC operate in the state now?

20 A. Yes, I think they do. I'm not sure --

21 Q. Okay, if we were under the rules that you're
22 proposing today, would they be allowed to come to you and
23 ask for an application to drill?

24 A. Not as long as the one well that we believe out
25 of compliance is still out of compliance, they wouldn't.

1 CHAIRMAN FESMIRE: Ms. MacQuesten, I have no
2 further questions of your witness.

3 REDIRECT EXAMINATION

4 BY MS. MacQUESTEN:

5 Q. Okay, just to clarify on that last point, if they
6 only have a few wells out of compliance, they may not lose
7 good standing on that basis alone if they're under the
8 threshold number; is that right?

9 A. That's right.

10 Q. But if it happens that they have more than the
11 number, then they would be out of good standing, whatever
12 number we ultimately --

13 A. Yes, that's what I meant. I didn't mean just the
14 one single well, but -- you know, we would look at
15 everything at that point, what they have.

16 Q. But there would also be other opportunities,
17 wouldn't there, if they -- We could have pursued this case
18 to require them to take certain corrective action, to
19 replace signs, to bring wells into compliance, to clean up
20 sites, whatever it is that we needed to do based on the
21 inspections. And if they failed to do that, we could get
22 an order saying they're in violation of an order requiring
23 cleanup, and that would affect good standing too, wouldn't
24 it?

25 A. That's right.

1 Q. And then once their good standing was lost, if a
2 related company came in -- and I don't know if KC has
3 related companies, but if we had reason to believe that KC
4 had morphed into a different company or its related company
5 was trying to come into New Mexico and assume operations,
6 we would have the opportunity to request information to
7 find out whether that company was related, right?

8 A. Yes, we would.

9 Q. And if it was, we would have the opportunity to
10 deny registration at that time?

11 A. That's right.

12 MS. MacQUESTEN: Thank you.

13 CHAIRMAN FESMIRE: Any further questions?

14 COMMISSIONER BAILEY: No.

15 COMMISSIONER OLSON: No.

16 CHAIRMAN FESMIRE: Ms. MacQuesten, you can pass
17 the witness.

18 MS. MacQUESTEN: I pass the witness. Thank you,
19 Mr. Sanchez.

20 MR. SANCHEZ: Thank you.

21 MS. MacQUESTEN: The OCD would next call Jack
22 Ford.

23 CHAIRMAN FESMIRE: Mr. Ford? Mr. Ford, you've
24 been previously sworn, have you not?

25 MR. FORD: Yes, correct.

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WILLIAM JACK FORD,

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

DIRECT EXAMINATION

BY MS. MacQUESTEN:

Q. Mr. Ford, would you state your full name for the record, please?

A. William Jack Ford.

Q. And where do you work?

A. I work for the Oil Conservation Division of Energy, Minerals and Natural Resources Department.

Q. Okay, and what is your title there?

A. Environmental Engineer.

Q. Are you part of the Environmental Bureau?

A. I'm part of the Environmental Bureau, yes.

Q. In the Santa Fe office?

A. In the Santa Fe office, yes.

Q. Now, what are your duties at the Environmental Bureau?

A. To evaluate permits for discharge permits, remediation projects, inspections of various types of facilities within the state, and generally help with -- any way that I can with environmental issues.

Q. How long have you held that position?

A. Approximately seven years.

1 Q. Could you tell the Commission a bit about your
2 education and relevant work experience?

3 A. I have a bachelor's and a master's degree in
4 geology from the University of Oklahoma. I've attended a
5 number of special conferences and workshops since
6 graduation. I have approximately 40 years in the petroleum
7 industry, beginning as a roughneck and roustabout for a
8 family-owned drilling and workover company in Oklahoma.
9 I've been involved in approximately 400 drilling ventures,
10 both domestically and foreign, been in exploration and
11 production phases of the industry, both as a -- from a
12 wellsite geologist to a company president.

13 Q. Mr. Ford, are you -- do you hold any
14 certifications as a geologist?

15 A. Yes, I have a -- I'm certified as a professional
16 geologist by the American Institute of Professional
17 Geologists, certified as a petroleum of geologist by the
18 American Association of Petroleum Geologists. Both are
19 national and international agencies, organizations that
20 certify people for particular facets of the industry.

21 I also have approximately 16 years as -- in the
22 environmental field, both as a consultant and as a state
23 employee.

24 I was co-developer of a remediation process for
25 cleaning organic soils, for which there have been two U.S.

1 and Canadian patents issued.

2 MS. MacQUESTEN: I would tender Mr. Ford as an
3 expert in geology and environmental issues related to the
4 oil and gas industry.

5 CHAIRMAN FESMIRE: Is there any objection to
6 Mr. --

7 MR. CARR: No objection.

8 CHAIRMAN FESMIRE: Mr. Ford is so accepted.

9 Q. (By Ms. MacQuesten) Mr. Ford, I'd like to talk
10 with you about inactive wells, and by that I mean wells
11 that are not plugged and are not on a temporary abandoned
12 status.

13 If we could go to slide 23, please.

14 Now, these are the current Statutes that apply to
15 the OCD regarding plugging, and there's a 70-2-12(B)(1) and
16 (B)(2). Both of these talk about oil, gas or water
17 escaping from one strata into another, and we tell the OCD
18 we should prevent that.

19 Why is it important to prevent those substances
20 from escaping from one strata to another?

21 A. Well, it's primarily -- number one, it's a
22 mandate by statute that would protect both fresh water and
23 potential reservoirs that may contain oil or natural gas
24 from waste that would affect the revenues for the State of
25 New Mexico and the citizens of New Mexico. The use of

1 proper plugging and operating techniques can do that.

2 Q. Okay. Ed, if we could go to slide 24. And for
3 members of the Commission, this slide also appears as OCD
4 Exhibit 10 in your exhibit books.

5 Mr. Ford, who prepared Exhibit 10, this diagram?

6 A. Yes, and I would request that the Commission
7 realize that this is a diagrammic -- a diagraphic
8 presentation of -- and does not represent any particular
9 wellbore or a wellbore of any particular operator. It's a
10 generalized picture of a layer-cake-type of geology that we
11 find in New Mexico and many other places in producing
12 basins, and it's used as a general scenario for what
13 potential can happen in a wellbore.

14 Q. Okay. And Mr. Ford, I wasn't sure I heard. Who
15 prepared this?

16 A. Mr. Stone actually did the graphics. He's quite
17 competent in computer operation and is a very talented
18 graphic artist, and together we put together these
19 diagrams.

20 Q. Okay. Could you show me, using this diagram, how
21 water could escape from its strata into a producing strata?

22 A. What we have at the bottom of the slide here, we
23 have a layer cake of various formations that have been laid
24 down geologically, very typical of New Mexico geology. We
25 don't take into account a lot of deformation in this

1 particular wellbore. And a wellbore basically covers an
2 area immediately surrounding the wellbore itself, as far as
3 the formations are concerned.

4 So what we have here at the bottom, near the
5 bottom of the diagram, is a producing formation that, when
6 -- that may produce both oil, gas and formation water, and
7 these formation waters can move both up and down, based on
8 what the bottomhole pressures might be between the two
9 producing formations.

10 And they encroach into another producing
11 formation, which would damage the formation to an extent
12 that oil or gas could not be recovered, and therefore we
13 have a waste problem of losing revenue both to the state
14 and to an individual, perhaps.

15 The migration as shown on the diagram could be
16 both uphole as well as downhole, depending on bottomhole
17 pressures or pressures of the formations that may have
18 either been perforated or perhaps corrosion could have
19 occurred along the -- in the pipe, which would allow
20 invasion of other formations.

21 I don't know how detailed you want me to go into
22 this thing, but that's basically what it shows.

23 Q. Okay. Have you seen this type of communication
24 between formations in your experience in the industry?

25 A. Yes, not only in New Mexico but in a lot of

1 producing basins in the mid-continent, the Rocky Mountains,
2 and other areas where I've had experience in the oil and
3 gas industry.

4 Q. Okay. Now, you were talking about communication
5 of water into producing zones. Could you show me, using
6 this diagram, how oil or gas could escape from its strata
7 and go into a water-bearing zone?

8 A. Yes, as you'll note in the diagram, if formation
9 waters exit the perforated zones and move upward in the
10 hole, if there are corrosive places in the pipe or
11 fractures or areas that are not well cemented, formation
12 waters can enter -- leave the pipe and enter the
13 formations, including freshwater zones near the top of the
14 hole, as shown in this particular diagram.

15 Q. Why would the OCD be concerned about that?

16 A. Well, one of the mandates that we have is
17 protection of fresh waters in the state, and that is -- not
18 only are we mandated to protect economic accumulations of
19 oil or gas but also fresh water.

20 Q. Is this type of communication between strata a
21 concern of the UIC program?

22 A. I'm sorry, say that --

23 Q. Is this sort of communication of oil or gas going
24 into water-bearing strata -- is that something that the UIC
25 program is concerned about?

1 A. Yes, that's part of their concern as well.

2 Q. Okay. If an inactive well is properly plugged or
3 placed on approved temporary abandonment status, will that
4 help prevent communication between formations?

5 A. It depends on the integrity of the wellbore
6 itself. If it's placed on temporary abandonment and is not
7 properly inspected prior to that placement, there is a
8 potential for invasion into freshwater zones or into other
9 zones that may have a detrimental effect on the wellbore.

10 Q. Okay. Let's turn to slide 25, and this is also
11 in your exhibit book as Exhibit Number 11.

12 Mr. Ford, was this prepared by you or at your
13 direction with Mr. Stone?

14 A. That's correct.

15 Q. And what does this slide show?

16 A. Basically what this shows is that a zone that has
17 been productive or is potentially water-bearing,
18 particularly saltwater-bearing, if it's plugged properly
19 and eliminates the invasion of the salt water or other
20 contaminants from former producing formations, even though
21 there may be potential weakness in the zones above or the
22 pipe above, it eliminates a potential for invasion of
23 detrimental fluids into formations and particularly into
24 freshwater zones.

25 Q. Okay. Now this picture shows a cast-iron bridge

1 plug being used?

2 A. Correct.

3 Q. And that's a type of plug that's used for
4 temporary abandonment?

5 A. Yes, that's correct.

6 Q. And in this particular diagram it's placed above
7 two producing formations?

8 A. It's placed above two producing or former
9 producing formations which may contain detrimental fluids
10 such as salt water.

11 Q. Well, now, that helps with what happens below the
12 plug, but how do you protect the casing above the plug?

13 A. Essentially there would be -- other than if there
14 are saltwater zones above the plug -- weaknesses in the
15 pipe such as shown there would have a tendency to
16 potentially invade freshwater zones near the surface and
17 would be detrimental, obviously, to freshwater sources.

18 Q. Before the OCD would approve temporary
19 abandonment of this type of well, would we require
20 mechanical integrity testing of the casing above the plug?

21 A. We should require mechanical integrity testing
22 both of the pipe and potential cementing conditions behind
23 the pipe as to whether there are -- there's adequate seal
24 that we could anticipate from lower formations that may be
25 detrimental to freshwater zones.

1 Q. So the temporary abandonment procedure would look
2 at both plugging to -- temporary plugs to deal with former
3 producing zones, and also testing of the casing to prevent
4 any --

5 A. It would be --

6 Q. -- problems there?

7 A. -- the integrity of the casing and the cementing
8 of the casing to the annulus of the hole.

9 Q. Okay. Now, you've described a number of problems
10 that can develop in casings. Does it always take years for
11 these problems to develop, or can they develop relatively
12 quickly?

13 A. They can develop rather quickly, depending upon
14 what the -- some of the formation waters might be. If
15 there's a potential for hydrogen sulfide development --
16 It's a very active fluid that attacks metal and creates
17 weaknesses in the metal, holes in the metal, which would
18 open up potential harmful zones that could migrate and
19 enter freshwater zones nearer the surface.

20 Q. Now, you mentioned some concerns about inactive
21 wells, possible waste of resources, possible correlative-
22 rights issues.

23 If a well is abandoned and it's not properly
24 plugged, who ends up having to plug it?

25 A. The State, unfortunately, is the ones that end up

1 plugging it. We have a fund which the petroleum industry
2 contributes to, but the cost of finding some of these old
3 holes and the cost of plugging becomes a part of that
4 reclamation project.

5 Q. Are there other uses for the reclamation fund, in
6 addition to plugging wells?

7 A. There are a lot of surface spills and various
8 contamination areas on the surface that need to be
9 addressed for the protection of the citizenry of New
10 Mexico, which a lot of these funds could be applied toward,
11 that -- instead of having to plug wells. So...

12 MS. MacQUESTEN: Those are all the questions I
13 have for Mr. Ford at this time.

14 CHAIRMAN FESMIRE: Mr. Carr?

15 CROSS-EXAMINATION

16 BY MR. CARR:

17 Q. Mr. Ford, when we look at these schematics,
18 they're just that, they're cartoons, diagrams, they're not
19 related to --

20 A. Yes, they're not related to any particular well
21 or any particular area within the state. They're
22 generalized diagrams.

23 Q. And you've been talking about concern for the
24 migration of fluids from one zone to another or from a
25 producing zone into a freshwater zone.

1 A. That's correct.

2 Q. If we look at this, in fact, what we really would
3 see is that if you cemented the casing and all in the well
4 as shown, that cement wouldn't be just confined around the
5 wellbore, but it would go out and fill the voids; isn't
6 that what you would anticipate would happen?

7 A. That is potential. There's also -- if you run a
8 cement bond log, you'll find that there areas that have
9 very good bonding and areas that have less than good
10 bonding.

11 Q. But again, this is just a diagram for general
12 purposes?

13 A. That's correct.

14 Q. Now, you talked about a number of concerns with,
15 you know, temporarily abandoned well. Those aren't
16 confined just to temporarily abandoned wells, are they?
17 You have the corrosion and the other problems with active
18 wells as well?

19 A. Well, they're old wells that were improperly
20 plugged many years ago that we have a problem with and that
21 we're concerned about, yes.

22 Q. You talked about your temporary abandonment
23 program and what you look for and the testing that you do.
24 That's under current rule; is that right?

25 A. That's correct.

1 Q. How would it be different under the new rules?

2 A. Under the new rule?

3 Q. Yes.

4 A. We would have a little more potential for making
5 sure that the integrity of the wellbore itself, not only
6 the casing but outside the casing, is adequate, and we
7 would require bond logs -- a cement bond log to be run at
8 the time of temporary abandonment.

9 If there was a problem, then that should be
10 addressed. If there is a corrosion problem within the
11 casing itself, that should be addressed. These are the
12 types of things that we would look for in a temporary-
13 abandonment-type situation.

14 Q. Can't you do that under current rule? Can't you
15 look for those same things and do just under current rule
16 what you're suggesting?

17 A. Unfortunately, what happens in most cases is that
18 wells that wells that become temporarily abandoned have
19 been producing maybe for 20 years, there's been no
20 integrity testing during that period of time. If it goes
21 into temporary abandonment, those wells really should be
22 tested to make sure the integrity of both the casing and
23 the cementing is still adequate.

24 Q. Isn't that required under current rules if you're
25 going to keep a well in a temporarily abandoned status?

1 A. Not necessarily.

2 Q. It isn't?

3 A. I don't believe so.

4 Q. And do the new rules contain provisions for that
5 kind of testing that don't exist

6 A. That's my understanding --

7 Q. -- in the existing rules?

8 A. -- yes.

9 Q. I'm just curious. I'm trying to figure out what
10 we're trying to do here. And it seems to me that if you're
11 going to keep a well in a temporarily abandoned status
12 today, you still run a Bradenhead test to check the
13 integrity of the wellbore, and I'm not aware of where in
14 the rules we're changing that with the new rules, and
15 that's what I'm trying to find.

16 MS. MacQUESTEN: If I could address that, Mr.
17 Chairman, Wayne Price will be testifying regarding the
18 specific technical changes to the temporary abandonment
19 rule.

20 I had asked Mr. Ford to testify to provide us
21 background information to explain the problem we are trying
22 to solve with the new rules.

23 We have thousands of wells that are inactive,
24 that are not temporarily abandoned. Those are the wells on
25 the inactive well list. And this was to provide background

1 information why we are so concerned about the Division
2 having that many inactive wells and why we're asking for
3 new enforcement tools that will help us bring that number
4 down.

5 CHAIRMAN FESMIRE: Mr. Carr, would you --

6 MR. CARR: I'll defer to Mr. Price.

7 CHAIRMAN FESMIRE: -- defer that question to Mr.
8 Price?

9 Anyone else?

10 Commissioner Bailey?

11 COMMISSIONER BAILEY: No.

12 CHAIRMAN FESMIRE: No? Commissioner Olson?

13 COMMISSIONER OLSON: No questions.

14 EXAMINATION

15 BY CHAIRMAN FESMIRE:

16 Q. Mr. Ford, one of the questions that Mr. Carr
17 asked was that corrosion occurs in producing wells too,
18 doesn't it?

19 A. That's correct.

20 Q. If corrosion were to occur in a shut-in well, a
21 well, you know, just arbitrarily shut in -- and I probably
22 should rephrase that. I mean a well that has been shut in
23 is not producing --

24 A. Okay.

25 Q. -- is that right? How do you know that there's

1 been a casing failure?

2 A. There may be -- there are several tests that
3 could be run.

4 Q. But I mean, if it's just sitting there, how do
5 you know that there's been a casing failure?

6 A. Well, if it shows up in a water well close by,
7 that's one way know that you have failure, either in the
8 cementing behind the pipe or you have corrosion in the
9 pipe, which allows fluids to escape from the wellbore and
10 migrate into freshwater zones.

11 Q. Okay. Now, generally you're saying that you've
12 got to have -- if you do have some sort of failure, you've
13 got to have some sort of indication elsewhere, not in that
14 well, that you've had that failure; is that correct?

15 A. That's correct.

16 Q. Until you go back into that well, you're not
17 going to know that that failure occurred --

18 A. Not --

19 Q. -- unless you get contamination --

20 A. Not completely, no sir.

21 Q. Okay. Now in a producing well if a casing
22 failure occurs, how do you know?

23 A. There may be ways that you can tell from the
24 reaction of the well in its producing state, either the
25 loss of pressure from the well, particularly if it's a

1 flowing well.

2 If it's a pumping well, you may find a reduction
3 in production, and you may find that you are beginning to
4 get water cut in your well that is not formation water but
5 fresh waters.

6 Q. Okay. So what you're telling me is, if it's a
7 producing well and you have a casing failure, you'll be
8 able to see it immediately, whereas in a temporarily
9 abandoned well, you have a casing failure, you don't know
10 until it's done some damage; is that right?

11 A. That's generally the case, yes.

12 CHAIRMAN FESMIRE: Those are the only questions I
13 would have.

14 Mr. Carr?

15 FURTHER EXAMINATION

16 BY MR. CARR:

17 Q. If you periodically test that well, you don't
18 have to wait until someone's water well is contaminated; is
19 that correct?

20 A. Absolutely, that's correct.

21 CHAIRMAN FESMIRE: Ms. MacQuesten, do you have
22 any other questions of your witness?

23 MS. MacQUESTEN: No, but before we release him I
24 would move for the admission of Exhibits 10 and 11, the two
25 wellbore diagrams.

1 CHAIRMAN FESMIRE: Any objection?

2 MR. CARR: No objection.

3 CHAIRMAN FESMIRE: Exhibits 10 and 11 will be
4 admitted.

5 MS. MacQUESTEN: Then I have no more questions of
6 Mr. Ford.

7 CHAIRMAN FESMIRE: Mr. Ford, thank you very much.

8 MS. MacQUESTEN: Shall we go ahead with the next
9 witness?

10 CHAIRMAN FESMIRE: How long is that witness going
11 to take?

12 MS. MacQUESTEN: Probably half an hour, maybe 45
13 minutes.

14 CHAIRMAN FESMIRE: Mr. Carr, would you have any
15 objection to continuing with this witness and then breaking
16 for lunch?

17 MR. CARR: I have no objection to anything you'd
18 want to do at this point.

19 (Laughter)

20 CHAIRMAN FESMIRE: Ms. MacQuesten, go ahead.

21 MS. MacQUESTEN: Then the OCD would call Wayne
22 Price.

23 CHAIRMAN FESMIRE: Mr. Price, you've been
24 previously sworn? Mr. Price, you've been previously sworn?

25 MR. PRICE: Yes, I have

1 WAYNE PRICE,

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

4 DIRECT EXAMINATION

5 BY MS. MacQUESTEN:

6 Q. Mr. Price, would you state your full name for the
7 record?

8 A. Wayne Price.

9 Q. And where do you work?

10 A. Oil Conservation Division, Santa Fe Environmental
11 Bureau.

12 Q. What is your title?

13 A. I'm a Senior Environmental Engineer.

14 Q. What are your duties as a Senior Environmental
15 Engineer?

16 A. Primarily permit writing for major downstream
17 facilities, major gas plants, oil refineries, large
18 chemical service companies, and also handle approximately
19 400 to 500 remediation cases. And I'm presently the
20 quality control, quality assurance officer for the OCD,
21 which is the liaison between the OCD and the EPA.

22 Q. Have your duties involved injection wells?

23 A. Yes.

24 Q. What have you done with regard to injection
25 wells?

1 A. For a number of years I worked for a rather large
2 company that I had oversight and support, engineering
3 support, permitting for several Class II and Class III
4 injection wells.

5 Q. Have your OCD duties included injection wells?

6 A. Yes, right, I presently -- I'm the permit writer
7 and also the inspector, and I basically handle all of the
8 Class III *in situ* brine wells in the state, and also all
9 the Class I nonhazardous injection wells.

10 Q. How long have you been a Senior Environmental
11 Engineer with the OCD?

12 A. For approximately 11 years.

13 Q. Is that your total time with the OCD? Have you
14 always been in your current position?

15 A. No, I haven't, I was actually in the field office
16 in Hobbs for about five years.

17 Q. What did you do in the field office?

18 A. I was an environmental engineer in the field
19 office in which we -- primarily was on-site inspection for
20 discharge plan facilities, for leaks and spills, also
21 maintained spill records --

22 Q. Okay. Could you tell the Commission a little bit
23 about your --

24 A. -- let me -- also witnessed pressure tests,
25 Bradenhead tests, MITs, so forth.

1 Q. Okay. Could you tell the Commission about your
2 relevant education and prior experience before coming to
3 OCD?

4 A. Okay, I'm a -- have a degree in electrical
5 engineering from New Mexico State University, graduated in
6 1969. Went to work for the Goodyear Tire and Rubber
7 Company, where I first had my -- first environmental
8 experience was when the Cuyahoga River caught on fire and
9 Goodyear was discharging -- as a number of other companies
10 in those days -- discharging oil into the river. And so my
11 first environmental project, or first environmental
12 exposure, was basically just designing an oil-water
13 separator and the electrical controls and so forth to go
14 along with that.

15 I was a plant superintendent at the Mattix
16 generating power plant in Hobbs, New Mexico, for a number
17 of years, and I've been with the oilfield -- I was with an
18 oilfield chemical company, Simon Engineering Unichem
19 International, and I was a project manager. I oversaw
20 trucking operations. We had a disposal site that was
21 permitted through the Oil Conservation Division, a number
22 of Class III and Class II wells, which I handled the
23 permitting and the engineering support staff for those. I
24 was the head of the blending operations and the complete
25 maintenance staff United States-wide, and various and

1 sundry other duties.

2 Q. Have you testified before the Commission or the
3 Division in other matters?

4 A. Yes, I have.

5 Q. And in those cases were your qualifications
6 recognized as an expert in injection wells and
7 environmental issues related to the oil and gas industry?

8 A. Yes.

9 MS. MacQUESTEN: I would tender Mr. Price as an
10 expert in injection wells and environmental issues related
11 to the oil and gas industry.

12 MR. CARR: No objection.

13 CHAIRMAN FESMIRE: Mr. Price is so accepted.

14 Q. (By Ms. MacQuesten) Now, Mr. Price, you were
15 here when Mr. Ford testified about communication between
16 formations; is that right?

17 A. Yes.

18 Q. I'd like you to address communication between the
19 formations and the surface.

20 If we could go to slide 26, please. And this
21 appears in your exhibit book as Exhibit 12.

22 Mr. Price, who prepared this slide?

23 A. I did.

24 Q. And what does it show?

25 A. This is a real-time example of a communication

1 between two wells that were located in the city limits of
2 Eunice, New Mexico. The wellbore on the left is a Class
3 III injection well, typical Class III. It's a brine well
4 which you pump fresh water down, it goes into a mined salt
5 cavern. It's -- down in that part of the country it's not
6 a dome salt, it's the bedded salt that you have, anhydrite
7 layers between the salt layers.

8 And the well on the right was about 600 feet
9 away, and it's an old Gulf well, a 1939 Gulf Oil well that
10 was recompleted as a marginal gas well and was basically
11 inactive.

12 And I got a call at three o'clock in the morning
13 from the Gulf people and -- basically saying they had water
14 coming out to the surface. And when we shut down the --
15 our injection well the flow would stop, and we'd start it
16 back up and the flow would start again, so it was pretty
17 obvious that we had communication between the two wells.

18 Just -- The well on the left is a 40- to 50-year-
19 old brine well that obviously had a very large cavern
20 associated with it. The well to the right, I explained,
21 was a 1939 oil well sitting in the city limits of Eunice.
22 And basically we had a communication and a 200-barrel-an
23 hour water flow that went through an outside casing cement
24 and into the casing, traveled up the intermediate casing
25 and actually came out in both the Bradenhead between the

1 intermediate, the yellow-colored zone, and it also come out
2 the surface casing.

3 We also had some water that appeared to be coming
4 up around the surface casing. And basically the surface
5 casing wasn't really casing, it was just basically old
6 conductor pipe, and that's kind of the way they did it back
7 in those days.

8 And so we -- you know, we had a salt flow, and we
9 ended up having to plug the Gulf well. And brine well
10 continued operation for a while, then it was plugged.

11 Q. Now this 1939 oil well --

12 A. Yes.

13 Q. -- what was its status at the time of this
14 incident?

15 A. Well, it --

16 Q. Was it plugged, was it producing? What was going
17 on?

18 A. Supposedly, according to the records, it had the
19 ability to produce, but it was basically an inactive well
20 sitting there.

21 Q. Had it been placed on approved temporary
22 abandonment status? In other words, had it gone through
23 MIT testing and bridge plugs and all the requirements?

24 A. I looked in the records and I didn't find a
25 record of that.

1 Q. Okay. If it had been properly TA'd, would that
2 have had any effect on this flow of brine water?

3 A. It would have prevented it.

4 Q. How would that have happened?

5 A. Well, basically, if they would have ran an
6 internal MIT -- there's two types of MITs, an internal and
7 an external. If they would have ran an internal MIT, that
8 certainly would have picked up the casing leak that allowed
9 the flow to go to the surface.

10 If they would have also ran some sort of external
11 MIT and to -- and maybe a cement bond log, and to verify
12 the cementing records, they certainly would have picked up
13 that there wasn't adequate cement in that particular well.

14 Q. Are you aware of other examples of communication
15 between the formation and the surface?

16 A. Yeah, there's some other ones. This one is in
17 Eunice, New Mexico. Let me think. There was one over in
18 the -- east of Artesia, Cedar Lake area. There was an old
19 inactive well there in which the OCD received a call, and
20 there was a water flow coming up from around the wellhead
21 and a similar situation. I don't know the details as much
22 as I do this one, but I did go to the site and I was active
23 in the environmental part of it, and also understanding
24 what happened there.

25 And so yeah, it's the same thing. It was an old

1 inactive well that hadn't been TA'd properly, and there was
2 some sort of external source that was causing the water to
3 flow to the surface. And I will add that it's my
4 understanding that the OCD did plug that well.

5 Q. Are you familiar with any incidents concerning
6 H₂S?

7 A. There had been -- When I was in the Hobbs
8 District, we did have some flows of gas that had H₂S in. I
9 don't have the specific example that I could -- or I don't
10 have the well location and so forth, but I can just tell
11 you that there were some cases where we did have some old
12 wells that we actually had that were pressured up from
13 another zone and actually had discharged some gas, and in
14 the gas there was some H₂S.

15 Q. Why is H₂S a concern?

16 A. Well, of course H₂S can be a potentially very
17 hazardous and -- an acutely hazardous gas, and it could be
18 extremely harmful to public health and the environment.

19 Q. In addition to the potential harm to humans and
20 the environment, does it have any impact on the wellbore if
21 you have H₂S in there?

22 A. Well, of course, H₂S -- being with a chemical
23 company for a number of years, H₂S is a very corrosive gas,
24 and when you mix it with produced water it basically makes
25 an acid. And a lot of the operators here will tell you

1 that if you don't get control of that situation you can
2 lose a lot of money real quick if you don't treat that well
3 properly. So yeah, it could be very corrosive.

4 Q. Okay. Do you have a greater concern about H₂S
5 with inactive wells than with active wells?

6 A. I have a greater concern with wells that are
7 inactive and that we don't know anything about. I have a
8 real big concern, particularly in areas where we have --
9 that are near large population centers, particularly where
10 they're having secondary, tertiary injection.

11 We have one area out in the west Hobbs field that
12 they're actually reinjecting H₂S, and it concentrates. And
13 we have some areas out there, the H₂S is 30,000 to 50,000
14 parts per million. And so I'm extremely concerned about
15 that. I'm not so concerned that we shouldn't produce it,
16 I'm just saying that we should make sure that the wells
17 that are in that area are properly plugged and abandoned
18 properly, are TA'd properly.

19 Q. If they are properly plugged or TA'd, that would
20 alleviate your concerns?

21 A. I'm not going to sit here and say that you won't
22 ever have a problem, because there's too many scenarios
23 that can happen. But statistically I would think that the
24 wells are properly plugged or temporarily abandoned, you're
25 going to eliminate the biggest part of the risk to the

1 public.

2 Q. Okay. I'd like to turn to Rule 203, which is the
3 temporary abandonment rule, and we've proposed a number of
4 changes to this rule. Some are style changes and some are
5 substantive, and I'd like to ask you about the substantive
6 changes we're proposing.

7 A. Did you say Rule 202?

8 CHAIRMAN FESMIRE: 203.

9 Q. (By Ms. MacQuesten) 203.

10 A. 203.

11 Q. And if we could go to slide 27. If you want --
12 Mr. Price, if you want to look at the rule itself, you
13 should be able to --

14 A. I think I've got it here.

15 Q. It's much too long to put the whole thing on one
16 slide, so we have to do it piece by piece.

17 The first part of the change that I'd like to ask
18 you about is a deletion of some material. The OCD is
19 proposing to delete 203.B(3), and the language that we're
20 proposing to delete is up on this slide. If a well fails
21 the MIT, we're proposing -- Well, let me back up.

22 Current language says that if the well fails the
23 MIT, the well should be plugged and abandoned in accordance
24 with the rules or the problem corrected and the casing re-
25 tested within 90 days.

1 We're proposing to eliminate this provision.

2 Why?

3 A. It's my understanding, is that if you don't
4 eliminate this, then -- it looks like there would be a
5 scenario where -- where you could continue testing and not
6 really bring the well into compliance. That's the way I
7 kind of see that right now.

8 Q. Okay. So that now, the current rule -- and we're
9 not proposing to change this -- the rule is that a well can
10 be inactive for up to 15 months, but after 15 months it has
11 to be TA'd or plugged?

12 A. That's my understanding, right.

13 Q. So an operator could wait until the last minute
14 and run an MIT. And if it fails, under this provision
15 they'd get an extra 90 days?

16 A. Extra 90 days, right.

17 Q. How would that work with our inactive well rule
18 and our -- we'd have to account for that in --

19 A. I don't know how you would.

20 Q. Yeah.

21 A. I just don't know how we'd keep up with that.

22 Q. So we have a practical concern about extending
23 that 15 months 90 days by 90 days?

24 A. Yeah, it's just going to be very difficult to try
25 to keep up with that.

1 Q. Okay.

2 A. I mean, if the well has a problem, you know, why
3 not go ahead and TA it properly?

4 Q. Okay.

5 A. Yeah.

6 Q. Or if an operator failed the first MIT and he's
7 up against the 15-month limit, would he have the option of
8 applying for -- asking for an agreed compliance order to
9 give him additional time?

10 A. It's my understanding he would.

11 Q. Okay. The rest of the changes we're going to be
12 talking about occur in paragraph C of the rule, and that's
13 the paragraph that describes how an operator can go about
14 demonstrating mechanical integrity. Before we get into the
15 specifics, I'd like to ask you, what does that mean to --
16 What does mechanical integrity mean?

17 A. Well, let me read you the EPA definition, and --
18 Mechanical integrity is defined as the absence of
19 significant leaks in the casing, tubing or packer, and the
20 absence of significant fluid movement into the USDW --
21 that's underground source of drinking water -- through
22 vertical channels adjacent to the injection wellbore.
23 That's the definition of it. And so that's the way I see
24 it, that's the way I understand it.

25 Q. Well, why is it important to demonstrate

1 mechanical integrity before placing a well on temporary
2 abandonment status?

3 A. Well, it's just a common-sense issue. I mean,
4 you know, if you don't have internal mechanical integrity
5 like Mr. Ford's graphical diagram or hypothesis or scenario
6 there, and like the real-life example that I just showed
7 you -- if you don't have mechanical integrity, then you
8 have the possibility for leakage from one well to another
9 and into -- up to the surface and into an underground
10 drinking water supply. And that's actually what happened,
11 the scenario that I showed you.

12 Q. Okay. Well, let's look at some of the ways that
13 an operator could demonstrate mechanical integrity and the
14 changes that we're proposing to those methods.

15 A. Okay.

16 Q. If we could go to slide 28. Now, this is the
17 proposed changes to Rule 203.C(1)(a), and just to explain
18 to the Commission, I could not figure out how to show
19 language that was deleted. I could not get a line through
20 on any slide, Mr. Gates would not allow me to do that. So
21 it looks a little confusing. What I've done is underlined
22 new language and put deleted language in brackets and
23 italicized it.

24 So Mr. Price, looking at these proposed changes
25 to Rule 203, the substantive change is to the -- it says

1 that the pressure has to be surface pressure; is that
2 right? Did I pick the right --

3 A. That's right. You know, I think most operators
4 realize if you pressure up a well, that is going to -- and
5 if you pressure it up 300, 500 pounds, that is surface
6 pressure.

7 But there are some cases where I guess an
8 operator could say that by using the length of the fluid
9 column in figuring -- calculating the density of the fluid
10 and calculating the hydrostatic head, that that indeed puts
11 a pressure of that amount on that casing at certain points
12 of the casing.

13 And I think this language here just clears up the
14 fact that we're talking about that the pressure needs to be
15 at the surface -- your test pressure needs to be at the
16 surface, and to make sure that -- It just clears the
17 language up.

18 Q. Okay. Could we go to slide 29? And this is Rule
19 203.C(1)(b), and we have the same substantive change?

20 A. Right, same thing, surface pressure.

21 Q. And this is in a situation where we're using a
22 retrievable bridge plug --

23 A. That's correct.

24 Q. All right. Let's go to the next slide, and this
25 is C(1)(c), and this is information that the OCD is

1 proposing to delete. The current language has this
2 provision for gas wells in southeast New Mexico completed
3 above the San Andres formation. They are exempt from
4 certain requirements. Why is the OCD proposing to
5 eliminate this?

6 A. Well, a good example is that real-life example
7 that I showed you. I believe that well was probably
8 completed in the -- I believe it was the Grayburg-San
9 Andres.

10 But anyway, if you were going to TA a well, an
11 old well, that this old rule or the old language showed,
12 you wouldn't have to run a mechanical integrity test. And
13 I guess they had -- I don't know the actual intent of the
14 old language, I didn't have an opportunity to look at it.

15 But I did make a couple telephone calls and I
16 talked to the geologist in Hobbs, and he was telling me
17 that there are a number of older shallow gas wells that
18 they were concerned about water standing in the wells, and
19 they thought it would be better to shoot the fluid levels,
20 and as long as they could demonstrate that the water was
21 not up in the area where the salt section was, that there
22 would be no need to run a mechanical integrity test,
23 because those particular wells, the bottomhole pressures
24 weren't high enough to move fluids up into a drinking water
25 zone.

1 However, it's my understanding that a lot of
2 those zones have been pressured up since then. You know, I
3 don't know when this rule was enacted, but I do know that
4 there are some of those zones that are pressured up now,
5 and that they will -- they have a sufficient bottomhole
6 pressure they could push it up into those area.

7 And so it's just kind of evolving and updating
8 our rules and regs. And this is one area that we probably
9 need to change.

10 Q. If we could go to the next slide. And this is
11 C(1)(d), and again, this is text that would be deleted?

12 A. Right. The --

13 Q. Go ahead.

14 A. The old language talked about running a casing
15 inspection log to confirm mechanical integrity. Being the
16 liaison to the EPA quality control program, they -- the EPA
17 doesn't allow casing inspection logs to be used in lieu of
18 a mechanical integrity test. And so it needs to be deleted
19 so we can conform to EPA regulations and standards under
20 the UIC program.

21 You know, I'm not going to say that a casing
22 inspection log is not good. It's very good. I like to see
23 casing inspection logs. It tell you what type of shape
24 your casing is in. But what it doesn't tell you is whether
25 you have internal mechanical integrity.

1 Q. If we could go to the next slide, please.

2 Now, this new material that the OCD is proposing
3 to add at C(1)(c), that the operator may demonstrate that
4 the well has been completed for less than five years and
5 has not been connected to a pipeline.

6 So these wells would not have to offer any other
7 proof of mechanical integrity, except that they're new?

8 A. Right, they're a new well. In today's standards
9 we feel pretty confident that they're probably going to be
10 completed properly. Operators are pretty good at using
11 good best-management practices in completing wells, and in
12 a lot of cases they might be completing wells probably
13 above our standards.

14 And so I think this is a good part of the rule,
15 is to -- I mean, you've got a brand-new well and it's been
16 MIT'd. Give it five years because after all, the EPA
17 recommends five years for a mechanical integrity test.

18 Q. So if a new well is still inactive after five
19 years, would it fall under the general rule?

20 A. I'm sorry, I didn't --

21 Q. If you have a new well and it doesn't have to
22 demonstrate mechanical integrity because it's brand new,
23 but it's still inactive after five years, then it just
24 comes under the regular rule, needs an MIT test?

25 A. That's my understanding.

1 Q. If we can go to the next slide, please. And
2 before everyone gets all excited about this, you pointed
3 out a typo to me.

4 A. Yeah, I did.

5 (Laughter)

6 THE WITNESS: I think a lot of the operators
7 would like this.

8 Q. (By Ms. MacQuesten) But that's not what we're
9 actually proposing, is it?

10 A. No, we're not.

11 Q. Okay. Where's the typo and what do we need to do
12 to fix that?

13 A. The typo is in the "10000 pound spring". That
14 should read "1000 pound".

15 Q. So if it read correctly and said a 1000-pound
16 spring, what are we trying to do with this new provision?

17 A. Well, it's a good idea to have some sort of
18 record of the mechanical integrity test. As some of the
19 District Supervisors pointed out, and I think as Daniel had
20 testified, that we don't have the manpower to get to all of
21 these MIT tests; we just simply can't get there. And so
22 it's a good idea to -- it just kind of gives us assurance
23 and comfort that when you run it on a chart recorder --
24 Most of the people in this room knows what I'm talking
25 about. It's just a chart recorder, records the pressure

1 and moves with time, and it gives you a real-time picture
2 of that test, that when the test was conducted you can
3 actually just have a snapshot of it, and it actually shows
4 you that the well held a certain pressure for a certain
5 length of time, and whether the pressure dropped or gained
6 during that time.

7 Q. Okay. Let me ask you a couple of questions about
8 the specific provisions. Why is it important to have a
9 maximum two-hour clock?

10 A. Well, let's go back to the 10,000-pound spring.
11 If you have a 10,000-pound spring and you have a 24-clock
12 and you run a 30-minute test at only 500 pounds, you'll get
13 a chart with a dot on it. And so that's -- and actually
14 we've had some examples where the line on the chart is so
15 small that you couldn't really interpret the length of it
16 and so forth.

17 And so by having a two-hour clock, that means it
18 makes one complete revolution in two hours. And if you're
19 running a 30-minute test, then you're getting at least 25
20 percent of the chart. And then if you use a 1000-pound
21 spring, you're basically -- it's a lower calibration and
22 the sensitivity of the meter and the sensitivity of reading
23 the actual pressure on the chart increases drastically.

24 It's a quality-control issue.

25 Q. Okay. Why is it important to have the chart

1 recorder calibrated within six months prior to the test?

2 A. Well, actually that's part of the quality
3 control, quality assurance of the EPA program, so any
4 environmental data that you collect, it has to be under
5 some sort of quality control. And by having these
6 instruments calibrated once every six months, we can ensure
7 that.

8 But the instrument -- you know, it's -- the
9 instrument has the proper accuracy to read the pressure
10 that we're wanting to read.

11 Q. And why is the OCD asking that the witnesses sign
12 the chart?

13 A. Well, I think it's -- You know, it's just a
14 verification that -- who was there and who witnessed it,
15 and if there was any problems or something, we could go
16 back and actually talk with that witness.

17 Q. I'd like to turn to something else now and go
18 to --

19 CHAIRMAN FESMIRE: Ms. MacQuesten --

20 MS. MacQUESTEN: Sure.

21 CHAIRMAN FESMIRE: -- would this be a good place
22 to break for lunch?

23 MS. MacQUESTEN: Sure, but we could finish this
24 in just a couple of minutes.

25 CHAIRMAN FESMIRE: Okay, let's go ahead.

1 MS. MacQUESTEN: Either way.

2 CHAIRMAN FESMIRE: Okay, go ahead.

3 Q. (By Ms. MacQuesten) If you could take a look at
4 Rule 701, this is a proposed amendment to our injection
5 rule. We received a comment on a new notice requirement
6 that we added to that rule, and that notice requirement
7 appears in paragraph B(2).

8 A. What exhibit would that be?

9 Q. You can look at Rule 701 in Exhibit 1. You can
10 also -- if we could have Slide 34, please, that may help.
11 Ed, 34?

12 The proposal in Rule 701.B(2) would change the
13 notice requirement for injection permit applications. The
14 current rule says that the applicant for an injection
15 permit shall notify the surface owner and the leasehold
16 operator.

17 The proposed change is that we add, "or other
18 affected person as defined in Rule 1210.A(2)(a)", and the
19 slide gives the language from Rule 1210.A(2)(a).

20 Why is the OCD proposing this additional notice
21 requirement for injection permits?

22 A. I am not an expert in correlative rights, and I
23 was not part of the rule-writing of this, and I don't know
24 if I can honestly answer that. I would refer you to one of
25 our engineers. Will Jones is who I'd recommend to answer

1 that.

2 Q. Okay. Are you aware of whether the OCD has had
3 incidents in which affected persons have wanted to object
4 to injection permits?

5 A. Yes.

6 Q. Okay. And are you aware of whether the Hearing
7 Examiners are requiring this sort of notice currently?

8 A. It's my understanding they are not.

9 Q. Okay. Well, we may need to call Mr. Jones then.

10 A. Yeah.

11 CHAIRMAN FESMIRE: He'll be glad to hear that.

12 THE WITNESS: Well, I have a hard time hearing.

13 Q. (By Ms. MacQuesten) Okay.

14 A. Ask the question again. Which part of the
15 question are you --

16 Q. Are you aware -- are OCD Hearing Examiners now
17 requiring applicants for injection permits to notify
18 affected persons of the application?

19 A. It's my understanding that on the C-108 they have
20 to notify the offset operators.

21 Q. Okay, but -- So you're not aware of whether
22 they're asking for this?

23 A. I'm sorry, I'm not.

24 MS. MacQUESTEN: Okay. Well, we may need to call
25 Mr. Jones.

1 I have no more questions for Mr. Price. I would
2 move for the admission of Exhibit 12, which was the diagram
3 that he testified to.

4 CHAIRMAN FESMIRE: Is there any objection to the
5 admission --

6 MR. CARR: No objection.

7 CHAIRMAN FESMIRE: Exhibit 12 will be admitted.

8 Mr. Carr, would you consider postponing your
9 cross-examination till after lunch?

10 MR. CARR: I have no cross-examination.

11 CHAIRMAN FESMIRE: Is there -- At the risk of
12 delaying lunch, is there any other party that would have
13 cross-examination of this witness.

14 Okay, Mr. Price, you're not off the hook yet,
15 because I think Commissioner Bailey wants to talk to you
16 when we get back.

17 At this time we will temporarily adjourn this
18 cause.

19 For those of you who are interested, we have
20 another cause that we are going to be taking up during
21 lunch. It's the Gandy Marley order, the review and
22 hopefully signing of the order.

23 But this case will be reconvened at 1:30.

24 (Thereupon, noon recess was taken at 12:20 p.m.)

25 (The following proceedings had at 1:38 p.m.)

1 CHAIRMAN FESMIRE: Let's go back on the record.

2 At this time, the Oil conservation Commission
3 will reconvene after lunch.

4 I believe, Mr. Carr, you had just indicated that
5 you had no cross-examination.

6 MR. CARR: That was correct.

7 CHAIRMAN FESMIRE: Have you changed your mind
8 over lunch?

9 MR. CARR: No, sir, I have not.

10 CHAIRMAN FESMIRE: Okay, does anyone else have a
11 cross-examination for this witness?

12 Commissioner Bailey, I believe you had some
13 questions.

14 EXAMINATION

15 BY COMMISSIONER BAILEY:

16 Q. Mr. Price, both you and Mr. Ford indicated quite
17 a bit of concern about pathways outside of the wellbore.

18 A. That's correct. I'll just say, I think what I
19 probably was trying to say is that there's two pathways,
20 inside and outside, and EPA classifies those as an internal
21 and external mechanical integrity test.

22 Q. Right. The proposed Rule 203 does not mention in
23 any way requiring cement bond logs or any kind of external
24 mechanical integrity tests.

25 A. I'm going to take a minute to --

1 Q. You bet. Look specifically at paragraph C.

2 A. Paragraph what?

3 Q. C.

4 A. C. Okay, under C(2) we have language there and
5 it says Division will not accept mechanical integrity tests
6 or logs conducted more than 12 months prior to the
7 submittal.

8 Now, I'd like to make a comment about logs,
9 particularly cement bond logs.

10 The EPA has not and still not recognize certain
11 -- or cement bond logs, even though there's a second- and
12 third-generation cement bond logs out there, and the
13 industry people will probably tell you that those logs
14 nowadays are very, very good. But yet the EPA still has
15 not recognized a cement bond log to satisfy external
16 mechanical integrity tests.

17 However what they will do is, they will allow you
18 to use a cement bond log to verify the old cement records.
19 So if you have old or new cement records that are still
20 there and you go ahead and run a cement bond log to just
21 verify the cement tops and verify that cement is there, and
22 in today's time with the second- and third-generation
23 cement bond logs, that would certainly suffice for an
24 external mechanical integrity test.

25 You could run -- and we don't specify here what.

1 Now, the EPA does recognize that there are other logs that
2 you can run to verify the external mechanical integrity
3 tests. Those logs are like tracer surveys, noise logs,
4 temperature logs. There is an O₂ log you can run, and
5 there are other logs out there that are really high-dollar,
6 that you can run to make a determination of external
7 mechanical integrity.

8 Q. But nowhere does this rule talk about external
9 integrity tests --

10 A. That is --

11 Q. -- it only -- it says that if it meets the
12 internal mechanical integrity tests, that the well can be
13 approved.

14 A. That is correct.

15 Q. With your concerns, should this well -- this will
16 be pulled and rewritten?

17 A. I do think that -- I thought that C(2) addressed
18 it by -- and maybe it's too vague -- the Division will not
19 accept mechanical integrity tests or logs conducted more
20 than 12 months -- and I guess I thought that that basically
21 inferred our -- you know, that we want a mechanical
22 integrity test, which is an internal test, and that we
23 wanted some sort of logs to verify the construction of the
24 well. Now --

25 Q. Not what it says.

1 plants down there, and it's downgradient of them. So it's
2 kind of presenting a conundrum in trying to figure out
3 which contamination is whose.

4 Q. Are you aware of any other cases of groundwater
5 contamination from abandoned well?

6 A. Yes, I think I had mentioned another one in our
7 District 2, over in the east of Artesia, what we call the
8 Cedar Lake area. It's a large depression and there's a
9 playa lake in the bottom of it. It's a heavily produced
10 area. There was an old inactive well that we started
11 getting a water flow, actually around the wellhead, and it
12 flowed for a couple of days before they were able to get
13 control of it. And in that particular instance we have --
14 it's kind of hard to say whether it contaminated -- so much
15 water come out of there, it's kind of hard to say whether
16 it contaminated the groundwater, the existing groundwater,
17 or whether we're looking at groundwater or the water that
18 came from the well. And so that hasn't been differentiated
19 yet.

20 Q. And how about -- Are you aware of any cases where
21 producing wells have contaminated groundwater?

22 A. Yes, out in the Buckeye area we had a well out
23 there in which a producing well had a casing leak and had a
24 quite large groundwater contamination case that's still
25 going on. However, I will say that we've had an active

1 remediation going on there for some time, and that water
2 has actually begun to look pretty good.

3 Q. So do you then have a larger concern for
4 abandoned wells than for producing wells, for potential for
5 groundwater contamination?

6 A. I have a larger concern for abandoned wells, just
7 like this case right here. Generally, if -- a producing
8 well -- the operator -- particularly in today's time, the
9 operators are very prudent about -- in my mind -- in making
10 sure that their Bradenheads are in good shape, they operate
11 the well every day, they have someone out there usually
12 every day. And so they generally know the characteristics
13 of that well if they have a problem. Particularly, most of
14 them have active chemical-treating programs going on.

15 Older abandoned wells or inactive wells or wells
16 that are in area of reviews that we don't know anything
17 about, obviously if you don't know anything about it, then
18 it's got to be -- you just have to logically put that well
19 on a higher concern than you would a well that you're
20 paying attention to.

21 COMMISSIONER OLSON: That's all I have.

22 EXAMINATION

23 BY CHAIRMAN FESMIRE:

24 Q. Mr. Price, Commissioner Bailey brings up a good
25 point. All we're testing here is the mechanical integrity

1 of the production string or the final casing string.

2 A. It looks that way, it looks like we just focused
3 on the internal MIT.

4 Q. Is there a need, then, to add a casing inspection
5 log run from the packer up the hole?

6 A. There's a need to verify a casing inspection
7 program for an external whether -- I'm not going to -- I
8 hate to spell out any one specific log which I think we
9 should use. I think there's a number of methods that could
10 be done.

11 And as long as it meets the EPA's criteria, then,
12 I would hope we would give the operator to use a gamut of
13 methods to do that. But it does look like that we missed
14 that.

15 Q. What about the back side, between the surface
16 casing or an intermediate casing string?

17 A. That's a good example, because that's what
18 happened here. And so if there is a back side and -- they
19 should also be checking that too.

20 Q. How would you propose that they check that?

21 A. Well, that -- In my mind, that would just
22 strictly be an internal mechanical integrity test, between
23 those two there.

24 Q. So that they should pressure up on the back side
25 -- on any annulus that they've got access to; is that

1 correct?

2 A. Absolutely, right.

3 Q. Would you recommend that change?

4 A. Yes, I would.

5 CHAIRMAN FESMIRE: Ms. MacQuesten, I have no
6 further questions. Your witness.

7 FURTHER EXAMINATION

8 BY MS. MacQUESTEN:

9 Q. Mr. Price, does the EPA list different methods of
10 testing the external mechanical integrity?

11 A. Yes, they do.

12 Q. Would it be possible to craft a rule that
13 referenced that list and said an operator could choose one
14 of those methods? Would that be acceptable?

15 A. Certainly.

16 FURTHER EXAMINATION

17 BY CHAIRMAN FESMIRE:

18 Q. Mr. Price, do you know what the -- off the top of
19 your head, do you know what that list is or --

20 A. Unfortunately, the EPA is not consistent between
21 regions on that. In Region 6 there is a specific list that
22 we use for Class I injection wells, and I can certainly --
23 we can reproduce that list and put it in the rule.

24 Q. Okay. Would it be possible prior to the end of
25 this hearing for you to come back and provide us with that

1 list and help us craft an additional section to this rule?

2 A. Sure, I can do that.

3 CHAIRMAN FESMIRE: No further questions, Ms.
4 MacQuesten.

5 MS. MacQUESTEN: I have no other questions of Mr.
6 Price.

7 CHAIRMAN FESMIRE: Okay. Can we reserve Mr.
8 Price and bring him back later?

9 MS. MacQUESTEN: I hope so.

10 MR. PRICE: I'm going to work on the list.

11 CHAIRMAN FESMIRE: Thank you, Mr. Price.

12 Ms. MacQuesten, your next witness?

13 MS. MacQUESTEN: Mr. Chairman, at the close of
14 Mr. Price's direct examination we were talking about Rule
15 701, and he stated that he was not the appropriate person
16 to testify on that and suggested Mr. Jones testify.

17 Mr. Jones is available, if the Commission would
18 like to hear from him. I should say he is not on our
19 witness list, because I didn't anticipate that I would need
20 to use him. But he is available. However, he is planning
21 on leaving later this afternoon. So if the Commission
22 wants to hear from him, then now would be a good time.

23 CHAIRMAN FESMIRE: Mr. Carr, would you have any
24 objection to --

25 MR. CARR: No objection.

1 CHAIRMAN FESMIRE: Would anyone else have any
2 objection to Mr. Jones testifying today, any of the other
3 parties?

4 Okay, why don't we go ahead and hear from -- How
5 long will it take for Mr. Jones?

6 MS. MacQUESTEN: Very short.

7 CHAIRMAN FESMIRE: Okay, why don't we go ahead
8 and hear from Mr. Jones, then we'll take a quick break.

9 Mr. Jones, you haven't been sworn yet, have you?

10 (Thereupon, the witness was sworn.)

11 WILLIAM V. JONES,

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

14 DIRECT EXAMINATION

15 BY MS. MacQUESTEN:

16 Q. Mr. Jones, would you state your full name for the
17 Commission, please?

18 A. William Voyle Jones, Jr.

19 Q. And Mr. Jones, you are a Hearing Examiner for the
20 OCD; is that right?

21 A. Yes.

22 Q. And as a Hearing Examiner for the OCD, do you
23 hear cases involving applications for injection permits?

24 A. Occasionally.

25 Q. All right. And do your duties at the OCD also

1 include the administrative review and approval of injection
2 permits?

3 A. They do, at this time they do.

4 Q. All right. When we had Mr. Price testify, he was
5 testifying about proposed changes to Rule 701, which is the
6 rule regarding permits for injection; is that right?

7 A. Yes.

8 Q. One of the suggested amendments to that rule
9 involves adding a notice requirement to the rule --

10 A. Yes.

11 Q. -- and that notice requirement would be that the
12 applicant notify not only, let's see, the surface owner and
13 the leasehold operator but other affected person as defined
14 under Rule 1210.A(2)(a). Are you familiar with that?

15 A. Yes, I am.

16 Q. And in fact, was that a suggested amendment that
17 you proposed?

18 A. Yes, it was suggested by me because it's been our
19 practice to require these -- this amount of notice for
20 these applications. So instead of having to review the
21 practice to every operator that applies and every new
22 person that's assigned to do the permits for those
23 operators that apply, it would be preferable to have it in
24 the rule itself.

25 Q. So you're, in fact, asking for this sort of

1 notice right now --

2 A. Yes.

3 Q. -- even though it doesn't appear in the rule?

4 A. Yes.

5 Q. Why do you want this sort of notice?

6 A. It's -- Notice needs to be provided to the
7 affected persons. We had the Division-designated operator
8 of any tract that was wholly or partially contained in a
9 half-mile radius of -- from the well in the rule already.

10 And the problem is, there is some wells that are
11 being permitted outside of existing oilfields where there
12 is no operator, and there may or may not be even a leasee.
13 And if there's not a leasee, then there's mineral interest
14 owners that might have their gas or their oil -- more
15 likely their gas -- swept out by injection in that zone.
16 So it would be a waste issue, primarily.

17 Q. Have you seen that sort of issue come up in
18 cases?

19 A. I've seen very concerned mineral interest owners,
20 yes. This has evolved because we've had concerned people
21 that haven't had wells, so they're not Division-designated
22 operators, but they definitely control the mineral estate
23 in that half-mile radius.

24 Q. Now, the way this provision is written in Rule
25 1210.A(2)(a). You look first to the Division-designated

1 operator, and if you don't have one then you go to the
2 lessee, and if you don't find that person you go down
3 further and down further; is that --

4 A. Yes, that's --

5 Q. -- your understanding of how this works?

6 A. In the majority of cases it doesn't increase the
7 notice burden for the operators.

8 But in some cases there is no Division-designated
9 operator, and in that case the leasees are very concerned
10 about being noticed.

11 I was advised by Division attorneys in this
12 regard also, and it turned out to be good advice, actually.

13 MS. MacQUESTEN: No more questions, thank you.

14 CHAIRMAN FESMIRE: Mr. Carr, do you have any
15 questions --

16 MR. CARR: No questions.

17 CHAIRMAN FESMIRE: -- for this witness?

18 Does any other party have a question of this
19 witness?

20 Commissioner Bailey?

21 EXAMINATION

22 BY COMMISSIONER BAILEY:

23 Q. Do you think there's going to be confusion?

24 Because in 1210.A(2)(a) it says affected persons in the
25 adjoining spacing units, which may be as small as a quarter

1 mile.

2 A. Yes. What I had intended is to be stated in any
3 adjoining spacing units that are wholly or partially
4 contained within a half-mile radius of the well. And that
5 sometimes requires some land work if -- by the operators,
6 if it goes all the way down to the bottom of that listing.

7 But they have to get their protractor out and
8 draw their radius and look on their maps and find out who
9 does own it, because unfortunately the water, when it's
10 injected, doesn't necessarily go into a rectangle. It goes
11 into a circle, in an ideal situation, so...

12 Q. Would it be better to go ahead and put those
13 words in this rule, rather than reference a rule that could
14 create some confusion between whether or not we're talking
15 of adjoining spacing units or a half mile?

16 A. The half-mile business is not always what we use.
17 Once in a while we use a little more than a half mile. And
18 in some cases it's even been less than a half mile.

19 So I don't think half mile is even written in our
20 rules, itself.

21 Q. Yeah, it is, right here.

22 A. It's in the -- the new proposed rule?

23 Q. It's an unchanged portion.

24 A. Okay, it's in the notice part of it.

25 Q. 701.B(2), the very last --

1 A. I think it would be nice to have it say wholly or
2 partially contained within the affected -- within the
3 radius of investigation of the well. And a half mile is --
4 We've talked a long time in previous hearings about the
5 half mile, and even in lots of talks with the EPA, and the
6 half mile has been used in New Mexico for many, many years,
7 and --

8 Q. That's not my issue. My issue is, do we repeat
9 that language in this rule, so as to remove any confusion?

10 A. I think removing confusion by repeating the
11 language would be good --

12 Q. That was my --

13 A. -- in my opinion.

14 Q. -- question, thank you.

15 CHAIRMAN FESMIRE: Commissioner?

16 COMMISSIONER OLSON: I have no questions.

17 EXAMINATION

18 BY CHAIRMAN FESMIRE:

19 Q. Mr. Jones, you said that we should include in
20 Rule 701.B(2) that phrase. Would you tell me exactly where
21 you'd suggest we put it?

22 A. It would be exactly where the notice is --

23 Q. The rule currently -- or the proposed rule
24 currently reads, the applicant shall furnish by certified
25 or registered mail a copy of the application to each owner

1 of the surface of the land on which each injection or
2 disposal well is to be located and to each leasehold
3 operator or other "affected person", as defined in
4 Subparagraph (a) of Paragraph (2) of Subsection A of 1210
5 NMAC within a one-half -- within one half mile of the well.

6 Where specifically would you --

7 A. That would be right before it refers to Rule
8 1210.A(2)(A). I would --

9 CHAIRMAN FESMIRE: Ms. MacQuesten, do we have a
10 copy of the proposed rule for -- Is it right here?

11 MS. MacQUESTEN: Yeah, it's down there.

12 THE WITNESS: It would have to be --

13 CHAIRMAN FESMIRE: That's Rule 1210.A(2) --

14 THE WITNESS: See, and that rule also applies to
15 nonstandard locations --

16 CHAIRMAN FESMIRE: Right.

17 THE WITNESS: -- does it not?

18 Q. (By Chairman Fesmire) So -- But your suggestion
19 was that we add certain wordings to 701.B(2); is that
20 correct?

21 A. I guess, Mr. Commissioner, I am requesting -- I
22 am suggesting that the language read tracts that are wholly
23 or partially contained within the half mile.

24 Q. Okay, and you're suggesting that we make that
25 addition to 701.B(2) --

1 A. B(2) --

2 Q. -- is that correct?

3 A. Yes.

4 Q. Okay, where specifically in 701.B(2) did you want
5 to add that phrase?

6 A. It says and to each leasehold operator or other
7 affected person for any tract, wholly or partially
8 contained as defined in subparagraph --

9 Q. Okay.

10 A. That's -- that would be my first guess, is to add
11 it in right there.

12 Q. So it should say --

13 A. -- affected person in any tract wholly or
14 partially contained within a half mile of the well, as
15 defined, so move the "half of the well" up before the "as
16 defined".

17 COMMISSIONER OLSON: Would you repeat that again,
18 please?

19 THE WITNESS: It says to each leasehold operator
20 or other affected person in any tract wholly or partially
21 contained within one half mile of the well, as defined in
22 subparagraph (a) of paragraph (2).

23 CHAIRMAN FESMIRE: Ms. MacQuesten, did you have a
24 question?

25 MS. MacQUESTEN: I would just like to suggest, to

1 avoid confusion, I would suggest making that into two
2 sentences. Describe to the affected persons within, and
3 then describe the area you want to cover.

4 And then in a separate sentence say, Affected
5 persons, for purposes of Rule 710, blah, blah, blah, is
6 defined as, and then put whatever the definition you want
7 for affected person.

8 The way it would be phrased in one sentence, it
9 makes it sound as though the tracts are being defined by
10 1210.A, and that's not what we are doing.

11 CHAIRMAN FESMIRE: Okay, we'll probably cover
12 that pretty extensively when we get to that rule, going
13 through it.

14 Okay any other questions of this witness?

15 Commissioner Olson?

16 COMMISSIONER OLSON: (Shakes head)

17 COMMISSIONER BAILEY: (Shakes head)

18 CHAIRMAN FESMIRE: Ms. MacQuesten?

19 MS. MacQUESTEN: No questions.

20 CHAIRMAN FESMIRE: Okay. Thank you, Mr. Jones.

21 At this time we're going to -- and I apologize
22 for this -- we're going to take a short recess, about a
23 five-minute recess.

24 We'll reconvene in approximately five minutes.

25 We'll move back into Cause Number 13,480.

1 (Thereupon, a recess was taken at 2:00 p.m.)

2 (The following proceedings had at 2:10 p.m.)

3 CHAIRMAN FESMIRE: Are we ready to go back on the
4 record? We're back on the record.

5 Mr. Carr has requested permission to make a
6 comment.

7 MR. CARR: Yeah. Mr. Chairman, during the break
8 questions were raised about the immediate preceding
9 testimony, and the concern is that if you start requiring
10 notice to any -- the owners of any tract, it might be
11 helpful to know what you mean by a mineral interest owner's
12 tract.

13 And also that as we read the rule it isn't clear
14 that you can meet your notification obligation by
15 publication, and we'd like to be sure it says that so that
16 we don't hit a dead-end there.

17 CHAIRMAN FESMIRE: Okay.

18 MR. CARR: Thank you, sir.

19 CHAIRMAN FESMIRE: You bet.

20 Ms. MacQuesten, your next witness?

21 MS. MacQUESTEN: The OCD calls Charlie Perrin.

22 CHAIRMAN FESMIRE: Mr. Perrin, you've been
23 previously sworn --

24 MR. PERRIN: Yes, I have.

25 CHAIRMAN FESMIRE: -- at? To, at, over?

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CHARLIE T. PERRIN,

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

DIRECT EXAMINATION

BY MS. MacQUESTEN:

Q. Mr. Perrin, would you state your name for the record?

A. Charlie Perrin.

Q. And where do you work?

A. I work in the Aztec District Office for the New Mexico Oil Conservation.

Q. And what do you do there?

A. I'm the District Supervisor.

Q. How long have you been District Supervisor in Aztec?

A. Six months.

Q. How long have you been with OCD all together?

A. Thirteen years.

Q. Before you became the supervisor in Aztec, what did you do for the OCD?

A. I was a Field Rep I in Aztec. Want to know what I did?

Q. Yes.

A. I supervised the inspection and enforcement activities of the Aztec District. I reviewed and approved,

1 made changes to application for permit to drill, workovers,
2 plug-and-abandonment procedures, and I managed the
3 reclamation fund activities.

4 Q. How long were you a Field Rep I in Aztec?

5 A. Since 1998?

6 Q. And what did you do before that?

7 A. I was a field rep in Hobbs, a Field Rep II in the
8 Hobbs district, where we witnessed plugging operations,
9 conducted inspections, witnessed completions, plugging
10 operations.

11 Q. All right. Would you tell the Commission a
12 little bit about your education and relevant work
13 experience?

14 A. I have an applied science degree in petroleum, I
15 have a business degree from College of the Southwest. In
16 1975 I started working on a drilling rig, in 1977 I went to
17 work for Bowen Tools, a fishing-tool company. I left them
18 as an office manager and went into service industry, where
19 I worked in the industry itself running fishing tools on
20 completions, workovers and plug-and-abandonment procedures.

21 As I moved through that process I went into sales
22 where I worked for various oil and gas companies and helped
23 them develop and design operations for well completions,
24 workovers, plug-and-abandonments, and oversaw those
25 operations.

1 Q. Now, Mr. Perrin, this is your first time
2 testifying before the Commission; is that right?

3 A. Yes, it is.

4 Q. But have you testified before the Division?

5 A. Yes, I have.

6 Q. And were those in plugging cases primarily?

7 A. Yes, they were.

8 MS. MacQUESTEN: I tender Mr. Perrin as an expert
9 in well-plugging.

10 MR. CARR: No objection.

11 CHAIRMAN FESMIRE: Any objection?

12 Mr. Perrin will be so accepted.

13 Q. (By Ms. MacQuesten) Mr. Perrin, were you
14 involved in a program started under Director Lori
15 Wrottenbery's administration to reduce the number of
16 inactive wells in New Mexico?

17 A. Yes, ma'am, I was.

18 Q. And by inactive we mean wells that aren't plugged
19 or properly TA'd?

20 A. Yes, ma'am.

21 Q. Why was that program started?

22 A. In early 2000 there was a discussion about why we
23 had so many wells out of compliance and inactive, and it
24 was determined that we were being a voluntary compliance
25 agency and that we needed to move forward and find out how

1 we could take care of this. So a cleanup program was
2 started at that time in 2000, to bring these inactive wells
3 into view.

4 Q. When you started the program in 2000, how many
5 wells were out of compliance at that time?

6 A. There was over 8000 wells.

7 Q. What was done to try to bring them into
8 compliance?

9 A. In May of 2000, letters were sent out from Santa
10 Fe to all operators in this state with a list of the wells.
11 It asked for the operator to identify the well as being
12 theirs, the current status of the well, and asked them to
13 notify the Division of what they were going to do with
14 those wells and to reply to those letters.

15 Q. I'd like you to turn to what's been marked as
16 Exhibit 13. Is that an example of such a letter?

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

18 Q. Now, were these letters sent out by the District
19 Offices or by the Santa Fe Office?

20 A. They were sent out by Santa Fe Office.

21 Q. And Exhibit 13, is that a copy of an actual
22 letter that was sent out?

23 A. Yes, ma'am, it is. I whited out the operator's
24 name and various information in this. I left the boxes at
25 the bottom and the information in that, so that everybody

1 could see what it was.

2 Q. All right. And if you look at that box at the
3 bottom, if this had been a copy, a complete copy of the
4 letter, there would have been subsequent pages with more
5 wells listed with similar information?

6 A. Yes, ma'am, that is true.

7 Q. All right. And in this case there is some
8 handwriting checking off some of the boxes down at the
9 bottom. What does that indicate?

10 A. That's the operator's response, this current
11 well. The well name and number is right above this, and I
12 whited it out, but the response is from the current
13 operator, yes, they are the current operator. And the well
14 is producing -- that's not marked -- TA'd? Plugged? The
15 shut-in is marked, indicating that they do own the well and
16 it is shut-in.

17 Q. All right, so if we had all the subsequent pages,
18 there would be other wells and they would have provided
19 information on those wells also?

20 A. Yes, ma'am.

21 Q. Was any follow-up done after this initial letter?

22 A. Yes, ma'am, there was.

23 Q. Could you turn to Exhibit 14, please? Can you
24 tell us what this is?

25 A. This is a letter that was sent out by the

1 District. This letter indicates, The Division has had no
2 response to your letter. The Division presumes you agree
3 with the information in the letter regarding your inactive
4 wells. It also states, You are hereby directed to bring
5 these wells into compliance within 60 days. In the
6 alternative, within 30 days you may submit a compliance
7 plan including a schedule of activities with dates.

8 Q. And this letter was sent to operators who didn't
9 respond to the first letter?

10 A. Yes, ma'am.

11 Q. Was any follow-up done to operators who did
12 respond?

13 A. Yes, ma'am.

14 Q. Could you turn to Exhibit 15? Can you tell us
15 what this is?

16 A. This is a letter that was sent out to the
17 operators. It indicates, We appreciate your attention to
18 our request for the response. It says the Division has
19 updated its records based, in part, on your response. It
20 also includes, Please submit your plan to bring these wells
21 into compliance, including a schedule of activities with
22 dates. Please submit this information to the Aztec
23 District Office within 30 days of the date of this letter.

24 Q. Now, you read a portion here that says the
25 Division has updated its records based, in part, on your

1 response. So when you got responses and operators
2 indicated what was going on with these wells, that helped
3 clean up your well list?

4 A. It helped clean up a few of the wells on the well
5 list. It did not eliminate all the wells.

6 Q. All right. After this letter-writing campaign,
7 did the OCD do anything else to try to reduce the number of
8 noncompliant wells?

9 A. Yes, ma'am, we did.

10 Q. What was that?

11 A. We tried working with the -- let me make sure I'm
12 right here. We tried working with the operators and -- on
13 just work plans, general work plans in the local districts,
14 and having them come in. We determined that that wasn't
15 going to be effective, that we would have an operator
16 indicate they could do something and then later find out
17 that wasn't the person that could make that kind of
18 indication.

19 Q. Uh-huh.

20 A. So what we ended up with was several work plans
21 that weren't being worked. So from that we decided that we
22 had to formalize the process.

23 Q. Now, what do you mean by formalizing the process?

24 A. We developed an agreement process, and we sent
25 out notice to the operators that the work plans were going

1 to have to be formalized. And that's where we developed
2 the agreed compliance orders, known as the ACOs.

3 Q. If you could jump ahead to Exhibit 17.

4 CHAIRMAN FESMIRE: For the record, you're
5 skipping 16?

6 MS. MacQUESTEN: Just for now.

7 Q. (By Ms. MacQuesten) Can you tell us what that
8 is?

9 A. Yes, ma'am. This is a copy of the letter
10 indicating, As part of our working cooperatively to bring
11 your wells that are in violation of the OCD Rule 201 back
12 into compliance, it will be necessary to formalize the
13 agreement process. This was attached to an agreed
14 compliance order and sent out. It says -- the agreed
15 compliance order -- You may sign and return both copies of
16 this agreement or contact this office within 10 days to
17 schedule a conference to resolve any differences.

18 Q. Okay. Now, you've mentioned trying to formalize
19 the process through agreed compliance orders. Was any
20 effort made to bring any operators to hearing?

21 A. Yes, ma'am, we brought operators to hearing in
22 2001. We filed several cases for hearing, we brought
23 several to hearing. That's how we got them to submit their
24 work plans. As they submitted the work plans, we filed for
25 continuances on the cases until the work plans were

1 completed or -- and at that time we dismissed them.

2 Q. Now, I'd like to get into the agreed compliance
3 orders in more detail. But before I do, I want to ask you,
4 just looking at the letter-writing campaign and trying
5 informally to get operators to come into compliance, how
6 successful was that in reducing the number that started out
7 over 8000?

8 A. It did well, it brought the wells down from 8000
9 to about -- I don't remember the exact number, I've got it
10 right here. In Aztec the campaign brought it down from --
11 to 800 wells, over 800 wells.

12 Q. Could you turn to Exhibit 16?

13 A. From May of 2000 to March of 2000 [sic] it went
14 from over 8000 down to just under 4000.

15 Q. All right, and that's total wells?

16 A. That's total wells.

17 Q. All right. Now did you have anything to do with
18 preparing this chart?

19 A. No, ma'am, I did not.

20 Q. Who did? Do you know?

21 A. I believe it was Jane Prouty.

22 MS. MacQUESTEN: Just for the Commission's
23 information, Ms. Prouty will also be testifying about this
24 chart, and I will not ask for it to be admitted until she's
25 had an opportunity to provide the background information

1 for it.

2 CHAIRMAN FESMIRE: Okay.

3 Q. (By Ms. MacQuesten) Now, these formal
4 agreements, these agreed compliance orders, they were
5 started after 2002; is that right?

6 A. Yes, ma'am, they were.

7 Q. Can you tell us when the agreed compliance order
8 program was started on inactive wells?

9 A. Yes, ma'am, in May of 2004.

10 Q. And who was in charge of agreed compliance orders
11 for your district?

12 A. I was.

13 Q. What is the object of an agreed compliance order
14 for inactive wells? What are you trying to do?

15 A. It's a negotiated schedule for coming into
16 compliance, with penalties if the operator fails to meet
17 their schedule. And it also waives any penalties for past
18 noncompliance with those wells, those specific wells.

19 Q. So you're forgiving past transgressions but
20 asking the operator to come into compliance --

21 A. Correct.

22 Q. -- under a schedule?

23 A. Yes, ma'am.

24 Q. If you could turn to Exhibit 18, can you tell us
25 what this exhibit is?

1 A. This is an exhibit of the most recent -- a most
2 recent agreed compliance order.

3 Q. Now, is this from your district?

4 A. This is not from my district, no, ma'am.

5 Q. In fact, your district did so many agreed
6 compliance orders early on that you haven't too many
7 recently?

8 A. They're really limited.

9 Q. Now, how do you go about negotiating one of these
10 agreed compliance orders?

11 A. The original process where we sent this list out
12 to the operators with a total number and a schedule inside
13 the program, and the program schedule requirement brings so
14 many wells back to compliance in a preset schedule, and
15 then we have a completion date. The operators -- we asked
16 the operators to come in and talk to us. We didn't want to
17 set an operator up to fail, so we had the operator come in
18 and talk to us and tell us what they could and couldn't do,
19 because where I might expect somebody to bring 50 wells in,
20 in 50 days, they were -- had a different information base
21 to work from. So they came in and sat down and talked to
22 us.

23 Between the time we sent the notices out and the
24 time the operators came in, a lot of times the lists had
25 changed. We encountered things where operators actually

1 cleaned up the lists they brought in or cleaned up in part
2 due to reporting things or paperwork, different things. So
3 by them having lists of noncompliant wells, they researched
4 out these and found the different issues that they had with
5 these and corrected quite a few of those issues before they
6 came to -- at the conference we negotiated the schedule.

7 Q. Now, when you negotiated these orders, did you
8 have a template order to work from?

9 A. Yes, we did. We had a basic template that we
10 worked from. Many operators had cause and concerns, some
11 operators were concerned with the terminology. In the
12 early days there was no grace period. Because of that
13 terminology, any agreed compliance order has changed.
14 There is a grace period built into it.

15 There was issues of equipment failure, weather.
16 Now there are ways to control the agreed compliance order
17 schedule for those events.

18 Q. So the template has changed over time as issues
19 came up?

20 A. Yes, ma'am, it has.

21 Q. And the Exhibit Number 18 is a current version of
22 an ACO that has most of the changes that have been made and
23 is now the working template?

24 A. Yes, ma'am, it is.

25 Q. Could you tell us how this program worked in your

1 district? And you might want to look at Exhibit 19 for
2 this.

3 A. Exhibit 19 is a chart I keep in our office. It
4 lists all of the agreed compliance orders, the date they
5 were signed, the completion date and the initial number of
6 wells involved in the program.

7 Like the first operator, this is my working list,
8 and I whited out the names to protect the innocent.
9 Operator, number of wells. The first operator had 11. The
10 date signed was the 11th of May, the date of completion was
11 8-31-2004.

12 Q. What's that last column?

13 A. The last column is the current wells that the
14 operator that has been through the agreed compliance
15 process currently has that is out of compliance.

16 Q. Now, were those wells that were originally
17 covered by the ACO or different wells?

18 A. No, ma'am, these are new wells that were not
19 covered by the ACOs.

20 Q. So even though the operator may have complied
21 with the agreed compliance order, in the meantime other
22 wells fell out of compliance?

23 A. Yes, ma'am.

24 Q. And that would be represented in that last
25 column?

1 A. Yes, ma'am.

2 Q. When Aztec started this agreed compliance order
3 program for inactive wells, how many wells in the District
4 were out of compliance?

5 A. We had over 600 wells.

6 Q. How many operators were you able to sign on
7 agreed compliance orders?

8 A. I had 21 operators sign an agreed compliance
9 order that covered 373 wells. We worked with various other
10 operators who signed. We spent time with operators. We
11 had operators who worked on an agreed compliance order, and
12 before it was time to sign it, they sold their properties
13 or they transferred their properties, so we had spent that
14 time, and -- so then we had to start over with the new
15 operator that now had the inactive wells. So it was time-
16 intensive.

17 Q. What was the overall change in number of
18 noncompliant wells in your district, from the start of the
19 program until today?

20 A. We started with over 600, we had 373 under the
21 agreed compliance order, and we currently have 398 inactive
22 wells in the district.

23 Q. Does that include wells that were under agreed
24 compliance orders and also wells that fell out of
25 compliance later, or how -- what does that final number

1 represent?

2 A. The majority of that, all but 19 wells are the
3 wells that were -- are new wells. Of the 21 operators, 15
4 met their order. And of those 15 we have six that have
5 currently...

6 Q. So did some operators have difficulty complying
7 with the ACO?

8 A. Yes, ma'am.

9 Q. Okay, what kind of problems did you see?

10 A. We had weather move into us and prevent it, we
11 had an extremely wet year that was an issue. We had a
12 tremendous push, we pushed all the big -- I say "we". I
13 pushed all the big operators into the ACOs. And what I did
14 was, I forced the operators to take up all the equipment,
15 so then other people couldn't get the equipment to work
16 with the compliance. So one of the things I learned was
17 that I had to watch how I did it, because there was only so
18 much equipment to move into those wells.

19 Q. How did you deal with those problems?

20 A. I had the operators come in, and we sat down and
21 talked about it, had them give me a schedule. The
22 operators know that I keep in contact with the local
23 plugging companies, that we keep a list of what's going on
24 in the district and how busy everybody is.

25 And we also did request some operators to send us

1 a letter from their vendor indicating when they would be
2 able to bring them back on compliance.

3 Q. Now, all of these ACOs had penalty provisions if
4 the operators failed to meet their schedules. Did you have
5 any situations where you felt it was necessary to claim
6 penalties?

7 A. No, ma'am, I have not.

8 Q. Have you had any significant success stories in
9 this program?

10 A. Yes, ma'am, I have. I've had several success
11 stories. Burlington Resources would be a good one.
12 Burlington Resources, when I sent out the notice to them,
13 had 118 wells. When they came in to sign the agreed
14 compliance order, it was down to 68 wells. Burlington
15 Resources met, or actually exceeded, their agreed
16 compliance schedule on their own and currently have three
17 or four wells that are inactive, are on the inactive list.
18 They worked extremely hard.

19 They have created or developed a process where
20 they're actually monitoring early-day wells. At 10 months,
21 the last I spoke to them, they're monitoring at 10 months,
22 which gives them time. Their goal is to start monitoring
23 earlier than that so that they can have everything done
24 before 12 months, which is when it actually becomes
25 inactive.

1 Q. Now, you say Burlington has three or four wells
2 out of compliance right now?

3 A. Yes, ma'am, they do.

4 Q. And with number, they would be in good standing
5 if --

6 A. Yes, ma'am, they would.

7 Q. -- the rules took effect?

8 How many wells does Burlington have total in the
9 state?

10 A. I believe it's 6044.

11 Q. Are they the largest operator in the state?

12 A. Yes, ma'am, I believe they are.

13 Q. By how many? Do they greatly exceed other
14 operators?

15 A. If I remember right -- don't quote me -- I think
16 the next operator has in the 4000 range. So yes, they do
17 exceed.

18 Q. Are you aware of how other districts have
19 succeeded with the ACO program? Do you know how many
20 operators -- I'll just ask you, do you know how many
21 operators are on agreed compliance orders for inactive
22 wells statewide?

23 A. Yes, ma'am, there are 38 agreed compliance orders
24 covering 900 wells statewide.

25 Q. I'd like to switch gears now and ask you some

1 questions about plugging wells when the State has to plug
2 the wells. And so far we've talked about trying to get
3 operators to plug the wells, but sometimes that doesn't
4 work out and we have to plug them.

5 I'd like to start by asking you how the State
6 goes about getting authority to plug. Have you prepared
7 cases seeking an order authorizing the State to plug wells?

8 A. Yes, ma'am, I have.

9 Q. To prepare for such a case, what do you have to
10 do?

11 A. We have to, of course, indicate the correct
12 operator through a -- search the well file. The well has
13 to be inactive for more than 15 months, the well has to be
14 not plugged or temporarily abandoned. It has to have
15 previous notice to the operator. If there's a surety bond,
16 we have to have notified the surety. We have to have a
17 copy of the well file, statements, correspondence, field
18 evidence and a P-and-A procedure, and then we request it to
19 be called to hearing.

20 Q. What's the largest plugging case you've ever
21 prepared?

22 A. 138 wells.

23 Q. How time consuming was that?

24 A. Very.

25 Q. Let's talk about what the State has to do once an

1 order is issued. Do you work on obtaining plugging
2 contracts --

3 A. Yes.

4 Q. -- for your district?

5 A. Yes, I do.

6 Q. Could you describe what you have to do to obtain
7 a contract when you're using the bid process?

8 A. Once it's been to hearing we have to fill out a
9 request for bid which we send to the State Personnel Office
10 -- SPO, State Purchasing Office. The SPO processes that,
11 creates the bid document and sends it out to the vendors.
12 The vendors then contact the District.

13 The District goes out for a site-by-site
14 inspection telling them -- showing them where it is so they
15 can calculate into their cost if they have to build a road,
16 if they have to build a location, any surface work that has
17 to be done or anything. So we have the site visit.

18 And then they send their bids in to SPO. SPO
19 processes it, and then the bid is awarded.

20 Q. Now, Aztec is using an alternate form of
21 contracting, price agreements?

22 A. Yes, ma'am, we are.

23 Q. How does that work?

24 A. We got together with the vendors and got specific
25 units, specific unit cost sheets, where every vendor bid on

1 the same thing. So if you knew when you send a crew to a
2 location that the crew included travel, it included the
3 transportation and the communication and the vehicle, so
4 that you didn't have a bunch of wild charges coming from
5 the site, we put that specification sheet together. We
6 sent it to state SPO, they send out the bid.

7 Vendors bid on that. And they bid on that not
8 per job, but it's bid on a period of time; it's a one-year
9 contract renewable. And so if you have eight or ten
10 different projects going, you don't have to take each one
11 to bid. You actually can call your vendor and say here's
12 what I need.

13 Q. Now, you've worked both with bidding contracts
14 and with price-agreement contracts?

15 A. Yes, ma'am.

16 Q. And so you have some experience in plugging
17 costs --

18 A. Yes, ma'am.

19 Q. -- for the state?

20 Could you describe the elements that go into
21 determining how much it's going to cost to plug a well?

22 A. Distance to the well, access to the location
23 again, road, how far it is, the time to get there, the time
24 to get equipment there, personnel there, the trucking of
25 the equipment there, age of the well, depth of the well,

1 configuration of the wellbore. If you get everything
2 loaded up and you had a piece of paper that said it had a
3 certain size casing and you load everything up, and you get
4 out to the site and it has a smaller size casing, none of
5 the tools you have work. So you're back at ground one. So
6 it is very expensive to have everything set up to do.

7 Q. Now, a number of the factors that you just
8 described seem to depend on distance and time; is that
9 accurate?

10 A. Yes, ma'am.

11 Q. The further away the well is from the vendor, the
12 more expensive it's going to be?

13 A. Yes, ma'am. You have a crew sitting out there,
14 cost in time, \$200 an hour at current rig time, while
15 you're bringing other equipment out. So...

16 Q. If a well is far away, do the pluggers stay on
17 site overnight or how does that work?

18 A. Depending on the distance. Even though we have a
19 small area of four counties, if we go south down to McGill
20 Creek, if they traveled three and a half, four hours to
21 location, worked three or four hours and drove their three
22 or four hours home, you'd have a 12-hour day and you hadn't
23 got a lot of work done. So we had the crews stay in Grants
24 and had to pay *per diem* for everybody that needed to be on
25 location. So the cost therefore increased.

1 Q. Now, the current rule setting amounts required
2 for financial assurances is based on depth, and your
3 county, for example, the bonding amounts would be \$5000 if
4 the well is less than 5000 feet; is that right?

5 A. Yes, ma'am.

6 Q. And \$7500 if the well is between 5000 and 10,000
7 feet, over 10,000 it's \$10,000?

8 A. Correct.

9 Q. In your experience, are these amounts sufficient
10 to cover plugging costs?

11 A. No, ma'am,

12 Q. The OCD is proposing to increase the amounts for
13 single-well bonds to a set amount plus a dollar a foot
14 depth.

15 A. Yes.

16 Q. And in your -- the counties in your district,
17 that set amount would be \$5000?

18 A. Correct.

19 Q. So \$5000 plus a dollar a foot?

20 A. Yes, ma'am.

21 Q. Do you support going to this sort of structure
22 where it's a set amount plus a dollar a foot depth?

23 A. Yes, ma'am, I do. I think it's more fair to the
24 operators. If you take an operator operating in a field
25 that has 1000-foot wells versus somebody that has 4000-foot

1 wells, the costs are different when it comes to plugging
2 and taking care of the wells. So therefore I think it's
3 more fair for the operators to have an amount that is put
4 regularly.

5 Q. Now in certain counties -- we'll just call them
6 frontier counties, counties that don't have a lot of
7 production -- the OCD proposes to increase the set amount
8 to \$10,000 plus a dollar a foot?

9 A. Yes, ma'am.

10 Q. In your county it's \$5000 plus a dollar a foot,
11 in these other counties it would be \$10,000 plus a dollar a
12 foot. So in other words, the proposal is that it costs
13 \$5000 more in those frontier counties. Do you agree?

14 A. Yes, ma'am.

15 Q. Why?

16 A. Several factors figure into the cost of plugging
17 at a distance. Again, it's back to time and distance. You
18 have rig travel time, crew travel time, cost *per diem* for
19 overnight stays, trucking, the things we're used to having
20 in a producing area like water. Is there a truck to haul
21 that water to location, or do have to shut down and have it
22 hauled 200 miles away. Cementing services, wireline
23 services, any type of packers, fishing tools.

24 Equipment for dirt work. If you need to do any
25 type of digging around the wellhead you have to call for

1 equipment, it has to come from 200 miles away. This gives
2 you an increased cost to that rig sitting there on site.

3 When you've completed the work you have disposal
4 of your fluids. If it's not in a productive area you
5 probably don't have a spot to dispose of your fluids or
6 your solids, you have to truck that back to town.

7 If there's any environmental cleanup or
8 remediation, you're again faced with the distance to take
9 care of that.

10 Q. In your experience, have plugging costs gone up
11 over the past few years?

12 A. Yes, ma'am, they have.

13 Q. What kind of cost increases have you seen? What
14 has caused the increase in cost?

15 A. All costs have gone up, just in general. But a
16 rig in 2000, a four-man rig, was costing the State \$160 per
17 hour. Today it's \$200. Cement was \$10.20, and now it's
18 \$11.98, plus a dollar per mile drayage. So all costs have
19 went up. Perforating was \$420, now it's \$600. So all
20 costs, the mileage cost, the fuel cost. We've recently
21 been asked to accept a fuel surcharge on a price agreement,
22 an amendment to the price agreement for fuel surcharge
23 because of the increase in cost.

24 Q. The rule that the OCD is proposing would require
25 single-well financial assurances on all wells that have

1 been inactive for more than two years. What is the
2 rationale for that?

3 A. Well, due to the longevity of the wells in New
4 Mexico, companies sell and trade wells. The cost to plug
5 the well rises. As the wells get older, they may develop
6 mechanical integrity problems.

7 Large operators, like Burlington, while they look
8 dramatic, they're going to be there. It's the mid-range
9 operators that are living day to day and working day that
10 could fold at any time and leave this liability upon the
11 state.

12 So we recently plugged 105 wells that had been
13 shut in for -- or abandoned for a lot longer than the two
14 years. If we would have had increased bonding on that, it
15 would have been a great asset to help us plug the wells.

16 Q. Now, the proposed rule would affect bonding for
17 all companies, including the big companies. What do you
18 say about that?

19 A. I think that again we need to be fair to all
20 operators. I think to start segregating the operators by
21 size is an issue, that all the responsibility falls back on
22 the -- if it's an inactive well, it's a potential threat to
23 the future, it's a risk that the State is liable for, and
24 therefore we should have the single-well bonding on any
25 inactive wells or temporarily abandoned wells.

1 Q. Would you say that the risk that the State will
2 end up plugging the well increases, the longer a well is
3 inactive?

4 A. Yes, ma'am, I would.

5 Q. The risk that the State is going to have to plug
6 an active well isn't as high?

7 A. Correct.

8 Q. Have you in your district plugged wells on
9 federal or tribal land?

10 A. Yes, ma'am, I have.

11 Q. Now currently, the State doesn't have a bond if a
12 well is on federal or tribal land, unless we've required a
13 single-well bond under the LeMay memorandum --

14 A. Correct.

15 Q. -- is that right?

16 Now, if we don't have a bond for those wells, are
17 there other entities that might have bonds for those wells?

18 A. Yes, ma'am. On injection wells the EPA may
19 retain bonds, the BLM may retain bonds, and tribal entities
20 may retain bonds.

21 Q. Now, if they're the folks who hold the bonds, why
22 are we plugging wells on those lands?

23 A. For several reasons. First is, we have the
24 reclamation fund. And if a bond is not enough to pay for
25 the costs of plugging the well, then that fund picks up out

1 of the reclamation fund and completes the plugging of that.
2 So that's a risk factor in itself.

3 They're not set up -- they haven't been set up in
4 the past to conduct pluggings, they've always contacted the
5 State because of the reclamation to use, in fact.

6 Q. So they are not set up to cover costs exceeding
7 the bond amounts --

8 A. Correct.

9 Q. -- whereas we are?

10 And do you receive requests from federal entities
11 or tribal entities to plug wells?

12 A. Yes, ma'am, I do.

13 Q. And at least up to this point in time, are we the
14 entity that plugs those wells, or does the EPA plug any
15 wells?

16 A. Not to my knowledge, the EPA doesn't. The EPA
17 contacted us about plugging the wells in the Horseshoe-
18 Gallup, and then they contacted a vendor and had the vendor
19 contact us, and they determined that they couldn't plug it
20 for the bond they were holding, and so they weren't
21 interested in doing it, so the EPA requested that we plug
22 those wells.

23 Q. How about the BLM? Do they plug their own wells?

24 A. No, ma'am, they don't. We also plug their wells.

25 Q. What is your experience with the tribes plugging

1 their own wells?

2 A. We plug the tribal wells as well.

3 Q. Now, you mentioned the Horseshoe-Gallup case.

4 How many wells were involved in that, total?

5 A. There's 138 wells that we actually took to
6 hearing to plug. Of the 138, during the process of
7 plugging and getting everything into place, the Bureau of
8 Land Management and the Navajo Tribe indicated other
9 operators with responsibilities and had the other operators
10 go out there and plug a percentage of these wells. So we
11 ended up plugging -- I believe it was 105, to date.

12 Q. What bonds were available to plug those 105
13 wells?

14 A. The US EPA had \$336,000, and they requested to
15 hold \$30,000 of that because they had some wells on the
16 Ute, and the Ute had not requested us to plug those wells.
17 So...

18 Navajo tribe was holding \$500,000. Because the
19 State doesn't do surface work, they asked to retain
20 \$425,000. The BLM held \$100,000, and we had two state
21 wells where we had state bonds.

22 Q. So how much money was actually available to the
23 State to use for plugging these wells?

24 A. Right at \$900,000.

25 Q. Was that enough to cover our costs?

1 A. No, ma'am, it's not. To date I've spent \$1.1
2 million, and I'm not through.

3 Q. What has your experience been in getting
4 reimbursed by these various agencies?

5 A. I've completed the plugging of seven wells for
6 the BLM in this project, and I sent them an invoice. They
7 paid immediately.

8 Before we started with EPA, we had a couple wells
9 leaking, and we went ahead and plugged those wells out of
10 concern for the environment. The EPA set up a trust at the
11 Bank of Santa Fe. And we send a copy of the invoices to
12 EPA, they approve it, send it to the bank, and they release
13 the funds. I understand that process is working very well.

14 The tribe has not got their bond collected as of
15 yet. I plugged the wells in 2000, and it cost \$548,000 for
16 that project. The tribe is holding a \$15,000 bond and a
17 \$75,000 bond, and we have not collected either.

18 Q. Are you aware of a comment that we received from
19 the BLM yesterday afternoon, stating that the new Energy
20 Policy Act will allow them to plug wells where the operator
21 is in bankruptcy or has abandoned the property?

22 A. Yes, ma'am.

23 Q. Do we have pending requests from the BLM for the
24 State to plug wells?

25 A. Yes, ma'am, we do. I have a request from BLM to

1 plug a geothermal well. It says, Charlie, here's what I
2 have on this well. BLM has \$50,407 to help cover the
3 plugging cost. Attached to this was a 2002 price bid, and
4 the price cost estimate to plug the well was \$87,000.

5 Q. So the BLM wants us to go ahead and plug that
6 well and pay the difference out of the reclamation fund?

7 A. Yes, ma'am.

8 Q. What is the date on that letter?

9 A. This letter was faxed to me on 6-7-05.

10 Q. And who's it signed by?

11 A. It is sent by Jay Spielman.

12 Q. Have you spoken to Mr. Spielman since the OCD
13 proposed these rules?

14 A. No, ma'am, I haven't. I spoke with him briefly
15 at our comment -- a few weeks ago at the comment over these
16 rules, I spoke with him a little bit. I asked him if he
17 had any other well information, because we were having a
18 hard time designing a well-plugging program. He said no,
19 they didn't, and there was no indication there was a change
20 to us plugging these wells.

21 Q. So he didn't withdraw his request that we plug
22 this well?

23 A. No, ma'am, he did not.

24 Q. Do you have other pending requests from the BLM?

25 A. I have two other requests from the BLM in

1 Farmington. One is for four wells located in Sandoval, New
2 Mexico: We have had ongoing discussions with your office
3 concerning these wells. In our discussions agreement was
4 reached to use the reclamation fund since operator has been
5 absent since the 1970s and there is no bonding in place.

6 The second one, dated August 10th, 2005, is for
7 three wells: We have had ongoing discussions with your
8 office concerning these orphan wells. The first two wells
9 were not plugged by the operator, who is now nonexistent.
10 The third well was plugged in 1944 and appears to be
11 leaking salt water. In our discussions agreement was
12 reached.

13 Q. So is there any federal bonding available for
14 these wells that they're asking you to plug?

15 A. No, ma'am.

16 Q. As far as you know, the BLM still wants OCD to
17 plug these wells?

18 A. I've heard nothing different.

19 Q. So if there is a new system under the Energy
20 Policy Act of 2005, it hasn't filtered down to you yet?

21 A. No, it hasn't. One of the concerns is if we have
22 a well that's leaking salt water, then we probably don't
23 want to wait, depending on how long it takes to design
24 their program.

25 Q. I'd like to switch to a different issue and ask

1 you about proposed Rule 100, which is -- let's see -- the
2 rule regarding operator registration, change of operator
3 and change of name.

4 When we first went out with this proposed rule,
5 did you suggest a change?

6 A. Yes, ma'am, I did.

7 Q. And we made that change in our amended
8 Application?

9 A. Yes, ma'am, we did.

10 Q. What were you asking for and why?

11 A. I was asking for a current operator, an emergency
12 contact that we can reach in the districts. When we have
13 emergency or we're contacted by emergency personnel, we
14 need to be able to contact that company, not call a company
15 in Oklahoma City on Saturday and know that they're closed
16 and not be able to contact anybody till Monday on an
17 ongoing issue.

18 Q. Have you had experiences where you needed an
19 emergency contact and didn't have one?

20 A. Yes, ma'am, recently we had a young man run into
21 a gas well with a golf cart, and he ruptured a small line
22 which had a leak, and we did not have a current operator or
23 a current contact, and what we had to start doing was
24 calling the people we knew that worked in that area and ask
25 them if they knew who pumped that well.

1 So yes, ma'am, there was a current...

2 Q. Now, the rule as proposed states that they should
3 provide a contact for each district in which they operate
4 wells? Is --

5 A. Yes, ma'am, that's correct.

6 Q. Is that something that you asked for?

7 A. Yes, ma'am, it is.

8 Q. Why?

9 A. Having a contact of an operator or a pumper in
10 Hobbs to react to an emergency in Aztec, it's an eight-hour
11 drive. So if they have wells in the district, they have
12 people that operate those wells. We need those contact
13 numbers so we can contact them in an emergency, so they can
14 respond to that emergency in a reasonable time.

15 MS. MacQUESTEN: I have no other questions of Mr.
16 Perrin.

17 I would move for the admission of Exhibits 13,
18 14, 15, 17, 18 and 19. I will not move for the admission
19 of Exhibit 16 at this time but will wait until Ms. Prouty
20 has testified.

21 CHAIRMAN FESMIRE: Mr. Carr, do you have any
22 objection?

23 MR. CARR: No objection.

24 CHAIRMAN FESMIRE: Is there any objections from
25 other participants? From the Commission?

1 COMMISSIONER BAILEY: I have a question.

2 CHAIRMAN FESMIRE: Okay, we'll -- Prior to the
3 admission of the exhibits?

4 COMMISSIONER BAILEY: No.

5 CHAIRMAN FESMIRE: Okay, we'll go ahead and admit
6 Exhibits 13, 14, 15, 17, 18 and 19.

7 Mr. Carr, do you have any questions of this
8 witness?

9 MR. CARR: Yes, I do.

10 CROSS-EXAMINATION

11 BY MR. CARR:

12 Q. Mr. Perrin, when you talk about needing to have a
13 current operator address in each district, an emergency
14 contact, are you recommending that just for the purpose of
15 emergencies, or are you suggesting that each company in
16 each district have a contact person for all purposes in
17 terms of dealing with your agency?

18 A. My original purpose was for emergencies. It is
19 good that you brought that up, Mr. Carr. I would support
20 and think that we should include it for all purposes, but
21 it is necessary and needed in the district for emergencies.

22 Q. You testified about you relationship with the BLM
23 as it comes to bonding, and NMOGA's comments suggested that
24 a way to handle this would be, instead of having an
25 additional bond, having a joint bond with the BLM. When I

1 listen to you today, it sounds like the issue isn't access
2 to funds as much as it is -- concerns the amount of the
3 bond; is that correct?

4 A. No, sir. One of the issues is, when they've
5 asked us to do something, it's easy because we have an
6 agreement before we start. In the event we went out and
7 did something and then tried to attach that bond, we would
8 need access to those funds.

9 Q. Now, you said you have an agreement with them.
10 If they ask you to go out and plug a well under this
11 agreement, are you committed to do that?

12 A. We review it, and if we're in agreement, yes,
13 sir, we do.

14 Q. Would that vehicle be -- is that something that
15 you could renegotiate with just these issues, instead of
16 just seeking a second bond?

17 The question is, if you're going to do the work,
18 doesn't -- it makes sense if you have access to the bond,
19 obviously. And the question is, if you're having to go
20 through this two-step process, doesn't it make sense to
21 talk to the BLM and have one adequate bond that if you the
22 work you can access it?

23 A. Yes, yes.

24 Q. And wouldn't that be better than having two bonds
25 and all of these other issues that you've been talking

1 about having to go back and try and collect from the
2 Navajos or the BLM or any of those?

3 A. Yes, if we had access to the same funds, yes.

4 Q. Now, you are the District Supervisor in Aztec?

5 A. Yes, sir.

6 Q. And as such, you approve well pluggings; is that
7 correct? What is your role when it comes to -- If I'm an
8 operator and I'd like to plug a well, what do I do and what
9 is your role?

10 A. You would -- as an operator, you would submit a
11 notice of intent to plug. It would be reviewed by the
12 geological department and also by the engineering. We
13 would look for any -- location of the plugs to make sure
14 each oil and gas and water zone is isolated, and then it
15 would go and be reviewed to make sure that the cement's on
16 the inside and outside of the pipe, that it's the correct
17 type of plug, the correct type of cement.

18 Q. And then what do you do? Do you approve --

19 A. We approve that.

20 Q. And then the operator plugs the well?

21 A. Yes, sir.

22 Q. And then what do you do? Do you go out and
23 inspect the site?

24 A. When the well is plugged and a notice is sent to
25 us of subsequent report, completion of plugging, when we

1 receive that and it says all the work's been done, we have
2 a compliance officer go out and conduct an inspection to
3 make sure all the surface equipment has been removed, the
4 pipelines, all the little risers, any contamination has
5 been cleaned up. And yes, we do release that, and at that
6 time we take it out of the system or show that it's plugged
7 in the system.

8 Q. And so that is the time when a well that's been
9 plugged and abandoned comes out of your system?

10 A. Yes, sir.

11 Q. That's when it would go off your inactive well
12 list?

13 A. No, sir.

14 Q. When would it go off the inactive well list, a
15 plugged well?

16 A. When you send in the form saying the well has
17 been plugged, then the well is no longer in the inactive,
18 it's in plugged, waiting on release. It's -- we're looking
19 at --

20 Q. So prior to release, would that go off the
21 inactive well list?

22 A. Yes, sir, it would.

23 Q. When an operator files a proposal and you start
24 reviewing it, how long does that process typically take?

25 A. When we receive the proposal saying the well has

1 been plugged, I review it, I approve it, it goes to Dorothy
2 who puts it in the system.

3 Q. When the operator comes in initially and says
4 we're going to plug this well, this is what we propose to
5 do, how long does that review take?

6 A. We try to process that within the week, Mr. Carr.
7 And if an operator comes in today and says I've got a
8 problem, I need to plug this well, or they call us on the
9 telephone and say I'm on site, our actions have changed, we
10 need to plug this, then we do the review then and give
11 verbal approval so that they can go ahead and do the work
12 without even waiting.

13 Q. Now up in the San Juan Basin as the District
14 Supervisor, you are the person who is charged with
15 administering the oil and gas rules and the Act in your
16 district; is that right?

17 A. Yes, sir.

18 Q. And in that role, you have to review what
19 operators bring in and confirm that they comply with
20 statute and rule and those sorts of things?

21 A. Uh-huh.

22 Q. And you make these determinations; isn't that
23 right?

24 A. Myself or someone on staff, yes, sir.

25 Q. And when there is a new well-plugging program,

1 you also are the person who decides and has discretion in
2 how aggressively you're going to do that; isn't that
3 correct?

4 A. When you say a well-plugging program --

5 Q. Well, when you had the 8000 wells that the agency
6 did on the list, and each of the districts started trying
7 to bring these wells into compliance, your office was more
8 successful than the other district offices; isn't that
9 correct?

10 A. Yes, sir, we did move ahead with the program.

11 Q. And you more aggressively enforced it; isn't that
12 right?

13 A. Yes, sir, we did.

14 Q. And so between the district offices, there is
15 some discretion in how you implement the Act?

16 A. There has been, yes, sir.

17 Q. And when you're called upon to interpret a rule
18 or a regulation to see if it's reasonable or legal, you
19 make your best judgment; isn't that right?

20 A. Yes, sir, I do.

21 Q. Do you always agree with Chris Williams' judgment
22 on those things?

23 A. I don't always agree with everybody.

24 (Laughter)

25 Q. (By Mr. Carr) I didn't want to isolate you that

1 much.

2 But when you do that, I mean, there is a certain
3 amount of discretion that is required, correct?

4 A. Correct, yes, sir.

5 Q. And there may be differences between how the
6 different districts enforce their rules; isn't that right?

7 A. Yes, sir.

8 Q. And that in turn can have an impact on what the
9 operator has to do to satisfy you?

10 A. I think, Mr. Carr, one of the things we've done
11 to move forward to eliminate the difference in the
12 districts in those decisions is, we now have a compliance
13 enforcement manager in Santa Fe who oversees the district
14 activities, Mr. Daniel Sanchez. And he is the one, if
15 there's any discrepancies or second thoughts, who would
16 review and approve any complications.

17 Q. And if there is a discrepancy we're concerned
18 about, we should call Daniel, not you?

19 A. Well, I would certainly want to be able to work
20 on it first and see if we can work through it before we
21 call Daniel. However, if you're uncomfortable working with
22 me, I would recommend and suggest that you call Mr.
23 Sanchez.

24 Q. Now, you've looked at the proposed enforcement
25 rules?

1 A. Yes, sir.

2 Q. And you've looked at the good standing provisions
3 in that rule?

4 A. Yes, sir.

5 Q. This, in fact, provides you with a new compliance
6 tool; isn't that fair to say?

7 A. Yes, sir.

8 Q. If you look at that rule and the way it's
9 enforced, there can be sanctions imposed on an operator who
10 is not in compliance?

11 A. (Nods)

12 Q. Because of that, isn't it important to you that
13 the data that you rely on is accurate?

14 A. Yes, sir.

15 Q. And when you started contacting operators back
16 several years ago and asking them to come in and meet with
17 you, one of the things that you accomplished by that was
18 not only getting wells plugged but getting the data
19 verified and corrected where it was wrong; isn't that fair
20 to say?

21 A. Yes, sir. At the same time, Mr. Carr, I'd like
22 to add that at that time we didn't have the means to have
23 each operator have access to that list.

24 Q. Okay.

25 A. That list was generated in Santa Fe and sent out

1 to the District Supervisors. I took that list and copied
2 out of that list and pasted it in and sent it out to the
3 operators. So you know, there's several things that have
4 happened through that process.

5 In that process, in the -- I hate to call it old
6 days because it shows my age --

7 Q. Uh-huh, uh-huh --

8 A. -- it --

9 Q. -- not a problem with me.

10 (Laughter)

11 A. -- it indicated that -- what we needed to do, to
12 get the information to you. Now the information is out
13 there and it can be reviewed at an operator daily, and if
14 there's an issue there and they say this isn't right, then
15 they should contact us, and let's get it straightened out.

16 Q. (By Mr. Carr) But the objective here really is
17 compliance --

18 A. Yes, sir, it is.

19 Q. -- isn't that correct?

20 And one of the other benefits will be a more
21 accurate database?

22 A. Correct.

23 Q. And it will make it easier for you to do your job
24 and for us to do our job?

25 A. Absolutely.

1 Q. Now, you talked about, you know, wanting to treat
2 operators the same and treat operators fairly. As the rule
3 is now drafted, Burlington, who operates 6000 wells, can
4 only have five wells on that inactive list and maintain its
5 good standing. Do you understand that?

6 A. I understand what you're saying, yes.

7 Q. And that's what the rule says as it's before us,
8 correct? They operate more than 100 wells, so they can
9 only have five on the inactive list?

10 A. Correct, correct.

11 Q. You have operators that operate, say, 110 wells
12 in your district. They also can have five; isn't that
13 right?

14 A. Yes, sir.

15 Q. Aren't you treating those two operators
16 differently under the rule as it is written?

17 A. I think it was good of the Commission to consider
18 giving a deviance from the rule that required no inactive
19 wells. Compliance with the rules would have allowed
20 everybody to have zero wells out of compliance. So I do
21 support the five and the two for that reason.

22 Q. Wouldn't you think that it would be fairer, you
23 would treat operators more fairly, if every operator was
24 required to have no more than five percent of its wells out
25 of compliance, or they'd lose their good standing?

1 A. I don't think that would be serving the purpose
2 of the statute. I think that we're allowing wells to be
3 out of compliance and at risk to the state.

4 Q. Well, you are with allowing five wells, correct?

5 A. Correct, yes, a very minimum number.

6 Q. And when you talk about being fair to operators
7 and treating them the same, shouldn't everyone be allowed
8 to have the same percentage of wells out of compliance?

9 A. I don't agree with that, Mr. Carr.

10 Q. So you think it is fair that Burlington could be
11 out of compliance with 99.7 percent of its wells in
12 compliance, and someone else could be in good standing with
13 20 percent of their wells --

14 A. I would prefer to think that all operators were
15 operating within the rules and were in compliance --

16 Q. Well, we'd all prefer --

17 A. -- and not have any -- the purpose of the --

18 Q. We'd all prefer to do that, but tomorrow morning
19 when you go to work you know that's not going to be true,
20 right?

21 A. Correct.

22 Q. And so when we talk about being fair, you still
23 think this discrepancy is better than a percentage
24 allocation?

25 A. Yes, sir, I do.

1 Q. When you talk about plugging and adjusting the
2 amount of the bond based on the feet of depth of the well,
3 that's to be fair, isn't it, so the deeper the well, the
4 more you have to have in your bond?

5 A. Yes, it is.

6 Q. And so that's fair, but it isn't fair to say that
7 the more wells you operate, you should be allowed to still
8 have the same percentage on the inactive list and not lose
9 your good standing; is that right?

10 A. Yes, sir.

11 Q. And that's a consistency between -- Is that
12 right, Mr. Perrin?

13 A. (Laughs)

14 Q. Charlie, these people come in and talk to you
15 about an agreed compliance order. You have entered most --
16 actually been involved in the negotiation of most of those.
17 And you indicated that when there was a problem with
18 materials, cement or equipment or weather, that you were
19 able to work with an individual operator.

20 A. (Nods)

21 Q. Is that decision strictly your decision, whether
22 to work with an operator or not?

23 A. No, sir, I think it's with the Division, I think
24 it's the purpose of the program.

25 Q. When you meet with an operator because he says he

1 can't comply with this agreed compliance order, I mean, do
2 you call Santa Fe and have to check with someone here
3 before you agree to extending the time or allowing some
4 deviation from the agreed order?

5 A. One of the things we required in the northwest on
6 agreed compliance orders was a monthly report sent to me
7 and copied to the attorney by the 10th of every month, so
8 if the issues were coming up they were addressed. So the
9 attorney was on board and knew what was going on when those
10 issues came on. Yes, I did confer with the attorneys.

11 Q. Earlier today, Mr. Sanchez told us how many
12 operators there were in New Mexico, 750 or something like
13 that.

14 A. Yes, sir.

15 Q. How many are in your district?

16 A. Well, you're asking a question I can't exactly
17 tell you.

18 Q. Can you give me an estimate?

19 A. I don't remember if it's 270 or three- --

20 Q. Just for the purpose of my question let's say
21 there are 300, and there may be 200, maybe 400.

22 If these new rules go into effect, a number of
23 operators in your district are going to have more than five
24 wells on that noncompliant list; isn't that right?

25 A. Yes, sir.

1 Q. And every one of them on the day the rule would
2 go into effect that has more than five wells could lose
3 their good standing on that date?

4 A. Yes, sir.

5 Q. Is that your decision alone?

6 A. No, that's the operator's decision for not coming
7 forth to the Commission to request an agreed compliance
8 order.

9 Q. But on the day the order is in effect, if you
10 have, say, 50 operators with more than five wells on that
11 list, will 50 operators on that day lose their good
12 standing?

13 A. If they haven't complied and seeked the agreed
14 compliance order, yes, sir.

15 Q. And so it will be an absolute door closing on
16 that date, the day the rule goes into effect?

17 A. I -- at one time we discussed -- and I'm not sure
18 what you're asking, Mr. Carr, but starting it in phases or
19 starting it farther out and giving people more time to be
20 ready. That is --

21 Q. The question I have is, you're going to be asked
22 to enforce this rule?

23 A. Yes.

24 Q. And the way you understand, it's going to affect
25 what you try to do to interpret and administer the rule,

1 and the question I have really is, is it your understanding
2 that the day the rule goes into effect, everyone with more
3 than five rules [sic] loses good standing, or is that a
4 matter within the discretion of the Commission and
5 Division?

6 MS. MacQUESTEN: Mr. Chairman, Mr. Carr is asking
7 questions that require a legal interpretation of the rule.
8 I'd be happy to answer them, but I'm not sure that Mr.
9 Perrin is the right person to ask.

10 MR. CARR: I'm not trying to ask Mr. Perrin to
11 reach a legal conclusion. He's going to be enforcing this
12 rule perhaps within a matter of months, and it's going to
13 affect a number of people that we represent here today.
14 And I'm not trying to box him, I'm just trying to get an
15 indication, if I have a well in the San Juan Basin and this
16 order is entered, and I have five wells on the list, do I
17 lose my standing or do I have time? And I don't care who
18 answers that. I think it's important, though, that we
19 understand whether or not one day the axe falls, or does it
20 give you an additional compliance tool that is
21 discretionary?

22 CHAIRMAN FESMIRE: I think --

23 MS. MacQUESTEN: That is a legal -- that is a
24 legal question.

25 MR. CARR: Will someone be able to answer that?

1 MS. MacQUESTEN: I can. We already discussed
2 that good standing, yes, will be affected, and that will be
3 automatic. How that is applied, however, as we went
4 through on the slides, most of the consequences of lack of
5 good standing are discretionary. We may deny APDs, we may
6 deny operator registration, we may deny transfer of
7 operations.

8 MR. CARR: And are there standards that govern
9 when you may and when you do not? Are those just within
10 the discretion of the agency?

11 MS. MacQUESTEN: They are within the discretion
12 of the agency at this point.

13 MR. CARR: And when they're within the discretion
14 of the agency, who do we mean? Does Mr. Perrin decide if
15 an APD can be approved?

16 MS. MacQUESTEN: Well, Ms. Prouty will be giving
17 more testimony, but initially the request would go to
18 usually the district, but an operator can also go to Santa
19 Fe and ask for changes --

20 MR. CARR: And --

21 MS. MacQUESTEN: -- and if that fails, can ask
22 for a hearing.

23 MR. CARR: And this decision is absolutely tied
24 to the inactive well list?

25 MS. MacQUESTEN: The inactive well list is one

1 aspect of good standing, but there are other ways to lose
2 good standing.

3 MR. CARR: But there are no -- but you do lose
4 good standing if you have more than five wells on that
5 list?

6 MS. MacQUESTEN: That's the way the rule is
7 drafted now.

8 MR. CARR: And if you, like Burlington, operate
9 6000 wells in there, out of 6000, five wells on the list in
10 error, Burlington would lose its good standing?

11 MS. MacQUESTEN: Yes, and if you operate the way
12 Burlington does, you would not have lost good standing,
13 because they have not.

14 MR. CARR: Do you realize that within the last
15 two weeks there have been a total of five Burlington wells
16 in and off that list? Four of the five were erroneously on
17 that list.

18 MS. MacQUESTEN: And that's a good example of
19 they have been able to get wells off lists.

20 MR. CARR: Is it possible that the decision on
21 whether to renew permits or enforce the sanctions that
22 apply to -- or could apply to operators who lose good
23 standing, that those sanctions would be directed by someone
24 other than people in the agency?

25 MS. MacQUESTEN: I'm not sure I understand.

1 MR. CARR: Would the Secretary of the Department
2 be involved? Could she? And tell you to stop issuing
3 permits for anyone on the list?

4 MS. MacQUESTEN: I wouldn't think that would be
5 appropriate, no.

6 MR. CARR: Would it be appropriate for the
7 Governor to do that?

8 MS. MacQUESTEN: No.

9 MR. CARR: Mr. Perrin, I'll go back to you.

10 (Laughter)

11 Q. (By Mr. Carr) You talked about having to plug
12 138 wells. How many operators were --

13 A. One.

14 Q. And where was that operator?

15 A. Where was the operator?

16 Q. Uh-huh. Could you find them?

17 A. No. I heard various rumors that I prefer not to
18 repeat, but I could not locate him myself, no, sir.

19 Q. It wouldn't have made any difference if you would
20 have had these new rules and could have called that guy a
21 bad actor, would it?

22 A. If we would have had the individual bonding two
23 years ago, we could have identified this problem and worked
24 forward from there.

25 Q. Now, I don't guess either of us have ever saw the

1 bond, but you work with people who go out and try and get
2 bonds. Is it easy to get a bond for a well that you
3 haven't done anything for two years?

4 A. Mr. Carr, I don't know.

5 Q. Yeah.

6 A. I have talked to a few bonding companies who have
7 indicated because of the liability of operators walking
8 off, they may stop issuing bonds.

9 Q. My concern was at both ends. Might an operator
10 just say, Tough, I'm not going to get the bond, go for it?

11 A. (Nods)

12 Q. But you haven't had any direct experience with
13 that?

14 A. No, I have not.

15 MR. CARR: I think that's all I have. Thank you,
16 Mr. Perrin.

17 THE WITNESS: Thank you, sir.

18 CHAIRMAN FESMIRE: Any other cross-examination
19 from participants?

20 Commissioner Bailey?

21 EXAMINATION

22 BY COMMISSIONER BAILEY:

23 Q. How much money is in the reclamation fund right
24 now, available for plugging?

25 CHAIRMAN FESMIRE: I can answer that.

1 (Laughter)

2 THE WITNESS: It has a \$1.25 cap, but I'll let
3 Mr. Fesmire --

4 CHAIRMAN FESMIRE: To the best of my knowledge,
5 right now there's a little under half a million dollars in
6 the fund.

7 Q. (By Commissioner Bailey) And how many wells
8 would that plug?

9 A. In 2000 we plugged 28 wells, it cost us \$548,000.
10 To date we've plugged 105 wells, we're not through, and
11 it's cost us \$1.1 million. So it would depend on the depth
12 of the wells, the location of the wells, the -- I have no
13 way to answer that question.

14 Q. The letter from the BLM that's dated October 12th
15 and signed by Linda Rundel, the state director of the BLM,
16 says that \$25 million is available in bonds covering
17 federal oil and gas leases. That would probably plug an
18 awful lot of federal wells on tribal or federal lands,
19 wouldn't it?

20 A. Yes, ma'am. Is that US, or is that strictly New
21 Mexico.

22 Q. It says for New Mexico BLM --

23 A. New Mexico, okay.

24 Q. -- approximately \$25 million is available. And
25 in the five years between 1998 and 2003, demands on the

1 bonds were required in three instances, for \$50,000.

2 Since all of those requests for federal well
3 plugging predate by quite a bit of time the Energy Act, is
4 it reasonable to suppose that what she describes in effect
5 negates those requests for your participation and plugging
6 and that the BLM can go ahead and plug it themselves?

7 A. I don't think so. I mean, the money is
8 available, but -- and maybe I'm not the one to speak to the
9 BLM's actions.

10 Q. Okay, because I'm very concerned about this
11 letter. It does say, quote, I confess that I do not see
12 where the new rules being considered by the State are
13 necessary or justified. BLM's regulations clearly give the
14 agency the tools and the authority to deal with
15 questionable operators.

16 I see this as a pretty strong stand from the BLM
17 against some of the actions that are proposed today. I see
18 this for this -- in the good standing, and I also see it in
19 the registration, I see it in the financial assurances.

20 I thought it was very interesting, on one hand
21 you were saying Burlington did such a good job, and on the
22 other hand, you said they had 68 wells out of compliance at
23 one time. That automatically puts them as bad actors --
24 with their names published on the website, as bad actors in
25 New Mexico. Do you intend to do that?

1 A. When we started the program is when Burlington
2 had the 68 wells, and they've brought them down. As far as
3 -- I'm not sure I'm the one that should speak to what's
4 going to be posted on the website.

5 Q. Would that be Ms. Prouty?

6 A. Yes, ma'am.

7 Q. But just the fact that this is part of the rule,
8 that it would be posted on the website -- not the actual
9 actions, not the process, but the recommendation to the
10 Commission that such a posting be made, I think is within
11 your area to answer.

12 A. I think that if an operator has 68 wells out of
13 compliance, we need to use any tool and every tool
14 available for us to bring them into compliance. If it
15 takes posting those operators on the website to have them
16 come into compliance -- It doesn't happen that the well is
17 inactive today. The well list is posted on the Internet.
18 They've had 12 months of no activity on that well. And
19 then the rule gives them 90 days more to do something with
20 that. So it's been 15 months. It's not an overnight or a
21 two-week process. They have had months to clear up their
22 issues. In this case they've had since 2000 to clear up
23 issues.

24 COMMISSIONER BAILEY: My pen showed that it was
25 somewhere in the vicinity of one percent of all of their

1 wells that would have made them a bad actor posted on the
2 website. I just -- My common sense says that's not a good
3 idea.

4 That's all I have.

5 CHAIRMAN FESMIRE: Commissioner Olson?

6 COMMISSIONER OLSON: Yeah, I might just follow up
7 on that, I guess.

8 EXAMINATION

9 BY COMMISSIONER OLSON:

10 Q. So Burlington had 68 wells that were out of
11 compliance, and that was a matter of concern to the
12 Division?

13 A. All the wells being out of compliance were a
14 concern. That's why we started the program, to get these
15 inactive wells off and to limit the liability to the State.

16 Q. And then if I take the idea that they're allowed
17 to have five percent out of compliance, that's 250 wells
18 they'd be allowed to have out without being -- before they
19 would be out stand- -- out of good standing at that point.
20 Wouldn't that be a concern to the Division, to have that
21 many wells out of compliance?

22 A. Absolutely. And if you took each operator -- if
23 you took the 700 operators and had five wells out, that's
24 3500. That's nearly what we have today, if you do it in
25 that aspect. That's the reason that we have requested a

1 set rate of two or five. Not percentage, but a flat two
2 wells or five wells.

3 Q. And I guess I heard Mr. Carr expressing some
4 concern about what would happen on the effective date of
5 the rule in terms of all of a sudden a number of companies
6 being -- losing their good standing. He seems to be
7 implying that there should be some mechanism to -- at least
8 prior to the effective date of the rule for companies to at
9 least come into compliance prior to the effective date of
10 the rule, such as a grace period or something like that.
11 Is that something that the Division would consider?

12 A. I'm not sure I'm the one to ask that question to,
13 as far as the Division. In answer to your question, I
14 wouldn't have a problem with a grace period myself, yes,
15 but it would be a short grace period. This program has --
16 We've been working for this since 2000. It's five years
17 old, it's not coming up today. The operators have known
18 and the operators know, and it seems like it's taking to go
19 to this requirement to get operators to come into
20 compliance, so...

21 But yes, it's not going to be just an
22 administrative problem for the operators. We're going to
23 have to process every single ACO. We're going to have to
24 dedicate time and people to do that, to handle that influx.
25 So no, I would not oppose a grace period to have this come

1 into effect.

2 Q. It seems like part of Mr. Carr's concern was,
3 what about the accuracy of the list that's out there?

4 A. The operator data that we receive, that we've put
5 out there -- and I'm not the one to speak to that -- the
6 way it's worked in my district is, when there's four wells
7 on the list and I see it, I call up Burlington and I talk
8 to them. I say, hey, I see four wells, you know, what's
9 going on? And they've always got an answer where they're
10 at and what's going on, because they're monitoring that
11 list and they know what's happening.

12 If one comes up and it's not going to come off
13 the list, then they contact me and say, you know, this is a
14 coal water dewatering process, it's going to take months.
15 You know, we just spent \$80,000 out there, it's going to
16 take months. Well then, this is not something that would
17 be directed.

18 Q. And I guess maybe some more follow up on
19 Commissioner Bailey's comments about access to BLM bonds,
20 how do you get access to those bonds?

21 A. We -- The process was in the past, and the way it
22 worked recently, we agreed to go plug the wells, we went
23 and plugged the wells, I sent copies of the invoice over to
24 BLM. BLM sent a letter requesting us to plug the wells,
25 and we plugged the wells, and then we sent the request.

1 They had a new procurement person who said that
2 we had to have a contract in place before it took place, so
3 they had some internal issues they had to work through
4 before they could pay us the money. But what they did was,
5 they transferred us the funds that reimbursed just the cost
6 of the vendor for plugging. It didn't reimburse any of the
7 costs of a compliance officer on time, any of the time it
8 took to do any of the administrative work to prepare
9 everything. It was strictly the cost that was incurred for
10 us through the vendor, or for them through the vendor.

11 So the BLM did pay us relatively quick when you
12 consider the BI- -- the tribe hasn't paid us since 2000.
13 The EPA process has worked well, we were reimbursed
14 quickly.

15 Q. So essentially the Division goes out and plugs it
16 first with the well-plugging fund and then tries to get
17 reimbursement from the BLM?

18 A. Yes, sir.

19 Q. I guess I had a couple of questions on the rule
20 itself, maybe, on Rule 101, maybe, that you might be able
21 to answer. I know -- I think we've heard, and I'm aware
22 that there is a limit in the Statute on the blanket bond of
23 \$50,000. Are there cases where you've had a blanket bond
24 where that's been insufficient for covering plugging costs?

25 A. I can't remember a specific case where we had to

1 call the bond. The bond is called by the legal department.
2 It's been more orphan wells where there was no financial.
3 I do not recall.

4 I can tell you this: The seven wells we plugged
5 for the BLM cost \$79,000, you know, \$80,000. If we would
6 have had a \$50,000 blanket bond, it would not have covered
7 those seven wells that we just plugged.

8 Q. So then you're just not aware of any cases where
9 it's -- there's only been a \$50,000 blanket bond and that
10 wasn't adequate?

11 A. No, I'm not. No, I'm not.

12 Q. And I had a question, at least on some of the
13 language here too in the rule. I'm looking at 101.B, and
14 it talks about the Division may waive the requirement for
15 the one-well financial assurance for a well that is shut in
16 because of a lack of a pipeline connection.

17 And I think I saw someplace else in the rules
18 here where it was talked about, if this was a new well that
19 had been constructed and fell outside the temporary
20 abandonment because of a lack of a pipeline connection, but
21 here it seemed -- it almost seems to me that the way this
22 is written, that someone could just come out with an
23 existing well, disconnect it from a pipeline and say, well,
24 it doesn't have a -- it has a lack of a pipeline
25 connection, and therefore it should be waived.

1 I don't know if that's -- Do you see that as a
2 problem in the way that's written?

3 A. Do you have a copy of that?

4 Commissioner Olson, when we have an investor go
5 in and drill a well, he might drill a well looking for
6 product. And when he gets it, there might not be pipeline
7 facilities there. So they might have to obtain right-of-
8 ways and easements to get a pipeline in to that. That's
9 the concern on a new well.

10 Q. Uh-huh.

11 A. If a well is new, then it should have that.

12 Q. Well, I think I understand that, but it just
13 seems that the way this is written here, it almost seems --
14 the way it's written, it just says because of the lack of a
15 pipeline connection. It doesn't say anything about a new
16 well or an old well at that point. So it might seem to be
17 that there's a little bit of a wording problem in the
18 intent -- in what you're intending at that --

19 A. I don't have a copy.

20 COMMISSIONER BAILEY: I can -- The Land Office
21 has, in its oil and gas lease, which is statutory --

22 COMMISSIONER OLSON: Uh-huh.

23 COMMISSIONER BAILEY: -- a provision that gas
24 wells -- or wells that can produce gas in paying
25 quantities, doesn't have to be a gas well -- can shut in

1 the well for lack of market or, quote, lack of a pipeline
2 connection --

3 COMMISSIONER OLSON: Uh-huh.

4 COMMISSIONER BAILEY: -- and that can be up to 10
5 years. And that's especially important in frontier areas
6 where there are no pipelines --

7 COMMISSIONER OLSON: Uh-huh.

8 COMMISSIONER BAILEY: -- for quite some distance.
9 And for exploration purposes this is a very important
10 phrase that we have in our statutory rules.

11 CHAIRMAN FESMIRE: And it's pretty well defined
12 in case law too.

13 COMMISSIONER OLSON: Uh-huh, okay.

14 Q. (By Commissioner Olson) And then one other
15 issue. I heard you discuss a lot about costs of the actual
16 plugging of the well, but it's my understanding the well
17 plugging is also used for the surface restoration. What
18 kind of costs have you incurred in restorations of the
19 surface, say for pits or for other types -- spills, other
20 types of activities?

21 A. I don't have a breakdown on that cost. We have a
22 -- That's part of the reason we're not done with the
23 project. It's just the particular project. We have three
24 wells that has contamination that we've got dug out, and
25 we're doing bio-piles and remediation. I don't have those

1 costs. Those costs have been minimal. That doesn't mean
2 that it wouldn't increase in the future.

3 Now, Bureau of Land Management in a working
4 cooperative with one of the folks their agency chose is
5 doing some different cleanup out there that we agreed to
6 exclude from ours. We're not removing pipelines, we're not
7 removing electric lines and those various activities.

8 Q. But you'll be doing some pit cleanups or other
9 types of activities?

10 A. Yes.

11 Q. So the plugging bond is not being used just for
12 that, it's being used for those other activities as well?

13 A. We do it for the general cleanup. If it's going
14 to turn into a large environmental project that is not part
15 of the plug-and-abandon procedure and the surface cleanup,
16 then that is an issue we turn to the Environmental Bureau
17 and let the Environmental Bureau do their funding.

18 Q. But if it's truly an abandoned well, wouldn't the
19 Division be trying to use the reclamation fund to effect
20 the cleanup and restoration of that site?

21 A. I would believe they would.

22 Q. So that would still be part -- covered under the
23 bond, even though it's not being done by the District
24 Office?

25 A. Correct.

1 COMMISSIONER OLSON: I think that's all the
2 questions I have.

3 EXAMINATION

4 BY CHAIRMAN FESMIRE:

5 Q. Mr. Perrin, we talked a little bit about
6 Burlington being the largest operator, at least in the
7 number of wells in the state; is that correct?

8 A. Yes, sir.

9 Q. And you said they figure they operate -- "they
10 figure" -- we figure that they operate about 6042 wells; is
11 that correct?

12 A. Yes, sir.

13 Q. So what's five percent of 6042?

14 A. Three hundred.

15 Q. Three hundred. So if we were to adopt the five-
16 percent threshold, Burlington could have 300 wells out of
17 compliance and not be burdened by a -- burdened under these
18 new rules?

19 A. Yes, sir.

20 Q. Do you happen to know how many wells Burlington
21 has out of compliance right now?

22 A. Last time I looked it was four.

23 Q. Four. In fact, Burlington has been rather
24 successful with this project, haven't they?

25 A. Extremely successful.

1 Q. In fact, don't they believe that they have made
2 money at it?

3 A. Yes, sir, I was told so.

4 Q. Okay, and who told you that?

5 A. I believe it was Mr. Bruce Gantner.

6 Q. Okay. So by complying with the rules and, in
7 essence, bringing their number of wells into compliance to
8 satisfy the new rules, they have actually made money in
9 this economic environment; is that correct?

10 A. Yes, sir, they have.

11 Q. How long have they -- I checked once last week
12 and they had, I believe it was zero wells out of
13 compliance. So it changes pretty quickly, doesn't it?

14 A. Yes, sir.

15 Q. But to get out of compliance, like you said,
16 first of all, the well has to be shut in or not reporting
17 production or injection; is that correct?

18 A. Yes, sir.

19 Q. And that status goes along for 12 months, right?

20 A. Yes, sir.

21 Q. Then what happens?

22 A. Then they'd have 90 days according to the rule to
23 return that well to temporary abandon, return to production
24 or plug and abandon that well, bring it into compliance.

25 Q. Okay. When does the company know that they are

1 on this track?

2 A. Well, as most operators go by their wells at
3 least monthly, they should know that the well's not
4 producing.

5 Q. Is there any other way for them to know? Is
6 there any way for the office to know?

7 A. We have posted an inactive-well module that shows
8 it on the website, yes, sir.

9 Q. And in that inactive-well module, does it have to
10 be 15 months before they can find out?

11 A. No, sir, it doesn't. That system is set up to
12 run a query, and you can select the month. You can go to
13 one month and find out what wells haven't produced for one
14 month, or you can go for each incremental month.

15 Q. So the operator can log onto our website, which
16 is not a difficult process, is it?

17 A. No, sir, it's not.

18 Q. Okay, and he calls up the inactive well list and
19 he looks under the operator's name, and he can set how many
20 months out he wants to look. So if he wants to look at the
21 wells that have not reported production for one month he
22 can do that. He can look at the number of wells that have
23 not reported production for two months, all the way out to
24 15 months, before he even gets on -- before he even falls
25 out of compliance?

1 A. This is correct.

2 Q. Okay, and that's the point that you and Gail were
3 making earlier; is that --

4 A. Yes, sir.

5 Q. Okay. So he's basically got 15 months to find
6 out whether or not he's going to get into compliance.

7 A. Correct.

8 Q. And it can be done by the largest operator in the
9 state?

10 A. Yes, sir.

11 Q. Okay. Now, all that notwithstanding, he doesn't
12 do it. Say Burlington gets six or seven wells out of
13 compliance. Do they show up on a list of bad actors?

14 A. No, sir, they don't. Not to my knowledge.

15 Q. Okay. And you can only answer --

16 A. Correct.

17 Q. -- you know, according to --

18 A. Correct.

19 Q. -- your own knowledge.

20 A. Right.

21 Q. But under these rules would they show up on a
22 list of bad actors?

23 A. I think that Jane Prouty -- Yes, they would be
24 classified as a bad actor. I think Jane needs to testify
25 to the -- how they show up.

1 Q. Okay. But would there be a list of bad actors --
2 Could somebody, you know, say *The New York Times*, pull up a
3 list of bad actors in New Mexico?

4 A. It's my understanding that there's not going to
5 be a headline that says bad actors, there's not going to be
6 a website that says these operators are out of compliance
7 or these are bad actors. But again, Ms. Prouty would
8 probably be the person to --

9 Q. Okay. Now, you talked about coal dewatering
10 wells. Do coal dewatering wells report production?

11 A. They should be reporting the water, yes, sir.

12 Q. Okay. And will that alone keep them off the
13 noncompliant list?

14 A. It's my understanding, yes.

15 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, I have
16 no further questions of this witness.

17 MS. MacQUESTEN: If I may, there are a few things
18 I'd like to be able to address myself.

19 I had previously offered the Commission copies of
20 a portion of the Energy Policy Act of 2005, and I'd like to
21 make that offer again, because I think it could help answer
22 one of Commissioner Bailey's questions. She referred to
23 the letter of the BLM and with reference to \$25 million
24 being available.

25 If they are referring to money available under

1 the Energy Policy Act of 2005, there is a provision for \$25
2 million, but it's for the entire nation, it's not for New
3 Mexico.

4 So again, I would like to offer this to the
5 Commission if they want to see it and ask them to take
6 administrative notice of the contents of the Energy Policy
7 Act, which is available on the Internet.

8 CHAIRMAN FESMIRE: Okay, would it be easier to
9 just make that an exhibit?

10 MS. MacQUESTEN: I'd be happy to.

11 CHAIRMAN FESMIRE: Why don't we go ahead and --

12 MS. MacQUESTEN: It would be --

13 CHAIRMAN FESMIRE: Mr. Carr, would you have any
14 objection?

15 MR. CARR: No objection.

16 CHAIRMAN FESMIRE: Any other objection?
17 Commissioners?

18 COMMISSIONER BAILEY: No, I'd just like to point
19 out that in her letter from the BLM Linda Rundel says
20 nationwide approximately \$125 million is available in bonds
21 covering federal oil and gas leases. For New Mexico BLM,
22 approximately \$25 million is available.

23 MS. MacQUESTEN: That I can't address. I can
24 only address what is in the Energy Policy Act.

25 Another issue I would like to have the

1 opportunity to address, Mr. Perrin was asked what the OCD's
2 policy was regarding delaying the effective date of the
3 rule or providing some sort of grace period, and I would
4 just like to second what he said.

5 The OCD does not object if the Commission would
6 like to delay the effective date of this rule, particularly
7 as to the inactive well list or to good standing, to give
8 operators the opportunity to do what they can to come into
9 compliance and address their concerns about the well list.

10 I would like to point out that I would suggest
11 that we keep that relatively short, say 60 or 90 days. I
12 was disappointed when the rule proposals went out and we
13 heard a lot of complaints about the well list in general,
14 but although we've had some inquiries and some questions
15 about specific wells, we were not deluged with requests for
16 changes. So that hasn't happened yet.

17 Maybe if the rule is going to go into effect and
18 has a date for -- effective date, that will prod industry
19 into coming forward and cleaning up that list. But we've
20 been working on that list since year 2000, and we need
21 something prod industry into taking action if they feel
22 that list is inadequate.

23 Another disappointment was that although we had
24 been negotiating agreed compliance orders -- and I thought
25 at least the ones that were in negotiation would follow

1 through on it, given the fact that these new rules were
2 being proposed -- we haven't had anybody come in and say we
3 want an agreed compliance order. Nothing has happened. So
4 industry is not acting as if these rules are going to take
5 effect.

6 So if -- I do not oppose an extension of time.
7 I'm disappointed that they didn't use the time after the
8 proposal of the rules to clean up the problems that they
9 see.

10 CHAIRMAN FESMIRE: Mr. Carr, any comments?

11 MR. CARR: Well, you know, I don't know
12 procedurally where we are, but I can always --

13 CHAIRMAN FESMIRE: I'm a little lost myself.

14 MR. CARR: -- I can always comment.

15 (Laughter)

16 MR. CARR: And I can argue with Ms. MacQuesten,
17 but I would point out that 8000 wells to 4000 wells doesn't
18 mean that you're talking about the same 8000 wells. The
19 4000 wells today are not necessarily part of the original
20 8000.

21 And I don't know what the industry as a whole is
22 doing, but two of my clients, EOG and OXY, have both been
23 in contact with the Division using this time to try and
24 address these problems. I don't know if that's -- I wish
25 that was a closing statement, but I'm afraid that it's not.

1 (Laughter)

2 MS. MacQUESTEN: Mr. Commissioner, I do have
3 questions for Mr. Perrin --

4 CHAIRMAN FESMIRE: Okay.

5 MS. MacQUESTEN: -- on redirect.

6 Sorry, Charlie.

7 REDIRECT EXAMINATION

8 BY MS. MacQUESTEN:

9 Q. Mr. Perrin, there was some discussion about an
10 agreement with BLM under which we could access their bonds.
11 Are you talking about an overall general agreement, or are
12 you talking about specific agreements, please plug these
13 wells and we will reimburse you? How does it work?

14 A. It's specific. If the BLM is holding a bond --
15 for instance, on this Horseshoe-Gallup, they said they were
16 holding \$100,000 to reimburse us to that point, to plug
17 those wells. If it exceeded that, then we would pay the
18 money out of the reclamation fund. If it was less than
19 that, like it was, we put in copies of invoices for just
20 under \$80,000, and they reimbursed us for just under
21 \$80,000.

22 Q. So this reimbursement arrangement is negotiated
23 on a case-by-case basis, and it's negotiated on each case?

24 A. Yes, ma'am, it is.

25 Q. You don't have an arrangement whereby you could

1 go and plug inactive federal wells and know that you would
2 be reimbursed by the appropriate federal agency?

3 A. No, ma'am, not at all.

4 Q. Now, if it is possible for a federal bond or a
5 tribal bond to include language that would allow us to
6 access that money, that would be fine by us, right?

7 A. Yes, ma'am, it would.

8 Q. But we're not likely to get that right now since
9 there's no requirement for federal bonding?

10 A. Correct.

11 Q. We talked about agreed compliance orders, and Mr.
12 Carr asked you about differences between large operators
13 and small operators. And you've negotiated some agreed
14 compliance orders with very large operators and some
15 smaller operators; is that right?

16 A. Yes, I have.

17 Q. Do large and small operators have different
18 concerns when it comes to being able to plug inactive
19 wells?

20 A. Yes, ma'am, I believe they do.

21 Q. Do large operators -- who's more likely to have
22 their own equipment to do those sorts of jobs? Small
23 operator or big operator? Does it --

24 A. Yeah, yeah, usually neither, it's a third-party
25 vendor.

1 Q. Okay.

2 A. There are some operators in the state that have
3 their own equipment, but I'm not aware --

4 Q. So that would make a difference if an operator
5 had the equipment available to them versus having to
6 contract out. And if they did have to contract out, do
7 large operators with a lot of business to offer have a
8 better shot at getting to that equipment?

9 A. Absolutely. A lot of times they'll already have
10 the equipment, and all they have to do is refocus. Instead
11 of focusing on completion and workovers, then, they can
12 take that unit in a break and go over here and plug wells
13 and work on compliance issues.

14 Q. And in dealing with negotiating ACOs with large
15 operators, have you found that they have the personnel --
16 they're better able to monitor their inactive wells and set
17 up programs for bringing wells into compliance than a small
18 operator?

19 A. Yes.

20 Q. Now, if an operator has -- if we look at the list
21 and we find an operator has four wells out of compliance,
22 and they're a big operator, so they're not out of good
23 standing under the proposed rule because they could have --
24 what? Have to be six wells before they're out? So he's
25 four wells and he hasn't lost his good standing. He's

1 still out of compliance on four wells, isn't he?

2 A. He is, yes.

3 Q. And this good-standing rule doesn't replace
4 existing enforcement mechanisms; is that right?

5 A. No, ma'am, it doesn't.

6 Q. So if an operator has four wells out of
7 compliance, theoretically he could be subject to \$1000 a
8 day penalty for each well, right?

9 A. Yes, ma'am.

10 Q. So he'd be racking up penalties, theoretically,
11 \$4000 a day, on those four wells, right?

12 A. Yes, ma'am.

13 Q. And we still believe that operator is out of
14 compliance. We may not label him as out of good standing,
15 but he's certainly out of compliance, right?

16 A. Yes, ma'am.

17 Q. And if we went to a five-percent provision -- and
18 use Burlington as an example -- they could have 300 wells
19 out of compliance. So they could be theoretically racking
20 up \$300,000 a day --

21 A. Yes, ma'am.

22 Q. -- in penalties --

23 A. (Nods)

24 Q. -- and we would say that's all right, they still
25 are in good standing as far as we're concerned?

1 A. If they had five percent, that would be correct.

2 Q. Now to bring wells off the inactive wells list,
3 one way to do that is simply to put the well on temporary
4 abandonment status; is that right?

5 A. Correct, yes, ma'am.

6 Q. And you were here this morning for all the
7 testimony about why that is important?

8 A. (Nods)

9 Q. So we're not necessarily saying plug the wells,
10 but we're saying make sure it has mechanical integrity and
11 has the right bridge plugs and so forth?

12 A. We're just asking for compliance with the rules.

13 MS. MacQUESTEN: Thank you, that's all I have.

14 CHAIRMAN FESMIRE: Mr. Carr?

15 RE-CROSS-EXAMINATION

16 BY MR. CARR:

17 Q. You know, I hate to make Burlington an issue, but
18 Charlie, Burlington works with you. You're not worried
19 that Burlington is going to walk away and leave a bunch of
20 wells for the State to tend to, are you?

21 A. No, I'm not, no.

22 Q. And if they had 300 wells that were out of
23 compliance, they would be penalized or subject,
24 theoretically, as Gail says, to a penalty of \$300,000 a
25 day. So they should have some incentive to get back in

1 line, even if you're not after them or saying they're a bad
2 actor. Wouldn't you think that also gives you a tool to
3 bring them back in line, the finding ability?

4 A. Yes, sir, if we could use that.

5 Q. But where you get into trouble are with the
6 medium to small-size operators, by and large. Isn't that
7 fair to say?

8 A. As far as being operating day to day and --

9 Q. And having wells on the inactive list.

10 A. I think there's all levels. I haven't seen the
11 inactive well list in the other districts. Well, when we
12 start trying to gauge our rules and the number of inactive
13 wells we're authorizing by trying to tie our wagon to
14 Burlington, don't you think we're kind of torquing what
15 we're worrying about?

16 A. I used Burlington for an example. I've also
17 worked with ConocoPhillips, Energen, XTO --

18 Q. Do they work with you?

19 A. Yes, all the operators work with us. And it is
20 an issue to bring their wells into compliance.

21 Q. But to try and evaluate the impact of this rule
22 by looking at Burlington and the number of inactive wells
23 they could have, that really gives you a sort of distorted
24 view, does it not, of what you might really, in fact, be
25 authorizing or dealing with if you went to a percentage

1 allocation on the inactive well?

2 A. Well, again, Mr. Carr, if we went through a
3 percentage and 700 operators had one percent of the 50,000
4 wells, then we're way back up. And that's the reason that
5 I don't support a percentage.

6 Q. One percent did you say, Charlie?

7 A. I said if we had a percentage for those 700.

8 Q. I thought you said one percent.

9 A. Well, it would be a number of wells, yes.

10 Q. It would be 500 wells if it was one percent,
11 right?

12 A. (No response)

13 MR. CARR: All right, that's all I have.

14 CHAIRMAN FESMIRE: Ms. MacQuesten, we're trying
15 to end this before Charlie -- I'm going to say I have no
16 more questions. Do you?

17 COMMISSIONER BAILEY: No.

18 CHAIRMAN FESMIRE: Anyone else have a cross-
19 examination?

20 Mr. Perrin, you may be excused.

21 And Ms. MacQuesten, do you have another witness?

22 MS. MACQUESTEN: I do, I have Ms. Jane Prouty.
23 I'd like to ask first, does the Commission -- do you wish
24 to hear from Ms. Prouty or do you wish to take comment? I
25 understand the new rules provide for comment on every day

1 the hearing is held. I don't know whether you're
2 considering that we're under the new rules now or not, but
3 I wanted to bring that to your attention.

4 CHAIRMAN FESMIRE: The new rules took effect on
5 September 30th. I hadn't intended to ask for comment
6 today, but she's absolutely correct. How long will Ms.
7 Prouty take?

8 MS. MacQUESTEN: I'm afraid Ms. Prouty will
9 probably take some time, because she'll be talking about
10 the inactive well list that's generated so much excitement.

11 COMMISSIONER BAILEY: And the website.

12 MS. MacQUESTEN: And the website.

13 CHAIRMAN FESMIRE: Why don't we go ahead -- Given
14 that you will be given an opportunity tomorrow to make
15 comment also, but like counsel pointed out to us, the rules
16 do require that every day we allow folks the opportunity to
17 make comments. So those of you who would like to make a
18 comment today or who won't be here tomorrow -- It looks
19 like we're going to carry over till tomorrow. So I thought
20 I'd give you that opportunity now.

21 We're going to hear from the BLM, Dennis Stenger.

22 Mr. Stenger, you asked for the opportunity to
23 make a comment.

24 MR. STENGER: Yes, I'm Dennis Stenger, Deputy
25 State Director for the Bureau of Land Management here in

1 New Mexico, and I thought maybe I should make a comment,
2 more for clarification purposes than anything. So as I've
3 listened to things that are going on here, why, I wrote out
4 some interesting comments, and basically that's kind of
5 where I'm coming from.

6 One thing I want you to know, I'm not here to
7 start anything between state and federal in conflict. I'm
8 here to try to resolve some of the issues.

9 OCD has plugged wells for the federal government,
10 yes. OCD has been willing to plug these wells, from my
11 knowledge, and has not balked at our request to come out
12 because of the funding under the operators.

13 BLM does have a means to plug wells, BLM does
14 plug wells, and I believe in our letter that we submitted
15 to the Commission you will see that there are a number of
16 wells that have been plugged out there. A lot of them have
17 been by the operators, so there has been a lot of
18 compliance by the operators to meet what we need out there.

19 At this time, BLM has no means to transfer funds
20 to OCD. Funds that were transferred to OCD were illegally
21 transferred, and we got into quite a bit of trouble over
22 that. I have been talking with the OCD Commissioner about
23 this and our problem with that area.

24 The Energy Bill itself is within its 90-day
25 approval, so everybody in Washington right now is scurrying

1 around trying to get up the MOUs and everything else that
2 need to be in place for the Energy Bill. It does
3 supplement the means of plugging federal wells. It is a
4 supplement, I underline that. It does not plug Indian
5 wells, however, you are right about that. It's not
6 mandated to do that, because the funding for plugging of
7 those wells basically will come out of royalty relief to
8 the operator, if we can find another operator to plug the
9 wells. But it does give us the means to do this.

10 BLM has always had the authority to raise bonds,
11 and in a recent district court ruling out of Wyoming we can
12 even now go after the lessee, and I have imparted that to
13 your OCD Commissioner.

14 And BLM bonding, there's been a lot of comment
15 about BLM bonding, and try to tie it together, but our
16 bonding is actually a royalty bonding, a performance
17 bonding. It also addresses OCD's single-well issue if we
18 wanted to. It's all under that bond. It addresses
19 infrastructure that is out there, and it includes
20 restoration of the surface. So our bonding is all-
21 encompassing out there. MMS has a right to request our
22 bond for royalty deficiencies.

23 Our bonding is at a minimum. It's \$10,000,
24 \$75,000 and \$150,000. Now \$150,000 nationwide bond, most
25 of you folks know that. \$75,000 is the statewide bond, and

1 \$10,000 is the lease bond. However, that is just a
2 minimum. Again, we have the right to raise that bond at
3 any time, so we can do that.

4 The \$25,000 that was mentioned -- yes, ma'am, you
5 were correct. That is \$25,000 worth of bond in place in
6 New Mexico right now. That is --

7 COMMISSIONER BAILEY: \$25 million.

8 MR. STENGER: \$25 million, yes, sorry. \$25
9 million in place in New Mexico, out of \$125 million that is
10 federal bonds right now. So that's 20 percent of the bonds
11 that BLM is carrying right now for oil and gas, is New
12 Mexico.

13 Now, under BLM New Mexico's jurisdiction is
14 Oklahoma, Texas and what's in Kansas, so there are a few
15 properties there.

16 What I see out of all of this is a potential of
17 conflicts with management of the lease, and potentially the
18 authority to exercise that, and under an Indian lease BLM
19 has that trust responsibility, and we cannot abrogate that
20 responsibility to any other party. So that would be a
21 contentious area.

22 One of the examples I would give you, from a
23 federal side or the Indian side is spacing of federal or
24 Indian leases for well spacing is only under OCD's
25 jurisdiction by an MOU with BLM.

1 There may be some authorities that OCD would have
2 in these two arenas, giving some thought to this, would be
3 under EPA's responsibility that the state has, from that
4 perspective.

5 I just want you to know that OCD and BLM have
6 partnered and we're continuing to work through improvements
7 in coordination. I'll give you another example.

8 Yesterday I met with your Commissioner,
9 expressing the offer of funding for two positions to be
10 located, one in Carlsbad and one in the Farmington field
11 office. Although they're for permitting -- I mean, that's
12 the primary thing, but BLM will fund those two positions
13 under the energy bill. This comes out of the energy bill
14 as kind of a partnering, and we would fund those two
15 positions for permitting. But I guarantee you that
16 compliance and monitoring would be a big part of all of
17 this, and our coordination and working efforts between all
18 the offices, the OCD.

19 Also wanted you to know that under the Energy
20 Bill BLM right now is hiring some 35 positions, Carlsbad
21 and Farmington, in those two areas. They're called pilot
22 offices under the Energy Bill. And one third of those
23 positions will be directly related to inspection and
24 enforcement goals out here.

25 We are in the process right now of changing our

1 strategy for inspection and enforcement of oil and gas
2 wells, which will be pretty much new from what we have done
3 in the past where we've inspected all the basically same
4 fields because of our requirements to inspect the higher
5 producing fields, and we're changing our strategy and we're
6 going to be out inspecting wells in other areas, probably
7 wells that haven't been inspected in 10 to 15 years.

8 So there are mistakes. However, we are
9 improving, much as you. We are trying to implement much
10 the same way that this regulation goes down that path.

11 Bottom line of this is, I think potentially that
12 there may be some conflicts. One of the conflicts that I
13 saw out of this would be potential stipulations, that OCD
14 would have a hearing and require something. And we have
15 timing stipulations on our leases, our APDs, when certain
16 things can happen out there in the field. So OCD wouldn't
17 necessarily be able to go out here and direct somebody to
18 do something, because it may be in violation of our
19 requirements and our regulations and the stipulation, as an
20 operator would be in violation and then could get -- from
21 our side. So there's many issues along that line. And
22 again, I think it's the management aspect out of an
23 operational area that would be a -- potential conflicts
24 areas.

25 So thank you for letting me make a comment.

1 CHAIRMAN FESMIRE: Dennis, how would you
2 recommend we handle the bonding issue? I mean, we're --
3 you know, without knowing exactly where we're going in the
4 Energy Bill, we've come to the impasse now where the old
5 arrangement we had was apparently frowned upon by the
6 auditors --

7 MR. STENGER: Yes, sir --

8 CHAIRMAN FESMIRE: -- I guess is the way to put
9 it?

10 MR. STENGER: -- very much so.

11 CHAIRMAN FESMIRE: How do -- Do we just have to
12 quit plugging wells on federal land, or leave that to you
13 all, or how do we handle that?

14 MR. STENGER: I still hope that we can come to
15 some kind of an arrangement out of that. I will -- I've
16 only been in this state a year as Deputy State Director. I
17 spent some 20 years with BLM in Wyoming, in various
18 positions throughout that area. So speaking from that
19 perspective, I believe we're on the right path in this
20 state right now to correct some of the areas where we have
21 a lot of old oilfields that have TA'd or shut-in wells and
22 those type of things.

23 And there is more emphasis on that, there is more
24 emphasis on that in the Energy Bill, which gives us better
25 authorities to accomplish our mission and our goal. And

1 there is a lot of support by this administration. There
2 have been legislative and various other things in the past
3 that have hindered some of our ability to address some of
4 these issues. I myself in Wyoming have complained about a
5 lot of the issues of TA'd and shut-in wells and BLM's
6 liability in that area, and I would like to think that a
7 lot of this stuff came out of this energy bill as a means
8 to try to accomplish some of this misfortune out there in
9 the area.

10 You know, when we have a company go bankrupt, it
11 is really tough for us to collect. Basically, the
12 Commission has much more authority, where we have
13 opportunities for an operator to appeal. And again, those
14 could be conflicting with the Commission, trying to do
15 something on federal lands, because that's by regulations,
16 that that operator has means. So it does take some time.

17 I think the OCD Commissioner and myself can work
18 a lot of these things out and we will gain things.
19 Unfortunately, the Bureau's procurement system is not very
20 conducive right now to having a blanket contract to plug
21 wells, which was mentioned here a little while ago. It has
22 to be done on a case-by-case basis, or a group of wells as
23 a case-by-case basis. But that's -- you know, that's the
24 federal government right now in its conflicts of
25 procurement.

1 So I don't know if that truly answers your
2 questions.

3 CHAIRMAN FESMIRE: Well, like I said, with
4 respect to the rules we're trying to promulgate today, and
5 specifically the bond running to the state for all wells in
6 the state, we certainly are not trying to usurp BLM
7 authority.

8 I just want to know what the best -- I mean, it
9 seems to me that given the problems that we have, you know,
10 transferring bonds and the fact that we have shown an
11 inclination to plug the wells that need to be plugged, I'm
12 just trying to keep that up without running afoul of the
13 BLM, and I was wondering what would be your suggestion we
14 should do in these -- within the context of what we have
15 noticed out in these rules to accomplish that?

16 MR. STENGER: I guess I would say here, I'm not
17 interested in double-bonding, but I can see that as a fact
18 out of this, unfortunately, because of what we're looking
19 at and what you're looking at.

20 Perhaps an MOU could be done in some ways to --
21 say for the plugging of a well, and we'd only look at the
22 plugging of the well as being that -- that would mean that
23 the operators would still, from BLM's side, have to be
24 bonded for surface compliance, infrastructure, potential
25 performance and those type of things. We could not stop

1 that part of this issue. So...

2 COMMISSIONER BAILEY: Would you recommend
3 withdrawing this rule from amendment at this time, until
4 you and OCD can work out some sort of reasonable,
5 consistent policy between the two agencies?

6 MR. STENGER: A portion of this rule, I think
7 that would help at this point in time, that we could sit
8 down and try to work out some things.

9 CHAIRMAN FESMIRE: So perhaps the provision on
10 the bond on federal lands, on at least BLM lands?

11 MR. STENGER: And the Indian lands specifically,
12 both of those lands I think would be conducive to
13 withdrawing at this point in time and not making -- until
14 maybe potentially a later date or something like that. It
15 would make -- because we are going to have conflicts in
16 management, I can pretty much see that at this point time.
17 So... Okay?

18 CHAIRMAN FESMIRE: It's okay with me. Any other
19 questions from the Commission?

20 COMMISSIONER OLSON: Why is BLM not plugging
21 wells then? Why are they referring them to the State?

22 MR. STENGER: I would say that just as the State,
23 we've been neglect in the past. That is not the present.
24 And we're both trying to catch up and clean up the
25 situation where we have problems. Of course, you know as

1 well as I do the timing is right too, because of what
2 they're getting for oil right now and what we're getting
3 for gas out there, that wells shouldn't be TA'd or shut in.
4 I mean, the opportunity is there for all of us, and so we
5 should be trying to do a good job and be good stewards.

6 So yes, we've been neglect in the past. BLM has
7 been neglect. I have no remorse in saying that. But we
8 are going forward.

9 COMMISSIONER OLSON: So is BLM still currently
10 referring some pluggings to OCD?

11 MR. STENGER: As you could see, there were some
12 letters. That has been because OCD has been willing to
13 plug those wells. We do -- in these other rulings -- I
14 mean, the Energy Bill and the ruling with the lessee, our
15 going after the lessee, just recently came down. So that
16 pretty much gives us new authorities here that we've not
17 had in the past, so... Bankruptcy always has been our
18 problem.

19 And TA'd and shut-in, we are trying to do much
20 the same way that OCD is proposing in here, is to get
21 operator plans, get operators in, make commitments and
22 those type of things. I'm still in the process of doing
23 this as the Deputy State Director here in New Mexico. So
24 we are moving forward, though, I honestly would tell you
25 that.

1 COMMISSIONER OLSON: Well, I guess what is the
2 problem, though, with truly abandoned bankrupt sites where
3 companies -- I mean, why is that a problem for BLM?

4 MR. STENGER: We've never had the funding,
5 because our funding is appropriated by Congress, and it was
6 not allowed to be used to plug wells. And so we had to
7 find alternate funding. We are doing this.

8 Again, I mean, we've got a great program going on
9 right now in cooperation with the oil and gas companies in
10 Carlsbad, cleaning up old wells down there, old roads,
11 infrastructures and things like that. They have
12 contributed quite a bit of money.

13 NRCF, the conservation service, has contributed
14 money to help clean up the habitat down there, roads,
15 pipelines and things like that, to try to restore the
16 fragmentation that's taken place down there over the years.
17 And it's for the benefit of the oil and gas companies to be
18 able to lease and -- back in that area again. And of
19 course as you know, I mean, we've got a -- resource
20 concerns down there with the chickens and the lizards, so
21 we are doing it.

22 COMMISSIONER OLSON: When you said the lack of
23 funding, is that the lack of funding for the staff? Not
24 the bonds themselves?

25 MR. STENGER: No, no, it's the lack of funding

1 for a bankruptcy. We have not been pro raising bonds, I'll
2 tell you that right in here. But we are doing that now, we
3 have done that. We've cited it in the letter there. So we
4 are on a different track now than from what we were three,
5 four, five years ago, so...

6 But to get -- when you have a company that go
7 bankrupt, then you've got to have some funding from
8 someplace. And you know, if you get a million-dollar
9 liability out there and a \$50,000 bond, then it doesn't
10 cover. These are things that we're being proactive
11 towards.

12 CHAIRMAN FESMIRE: Anything else?

13 MR. STENGER: No, sir.

14 CHAIRMAN FESMIRE: Any other questions?

15 COMMISSIONER OLSON: No.

16 CHAIRMAN FESMIRE: Raye, did you want to make a
17 statement or ask a question?

18 MR. MILLER: I think I'd like to ask a question,
19 probably, at this point, and then maybe I'll make a small
20 statement, if that's all right.

21 CHAIRMAN FESMIRE: Sure.

22 MR. MILLER: My name is Raye Miller, I work for
23 Marbob Energy Corporation.

24 My question is, tomorrow when you have your
25 comment period, do you have any idea what time that might

1 occur? I mean, there's a tremendous social event tomorrow
2 night in the community of Artesia with the Community of
3 Clovis, and you know --

4 (Laughter)

5 MR. MILLER: -- I would hate to be up here at
6 seven o'clock and miss a social event of such great --

7 CHAIRMAN FESMIRE: Is that event going to occur
8 in the Bulldog Bowl?

9 MR. MILLER: Sometimes it's in there, yes.

10 But anyway, I mean -- and I appreciate the OCD,
11 they've done a wonderful job of explaining their entire
12 task with every office so far today, but I didn't know if
13 tomorrow they were going to do that all day again. Maybe I
14 should wait and come back on Monday when the Commission
15 reconvenes. Do we have any feel for how long it's going to
16 take?

17 CHAIRMAN FESMIRE: I think Ms. Prouty is your
18 last witness, isn't she?

19 MR. PROUTY: The last office you have to learn
20 all the operations.

21 MR. MILLER: Well, I didn't know. We still have
22 several districts that we could call two more to see if
23 they have any more input to go.

24 CHAIRMAN FESMIRE: Mr. Carr, do you --

25 MR. MILLER: The other question is, how many does

1 Mr. Carr have and how long will that take?

2 MR. CARR: I have two witnesses, 20 minutes each.

3 CHAIRMAN FESMIRE: I intend to get started
4 tonight on Ms. Prouty. Mr. Carr -- That will probably go
5 the rest of the day. Mr. Carr in the morning, then
6 comments, then deliberations, which I anticipate taking a
7 significant amount of time. That's my planning.

8 MR. MILLER: Okay. So it is possible that
9 sometime before or shortly after -- we might be able to
10 actually make comments, not tomorrow night about this time?

11 CHAIRMAN FESMIRE: No, I would assume that it
12 would be tomorrow, late -- mid- to late morning.

13 MR. MILLER: Excellent. Now, can I make one
14 comment, and then I'll --

15 CHAIRMAN FESMIRE: Sure.

16 MR. MILLER: I feel I should be responsible, I'm
17 almost a BLM employee, as long as I've worked for their
18 organization at this point. I am partially, probably,
19 responsible for the BLM having asked you to plug wells.

20 I believe the question should have been addressed
21 to your attorney, because I think she would probably have
22 told you that the statute does not limit the reclamation
23 fund or the plugging obligation by the State and the use of
24 those funds to only state or private wells.

25 I would also point out to you that the funds that

1 accrue into the reclamation fund, many of them are federal
2 wells that actually pay that money into that fund, and
3 there might be some logic why they actually asked you to
4 consider plugging their orphan wells. I do agree that you
5 won't need to figure out how to legally be able to secure
6 their bond and pursue -- either have them pursue or you
7 pursue the companies who do have financial ability and are
8 just shirking responsibility.

9 But anyway, I will defend the BLM because I think
10 that they are proper in asking you to do that.

11 CHAIRMAN FESMIRE: Okay. Any other comments?
12 Gwen?

13 MS. LACHELT: Hi, I'm Gwen Lachelt, I'm the
14 Director of the Oil and Gas Accountability Project.
15 Appreciate the opportunity to make a few comments. We did
16 submit written comments, so I won't go into those in any
17 great detail, and to save time here.

18 But in general, OGAP views that these proposed
19 amendments are an important step forward to ensure an
20 appropriate balance between the development of the oil and
21 gas resource in weeding out the bad actors in the oil and
22 gas industry, and we do urge that these amendments be
23 adopted by the Commission at the public hearing today, or
24 tomorrow, or whenever.

25 And since I won't be able to be here tomorrow, I

1 just wanted to review a couple of specific comments
2 regarding the individual well assurance amounts.

3 In general, we're supportive of the new rates at
4 \$5000 and \$10,000. But based on some data submitted today
5 and some other information we received in the past from
6 BLM, information, it seems like the average cleanup costs
7 are between \$13,000 and \$15,000 on BLM, and your
8 information today had the lowest rate at over \$10,000 going
9 up to over \$18,000. So this does seem to be too low for
10 the need.

11 In addition, the blanket bond amount of \$50,000,
12 I understand now that that's established by State Statute.
13 So the larger companies, BLM -- or Burlington, BP, operate
14 under a blanket amount, they're not posting an individual
15 well amount. And everybody seems to be very confident that
16 Burlington is going to stay around and be an operator in
17 New Mexico for some time, but stranger things have
18 happened. And that would certainly leave the State in a
19 terrible position with a \$50,000 blanket bond.

20 So we do encourage that perhaps the OCD consider
21 legislation that would increase that amount. Alaska, for
22 example, their blanket bond amount is set at \$500,000
23 statewide.

24 So those are our specific comments for today.
25 Otherwise we're very supportive of the good standing

1 language, operator registration, the enforceability
2 language. And the folks we work with across the state are
3 very pleased that the OCD has taken this step.

4 CHAIRMAN FESMIRE: Thank you.

5 MS. LACHELT: Appreciate the opportunity.

6 Comments, questions? Okay, thanks.

7 CHAIRMAN FESMIRE: Anyone else?

8 Now, if we hurry we can get Jane up on the stand
9 real quick and get her started.

10 Oh, I'm sorry, Commissioner Bailey has asked that
11 we take about a 10-minute break.

12 (Thereupon, a recess was taken at 4:10 p.m.)

13 (The following proceedings had at 4:25 p.m.)

14 CHAIRMAN FESMIRE: Let's go back on the record.

15 Ms. MacQuesten, are you ready?

16 MS. MacQUESTEN: Yes, the OCD calls Jane Prouty.

17 CHAIRMAN FESMIRE: Ms. Prouty, you've been sworn?

18 MS. PROUTY: Yes.

19 JANE E. PROUTY,

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

22 DIRECT EXAMINATION

23 BY MS. MacQUESTEN:

24 Q. Ms. Prouty, would you state your full name for
25 the record, please?

1 A. Jane Prouty.

2 Q. And where do you work?

3 A. At the Oil Conservation Division in Santa Fe.

4 Q. What is your title there?

5 A. My working title is Bureau Chief of the
6 Automation and Records Bureau.

7 Q. And what are your duties?

8 A. I'm responsible for IT-type activities, I'm the
9 liaison to our IT department on any computing activities
10 OCD does, and then I share some of that with Ben Stone.
11 I'm responsible for the budget, records management, the
12 management of the production data from the wells, and the
13 website.

14 Q. How long have you held the position of Bureau
15 Chief of Automation and Records Bureau?

16 A. I've been in my current real position for six
17 months. I've done some Bureau Chief responsibilities for
18 probably five years. I was more IT, now I'm more not.

19 Q. How long have you been with OCD all together?

20 A. Nine years.

21 Q. And before you became Bureau Chief, what was your
22 title?

23 A. Computer specialist, all other advanced.

24 Q. Did your duties change when you became Bureau
25 Chief?

1 A. It's been a long transition. I've received some
2 new responsibilities such as the website and the budget.

3 Q. Could you tell us a little bit about your
4 background in IT work?

5 A. I joined IBM in 1973 and -- not as an IT person,
6 as an accounts-payable person, and then I was an
7 instructor. And in 1980 I became a systems engineer with
8 IBM and advanced through the ranks of systems engineering,
9 through 1993, I think.

10 Q. So you are our numbers person?

11 A. Yes, but please don't ask me to take five percent
12 of anything.

13 (Laughter)

14 Q. (By Ms. MacQuesten) I'll try not to.

15 A. I only produce them with queries.

16 Q. Okay. I'd like to start with asking you some
17 questions about financial assurance issues, because Mr.
18 Perrin last was testifying about those and I'd like to
19 continue that.

20 Could you turn to what has been marked as Exhibit
21 Number 20, please?

22 A. Yes.

23 Q. Can you tell us what this is?

24 A. This is a summary of some information that I'm
25 sure you'll also refer to in Exhibit 21 and 22. David

1 Brooks prepared the detail information and I used the
2 detail information to prepare this summary sheet.

3 Q. And this chart shows the average actual costs of
4 well plugging done by the State for the past three years?

5 A. Correct.

6 Q. And you've broken it down by the depth of the
7 well?

8 A. Yes.

9 Q. And that follows the current structure of Rule
10 201, which assigns a plugging bond value, based on the
11 depth of the well?

12 A. Yes.

13 Q. And you say this information that -- the
14 information you used to create this chart came from Mr.
15 Brooks?

16 A. Yes. Should I go on and show the other exhibits?

17 Q. Sure.

18 A. Okay. Yes, Mr. Brooks -- It's easier, if we walk
19 through it, if you look at Exhibit 22. That puts
20 everything on one page, for an example, and he -- well, I
21 have my own copy, so I'll use this.

22 Q. Just as background information, Exhibits 21 and
23 22 provide information on pluggings done by the State in
24 different fiscal years; is that right?

25 A. Yes.

1 Q. And so 21 is for Fiscal Year 2003, and then
2 Exhibit 22 has Fiscal Year 2004, and then behind it Fiscal
3 Year 2005?

4 A. Right.

5 Q. All right. And you suggested we take a look at
6 Exhibit 22 because it has the clearest structure. So let's
7 take a look at the first page of Exhibit 22 and use that as
8 an example.

9 Now from the information on this -- on these
10 exhibits, on these spreadsheets, you were able to pull out
11 the actual costs that the State incurred in plugging
12 wells --

13 A. Yes.

14 Q. -- that generated that chart that you've
15 provided?

16 A. Right.

17 Q. So you were able to find both the actual cost and
18 the well's depth?

19 A. (Nods)

20 Q. When you calculated an average cost, did you use
21 every well that Mr. Brooks provided information for?

22 A. No, nor did I use all the money that he had that
23 was -- costs there. I didn't use every well because some
24 of them he didn't have a depth on record. So I was just
25 trying to pull samples.

1 So I think on all three spreadsheets there might
2 have been 10 wells on this list that I didn't include in my
3 numbers. I wasn't trying to match back to them, I was
4 trying to be sure I had good representations.

5 Some of these, the plugging is not done yet, so I
6 didn't count those. Some of the actual amounts that he had
7 on the list were summary amounts, amounts that couldn't be
8 assigned to a specific well. So I only took the costs
9 related to specific wells, but obviously those other costs
10 would be valid. Some on here are listed. If you look at
11 the second page, the plugging was canceled, so they of
12 course weren't included.

13 If you -- There was one that was out of range.
14 I'm not -- Oh, it's right in front of me, the first well on
15 the very first page, the Devito Federal Number 1, the cost
16 of that one, the actual plugging cost was \$36,994. So
17 since that was out of range I didn't use that one. So I
18 wasn't exact, I was trying to come up with an average.

19 Q. So you took from Mr. Brooks' data only wells that
20 had actually been plugged and you had costs that you could
21 attribute to that particular well, and then you excluded
22 this one well that seemed to be out of the average?

23 A. Yes.

24 Q. So let's go back to your chart and see what the
25 result was. This is Exhibit 20 again. If we're looking at

1 wells that have a depth of less than 5000 feet, what was
2 the average cost to the State to plug those wells?

3 A. \$11,590.

4 Q. And that's averaged over the three-year period?

5 A. Correct.

6 Q. And for wells that are 5000 feet to 10,000 feet,
7 what was the average over the three-year period?

8 A. \$15,234.

9 Q. And for wells exceeding 10,000 feet?

10 A. \$16,069.

11 Q. Now, Ms. Prouty, Ed Martin who had been providing
12 the PowerPoint assistance has abandoned us. Do you think
13 you could pull up slide 35, which --

14 A. If it's the next sequential one, I think I can.
15 Let me see. Oh dear, has it gone -- There we go. Is that
16 the one you were hoping for?

17 Q. I think that's it.

18 A. Great.

19 Q. Now, this slide shows those average actual costs
20 that you just mentioned, the \$11,000, the \$5000, the
21 \$16,000. But we've added some more information, we've
22 added what the bonding would be under current rules and
23 what the bonding range would be under the proposed rule.

24 So for wells less than 5000 feet, your average
25 actual cost was over \$11,000, but the current bonding

1 amount for single-well bonds would have been only \$5000?

2 A. Yes.

3 Q. And the proposed bond amount is a range from
4 \$5000 to \$10,000, depending on the depth of the well?

5 A. Yes.

6 Q. And you could do the same sort of analysis for
7 the next two categories.

8 A. (No response)

9 Q. So the actual cost is higher than current bond
10 amounts, but it's actually somewhat higher than the
11 proposed amounts, depending on the depth of the well; is
12 that true?

13 A. Yes.

14 Q. So the amounts that are in the proposal are
15 conservative amounts?

16 A. Yes.

17 Q. There's additional information that I would like
18 to ask you about in the documents provided by Mr. Brooks.
19 He also provided information on the actual cost compared to
20 the amount of bond, if any, that was available for plugging
21 the wells. And he calculated by each well whether the
22 State ended up with a deficit; is that right?

23 A. Yes.

24 Q. In other words, if we had to pay out more than
25 the bond available for that particular well, and then he

1 added up all of those amounts.

2 If you could turn to slide 36, the next slide.

3 Are these the deficit amounts that Mr. Brooks
4 reported on his Exhibits 21 and 22?

5 A. Yes, it's at the last page of each of the
6 spreadsheets, he has a total of that.

7 Q. So these were amounts that the State had to use
8 the reclamation fund to cover?

9 A. Yes.

10 Q. Now, all of the information in Mr. Brooks'
11 exhibits and your own chart, that information comes
12 exclusively from what we're calling the producing counties?

13 A. Yes. In what Mr. Brooks produced, there were not
14 any wells in the nonproducing counties.

15 Q. So when we're talking about the frontier counties
16 or the counties that we would be proposing a \$10,000 set
17 amount for, we don't have any data for those counties, do
18 we, to know actual costs?

19 A. Correct, not from the State.

20 Q. And not from this three-year recent period?

21 A. (Nods)

22 Q. We've had a lot of testimony on requiring bonding
23 for wells on federal or tribal land. Just for convenience,
24 when I say federal now, I'd like you to understand that I
25 mean BLM, EPA, tribal land, all of those.

1 Did you check for me to see how many wells we
2 have on federal land, federal meaning BLM, tribal, EPA?

3 A. Right, it's about 30,000 out of approximately
4 53,000, if you count completed wells.

5 Q. If you could turn to slide 37, the next slide,
6 you have examined the current wording of our bonds and
7 letters of credit forms; is that right?

8 A. Yes.

9 Q. And this slide summarizes the language regarding
10 what those documents cover?

11 A. Yes, it does.

12 Q. All right. And the blanket surety bond language
13 is limited to wells on privately owned or state-owned
14 lands, and that is the same for blanket cash bonds?

15 A. Yes.

16 Q. But the letter of credit form, at least the
17 current letter of credit form, covers wells on lands in the
18 State of New Mexico; there's no limit to federal, tribal,
19 anything?

20 A. Yes.

21 Q. So if an operator is covered by a letter of
22 credit that has that language, then they may not need to
23 make a change to their blanket financial assurance, if we
24 go to federal bonding?

25 A. Right.

1 Q. But the others would?

2 A. Yes.

3 Q. Do we accept riders or amendments to bonds?

4 A. Yes.

5 Q. So if an operator had a blanket surety bond or a
6 blanket cash bond and we went to federal bonding, they
7 would be able to either replace the bond, or they could
8 provide an amendment, a rider?

9 A. I'm not an expert on that, I just know we accept
10 them. The ones I'm familiar with is, we accept them for
11 name changes.

12 Q. Okay. Now I'm going to ask you some questions,
13 and I'm not entirely sure you're going to have the answers
14 for me. So if you don't, just tell me that. All right?

15 How many operators have only federal or tribal
16 wells and no financial assurance at all running to the
17 State?

18 A. I did check that, and I believe it's 120
19 operators.

20 Q. Can you tell me how many operators have a mix of
21 federal, state, fee, tribal?

22 A. 524. That was approximate too, because I just
23 counted something after it had already been printed out.

24 Q. I'd like to ask you about the current OCD
25 policies regarding single-well financial assurances, and to

1 do that I'd like you to turn to Exhibit 24.

2 A. Oh, yeah, I have it. Yes, sorry.

3 Q. Do you know -- Can you identify what that
4 document is?

5 A. Yes, we call it the LeMay memo, and it interprets
6 the statute you referred to earlier, and it's how we
7 practice requiring additional well bonds on operator -- at
8 the time of operator change.

9 Q. And this has a date on it. How old is this memo?

10 A. From 1996.

11 Q. Now, what is the OCD's policy, then, under this
12 memo, regarding additional bonding?

13 A. For any well -- If an operator is transferring
14 more than 10 wells -- let me make sure I've got that right;
15 yes, over 10 -- and any well among the wells being
16 transferred that has been inactive for two years or longer
17 is subject to an additional bond. It's -- regardless of
18 what type land it's on. And it's -- it can be interpreted,
19 because it says -- there's judgment involved, whether the
20 new operator has no operating history or a less than
21 satisfactory compliance record in the state.

22 Q. So it's discretionary with the Division whether
23 they want to ask for additional bonding or not? It's not
24 across the board to all operators who transfer wells and
25 have inactive wells?

1 A. Right.

2 Q. And you said it applied no matter what type of
3 land. So has this been interpreted to require single-well
4 bonds for inactive wells on federal or tribal land?

5 A. Yes.

6 Q. How many wells in New Mexico have single-well
7 financial assurances in place right now?

8 A. I did not look that up, I'm sorry. I looked up
9 how many wells that have been inactive for two years have
10 single-well bonds, but not --

11 Q. Okay.

12 A. That was 242.

13 Q. Okay. How many -- Can you tell me how many would
14 require single-well bonds if we adopted the rule that all
15 wells inactive over two years had to have additional
16 bonding?

17 A. This is a very approximate number, because it
18 includes all categories. But if you just base it on wells
19 that haven't produced in two years and deduct the 242 that
20 have the bonding, you'd be in approximately 4361.

21 Q. Now, does that number include wells awaiting a
22 pipeline connection?

23 A. It includes everything. So it would not be the
24 final number.

25 Q. So the actual number would be something below

1 that, but at least it gives us an idea of what we're
2 talking about?

3 A. Right.

4 Q. Now, if operators went out there and plugged the
5 wells or returned them to production, that number would go
6 down too, wouldn't it?

7 A. Right.

8 Q. Let me ask you about the reclamation fund. If
9 you could turn to Exhibit 25. Who prepared this, and what
10 does it show?

11 A. The top numbers were summaries from the
12 spreadsheet that Mr. Brooks prepared, and the bottom
13 information I received from two of our environmental
14 engineers who are managing reclamation fund projects this
15 year, Ben Stone and Ed Martin.

16 Q. All right.

17 A. And actually, Ed's information isn't on here. I
18 have it -- somewhere. It's a smaller project.

19 Q. Okay, well, we'll get to that in a second. But
20 let me ask you, these top numbers -- the title is Cost per
21 year for wells plugged through the Reclamation Fund, and
22 you have numbers for each year. Now, these numbers don't
23 match the numbers that we just talked about for the
24 deficit, so what do these number represent?

25 A. As far as I know -- I'm not looking at the

1 spreadsheet -- I think they represent the total cost.

2 Q. And they don't reflect reimbursement --

3 A. Correct.

4 Q. -- from bonding, so that's why they don't match
5 that deficit number?

6 A. Yes.

7 Q. But for example, if we look at fiscal year '05,
8 the State had a cost through the reclamation fund of over
9 \$663,000. But if we go back to the deficit amount, we find
10 that at the end of the day, after recovering all the bonds
11 we could, we still had a deficit of \$564,000?

12 A. Yes.

13 Q. Now, I asked you in preparing this to give some
14 examples of other uses of the reclamation fund, because the
15 reclamation fund isn't exclusive to well plugging; is that
16 right? You have also used it for other projects?

17 A. Right.

18 Q. And what are you showing with the bottom of this
19 chart?

20 A. These are the projects that are currently going
21 on. The largest one is the Eunice project that's expected
22 to cost between \$2.5 and \$3 million this year, and then
23 others are Meteor Development, expected to be about
24 \$300,000, and Orbit, expected to be about \$100,000.

25 Q. And you mentioned another project --

1 A. Yes, I did.

2 Q. -- Mr. Martin had provided you information on?

3 A. He certainly did, and he went to all that trouble
4 -- Oh my gosh, here it is. Okay. Inner Source, an oil
5 treating plant that's been inactive for approximately 12
6 years in Lea County, and the cost is expected to be between
7 \$1.5 and \$2 million dollars to remediate.

8 Q. I'd like to follow up briefly on Mr. Perrin's
9 testimony. He showed us a chart which was Exhibit Number
10 16, showing the impact of the inactive well project from
11 May of 2000 to March of 2002. Did you prepare that chart?

12 A. I actually prepared -- When I went back, I
13 prepared its predecessor. And then I believe Lori
14 Wrotenbery, the Director at the time, had a presentation to
15 do, and I gave her updated numbers and she prepared this
16 chart.

17 Q. Did you prepare many such charts during the
18 course of the inactive well project?

19 A. Yes.

20 Q. Can you tell us where these numbers came from?
21 Could you first explain what the difference is between all
22 wells and gas and oil wells?

23 A. Okay, yes. The "all wells" included injection,
24 SWD, the monitoring type wells, observation brine wells, et
25 cetera. And then gas and oil is just those classified as

1 gas and oil.

2 Q. What was the criteria for including a well in
3 these numbers?

4 A. In the first count I have to look at my notes,
5 because as we tried to get it most representative it
6 changed over the years. The first well that came up with
7 the 8000 was that the APD was not canceled, of course, that
8 it had a completion in our system and that it was not
9 plugged. Only wells that were completely released were
10 excluded from the list.

11 So if -- Unlike what Charlie said earlier, where
12 if the site was not released but the well was plugged, that
13 does not count today. It means it did. And any well that
14 had not reported production or injection since 1998 because
15 of the two-year thing, and also only wells that had been
16 completed prior to 1998 were on the list so that the new
17 ones were not counted as inactives.

18 Q. Now, the chart shows a substantial reduction from
19 something over 8000 to something less than 4000. How do
20 you account for that sharp drop?

21 A. The main thing was, the first go-around included
22 wells in TA status, and the second group didn't because it
23 shouldn't have. They were covered in the five-year period.

24 Q. So part of it was in changing the definition of
25 what was going to be included in this list. It doesn't

1 represent that operators went out and returned 4000 wells
2 to compliance?

3 A. You don't -- I don't know what the difference
4 would be. But no, the biggest -- there were at the time
5 4000 wells in TA status, within the five-year period, and
6 that represents those, yes.

7 Q. Now, Mr. Perrin testified about sending letters
8 out and requesting information from operators about the
9 status of the wells. Did that impact the numbers?

10 A. Definitely, just as today where wells are falling
11 off the list, this was our first initiative. So we learned
12 a lot about wells that were plugged. Generally we would
13 have received an intention to plug, but never a subsequent,
14 so based on sending out these letters we did receive
15 subsequents and we were able to process them on our system.
16 That kind of activity took place.

17 Or wells were not being reported on the C-115.
18 They might have been reported on the C-115 under a
19 completion that made them reject, not under the completion
20 that was looking for it, so those got straightened out.

21 Q. So the drop from over 8000 to fewer than 4000,
22 part of that is represented by cleaning u reporting issues?

23 A. Yes.

24 Q. If you could turn to Exhibit Number 26, please.

25 A. I think here you might want me to change the

1 cable.

2 Q. Let me just double-check? Yes, I'll need to go
3 back to the PowerPoint later.

4 MR. FORD: Did you get it okay?

5 THE WITNESS: We'll see. Did it happen to flash
6 by there? There we go, okay.

7 Q. (By Ms. MacQuesten) Thank you. So we'll be able
8 to have an exciting live demonstration.

9 Can you tell us what -- First of all, looking at
10 the paper documents, Exhibit 26, what is that?

11 A. It starts with the main screen that is available
12 on the Web, showing the inactive well list.

13 Q. Now, did you help develop this function?

14 A. Yes.

15 Q. Now, if you look at the first page of Exhibit 26,
16 it doesn't look like the page that you're displaying on the
17 PowerPoint screen. Why is that?

18 A. We changed to a new version of OCD online October
19 4th, so it has the same words but they used a different
20 default font and different colors.

21 Q. And when was the document, Exhibit 26, generated?

22 A. It has a date of 8-29 here, so was that --

23 Q. That's certainly for the cover sheet. Let's take
24 a look at the actual inactive well list --

25 A. Oh, okay.

1 Q. -- behind it, because I think they may have been
2 generated on different dates.

3 A. Okay, yes, I see the report itself that we
4 printed out is dated October 3rd.

5 Q. So if we were to compare these two, the one on
6 the PowerPoint is the current up-to-date version of the
7 inactive well list; is that right?

8 A. Yes.

9 Q. And the paper document that you have in front of
10 you was generated back on October 3rd?

11 A. Yes.

12 Q. So there may be differences between the two
13 documents; is that right? The PowerPoint and the --

14 A. Generally just the font, yes.

15 Q. But I mean the inactive well list itself.

16 A. The contents, of course, yes.

17 Q. Can you tell me the total number of wells on the
18 inactive well list today?

19 A. Yes, I pulled it a little bit ago. 2853.

20 Q. When you searched for those wells, did you limit
21 your search to wells that had been inactive for 15 months
22 or more?

23 A. I just took the default, right.

24 Q. So those are 2853 wells that are currently out of
25 compliance under Rule 201?

1 A. They meet the criteria that I listed here.

2 Q. Let's go through those criteria. And before we
3 start, are the criteria you used in developing this list
4 the same as the criteria used at the beginning of the well
5 program that generated those 8000 inactive wells?

6 A. No, it evolved over time. For example, the first
7 8000 did not acknowledge TA wells being excluded for the
8 moment, that kind of thing. The criteria went back and
9 forth a few times, generally in an effort to determine what
10 an active well is, what a really drilled well is. So there
11 were a few changes.

12 Q. And when we developed this list, it was developed
13 specifically with the good-standing rule in mind; is that
14 right?

15 A. Yes.

16 Q. So it does not capture every well that is out of
17 compliance with our inactive well rules, for example?

18 A. Right.

19 Q. But it is -- we made some decisions to limit this
20 well list?

21 A. Right.

22 Q. Let's go through what those criteria are and the
23 limits we put on them. You have criteria listed on the
24 screen. I can't read the one from the PowerPoint, but the
25 paper version I have is that it reports -- lists wells that

1 produced at one time.

2 A. Yes.

3 Q. Why did you have that criteria?

4 A. Again, in our effort to be absolutely certain
5 that it was really a well that was drilled. Our system --
6 Prior to 1994, we didn't have a lot of places to enter
7 certain data elements, so for any well prior to 1994 we
8 didn't know exactly the completion date, et cetera. So
9 whether the well produced or not definitely tells us the
10 well was drilled and exists.

11 Q. Okay. The second criteria, it says the report
12 lists all wells that "are not plugged (site may or may not
13 be released)". Now, if the wellbore is plugged but the
14 site isn't cleaned up, it shouldn't appear on this list,
15 right?

16 A. Correct.

17 Q. We only looked at whether the wellbore was
18 plugged and didn't pay any attention to anything subsequent
19 to that?

20 A. Correct. However, we may not have entered all
21 the "plugged (not released)" information in the system yet,
22 and that's what we've been doing since -- for the past
23 month that it's been available on the web, trying to make
24 our records entirely accurate there. So that was why I
25 worded the same "(site may or may not be released)". If

1 we've recorded that the site is not released, it's off the
2 list. If we haven't recorded that because we may not know
3 it, because we don't necessarily get a permit indicating
4 that, it may still be on the list, and that's where we
5 request the operators to let us know.

6 Q. Okay. The goal, though, is to only have wells on
7 the list that do not have a wellbore plugged?

8 A. Correct.

9 Q. That's going to exclude some wells that are out
10 of compliance, right? Because you could have a plugged
11 wellbore but not have the site cleaned up after a year,
12 that well is out of compliance with Rule 201, right?

13 A. Yes, you can see that in some of the contents,
14 probably when we get to the content of the report. But
15 yes, there are a lot of wells where they were plugged in
16 the 1960s and the site hasn't been released, and something
17 should have taken place between then and now, but as best
18 we know it hasn't.

19 Q. Okay. Why weren't we trying to capture wells
20 that were in violation because the site wasn't cleaned up?
21 Other than the fact that I told you to do that?

22 A. I was trying to -- I think the action has -- it
23 requires action on our part, maybe, to initiate. I don't
24 know, I'm sorry, I can't address that very well.

25 Q. Well, would the computer system be able to --

1 with the current data that we have and the current
2 information that we have, could we have programmed it so
3 that it would -- a well would show up because the wellbore
4 wasn't plugged, then when the wellbore is plugged it goes
5 off the list, and then after a year and the site isn't
6 cleaned up, it pops back on the list?

7 A. Could we have programmed it? Yes. But do we
8 have data supporting that? No. We have the ability now to
9 enter the date that the site -- one year from the plugging
10 date to track those, but we weren't doing that before
11 because we were calling them complete. To us they weren't
12 complete until the site was released. For this program we
13 are calling them complete earlier, to put our attention
14 elsewhere, but -- so yes, and I would hope in the future we
15 manage it that way, perhaps outside of a good standing,
16 just trying to get those cleaned up.

17 Q. But strictly for purposes of the good-standing
18 rule and coming up with a list of inactive wells, we took
19 the more conservative approach and said let's just look at
20 whether the wellbore is plugged?

21 A. Yes.

22 Q. The third criteria is that the wells are not in
23 the approved TA period. What approved TA period did you
24 use?

25 A. I used five years from the effective date of the

1 TA, so that could either be the initial TA period or a
2 renewal.

3 Q. And a five-year period, is that the outside limit
4 of a temporary abandonment?

5 A. It is.

6 Q. But a well could have been approved for a shorter
7 time period?

8 A. Yes.

9 Q. But you gave it the benefit of the doubt and
10 assumed that if a well was on TA status it was for a full
11 five years?

12 A. Right.

13 Q. Now, the fourth criteria is that the well has not
14 produced or injected in the number of months you've
15 selected. So that's variable, you can query for a well
16 that's been out of activity for 15 months or six months or
17 three months or whatever period you choose?

18 A. Yes.

19 Q. Now, you mentioned earlier a default number of
20 15. If you didn't change that, it would just pull up wells
21 that are 15 months of inactivity?

22 A. Yes.

23 Q. Would it be possible for an operator to look up
24 wells that were inactive for a shorter period of time?

25 A. Yes.

1 Q. So that he could tell which wells he needed to
2 look at for the future?

3 A. Yes.

4 Q. Make sure they're in compliance before that 15-
5 month deadline runs?

6 A. (Nods)

7 Q. Now, a lot of these criteria depend on
8 information that the well has been producing or not
9 producing, or whether it's been plugged or whether it's
10 been TA'd. Where does that information come from?

11 A. A lot of it comes from the ONGARD database. It
12 starts from a permit, or a form submitted by the operator,
13 the C-115 for the production side. On the TA side it's a
14 sundry submitted by the operator, or a completion notice to
15 get the well into our system. And so the data is kept in
16 our ONGARD system and our RBDMS system.

17 Q. And it's information that originates with the
18 operator?

19 A. Yes.

20 Q. And comes to us in the form of reports from the
21 operator?

22 A. Yes.

23 Q. Does the OCD require that information to be
24 provided in reports? Are they complying with rules when
25 they file those reports?

1 A. Yes.

2 Q. Now, there's one more criteria on this list and
3 it is that the list includes wells that are not covered
4 under an agreed compliance order. Now, if a well is
5 covered by an agreed compliance order, that doesn't
6 necessarily mean it's in compliance, right?

7 A. Right.

8 Q. We hope it will come into compliance at some
9 point, but we're excluding wells that are out of
10 compliance, as long as they're under an order to come into
11 compliance.

12 A. Yes.

13 Q. And that information comes from who?

14 A. The --

15 Q. The order itself?

16 A. Yeah, the order itself, and then it's recorded in
17 the system.

18 Q. Could you give us an exciting live demonstration
19 of searching the list?

20 A. Do we have any volunteers?

21 MR. MILLER: Sure.

22 THE WITNESS: Oh, I recognize that voice. This
23 one won't be any fun. All right, want me to -- well, let
24 me show some with some wells. Who wants -- Shall we show
25 Marbob?

1 CHAIRMAN FESMIRE: Show Marbob.

2 THE WITNESS: Okay, all right. So you go to the
3 -- For those of you who can't see like I can -- can't see
4 the screen, I have a choice of entering it by operator or
5 by OGRID, and so I'll just enter -- I can enter Mar or
6 Marbob or whatever. And then I click the find button to
7 the right, and it finds me any operators that have Marbob
8 in them, and I pick the one that's there. And let's say
9 I'm not going to change any other criteria, I'm just going
10 to get all inactive wells for 15 months, that's the
11 default.

12 Also, this -- one of the reasons this was started
13 was, people want to know -- Okay, here's the resulting
14 list, it has no wells. So congratulations to Marbob.

15 MR. MILLER: Try one month, see what it gets.

16 THE WITNESS: All right, so yes, we'll change it
17 back -- Let me do like three months and see if there are
18 any still for Marbob. And this goes through any production
19 we received as of last night.

20 Okay, so we do have some -- Oh, I don't know if
21 that's -- let me see if it's -- since July -- Oh, it's
22 counting three months from today. I should have remembered
23 that, so -- because we have our July C-115, that's where
24 the 15 months comes in, the three allowing. So let me do
25 five months, to say that really two months have not been

1 reported. That's due to the lag in -- the July C-115 was
2 only due mid-August, and just this week we'll be -- or next
3 Monday we'll be receiving the August C-115.

4 So did I click get report? I think I already had
5 the report. Now we have a nice list. So here these wells
6 have not produced since February or April or --

7 CHAIRMAN FESMIRE: So the list you previously got
8 were the ones that hadn't produced in three months and the
9 ones that you hadn't yet gotten due C-115s?

10 THE WITNESS: Correct. Right, the last month we
11 have on record for Marbob is July of 2005, as it should be,
12 because the C-115s lag. So this picked up all the older
13 ones there.

14 CHAIRMAN FESMIRE: So Marbob only has six wells
15 that have been down for five months?

16 THE WITNESS: Or longer, yes.

17 MR. MILLER: Three of those are waiting for the
18 plugging company to actually plug the wells. They're
19 already filed for plugging, the plugger is behind in our
20 area. One of the wells is waiting for a drilling rig. It
21 already has an approved plugback kick to the bottomhole
22 location; it's a Morrow well that'll be kicked; it's down
23 in the Lusk area. And the other two, I'd have to go --

24 Q. (By Ms. MacQuesten) Now, I have a hard time
25 seeing that, but I'm looking at the hard copy list and

1 reading the headings off, and I'd like you to help us
2 understand the information on this. You can tell which
3 district a well is in; is that right?

4 A. Yes, would you like me to just go through the
5 columns?

6 Q. Sure, if you could.

7 A. Okay. The district was just printed as a number
8 because we were short of space. People tend to print by
9 portrait, so we tried to meet that. So it shows the
10 district in case they want to know who to call. Then the
11 report is printed in API order number, just again for
12 sequencing purposes so everyone can work with it. Then the
13 well name and number are on there. The unit letter,
14 section, township, range.

15 And then the OCD unit letter is the one that --
16 is what you all talk in. The other unit letter is what the
17 State Land Office and what we talk in, to get the specific
18 lot. So we have both of those pieces of information.

19 The OGRID code and the company seems ridiculous
20 for this report because we picked one operator, but since
21 the report can go for all operators or all over a district,
22 we put that in the body of the report.

23 It lists the land type -- in this case these are
24 all federal wells, as are half of our inactive wells -- and
25 it lists the well type and the month and year of last

1 production.

2 And the next column is an odd one. It's really
3 the formation column, as you see the word Morrow in there,
4 but we've long used this as a private notes area to tell
5 ourselves things, as you see with that note in the very top
6 that says P-and-A, March 23rd, 2005. So I print this
7 column on just about every report because it has valuable
8 information for everybody. So this well is an example of
9 one that is plugged but not released, but we have not
10 recorded it yet as that way, and we should. So our
11 districts are trying to go through these lists as fast as
12 they can to make those records.

13 MR. MILLER: That was one of the two I didn't
14 recognize. The other one, a friend, Mr. Gray, reminded me,
15 was an Abo well. For the BLM/State Land Office, we
16 actually -- state surface federal minerals, we actually
17 drilled a Morrow gas well on the same location so that we
18 didn't disturb more land. You don't want to know all the
19 specifics. But anyway, the well was taken off production
20 while the rig was brought in, drilled the Morrow well,
21 completed the Morrow well. The Morrow well is now
22 producing, the Abo well has been returned to production.

23 THE WITNESS: Okay --

24 Q. (By Ms. MacQuesten) I'm sorry, go ahead.

25 A. Okay, the next column is the status, and this --

1 what the P means is that all the zones attached to this
2 well are correctly plugged, but the indication is that the
3 wellbore is not yet plugged, if it's still on this list.

4 And the statuses you might see are very limited.
5 They would be P for the zones being plugged. Or you might
6 see a T if the well has been in TA status for longer than
7 the five-year period, and in that case you would see the
8 column to the right called "days in TA status", to just let
9 you know how many days over -- I think it's 1835, which is
10 five years, just to let you know, has this well been TA'd
11 for, you know, 14 years or something like that. But none
12 of these are in that category.

13 Q. Let me ask you a question about well types. What
14 sort of designations should we see in that column?

15 A. When we initially -- when I designed and released
16 the report, I had in there some columns, some well types,
17 that I shouldn't have, and they're not there now. We took
18 out water wells, which do report to us, but usually they're
19 converted. We only have about 40 of those.

20 Then we've taken out observation wells, brine
21 wells. Those were all categorized as miscellaneous.

22 So if you have any wells that are observation,
23 gas storage, of those odd categories, make sure we have
24 some piece of paper supporting that category and we'll call
25 it a miscellaneous well and it will come of the list. And

1 that was due to a request by Occidental that we shouldn't
2 have had those on there. And the ones that would be there
3 are state, fee, private, the four or five Indian
4 categories, you know, Jicarilla, Ute, Navajo, federal and
5 other Indian.

6 Q. Now is that lease type or well type?

7 A. Excuse me, I went into lease type. The other
8 well types would be the SWD and injection. Thanks.

9 Q. So we should be seeing O's for oil and G for
10 gas --

11 A. -- and an I for injection, and that's for SWD.

12 Q. All right, but we shouldn't see anything that is
13 W for water --

14 A. Correct.

15 Q. -- or M for miscellaneous?

16 A. Right.

17 Q. Now, those did appear on the --

18 A. They would be --

19 Q. -- hard copy?

20 A. -- here, right. So if you're managing to an old
21 list, you might want to pull a more current one.

22 Q. And the column that has last production or
23 injection, that's the last reported production or injection
24 that we've seen?

25 A. Yes, from the -- It's the C-115 month, you know,

1 so it's not that we received it at that time, it's the
2 month that the well produced or injected.

3 Q. All right. And that's a useful tool for the
4 operator to know well by well how long this well has been
5 inactive?

6 A. It tells them how it got on the list.

7 Q. Okay. How is this list updated? Let me go
8 through some examples of things that might result in change
9 and ask you how that change would show up.

10 Let's say I'm an operator and I enter into an
11 agreed compliance order to bring 10 wells into compliance
12 within a certain time period. How will that affect my list
13 of wells?

14 A. The minute that OCD enters that order into the
15 system, the 10 wells would be off the list.

16 Q. Do you have to wait until overnight when the
17 system --

18 A. No.

19 Q. -- regenerates, or whatever it does?

20 A. No, it's done as it's done instantly, it shows
21 some things you do, but not those. They're done in the
22 same database, so they're reflected immediately.

23 Q. What happens if I place a well on temporary
24 abandonment status and I receive approval from the OCD that
25 it is temporarily abandoned? How does that information get

1 to this list?

2 A. We record those right now in ONGARD. We will be
3 moving them to another system, but right now they're
4 recorded in ONGARD, so the changes aren't noticed until
5 about seven o'clock at night, and every night they're
6 updated.

7 Q. What happens if I have a well and I'm able to
8 plug the wellbore and report to the OCD that the wellbore
9 is plugged?

10 A. That requires two steps. It requires recording
11 the plug data and also recording the plug not released. So
12 whatever day the plug not released is entered, immediately,
13 the next minute, that will also fall off the list.

14 Q. Okay. Could you explain that to me a little
15 more? Because I'm not sure -- There's a distinction
16 between plugged and plugged not released?

17 A. Yeah, yeah. It's just what our staff goes
18 through, the districts, they -- yeah, I should have just --
19 the plug date wasn't relevant, because if we just enter a
20 plugged not released, that's the kicker that will take it
21 off the list. So once the district enters plugged not
22 released, it will be gone in the next minute.

23 Q. Okay. What happens if I return a well to
24 production? You're not even going to get the report on
25 production until what, the next month? What could I do to

1 get my well off the list quicker than that?

2 A. You could, if you chose to -- and a lot of
3 operators do -- send your C-115 in the minute the month is
4 over. That's only feasible for operators with a small
5 number of wells. But we can take -- you know, a September
6 C-115 right now. We can't take an October one because the
7 month's not complete, but -- So you could send the C-115
8 in, but it has to be a complete C-115.

9 You also could enter an agreed compliance order
10 for that short period of time. I think those are the only
11 two options I'm thinking of.

12 Q. So one option would be to enter into an agreed
13 compliance order so that we could recognize the problem and
14 deal with it immediately and get it taken care of?

15 A. Yes.

16 Q. How can an operator fix errors if they pull up
17 their list and they see something they think shouldn't
18 belong there? I can't really read that first one, but you
19 said there's a question about whether that first item
20 should even be on the list?

21 A. Correct.

22 Q. Well, what if I'm Marbob and I see that? What do
23 I need to do?

24 A. You shouldn't need to do anything if you're
25 Marbob on that well, because we've asked our staff to comb

1 through these. And anything that they already acknowledge,
2 they saw something where they knew it was plugged that they
3 should please take care of -- it's a new -- in their
4 defense, they're very good, they keep track of everything.
5 This is a new facility they have available to them to enter
6 this. So a lot of the older ones were not entered, and it
7 didn't have a ramification until now.

8 So if on that top line, if we don't get it off in
9 time to meet your satisfaction, feel free to call the
10 District Office, and we will -- other -- do you want to go
11 on to other types --

12 Q. Let me ask you, what if it's something that's not
13 a problem that the OCD is aware of and working on right
14 now? Let's say it's a well that is showing as inactive,
15 but I happen to know that I went out and got that well
16 temporarily abandoned, and I have a piece of paper that
17 shows that the OCD approved that temporary abandonment, but
18 my well is still showing up on the list. What should I do
19 then?

20 A. In that case, I would contact the District
21 Supervisor, and also contact them with your piece of paper
22 in hand, you know, be ready to fax it over to us or send it
23 to us, and we'll take care of it.

24 Q. What if I don't get the response I'm hoping for
25 from the District? Is there any other option?

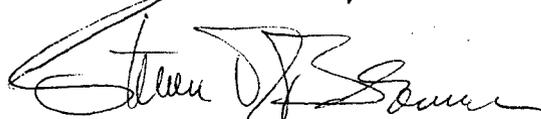
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 23rd, 2005.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006