

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

4 ORIGINAL

5 IN THE MATTER OF THE HEARING CALLED
6 BY THE OIL CONSERVATION COMMISSION FOR
7 THE PURPOSE OF CONSIDERING:

CASE NO. 14041

8 APPLICATION OF THE NEW MEXICO OIL
9 CONSERVATION DIVISION FOR A COMPLIANCE
10 ORDER AGAINST MARKS AND GARNER
11 PRODUCTIONS LTD., COMPANY

12 Case No. 14055: Adoption of order
13 Case No. 14074: Continued, 9/11/08
14 Case No. 14134: Continued, 9/11/08
15 Case No. 14141: Continued, 9/11/08

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17 COMMISSIONER HEARING

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

21 August 14, 2008

22 Santa Fe, New Mexico

23 This matter came on for hearing before the New Mexico
24 Oil Conservation Commission, MARK E. FESMIRE, Chairman, on
25 Thursday, August 14, 2008, at the New Mexico Energy, Minerals
and Natural Resources Department, 1220 South Saint Francis
Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

INDEX

Examiner Hearing
CASE NO. 14041

PAGE

APPEARANCES 3

APPLICANT'S WITNESSES:

DANIEL SANCHEZ

DIRECT EXAMINATION BY MS. ALTOMARE	15
CROSS-EXAMINATION BY MR. PADILLA	47
EXAMINATION BY CHAIRMAN FESMIRE	58
REDIRECT EXAMINATION BY MS. ALTOMARE	64
RE-CROSS-EXAMINATION BY MR. PADILLA	66

JANE PROUTY

DIRECT EXAMINATION BY MS. ALTOMARE	73
CROSS-EXAMINATION BY MR. PADILLA	87
EXAMINATION BY COMMISSIONER BAILEY	95
EXAMINATION BY CHAIRMAN FESMIRE	97

APPLICANT'S EXHIBITS 1, 2, and 3 and 6 through 12 71

APPLICANT'S EXHIBITS 4 and 5 99

RESPONDENT'S WITNESSES:

QUINTON WELBORN

DIRECT EXAMINATION BY MR. PADILLA	100
CROSS-EXAMINATION BY MS. ALTOMARE	128
EXAMINATION BY COMMISSIONER BAILEY	154
EXAMINATION BY COMMISSIONER OLSON	157
EXAMINATION BY CHAIRMAN FESMIRE	164
REDIRECT EXAMINATION BY MR. PADILLA	172
RE-CROSS-EXAMINATION BY MS. ALTOMARE	174
FURTHER EXAMINATION BY COMMISSIONER OLSON	176

RESPONDENT'S EXHIBIT 1 (not admitted)

REPORTER'S CERTIFICATE 190

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE APPLICANT, NEW MEXICO OIL CONSERVATION DIVISION:

Mikal Altomare, Esq.
Assistant General Counsel, Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE RESPONDENT, MARKS AND GARNER, LTD:

Ernest L. Padilla, Esq.
PADILLA LAW FIRM, PA
1512 South St. Francis Drive
Santa Fe, New Mexico 87504

1 CHAIRMAN FESMIRE: Let's go on the record. Let the
2 record reflect that this is the regularly scheduled meeting of
3 the New Mexico Oil Conservation Commission. The date is August
4 14, 2008, Thursday. It's 9:00 a.m. in Porter Hall. The three
5 members of the Commission are present, Commissioner Bailey,
6 Commissioner Olson and Commissioner Fesmire. We, therefore,
7 have a quorum.

8 The first order of the business before the Commission
9 today is the adoption of the minutes of the July 30th, 2008,
10 meeting. Have the commissioners had an opportunity to review
11 the minutes as prepared by the secretary?

12 COMMISSIONER BAILEY: Yes, I have, and I move we
13 adopt them.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: I think the minutes accurately
16 reflect the actions we took at this meeting, and I'll second
17 that.

18 CHAIRMAN FESMIRE: All those in favor of adopting the
19 minutes as presented by the secretary signify by saying "aye."

20 COMMISSIONER BAILEY: Aye.

21 COMMISSIONER OLSON: Aye.

22 CHAIRMAN FESMIRE: Aye. Let the record reflect that
23 the minutes have been unanimously adopted, signed by the
24 chairman and conveyed to the secretary.

25 * * *

1 CHAIRMAN FESMIRE: The next order of business before
2 the Commission is Case No. 14055, the de novo Application of
3 the New Mexico Oil Conservation Division for a Compliance Order
4 Against C&D Management Company, d/b/a Freedom Ventures Company.

5 Have the commissioners had a change to review the
6 order as presented by the secretary?

7 COMMISSIONER BAILEY: Yes, I have, and I believe it
8 accurately reflects our decisions.

9 CHAIRMAN FESMIRE: Commissioner Olson, have you had a
10 chance to review the order?

11 COMMISSIONER OLSON: Yes, I have. I'll just note
12 that they were actually prepared by our counsel, not the
13 secretary.

14 CHAIRMAN FESMIRE: I'm sorry. You're absolutely
15 correct. I'm not on game today.

16 COMMISSIONER OLSON: And I'll second that.

17 CHAIRMAN FESMIRE: All those in favor of adopting the
18 order in Case No. 14055, Order No. R-12913-A, as presented by
19 counsel for adoption, signify by saying "aye."

20 COMMISSIONER BAILEY: Aye.

21 COMMISSIONER OLSON: Aye.

22 CHAIRMAN FESMIRE: Let the record reflect that the
23 commissioners will sign the order and convey it to the
24 secretary. The order has been adopted and conveyed to the
25 secretary.

1 The next item before the Commission is Case
2 No. 14047, the de novo application of Celero Energy II, LP, for
3 Expansion of a Waterflood Project, Chaves County, New Mexico.
4 At the request of counsel, this case has been continued to the
5 October 23rd Commission Meeting.

6 The next item before the Commission is Case No.
7 14041, the de novo Application of the New Mexico Conservation
8 Division for a Compliance Order Against Marks and Garner
9 Production Limited Company. Are the attorneys present for this
10 case?

11 MS. ALTOMARE: Yes, Mr. Chairman.

12 MR. PADILLA: Yes.

13 CHAIRMAN FESMIRE: Why don't we go ahead and take the
14 entry of appearances for the attorneys then.

15 MS. ALTOMARE: Mikal Altomare on behalf of the Oil
16 Conservation Division. I have two witnesses.

17 CHAIRMAN FESMIRE: Mr. Padilla?

18 MR. PADILLA: Earnest Padilla for Marks and Garner
19 Production Ltd, Company, and I have one witness.

20 CHAIRMAN FESMIRE: Okay. We would ask that the
21 witnesses stand to be sworn, then.

22 MS. ALTOMARE: I think only one of my witnesses is
23 currently present. We would ask that we be able to swear in
24 the other witness at a later time.

25 CHAIRMAN FESMIRE: Counsel, would you be so kind as

1 to remind me when it comes time for that witness to testify
2 that she hasn't been sworn yet?

3 MS. ALTOMARE: Sure.

4 CHAIRMAN FESMIRE: Raise your right hands, please.

5 [Witnesses sworn.]

6 CHAIRMAN FESMIRE: Ms. Altomare, do you have an
7 opening statement?

8 MS. ALTOMARE: I do. We presented a pretty
9 comprehensive pre-hearing statement. In addition to that, I'd
10 just like to emphasize a few points.

11 The basis, obviously, of the Oil Conservation
12 Division action in this matter is two basic rules: Rule 201,
13 which requires that operators plug and abandon and apply our
14 approved temporary abandonment status or restore to beneficial
15 use any well that has been inactive for more than 90 days after
16 a period of one year of inactivity; and, Rule 1115, which
17 requires operators to report production on a monthly basis for
18 all completed wells.

19 This case has proposed some obstacles because we have
20 not been able to pinpoint exactly which rule for each of these
21 wells the violations fall under because the records are so
22 incomplete as to a lot of these wells. So the allegations that
23 have been alleged in the application and as proposed in our
24 pre-hearing statements are couched in terms of either -- an
25 either/or kind of statement because the wells are in violation.

1 They come up on the inactive well list as not reporting
2 production for the necessary period of time, but we're not sure
3 whether or not that's because they're just not reporting the
4 production that is actually occurring or whether or not they
5 actually are inactive.

6 We have reason to believe, based on the testimony
7 that was provided in the underlying hearing and based on the
8 records that we do have, that the C-115s that we have received
9 over the years, both prior to Mr. Welborn coming on board with
10 Marks and Garner and after he's become involved in Marks and
11 Garner, are not completed and the ones that have been submitted
12 completely are not accurate.

13 So at this point in time, we're not entirely sure
14 what rule is being violated. What we are sure of is that 23
15 wells are in violation of one or both of these rules. The
16 bottom line is, it doesn't really matter which rule they're in
17 violation of, they're in violation of one or both of them.

18 At the time that we filed the application, it was
19 clear that 23 wells had been coming up on this inactive well
20 list for one or both reasons. We had gone through a long
21 period of time where we had been trying to get their attention,
22 trying to gain compliance, routinely sending notices to the
23 address that had been provided for OCD records purposes. We've
24 been getting absolutely no response from the Marks and Garner
25 Company.

1 We gave them -- finally, in August of 2006, I
2 believe, counsel drafted a letter giving them a final deadline
3 to get back to us and indicated that we would be filing an
4 application if they did not get back to us. We heard nothing
5 further, so we did file an application, and we documented the
6 23 wells that were in violation.

7 At the last hearing, it became apparent, also, that
8 in addition to the 23 violations for the inactivity, that Marks
9 and Garner has made absolutely no efforts to come into
10 compliance with the new financial assurance rules. They were
11 put on notice of this at the last hearing, and eight months
12 have passed, and they have made absolutely no efforts to come
13 into compliance with those. Although this was not originally
14 alleged in the application, this is just further evidence of
15 the fact that they apparently don't think that the rules apply
16 to them. They are making absolutely no effort at all to come
17 into compliance. They're doing things on their own timetable
18 and absolutely not making an effort to work with the OCD to
19 bring these things into compliance.

20 The wells that they are claiming now are reporting
21 production and are, therefore, not on the list anymore and are
22 grossly in noncompliance as to reporting of sundry. Some of
23 them the last reported sundry that we have for any work that
24 was done on the well is as far back as 1994. So I think that
25 if something is not reporting production for a good chunk of

1 time and all of a sudden is reporting production this year,
2 there has to be something that was done on that well which
3 falls under the category of remedial, which under Rule 1103
4 would require the filing of a sundry to document what kind of
5 workover work was done on that well to let us know what are you
6 doing downhole, what are you doing on that well, what are you
7 doing out there on our land to bring that well back into
8 production.

9 So we've got a lot of missing records. We have
10 absolutely no idea what they're doing out on these sites. And
11 frankly, until we get them to bring their records up to snuff,
12 we're never really going to know exactly how bad these sites
13 are and how bad the records are -- how badly out of compliance
14 they are.

15 The record is well-documented, both prior to and
16 after Mr. Welborn became involved with this particular company.
17 I think it's his position that he's not responsible for the
18 company's behavior before he became involved. The nature of a
19 limited liability company, just like a corporation, is that
20 these very same laws that protect the individuals involved in
21 the company from being individually responsible are those same
22 laws that hold them responsible -- the company as an entirety
23 responsible -- for the behavior regardless of who the various
24 members are at any given point in time.

25 He knew that when he took over the company in 2004

1 what the documented history was. He testified to that at the
2 last hearing that he knew there were compliance issues in 2004.
3 It's now 2008. The compliance issues still persist, and now
4 there is more.

5 So it's our position that there have just been too
6 many instances where he's been given absolute clear notice, and
7 if there's ever been an example of knowing and willful
8 violation -- there's just been repeated demonstration of an
9 attitude of willful noncompliance in this case.

10 So with that, we are requesting that there be
11 penalties assessed in the amount of a thousand for each of the
12 23 wells that were originally alleged in the application
13 because they were all in noncompliance at the time the
14 application was filed. And we are asking that he be given
15 specific dates, which Mr. Sanchez will discuss with the
16 Commission at the time of his testimony, to bring the wells
17 into compliance and to bring records up to date so that the Oil
18 Conservation Division can actually fully assess what's going on
19 out there and make sure that we are able to fulfill our duties
20 as an agency to make sure that we're protecting ground water,
21 that we are protecting correlative rights, that we are making
22 sure that we are fulfilling the obligations that we have as an
23 agency, which right now, we're not able to do because they're
24 not filing things the way that they should.

25 CHAIRMAN FESMIRE: Mr. Padilla, would you like to

1 reserve a statement or would you like to make a statement now?

2 MR. PADILLA: No. I'll do it now, Mr. Chairman.

3 First of all, listening to this opening statement, I'm sort of
4 appalled that the Division doesn't know what rule is being
5 violated. This business of saying "and/or" and admitting "we
6 don't know what rule is actually being violated" seems like
7 this whole application has been premature until some kind of
8 inspection is actually performed by the Division.

9 I say that as commentary based on counsel's opening
10 statement here. But our case is going to be about the 23 wells
11 that are supposedly noncompliant. Mr. Welborn is going to tell
12 you, first of all, the history of the purchase of the 71 wells
13 that they purchased from Marks and Garner. Unfortunately,
14 here -- as in the case I did two weeks ago -- in purchasing,
15 they adopted the same names. In other words, it made it
16 convenient for them to transition into the production phase of
17 the 71 wells and assume responsibility for them.

18 Mr. Welborn will tell you that Marks and Garner,
19 under new ownership, is not ducking any compliance issues here.
20 He will tell you that of the 71 -- what they have done to all
21 of the wells here -- and when you look at the big picture, they
22 have essentially taken all 71 wells, prioritized them and
23 inventoried those wells as to what they needed. He will tell
24 you that some of those wells needed pumping, new pumps. They
25 needed tubing or casing repairs or something, but -- and we're

1 down to 23 wells.

2 We'll also tell you those 23 wells, where they are
3 with respect to having done and performed compliance issues.
4 The production reports are all in, he'll tell you, for all of
5 the producing wells, and all of that has been brought up to
6 date. Now, he's going to admit that records were in shabby
7 condition at the time of the purchase. And yes, there's some
8 assumption of liability here in terms of violations and all
9 that.

10 But also Mr. Welborn will tell you that he's in
11 business. Sometimes you buy a property that's a fixer-upper.
12 He bought a fixer-upper here, and he's bringing it into a
13 reputable state. You don't do that overnight. There are three
14 wells here that are also in contention with ownership.
15 Sometime after this purchase occurred, there was a dispute over
16 a pulling unit that was supposed to stay with Marks and Garner.
17 Somehow or other the prior owners took that pulling unit, took
18 it to Texas. The pulling unit was assigned to use for
19 performing the work on these 23 wells -- and all the wells,
20 actually. That was a delay.

21 In the settlement that they had, and we'll hear, they
22 had made a deal where the former owners kept the pulling unit.
23 There were delays, then, with the pulling unit because of the
24 conditions in the industry and the demand on well equipment.
25 So, he'll tell you all the problems.

1 There are three wells, really, that belong to Buddy
2 Garner here, the old Buddy Garner from one of the prior owners.
3 He hasn't bonded those wells. I've been asked, but I think I
4 have a conflict because I did represent Marks and Garner, the
5 prior owners, before the Commission, so I can't do any
6 litigation for them. But they're going to file a lawsuit over
7 the three wells.

8 There's one well that's a state well that's on a new
9 state lease. The Land Office sold that lease and the new owner
10 of that lease wants to assume responsibility for that well. In
11 probably the next couple of weeks, that's going to be done.

12 But the overall picture, you will hear, is going to
13 be one that is not as dire as counsel for the Division
14 characterizes. There is no question there are some problems,
15 but those problems are part of the fixer-upper, and Marks and
16 Garner is taking care of those wells. Thank you.

17 CHAIRMAN FESMIRE: Ms. Altomare, would you call your
18 first witness.

19 MS. ALTOMARE: Yes. Thank you. The Division calls
20 Daniel Sanchez.

21 CHAIRMAN FESMIRE: Mr. Sanchez, for the record,
22 you've been sworn in this case.

23 THE WITNESS: Yes, sir.

24
25

1 DANIEL SANCHEZ

2 after having been first duly sworn under oath,

3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ALTOMARE:

6 Q. Will you state your full name for the record,
7 please.

8 A. Daniel Sanchez.

9 Q. And by whom are you employed?

10 A. The New Mexico Oil Conservation Division.

11 Q. And what is your full title with the Division?

12 A. Compliance and Enforcement Manager.

13 Q. And what is your -- just concisely, what are your
14 job duties as compliance enforcement?

15 A. I manage the four district offices for the OCD
16 and the Environmental Bureau, and I oversee enforcement
17 compliance programs for the Bureau.

18 Q. Are you familiar with the requirements of
19 Rule 201?

20 A. Yes. The basic requirements are an operator must
21 plug and abandon, obtain approved temporary abandonment status
22 or restore to production within a year plus 90 days of a well's
23 inactivity.

24 Q. Are you familiar with the requirements of
25 Rule 1115?

1 A. Yes. Basically, it's reporting requirements.
2 For all active wells, reporting is required.

3 Q. And by "active" you mean completed wells?

4 A. Completed wells.

5 Q. Have you reviewed the exhibit packet that the
6 Division submitted?

7 A. Yes, I have.

8 Q. And have you been provided with one?

9 A. Yes, ma'am.

10 Q. I'd like to direct your attention to --

11 MS. ALTOMARE: Oh, actually, prior to doing that, I'd
12 like to direct the Commission's attention to Exhibit No. 1. It
13 is actually an affidavit prepared by Dorothy Phillips regarding
14 the bonding involved in this case. It was executed and
15 actually was in the underlying hearing as well.

16 Q. (By Ms. Altomare): Mr. Sanchez, I'd like to
17 direct your attention to Exhibit No. 2.

18 A. Okay.

19 Q. Can you identify this for the Commission?

20 A. This is an inactive well list for Marks and
21 Garner. This was pulled on December 6th, 2007, and it shows 23
22 wells as inactive.

23 Q. Okay. And how is this list generated?

24 A. It's on OCD online.

25 Q. Okay. And OCD online, is that data available to

1 the public?

2 A. Yes, it is.

3 Q. And is the data derived from information that is
4 collected from the operator-submitted production reports?

5 A. That's correct.

6 Q. What is the last production column? What does
7 that mean?

8 A. That shows the last time that production or
9 injection into a well was recorded or submitted by the
10 operator.

11 Q. And that's based on the C-115 submitted by the
12 operator?

13 A. Yes.

14 Q. Are these documents maintained at OCD online and
15 generated and maintained during the regular course of business?

16 A. Yes, it is.

17 Q. What does it mean if a well is listed on this as
18 being inactive?

19 A. Just that the well, the operator, has not
20 reported any production for that well or it is not on approved
21 temporary abandonment status or hasn't been properly plugged.

22 Q. For one year plus 90 days?

23 A. For one year plus 90 days.

24 Q. I'd like to direct your attention now to Exhibit
25 No. 3. What is this document?

1 A. This is the inactive well list for Marks and
2 Garner, and this one was pulled on August 7th, 2008, and this
3 one is showing 14 inactive wells at this time.

4 Q. And so as of August 7th, Marks and Garner still
5 had 14 inactive wells?

6 A. That's correct.

7 Q. And looking at this list, seven of the listed
8 wells actually have not reported production until sometime
9 prior to 2004; is that right?

10 A. Yes.

11 Q. And 2004 is, to your best understanding,
12 approximately when Mr. Welborn became involved in Marks and
13 Garner?

14 A. Yes.

15 Q. What are the wells that have not produced since
16 before 2004?

17 A. They're the Coquina State #001, the Ernest
18 Federal #001, the Julia Culp #001, the Lea/UA/State #001, the
19 Red Twelve State #006, the State #001, and the WM Snyder #001.

20 Q. And again, this document was generated in the
21 same fashion as Exhibit No. 2, correct?

22 A. Yes.

23 Q. Okay. Are you familiar with the violations that
24 were specifically alleged in the original application filed
25 back in November?

1 A. Yes, I am.

2 Q. And are you familiar with the history of
3 violations of Marks and Garner?

4 A. Yes.

5 Q. Based on the well files, when did inactive issues
6 begin to arise with regard to Marks and Garner?

7 A. Back in 2001.

8 Q. And what do the OCD records reflect with regard
9 to documented inactivity noncompliance?

10 A. Well, a number of things. A number of letters of
11 violation were sent out to Marks and Garner over the years.
12 There were never really any responses during that time period.

13 Q. Okay. All of the violations, whether they
14 occurred before or after Mr. Welborn became involved, would
15 have been documented, correct?

16 A. That's correct.

17 Q. Since 2004, what kinds of actions did the
18 Division take to try and obtain compliance with regard to these
19 inactive wells?

20 A. The same. A number of letters of violation were
21 issued through the district office with a request for specific
22 dates that the violations be taken care of. There was never
23 responses from Marks and Garner from those letters.

24 Q. In April of 2005, what actions were taken by the
25 Division?

1 A. They selected -- basically, one of the wells that
2 was inactive at the time -- at the time, they were called
3 Notices of Violation through the RBDMS system. And they were
4 given a specific time frame to go ahead and take care of that
5 well and respond. And nothing came out of that letter.

6 Q. Okay. And is that common for the district office
7 to pick one of a selection of wells even if there is more than
8 one well in violation at that time?

9 A. Yes. The common practice is usually to pick one
10 or two wells, and when the operator contacts the OCD to resolve
11 the issue, then we'll sit down with them and discuss the other
12 wells that may be out of compliance and give them the
13 opportunity to take care of those as well.

14 Q. And you indicated there was no response received
15 to the April 7, 2005, notice, correct?

16 A. Yes.

17 Q. I'd like to direct your attention to
18 Exhibit No. 6 in the OCD exhibit packet.

19 A. Okay.

20 Q. Is this the letter to which you're referring that
21 has been identified as the Notice of Violation?

22 A. Yes, it is.

23 Q. And again, this is dated April 7, 2005?

24 A. That's correct. And it was for the Coquina
25 State #001, and it gave a corrective action due date of May

1 18, 2005, which was not met.

2 Q. What further action was taken by the Oil
3 Conservation Division when no response was received by Marks
4 and Garner in response to the April 7th letter?

5 A. Another letter was issued on November 21st
6 of '05, once again stating that the Coquina State #001 was not
7 in compliance with Rule 201. And it gave another corrective
8 action due date of February 18th, 2006.

9 Q. And this is the letter that has been documented
10 as Exhibit No. 7?

11 A. Yes.

12 Q. And this letter has been dated November 21, 2005?

13 A. Yes.

14 Q. Was any response received, to your knowledge, to
15 the November 21st, 2005, letter?

16 A. No.

17 Q. I'd like to direct your attention to
18 Exhibit No. 8. What's this document?

19 A. This is the letter of violation dated December
20 7, 2005, and it covers seven different wells: The State #001,
21 the Hodges Federal #002, Cave Pool Unit #041, the Theos
22 State #001, the Red Twelve State #006, the Red Twelve Levers
23 Federal #008Q, the Red Twelve Levers Federal #012.

24 Q. Okay.

25 A. All of these wells were listed as being out of

1 compliance with Rule 201.

2 Q. And all but one of them are among the 23 that
3 were identified in the current application, correct?

4 A. That's right.

5 Q. And to your knowledge, was any response received
6 from Marks and Garner in response to this letter?

7 A. No.

8 Q. Okay. Looking at Exhibit No. 9, what does this
9 indicate?

10 A. Exhibit No. 9 is a Notice of Violation issued on
11 the 19th of June, 2006, once again, for the Coquina State #001,
12 Rule 201 violation, third letter, expired in February 18th of
13 2006, and corrective action due date for that was July 6, 2006.

14 Q. And to your knowledge, was any response received
15 by the deadline set in this letter?

16 A. No.

17 Q. Okay. With regard to Exhibit 7 through 9, are
18 these documents, these letters, of the sort that are typically
19 issued by the districts in the normal course of business?

20 A. Yes, they are.

21 Q. I'd like to direct your attention to
22 Exhibit No. 10. What is this document?

23 A. This is a letter of violation that was issued
24 from Santa Fe to Marks and Garner to August 30th of 2007, and
25 it's basically letting Marks and Garner know again that there

1 is issues that we have with a number of wells, and we would
2 like a response. We also gave them a list of the wells that we
3 were concerned about and that we needed to resolve that issue.

4 Q. Okay. And this letter was prepared by OCD
5 counsel, correct?

6 A. Yes.

7 Q. And you indicated you gave them a list of wells.
8 In fact, it attaches a full inactive well list current as of
9 that time, right?

10 A. Yes.

11 Q. And at that time there were 24 inactive wells?

12 A. I believe that's correct.

13 Q. To your knowledge, was any response received from
14 Marks and Garner after the mailing of the August 30th, 2007,
15 letter?

16 A. No, there was no response.

17 Q. What was the next step that was taken by the Oil
18 Conservation Division after not receiving a response to the
19 August 2007 letter?

20 A. We filed the official case against Marks and
21 Garner.

22 Q. Okay. Have you had an opportunity to review the
23 exhibit that was submitted by Marks and Garner for the current
24 hearing today?

25 A. Yes, I have.

1 Q. Does it appear to be a spreadsheet listing a
2 number of wells? Does it accurately and comprehensively
3 portray, to your knowledge, the current status or what has
4 occurred with regard to the wells that are listed?

5 A. No.

6 Q. Let's go through the list, and you can tell me
7 why or why not.

8 A. Okay.

9 Q. With regard to the Cave Pool Units 27 and 36, the
10 document notes that, "Needs to T&A, sent in procedure."

11 What information do you have regarding these two
12 particular wells?

13 A. As of yesterday, the well file indicated the last
14 entry by Marks and Garner was -- or, into the well file -- were
15 letters dated December 4th of 2006 to Marks and Garner
16 determining the injection -- for their authority to inject into
17 these wells, and that was it. There were no letters of intent
18 to TA or no procedures that were listed in the well files for
19 these wells.

20 Q. Okay. In fact, has the district indicated that
21 they've received anything informally that wouldn't have been
22 entered into the well file or scanned in?

23 A. According to the district as of yesterday, I
24 haven't received anything.

25 Q. Okay. You mentioned that the injection authority

1 had been terminated. When was the injection authority
2 terminated?

3 A. December 4th, 2006.

4 Q. Actually, wasn't it terminated back in 2004,
5 originally?

6 A. I didn't read that part of the well file, but
7 that's probably correct.

8 Q. They were shut in originally in 2004?

9 A. Yeah.

10 Q. Okay. So to the best of your knowledge, these
11 two wells are still currently inactive with no plans for
12 remediating the situation?

13 A. As of today, that's correct.

14 Q. With regard to the Coquina State #001, the
15 spreadsheet notes, "Plugging, sent in procedure."

16 What information do you have regarding the Coquina
17 State #001?

18 A. We do have a C-103 that was sent in, and there
19 was a notice of intent to plug and abandon that well. It was
20 submitted on July 23rd and was denied by the OCD as being
21 insufficient.

22 Q. To your knowledge, has any follow up been
23 performed?

24 CHAIRMAN FESMIRE: Ms. Altomare, do you have an
25 exhibit that we don't have, perhaps?

1 MS. ALTOMARE: I'm looking at the Marks and Garner
2 exhibit.

3 COMMISSIONER BAILEY: I've never seen that one.

4 THE WITNESS: Excuse me, Mr. Commissioner?

5 COMMISSIONER BAILEY: It's attached to the
6 pre-hearing statement.

7 MS. ALTOMARE: I apologize.

8 MR. PADILLA: I have some of the exhibit.

9 CHAIRMAN FESMIRE: Go ahead and proceed,
10 Ms. Altomare.

11 MS. ALTOMARE: I apologize. I didn't realize it
12 was --

13 CHAIRMAN FESMIRE: We did have it. It just wasn't
14 where we thought it was going to be.

15 MS. ALTOMARE: Okay.

16 Q. (By Ms. Altomare): I'm sorry. Back to the
17 Coquina State #001: You indicated that there had been an
18 intent to PA submitted?

19 A. It was denied by the district office.

20 Q. With what was the basis of the denial?

21 A. I believe the procedure was insufficient.

22 Q. Okay. And to your knowledge, has any follow up
23 been done by Marks and Garner to either resubmit or to make
24 further inquiries regarding further denial?

25 A. As of yesterday, no.

1 Q. Okay. Has any recent inspection been performed
2 with regard to the Coquina State #001 that you're aware of?

3 A. Yes. One of the inspectors from the district
4 office went out a couple of days ago to verify whether it was
5 plugged, I guess. And it hadn't been.

6 Q. Okay. And, in fact, there's no pump on the unit,
7 but there is still equipment on the site, and there's still no
8 activity on the site?

9 A. That's correct.

10 Q. Okay. And so the Coquina State #001 is still
11 inactive with no plans for remedy at this time?

12 A. That's correct.

13 Q. With regard to the Julia Culp, which is the next
14 one listed, the spreadsheet indicates, "Plugged and abandoned
15 through OCD 2001," question mark, "Bill Pritchard witnessed,
16 found paperwork."

17 There was some testimony at the underlying hearing
18 that there was some confusion about whether or not this
19 particular well had been, in fact, plugged and abandoned. What
20 is the current status of this well, to your knowledge?

21 A. It's still listed as inactive. The last item in
22 the well file was a C-103 with a notice of intent to plug and
23 abandon. That was on January 24th of 2002. There hasn't been
24 any other follow-up paperwork to show that the plugging was
25 completed.

1 Q. Okay. Was a recent inspection conducted to try
2 and confirm the current status?

3 A. Yes. A couple of days ago, August 11th, I
4 believe, an inspection was made, and there was still equipment
5 on site. Restoration hadn't been completed, and it was still
6 not ready to be released.

7 Q. And under the rules, how long does an operator
8 have to complete site restoration?

9 A. One year after the plugging has been approved.

10 Q. So what is your understanding after talking to
11 the district and further reviewing records as to when this
12 plugging would have occurred in relation to now? How many
13 years ago?

14 A. It would be about six years.

15 Q. Okay. And so this well's current status is that
16 it is not currently in compliance?

17 A. It's still listed as inactive.

18 Q. Okay. With regard to the WM Snyder #001, the
19 spreadsheet lists, "Plugging, sent in procedure."

20 Have you seen any additional paperwork or do you know
21 of any additional paperwork listing a procedure for plugging on
22 this well?

23 A. No. The last entry into the well file as of
24 yesterday was for December 14th of 1994 and was a request for
25 allowables.

1 Q. Has the district received anything that hasn't
2 been put into the well file regarding this well and possible
3 plugging or other way of remedying this well's inactive state?

4 A. As of two days ago, no.

5 Q. Okay. Regarding the Theos State #001, the next
6 well listed on Marks and Garner's spreadsheet, again, it's
7 listed, "Plugging, sent in procedure."

8 What is your current status, to your knowledge, about
9 this?

10 A. That one is still inactive. The last entry into
11 the well file was the letter of violation sent on December 7th
12 of '05 showing that it was in violation of Rule 201.

13 Q. Do you have any further information regarding the
14 history of inactivity on the Theos State?

15 A. It has been -- well, just the fact that there
16 have been no sundry shown, and it's been put back into
17 production for that period of time. There's very little in the
18 well file showing, you know, giving the history on that one.
19 It shows that there's no production since about August of 2003
20 with the exception of a five-month period in 2005 between
21 January of '05 and November of '05. Identical amounts of gas
22 were reported for those months.

23 Q. Do you find this reporting to be a bit anomalous?

24 A. Well, yes, for a couple of reasons: One, the
25 fact that there had been no production reported at all for this

1 well for quite some time, then all of a sudden, just for five
2 months, the exact same amounts were reported for that
3 five-month period. And then production once again stopped --
4 or reporting of the production stopped after that period.

5 Q. What was the status of this well according to the
6 inspection that was conducted on it in 2001?

7 A. It showed that the site had no motor pumping
8 unit, no rods in the hole. TA was granted that had expired in
9 2002 and no sundries had been submitted to reflect any work
10 done at that time.

11 Q. So is there any reason to believe that there was
12 a way that this well could have been brought back on line
13 between the 2001 entry saying that there was no pumping unit
14 and the 2005 reporting of production?

15 A. Not by the records that we have.

16 Q. Okay. The next well listed on the Mark and
17 Garner exhibit is the Red Twelve Levers Federal #008Q. The
18 spreadsheet indicates, "Need to T&A, sent in procedure."

19 What information, if any, do you have on this well?

20 A. Once again, nothing has been submitted as of
21 yesterday. The last entries into the well file for those were
22 the letters of violation for these two wells issued on
23 December 7th of '05.

24 Q. Actually, it's the same status of the Red Twelve
25 Levers Federal #012, the same situation?

1 A. Yes.

2 Q. Do you recall testimony that was provided by
3 Mr. Welborn at the underlying hearing about these particular
4 wells --

5 A. Yes.

6 Q. -- wherein he said that they had never actually
7 been completed to the point where they were being produced?

8 A. Yes. That there was probably a mistake in the
9 reporting and that they would go ahead and correct the
10 reporting issues.

11 Q. To your knowledge, has he made any of those
12 corrections?

13 A. Not as of today or yesterday.

14 Q. So the current status of both these wells at this
15 time is they are inactive with no plans for remedy?

16 A. At this time, yes.

17 Q. The next well listed on the spreadsheet is the
18 Red Twelve State #006, which has the same descriptor as the Red
19 Twelve State -- I mean, as the State #001. Both of them
20 indicate, "Need to plug."

21 Do you have any further information on those two
22 wells?

23 A. No. No requests -- or no paperwork has been
24 filed requesting that these wells be plugged.

25 Q. So these wells or both currently inactive?

1 A. They're currently inactive.

2 Q. Regarding the Lea/UA/State #001, this spreadsheet
3 indicates simply, "Need change of operator."

4 Have you been made aware of or do you have any
5 paperwork that indicates that there's a change of operator for
6 this particular well?

7 A. None. The last entry in the well file was a
8 change of operator from Debbie McKelvey to Mickey Welborn for
9 the current operator.

10 Q. Okay. And what was the date on that?

11 A. It was March 14th, 2005.

12 Q. What was the last filing prior to transfer of
13 operator filed on that well?

14 A. There was a submission for the intent to plug the
15 well back in December of 2003. It never was followed through
16 with, though. The current status on that well is still
17 inactive.

18 Q. Okay. Is this spreadsheet that's been provided
19 by Marks and Garner complete? Does it list all of the wells
20 involved in this particular action?

21 A. No, it does not.

22 Q. I'd like for us to review the wells that are not
23 listed on there, the first two being the Bradley Federal #001
24 and #003. What, to your knowledge, is the current status of
25 the Bradley Federal #001 and #003?

1 A. Currently the sundries to plug and abandon were
2 filed in late January after the hearing in this case in '08.
3 Right now, at this time, we haven't had any paperwork submitted
4 indicating that they have been plugged or they're ready to do
5 that.

6 Q. Actually, it looks like they've been plugged, but
7 we just don't know if they've been released; is that right?

8 A. Exactly.

9 Q. Okay. So they're federal wells.

10 A. They're federal wells, but we haven't received
11 the paperwork to indicate to us that the well has actually been
12 plugged. There's no, you know -- and it's ready for release.

13 Q. Okay. I think we actually do you have the
14 plugged, but not the release. I think that's --

15 A. Not the P&A?

16 Q. Yeah.

17 A. Okay.

18 Q. The next well is the City Service State #001.
19 What do the OCD records reflect for this well?

20 A. It shows that Marks and Garner is still the
21 operator of record. They were trying to transfer to another
22 operator, but the transfer hasn't gone through yet. So as far
23 as the OCD is concerned, it is still a Marks and Garner well.

24 Q. What's the last record that we have in the actual
25 well file for this?

1 A. It's a request for authority to transport filed
2 in 1994.

3 Q. And when did this -- has this well been reporting
4 production?

5 A. It started reporting production again in January
6 of this year, apparently. There's some record listing the
7 C-103s showing what work was done to get the well back in
8 order. The well was inactive from December of 2005 at that
9 time. So currently it's still inactive. Well, at the time the
10 application was filed, it was still inactive. The current
11 status of it is it is still reporting production, but we're
12 still looking for paperwork on past actions taken to get that
13 well back in operation or reporting, whatever. You know, if it
14 was already producing back in that time, we needed production
15 records.

16 Q. So from December 2005 until recently in January,
17 it wasn't producing at all or reporting production?

18 A. It wasn't reporting production, yes.

19 Q. And the last sundry that we have as to anything
20 done on the site was 1994?

21 A. That's correct.

22 Q. Okay. On the Ernest Federal #001, what do the
23 OCD records reflect for this well?

24 A. They were given an extension by the BLM until
25 early May to finish remediation of the site and complete the

1 plugging and abandonment process. We don't have anything to
2 indicate that they have done so or met the date on that. Our
3 records reflect the start of the PA process was back in early
4 2006. But in the most recent federal sundries, there's still
5 debris on the site listed from them, and they haven't completed
6 the plugging and abandonment process yet.

7 Q. Because of the surface restoration?

8 A. The surface restoration issues.

9 Q. Okay. So it's still listed as inactive on the
10 OCD inactive well list?

11 A. Yes.

12 Q. The Graham Federal #003, what do the OCD records
13 reflect for this well?

14 A. The last submission was a sundry reporting well
15 back in production of July of '05. They stopped reporting
16 production back in November of '05 and, suddenly, was reporting
17 production again in September of 2007 with no additional
18 reporting submitted or no additional sundries to explain how
19 they got it back on line or if it had been producing for that
20 time period without any records for production.

21 Q. So the current status is that it's reporting
22 production, but we appear to be missing records?

23 A. Yes.

24 Q. The Jennings Federal #002, what is the current
25 status on that well?

1 A. The last record filed with the OCD was a request
2 for authorization to transport 2001. They stopped reporting
3 production as of December 2004, but began reporting production
4 again in August 2007. We're missing records regarding bringing
5 the well back on line prior to August of '07 and no production
6 reported since December 2004. So either they continued
7 production and once again didn't submit production reports, or
8 they haven't filed any C-103s indicating how the well was
9 brought back into production after that time frame.

10 Q. So again, the status is?

11 A. It is producing. It is in production at this
12 time, but it's missing records.

13 Q. Okay. The Kemnitz 17 State #001, what do the OCD
14 records reflect for this well?

15 A. Again, Marks and Garner is still the operator of
16 record. They were trying to transfer to another operator, but
17 the transfer hasn't gone through at this time.

18 Q. Okay. And the last record for this well in the
19 well file with the OCD?

20 A. A request for authorization to transport back in
21 1994. They stopped reporting production in February of 2006,
22 then once again reassumed production in September of '07. So
23 it's currently producing, but we're still missing records as to
24 whether or not it was reporting production for a lack of
25 reporting production or what other work was done to put it back

1 into production.

2 Q. The Levers #003Y; what's the current status?

3 A. It is reporting production, but once again,
4 missing records. The last thing we had was a request for
5 authorization to transport in '94. They stopped reporting
6 production in '03 and then once again, started up again in
7 December of 2007. So we have the same issues there.

8 Q. Okay. The Red Twelve Federal #002; what's the
9 current status?

10 A. It is reporting production but missing the same
11 records. Once again, it had a request for authorization to
12 transport completed in 1999 and stopped production in May of
13 '06, resumed production again in September of 2007. So the
14 records of between '06 and '07 is what we would be looking for.

15 Q. The Red Twelve State #003?

16 A. In 2005, there is correspondence where they
17 failed an inspection. Prior to that, the last filing was a
18 1999 request for authorization to transport. It stopped
19 reporting production in May of 2006. It started production
20 again in 2007. Currently it's producing, but we're missing
21 those records for that time period.

22 Q. And when you say, "currently producing," you're
23 saying -- we're assuming it's producing because we're receiving
24 reports of production?

25 A. They're reporting production.

1 Q. Okay. The State #002; what's the current status
2 on that?

3 A. The current status is it's reporting production,
4 and we're looking at missing records again. The 2000 sundry
5 subsequent report of production equipment was filed and it
6 began producing into a tank battery, but production reports
7 reflect no production reporting for those years that it was
8 supposedly producing into a tank battery.

9 Then it started to report production again in
10 September of '07. And prior to '07, no production reported
11 since some time prior to September of '03. So there's still
12 those time frames that we don't have records indicating what
13 was done or what was being produced.

14 Q. And finally, the Northeast Malajmar #001; what's
15 the current status on that?

16 A. It's inactive. And once again, this is the well
17 that they're trying to change the operator, and we still don't
18 have a change of operator record and, therefore, it's still a
19 Marks and Garner well.

20 Q. What's the last record that is in the well file
21 for this well?

22 A. It was an intent to plug and abandon in 1993.

23 Q. And how long has it been since this well has
24 reported production?

25 A. About five years.

1 Q. Okay. And all of these wells that we just
2 reviewed that were omitted from the list were inactive at the
3 time we filed the application; is that right?

4 A. That's right.

5 Q. Okay. Going back to the Marks and Garner
6 spreadsheet, I'd like to direct your attention to the very last
7 column listed as additional bonding; what do you interpret that
8 to mean?

9 A. Additional bonding would have been what would
10 have been required as of January 1, 2008, for the new bonding
11 rule, which states that if a state or fee well has been
12 inactive for more than two years, each of those -- or that well
13 that has been inactive requires individual bonding, additional
14 bonding.

15 Q. Okay. And that bond amount is based on the total
16 depth, correct?

17 A. Total depth, yes.

18 Q. Okay. And do you recall providing testimony at
19 the last hearing regarding the fact that there are a number of
20 Marks and Garner wells that require additional bonding?

21 A. Yes.

22 Q. To your knowledge, are the figures that are
23 listed on this spreadsheet accurate as to the Marks and Garner
24 wells that they are referencing?

25 A. Not necessarily. On the William -- or the

1 WM Snyder -- they show a figure of 15,765. According to our
2 records, that amount should be \$15,864.

3 Q. Wait, what about the Lea?

4 A. Oh, I'm sorry, the Lea.

5 Q. Yeah.

6 A. The Lea/UA/State #001; that was the same line in
7 the middle of that. I'm sorry. And then for the Cave
8 Pool #036, the total depth is not known per OCD records, so we
9 wouldn't have been able to have an amount on that until we get
10 that information. But it shows the same banding amounts as the
11 Cave Pool #027, so we're assuming that it's probably going to
12 be the same, if those numbers are correct.

13 Q. And then is this list complete as to all the
14 wells involved in this particular action and the additional
15 bonding needed?

16 A. No. There are other wells on the inactive list
17 that are still requiring additional bonding. As a matter of
18 fact, the additional bonding that's shown on this exhibit
19 hasn't been submitted to the OCD yet. It's just figures
20 showing what they believe would be the additional bonding
21 requirements.

22 Q. And what wells are missing from this list?

23 A. Specifically?

24 Q. Are the additional wells --

25 A. There are 14 on the inactive well list.

1 Q. The Northeast Malajmar isn't included on this
2 list; is that right?

3 A. Yes, that's right.

4 Q. And to your knowledge, what would be the bonding
5 amount needed for that?

6 A. That one would be \$15,900.

7 Q. And the Julia Culp doesn't have an amount listed.
8 What would be the amount needed for that?

9 A. That one is 15,765.

10 Q. And again, to your knowledge, none of these
11 single-well bonds have not been posted since the rule went into
12 effect in January, correct?

13 A. That's correct.

14 Q. So in total, how many wells for Marks and Garner
15 require additional bonding at this time?

16 A. At this time, 12.

17 Q. Twelve or ten?

18 A. Ten. I'm sorry. Excuse me.

19 Q. I'd like to direct your attention to Exhibit 12?

20 A. Yeah.

21 Q. What is Exhibit 12?

22 A. This is the additional financial assurance
23 report.

24 Q. Okay. And how was this particular report
25 generated?

1 A. It's generated through OCD online as well.

2 Q. And is this report and the date included on it
3 kept in the ordinary course of Oil Conservation Division
4 business?

5 A. Yes, it is.

6 Q. And are the figures generated on it based on data
7 submitted by the operators?

8 A. Yes, it is.

9 Q. And what does this report reflect?

10 A. It reflects that there's ten wells that require
11 additional bonding.

12 Q. Okay. Just for formality, let me go ahead and
13 reference Exhibit No. 11. Do you recognize what this document
14 is?

15 A. Exhibit 11 is the transcript of the proceeding
16 from the previous case, the January case.

17 Q. There's actually a portion of the transcript; is
18 that correct?

19 A. A portion of the transcript, yes.

20 Q. Have you reviewed this?

21 A. Yes.

22 Q. And does it, to the best of your knowledge,
23 accurately represent the testimony that were presented at the
24 hearing?

25 A. Yes, it does.

1 Q. Mr. Sanchez, what is the relief that you're
2 seeking for the Division in this particular action?

3 A. What we're asking for right now is that the
4 Commission find at the time the application was filed back in
5 January, the operator was in knowing and willful violation of
6 OCD Rules 201 and/or 1115 with regard to 23 wells. The
7 operator is currently in violation as to 14 wells either as to
8 Rule 201 because each of those wells has been inactive for a
9 period of at least one year plus 90 days and has not been
10 plugged and abandoned, temporarily abandoned, or put back on
11 production or is in violation of Rule 1115 because one or more
12 of those wells has appeared to have been inactive for this
13 period of time. They have actually been producing but the
14 operator has failed to file production reports as required by
15 Rule 1115.

16 We're asking that the operator be required to pay a
17 penalty assessment in the amount of 23,000, \$1,000 for each of
18 the 23 wells in violation at the time the application was
19 filed. We're asking that the operator be required to come into
20 full compliance with Rules 201 and/or 1115 by a date certain.
21 On the paperwork issues, I think October 31st would give them
22 sufficient time to get those records together and submit them.
23 Either plug and abandon, bring back into production, or obtain
24 approved temporary abandonment status on the remaining 14
25 inactive noncompliant wells also by October 31st of 2008.

1 We're asking the operator be required that for all
2 wells originally identified in the application as inactive, but
3 now recently reporting production, that operator submit the
4 delinquent C-103s, subsequent reports pursuant to Rule 1103 for
5 any remedial work performed or for any other activity requiring
6 the filing of such a form as defined by Rule 1103, Parts B, C
7 and/or D by -- I believe the end of this month should give them
8 enough time to do that -- just a couple of weeks. If they have
9 those records, it should be fairly easy for them to produce
10 them and submit them to the OCD.

11 We also are requesting that the operator be required
12 to post a single-well -- all single-well financial assurance
13 owed pursuant to Rule 101 and that as well by the end of this
14 month. And we would also like a determination that if the
15 operator fails to comply with this order by whatever dates are
16 set by the Commission, that the operator shall pay an
17 additional penalty of \$1,000 per well which hasn't come into
18 compliance by whatever date the commission has established, and
19 order that the Commission shall be permitted to plug those
20 wells and that the applicable bonding be forfeited if none of
21 these wells have come into compliance by that time.

22 Additionally, we're asking that the records be
23 corrected for the Red Twelve Levers #008Q and #012, and the
24 Theos State #001, which may or may not have been errors in
25 reporting production, and that those corrections be made by the

1 end of this month.

2 Q. Are there any other comments that you would like
3 to make, Mr. Sanchez?

4 A. Just that you know, there's a question as to
5 whether or not the operator knew of the previous infractions
6 from Marks and Garner before purchasing Marks and Garner. And
7 since the purchase was made in 2004 and a number of those
8 letters of violation went out after that time frame, we feel
9 that he was more than aware of what was going on with those
10 wells at that time.

11 I understand the idea of buying something that needs
12 to be fixed and requires additional work, but four-plus years
13 is probably plenty of time for most operators to be able to go
14 in, analyze what's going on with those wells and determine
15 whether or not they need to be remediated, whether they are
16 going to be able to go back in and plug a well, produce that
17 well again. At a minimum, go in there and do enough repair on
18 that well to get approved temporary abandonment status until
19 they can determine what can be done with those wells.

20 To say that they haven't had enough time as an
21 operator after four-plus years, I don't think is a really
22 adequate excuse to leave the wells in the condition that they
23 have been all this time. The issuance of penalties, I think
24 it's important. It's a deterrent to continued noncompliance.
25 I believe that that's really important in this case for the

1 reasons -- well, one of the reasons being that when we went to
2 hearing in January, they already knew of these infractions
3 before coming and us putting on our case. And that was in
4 early January. Now we're here in August, and we're still
5 looking at some of the same infractions. If the operator knew
6 that these infractions needed to be taken care of, they've
7 really shown no effort to take care of those problems.

8 And I think with that it shows a disregard for what
9 we're trying to do over here and trying to get compliance with
10 other operators. And it's not a good signal to send out.
11 There has to be some consequence, I guess, to those actions --
12 and I believe the penalties work in that they do understand
13 that there's consequences. And by paying those penalties, it
14 encourages them to come into compliance and hopefully work with
15 the OCD to come into compliance.

16 In the past, we've gotten no responses from those
17 letters of violations or any other type of contact that we
18 tried to have with the company. We feel this is one way to get
19 their attention and hopefully get them to work with us to come
20 back into compliance.

21 Q. One last question, Mr. Sanchez. Since the early
22 January hearing, to your knowledge, has Marks and Garner
23 plugged any of the wells that were in violation or set up or
24 scheduled or conducted any MIT tests in an effort to obtain a
25 TA for any of wells that are in violation?

1 A. Not that I'm aware of and not that I've talked to
2 the district office about that they've had any contact with
3 them.

4 Q. Okay. Thank you.

5 CHAIRMAN FESMIRE: Mr. Padilla, I'm assuming you've
6 got some questions for this witness.

7 MR. PADILLA: I do.

8 CROSS-EXAMINATION

9 BY MR. PADILLA:

10 Q. Mr. Sanchez, I'm confused as to why you say
11 you're not sure -- and correct me if I'm mistaken -- but you're
12 saying there is rule violations of Rule 201 and/or 1115, right?

13 A. Yes, sir.

14 Q. Which is it, 201 or 1115?

15 A. That depends on the outcome of the missing
16 paperwork. If the wells were actually producing, then what
17 we're asking for is that those production reports are filed and
18 then catch up with those reports. That would be a violation of
19 Rule 1115. If the well was inactive for that time frame and
20 they then brought back those wells into compliance, then they
21 would have to file a C-103 showing whatever remedial work was
22 done on that well to get it back into action, which would
23 indicate that they had been inactive for that period of time
24 and showing that they're in violation of Rule 201.

25 Q. At the Division hearing, was your testimony the

1 same that it was a violation of Rule 201 and/or 1115?

2 A. I believe at that time, that my testimony was
3 that all of those wells were in violation of Rule 201.

4 Q. Then?

5 A. Then.

6 Q. And now?

7 A. And now we're looking at -- like you said,
8 and/or. Some of the information that we got from Marks and
9 Garner through your exhibit here would indicate that the wells
10 were brought into compliance in some fashion, and also that
11 they all of a sudden started showing production in late 2007.
12 What we didn't know was were they always showing production or
13 were they always producing? If they were, like I said, then
14 there was a violation of 1115 by not showing that production.
15 And if not, if they had just been brought back in, then that
16 would indicate that they were in violation of Rule 201.

17 Q. Right now, did you do any investigation as to
18 which rule was actually in violation?

19 A. Like I said, until we have a complete record,
20 which we're asking it be submitted by Marks and Garner, we'll
21 have only speculation in terms of which rule is being violated.
22 But we could go with just the inactive well rule at that time.
23 What we're asking for is the penalty be based on the 23 wells
24 that were inactive at the time of the original application
25 which were in violation of Rule 201.

1 Q. I understand that. My question was whether you
2 had conducted an investigation.

3 A. Not personally. We have had district personnel
4 go out and check some of the wells that were in question for
5 this hearing.

6 Q. Which wells did they check?

7 A. I believe it was the Coquina State, and I have to
8 ask my attorney. I can't remember the other one right now.
9 She had spoken with the inspector.

10 Q. Well, do you know yourself?

11 A. Yes. At the time, I had them written down, but I
12 have a lot of things going on, so I don't remember exactly the
13 names of every well that I have people going out and taking a
14 look at or anything else.

15 Q. Well, I assume you looked at -- you prepared for
16 this hearing, and you're testifying concerning violations, and
17 I'm asking you first of all, did you conduct an investigation.
18 You told me that the district office, you know, made
19 inspections of two wells. One was the Coquina and the other
20 you can't tell me, right?

21 A. I don't remember which was the other well, yes,
22 sir. That's correct.

23 Q. How about the other 21 wells that are under
24 investigation or part of this hearing? Do you have any
25 inspection or investigation made on those wells?

1 A. Not at this time.

2 Q. From January -- from the January hearing to this
3 time, you haven't had any inspection or investigation
4 performed?

5 A. No.

6 Q. How many of these wells are federal wells where
7 you may not have received paperwork from the federal
8 government, the BLM?

9 A. Of the wells in question, there's at least two:
10 The Red Twelve Levers Federal #008Q and #012.

11 Q. Did you check the BLM records to determine
12 whether any paperwork had been filed with the BLM?

13 A. I don't have access to the BLM database. What we
14 do is when the BLM completes their paperwork, they usually
15 forward that to the district office, and that's put into our
16 well files. And what I checked was our well files, and there's
17 nothing in our well files to indicate that we received anything
18 from the BLM.

19 Q. You have made no other verification with the BLM
20 as to whether any paperwork had been filed?

21 A. No, I haven't.

22 Q. How many of these wells -- of the 23 wells listed
23 on the application, how many have actually been plugged and
24 abandoned, but maybe the paperwork has not been completed?

25 A. There may be two wells that I'm aware of that

1 were actually plugged and abandoned where we're waiting for the
2 final paperwork from the BLM.

3 Q. And those are the Bradley Federal wells?

4 A. I believe so.

5 Q. You don't know?

6 A. I'm not sure which ones, but there were two that
7 we were waiting -- that we have paperwork showing that the
8 wells have been plugged, but site restoration needed to be
9 completed.

10 Q. Correct me if I'm wrong, what you're doing is --
11 as I understand it, you look at OCD well files and you base
12 your violation on the records of the OCD, right?

13 A. That's correct.

14 Q. Now, let me -- are you saying that the C-115
15 filing is deficient for some of these wells?

16 A. I'm saying it may be deficient in terms of which
17 of those violations that we're looking at. If the well all of
18 a sudden started showing production again without any
19 indication that there was any remedial work done to that well,
20 then it's hard for us to say whether it had been producing for
21 a time before that. The records and the reporting just wasn't
22 done, in which case, like I said, there was a violation of
23 Rule 1115, or if that well had been inactive and some work was
24 done to bring that well back into compliance or back into
25 operation.

1 Q. So if you have -- well, I don't understand for
2 what periods there may be deficiencies in the C-115s. Are you
3 saying there are gaps in the past or present gaps or when --

4 A. Most of those gaps occur prior to late 2007 when
5 a number of those wells on that list started reporting
6 production again. There were time frames when the production
7 reports ended 2003, 2005, various time frames which we went
8 through in the testimony. The time periods that we're
9 questioning are those time frames when that initial reporting
10 had stopped up to the time frame where the reporting began
11 again in 2007.

12 Q. So let's just say -- I think your testimony was
13 that in September of 2007, a number of those wells started
14 producing?

15 A. That's correct.

16 Q. Are the C-115s up to date as of that production
17 starting in September of 2007?

18 A. I believe those ones are. We have another
19 witness, Jane Prouty, you could ask that. She'd be able to
20 tell you exactly which ones are.

21 Q. As far as you know?

22 A. As far as I know, they are, yes.

23 Q. Are there any wells currently that you know of
24 from this list of 23 wells that are producing wells for which
25 there aren't any current C-115s?

1 A. Not that I'm aware of.

2 Q. So if you're looking for C-115 deficiencies,
3 you're looking for deficiencies that may have occurred in the
4 past before these wells got placed on production, right?

5 A. That's correct.

6 Q. And do you have any specificity, based on your
7 records, as to when those C-115s -- or which one of those
8 C-115s are missing?

9 A. We could go back through the exhibits that we
10 just -- or my testimony that we went through, and we could pull
11 dates out of there if you'd like. But like what I described in
12 my testimony, take the Red Levers Federal #002. It stopped
13 production in '06 and once again reassumed in September '07.
14 Either it was not producing or it was.

15 If it was producing, then the time frame we're
16 looking at is that time frame between May of '06 and September
17 of '07. If not, when it went down, with that length of time,
18 you would think that something had to be done to the well in
19 order to get it back producing again. So we're looking for the
20 C-103 that should have been filed to get that well back in
21 production.

22 Q. Let's just say that a pump was put on a well.
23 Would a sundry notice have to be filed?

24 A. Yes, it would.

25 Q. What would it say?

1 A. I'm not sure exactly the language it would say,
2 but according to Rule 1103, any time any remedial work is done,
3 replacing of a pump, tubing, whatever, a C-103 must be filed
4 with the district office showing what work was done.

5 Q. To your knowledge, are there -- other than the
6 wells listed on Exhibit 1 of Marks and Garner, are there any
7 other wells that are materially out of compliance?

8 A. At this time, not that I'm aware of.

9 Q. Has the OCD, other than the two wells that you
10 mentioned, done any inspections for surface restoration or any
11 of that sort of thing?

12 A. Not that I'm aware of.

13 Q. Let me -- on your exhibits -- and I don't have --
14 I didn't get copies of these exhibits, but I assume you're
15 using the same exhibits as before at the January hearing.

16 MS. ALTOMARE: Actually, we're not, and I e-mailed
17 you a full packet.

18 MR. PADILLA: I didn't get it. So --

19 MS. ALTOMARE: Okay.

20 MR. PADILLA: That's beside the point.

21 Q. (By Mr. Padilla): A number of these letters were
22 sent to PO Box 70, Lovington, New Mexico.

23 A. Yes, sir.

24 Q. And there was one letter dated June 6th of 2006
25 that we sent to PO Box 108, Hobbs, New Mexico. Do you know

1 which one of those addresses is the actual current, correct
2 address?

3 A. At the time the letters of violation were sent
4 out to PO Box 70, Lovington, New Mexico, that was the correct
5 address of record. The 2006 letter that went out to Hobbs, I
6 believe, was also an accurate address, and that was given by
7 the operator.

8 Q. Looking at Exhibit No. 8, which is a letter dated
9 August 30th, 2007 --

10 MS. ALTOMARE: I'm going to interject so we can be
11 consistent with exhibit numbers. May I approach counsel?

12 CHAIRMAN FESMIRE: You may.

13 Q. (By Mr. Padilla): Your Exhibit 10, current
14 Exhibit 10.

15 A. Okay.

16 Q. Why was the PO Box 70 still used on that letter
17 which is dated August 30th, 2007, after say, June 19th, 2006,
18 when a letter was sent to the current address, Box 1089, Hobbs?

19 A. It must have still been listed on our records as
20 the official address.

21 Q. Why would that letter of June 19th, '06, be
22 directed to PO Box 1089, Hobbs, New Mexico?

23 A. I have no idea. I'm not the one who created that
24 letter or sent it out, so I'm not sure how that address was
25 obtained.

1 Q. Well, that came from the compliance officer,
2 Buddy Hill. Does he work under your supervision?

3 A. Yes, he does.

4 MR. PADILLA: I don't have any further questions.

5 MS. ALTOMARE: Mr. Chairman, can I do a couple of
6 follow up?

7 CHAIRMAN FESMIRE: Why don't we go ahead and let the
8 commissioners ask and you can redirect at that time.

9 Commissioner Bailey?

10 COMMISSIONER BAILEY: I have a question about OCD
11 process, and I just want to be clear. Using an example of the
12 Kemnitz 17 State Well #001, which shows up on OCD Exhibit 2,
13 but not on Exhibit 3 -- the Kemnitz 17 State #001?

14 A. Okay.

15 Q. Your comments during your testimony was that it
16 dropped off because there was a transfer of operator or
17 application to transfer operator?

18 A. No. It actually wouldn't come off just for a
19 transfer of operator unless that transfer actually occurred.
20 If it fell off this, it was in some other way brought into
21 compliance. Either it was transferred officially by the OCD to
22 another operator, or they got it back into production, TA'd or
23 plugged. That's the only way it would be coming off of that.

24 Q. Okay. So we don't know if it was plugged or not
25 at this point?

1 A. No. I'd have to review the later well file.

2 Q. Okay.

3 A. I'm sorry. It's reporting production at this
4 time, so that's why it fell off the list.

5 Q. The Kemnitz located in Unit Letter M, of
6 Section 17, 16 South, 34 East, is reporting production?

7 A. According to current C-115s, yes.

8 Q. Okay. Because I queried ONGUARD yesterday for
9 production from that well for the period of January 2004
10 through August of 2008, and it's showing no production.

11 A. No production?

12 Q. Yes. In addition, that acreage is state acreage,
13 and there is no lease on that acreage. So if there is
14 production, it's in trespass and violation of the law.

15 A. Yes, ma'am.

16 Q. Which brings up my question on the OCD process.
17 If there's a transfer of operator, is there any checking to see
18 what the status is for state lands to see if it's leased or not
19 leased?

20 A. I'm not familiar with that process. When the
21 paperwork comes in, it goes to a different area. I never see
22 that stuff, so I'm really not familiar at all with that
23 process. Jane Prouty, who is our other witness who will be in
24 this afternoon, will be the one to ask that question.

25 Q. Then I would just like to give a heads-up that

1 any activity of this well, the only activity that can be
2 performed is plugging and abandonment --

3 A. Okay. Thank you.

4 Q. -- because there's still a liability if there is
5 no -- if it has not already been plugged.

6 A. Okay.

7 Q. I guess that's all that I have for my questions
8 for you.

9 A. Thank you.

10 CHAIRMAN FESMIRE: Commissioner Olson?

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

12 EXAMINATION

13 BY CHAIRMAN FESMIRE:

14 Q. Mr. Sanchez, there were three -- in the OCD
15 exhibits, there were three letters of violation. Some of them
16 involved the same wells or the same properties; is that
17 correct?

18 A. Yes, sir.

19 Q. And the letter was sent out, and then nothing --
20 there was no follow up between the letters?

21 A. There were no responses from the operator, so the
22 next letter was actually sent out after that to the operator
23 from the district.

24 Q. Okay. So is it -- again, this is a question of
25 OCD process: Is that the way it works? You just keep sending

1 them letters?

2 A. That's the way it used to work. What I found
3 through supervising the district offices is that letters would
4 go out on a regular basis regardless if there was a response or
5 not. What we've done with the new compliance and enforcement
6 policies that we're putting in place here is to stop that.

7 What we're doing now is when a letter of violation
8 goes out, that letter of violation is notice to the operator
9 that they have a certified period of time to respond to the
10 OCD, and there's no penalties or anything. All it's stating is
11 you're in violation of this, please respond within this time
12 frame and take care of the problem. Either way, they have to
13 respond to the OCD. There's a definite message there to
14 respond within, I believe, ten days on any letter of violation.

15 If at that time, we don't get a response from an
16 operator, the next step is to issue a notice of violation. A
17 notice of violation contains penalties, and it also requires
18 the operator to contact me within a ten-day time frame, and we
19 schedule an administrative conference with that operator in the
20 individual district. We sit down with them. We review the
21 notice of violation again. We listen to their side of the
22 story, and at that time, we determine whether or not to waive
23 the penalty or to go forward with the penalty. In either case,
24 we'll go into an Agreed Compliance Order and that resolves the
25 issue. It gives the time frames to resolve whatever issue was

1 out there. If it's already been resolved, that's stated in the
2 Agreed Compliance Order. Any penalties issued is in the order.
3 If a penalty is waived, that's also stated in that order and
4 that's what closes out that case.

5 So in the past, there may have been anywhere from two
6 to five to ten letters that would have gone out for the same
7 violation. Now the maximum is two and we've been able to
8 resolve a lot of issues by cutting it down that way.

9 Q. Okay. So Marks and Garner did not respond. Have
10 you ever had any contact with Marks and Garner concerning these
11 letters, any phone calls or anything like that?

12 A. No. Not until the time we filed the application.
13 At the time we did that for the hearing, we were just getting
14 into this, and the district offices were just getting used to
15 that process of just the one letter of violation and notice of
16 violation and then the Agreed Compliance Order.

17 So usually the district office would try to make the
18 call to the operator until they were frustrated enough to tell
19 the attorneys in Santa Fe. And that's where we would go
20 forward with the process.

21 Q. So there never was an Agreed Compliance Order or
22 an offer of an Agreed Compliance Order to Marks and Garner to
23 cover all these things?

24 A. No, there was not.

25 Q. And the reason for that was they simply didn't

1 respond to the letters?

2 A. That's correct.

3 Q. But if they had, would you have negotiated an
4 Agreed Compliance Order that would have addressed the concerns
5 that Marks and Garner had and the scheduling?

6 A. Yes, we would have.

7 Q. And do you do that customarily?

8 A. Yes, we do.

9 Q. When you negotiate an Agreed Compliance Order,
10 what sort of issues do you take into account?

11 A. Depending on what the violation is. In this
12 case, it was the inactive wells. We would sit down with them.
13 We would have given them a time frame to address all of the
14 wells. When we do that, we don't establish the time frame for
15 that. We discuss it with the operator, what they're
16 comfortable with, what equipment is available at that time, you
17 know, manpower. There's a lot of things that go into an Agreed
18 Compliance Order.

19 Q. Like the resources of the company?

20 A. The resources of the company. Just about
21 everything that would affect them being able to bring in --
22 getting into compliance in a certain time frame. And all that
23 is taken into account.

24 Q. Okay. Let's talk about the address issues on the
25 letters. Are these letter sent return receipt requested, or --

1 A. At this time, they were not.

2 Q. Are they now?

3 A. If it goes to a notice of violation, they are.

4 Q. And if I remember correctly, the April '05 letter
5 went to PO Box 70. The November 21st, '05, letter went to PO
6 Box 70. The December '05 letter went to PO Box 70. And then
7 the June '06 letter went to PO Box 1089. And then the letter
8 of violation on August 30th goes back to PO Box 70 in
9 Lovington.

10 A. That's correct.

11 Q. Except that the envelope copy on the back page is
12 addressed to PO Box 1089 on the August 30th letter.

13 A. Yes. I see that.

14 Q. The discrepancy there between the letterhead
15 address and the address on the envelope, which I'm assuming was
16 attached, because it was the envelope this was sent in, right?

17 A. I believe so.

18 Q. So we have a little problem with the address. Do
19 you know what the current address is to Marks and Garner?

20 MS. ALTOMARE: You know what? If you look at the
21 date stamp, though, that may be a clerical error on my part.
22 If you look at the date stamp on the envelope, it's the one for
23 June.

24 CHAIRMAN FESMIRE: 6/29, okay.

25 MS. ALTOMARE: Yeah.

1 CHAIRMAN FESMIRE: So that was --

2 MS. ALTOMARE: That was my error. I apologize.

3 CHAIRMAN FESMIRE: So that envelope was with the
4 prior letter, the one that did go to PO Box 1089.

5 MS. ALTOMARE: Yeah. It was my error. Sorry.

6 CHAIRMAN FESMIRE: I thought I was so clever to catch
7 that, and I didn't look at the date.

8 Q. (By Chairman Fesmire): But either way, we appear
9 not to be consistent in our address for Marks and Garner. Why
10 would that be?

11 A. That I'm not sure. The only thing I can think of
12 is that someone from the company changed the address as the
13 official address of record. We at the OCD do not deal with
14 that. It's given to us by the operator and if there is a
15 change, that change is also given to us by the operator.

16 Q. Okay.

17 MS. ALTOMARE: There's actually going to be another
18 witness that's better equipped to testify to that. I mean,
19 you're welcome to inquire further, but --

20 CHAIRMAN FESMIRE: Well, thank you, ma'am.

21 MS. ALTOMARE: Just for your information.

22 Q. (By Chairman Fesmire): Mr. Sanchez, it does
23 concern me that we would send the 19 June letter to one address
24 and then come back and send the August 2007 letter to the old
25 address. Is there a possibility that the company uses both

1 addresses?

2 A. That's a possibility, but I'm not sure if that's
3 the case.

4 CHAIRMAN FESMIRE: Ms. Altomare, you indicated you
5 had a redirect of this witness?

6 MS. ALTOMARE: I do. I just have a couple of
7 clarification questions, if you'll indulge me.

8 REDIRECT EXAMINATION

9 BY MS. ALTOMARE:

10 Q. Mr. Sanchez, counsel had asked you about
11 conducting inspections at the different sites. If the operator
12 is suddenly reporting production for a well and you go out and
13 conduct an inspection, are you going to be able to tell what's
14 going on downhole or what brought that well back on line by
15 conducting an inspection, necessarily?

16 A. No.

17 Q. Okay. If you go out and you look and see that
18 the well is not producing, and it's been reported as inactive
19 for a certain amount of time, are you necessarily going to be
20 able to tell how long it's been inactive by doing an
21 inspection?

22 A. No.

23 Q. So conducting onsite inspections isn't
24 necessarily going to fill in the blanks for the missing
25 paperwork in the files; is that right?

1 A. That's correct.

2 Q. There was also some questions about your
3 testimony at the hearing about the fact that you were
4 testifying primarily as to Rule 201 at the hearing but, in
5 fact, our application was prepared under both Rule 201 and
6 1115; isn't that right?

7 A. That's probably correct.

8 Q. And it wasn't until we got additional information
9 through the testimony at the hearing that we were able to more
10 fully understand the arguments under Rule 1115?

11 A. Yes, that's correct.

12 Q. Do you recall testimony at the other hearing by
13 Mr. Welborn that he had provided the 1089 PO Box address to
14 somebody at the district office at some point during the
15 sequence of -- during this 2005/2006 time period?

16 A. I really don't recall that part of the testimony.

17 Q. Do you recall him testifying that he never went
18 online to actually make the change to the 1089 PO Box?

19 A. That I do recall.

20 Q. As for the BLM records and checking up on BLM
21 records, under the OCD rules, the obligation is on the operator
22 to provide the BLM with enough copies to provide us with a copy
23 once sundries have been filed with the BLM; isn't that right?

24 A. That's right.

25 MS. ALTOMARE: I think that's all I have.

1 CHAIRMAN FESMIRE: Mr. Padilla, any recross on those
2 subjects?

3 MR. PADILLA: Yes, I have a couple.

4 RECCROSS-EXAMINATION

5 BY MR. PADILLA:

6 Q. Mr. Sanchez, in response to some of Commissioner
7 Fesmire's questions, you stated the procedure for issuing the
8 notice of violation. And my question is: Is the only notice
9 of violation you've issued in this case is the one dated to the
10 1089 Hobbs, New Mexico, address? Is that only one you issued,
11 June 19th, 2006?

12 A. Yes, I believe that -- on this one, this was --
13 let me clarify something for you: This letter came out of
14 RBDMS.

15 Q. What is that?

16 A. Our Risk Base Data Management System. It has
17 letters already set in there for the inspector to go in there
18 and type in what that violation was, and they're able to send
19 out a canned letter, basically, describing what the violation
20 might have been and stuff like that.

21 At the time the letters were indicating notice of
22 violation, some of the letters, depending on who the inspector
23 was, showed it as a notice of violation. Some were letters of
24 violation. But at that time, we hadn't established the
25 procedure that we use currently. And the reason we went to it

1 was because it was a little confusing, you know, that one
2 inspector might be sending out a notice of violation. Another
3 inspector might be sending out a letter of violation. That's
4 why we had it changed. We had to go through our IT people to
5 make the change within the RBDMS on the canned letters to
6 indicate that it was just a letter of violation.

7 So this one was basically a letter of violation
8 regardless of what the thing said. There were no penalties
9 attached to this when it went out.

10 Q. And the only letter that went out to PO Box 1089,
11 Hobbs, cited only one well, right?

12 A. Yes, sir.

13 Q. And that was the Coquina well?

14 A. Yes.

15 Q. When did you change your policy as you answered
16 Commissioner Fesmire's question?

17 A. Probably within the last year and a half,
18 somewhere in there. I don't know exactly when we've done it,
19 but it's been fairly recent. I think we did it after the new
20 attorneys came on because it helped them kind of get a better
21 feel for what we were doing and how we were doing things. And
22 through their input, we were able to streamline some of our
23 processes.

24 Q. Was that done before the January hearing?

25 A. Yes, it had to have been. Yes.

1 MR. PADILLA: That's all I have.

2 CHAIRMAN FESMIRE: Commissioner Bailey?

3 COMMISSIONER BAILEY: No further questions.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: No questions.

6 CHAIRMAN FESMIRE: One quick question, Mr. Sanchez.
7 You indicated that you had actually performed an inspection on
8 two of these wells, or you had an inspection performed on two
9 of these wells?

10 THE WITNESS: We had an inspector go out. There was
11 some question that we were -- just a clarification issue, and
12 they were out in that area, so they just stopped by to take a
13 quick look.

14 CHAIRMAN FESMIRE: And they reported that there was
15 no production equipment on at least one of those wells; is that
16 correct?

17 THE WITNESS: The actual report went to Ms. Altomare
18 from Buddy Hill. I got to see it real quick and I just --
19 right now, at this time, I don't remember exactly what the
20 message said, but basically it was something to that effect.

21 CHAIRMAN FESMIRE: And has production been reported
22 on that well since that inspection?

23 THE WITNESS: I really cannot answer that question
24 right now.

25 CHAIRMAN FESMIRE: Ms. Altomare, do you have anything

1 else of this witness?

2 MS. ALTOMARE: No.

3 CHAIRMAN FESMIRE: Mr. Sanchez, thank you very much.
4 Ms. Altomare, your other witness is not available until after
5 lunch; is that correct?

6 MS. ALTOMARE: Thereabouts. She's in a meeting until
7 11:30-ish. But it's in the office of the secretary, so I don't
8 know. So I was just thinking that after lunch would be the
9 safest bet.

10 CHAIRMAN FESMIRE: Mr. Padilla, we can either start
11 your stuff and go out of order, which I wouldn't recommend, but
12 it's your decision. Or we can just basically adjourn for a
13 very long lunch and reconvene at 1 o'clock.

14 MR. PADILLA: Well, we'll start now. I know I should
15 wait, but we'll tell our story.

16 CHAIRMAN FESMIRE: Is your witness going to be
17 available after Ms. Prouty?

18 MR. PADILLA: He's going to be available after. It
19 just makes for a very long day if we take that two-hour lunch,
20 I guess, is really what we're --

21 CHAIRMAN FESMIRE: Well, since we didn't have a break
22 this morning, we could probably go to about 11:30. Would
23 anybody --

24 MR. PADILLA: Well, we can resume at 1 o'clock.

25 CHAIRMAN FESMIRE: Okay.

1 MS. ALTOMARE: I still need to get my exhibits in
2 before I forget.

3 CHAIRMAN FESMIRE: Why don't we finish this before
4 you move. Mr. Padilla, if that's okay? Like you say, it may
5 make for a little bit longer day than we would have had.

6 COMMISSIONER OLSON: Can we start earlier? Maybe
7 12:30 or something?

8 CHAIRMAN FESMIRE: What time is -- well, Jane's got
9 to have lunch after her meeting.

10 MS. ALTOMARE: But I think she said she should be
11 done by 11:30.

12 CHAIRMAN FESMIRE: Is it okay if we just start at
13 1:00?

14 COMMISSIONER OLSON: Okay.

15 MS. ALTOMARE: Sorry. With Celero suddenly
16 continuing, it kind of threw things off.

17 CHAIRMAN FESMIRE: Okay. Commissioner Bailey?

18 COMMISSIONER BAILEY: 1:00 is fine with me.

19 CHAIRMAN FESMIRE: Why don't we adjourn after you
20 move for admission of your exhibits and reconvene at 1 o'clock.

21 So Ms. Altomare, you had --

22 MS. ALTOMARE: I would like to move for admission of
23 Exhibits 1, 2, 3 and 5 through 12 -- I mean, 6 through 12. The
24 other two will be addressed by my other witness.

25 CHAIRMAN FESMIRE: Mr. Padilla, do you have any

1 objection to Exhibits 1, 2, 3 and then 6 through 12?

2 MR. PADILLA: No.

3 CHAIRMAN FESMIRE: Exhibits 1, 2 and 3 and Exhibits 6
4 through 12 will be admitted into the record.

5 [Applicant's Exhibits 1, 2, and 3 and 6 through 12
6 admitted into evidence.]

7 CHAIRMAN FESMIRE: And with that, we will adjourn for
8 a long lunch and reconvene at 1 o'clock.

9 [Recess taken from 10:47 a.m. to 1:07 p.m., and
10 testimony continued as follows:]

11 CHAIRMAN FESMIRE: Let's go back on the record. Let
12 the record reflect that it's 1 o'clock on Thursday, August
13 14th, 2008. This is a continuation of the regularly scheduled
14 August Oil Conservation Commission meeting.

15 Let the record also reflect that all three
16 commissioners are again present, Commissioner Bailey,
17 Commissioner Olson, and Commissioner Fesmire.

18 I believe, Ms. Altomare, you were prepared to
19 introduce your next witness.

20 MS. ALTOMARE: Yes.

21 CHAIRMAN FESMIRE: And I also believe that this
22 witness has not been sworn.

23 MS. ALTOMARE: That is true. And before we do that,
24 just for clarification purposes, there was an issue as to
25 whether or not I had adequately provided counsel with exhibits

1 prior to the hearing. And over the break, I did make copies of
2 the e-mail correspondence related to that which I just wanted
3 to confirm for the Commission that I did, in fact, provide the
4 exhibits in the pre-hearing statement to opposing counsel in a
5 timely fashion.

6 CHAIRMAN FESMIRE: Mr. Padilla?

7 MR. PADILLA: I didn't object to her exhibits, so I
8 don't know what the deal is. It says that -- I notice here
9 that her e-mail does show an attachment to it. I didn't get
10 it. And it could be my e-mail server. It's quite a bit of
11 e-mail in here. So I didn't object.

12 CHAIRMAN FESMIRE: As Mr. Padilla points out, he
13 didn't object. So I think the subject is moot. For the most
14 part, your exhibits have been admitted. We may have to revisit
15 this if Mr. Padilla objects to the other two exhibits, but as
16 of right now, I think it's moot.

17 MS. ALTOMARE: I simply wanted to assure the
18 Commission that the rules had been complied with.

19 CHAIRMAN FESMIRE: Okay. So why don't we go ahead
20 and start with your next witness.

21 MS. ALTOMARE: At this time, I call Jane Prouty.

22 CHAIRMAN FESMIRE: Ms. Prouty, would you stand and
23 raise your right hand, please and be sworn?

24
25

1 JANE PROUTY

2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. ALTOMARE:

6 Q. Could you state your full name for the record,
7 please?

8 A. Jane Prouty.

9 Q. And what is your position?

10 A. I'm the bureau chief of the Automation and
11 Records Bureau.

12 Q. And that's with the Oil Conservation Division?

13 A. Yes.

14 Q. I just have a few topics to cover and it might
15 seem that I'm bouncing around a little bit because I'm kind of
16 going to be filling in the blanks a bit for the areas that I
17 couldn't cover with Mr. Sanchez earlier this morning.

18 I'm going to direct your attention to two exhibits.

19 MS. ALTOMARE: May I approach the witness?

20 CHAIRMAN FESMIRE: You may, ma'am.

21 Q. (By Ms. Altomare): These two exhibits have been
22 marked Exhibit 4 and Exhibit 5 by the Oil Conservation
23 Division. Can you first, looking at Exhibit No. 4, describe
24 for the Commission what that exhibit is?

25 A. Yes, it's a change of operator form. It's called

1 a C-104-A. When put in the rules in 2005, we renamed it to a
2 C-145. But it's a change of operator form C-104-A, and it
3 means that some number of wells which can be listed on
4 Permit 2785 on the top right are being transferred from WAS,
5 LLC to Marks and Garner Production.

6 Q. Okay. And what is the effective date listed at
7 the top under "New Operator Information"?

8 A. October 1, 2004.

9 Q. And at the bottom, what is the date under the
10 signature line under "New Operator"?

11 A. One is signed by the new operator on November
12 29th, 2004.

13 Q. Under "New Operator," who is the individual that
14 signed the form?

15 A. Mickey Welborn.

16 Q. And what is the title that's indicated for Mickey
17 Welborn?

18 A. Manager.

19 Q. The new operator information provided on the
20 right-hand side is for Marks and Garner Production, Ltd.,
21 Company, correct?

22 A. Yes.

23 Q. And what is the OGRID for that company?

24 A. 14070.

25 Q. And what address has Mickey Welborn provided on

1 this form as the new operator information address for Marks and
2 Garner Production, Ltd., Company?

3 A. PO Box 70, Lovington, New Mexico 88260.

4 Q. And at the very bottom there's an approval log.
5 Can you indicate for the Commission what's included in there?

6 A. Chris Williams is the supervisor of District I,
7 and he approved it on March 14th, 2005.

8 Q. Okay. Thank you. Directing your attention to
9 Exhibit No. 5, what is this document?

10 A. This is an Operator Administrator Form.

11 Q. Okay. And how are these forms used by the
12 Division?

13 A. We ask executive of the company to indicate
14 through his signature, or hers, who will be the administrator
15 of all user IDs for that operator. So on this form, the
16 executive signs the form and the executive authorizes someone
17 to be the operator administrator.

18 Q. And in this case, the executive and the person
19 designated are the same person; is that right?

20 A. Yes.

21 Q. And who is that person?

22 A. It's Quinton Welborn.

23 Q. What is the title that Quinton Welborn designated
24 on this document?

25 A. Controller.

1 Q. And what is the date that this form was
2 apparently filled out and submitted?

3 A. It's signed on February 1st, 2005.

4 Q. Can you indicate for the record the information
5 that was provided in handwriting on the form by Mr. Welborn?

6 A. Yes. So then the company name, Marks and Garner
7 Production Company, Ltd., filled in the OGRID number 14070,
8 PO Box 70, Lovington, New Mexico. It's a little -- it sort of
9 looks like -- I don't know. I think it's 88260 -- and he named
10 himself as operator administrator and he signed it, and he
11 provided his e-mail address and phone number.

12 Q. Okay. Are both of these documents, Exhibit No. 4
13 and Exhibit No. 5, documents that are kept in the ordinary
14 course of conducting the business of the Oil Conservation
15 Division?

16 A. Yes.

17 Q. Okay. Are you familiar with Rule 100(c) of the
18 Oil Conservation Division rules?

19 A. I am.

20 Q. And what does that rule require?

21 A. Section C requires the operator to keep the
22 Division informed of its current address of record and
23 emergency contact names and telephone numbers.

24 Q. And how is the operator required to submit
25 changes for addresses to the Oil Conservation Division?

1 A. To the financial assurance administrator in our
2 Santa Fe office.

3 Q. And in what form are they supposed to submit
4 that?

5 A. In writing.

6 Q. To your knowledge, since receiving either
7 Exhibit 4 or more significantly, Exhibit 5, where Mr. Welborn
8 is controller registered as the administrator for the company,
9 have we received anything in writing indicating a change of
10 address for this particular company that would come close to
11 meeting the obligations?

12 A. As far as to the financial assurance
13 administrator, no.

14 Q. Okay. So when we're looking at meeting the
15 obligations under Rule 100(c) for providing a change of address
16 for an address of record for the Oil Conservation Division, we
17 haven't received anything from Marks and Garner in writing
18 submitted to the financial assurance administrator?

19 A. No.

20 Q. Okay. To date, or up until recently, has the Oil
21 Conservation Division treated the PO Box 70, Lovington,
22 New Mexico, address as Mark and Garner's address of record?

23 A. Excuse me. Did you say "to date"?

24 Q. I said, "until recently" -- until approximately
25 January.

1 A. Well, July it was updated. But yes, until then,
2 the address of record was the Lovington address.

3 Q. Is that relatively common practice that if an
4 operator has, especially around the time this particular
5 registration form is filled out, to have treated an address
6 that was provided in this fashion on this operator registration
7 form to treat that as an address of record, up until we receive
8 something under our Rule 100(c)?

9 A. Right. At the time that this was signed, we
10 didn't have Rule 100. So Rule 100 came into effect at the end
11 of that year in December of 2005. So the concept -- the
12 responsibility of the operator to notify us of an address
13 wasn't in the rule at this time, so we used this address.

14 But from December 2005 on, Rule 100 was in place
15 requiring the operator to notify us of their address.

16 Q. So at the time that the operator administrator
17 registration form was filled out, we would have treated the
18 PO Box 70, Lovington, New Mexico, address as the address of
19 record?

20 A. Yes.

21 Q. And then as of December, all operators were
22 required to begin notifying us within 30 days of any address
23 changes in writing to the financial assurance administrator?

24 A. Yes.

25 Q. Okay. What, if anything, happened in

1 approximately January that indicated that there might be an
2 issue with the address for Marks and Garner?

3 A. We continually received letters returned, and on
4 January 2nd, we mailed letters for non-filing of C-115s to two
5 addresses. We actually sought addresses. We mailed one to a
6 Ruidoso address, and on the same -- then that came back
7 undeliverable, and we mailed -- we looked in the file for
8 records -- and it might be in the reverse order -- and got
9 the -- found that -- let me just see.

10 Okay. The Ruidoso address, they came back bad as
11 return-to-sender. We mailed them on December -- no, November
12 27th and December 18th -- it's postmarked, and they came back
13 returned. So -- do you want me to go ahead with the rest of
14 it?

15 Q. Well, which letter went first; the Ruidoso or the
16 PO Box 70?

17 A. In November, there was a PO Box 70 letter that
18 was mailed, and then --

19 Q. So that would be the letter that was mailed to
20 the address of record --

21 A. Right.

22 Q. -- in November?

23 A. And then we -- let me just -- I have different
24 return addresses because they get processed. These were both
25 postmarked on December 18th to the two different addresses so

1 that we could try to get information. And then they came back
2 at different times, both as incorrect addresses.

3 Q. Okay.

4 A. Then we made another attempt to send it to the
5 PO Box 70 address. It was returned. And then the person who
6 was doing this at the time, Barbie Segovia, sent an e-mail.
7 The other addresses had been obtained by going through the well
8 files looking for any address since they kept coming back. And
9 none of those was working. So Barbie sent an e-mail to the
10 person who filed the C-115s and received a reply that the
11 address was PO Box 1089 in Hobbs.

12 CHAIRMAN FESMIRE: When was that?

13 THE WITNESS: That was on January 2nd, 2008, to
14 Barbie, the C-115 person.

15 Q. (By Ms. Altomare): Other than the e-mail that
16 was received in response to the inquiry made by OCD staff, have
17 we received anything else from Marks and Garner to update the
18 address in our system for Marks and Garner?

19 A. Yes. On July 8th, 2008, this year, we received
20 notification of their address, the Hobbs address.

21 Q. Okay. So finally in July, they got online and
22 officially changed their address of record on our system?

23 A. Yes.

24 Q. Okay. I wanted to talk to you a little bit
25 about -- there were some issues that came up with regard to

1 some C-115s with this company. There are a number of wells
2 that have recently apparently started reporting production, two
3 of which there was testimony earlier in January by Mr. Welborn
4 that he is no longer involved in the operation with, and that
5 he's sold them, but he just hasn't transferred operatorship of
6 them yet. And those are the Kemnitz 17 State #001 and the
7 Cities Service State #001. What are you showing as the status
8 regarding production for those two wells?

9 A. Okay. The first one, the Kemnitz 17, which is
10 3002528767, the well produced somewhat regularly from our
11 system beginning in 1992, and it shows cumulative production
12 prior to that. So the well produced regularly from at least
13 1992 through -- it stopped in January of 2006. And then we had
14 zeros reported through August of 2007 and then, beginning in
15 September of 2007, at first the well was producing 400 MCF of
16 gas a month or 300, and now it's producing 14 MCF of gas every
17 month through -- this was through the May report.

18 COMMISSIONER BAILEY: Could you repeat that figure
19 after the figure that you gave for September of '07?

20 THE WITNESS: September of '07 was zero. So they --
21 no. Excuse me. September of '07 was 400, then there were two
22 months at 389 and two months at 313 and then four months of
23 14 MCF.

24 The other well, the Cities Service State #001, had
25 the same pattern. It produced -- I shouldn't say that. It

1 produced intermittently every six months or so, sometimes every
2 two months, but it didn't have a -- sometimes every four or
3 five months -- since -- it looks like it started -- it has a
4 cumulative value also for 1992. So it produced prior to that,
5 then intermittently through the years. And then it stopped
6 producing altogether at the same time frame -- no. That's not
7 correct. It stopped producing altogether in November --
8 December 2005 was reported as a zero, and it went with zero
9 production through January 2008. And then -- would you like me
10 to go over the individual monthly amounts?

11 COMMISSIONER BAILEY: Sure.

12 THE WITNESS: Okay. It produced some months 33 MCF
13 and some months 12. Actually, every other month it produced 12
14 and 33 through the May report.

15 Q. (By Ms. Altomare): So both of these wells are
16 now, as of the May report, reporting as productive?

17 A. Yes.

18 Q. Okay. These wells are still listed as Marks and
19 Garner wells, correct?

20 A. Yes.

21 Q. So any C-115s that are being submitted are being
22 submitted as part of the Marks and Garner C-115 submission?

23 A. Right.

24 Q. The other C-115 issue that I wanted to address
25 with you has to do with the Red Twelve Levers Federal #008Q and

1 #012. There was testimony at the previous hearing that neither
2 one of these wells was -- had ever produced. However, the
3 records that we had indicated that they had reported
4 production. And I wonder if you can review for the Commission
5 what the current status is for the reports on those and
6 whether, in the last eight months since the hearing, Marks and
7 Garner has amended to correct those records.

8 A. Okay. No, there's not been an amendment. I
9 pulled a list of every filing that they made. And although
10 they amended some months at some times, we have not received
11 any amendments for the months of May 2006 forward, so none for
12 all of those months 2007, 2008. We received the initial C-115,
13 but nothing to change those values.

14 So the other side of that, I'm looking at the Red
15 Twelve Levers Federal #008Q. It showed production -- the
16 earliest time it had production looks like November of 2000,
17 and it reported for several months. It was always reported as
18 zero prior to that. And then it reported intermittently for
19 several months with one barrel of oil from time to time. And
20 then it didn't produce anything for several years until June of
21 2004 when it started producing again in the approximately
22 500 MCF range. And it stopped producing in June of 2005, and
23 since that time, there's been no production from that well.
24 And that's reported every month, but reported with a zero.

25 The other well, the Red Levers Twelve Federal #012,

1 has not produced anything since November 2004. Actually, I
2 should say November was the last production. December 2004
3 forward have all been zeros. It also had the very same small
4 production as the other well prior to that. It looks like the
5 earliest production looks like September of 2000 with 5 MCF,
6 and it produced in that same pattern as a other well, very few
7 MCF for maybe through August 2001.

8 Q. So just to be clear, no amended reports have been
9 submitted by Marks and Garner to clarify that? In fact, no
10 production has occurred with regard to these two wells?

11 A. That's correct.

12 Q. How long have you worked with the Oil
13 Conservation Division?

14 A. 12 years.

15 Q. So you're pretty well aware of what the
16 Commission and obligations are of our agency?

17 A. Yes.

18 Q. As far as protecting and conserving -- well, off
19 of our website, for instance, it says to insure the protection
20 and conservation management and responsible development of oil,
21 gas and associated natural resources through professional,
22 dynamic regulation and advocacy for the ultimate benefit of
23 New Mexico?

24 A. I put that on the website. I'm sure someone gave
25 me the words, but I'm aware of it.

1 Q. How important do you think accurate recordkeeping
2 is to fulfilling those obligations?

3 A. Oh, it's very important.

4 Q. How do you think -- can you explain to the
5 Commission how you think that plays a role, or how not having
6 accurate records inhibits our ability to perform that role?

7 A. Okay. One, there are the obvious things that the
8 interest owners deserve the money, so accurate records allow
9 that to flow through where the Taxation and Revenue Department
10 and the State Land Office can compare what they receive to what
11 we receive to be sure that everyone is reporting the same
12 production and sale of that product. So that's really
13 important so that the interest owners get paid.

14 It's also important because it tells us whether the
15 well is active or inactive and whether it could be a problem to
16 the environment -- whether someone is looking at that well once
17 a month and reporting it to us and letting us see any flags
18 about the status of the well.

19 Production in general is very important because the
20 correct taxes have to be paid to the State. And timely
21 reporting is very important because people made projections on
22 the quantity coming in, so they have to be received by the due
23 date.

24 Q. Okay. Do other agencies rely on the records that
25 we keep here at the Oil Conservation Division?

1 A. They do. They don't use them for royalties and
2 tax collection. That is reported separately to them. But we
3 always call it a second watch. And what it is, is they have
4 reports already prepared that run on the web for them that
5 compare what an operator reported to us and the production and
6 how it was transported compared to what the taxes were reported
7 for that period. So yes, we hear from them loud and clear if
8 we don't have production out there for some reason.

9 Q. In your review of the records for this case, is
10 there anything else that you wanted to comment on?

11 A. Perhaps. The letters that -- I've sent C-115
12 letters myself after Barbie left, and they say please call me
13 to discuss this matter, and I have not received any calls, to
14 my knowledge.

15 Q. Okay. And were those letters -- what address
16 were those letters sent to?

17 A. PO Box 1089, Hobbs.

18 Q. And that was at the specific request of the
19 operator contacting Ms. Segovia after the January conversation?

20 A. Yes, until the July period until we actually got
21 the formal address, yes. Same address we got, but this is the
22 formal address we have in the records.

23 MS. ALTOMARE: Okay. I'll pass the witness.

24 CHAIRMAN FESMIRE: Mr. Padilla?
25

CROSS-EXAMINATION

1
2 BY MR. PADILLA:

3 Q. Ms. Prouty, you just now testified about
4 PO Box 1089, Hobbs. You're referring to the letter in front of
5 you; is that right?

6 A. Am I referring to a letter in front of me? I
7 have a lot.

8 Q. Yes. And Ms. Segovia sent that letter to --

9 A. No, I did.

10 Q. You did.

11 A. There's several letters that I sent.

12 Q. And what address is used in those letters?

13 A. In these? We take the address that comes into
14 OCD as the address of record.

15 Q. So is it PO Box 70, Lovington, or is it
16 PO Box 1089, Hobbs?

17 A. This letter is dated July 2008, and it's Box 1089
18 in Hobbs.

19 Q. And that's the only letter that's been addressed
20 to PO Box 1089 in Hobbs, New Mexico?

21 A. No.

22 Q. What other letters have been addressed --

23 A. Okay. This one was sent July 1st, 2008. This
24 one was sent March 13th, 2008.

25 Q. And what's the date of that letter?

1 A. March 13th.

2 Q. Of 2008?

3 A. Yes. And this one was for a different reporting
4 month. It was December. It was also sent March 13th, 2008.
5 Then we have the November letters that were mailed to
6 PO Box 70. And then as I mentioned --

7 Q. And those came back?

8 A. Absolutely. And then more mailed in January came
9 back.

10 Q. Do you typically communicate through e-mail or
11 hard copy as you have in these letters?

12 A. Both.

13 Q. When did you first start using e-mail to address
14 correspondence to -- well, let me ask this first: What e-mail
15 address are you using?

16 A. On the operator administrator form -- on the
17 operator administrator form, it says "rotarywireline@aol.com."
18 And then also when -- one of the reasons we want operators to
19 register with us, when it was registered in July by Quinton
20 Welborn, that has a place for him to fill in the e-mail
21 address. Now, we don't consider any e-mail address an address
22 of record, but we try everything we can. We also have e-mail
23 addresses on all the forms that we send out, so we try any
24 address we can find for e-mail.

25 Q. When did you first started using the e-mail

1 address in your Exhibit No. 5?

2 A. I don't know that we did use it.

3 Q. Let me ask this: When did you first communicate
4 via e-mail and found out that the mailing address was PO 1089,
5 Hobbs?

6 A. Barbie sent an e-mail to -- she found an address,
7 I believe, on a form and sent it to qwelbornvaler.net in --
8 this is January 2nd, 2008, after the envelope came back
9 returned.

10 Q. Okay.

11 A. But this is not a -- this is just one person
12 sending an e-mail.

13 Q. But do I understand your testimony to be that you
14 did not use this rotarywireline@aol.com?

15 A. Oh, no. I -- oh, no, you did not understand. I
16 have no idea whether anyone used that. We -- it's just a way
17 to get a hold of someone. Anyone may have sent an e-mail to
18 it, but I don't know who or anything.

19 Q. Did you use -- did you call anyone on this
20 telephone number on Exhibit 5?

21 A. I think Barbie. Let me see what she -- what she
22 said she did, she e-mailed Quinton Welborn to get the correct
23 address. I don't think anyone called anybody in the January
24 time frame when these letters came back. I think she -- when
25 we get the C-115s in or any correspondence, if we learn an

1 e-mail address, we'll use it. I'm not sure where she got this
2 e-mail address, but it worked and he responded.

3 Q. Okay. When you can't find an address, do you ask
4 your Hobbs office or district office for a current address that
5 that office may be using?

6 A. We ask anyone we can if they know a way of
7 getting ahold of someone. Usually what we do -- no. If you're
8 asking me, myself -- I can't speak for what my staff did. What
9 I ask my staff to send these letters -- until January when I
10 was sending them or maybe December -- we look in the well files
11 for any permit turned in, and if we find an address, we'll mail
12 it. It's not the letter of record.

13 The one letter we send to the address of record. But
14 we may mail multiple letters just like we may place e-mails, we
15 may place phone calls, we may ask agents, we may look up in the
16 PRC, we may look up in the Yellow Pages. We do whatever we can
17 to find an address. But that doesn't mean it's the address of
18 record.

19 Because the reason we put in Rule 100 was we have a
20 lot of people telling us a lot of addresses, and then saying,
21 "You didn't mail it to the right place." So we came up in 2005
22 with this rule to say please give us one address from one
23 person that we know is authorized through this form, and we'll
24 use that address. But we will continue to use multiple ways to
25 get a hold of someone if that address doesn't work.

1 Q. Did you send any of this correspondence to
2 multiple addresses other than the PO Box 70, Lovington, New
3 Mexico?

4 A. Yes.

5 MS. ALTOMARE: Can you clarify, though, what you mean
6 by "this correspondence"?

7 MR. PADILLA: Correspondence that she's been
8 testifying to. There are two or three letters there.

9 A. But these are all C-115 letters. Yes, I had
10 mentioned earlier all the returned addresses.

11 Q. (By Mr. Padilla): Now, C-115s are sent
12 electronically, right?

13 A. Yes.

14 Q. And do those things have an e-mail address?

15 A. No. They're sent through a web-based system.
16 The user who uses the web-based system registers an e-mail
17 address with us, but they're sent through the web. It's like
18 to buy a book on Amazon.com, you don't -- you give your e-mail
19 address for authentication, but you don't e-mail your request
20 to them.

21 Q. Are you saying you can't send a reply or
22 communicate with somebody based through the web system?

23 A. We use -- we send a confirmation that we received
24 it, and we use the last address, e-mail address, that the
25 operator registered on the OCD online.

1 Q. So with Marks and Garner, have you had any
2 problems confirming receipt of C-115s?

3 A. We don't know. We don't get them back, but we
4 also weren't receiving C-115s. That's why we were sending
5 letters.

6 Q. I understand.

7 A. The reject -- just like you get a reject now,
8 human beings do, but no, we don't in that system. For one,
9 people don't maintain their addresses, so we wouldn't want them
10 back, but we don't get confirmation of -- this is a courtesy
11 people request when they sign up for an operator administrator,
12 we ask them, "Do you want to receive acceptances and rejects?"

13 And some say yes and some say no. And if they don't
14 arrive, that's fine with us. Because they know they sent it to
15 us and we ask them to look on the web to make sure their files
16 got there.

17 Q. But all this time you know what their e-mail
18 address is?

19 A. No, not at all.

20 Q. No?

21 A. Because if they don't update their records in OCD
22 online, when -- to use an example, when Quinton Welborn signed
23 on with this address, I set up the operator administrator. I
24 would put in this address. He's authorized to go change this
25 address at any time, the e-mail address. But if he doesn't, it

1 stays with that address. Then there's the different place that
2 has the address, the address -- the e-mail ID of the person of
3 record.

4 Q. You've had this e-mail address and this telephone
5 number since February of 2005, right?

6 A. The wireline?

7 Q. As shown on Exhibit 5?

8 A. Okay. Let me see. We had this in 2005. You
9 wouldn't say "since 2005" because he could change it. Once you
10 have a user ID, you can sign on and change it.

11 Let me make sure I'm clear. We can notify people by
12 e-mail, but we don't ask for an official e-mail of record
13 because they change too often. We ask for an official address
14 of record.

15 Q. But what's your normal practice for conducting
16 everyday business, e-mail or hard paper?

17 A. These are violation letters. It's not normal
18 practice to contact operators at all.

19 Q. I'm not asking about violation letters. I'm
20 asking about normal course of business?

21 A. We don't -- it's electronic. We don't speak to
22 them unless they call us if they have a question. We don't
23 call them or e-mail them for anything. If they send in a C-115
24 that isn't acceptable, we just punch a button that says
25 "reject," and they know to go back in and fix it. They get the

1 notification if they selected it.

2 Q. Do you give them a reason for the rejection?

3 A. We put in comments, yes.

4 Q. Okay. Do you know whether Marks and Garner's
5 C-115s are up to date now?

6 A. Let me look. Yes, they are.

7 Q. Let me ask you about the Kemnitz and the Cities
8 Service wells that you testified about. Can you tell us
9 whether -- can you tell us from whom you received production
10 reports for those two wells? I know your records say Marks and
11 Garner, but in terms of actual -- the actual sender of the
12 production reports under that name. Do you have information
13 that would indicate who sends the production data?

14 A. Yes. The system keeps track of what user ID sent
15 them. When Quinton Welborn sent in the operator administrator
16 form in 2005, we set up a user ID for him, and it was called
17 "qwelborn." And, as I say, the operator administrator has the
18 ability to set up other user IDs. But the only user ID I'm
19 aware of for Marks and Garner is "qwelborn." And then the
20 system keeps track of who submits every C-115.

21 So on July 7th of this year, three C-115s were sent
22 in by "qwelborn." So if you're asking me who sent it, I can't
23 guarantee that. I can tell you that the user ID "qwelborn"
24 sent it. I give the user ID to the person. Whether they give
25 that to anyone else, I can't control.

1 Q. Where did you get the Ruidoso address?

2 A. I don't know. I did not send anything myself to
3 that address. I don't know.

4 MR. PADILLA: I don't have any further questions.

5 CHAIRMAN FESMIRE: Commissioner Bailey?

6 EXAMINATION

7 BY COMMISSIONER BAILEY:

8 Q. I'm a little confused. I need some
9 clarification. The Kemnitz 17 State #001, API #302528767,
10 which is located in Unit H of Section 17, 16 South, 34 East.
11 It's on State acreage, which is not currently under lease, and
12 has not been under lease since March of '07. But your reports
13 indicate that Marks and Garner has sent in production reports
14 for months between March of 2007 and current date?

15 A. Yes.

16 Q. You might better quit doing that. That is
17 trespass on State lands. The Cities Service State well, API
18 #302523551, were there production reports between any time
19 early before -- I guess my question is: Were there production
20 reports before September of 2007?

21 A. Now, there have been production reports for a
22 long time, but you mean with a volume greater than zero?

23 Q. Yes.

24 A. Yes, there were.

25 Q. There was production in 2007 up until September

1 of '07?

2 A. I'm sorry. Did you -- I thought you meant -- I
3 didn't know you limited it to the year 2007. Are you only
4 interested in 2007?

5 Q. Well, it went back under lease in September
6 of '07?

7 A. So you're talking about --

8 Q. So there was production prior -- for the two
9 months prior to September '07?

10 A. No. Yes. When I earlier was talking to you that
11 was production from 2005. So as far as 2007, there was no
12 production until February of 2008. So none in 2007.

13 Q. Okay. That's the clarification I needed. But
14 there was a little confusion. Yesterday I queried ONGUARD
15 screen IPRD for production from the Kemnitz 17 State #001, and
16 it showed no production from 2004 to August of 2008. Were the
17 reports that were sent in just recently sent in?

18 A. No. And I actually ran a comparison recently.
19 They should be the same. I'll be glad to check into that. You
20 were using 3025232551.

21 Q. OGRID number 35325, pool ID OGRID identifier
22 14070, Marks and Garner.

23 A. Okay. I think you were using a different pool
24 than we show them completed in. Could you tell me the --

25 Q. Okay.

1 A. We're talking about API 2523551 right now?

2 CHAIRMAN FESMIRE: 28767.

3 THE WITNESS: Okay. So there are two. So, okay, we
4 show the production was coming from pool 35530; that's what you
5 just said?

6 Q. (By Commissioner Bailey): I'm sorry. Well
7 API #28767.

8 A. Yes. And pool 35530.

9 Q. Pool 35325.

10 A. No. The production is 35530. That would
11 explain. They might have a depletion there, but --

12 Q. That would explain the problem.

13 A. Yeah.

14 Q. Thank you. That clears it up.

15 COMMISSIONER BAILEY: I don't have any other
16 questions.

17 CHAIRMAN FESMIRE: Commissioner Olson?

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

19 EXAMINATION

20 BY CHAIRMAN FESMIRE:

21 Q. Ms. Prouty, I think your later testimony
22 clarified this question, but you said initially when
23 Mr. Padilla was talking about the change of address, you said
24 "To the final assurance administrator, no." That you had not
25 received any additional -- or any change of address since the

1 one of record. Was there something in there that you wanted to
2 tell us about? Why did you clarify it to the financial
3 assurance coordinator?

4 A. The only reason I did was we have a lot of issues
5 where someone feels they notified someone of an address, but we
6 never know whether that person -- whether that is changing the
7 address of record. So we don't change the address of record
8 unless it comes in in that one avenue, and that's why the rule
9 created that. And then if it comes -- so that they come
10 through one person.

11 This particular item was a note sent by the C-115
12 person, but the person -- she didn't say, "What is your address
13 of record?"

14 She said, "What is your address? I'm trying to
15 verify a current address."

16 She didn't say, "I'm the financial administrator. I
17 would like to know the official address for all OCD
18 activities."

19 But that does turn out to the address I sent
20 subsequent letters to because I knew we could find them.

21 CHAIRMAN FESMIRE: I thought we solved this problem
22 in 2005, but it's still got some remnants in the system?

23 A. Well, a lot of people have not filed their
24 addresses. Quite a few people.

25 Q. What's the current address of Mark and Garner?

1 A. Let me just look. PO Box 1089, Hobbs, New Mexico
2 88241, and that was dated July 8th, 2008, from Quinton Welborn.

3 Q. And prior to that, the official address was
4 PO Box 70 in Lovington, right?

5 A. Yes. I don't know if there were a lot, but
6 that's where I was mailing -- that's what I believe the address
7 of record was prior to that.

8 CHAIRMAN FESMIRE: Any redirect, Ms. Altomare?

9 MS. ALTOMARE: No questions.

10 CHAIRMAN FESMIRE: Anything else, Mr. Padilla?

11 MR. PADILLA: Nothing further.

12 CHAIRMAN FESMIRE: Anything from the Commission?
13 Ms. Prouty, thank you very much.

14 MS. ALTOMARE: I have no further witnesses.

15 CHAIRMAN FESMIRE: No further witnesses.

16 MS. ALTOMARE: I would like to move for the admission
17 of Exhibits 4 and 5 at this time.

18 CHAIRMAN FESMIRE: Any objection, Mr. Padilla?

19 MR. PADILLA: No objection.

20 CHAIRMAN FESMIRE: Seeing no objection, Exhibits 4
21 and 5 will be admitted into the record.

22 [Applicant's Exhibits 4 and 5 admitted into
23 evidence.]

24 Mr. Padilla, are you ready to begin?

25 MR. PADILLA: I'm ready to go.

1 CHAIRMAN FESMIRE: As soon as Ms. Prouty gets
2 organized, we'll start.

3 * * *

4 CHAIRMAN FESMIRE: Mr. Welborn, I'm assuming --

5 THE WITNESS: Sorry?

6 CHAIRMAN FESMIRE: Are you Mr. Welborn?

7 THE WITNESS: Yes, sir.

8 CHAIRMAN FESMIRE: Are you Mickey or Quinton?

9 THE WITNESS: I am Quinton.

10 CHAIRMAN FESMIRE: What's the relationship between
11 Mickey and Quinton?

12 THE WITNESS: Mickey's my father.

13 CHAIRMAN FESMIRE: Okay. And you've been previously
14 sworn in this case?

15 THE WITNESS: Yes, sir. This morning.

16 CHAIRMAN FESMIRE: Mr. Padilla, are you ready?

17 MR. PADILLA: I'm ready.

18 QUINTON WELBORN

19 after having been first duly sworn under oath,

20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Welborn, state your full name.

24 A. Quinton Welborn.

25 Q. Where do you live, Mr. Welborn?

1 A. I live in Hobbs, New Mexico.

2 Q. What's your connection with Marks and Garner
3 Production, Ltd.?

4 A. VP and Operations Manager.

5 Q. VP as vice president?

6 A. Yes, sir.

7 Q. Who's the president?

8 A. Mickey.

9 Q. Your dad?

10 A. Yes, sir.

11 Q. Can you give us a brief history of how you came
12 about buying this oil and gas property that we're talking about
13 here?

14 A. Yes, sir. When we purchased the wells in -- I
15 believe it was 2004. We had bought all these wells.

16 Q. How many wells did you buy?

17 A. I think it was 71. And we bought them and a
18 pulling unit that they had owned as assets, and we kept the
19 name Marks and Garner, you know, just kind of make a smoother
20 transition, which in retrospect was probably the wrong choice.

21 We bought the -- what had happened was, we bought
22 this assuming that -- and we had left Devon Garner, which was
23 one of the old partner's son in charge. He came on board with
24 us. He was in the charge of the pulling unit and everything.
25 We bought this thinking that they were going to use that

1 pulling unit to work on all this stuff. We were going to get
2 it going. And he worked there for, oh, a year and a half, I
3 think. Anyway --

4 Q. Tell us about the condition of the wells.

5 A. Well, we knew we had a lot of work to do to get
6 them going and we needed -- we were sure we had to plug some.
7 But we looked at it as a good opportunity to fix something up
8 and make some money. When we first bought them, our Double X
9 lease in Lea County, there was several wells there from the BLM
10 that we had to clean up and fix and plug a few.

11 But what really put us in a bind and set us so back
12 was they pretty much took the pulling unit to Texas working for
13 other people until it got to where we were this close to
14 pressing criminal charges to bring it back, but we had a
15 meeting of the minds with our lawyers there in Hobbs. And they
16 ended up with the pulling unit and those three wells, the
17 Kemnitz Cities Service and the Northeast Malajmar.

18 Q. Give us a time line of, more or less, when the
19 transactions occurred; your initial purchase and then when --

20 A. The initial purchase, I believe, was in August of
21 '04. When this happened, I believe it was in March -- maybe
22 March or February of 2006 when we finally got rid of Devon, and
23 that's when we had the issues.

24 Q. When you say Devon --

25 A. Devon Garner. Excuse me. He was the one we had

1 as our production guy at the time that was supposed to be
2 fixing these wells and stuff. From then on, when we got to, I
3 believe it was March, I've been in charge of that process of
4 it. I was employed there -- before, they had just like a
5 bookkeeper. So I mean, I've been there since January of 2005,
6 but I was not running the company until '06.

7 Q. Okay. Tell us more about were any of the 71
8 wells you bought producing?

9 A. There was -- yeah, there was a few. Not many.
10 Probably 10 or 15, I think, just off the top of my head. But,
11 I mean, just that could produce for a little bit and then we'd
12 to have fix them and stuff. I mean, it was in pretty bad
13 shape.

14 Q. What did you do as an initial inventory of the
15 wells and --

16 A. Well, we decided which ones would be easiest to
17 get back on and make some money and get us some revenues and
18 stuff. We went out and looked at all the wells and seeing what
19 all we needed to do and just kind of prioritized from there.

20 Q. So give us some kind of time line as to when you
21 actually started doing work on all of the wells?

22 A. Well, the real work didn't -- of course, not
23 having -- like I said, the pulling unit was a big deal for us
24 because that's what we were going to use to do it. And around
25 in '07, especially in '05 and '06, it was virtually impossible

1 to get a pulling unit if you didn't have your own. I mean,
2 there was a six- or eight-month waiting list. We fixed a
3 couple.

4 And then in '06, we fixed a lot and we had started on
5 our Double X lease and we fixed approximately -- we got 20
6 wells either producing or plugged. And that took a long time.
7 We had a lot of, you know -- changed a lot of tubing, pump
8 changes, had to get some pumping units going. And, of course,
9 well time, and then we did plug four wells out there.

10 Q. Who told you to plug the wells?

11 A. The BLM.

12 Q. Now, the Double X lease that you talk about --

13 A. Yes, sir.

14 Q. -- is that a federal lease?

15 A. Yes, sir. Mostly they're all federal.

16 Q. Okay. And you were dealing directly with the
17 BLM?

18 A. Yes, the BLM there in Hobbs, yes.

19 Q. And did you satisfy the requirements of the BLM?

20 A. Yes, sir. In Lea County everything is real good
21 on our federal lease out there. Like I said, we either got
22 them all pumping or they're plugged.

23 Q. Tell us generally what kind of production you get
24 from these wells.

25 A. We get about two or three barrels of oil a day.

1 A couple of them float some gas, you know, five to ten MCF a
2 day. But, you know, some of them don't flow very much but they
3 do make some gas, maybe 15, 20 MCF. But as far as the oil
4 wells, they make about two to three barrels a day and about ten
5 barrels of water.

6 Q. Do you have a plan in place to do some
7 stimulation or anything else to the wells as you continue your
8 progression?

9 A. Yes. We want to do some frac jobs in some of the
10 State wells there in the Loco Hills area, which would be in
11 like the Cave Pool units and the Levers units, right in those
12 Grayburg wells that we have out there.

13 Q. Now, let's go to the OCD Exhibits No. 2 and 3.
14 Exhibit No. 2, as I understand it, is the list of the 23 wells
15 that were originally noncompliant; is that your understanding?

16 A. Yes.

17 Q. Let's start up with the very beginning --

18 A. Okay.

19 Q. -- the two Bradley Federal wells at the top.

20 A. The Bradley Federal #001 is plugged and
21 abandoned. All the remediation has been done. All the
22 paperwork submitted to the BLM. It is, you know -- everything
23 is done on that one. It is plugged and abandoned.

24 Q. When did you do that?

25 A. Well, we've done the plugged and abandoned part

1 of that one, I think, in '06, but we did not -- the remediation
2 did not get done until May of this year.

3 Q. When you say "remediation," what are you talking
4 about?

5 A. Reseed the -- they got to strip the location,
6 reseed it, trying to make it back to where there's, you know,
7 back to how it would be if there wasn't a well there, I guess,
8 so to speak.

9 Q. Why did you wait so long to remediate?

10 A. Well, there was a couple things. We had to plug
11 a few more of them. Just, you know, like I say, that's the
12 point where we got working on other stuff.

13 Q. When you say you had to plug a few more wells,
14 are you looking at this Exhibit No. 2?

15 A. Yes, we plugged --

16 Q. Or are there wells outside of this?

17 A. We plugged one more outside of this. Let's see.
18 We plugged four wells for the BLM out there.

19 Q. I don't want to take you out of your sequence on
20 your testimony. I'm just asking are they --

21 A. Right.

22 Q. -- as we progress down this list. But my
23 question was whether or not you plugged other wells that are
24 not on this list?

25 A. Yes.

1 Q. And which ones did you plug?

2 A. We plugged the Gulf Hanagan #002. Yeah, well,
3 no, we plugged the Gulf Hanagan #002 but we also plugged the
4 Gulf Hanagan Federal #001 as well.

5 Q. And that's not on this list?

6 A. That's not on this list. It's on Exhibit 3.

7 Q. Let's go to the third well which is the Cave Pool
8 Unit #027 on Exhibit 2.

9 A. Yes. That is a well that we want to T&A. We've
10 drawn up a procedure, and we've sent it in. It's been real
11 recent since we've sent it in. It went out Friday or Monday.
12 But that is one of the wells that we do want to temporarily
13 abandon.

14 CHAIRMAN FESMIRE: Which one was that?

15 THE WITNESS: The Cave Pool Unit #027.

16 Q. (By Mr. Padilla): Is there any reason why you
17 waited until recently to --

18 A. Well, like I said, we've been working, you know,
19 we have to maintain the wells that we could get fixed. And the
20 ones that -- some of these that you'll see that we have done
21 work on. One reason we wanted to do this one and a few of them
22 is because, I'll tell you, because they're all in the same
23 lease and that's -- when we plug two more of these wells,
24 that's where we want to go from there. And that will be in
25 that agenda when we get to those leases to T&A those wells

1 there and plug --

2 Q. Have you made an evaluation to see whether or not
3 to plug and abandon or to rework wells?

4 A. Yes, we have. We believe this one we might have
5 a good chance if our production holds and everything. If we
6 frac them and they do what we want, we do believe this will be
7 a good candidate to try at a later time to do that.

8 Q. But you haven't -- okay. That's why you want to
9 T&A it?

10 A. Right.

11 Q. How about the Cave Pool #036, which is the --

12 A. Yes. It's right next to it. Same situation.

13 Q. Okay. Cities Service State #001, the fifth well?

14 A. The Cities Services is one of those that Buddy
15 Garner, when we done that and they never did come up with the
16 plugging bond. And apparently they have lost -- the lease has
17 been lost on that and -- I just want to clarify one of the
18 reasons that -- and in retrospect, we probably shouldn't,
19 but -- the reason that there is showing production on that is I
20 still get gas statements and stuff showing that they are
21 producing these wells. And at the time --

22 Q. Who do you get gas statements from?

23 A. From like DCP and Targa.

24 Q. Why would you submit a production report on them?

25 A. Well, just because it was one of these that was

1 in violation. And, I mean, I just wanted to show that they
2 were producing it. I was not aware of -- like I'm not getting
3 no royalties or nothing on it, but -- we're trying to get the
4 wells back. Apparently that might not be a good deal, but
5 we're going to have to file suit against Buddy. And like, you
6 know, if we had the wells back, we'd be producing those two
7 right off the bat, but apparently not now.

8 Q. Well, if the lease is gone back to the Land
9 Office, then --

10 A. But, I mean, it has -- for some reason, I don't
11 know who bought them or whatever, but they have -- I'm still
12 getting gas statements and stuff like that on the wells.

13 CHAIRMAN FESMIRE: Mr. Padilla, I need to make a
14 little detour here. You're not getting any royalty, but there
15 is production coming off those wells?

16 THE WITNESS: Right. Okay. They changed their
17 Division order. Have we already done this?

18 CHAIRMAN FESMIRE: "They" being?

19 THE WITNESS: Buddy Garner, okay. He's taking all
20 the money and everything, but he won't put up a plugging and
21 bonding. He won't do nothing that we've asked him to do. We
22 have tried. He's called several times and said, "Yeah. I got
23 it." So we've gone on line to submit a change of operator --
24 bam, it's rejected. With this deal --

25 CHAIRMAN FESMIRE: Mr. Padilla, do you want to talk

1 to your witness, because this is beginning to be a bit of a
2 problem here.

3 MR. PADILLA: All right. Can I step out?

4 CHAIRMAN FESMIRE: Please.

5 [Recess taken from 2:08 p.m. to 2:09 p.m., and
6 testimony continued as follows:]

7 Q. (By Mr. Padilla): Mr. Welborn, we were talking
8 about the Cities Service #001.

9 A. Yes, sir.

10 Q. As far as you know, that's somebody else's well?

11 A. Yes, sir.

12 Q. Are you operating the well?

13 A. No.

14 Q. Okay. How about the Coquina State?

15 A. The Coquina State, we sent in a procedure to get
16 plugged. It was rejected. We have amended our procedure and
17 re-sent it in, and that is the first -- as soon as we get it
18 back, we will rig up and plug and abandon that well -- is the
19 plan.

20 Q. Is that on the same vicinity as the other wells?

21 A. No, sir. It's by itself. It's away from -- but,
22 yeah, it's one that we need to.

23 Q. Okay. How about the Earnest Federal #001?

24 A. It is plugged and abandoned.

25 Q. When did you do that?

1 A. In 2007. And the remediation was done a few
2 months ago.

3 Q. How about the Graham Federal #003?

4 A. We got it flowing gas. It's producing gas.

5 Q. What is -- how much gas?

6 A. In a month, between ten and 20 MCF. It's not a
7 lot, but it is--

8 Q. Who do you sell the gas to?

9 A. That goes to DCP.

10 Q. Okay. How about the Jennings Federal?

11 A. The same thing. It's flowing gas. We're selling
12 between 10 or 20 a month.

13 Q. How about the Julia Culp?

14 A. Julia Culp; what we discussed earlier. It was
15 plugged and abandoned. And I spoke to Bill Pritchard. In
16 2004, I don't believe -- before we bought it -- but I don't
17 believe a subsequent report was ever filed. We found the -- we
18 have since filed a subsequent report showing what work was
19 done, and I believe that was in April of 2004.

20 Q. 2004?

21 A. Yes, sir.

22 Q. And what needs to be done on that well?

23 A. From what I understand from Bill Pritchard, he
24 thought it was released, but I guess there could be some
25 remediation issues.

1 Q. Who's Bill Pritchard?

2 A. He used to be in the Hobbs office of the OCD. He
3 used to work for the OCD in the Hobbs office.

4 Q. Did you consult with Mr. Pritchard?

5 A. Yes, I do.

6 Q. And what do you intend to do about finalizing the
7 paperwork on this well?

8 A. Like I say, we've submitted the -- I think we've
9 submitted the proper paperwork for that to be finalized.

10 Q. The next well is Kemnitz 17 State #001?

11 A. Yes. Another one we don't have any interest in.

12 Q. Okay. And that was the result of the settlement
13 that you had?

14 A. Yes, sir.

15 Q. Okay. The next one is the Lea/UA/State #001.

16 A. Yes. That is one of the leases that has been
17 lost. And we do believe that we've got a deal where they're
18 going to -- I think some guys out of Midland are going to take
19 the well for the plugging liability. But if they don't, that's
20 one we'll need to plug.

21 Q. What's the latest that you've heard about that?

22 A. They were meeting today at lunch there in Hobbs,
23 so I hadn't heard anything else.

24 Q. Has the Land Office issued a new lease on this,
25 do you know?

1 A. I guess -- not to my knowledge, no. I haven't
2 heard about that. I don't know. I don't have any knowledge of
3 that.

4 Q. But somebody wants to buy the well from you?

5 A. I think they bought the lease through an auction,
6 is the way I understood it.

7 COMMISSIONER BAILEY: Can you tell us who it is?

8 THE WITNESS: American Production out of Midland --
9 no. American Exploration. Excuse me.

10 Q. (By Mr. Padilla): If they don't buy the well and
11 change operator, you're going to plug it?

12 A. Right.

13 Q. How about the Levers #003Y.

14 A. Yeah. We got it producing gas.

15 Q. How about the Northeast Malajmar Unit #001?

16 A. One of the ones that Buddy -- we don't have no
17 interest in.

18 Q. The Red Twelve Federal #002?

19 A. We have it producing.

20 Q. The Red Twelve Levers Federal #008Q?

21 A. Yeah. That's -- we want to T&A that well.

22 Q. What have you done to that well to determine
23 whether or not you want to do that?

24 A. Well, it was one of those that was -- well, like
25 she had talked about on that list that it was never -- it's in

1 the right place, and we just think it'll make a good well. But
2 we can T&A it and come back to it because it's a shallow well.
3 They never did complete that thing, so we'll go in there and do
4 perforation. But we think it'll be a good producer.

5 Q. So this well is not open to the -- in any
6 formation?

7 A. It is -- the casing has been put in the hole. I
8 don't think they ever perforated it.

9 CHAIRMAN FESMIRE: But it's got a last production
10 date on it.

11 THE WITNESS: Yes. That was one that we had talked
12 about at the last hearing was supposed to -- and that was a
13 mistake on my part -- those two and the Theos State, which I
14 thought I did send amended reports in for those, but apparently
15 nobody has got them. But I did go back and take the production
16 off. That was a mistake.

17 Q. Did you amend that report?

18 A. Yes, I did. I sent it in, but apparently, like
19 Ms. Prouty said, they never did receive those reports. But I
20 did go back in and do that after, in January. It was the exact
21 same thing for the Red Twelve Levers Federal #012.

22 Q. They've not been perforated? Is that what you're
23 saying?

24 A. I don't think they have. I don't think so.

25 Q. Do you have any type of integrity tests scheduled

1 for any of the T&A wells?

2 A. We were waiting to get -- I mean, we know who can
3 do it. We've talked to them. It would just be a matter of
4 time. We were just waiting to get our procedure back and then
5 we got a set of cast iron bridge plugs, and set the cement on
6 it and then we do the integrity test.

7 Q. You've made arrangements for doing an integrity
8 test?

9 A. Yes. We usually use a company out of Hobbs to do
10 that. But then we got to contact the field guy there in the
11 Artesia office to come witness that.

12 Q. The Artesia or Hobbs?

13 A. These will be in Artesia.

14 Q. I'm not sure, did I talk to you about the Red
15 Twelve Levers Federal #012?

16 A. Yeah. That was -- the #008 and the #012 are
17 identical situations.

18 Q. The Red Twelve State #001?

19 A. State #001.

20 Q. That's the next one, the next to the last, bottom
21 of the page.

22 A. Red Twelve State #003, you mean?

23 Q. I'm sorry, yes.

24 A. Yeah. We got it producing gas.

25 Q. How about the bottom one, Twelve -- Red Twelve

1 State #006?

2 A. That's one in this area there that we need to
3 plug.

4 Q. When are you going to plug it?

5 A. We thought -- how our schedule goes right now was
6 the Coquina plug first, then move to the WM Snyder, because
7 it's away from those. T&A the four wells that we've just
8 talked about, and then plug the Red Twelve State #006 and the
9 Theos State #001.

10 Q. Do you have to wait on a pulling unit now?

11 A. No. We have our own pulling unit. We had to buy
12 our own pulling unit, so that part is not the problem. We do
13 have to wait on cement sometimes, but usually with our own
14 pulling unit, we can get that.

15 Q. What's your schedule for this well, the plugging
16 procedure for these wells?

17 A. I'm thinking that Red Twelve State #006, we could
18 probably be there in -- with the work we're doing before that,
19 it'll probably be in September when we can get there, because
20 we want to do those Coquina. The Coquina will be -- you just
21 don't know how long it's going to take to plug the well, but we
22 know the Snyder is pretty deep, so we know that might take a
23 whole week to do. Coquina we're thinking a couple of days.

24 But after that, T&A'ing those four wells, we're
25 looking at about a week. So that would be the next one on the

1 list that we would want to do. So I'm thinking sometime
2 mid-September, maybe.

3 Q. In terms of -- how many wells do you have to plug
4 here?

5 A. We have to plug about -- it looks like about six
6 wells, I believe -- four to six. Let's see. We got to do the
7 Coquina, the Snyder, the Red Twelve #006 and the Theos State
8 #001, so that's four right there. So it looks like about four
9 more wells to plug, four to T&A.

10 Q. The next well is the State #001 on the next page.

11 A. Excuse me. Five wells, yeah. We need to plug
12 the State #001 also. It's in the same area, so we'll just be
13 moving from one to the next.

14 Q. Now, let me ask in terms of the time frame here,
15 you know. You're giving me -- or giving us five days here, two
16 days here, that sort of thing. What time frame do you need to
17 complete --

18 A. I think realistically December we would have
19 everything. Sometime in December we should have everything in
20 compliance.

21 Q. How about the State #002?

22 A. It's producing gas.

23 Q. The Theos State #001?

24 A. That's one that we need to also plug.

25 Q. And you already talked about that?

1 A. Yes, sir.

2 Q. And the William Snyder?

3 A. The William Snyder. Yes. That's the second one
4 we want to plug.

5 Q. That's a deep well?

6 A. Yes, that's a deep well.

7 Q. Now, do you have other plans for this well?

8 A. Yes, we did. At one time, we were going to
9 transfer that to Billy Pritchard. They were going to try to
10 make a disposal well out it, but there was another well in that
11 area, I believe, that was causing problems, so they're not
12 letting anybody make a disposal well out there. But that was
13 the plan at one time. Because I remember he submitted a big
14 report on that, and it got denied.

15 Q. Submitted to the OCD?

16 A. Yes, Bill Pritchard did, yes. I mean, it wasn't
17 in our name. He was going to do it in somebody -- I mean, they
18 were going to, you know, operate it under a different name.

19 Q. But that never got transferred?

20 A. Well, it got denied. So then they didn't want
21 the well, see.

22 CHAIRMAN FESMIRE: So you're going to plug it.

23 THE WITNESS: Yes. We are going to plug that one.
24 It's second on the list.

25 Q. (By Mr. Padilla): Overall, where are you with

1 the 71 wells?

2 A. We're in pretty good shape, other than -- I mean,
3 well, I will say in pretty good shape. Under the
4 circumstances, we have done a lot of work, and we're continuing
5 to do it. We're just -- we're at this point where I think
6 we're down, from what I got from here, about ten wells that we
7 need to do. Like I say, the plans are in the process. We are
8 going to continue forward, and that's what we're trying to do.

9 MR. PADILLA: This morning Mr. Sanchez testified
10 about Marks and Garner Exhibit No. 1. May I approach the
11 witness, Mr. Chairman?

12 CHAIRMAN FESMIRE: You may, Mr. Padilla.

13 Q. (By Mr. Padilla): Mr. Welborn, did you prepare
14 that exhibit?

15 A. Yes, I did.

16 Q. What's on that exhibit?

17 A. Those are the wells that we need to plug or T&A.

18 Q. How do those --

19 A. Other than the Julia Culp because that one was --
20 that one we feel is already plugged. I mean, it is plugged.
21 We haven't submitted the paperwork.

22 Q. How does that compare to the OCD's Exhibit No. 3?
23 Your Exhibit 1 is the wells that are on Exhibit No. 3 of the
24 OCD, Exhibit No. 3?

25 A. They're showing 14 inactive wells, and I'm

1 showing 11 here.

2 Q. What's the difference?

3 A. Well, they have the Gulf Hanagan on their list
4 which we've already plugged and abandoned, the Ernest Federal,
5 which is already plugged and abandoned. Those are two of the
6 biggest ones I see.

7 Q. Mr. Sanchez testified this morning that maybe
8 some of the paperwork was not in. What's your story on that?

9 A. Well, I know our C-115s are current. I guess
10 we're behind on some of the C-103s. That's, I guess, where we
11 stand.

12 Q. If you're behind, how long would it take you to
13 submit --

14 A. I could have all --

15 Q. Would you have to check first to see where you
16 are?

17 A. I thought we were sending C-103s, but I have to
18 check with the people that -- that would not be a problem at
19 all. I think that could be resolved some time next week on the
20 sundry reports. I don't see any problem on that.

21 Q. Do you know whether there are any deficiencies
22 from say, 2001 or before -- you know, before you acquired the
23 wells?

24 A. Not to my knowledge.

25 Q. Did you get any paperwork from the prior owners,

1 Marks and Garner, about regulatory aspects of the wells?

2 A. No.

3 Q. Any wells records?

4 A. We have some well files, but they didn't have
5 any -- I mean, they showed where they had done some work, but
6 not like violation letters or nothing of that sort.

7 Q. Were you apprised of any violation letters that
8 may have been sent to PO Box 70 in Lovington?

9 A. Sir?

10 Q. Were you apprised of that correspondence from the
11 OCD?

12 A. I don't understand what you're asking.

13 Q. Were you told about the --

14 A. No, no, no. I wasn't told if they were receiving
15 them.

16 Q. Were any of those letters forwarded to you?

17 A. No.

18 Q. Now, in your testimony as you went down
19 Exhibit No. 2 of the OCD and comparing that with Exhibit 1,
20 your exhibit, is there any difference in your testimony as to
21 what you have put in this Exhibit No. 1?

22 A. No.

23 Q. Now, this morning Mr. Sanchez testified about the
24 additional bonding requirement as shown on your Exhibit No. 1.
25 What are you going to do about this additional bonding?

1 A. Well, we know -- like I say, we're trying to plug
2 the wells, and we definitely know the ones that are T&A's need
3 to be additionally bonded, especially like the Lea/UA, you
4 know, we feel that that would be resolved in just a matter of
5 days. And like the Coquina and the Snyder and the Theos and
6 the ones that we intend to plug, you know, we could definitely,
7 you know -- that would exhaust our cash flow to plug these
8 wells if we had to -- some of that bonding. And the Julia
9 Culp, we feel that it's already plugged. So we don't feel that
10 there should be additional bonding on that one.

11 Q. Now, let's take the bottom well on your exhibit,
12 the Lea/UA State #001.

13 A. Yes.

14 Q. What happens if a transaction is struck today?

15 A. Well, they would have a change of operator. As
16 soon as we do that, then it's no longer our well, the way I
17 understand it. It's no longer our liability.

18 Q. If they file the bond?

19 A. If they file their bond and do all that.

20 Q. If not, you're going to plug it?

21 A. Yes, sir.

22 Q. Okay. So what's the time frame for plugging all
23 the wells on Exhibit No. 1?

24 A. Like I said --

25 Q. You said December, but what's the progression?

1 A. Well, if we don't get that, we'll go from the
2 Coquina to the Snyder and then try to go to the UA well. So
3 we're looking at a matter of a few weeks to get that done. Of
4 course, we have to submit -- on the UA well, we'll have to
5 submit and get approval on our plugging and go from there.

6 Q. Let's talk about this PO Box 70, Lovington,
7 New Mexico.

8 A. Correct.

9 Q. On the OCD's Exhibit No. 5 which you signed, you
10 used that PO Box 70, Lovington, New Mexico?

11 A. Correct. Yes. At the time, we were still using
12 that. Sometime there in -- I think it was in about April or
13 May is when we changed over to Hobbs.

14 Q. What year?

15 A. In 2005. And I know I did not go online and do
16 that, but I remember I sent letters to the offices in Hobbs and
17 Artesia to get that changed. And then after our hearing in
18 January -- they were saying July -- I did go in and put, you
19 know -- since we went through all this in the hearing in
20 January, I went in and double-checked that -- well, I went in
21 and put back in PO Box 1089. Going through the internet and
22 looking at some of that other stuff, it looked like some of it
23 still said PO Box 70 still in July, and then that's when
24 they're showing that I had changed it. But I did change it
25 again in July because it was incorrect. But we have used

1 PO Box 1089 since 2005.

2 Q. And where have you used it?

3 A. Where have I used it?

4 Q. Yes.

5 A. Well, for everything. Like -- I mean, it's on
6 all our reports we submit. Like I said, we submitted -- well,
7 I wrote a letter to the field offices, here's our change of
8 address. That's all I thought I had to do at the time, but we
9 put it on all our C-115s. Everything that we submitted is
10 that. I've gone online and I guess changed it twice to PO
11 Box 1089.

12 Q. C-115s have the 1089 address?

13 A. Yes, they should.

14 Q. Since when?

15 A. Sometime in 2005, I believe it was. I don't
16 know. It was either March, April, some time in there.

17 Q. Now, on April 7th, 2005, a notice of violation
18 was sent to the PO Box 70, Lovington, New Mexico.

19 A. Yes.

20 Q. Did you get notice of that?

21 A. No.

22 Q. OCD Exhibit No. 9 is letter dated June 19, 2006,
23 and it's addressed to Post Office Box 1089, Hobbs, New Mexico.
24 Do you recall receiving that letter?

25 A. Sir? Excuse me?

1 Q. Do you recall receiving that letter?

2 A. No, I do not.

3 MR. PADILLA: May I approach?

4 CHAIRMAN FESMIRE: You may, sir.

5 THE WITNESS: Oh, yes, yes. I did receive this
6 letter. And at the time, we did submit a procedure to T&A this
7 well.

8 Q. (By Mr. Padilla): That's the Coquina?

9 A. That's the Coquina. And I never did get any
10 response back.

11 Q. Did you inquire again?

12 A. Yeah. And I never got a response. And then I
13 did -- when we were checking through, we were doing some more
14 procedures, I did find where they did approve that procedure on
15 the internet, but I never did receive any written
16 correspondence or anything to that effect.

17 Q. It was posted on the internet?

18 A. Yes. It's -- in the well file of the internet,
19 it was in there.

20 Q. And when did you discover that?

21 A. Oh. About two months ago, I guess, when we were
22 pulling up well files on the Coquina to write up our procedure
23 to plug it.

24 Q. But you'd already, in fact, filed a procedure for
25 it?

1 A. Well, a different procedure. At this time, we
2 filed a T&A procedure instead of filing -- now we're filing a
3 plugged and abandoned procedure.

4 Q. When was the first time that you, Mr. Welborn,
5 became aware of violations on 23 wells?

6 A. Well, the first time about the violations, I
7 mean, I knew we were working on them and everything. But the
8 first other letter that I got of this was when we were going to
9 hearing, and it was sent to PO Box 1089.

10 Q. Did you receive Exhibit No. 10 of the OCD, a
11 letter from one of the attorneys for the Division, Gail
12 MacQuesten? It's dated August 30th, 2007.

13 A. No, sir.

14 Q. So the very first time, as I understand your
15 testimony, that you knew you were in violation of 23 wells was
16 when you received a notice of hearing?

17 A. Yes.

18 Q. And you came to the hearing.

19 A. Yes.

20 Q. And did you get a copy of the order?

21 A. No. I did not get a copy of the order. The way
22 I found out about our order was on the internet. It was posted
23 on the internet. I did not receive a copy of the order.

24 Q. Did I send you a copy of the order?

25 A. Sir?

1 Q. Did I send you a copy of the order?

2 A. No, sir.

3 Q. Did you get a reason why I didn't send you a copy
4 of the order?

5 A. I don't think you received it.

6 Q. Did you instruct me to file for de novo hearing
7 once you got it?

8 A. Yes, sir, the day that I found out.

9 Q. And how many days were left before you had to
10 file a de novo hearing?

11 A. There were -- I'm not sure. There wasn't very
12 many, if any, days.

13 MR. PADILLA: Pass the witness, Mr. Chairman.

14 CHAIRMAN FESMIRE: Why don't we take a ten-minute
15 break and reconvene at a quarter to 3:00. And when we do,
16 Ms. Altomare, I guess you'll begin your cross-examination.

17 [Recess taken from 2:36 p.m. to 2:47 p.m., and
18 testimony continued as follows:]

19 CHAIRMAN FESMIRE: Okay. Let's go back on the
20 record. The record should reflect that, again, this is a
21 continuation of Case No. 14041. It is Thursday, August 14th,
22 2008, at a quarter to three. The record should also reflect
23 that all three commissioners are present. We, therefore, have
24 a quorum.

25 I believe, Ms. Altomare, you were going to begin your

1 cross-examination of Mr. Welborn.

2 MS. ALTOMARE: Yes.

3 CROSS-EXAMINATION

4 BY MS. ALTOMARE:

5 Q. Mr. Welborn, you and -- it's your dad, I guess,
6 that's involved in the company?

7 A. Yes, ma'am.

8 Q. You became involved in Marks and Garner Company
9 in 2004; is that right?

10 A. Yes.

11 Q. Okay. And I think you previously testified, and
12 I think you reiterated today as well, at the time you took on
13 responsibility for Marks and Garner, you were aware that there
14 were issues with the recordkeeping, that the record --

15 A. Yes.

16 Q. The word you used was "shady" last time.

17 A. Yes.

18 Q. And you had also testified that you knew that
19 they had not filed C-115s for two or three years at that point?

20 A. Right. That's correct.

21 Q. Are you aware that the OCD stopped using hard
22 copy C-115s in about 2002?

23 A. I didn't know when, but yes, it is
24 electronically.

25 Q. Right. And the electronic forms of the C-115s do

1 not have a place for addresses. Are you aware of that?

2 A. I didn't know how that was -- you know, I know
3 it's on a spreadsheet, and I see it there, so --

4 Q. Okay. But you're not surprised -- I mean, that's
5 not a surprise to you.

6 A. Like I say, I don't know how you all look at the
7 data when it comes through, so I don't have no idea.

8 Q. When you took on Marks and Garner, you took it on
9 yourself to fix the existing violations. You were aware there
10 were issues?

11 A. Yes, we know that --

12 Q. And that was over four years ago?

13 A. Yes. But like I said, a year and a half of that
14 without a pulling unit and everything, that really set up back.
15 I mean, I don't mean to harp on it, but now we do got our own
16 pulling unit, and we are making strides to get everything
17 provided.

18 Q. Do you have OCD Exhibits 4 and 5 in front of you?

19 A. No, ma'am. I do not.

20 MS. ALTOMARE: May I approach the witness?

21 CHAIRMAN FESMIRE: You may.

22 Q. (By Ms. Altomare): If I could get you to go
23 ahead and look at Exhibit 4.

24 A. Yes.

25 Q. Do you recognize this document?

1 A. Yes, I do.

2 Q. Can you describe it for me, please?

3 A. I believe this is changing the UA well -- this is
4 the change of operator to Marks and Garner from WAS, LLC.

5 Q. And this is one of the first wells that you
6 acquired; is that right?

7 A. That's correct.

8 Q. And who executed this document?

9 A. Well, it looks like Debbie McKelvey and Mickey
10 Welborn is the one who signed it.

11 Q. Okay. Mickey Welborn signed on behalf of Marks
12 and Garner, Ltd.; is that right?

13 A. That's correct.

14 Q. And what is the title that he designated for
15 himself?

16 A. Manager.

17 Q. And what is the address that is listed?

18 A. PO Box 70.

19 Q. What is the date that he signed this document?

20 A. 11/29/2004.

21 Q. Were you involved at all in the transaction
22 involving this well?

23 A. No, I was not.

24 Q. Do you recognize your father's handwriting and
25 signature?

1 A. Yes. That is his signature.

2 Q. I'm going to go ahead and direct your attention
3 to Exhibit No. 5. Do you recognize this document?

4 A. Yes, I do.

5 Q. And is that your handwriting and signature?

6 A. Yes, it is.

7 Q. And this is an operator administrator form,
8 correct?

9 A. Yes.

10 Q. And in this form, you identify yourself as the
11 controller of Marks and Garner?

12 A. Yes.

13 Q. And as that title -- what does that title mean in
14 terms of the company?

15 A. At this time, I was just like pretty much the
16 accountant. You know, financial-wise, I did not have any --
17 and I was doing the electronic reporting.

18 Q. Okay. And so you had the authority both to
19 designate an administrator and also to be designated as the
20 administrator?

21 A. Correct.

22 Q. And what is the date that you executed this
23 document?

24 A. February 1st, 2005.

25 Q. And this is indeed your handwriting and your

1 signature?

2 A. Yes.

3 Q. And the address that you indicated on this form
4 is what?

5 A. PO Box 70 in Lovington.

6 Q. Are you familiar with the OCD Rule 100 for
7 operator registration and notification of change of address?

8 A. Yes, I am now.

9 Q. Are you aware that, as an operator in the State
10 of New Mexico, the burden is on you to be aware of what the
11 rules are and as they change to be aware of the changes?

12 A. Yes.

13 Q. Is there a reason that when it came time to
14 change your address, that you just assumed that submitting a
15 change of address to the district office was sufficient and you
16 didn't look to the rules to see what you were specifically
17 supposed to do?

18 A. Yeah. When I talked to them -- I talked to
19 somebody at the district office. And I sent it to Hobbs and to
20 Artesia, and they said it would be sufficient. I guess it was
21 my error that it was not, you know, that -- I'm like, you know,
22 like I said, I know I did not do that until January, until our
23 first hearing. I know that it was not done electronically.

24 Q. Okay. Regarding the letters that were issued,
25 you've acknowledged that you did indeed receive the June 19th,

1 2006, letter at the 1089 box in Hobbs?

2 A. Yes.

3 Q. In fact, that address indicated that it was the
4 third notice, right?

5 A. Yes.

6 Q. That didn't raise any red flags to you that
7 perhaps you had been missing some mail?

8 A. Yes, we did. And I double-checked with the field
9 offices to make sure that they had my right address at that
10 time. And they both said that they had it. And that's where I
11 figured, you know, that's where that stuff is coming from.

12 Q. Okay. Did you discuss with them what the
13 previous two violation letters had contained?

14 A. I just knew that, at that time, that's when we
15 had decided that we would T&A that well. And we did send --
16 like I said, submitted a procedure and never did hear nothing
17 back from any district or anybody.

18 Q. Okay. The June 6th, 2006, letter provided a
19 deadline for you to comply by.

20 A. Right.

21 Q. Why didn't you follow up when you didn't hear
22 anything to make sure that you were able to achieve that
23 compliance by that date?

24 A. Well, like I said -- I -- let's see. I talked to
25 Buddy Hill once, and he told me that as soon as it got in, just

1 to get with him, and we would get the work done and then
2 maybe -- just moved on to get some of these others. That was
3 at a time when we were plugging all those other wells, too. So
4 that's --

5 Q. Okay. Let's talk a little bit about the wells.
6 You've indicated that the Bradley Federal wells #003 and #001
7 are both P&A's; is that right?

8 A. Yes. They are both plugged and abandoned.

9 Q. Okay. Have the surfaces of both of those wells
10 been restored?

11 A. Yes, ma'am.

12 Q. So those wells may be an issue of submitting
13 additional paperwork from a federal agency?

14 A. From the BLM, uh-huh.

15 Q. At the time that we filed this application,
16 however, all of the paperwork had not been filed to indicate
17 that they had been P&A'd; is that right?

18 A. The remediation part was not one done in January.

19 Q. But, in fact, even the P&A paperwork to say that
20 it had been plugged hadn't been filed with our office; isn't
21 that right?

22 A. It might not have been filed in your office. It
23 was filed with the BLM.

24 Q. Okay.

25 A. And I think -- anyway -- but that was, yeah.

1 That was the issue I addressed when we got back from that
2 hearing.

3 Q. Okay. On the Cave Pool unit #027 --

4 A. Uh-huh.

5 Q. -- and #036, according to the spreadsheet that
6 you provided in Marks and Garner Exhibit No. 1, you did say
7 that you planned to T&A both of these wells.

8 A. Yes, we do.

9 Q. And that you said in the procedure -- you
10 provided that spreadsheet to counsel and to the Commission on
11 August 8 indicating that you sent in the procedure, but you
12 haven't provided us with any copies of what that procedure is;
13 isn't that right?

14 A. Yes. They were probably sent out after that. I
15 believe we sent them out last week.

16 Q. So we just have to take your word for it that it
17 was sent out and that the procedure is adequate?

18 A. Right. Well, I mean, I could, you know, I mean,
19 when I get back, I can provide you with copies -- when I get
20 back next week into Hobbs, yes.

21 Q. Would it surprise you to know that as of two days
22 ago, the Hobbs office, the district office, had not received
23 anything from you in the way of paperwork on any of these
24 wells?

25 A. Well, yeah, it would surprise me, because I know

1 they have got the Coquina procedure. And the ones at the Cave
2 Pool #027 and #036 and all the ones that we have T&A'd have
3 gone to the Artesia office.

4 Q. We'll talk about the Coquina in a moment.

5 A. As well as the Julia Culp.

6 Q. Okay. You had previously telephoned that you
7 planned to plug these wells, the Cave Pool Unit #027 and #036.
8 When and why did you decide that you were going to TA them
9 instead of plugging them?

10 A. I really thought we said we would T&A those two
11 wells in our previous -- I could be wrong, but it's always
12 been -- you know, I might have misspoken, but I don't believe
13 that we wanted to T&A those wells.

14 Q. Okay. I believe it was your testimony in January
15 that you planned to plug those wells within three or
16 four months. But you may be right that it wasn't a for-sure
17 thing, that it was an if.

18 A. Okay. But we did plan to T&A the wells.

19 Q. Okay. Have you begun to make any arrangements to
20 schedule the MITs that are going to be necessary for the T&A?

21 A. Well, we have -- we weren't quite sure -- you
22 know, we've been plugging wells. We weren't quite sure about
23 the procedure with the T&A.

24 I do remember my production guy did speak with Gerry
25 Guye as to the steps involved in getting that done. He told us

1 to first send in our procedures to get them approved, get all
2 your work done, basically, setting your bridge plugs and
3 dumping cement and everything, call us back where we get a
4 truck, and you can pressure up on the wells and do your MIT
5 test.

6 Q. Okay. These wells previously failed MITs back in
7 2004 and 2005; isn't that right?

8 A. Well, I don't think they -- the reason they
9 failed the MITs is I believe when Devon Garner was in charge up
10 there, he never met with them to do an MIT test.

11 Q. But regardless, they never passed --

12 A. They never passed.

13 Q. -- successfully?

14 A. But we do believe that they will pass an MIT
15 test.

16 Q. And as a result of those failures of MITs in
17 2004, they were ordered to be shut in; isn't that right?

18 A. Yes. They were lost -- we had lost authority to
19 inject into those wells.

20 Q. Are you aware that, despite being told to be shut
21 in as of 2004, there is continued recorded injection through
22 November of 2005 on those wells?

23 A. No, I was not aware of that.

24 Q. Regarding the Cities Service #001 --

25 A. Yes.

1 Q. -- this is one of the wells that you are in the
2 process of trying to convey to Buddy Garner.

3 A. Yes.

4 Q. Are you aware of the rules that state that,
5 basically, until you effect that change of operator, that well
6 is yours and your responsibility?

7 A. Yes.

8 Q. And are you also aware that under the rules he's
9 not supposed to be operating it until it is actually under his
10 operatorship?

11 A. Okay.

12 Q. So we've got some problems going on. Have you
13 talked to Mr. Garner about that?

14 A. Yeah. We've done everything. I'm basically not
15 into any discussions with him other than through lawyers and
16 litigation, so --

17 Q. Okay. I'm showing the last activity that was
18 reported on this well in the form of a sundry was a request for
19 authority to transport filed in 1994. And we're suddenly
20 showing some production since January of 2008. So we seem to
21 be missing a significant amount of records on this well.

22 A. Yes.

23 Q. Do you have any explanation for that?

24 A. Well, I do know that it was not producing for a
25 while. We did -- I know we, until we sold the wells, we did

1 have it going and producing until the deal with our agreement,
2 so to speak, about selling these wells.

3 Q. So you had brought it back on line prior to
4 conveying it to Mr. Garner?

5 A. Yes.

6 Q. Obviously you did some work on the well?

7 A. Yes.

8 Q. Is there a reason you didn't file the required
9 sundries to document the work that you did to remedy whatever
10 it was that was keeping it from producing?

11 A. Like I said, I'll have to check on that. I do
12 not know why they were not filed.

13 Q. On the Coquina State, you seem to be under the
14 impression that you are just waiting on approval from the
15 district. Did you hear the testimony this morning that your
16 application was denied?

17 A. Yes. We knew that. We have sent another one
18 since that has been denied. We have met with an engineer
19 friend of ours in Hobbs. We did not have a -- we had to have
20 another plug in there in a different zone, but we do believe it
21 is an adequate way to plug the well and the way it should be
22 done. We have resubmitted it with all the paperwork and well
23 scheduling on how to do that. Now we're just waiting to see
24 what they do on that. But yes, we did know we did get denied.
25 We have revised that and resubmitted it.

1 Q. When was that resubmission made?

2 A. It was probably like last week. I mean, it's
3 only been a few days, probably Thursday, maybe?

4 Q. Would it surprise you to know that according to
5 the district office that within the last couple of days they
6 have not received any correspondence or inquiries, anything
7 involving this well or the denial that they issued?

8 A. I would have figured that they probably would
9 have got that by now. I mean, yeah, it's probably been a
10 little bit, but it has been resubmitted.

11 Q. In any event, you do plan to move forward with
12 the plugging on this well?

13 A. Yes, we do.

14 Q. You recognize that it can take a significant
15 amount of time to complete the plugging of a well?

16 A. Yes.

17 Q. Okay. The Earnest Federal.

18 A. Yes.

19 Q. This is another one that you have indicated has
20 been already plugged.

21 A. Yes.

22 Q. But we're waiting on the surface restoration.

23 A. The work has been done. The paperwork has been
24 submitted.

25 Q. Okay. The last paperwork that we are showing

1 from the BLM indicates that they had extended a deadline for
2 you, but I had nothing to indicate that you had met it.

3 A. Yeah. We have met that deadline on those wells.

4 Q. But nonetheless, it had not been completed and
5 the plugging and abandonment process had not been done at the
6 time that the application was filed back in November; is that
7 right?

8 A. In November?

9 Q. In November of 2007?

10 A. No. You're right, yes.

11 Q. Okay. On the Graham Federal, that well -- it
12 looks like resumed reporting production in approximately 2007,
13 September?

14 A. Uh-huh.

15 Q. Except that I'm showing that the last sundry of
16 any kind that we have in our well file was something showing it
17 back on production back in 2005. But then it stopped reporting
18 production in November 2005, and then there's another gap until
19 2007.

20 A. Uh-huh.

21 Q. You kept making reference to, "We got it going
22 again. We got it pumping again."

23 I'm assuming when you say that, you're talking about
24 doing work on wells.

25 A. Yes, we did do work on the wells.

1 Q. Did you do some work on this well to get it
2 pumping again?

3 A. Yes. Well, we got it flowing gas, but yes.

4 Q. So where are the sundries on this to indicate
5 what work you did to get the well flowing again?

6 A. Well, I know they were filed with the BLM. Now,
7 then again, it might be an issue of between the two agencies,
8 but there has been sundry notices from the BLM on this one as
9 well as the Jennings Federal #002.

10 Q. When you file your documents with the BLM, are
11 you filing the required number of extra duplicates so that they
12 can provide the copies to our Division?

13 A. Yes.

14 Q. On the Jennings Federal #002, again, we're
15 showing reported production resuming back in August of '07, but
16 the last activity being reported in our well file was a request
17 for authority to transport back in 2001 before you even were
18 involved.

19 A. Then, again, it's just like the Graham
20 Federal #003, they were submitted with the BLM, but the work --

21 Q. Would it surprise you to know that we don't
22 routinely have problems getting records from the BLM?

23 A. Well, yeah. Because I've heard of other people
24 having some problems, so --

25 Q. Intermittent, maybe, but not --

1 A. Well --

2 Q. Okay. On the Julia Culp #001, on the spreadsheet
3 it indicates that you found the paperwork indicating that it
4 had been plugged and abandoned --

5 A. Right.

6 Q. -- but you didn't provide that as an exhibit.
7 Why not?

8 A. Well, I don't know. We have resubmitted it.
9 It's --

10 Q. Okay. You've indicated that you're under the
11 impression that it's ready to be released.

12 A. Yes. That's -- when I had spoke to Bill
13 Pritchard, he thought yes, it was -- it would be released. I
14 was under the impression -- of course, I was not on board when
15 that thing was --

16 Q. Have you been out to the site recently?

17 A. No, I have not.

18 Q. Are you aware that there is still a 500-barrel
19 welded tank and a gas meter on the site?

20 A. Yes, I wouldn't be surprised about the gas meter,
21 but I'm surprised about the tank still being there.

22 Q. Okay. Are you aware that it's not ready to be
23 released?

24 A. I don't know what that tank is -- they told me
25 they had -- I mean -- yeah, I'm surprised that tank is there.

1 I don't know what's going on there.

2 Q. Okay. On the WM Synder --

3 A. Uh-huh.

4 Q. -- your spreadsheet indicates that you are
5 plugging it, and you've sent in the procedure.

6 A. Uh-huh.

7 Q. Again, this is another well that wasn't addressed
8 until after our application for hearing was filed, right?

9 A. What's that?

10 Q. At the time we filed our application, it was in
11 violation?

12 A. Yes.

13 Q. This is a well that hasn't produced for five
14 years?

15 A. Yeah, we needed to plug it. Like I said, that is
16 the second one in line that we want to --

17 Q. Do you recall in January that you testified that
18 this was going to be the first one to be plugged and that you
19 planned to do it in February or March of 2008?

20 A. Yes, but like then again, you know, we had
21 to remediate some of these deals for the BLM, and we just --
22 like I said, we've had to maintain some wells and stuff. And
23 around that time is, I believe, when Bill Pritchard and them
24 were wanting to make a Snyder -- were wanting to make a
25 disposal well out of it, so we were going to do a change of

1 operator where they own the well. We didn't have no more
2 interest in it. Of course, since then, things have changed.
3 But that's one reason it was --

4 Q. So things can change?

5 A. Yes. Things can change, definitely. There's no
6 doubt about it.

7 Q. So the time line that you're testifying today
8 about, you're anticipating coming into compliance, having lofty
9 aspirations of doing it by December and whatnot -- things can
10 change?

11 A. Well, yeah. Definitely things can change. I
12 mean, like I said, we've had, you know, some setbacks, but, you
13 know, that's what, you know, what we're planning on, what we're
14 looking at now.

15 Q. Okay. On the Theos State #001 --

16 A. Uh-huh.

17 Q. -- again, you said you sent in the plugging
18 procedure?

19 A. Uh-huh.

20 Q. Again, I think it seems like a very similar
21 situation as the WM Snyder; is that right? the well that hasn't
22 produced for a very long time?

23 A. Yes.

24 Q. This well was actually TA'd --

25 A. Right.

1 Q. -- prior to you getting involved in the company?

2 A. Uh-huh.

3 Q. And that TA had actually expired prior to you
4 coming on board?

5 A. Right.

6 Q. On the Kemnitz State #001, Kemnitz 17 State #001,
7 is this another one of the Buddy Garner issue wells?

8 A. Yes, ma'am.

9 Q. Again, you're aware that until that change of
10 operator takes place, you are responsible for that well?

11 A. Yes.

12 Q. The Lea/UA/State #001.

13 A. Yes.

14 Q. You've testified that you are in the process of
15 trying to transfer that well to another operator?

16 A. Well, the lease has been sold. So if they don't
17 take it, then we will plug the well.

18 Q. But it is currently inactive, and it has been for
19 at least five years, correct?

20 A. Correct.

21 Q. Which means that it was inactive at the time you
22 took over Marks and Garner?

23 A. Yes.

24 Q. The Levers #003Y well, I think that you had
25 testified at the last hearing that you got it pumping?

1 A. Uh-huh.

2 Q. Again, to my ear, that means that you must have
3 done something to it?

4 A. Yes, we did.

5 Q. But again, the last filing that I have in the
6 well file is a request for authority to transfer back in 1994.
7 Why are there no sundries being submitted?

8 A. I'll have to check on that. I don't really -- I
9 know that there was probably a few sundries, but -- that
10 weren't -- but I didn't know you all haven't got any of them,
11 so I need to see what the problem is on that.

12 Q. Because this one is not a federal well, right?

13 A. The Levers, I do not -- that one, I do not
14 believe it is.

15 Q. So this would have come directly to us?

16 A. Yeah. It would have gone to -- well, yes. It
17 would have been to the OCD.

18 Q. And at the time we filed our application, it was
19 not producing; is that right?

20 A. Right.

21 Q. The Northeast Malajmar is the last of the three
22 Garner wells?

23 A. Right.

24 Q. And it has been inactive for at least five years;
25 is that right?

1 A. That's correct.

2 Q. The last filing in that record that I'm showing
3 is an intent to P&A back in June of '93. So it appears that
4 we're missing a significant number of records on that as well.

5 A. I mean, like I said, I don't have no interest in
6 that well now. But I know that it was inactive when we had it.

7 Q. Okay. You understand that under the rules, under
8 the law, you do have an interest in that well up until the
9 transfer occurs?

10 A. Right.

11 Q. Okay. The Red Twelve Federal #002, you testified
12 previously that you had placed flow lines on the well?

13 A. Uh-huh.

14 Q. And it has been put back on line, it looks like,
15 back in September of 2007.

16 A. Uh-huh.

17 Q. But the last record I'm showing is a request for
18 authority to transfer it back in June '99. Again, we seem to
19 be missing some records.

20 A. Yes.

21 Q. Do you have any explanation for that?

22 A. Like I said, it doesn't surprise me a few of them
23 are missing, but it surprises me that all of them are missing.

24 Q. All right. So the Red Twelve Levers Federal
25 #008Q and the Federal #012, those are the two that you're

1 saying have never produced?

2 A. Yes.

3 Q. You seemed a little unclear about whether or not
4 they have been perfed. The records that I have indicate that
5 they have been perfed.

6 A. They might have. I just -- I mean -- I'm --

7 Q. Okay.

8 A. But I know that they never did complete them.

9 Q. Okay. So you had testified at the last hearing
10 that you were sure that they hadn't produced and that you
11 assured the Hearing Examiner and the Division that you would
12 make sure that you amended those records?

13 A. Yes, uh-huh.

14 Q. Why have you not taken steps to do that in the
15 last seven-and-a-half months?

16 A. I have. I thought I did. I don't know if they
17 got rejected or what. That could have happened and I might not
18 have, but I did go back and take that production out of those
19 reports and amend them. But like I said -- I don't know, but
20 that's, you know -- it was on those two and Theos State.

21 Q. Okay. Which is the other one with the anomalous
22 production being reported?

23 A. Yes.

24 Q. The Red Twelve State #003?

25 A. Uh-huh.

1 Q. It looks like it's another one where we are
2 having a significant amount of missing records. It looks like
3 there was some correspondence with the OCD on some compliance
4 issues, but the last -- it resumed production back in September
5 of 2007 --

6 A. Uh-huh.

7 Q. -- and we appear to be missing records on that as
8 well. And that's another State well; isn't that right?

9 A. Yes, uh-huh.

10 Q. And you don't appear to have any explanation for
11 why you haven't filed --

12 A. Right. Like I said, I do not know why they are
13 not done. I know they've been prepared. Like I say, that
14 won't be -- I will not be in Hobbs tomorrow, but I know that
15 stuff is being taken care of just --

16 Q. Actually, there aren't any significant sundries
17 files for anything done to the well since prior to your coming
18 on board with Marks and Garner.

19 A. Yes. There has been work done to that well.

20 Q. Okay. The Red Twelve State #006, your
21 spreadsheet indicates that you need to plug it.

22 A. Yes.

23 Q. In fact, that well has been inactive since you
24 became involved in Marks and Garner.

25 A. That's correct.

1 Q. Why haven't you addressed this well before now?

2 A. Like I said, you know, we've been working on this
3 other stuff first. Just, you know, just, down the line, that's
4 the point we're at.

5 Q. Again, the same thing with the State #001 --

6 A. Correct:

7 Q. -- it was inactive at the time you became
8 involved in Marks and Garner?

9 A. Uh-huh.

10 Q. And again, it just wasn't a priority?

11 A. Well -- I mean, it's a priority. But like I
12 said, we've been working on them other wells, and that's --
13 we're getting closer to getting to where we need to be to get
14 these done. That's for -- now, one reason that we hadn't -- we
15 want to do the Coquina and the Snyder first is those are, you
16 know, our well leases. And they're, you know, they're far away
17 from each other and nothing else there.

18 But the rest of these, excluding the UA well on our
19 Exhibit 1 here, all in the same area. So we're going to --
20 before we do those two, we're going to move to that area and
21 start our T&As and try to plug -- I think there's two of them
22 in there -- or three that we need to plug and T&A four of them.

23 Q. Okay. The last well is the State #002. I'm
24 showing that it began reporting production again back in
25 September of 2007, but the last sundry I have is a 2001

1 subsequent report of installation of some new equipment. And
2 there's a pretty significant gap in the production. I'm
3 assuming that work was done on that well?

4 A. Yes.

5 Q. And we still appear to be missing records?

6 A. Right.

7 Q. Is it fair so say that you testified that you
8 took kind of an inventory of the wells and that you were
9 prioritizing how to do the work on the wells. It appears to me
10 that you seem to be focusing on reworking wells and bringing
11 things back online before cleaning up the ones that were
12 defunct?

13 A. Well, not necessarily. But, I mean, we do have
14 to have our cash flow to be able to plug these wells and to be
15 able to maintain the ones that do make us money or we'd be
16 broke.

17 Q. But you understand that it's as much as
18 obligation on you as an operator --

19 A. Yes.

20 Q. -- to take care of the stuff that needs to be
21 done.

22 A. And I do believe we are making strides to get
23 that done. I mean, we've gone from 23 to what we've got here.
24 We're showing -- I was showing ten. You all are showing 14 on
25 August 7th. So I mean -- like I said, we've plugged four or

1 five wells. We've gotten at least that many or more producing
2 that were on this list. And we're just -- like I said, we
3 can't do them all first. We're -- this is to the point where
4 we're at on the work we've done.

5 Q. Okay. Do you recall your testimony back in
6 January and again earlier today about the financial assurance
7 requirements?

8 A. Yes.

9 Q. Is there a reason that Marks and Garner has not
10 made any efforts to come into compliance with those
11 requirements?

12 A. Well, you know, like I said, we had the ones that
13 we were fixing to plug. And then we have the Julia Culp, you
14 know, which we believe has been plugged. And like the UA well,
15 we know that if we get that change of operator -- and the
16 money -- like on that deal, it's going to cost us with our own
17 unit, 15- to 25,000, which is, you know, financial strain. And
18 you know, we -- you know, the wells we're plugging, we don't
19 have to do it.

20 But -- anyway, all I'm saying is we're trying to
21 whittle it down, and I know that we will additionally have to
22 bond the ones that we're T&A'ing -- those four that we want to
23 T&A. But I do believe that we will have the rest of them
24 plugged or out of our name.

25 Q. Are you aware that financial assurance is still

1 required on plugged wells right up until they are fully
2 released?

3 A. No, I did not.

4 Q. Okay. So just plugging the well bore isn't
5 enough. It has to be fully released by the district.

6 A. Right. But I mean, we plan on as soon as we do
7 plug the well bore and do the remediation work and just, you
8 know, get it released.

9 Q. Have you posted any single well bonds?

10 A. No, I have not.

11 MS. ALTOMARE: I think that's all I have.

12 CHAIRMAN FESMIRE: Commissioner Bailey?

13 EXAMINATION

14 BY COMMISSIONER BAILEY:

15 Q. Do you file the production reports
16 electronically?

17 A. Yes, ma'am.

18 Q. I thought I understood Ms. Prouty to say that
19 when you filed this form shown in OCD Exhibit No. 5, the
20 operator administrator registration form?

21 A. Uh-huh.

22 Q. That a specific code number was given to you for
23 use when you electronically file; is that correct?

24 A. Yes, that's correct.

25 Q. And you are, as the controller and vice

1 president --

2 A. Uh-huh.

3 Q. -- all those production reports would be filed
4 under that code number, either personally, or under your
5 direction.

6 A. Yes.

7 Q. So all of these production reports for Kemnitz,
8 the Cities Service, the Lea/UA/State, and the Northeast
9 Malajmar, are being filed under your name, under your code?

10 A. Yes.

11 Q. So how does Buddy Garner have responsibility for
12 the wells if you're the one that has that code and is reporting
13 the production?

14 A. Well, like I said, I don't know what to really
15 tell you other than what I've told you about the situation with
16 him. When we sold those wells, he, you know -- they're pretty
17 much out of our control. They never get changed over, so they
18 have stayed in our name.

19 Q. But when the production reports are filed,
20 they're filed by you under your code?

21 A. That's correct, uh-huh.

22 Q. So you were aware of the fact that there is
23 production on these wells that you say you don't have any
24 control over.

25 A. Yes. I -- I do know that -- well, I mean, I do

1 know that they have produced.

2 Q. Do you have an operating agreement with Chase?

3 A. With who?

4 Q. With Chase?

5 A. Chase?

6 Q. Yeah.

7 A. I did not know these leases were lost.

8 Q. Chase Oil Corporation?

9 A. No, I do not.

10 Q. Because the Cities Service is on the Chase lease,
11 and if there is not an operating agreement with the lessee of
12 record, then there's an issue you might want to address also.

13 A. Yes, ma'am.

14 Q. When do you intend to make this change of
15 operatorship?

16 A. We have tried and tried since the deal has
17 happened. You know, they won't come up with the money to bond
18 the wells, so they keep -- every time we try, they tell us,
19 "Yeah, we've got the additional bonding."

20 And bam, it gets rejected. So the only other thing I
21 know to do is -- I even asked Mr. Padilla, but he feels like
22 there's a conflict of interest, so we'll use another attorney
23 there in Hobbs. The only thing I know is to file suit against
24 him for these wells because they did not hold up to their end
25 of the obligation.

1 Q. You're reporting the production. Are you also
2 reporting and paying royalties and taxes?

3 A. Ma'am, I've --

4 Q. I'm concerned because I am --

5 A. Right. No, I understand --

6 Q. -- representing the State Land Office, and we
7 should be getting those royalties.

8 A. The money is going to Buddy Garner. That's about
9 all I know about it. It's what they've had.

10 Q. So until Buddy Garner gets the bonding in place,
11 you are the responsible operator?

12 A. Correct.

13 COMMISSIONER BAILEY: That's all I have.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 EXAMINATION

16 BY COMMISSIONER OLSON:

17 Q. I guess I want to understand what you're asking
18 of us here. It seems that -- and maybe you can clarify this
19 for me -- you don't seem to deny that these wells have been in
20 violation of OCD rules and regulations; is that correct?

21 A. That's correct.

22 Q. So you just don't want to be fined, is that --

23 A. Well, I mean, I understand that we probably do
24 need to be fined. I'm trying to get them done as soon as we
25 can. I do think December is a legitimate time line. But

1 just -- you know, we're just trying to, you know -- we had --
2 there's 23 that we're saying, but, you know, we feel we've made
3 a good effort to whittle that down. And we are going to be
4 compliant, only we are -- that's what we're going -- we're
5 going to get these wells either plugged or producing or T&A'd.
6 That's what we're moving forward to do.

7 Q. So your main issue is just the schedule for
8 coming into compliance?

9 A. That's one of our main issues. You know,
10 August 31st, like I said, was probably not going to be to
11 sufficient. I mean, we have made strides, but like I said,
12 yes, that was a big issue.

13 Q. You have stated that you filed paperwork with the
14 Hobbs district office back in April of 2005 on a change of
15 address.

16 A. Uh-huh.

17 Q. Do you have any copy of this? I guess, I
18 understand OCD doesn't have any copies of that? Do you have
19 any copies of what you've submitted?

20 A. I'm sure I can pull that letter that I sent to
21 them in Hobbs. I don't know -- I know I sent one to Hobbs and
22 Artesia. I'm sure I can find it.

23 Q. But you don't have any copies for us to present
24 here as evidence at the hearing?

25 A. Correct.

1 Q. Then I guess the same thing just seems to come to
2 me. On a number of statements that you made where you've said
3 you've submitted things, and here we are at hearing in
4 contention over whether or not you submitted documents, and you
5 keep saying you've submitted things to the Division, the
6 Division has no records of them, but you're not presenting us
7 here with any evidence that you actually submitted them?

8 A. Well, I just -- I mean, I don't know. I put
9 together the spreadsheet on what, you know, I felt like where
10 we were at. I just -- you know, that's what I did. But I
11 mean, I do know for sure that these procedures have been drawn
12 up. I do know, like I said, that the Coquina was denied, and
13 we have resubmitted it. I'm real surprised we haven't heard
14 back from that one.

15 Like some of these have, you know -- like it's not
16 been very long since they have been sent. You know, something
17 could have happened. But yes, we have done that.

18 Q. Well, I'm just thinking since that's a major
19 point of dispute for this hearing, it would seem incumbent upon
20 you to bring copies of things that were in dispute where you
21 say you have submitted something that there is no record of.
22 And you don't have anything, I guess, to present to us?

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

24 Q. Okay. And you said you filed a change of address
25 with the Hobbs district office back in April 2005?

1 A. Yes.

2 Q. Did you file a change of address with the U.S.
3 Postal Service?

4 A. There was -- I don't think I did. I
5 think they -- I don't think so. I can't remember if we did or
6 not. I mean, I thought that I had sent everybody that should
7 have known where to send the mail to, so I probably did not. I
8 don't think I did.

9 Q. Weren't you concerned then you weren't going to
10 get your mail?

11 A. Well, I got it for a little bit, you know, there
12 for maybe a month period before they discontinued it. But I
13 thought by then everybody had -- you know, I had sent out
14 letters to all my vendors and payables people and all that, you
15 know, all my customers and everything on our other deal -- but,
16 yes.

17 Q. So why wouldn't you file a change of address with
18 the post office so that your mail would be forwarded?

19 A. Well, I think I did. It was forwarded for about
20 a month and then that was it.

21 Q. Well, I know, because I've just done this
22 recently. But do you know when you file a change of address
23 with the post office, they forward your mail for one year?

24 A. No, I did not. I thought it was a month -- it's
25 what it seemed like I got.

1 Q. And they specifically state in their application
2 forms and the confirmation documents that they send to you that
3 you're changing your address.

4 A. Well, I know I got some mail for about a month at
5 that post office box, but after that, I don't think I did a
6 change of address with the post office.

7 Q. Well, that was in April 2005 when you were
8 changing your address; is that correct?

9 A. It was somewhere in that vicinity. I don't
10 remember exactly when we did it.

11 Q. Well, wouldn't it have been about same time you
12 filed paperwork with the Hobbs district office?

13 A. Yes. Like I said, I mean, I could be -- in my
14 mind, it's around April 2005. But it could have been, like I
15 said, it could have been a little bit different, but I do know
16 it was in 2005.

17 Q. So if you file -- if you're saying you got mail
18 for about a month after that at that post office address, why
19 did you not then receive the April 7th, 2005, notice of
20 violation?

21 A. I don't know.

22 Q. That was at the same time, apparently, that you
23 were supposedly filing paperwork for a change of address?

24 A. I do not know why.

25 Q. I guess what concerns me is there seems to be a

1 broad-ranging noncompliance with this, the issues related to
2 this site. And even going through a Division hearing -- I
3 guess I don't understand why if your issue is scheduling of a
4 lot of this, why didn't you submit plans to OCD to try to work
5 out some kind of a reasonable schedule to come into compliance?

6 A. Well, like I said, we've been working on that. I
7 thought some of them C-103s had been being done. But yeah,
8 we're -- just like I said, we just -- just -- we've been
9 working on the other stuff, and, you know, that's where we got.
10 Like I said, and it kind of threw me for a loop because we did
11 not -- the hearing orders come through on the internet. I
12 can't remember what day I found that out. The only thing I
13 could tell you is it was like we got to have the rest of this
14 stuff just right now.

15 Q. I'm not sure I understand what you're saying.
16 Can you clarify?

17 A. When we got the hearing orders back, it was like
18 you had to have this done. And I got it in -- was it -- it was
19 in late June, I believe, so we needed to have all this done by
20 July 31, when we had the hearing orders back. When I found out
21 that out on the internet. I never did receive a copy of it in
22 the mail or -- but I don't know if that's how that works now,
23 if you go on the internet to see that.

24 Q. But you participated in the hearing?

25 A. Yes, I did.

1 Q. -- in January, correct?

2 A. That's correct.

3 Q. So then you knew well in advance of January that
4 there was problems that the Division had with compliance --

5 A. Yes.

6 Q. -- of these wells. So why didn't you try to meet
7 with the Division and try to come into compliance with these
8 wells instead of just having to go to hearing on it?

9 A. Well, I mean, we were going to try to work
10 something out this morning. But it didn't seem like nobody
11 really wanted to. But we've just been working on it. Other
12 than that, I don't really got an answer.

13 Q. And I guess when we come back to OCD's
14 Exhibit No. 4, that was signed by Mickey Welborn.

15 A. That's correct.

16 Q. You say he's your father. It says here he's the
17 manager. What is his role with the company?

18 A. Basically he is the owner and the president, but
19 I handle all the day-to-day operations and run the company.

20 Q. So then you're responsible for regulatory
21 compliance and keeping up with Division rules?

22 A. Yes.

23 Q. I guess I'm just confused. If that was your
24 role, why didn't you try to reach some kind of -- bring these
25 things into compliance, especially if you're issuing -- if the

1 problem was scheduling of a lot of this work.

2 So I guess -- I guess you don't have an answer for
3 that, from what I understand.

4 COMMISSIONER OLSON: I think that's all I have.

5 EXAMINATION

6 BY CHAIRMAN FESMIRE:

7 Q. Mr. Welborn?

8 A. Yes, sir.

9 Q. Following up on one of the commissioner's
10 questions, when did you quit using that PO Box in Lovington?

11 A. Like I said, I believe it was sometime around
12 April, May of 2005.

13 Q. And the first -- sometime around April, May, so
14 it would be late April, early May?

15 A. Like I said, I could be off on that. That was
16 just my recollection.

17 Q. And the first notice that you didn't get is dated
18 7 April '05. So that was before you quit using the post office
19 box? That was before you notified anybody of the change; is
20 that correct?

21 A. It could be. Like I said, it could be -- like I
22 said.

23 Q. Now, you said you were -- I'm assuming from the
24 e-mail address that you had that "rotarywireline" is another of
25 your companies?

1 A. That's my father's company.

2 Q. Okay. And you indicated that you were the
3 controller and the accountant at "rotarywireline"?

4 A. Well, no, for Marks and Garner.

5 Q. For Marks and Garner?

6 A. Uh-huh.

7 Q. Okay. I apologize. I misunderstood that. So
8 your background is in accounting?

9 A. Yes.

10 Q. Do you have a degree in accounting?

11 A. Yes, I do.

12 Q. Okay. And you indicated that you purchased the
13 wells in 2004 and the pulling unit?

14 A. Uh-huh.

15 Q. 71 wells and the pulling unit; is that correct?

16 A. That's correct.

17 Q. Did you purchase the equipment or did you
18 purchase the company?

19 A. We ended up purchasing the company.

20 Q. Okay. So it would be misleading to say that you
21 just purchased the wells. You purchased the entire company and
22 that's why you kept using the name; is that correct?

23 A. Yes. That's correct.

24 Q. Were there other claims against Marks and Garner
25 outstanding? Did you have other creditors that --

1 A. Well, I think they were a little slow paying when
2 we first took over, but that was something we got through.

3 Q. Was that a consideration in changing the post
4 office box to get away from other folks?

5 A. Well, basically, the reason -- no. That didn't
6 have anything to do with it. The reason we changed post office
7 box, when Devon Garner still worked for us, he was living in
8 Lovington. When he quit working for us, I was living in Hobbs.
9 So the reason for the PO Box was just our location. It was not
10 to get away from any creditors. I mean, yeah, our bills are
11 paid. That's not a problem. We're not trying to hide from
12 nobody.

13 Q. Let's talk a minute about that water disposal
14 well. Which well were you going to convert to water disposal?

15 A. We weren't going to convert it. Bill Pritchard
16 wanted to -- he wanted to convert the WM Snyder. He sent in a
17 big presentation on it. I'm not sure exactly, you know -- we
18 wrote -- what he did is he had a -- it might have even been
19 Mickey signed it -- a letter saying that him -- and the I think
20 the guy's name was -- the last name was McKay -- and they were
21 going to do it under McKay Operating, I believe.

22 Q. And when did they first propose that to you?

23 A. Oh, man, that was -- I was thinking it was
24 sometime in the beginning of last year, but my memory could be
25 wrong. But they were looking at doing that. So we signed a

1 letter saying that we weren't going to be operating anymore if
2 they got approved, which they didn't, so they moved on.

3 Q. That was the beginning of last year, but you
4 didn't do anything to plug and abandon that well prior to that,
5 did you?

6 A. No. We did some work on it when we first bought
7 that thing, trying to do some stuff. Because before we had
8 bought it, they had a -- they were going to do that, and I
9 think they got approved for some. Before, you know, we bought
10 that thing -- and they had worked on it a little bit and never
11 got nothing done it. But like I said, we moved forward in
12 plugging stuff for the BLM and everything. But no, we did not.

13 Q. And then about the beginning of 2007, they
14 approached you about converting it to a water disposal well?

15 A. Right. We were going to give it to them to get
16 rid of the plugging liability. And that's something that Bill
17 Pritchard could definitely tell you about.

18 Q. Okay. Now, you said you thought the C-103s were
19 done?

20 A. Uh-huh.

21 Q. Why would you think that?

22 A. Well, I wrote them up myself, but I don't -- I'll
23 have to check and see. You know, I do most of that stuff, but
24 sometimes me and my wife, we send the mail in later, and I
25 don't know. It might not have got sent in, some of the things

1 I'm thinking. But I knew some of them were sent prior. But I
2 do know that they have been written up. Now, apparently they
3 have not been received.

4 Q. You said that you knew that there are a few
5 C-103s that --

6 A. Yeah. We hadn't got to -- I know I had not
7 done -- let me see which one it was. There was two or three
8 that I knew I needed to do. I just fell behind with -- on -- I
9 believe it was the Levers #003 and the Red Twelve Federal #002.

10 Q. Do you mean the C-103 or federal equivalent on
11 the federal well?

12 A. Oh, excuse me. I'm sorry. It was Levers #003
13 and the Red Twelve State #003. I apologize.

14 Q. Now, why weren't they filed? Just because you
15 got behind?

16 A. Yes, sir.

17 Q. And you knew there were a few. How did you know
18 it was a few and there weren't more involved?

19 A. Well, because I remember writing the rest of them
20 up. Or -- I mean, I remember doing a whole bunch of them.

21 Q. Now, you had made a couple of statements. You
22 said something to the effect that you didn't need any financial
23 assurance on the ones you were fixing to plug?

24 A. I mis-phrased that. I mean, that would exhaust
25 our cash flow. We could really use that money, you know, to

1 plug them.

2 Q. But you knew that financial assurance was
3 required, didn't you?

4 A. [Witness nods head.]

5 Q. That's a "yes"?

6 A. Yes, sir.

7 Q. And you just chose not to file the financial
8 assurance?

9 A. Well, it's not that I chose. It's like on some
10 of those -- like, well, first of all the Coquina -- not the
11 Coquina -- but like the -- I mean -- it would drain all my --
12 exhaust my cash flow. I mean, I know I can do a significant
13 portion of them, but I don't -- I mean, I can't -- right now it
14 would take me a little bit to get them all.

15 Q. And again, later you made the statement, "The
16 ones we're plugging, we don't have to do it." Are you
17 referring --

18 A. Well, I misunderstood. I should not have said
19 that. I understand. I'm probably referring to the ones we've
20 already plugged. I don't know if there was any of them on
21 there or not. They were at one time. And I probably -- and
22 like the Julia Culp, I mean -- I guess I figured that we didn't
23 have to on that one because I figured it was already plugged
24 and abandoned. And the way Bill Pritchard talked, it should
25 have been released. So that's what I mean. But the rest, I

1 know we had to -- financial assurance.

2 Q. And you were talking about the two wells that
3 Garner had, two or three wells that Garner retained control of
4 or came to control. I didn't quite understand exactly what
5 that was. You said, "They were pretty much out of our
6 control." Could you define "pretty much"? What did you mean
7 by "pretty much"? How is that qualified?

8 A. Well, I mean, you know, I guess I could get
9 them -- you know, we have done everything on our end. It's
10 just I can't make him get them switched over.

11 Q. So you mean the transaction --

12 A. Yeah. Right. I mean -- and I know he's not
13 going to do it, so I know we're going to have to file suit.
14 That's our only recourse and, like I said, I don't know what
15 that's going to entail or how that does it. I mean, I don't
16 know if -- it looks like we'll probably have to plug them and
17 sue him. I don't know, you know, that's --

18 Q. Without getting into the things that your lawyer
19 talked to you about --

20 A. Yes, sir.

21 Q. -- who pumps those? We know that they are
22 producing some gas at some time. Who pumps those wells?

23 A. I do not know. The reason I do know that there
24 is gas is --

25 Q. Let's not get into that. I'm asking who pumps

1 the wells.

2 A. I do not know.

3 CHAIRMAN FESMIRE: Mr. Padilla?

4 COMMISSIONER OLSON: Can I just follow up on this one
5 aspect of what you had? Is there some contractual agreement
6 between Marks and Garner and --

7 THE WITNESS: Yes, there is.

8 COMMISSIONER OLSON: -- that has not been satisfied?

9 THE WITNESS: Yes, that is correct.

10 CHAIRMAN FESMIRE: Now, that's got my curiosity up.
11 Is that agreement -- it's an agreement between you and Marks
12 and Garner, or Marx and Garner --

13 THE WITNESS: Marks and Garner and Buddy Garner.

14 CHAIRMAN FESMIRE: Okay. So it's between the company
15 that you now control and Mr. Garner --

16 THE WITNESS: Yes.

17 CHAIRMAN FESMIRE: -- for transfer of the assets and
18 the way you've divided up the -- things like the pulling unit
19 and things like that?

20 THE WITNESS: Yes, sir.

21 CHAIRMAN FESMIRE: And Mr. Garner has not
22 fulfilled -- your claim is that Mr. Garner has not fulfilled
23 his part of the obligation?

24 THE WITNESS: Exactly.

25 CHAIRMAN FESMIRE: Commissioner Bailey, did you have

1 anything more?

2 COMMISSIONER BAILEY: No more questions.

3 CHAIRMAN FESMIRE: Mr. Padilla?

4 REDIRECT EXAMINATION

5 BY MR. PADILLA:

6 Q. I have a couple of questions. I was not going to
7 have any until Commissioner Olson started asking you questions.
8 He asked you why hadn't you worked out something with the OCD
9 since the January hearing. Can you be more specific as to when
10 an order was issued by the OCD as to whether you were in
11 violation?

12 A. The first hearing? It was -- we went in January,
13 I believe, it was in December. Or you know, my memory is
14 fuzzy, but it was somewhere in there. Prior to that, we did
15 not -- there was no communication. I had not gotten some of
16 those letters and stuff so, you know, that's how that come
17 about.

18 Q. But you had a hearing in January of this year,
19 correct?

20 A. That's correct.

21 Q. And the order on that hearing was not issued
22 until sometime in the summer?

23 A. Right.

24 Q. Before you heard Mr. Sanchez testifying about the
25 procedure the OCD has about first issuing a notice of violation

1 and then meeting with an operator like yourself?

2 A. Right.

3 Q. Were you ever asked to come to a meeting
4 regarding the Coquina well?

5 A. No, sir.

6 Q. Did you ever meet with anybody at the Hobbs
7 district -- or, is that Coquina in the Artesia district?

8 A. It's the Hobbs district.

9 Q. Did anybody there tell you to come and work
10 something out with the OCD?

11 A. No, sir.

12 Q. Did anybody tell you to try and work something
13 out about the -- well, let me ask this: Was a compliance order
14 ever issued against the company?

15 A. Not, you know, not until the deal about the
16 hearing. That's when I was aware of the hearing and of all
17 that stuff.

18 Q. When did you find out that you were in violation
19 on 23 wells?

20 A. When I got a notice of the hearing.

21 MR. PADILLA: That's all I have.

22 CHAIRMAN FESMIRE: Ms. Altomare, do you have any
23 questions on Mr. Padilla's redirect?

24 MS. ALTOMARE: Just a follow up.
25

1 RE-CROSS-EXAMINATION

2 BY MS. ALTOMARE:

3 Q. I think you testified that one of your concerns
4 was that when you got the order, you saw that there was a
5 deadline of August, end of August, and you didn't feel that
6 that was reasonable?

7 A. Yes.

8 Q. Do you recall testifying in January that you felt
9 that at that time, you could get everything done within -- I
10 think you said eight or nine months?

11 MR. PADILLA: This is not part of the redirect.

12 MS. ALTOMARE: It was testified to when he was
13 talking to the commissioners.14 CHAIRMAN FESMIRE: I think it's, you know, a question
15 about one the commissioner's questions. I think it's
16 appropriate. I'll overrule the objection.17 THE WITNESS: It's like you said before. Things do
18 change. But, I mean, we have been working on these wells, and
19 this is the point where we have gotten. I would have loved to
20 have got them all done, but we've had a few setbacks. You
21 know, that's --22 Q. (By Ms. Altomare): Okay. But I mean, do you
23 recall testifying to that particular time frame in January?

24 A. Yes.

25 Q. And regardless of when the actual order came

1 out --

2 A. Right.

3 Q. -- that order was structured around the
4 discussion that happened in that January hearing?

5 A. Yes, yes.

6 Q. Okay. After receiving the notice of hearing in
7 November, did you ever attempt to contact the OCD to negotiate
8 any kind of a resolution?

9 A. I believe I remember making a phone call, and it
10 was said, "No, we got to go to a hearing."

11 Q. Do you remember who you spoke to?

12 A. No, I do not. And that's when I retained
13 Mr. Padilla's counsel, and that's where we're at.

14 Q. And then with regard to the letters of notice of
15 violation about the Coquina, in fact, you did discuss those
16 notices with -- at least one of them with Buddy Hill?

17 A. I did have a phone conversation with him. And
18 then he -- you know, like I said, then we sent in the T&A at
19 the time. And then other than that, I never heard.

20 Q. The OCD district office was attempting to work
21 with you to try and resolve that issue?

22 A. Well, yeah. I mean, yeah, they -- you know, I
23 did talk to Buddy Hill one time, and that was the conversation
24 he had -- "Whenever you get approved, then call me back and
25 we'll go do that."

1 sent, but I did know we were going to have to do a lot of work
2 to these wells.

3 Q. And you never reviewed the well files at the OCD
4 prior to purchasing these wells?

5 A. I reviewed the well files they had, and I had
6 looked at some production reports, but I had never -- I looked
7 at some run tickets that they had, but I never did -- and I'm
8 probably ignorant of the subject back then on how to go in
9 there on the OCD online at the time, to go in there and look
10 and see if there was violations and that. No, sir, I did not.

11 Q. But you did know that there was violations back
12 in 2004 when you purchased these. You knew these things were
13 noncompliant with OCD rules.

14 A. Well, I knew we had to get them pumping. I
15 didn't know, you know, exactly if they were in compliance or
16 not, you know. But I did know we had a lot of work to do to
17 get some of these wells pumping and producing and stuff.

18 COMMISSIONER OLSON: That's all I have.

19 CHAIRMAN FESMIRE: Mr. Padilla, anything else?

20 MR. PADILLA: I can argue this. I'm fine.

21 CHAIRMAN FESMIRE: Ms. Altomare? Thank you very
22 much, Mr. Welborn.

23 Ms. Altomare, do you have a closing argument?

24 MS. ALTOMARE: Yes.

25 CHAIRMAN FESMIRE: Would you like to give it?

1 MS. ALTOMARE: As the Commission is aware, the
2 legislature has given the OCD some very specific obligations
3 and duties. The OCD can only be effective in performing those
4 duties and responsibilities insofar as it can rely on its
5 records. It's imperative that we have accurate and up-to-date
6 reporting. If we come across an operator that has
7 long-standing and egregious incidents of bad reporting and just
8 not updated records, the onus is on us to take action, both
9 because we need to bring that particular operator up to snuff
10 and because we need to set a standard for other operators so
11 that everybody can see that the lynchpin of how we operate is
12 by relying on those records.

13 OCD online is becoming more and more saturated with
14 information that more and more other agencies and lay people
15 rely on, and we need to make sure that our information is as
16 accurate and as up to date as possible. And when
17 inconsistencies like this arise, stuff like this happens with
18 the State Land Office, we've got production issues, who's
19 supposed to be claiming royalties and turning in -- it becomes
20 a mess.

21 And that's not even talking about the environmental
22 issues. We don't know what they're putting down the hole. We
23 don't know what's being repaired and when, how on earth a well
24 that hasn't filed any repair reports since 1994 is suddenly
25 coming back on line in 2007. Something has been done down

1 there. They're putting things into our land, and it has an
2 impact. And we need to be able to meet our obligations as an
3 agency. We need to be able to -- we need to enforce our rules
4 for reporting.

5 That being said, these wells are either sincerely
6 were inactive at the time that we filed the application back in
7 November, or they weren't reporting for whatever reason --
8 because the lease wasn't being renewed until September of 2007
9 or because of whatever variety of reasons -- it really doesn't
10 matter which. They were in violation; 23 wells were in
11 violation at the least.

12 This operator has had repeated notice through letters
13 of violation from the district, through the notice of the
14 application being filed, the hearings itself. We spent an
15 entire day doing nothing but talking about the many violations
16 and the ways in which he could correct the violations and start
17 taking action. Nothing has been done, virtually, since
18 January. Not a single financial assurance has been filed. No
19 additional plugging has been done. No MITs have been
20 scheduled. The only thing that's really been done is that a
21 P&A has been filed that was denied. And apparently within the
22 last couple of days, that's been amended and sent in for
23 further review.

24 It doesn't give me confidence that this operator is
25 making good faith efforts to come into compliance. There's

1 been repeated demonstrations that for some reason this operator
2 feels the rules don't apply to him, or apply in a special way,
3 that the financial assurance requirements don't apply because
4 he's on the brink of fixing wells or getting rid of them or
5 plugging them. The rules need to apply consistently to all
6 operators and we need to enforce them consistently with regard
7 to all operators or the system doesn't work properly.

8 At the time that we filed this application, there
9 were 23 wells that even Mr. Welborn doesn't contest were in
10 violation of at least one Oil Conservation Division rule. We
11 are permitted to assess a penalty at a rate of \$1,000 a day per
12 well per violation. What we're asking for is \$1,000 per well
13 rather than looking at the time frame. So we think that an
14 assessment of \$23,000, \$1,000 for each of the wells that were
15 in violation at the time of filing is appropriate, rather than
16 asking for what we could be asking for which would be an
17 exorbitant amount, which would indeed put them in a position
18 where they wouldn't be able to pursue actually coming into
19 compliance.

20 We are also asking that they be required to have
21 specific deadlines that they be required to meet. He has
22 repeatedly professed to have lofty aspirations of meeting
23 deadlines. At the last hearing, he was supposed to have a
24 couple of wells plugged by March or February and everything
25 done within eight or nine months, which means, in theory, by

1 the end of this month or next month, everything would be done.
2 And clearly, he's not even close to that.

3 I think that we need to have very solid dates, and we
4 would ask that the Commission do something a little different,
5 that maybe they set another follow-up hearing for whatever the
6 next regularly scheduled Commission hearing date would be
7 following whatever deadline is set for Mr. Welborn to come back
8 and report on exactly what it is he's done; what files he has
9 updated with sundries to make sure that we are clear as to what
10 is going on with each and every one of those wells that have --
11 that the well files have been so neglected; and make sure that
12 we are apprised of all the pluggings and TAs and returns to
13 production that he's been required to do.

14 Because, frankly, this has been one of those cases
15 where we have been chasing our tails both with the predecessor,
16 Marks and Garner, and with the new Marks and Garner
17 individuals, who seemed to have stepped right into the same
18 shoes and kept on marching along the same path. These kinds of
19 violations have been going on since at least 2001, and that's
20 only when our system has been documenting it well enough for us
21 to track it back. They've been going on much longer, further
22 back than that.

23 Essentially, what we're asking for is the \$23,000
24 penalty, compliance with financial assurance issues,
25 requirements by a date certain, return to production or

1 updating of C-115s, if that's the issue by a date certain, and
2 updating of all delinquent sundries for subsequent reports for
3 work done on wells by a date certain.

4 I think that's everything.

5 CHAIRMAN FESMIRE: Mr. Padilla?

6 MR. PADILLA: Thank you. First of all, the
7 speculation about putting something down the hole is total
8 speculation. I mean, there has been no evidence here that
9 Marks and Garner or the new Marks and Garner has put anything
10 down the hole in any of the 71 wells or the 23 wells or now the
11 ten wells that are under contention here. To make that kind of
12 allegation that there is something down the hole would require
13 some kind of an inspection by the OCD, which by Mr. Sanchez'
14 testimony here, there has been no inspection except for maybe
15 two wells.

16 I think Mr. Welborn has been very candid in his
17 testimony here about Marks and Garner's efforts since they
18 purchased -- or the Welborn's -- purchased the company as far
19 as cleaning up and complying with both the OCD and the Bureau
20 of Land Management requirements.

21 Now, if you look at the big picture here, the
22 testimony that Mr. Welborn testified to said very few of the
23 wells of the 71 wells were under -- producing. They knew that
24 they had to get production. Those were the issues that they
25 were aware of. Commissioner Olson says that they were in

1 violation. That, with all due respect, is an allegation, I
2 think.

3 There's no question -- Mr. Welborn admits that the
4 wells needed substantial work on the wells. But in terms of
5 the litigation here before the OCD or any workout attempt,
6 Marks and Garner has been in an adversary proceeding here at
7 the OCD since December when the application was filed.
8 Mr. Sanchez testified that the normal policy is to issue a
9 notice of violation or a letter of violation, depending on
10 who's writing the letter. But apparently, that procedure has
11 been set aside where now it's called a notice of violation.
12 But the procedure has been that they call the operator, sit
13 with the operator, and say, "This is what you're in violation
14 of. Let's see if we can work it out."

15 And by his own testimony, sometimes they waive the
16 penalty after a compliance order has been issued. Nothing like
17 that happened here. There's a substantial issue as to whether
18 or not -- and this is not the first case that we're involved
19 with notice in terms of the wrong address or where a notice or
20 a notice of a violation is sent. It's clear here that at least
21 three letters were sent to PO Box 70 in Lovington.

22 In 2005, sometime in 2005, Mr. Welborn changed that
23 through the district offices. Technically he's in violation of
24 the December 2005 rule that says that you have to file an
25 official record with the OCD, but here in Santa Fe. But you

1 have -- in the same form, you have an e-mail address, which
2 seems to be the mode of operation. You certainly don't file
3 any paper C-115s anymore. You file electronically. And my
4 experience is through communication with counsel here is that
5 you've got to do it through e-mail or something. Really, in
6 this society, eliminating hard copies -- I prefer not to work
7 with e-mail addresses for notice purposes, that kind of thing.
8 If I'm doing correspondence, day-to-day correspondence, that's
9 fine. But I don't rely on an e-mail address.

10 But I think when you have to file electronic C-115s,
11 then all of a sudden, you know, the e-mail address is
12 important. The telephone number is important. Ms. Prouty
13 testified that that wasn't changed since the beginning of this
14 year, and then in July again.

15 But what all this does is bring into question whether
16 or not Marks and Garner received adequate notice for purposes
17 of issuing the fine. When that doesn't happen, where there's
18 some confusion about whether notice was proper, I think it's
19 incumbent upon an agency to come back and give official notice
20 of an action that it is going to take regarding 23 wells, in
21 this case, not the Coquina well, one or two wells that are
22 noticed on this letter of violation, or notice of violation
23 from the district office.

24 So we have a proceeding here that started in January.
25 And in between that time, we're supposed to assume that there

1 are violations of regulations. Well, in June or some time --
2 and I was counsel of record in the OCD hearing -- Mr. Welborn
3 calls me and says, "Why haven't you called me about this order
4 that was issued?"

5 I said, "What order?" Well, I didn't get an order
6 that was issued by the Division. But we had time to file for
7 de novo.

8 So we're still in the adversary proceeding mode.
9 We're not in a conciliatory-type of mode where we're going to
10 work something out here. And, you know, all this time from
11 January to the time that the Division's order was issued, we're
12 wondering what, you know, what is going to be the outcome?
13 It's still adversarial.

14 You can say, "Well, let's work this thing out." But
15 at the same time, you're trying to figure out what the outcome
16 is going to be. What are we going to work out? We don't have
17 anything to work out until some time in June or whenever the
18 order was issued. I can't tell you exactly when the order was
19 issued because I didn't get a copy of it. Now, I do have a
20 copy that was e-mailed by Mr. Welborn to me.

21 But all I'm saying is that when you look at all of
22 these things, and you look at what Marks and Garner has done --
23 and I've represented the old Marks and Garner all the way to
24 the District Court in Eddy County -- and there is a big
25 difference. There is a big difference. I've come in here with

1 clients who, by my own admission, are not compliant. But I
2 think overall here you see some progression that starts out at
3 the date of purchase, and they move forward to the present time
4 and there's no -- and it's a positive progression. Wells have
5 been plugged. C-115s -- there's no issues as far as I can tell
6 about C-115s. They're all current.

7 And so I think when you look at that, you have to
8 really question -- plus the notice issue here -- you really
9 have to question whether or not there's been adequate notice to
10 correct any deficiencies and to assess penalties. Now,
11 Mr. Welborn may be willing to pay some fine. I disagree with
12 what Mr. Welborn said. I think that no fines ought to be
13 assessed. If fines need to be assessed, proper notice should
14 be given. I just think that's the way things ought to be.

15 If there's confusion about addresses, I don't think
16 that fines are appropriate. And I think under the
17 circumstances, they should be given more than August 31st or
18 August 30th for complete compliance here. So I think the
19 December petition of Mr. Welborn is much more reasonable and
20 realistic than what the Division says as far as -- now, if they
21 don't do it by then, fine.

22 But I think that between now and December that the
23 Commission will be satisfied that all of it will get done.

24 Thank you.

25 CHAIRMAN FESMIRE: Anything else? Okay. I'm

1 assuming it's the pleasure of the Commission to go into
2 executive session?

3 COMMISSIONER BAILEY: I so move.

4 COMMISSIONER OLSON: Second.

5 CHAIRMAN FESMIRE: All those in favor signify by
6 saying "aye."

7 COMMISSIONER BAILEY: Aye.

8 COMMISSIONER OLSON: Aye.

9 CHAIRMAN FESMIRE: Aye. Let the record reflect that
10 the Commission will go into executive session for the sole
11 purpose of deliberating on Case No. 14041.

12 And we will -- that will be the only thing that the
13 Commission will discuss during that period. We will notify
14 anybody who is interested enough to wait out the results of
15 that deliberation, at which time we will continue the regularly
16 scheduled Commission meeting. There are a couple of other
17 cases we have to address before we can adjourn.

18 Thank you very much.

19 [Executive session held from 4:14 p.m. to 4:36 p.m.,
20 and testimony continued as follows:]

21 CHAIRMAN FESMIRE: Okay. At this time, we'll go back
22 on the record. Let the record reflect that this is the
23 continuation of the regularly scheduled Thursday, August 14th,
24 2008, of the New Mexico Oil Conservation meeting. The record
25 should also reflect that all three commissioners are present,

1 Commissioner Bailey, Commissioner Olson and Commissioner
2 Fesmire.

3 We have just come out of executive session. During
4 that executive session, we discussed nothing except our
5 deliberations in Case No. 14041. The Commission has reached a
6 decision. We have communicated that decision to Counsel Bada,
7 and have asked Counsel Bada to draft an order reflecting that
8 decision. That order is to be prepared and circulated to the
9 commissioners prior to the next regularly scheduled meeting of
10 the Oil Conservation Commission, approved by each commissioner,
11 and the Commission will take it up again at the next meeting.

12 * * *

13 CHAIRMAN FESMIRE: With that, we will proceed to the
14 next case on the docket, which is Case No. 14074, the
15 Application of the New Mexico Oil Conservation Division for a
16 Compliance Order Against Jackie Brewer, d/b/a Sandlot Energy.
17 This case will be continued to the September 11th, 2008,
18 Commission meeting.

19 The next case before the Commission is Case
20 No. 14134, the de novo Application of the Board of County
21 Commissioners of Rio Arriba County for Cancellation or
22 Suspension of Applications for Permits to Drill Filed by
23 Approach Operating, LLC, Rio Arriba County, New Mexico. This
24 case has also been continued to the September 11, 2008,
25 Commission meeting.

1 The next case before the Commission is Case
2 No. 14141. It's a related case to the previous 14134. It's
3 the de novo Application of Approach Operating, LLC for Approval
4 of Six Applications for Permits to Drill, Rio Arriba County.

5 Is there any other business before the Commission
6 today?

7 COMMISSIONER BAILEY: No.

8 COMMISSIONER OLSON: No.

9 CHAIRMAN FESMIRE: With that, the chair would
10 entertain a motion for adjournment.

11 COMMISSIONER BAILEY: I so move.

12 COMMISSIONER OLSON: Second.

13 CHAIRMAN FESMIRE: All those in favor signify by
14 saying "aye."

15 COMMISSIONER BAILEY: Aye.

16 COMMISSIONER OLSON: Aye.

17 CHAIRMAN FESMIRE: Aye. The record should reflect
18 the Commission meeting was adjourned at 4:40 p.m.

19 Thank you.

20 * * *

1
2 **REPORTER'S CERTIFICATE**

3
4 I, JOYCE D. CALVERT, Provisional Court Reporter for
5 the State of New Mexico, do hereby certify that I reported the
6 foregoing proceedings in stenographic shorthand and that the
7 foregoing pages are a true and correct transcript of those
8 proceedings and was reduced to printed form under my direct
9 supervision.

10 I FURTHER CERTIFY that I am neither employed by nor
11 related to any of the parties or attorneys in this case and
12 that I have no interest in the final disposition of this
13 proceeding.

14 DATED this 14th of August, 2008.
15
16
17
18

19
20 

21 JOYCE D. CALVERT
22 New Mexico P-03
23 License Expires: 7/31/09
24
25

1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO)

3
4 I, JOYCE D. CALVERT, a New Mexico Provisional
5 Reporter, working under the direction and direct supervision of
6 Paul Baca, New Mexico CCR License Number 112, hereby certify
7 that I reported the attached proceedings; that pages numbered
8 1-189 inclusive, are a true and correct transcript of my
9 stenographic notes. On the date I reported these proceedings,
10 I was the holder of Provisional License Number P-03.

11 Dated at Albuquerque, New Mexico, 14th day of
12 August, 2008.

13
14 

15
16 Joyce D. Calvert
17 Provisional License #P-03
18 License Expires: 7/31/09

19
20 

21
22 Paul Baca, RPR
23 Certified Court Reporter #112
24 License Expires: 12/31/08
25