

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4

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

CASE NO. 14110

8 APPLICATION OF THE NEW MEXICO OIL
9 CONSERVATION DIVISION FOR A COMPLIANCE
10 ORDER AGAINST QUANNAH, INC.

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

EXAMINER HEARING

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16

17 BEFORE: DAVID K. BROOKS, Jr., Legal Examiner
18 TERRY WARNELL, Technical Examiner

18

April 17, 2008

19

Santa Fe, New Mexico

20

21 This matter came for hearing before the New Mexico Oil
22 Conservation Division, DAVID K. BROOKS, Jr., Legal Examiner,
23 and TERRY WARNELL, Technical Examiner, on April 17, 2008, at
the New Mexico Energy, Minerals and Natural Resources
Department, 1220 South St. Francis Drive, Room 102, Santa Fe,
New Mexico.

24

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FOR THE APPLICANT, NEW MEXICO CONSERVATION DIVISION:

Gail MacQuesten, Esq.
NEW MEXICO OIL CONSERVATION DIVISION
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

WITNESSES: Maxey Brown, OCD Inspector, Hobbs, New Mexico
Rex Harold Smith, Energen Corporation
Kevin O. Butler, Kevin O. Butler & Associates
Daniel Sanchez, OCD Compliance & Enforcement

FOR THE RESPONDENT, QUANNAH, INC.:

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

WITNESSES: Louis Edgett, Quannah, Inc.
Greg Lopez, Quannah, Inc.
Don Buckingham, Quannah, Inc.

1 MR. BROOKS: Okay. Let us go back on the record.
2 We'll call Case No. 14043, the Application of the New Mexico
3 Oil Conservation Division for a Compliance Order -- I'm sorry.
4 Wrong case.

5 We'll call Case No. 14110, Application of the
6 New Mexico Oil Conservation Division for a Compliance Order
7 against Quannah, Inc.

8 Call for appearances.

9 MS. MACQUESTEN: Mr. Examiner, Gail MacQuesten for
10 the Oil Conservation Division. I have four witnesses.

11 MR. PADILLA: Mr. Examiner, Ernest L. Padilla for
12 Quannah, Inc. I have three witnesses.

13 MR. BROOKS: Will the witnesses please identify
14 themselves for the record, one by one? And we'll start with
15 the OCD's witnesses.

16 MR. SMITH: Rex Smith with Energen Resources.

17 MR. BOOKS: Could you spell the last name, please.

18 MR. SMITH: S-m-i-t-h.

19 MR. BROOKS: I'm sorry. I wouldn't have asked you to
20 spell it if I had heard it correctly.

21 MR. BROWN: Maxey Brown, Oil Conservation Division.

22 MR. SANCHEZ: Daniel Sanchez, OCD.

23 MR. BUTLER: Kevin Butler.

24 MR. BROOKS: Okay. Witnesses for the Respondent.

25 MR. EDGETT: I'm Louis Edgett.

1 MR. BROOKS: Edge?

2 MR. EDGETT: Edgett, E-d-g-e-t-t.

3 MR. BROOKS: Okay.

4 MR. LOPEZ: Greg Lopez.

5 MR. BUCKINGHAM: Don Buckingham.

6 MR. BROOKS: I'm sorry. I didn't hear you.

7 MR. BUCKINGHAM: Don Buckingham.

8 MR. BROOKS: Okay. Will the witnesses please stand
9 and be sworn?

10 [Witnesses sworn.]

11 MR. BROOKS: You want to make an opening statement,
12 Ms. MacQuesten?

13 MS. MACQUESTEN: Yes, please.

14 MR. BROOKS: Proceed.

15 MS. MACQUESTEN: This is a compliance action against
16 Quannah, Inc., a trucking company, for violating Rule 52. The
17 evidence will show that they were disposing into a private
18 saltwater disposal facility without authority. We are asking
19 for penalties and cancellation or suspension of Quannah's
20 authorization to transport liquid waste under Rule 51E.

21 You should have an evidence packet in front of you.
22 The first exhibit is an Affidavit of Notice and publication in
23 this case. The second exhibit is an affidavit from a gentleman
24 with Energen, the company that operates the private saltwater
25 disposal system, with a copy of the co-op agreement.

1 I'd like to draw your attention to some of the
2 information in that co-op agreement. The first page of that
3 exhibit, Exhibit No. 2, is Mr. John Cox's affidavit that states
4 that Energen Resources Corporation is the operator of the
5 Saunders Saltwater Disposal System. Behind his affidavit is a
6 copy of the agreement itself. The first few pages are
7 unnumbered. If you turn to --

8 MR. PADILLA: Mr. Examiner, Mr. Cox is not here to
9 testify. I object to the introduction of any affidavit without
10 Mr. Cox being here. There's no way I can cross-examine
11 Mr. Cox, and I object to introduction of any reference to this
12 exhibit.

13 MR. BROOKS: Well, for purposes of opening statement,
14 I'm going to overrule the objection since it's not necessary to
15 object for opening statement. If the affidavit is tendered in
16 evidence, then you may reiterate your objection at that time.

17 MS. MACQUESTEN: Mr. Examiner, just to make the
18 point, the affidavit states that the agreement is maintained by
19 Energen Resources Corporation in the ordinary course of its
20 business. The agreement should speak for itself.

21 The reason that we are introducing this is to explain
22 the circumstances that cause us to say that there was no
23 authority for Quannah to be injecting into this facility.

24 MR. BROOKS: Okay. You may continue.

25 MS. MACQUESTEN: If you turn to the fourth page -- or

1 the second page after Mr. Cox's affidavit, it's titled
2 Exhibit B. And you'll see that it lists the operators who are
3 part of this co-op and the specific wells that are part of the
4 co-op.

5 I'd like you to note that Kevin O. Butler &
6 Associates is a member of the co-op, and they have two wells
7 identified as participating in the co-op, the State R #1 and
8 the #3. You're going to be hearing about those wells during
9 the course of the testimony.

10 If you turn to the next page, you get to the
11 agreement itself. These pages are numbered, other than the
12 very first page. I'd like to direct your attention to Pages 2,
13 3 and 5, which discusses how gathering lines will be installed
14 to transport water from the wells that are participants in the
15 co-op to the disposal well.

16 Page 5, the last paragraph, talks about what type of
17 water can be delivered into the system and says that only water
18 reasonably free from solid matter, basic sediment and oil shall
19 be acceptable for delivery. And also that the operator,
20 Energen, shall have at all times the right to go upon the
21 leases in the contract area to inspect the manner and
22 facilities in which saltwater is being delivered into the
23 system.

24 The next page talks about the operator accepting
25 water to the limits of the gathering line capacity and the

1 disposal capacity of the system. And also on that page it
2 explains that the costs of participating in this are borne in
3 proportion to the number of the wells that the participant has
4 in the system.

5 All of this information will become relevant as you
6 hear the testimony from an Energen representative who will be
7 discussing what he observed at the State R lease.

8 Thank you.

9 MR. BROOKS: Mr. Padilla, do you want to make an
10 opening statement at this time or defer?

11 MR. PADILLA: No. I'll wait for my opening
12 statement.

13 MR. BROOKS: Very good. You may call your first
14 witness, Ms. MacQuesten.

15 MS. MACQUESTEN: I call Maxey Brown.

16 MAXEY BROWN

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

19 DIRECT EXAMINATION

20 BY MS. MACQUESTEN:

21 Q. Would you please state your name for the record.

22 A. My name is Maxey Brown.

23 Q. And where are you employed?

24 A. I'm employed by the State of New Mexico Oil
25 Conservation Division, District I out of Hobbs, New Mexico.

1 Q. What is your title there?

2 A. Deputy Inspector.

3 Q. Do your duties as a deputy inspector for the OCD
4 include possible violations of the Oil and Gas Act and OCD
5 rules?

6 A. That's correct.

7 Q. How long have you been with the OCD?

8 A. For approximately a year and a half.

9 Q. Do you have any prior experience in the oil
10 field?

11 A. In 1974 I went to work for Texaco, which merged
12 with Chevron, and I took retirement in 2005.

13 Q. All right. What did you do for Texaco and
14 Chevron?

15 A. I started off as a roustabout, pumper, lease
16 operator, production foreman, drilling foreman, senior
17 supervisor.

18 Q. I would tender Mr. Brown as an expert and
19 practical oil man.

20 MR. BROOKS: Any objection, Mr. Padilla?

21 MR. PADILLA: I would accept his testimony as a
22 regulatory person for the Oil Conservation Division. That's
23 his job, and I assume that's what he's testifying about.

24 MR. BROOKS: I'm sorry. Are you going to object,
25 then, to his --

1 MR. PADILLA: No, I'm not.

2 MR. BROOKS: -- tendered expertise as a "practical
3 oil man"?

4 MR. PADILLA: No, I'm not.

5 MR. BROOKS: Okay. He's so qualified.

6 Q. (By Ms. MacQuesten): Mr. Brown, on
7 February 7, 2008, did you investigate a possible illegal
8 dumping at the State R lease in Lea County, New Mexico?

9 A. That's correct.

10 Q. How did you become aware of a possible oil
11 dumping?

12 A. I had received a phone call from Rex Smith with
13 Energen directing me to that site.

14 Q. Okay. Did you meet with Mr. Smith?

15 A. That's correct. We met on site.

16 Q. Okay. Can you tell us, in general, what was the
17 nature of Mr. Smith's complaint?

18 A. He had called to say that he had approached
19 trucks on that site that were putting fluid into the water tank
20 and had asked them to stop at that point and, basically, had
21 asked me to come in and look at what he had visibly seen at
22 that time.

23 Q. What did you do after you spoke to Mr. Smith?

24 A. I took my camera to record any photos of the area
25 and entered into my RBDMS program, that as an inspector we use

1 for OCD.

2 Q. All right. Did you go out to the site of the
3 State R lease?

4 A. We were on site. That's where I met with
5 Mr. Smith after he called me.

6 Q. So he was with you when you went to the site?

7 A. That's correct.

8 Q. Is the State R lease normally within your
9 inspection area?

10 A. That's correct. It falls within what would be
11 considered District I, but it's more to the north end of our
12 district, and that's predominantly the area that I take care
13 of.

14 Q. Had you been in the State R lease before you were
15 called by Mr. Smith?

16 A. Yes, I have.

17 Q. When was the last time that you had been there
18 before you got Mr. Smith's call?

19 A. January 3rd, 2008.

20 Q. What were you doing at that time?

21 A. Just a normal field inspection.

22 Q. I'm sorry. That was January --

23 A. 3rd, 2008.

24 Q. So slightly over a month before Mr. Smith's call?

25 A. Yes.

1 Q. I'd like you to describe the general layout of
2 the State R lease. And it may help you if you could turn to
3 what's been marked as Exhibit No. 17.

4 A. This is a hand-drawn sketch that I took of the
5 area.

6 Q. And this is something you prepared for this case?

7 A. That's correct.

8 Q. All right. Could you just walk us through this
9 diagram, and tell us what it shows.

10 A. In the left-hand corner of the drawing,
11 identified as SR -- that's State Road 457 -- is a pavement.
12 There are two gates that represent to be open in the drawing,
13 which open up to the lease road, which comes in on the north
14 side of this fenced facility.

15 The facility has two oil tanks, water tank,
16 separator, heater-treater, and I've identified a water transfer
17 pump. There is a road that comes in on the west side of the
18 battery, crosses a poly pipe that's buried -- indicated by the
19 slash lines, -- pulls around to the south side of the battery.
20 There's a gas meter run and a small area where a vehicle could
21 turn around and exit back out that area.

22 And in the same drawing on the south side of the
23 facility, I have enlarged a little area where there had been
24 traffic enough to knock the vegetation down. I took
25 photographs of that area. It had had a spill or some kind of

1 discharge in that area, and so indicated by the enlarged
2 drawing.

3 Q. Just above the area you describe as area of truck
4 traffic and spill area, there's a circle with WT in it. Is
5 that the water tank?

6 A. That's correct.

7 Q. And that's the tank that Mr. Smith was concerned
8 about?

9 A. Yes, ma'am.

10 Q. How close is this facility to State Road 457?

11 A. Approximately a quarter mile.

12 Q. Are you familiar, in general, with how the co-op
13 system works at this lease?

14 A. I've had some understanding. At the time I
15 worked for Texaco, Texaco did have a battery that was in the
16 co-op system.

17 Q. In this co-op system?

18 A. Yes, ma'am.

19 Q. How is water transferred from the participating
20 wells to the co-op disposal well?

21 A. It's transferred through piping or lines to that
22 system from each battery.

23 Q. When you and Mr. Smith arrived at the State R
24 lease, was there anyone else there?

25 A. There was. There was a yellow dump truck and

1 backhoe identified as R & B Roustabout out of Lovington. A
2 gentleman was unloading his backhoe off his trailer.

3 Q. Did you take photographs of the State R lease
4 when you conducted your investigation?

5 A. Yes, I did.

6 Q. Are Exhibits 3 through 8 photographs that you
7 took during your February 7th investigation?

8 A. That is correct.

9 Q. Let's look at what's been marked as
10 Exhibit No. 3. Can you tell us what the top picture shows?

11 A. The top photo is the sign at the State R tank
12 battery.

13 Q. Okay. I noticed there are two identifying
14 stickers. One starts, Kevin O something, and there's another
15 sticker that says Taurus Exploration on top of that. Who is
16 the operator of record of this tank battery, according to OCD
17 records?

18 A. Kevin O. Butler & Associates.

19 Q. Do you know anything that would explain why
20 there's a Taurus sticker on the top of that name?

21 A. Not at this time. When I did my entry on my
22 inspection, I checked records for any change of operators.
23 There was none. I checked OGRID for this Taurus, and they're
24 not identified in our system.

25 Q. Okay. What does the lower picture on

1 Exhibit No. 3 show?

2 A. The lower picture is taken from State Road 457
3 looking northeast back towards the tank battery. It does
4 include the backhoe in this picture.

5 Q. Could you point out for us where the water tank
6 is?

7 A. The water tank would be directly behind the
8 backhoe in this picture.

9 Q. Did Mr. Smith describe to you where he saw the
10 trucks that caused him concern?

11 A. He indicated they were hooked up to the water
12 tank.

13 Q. Where would they be in this picture?

14 A. Parked exactly where the backhoe is.

15 Q. If you could turn to what's been marked as
16 Exhibit No. 4. What did these two pictures show?

17 A. The top photo on Exhibit 4 is the connection to
18 what the trucks that were indicated to me by Mr. Smith were
19 connected to.

20 Q. Now, it appears to be a barbed-wire fence
21 immediately in front of that connection. Where would the
22 trucks be to use this hookup?

23 A. They were outside of the fenced area. The fence
24 is around the perimeter of the battery.

25 Q. Is that where you would commonly see a tank

1 hookup with a barbed wire fence, within a few feet of it?

2 A. Can I ask you to repeat the question?

3 Q. Let me rephrase it. It probably wasn't very
4 clear.

5 If you were going to routinely use a hookup to a
6 tank, would you set it up so that someone had to go through
7 a barbed-wire fence to access it?

8 A. If it was to be used on a frequency that was more
9 than just a one-time operation, I think it would be set up. We
10 see other batteries that would have the line run outside the
11 fence so they would not have to climb through the fence to hook
12 up to the valve.

13 Q. Now, still looking at that top picture, what are
14 the dark spots on the earth in front of the connection?

15 A. They were damp spots on the ground.

16 Q. What does the bottom picture show?

17 A. The bottom picture is similar to the top. I had
18 moved away from the tank to get more area in perspective of the
19 fence.

20 Q. What are the dark spots on the ground in front of
21 the fence, towards the viewer?

22 A. They were, again, just damp liquid spots.

23 Q. Okay. Did you notice any crusting on the spots?

24 A. There was a small amount of white crusting around
25 the edges, some of the wet areas, yes.

1 Q. Do you have any opinion as to what that might be?

2 A. Normally around a water tank or produced water,
3 it gives the indication of chlorides or salts in the water.
4 And with drying, it will form a crusting around the edge.

5 Q. If produced water had been spilled that morning,
6 would there have been enough time to dry and produce that
7 crusting?

8 A. I don't think it would have evaporated or soaked
9 in that quick, no.

10 Q. Did you observe any issues with that water tank,
11 any damage or anything that needed to be repaired?

12 A. Not during the time that I was there on the
13 inspection or took photos. I saw what I would say would be an
14 operational tank.

15 Q. Did you see anything that looked like a recent
16 repair on the tank?

17 A. Not on the February 7th inspection, no, ma'am.

18 Q. The dark spots on the soil, could you tell where
19 they had come from?

20 A. There was a small amount from the valve to the
21 fencing, but the majority of it was pooled outside of the
22 fence.

23 Q. If someone had entered the facility from the
24 lease road, they would be approaching the water tank from the
25 other side, is that right, the north side of the tank?

1 A. If you stayed on the lease road, yes. You would
2 be on the north side of the tank battery.

3 Q. If they pulled into the road that you show where
4 there's a small turn-around, would it -- would those dark spots
5 on the soil have been obvious to someone?

6 A. Obvious from what point?

7 Q. Well, you have on your diagram -- in Exhibit 17,
8 you have a road someone could turn right off the lease road and
9 approach the facility from the south, and there's a small area
10 for trucks to turn around.

11 A. In the small area, if you pulled in to take a
12 reading from the gas measurement run, yes, the area in front of
13 it that had a spill or discharge would have been very
14 noticeable. It would have been right in front of your vehicle.

15 Q. Would you please look at what's been marked as
16 Exhibit No. 5? And what do these three photographs show?

17 A. The upper left photograph is of the door of the
18 dump truck that had pulled the trailer and the backhoe out.
19 The lower left photo is taken from the north side of the
20 battery. There's a small edge of the water tank. The backhoe
21 is behind it. It is what is commonly termed back-dragging,
22 moving soil from one side of the area, just dragging it back
23 and forth.

24 The right photo is of the gas meter run which has
25 been noted in this Exhibit 17 to the southwest corner of the

1 battery. The dark area is where the backhoe had been moving
2 the oil and water-stained soil back and forth, mixing it with
3 the dry dirt.

4 Q. How large an area was being worked on?

5 A. It was approximately a 20-by-30.

6 Q. Could you estimate how much liquid had been
7 spilled to create that much of a spill?

8 A. If it was somewhere around one inch deep, it
9 would have been approximately 10 barrels.

10 Q. Did you speak to the fellow who was doing the
11 cleanup?

12 A. I asked the gentleman on the backhoe who had sent
13 him out or who he was working for. He said his supervisor had
14 sent him out. He did not know who called the job in. And he
15 said he was just told to back-drag the area to absorb any loose
16 liquids off of that area.

17 Q. Would you turn to what's been marked as
18 Exhibit 6, please. What do these two photos show?

19 A. The top photo is the gate, the entrance to the
20 lease road that comes into the State R battery off of the
21 highway, 457. There has been damage to the gatepost and the
22 gate in the top photo.

23 Q. And this is the gate that you've drawn on your
24 diagram also?

25 A. That's correct.

1 Q. Had the gate been in this condition when you were
2 at the site in January?

3 A. It was not. It was -- the gate was up. I had to
4 open it to go in.

5 Q. What does the bottom picture show?

6 A. The bottom photo shows the highway. And to
7 the -- what would be left or right above the highway, there is
8 a worn path that gave the appearance of traffic crossing the
9 road and heading down the right of way of the highway.

10 Q. What are the dark lines that appear in the
11 foreground of the picture crossing the paved area of the road?

12 A. Some of it is a dual set of tire tracks, and
13 there is a little bit of oil staining with it.

14 Q. Had you seen the wear on the side of the road
15 when you had been at the site before? And I'm talking about
16 not the paved area, but in the picture it's just above the
17 paved area.

18 A. Not in the right of way area.

19 Q. How often are you travelling on this road?

20 A. One to two days a week.

21 Q. Could you turn to what's been marked as
22 Exhibit 7, please? What does the top photograph show?

23 A. The top photo shows the area of tracks that had
24 been well used. Vegetation was worn down. It's indicated on
25 Exhibit 7 as truck tracks cutting across the three-inch poly

1 line. It's visible right in the center of the picture.

2 Q. Is it safe for large trucks to drive over a poly
3 line?

4 A. It's not a recommendation to be driving over it.

5 Q. Why not?

6 A. You can cause damage to the line. This area has
7 a lot of caliche rocks that are close to the surface. Repeated
8 traffic over it would probably cause damage to that line.

9 Q. When you had been to the site a month before, had
10 you seen these truck tracks?

11 A. I do not recall seeing traffic into that area. I
12 use the road that came on the west side of the battery around
13 to the gas main run. And I think if I had seen that much
14 traffic on the road, I might have presumed that was the road to
15 enter in.

16 Q. Would you say two trucks entering the site and
17 leaving the site on a single occasion have created this path?

18 A. I don't think just entering and turning and
19 coming out would have worn the vegetation down to the dirt.

20 Q. Looking at your diagram, what would be the point
21 of creating the truck tracks in that area?

22 A. The road on the west side of the battery takes a
23 pretty short turn right around the gas main loop, so it would
24 be fairly difficult for a truck to maneuver that corner without
25 getting farther out into the pasture or getting a set -- maybe

1 the trailer wheels -- over on that gas meter loop.

2 Q. Could you turn to what has been marked as
3 Exhibit 8, please? What does that top picture show?

4 A. It's a photo of a new pump and motor that was
5 installed at this battery.

6 Q. Was the new pump installed at the time you did
7 your investigation? Was it hooked up to the system?

8 A. I do not think it was there at that time.

9 Q. Well, I mean, you took this photograph the day of
10 your investigation, right?

11 A. I misunderstood. I thought you were talking
12 about the January inspection.

13 Q. No. I'm sorry. The day you went out with
14 Mr. Smith.

15 A. That's correct. On the February 7th date, it was
16 installed.

17 Q. But you don't believe it had been installed when
18 you were there in January?

19 A. I don't recall seeing it in January.

20 Q. What is the bottom picture?

21 A. The bottom is the old pump that has been just
22 moved away from the installation of the new pump.

23 Q. Have you gone back to the State R tank battery
24 recently?

25 A. Yes, I have.

1 Q. When was that?

2 A. Yesterday. Wednesday, April the 16th.

3 Q. Are you aware that Quannah stated in its
4 prehearing statement that they were at the site on February 7th
5 when Mr. Smith saw them to remove water from the tank so they
6 could fix a valve?

7 A. Yes.

8 Q. Did you examine the valves on the water tank when
9 you were there yesterday?

10 A. Yes, I did.

11 Q. Did you take pictures of those valves?

12 A. Yes, I did.

13 Q. Could you turn to what's been marked as
14 Exhibits 15 and 16. Are those photographs you took yesterday?

15 A. That's correct.

16 Q. Let's look at Exhibit 15. What does this show?

17 A. This is the valve that's on the south side of the
18 tank.

19 Q. Is this the same valve that we saw in the
20 pictures you took on the day of your investigation?

21 A. That's correct.

22 Q. And this is the valve that was closest to the
23 area to where Mr. Smith saw the trucks?

24 A. That's right.

25 Q. Had there -- when you went there yesterday, did

1 you notice any change since you saw it on the day you went out
2 there with Mr. Smith?

3 A. I saw no change in that valve.

4 Q. Looking at Exhibit 16, what does this picture
5 show us?

6 A. This is the valve on the north side of the tank.

7 Q. All right. Now, we have not seen a photo of this
8 valve before; is that right?

9 A. That's correct; we have not.

10 Q. Okay. Can you describe the piping that we're
11 seeing coming out of the tank here? What -- where are the
12 valve or valves?

13 A. It comes off the tank to a valve. There's a
14 small piece of pipe or a nipple, referred to in oil field
15 terms, a T, a nipple, a valve. From the T, it goes down to the
16 ground.

17 Q. Where would that pipe that goes into the ground
18 go?

19 A. It goes off to the right and goes to the water
20 transfer pump.

21 Q. Now, you described two valves, the one closest to
22 the tank and the one at this sort of a dead end at the end of
23 the T; is that right?

24 A. Yes.

25 Q. Did either of those valves appear to be new or

1 repaired?

2 A. The one that's not connected on the right side of
3 it was a newer valve than the one by the tank.

4 Q. Okay. If they had needed to repair or replace
5 that valve, the one that's at the dead end at the end of the T,
6 would they have had to drain the tank?

7 A. If the valve by the tank would close and operate,
8 no.

9 Q. Okay. If that was the problem, if the valve
10 close to the tank was leaking and they drained the tank, can
11 you think of any reason why they wouldn't have fixed that
12 leaking valve?

13 A. No.

14 Q. In fact, if that was the problem and they didn't
15 fix it, they wouldn't have any way to turn the water off that
16 was going down that pipe to the -- was it the treater?

17 A. It goes to the water transfer pump.

18 Q. Water transfer pump. So you'd want to repair
19 that if this was a leaking valve, I think.

20 A. I would think that would be the best option, to
21 have a valve working on the tank, yes.

22 Q. But the newer valve, the one at the end of the T,
23 wouldn't solve that problem?

24 A. No, it would not.

25 Q. Now, you're aware that Mr. Smith indicated that

1 trucks he saw were Quannah trucks?

2 A. Yes, ma'am.

3 Q. Are you aware of who runs Quannah?

4 A. The paperwork that we have in our office shows
5 Louis Edgett.

6 Q. Are you aware of whether Mr. Edgett also operates
7 wells in New Mexico?

8 A. Yes, ma'am. He does.

9 Q. Do you know what company he operates wells under?

10 A. Louray Oil Company.

11 MS. MACQUESTEN: I would ask the Examiner to take
12 administrative notice of Exhibit 10 and 11 -- I'm sorry -- 9
13 and 10. Excuse me.

14 These are printouts from the PRC website for Quannah
15 Inc. and Louray Oil Company. And I'd ask the Examiner to note
16 that Mr. Edgett is listed as the registered agent and the
17 director of Quannah, and he is listed as the registered agent
18 and organizer of Louray Oil.

19 MR. BROOKS: Is there any objection to the matters
20 proposed to be noticed?

21 MR. PADILLA: Yes. I do object to any reference to
22 Louray Oil Company. I don't know what the purpose of it is in
23 this case. We're talking about an oil spill, as I understand
24 it, not who organized or how these companies are incorporated
25 or organized.

1 MR. BROOKS: So your objection is to relevance?

2 MR. PADILLA: Relevance, yes.

3 MR. BROOKS: Okay. If the objection is in reference
4 to relevance, I will overrule the objection. We will appraise
5 relevance when the entire record is in. So the request to take
6 administrative notice will be granted.

7 MS. MACQUESTEN: Thank you.

8 Q. (By Ms. MacQuesten): Would you turn to what's
9 been marked as Exhibit No. 11, please. And this IS a list of
10 the wells operated by Louray Oil Company, according to OCD
11 records?

12 A. That's correct.

13 Q. Are any of these wells disposal wells?

14 MR. PADILLA: Objection. Now we're getting outside
15 of the scope of this hearing. I don't understand what Louray
16 Oil Company has to do with anything in this hearing.

17 MR. BROOKS: Once again, I will make a decision as to
18 relevance after I've heard the entire evidence, this being not
19 a jury-type proceeding where the decision-maker needs to be
20 screened from the relevant evidence. I will overrule the
21 objection.

22 Q. (By Ms. MacQuesten): Mr. Brown, are any of
23 Louray Oil Company's wells disposal wells?

24 A. Yes, ma'am. The top one, the Government E #001.

25 Q. And you can tell by the well type?

1 A. Yes. It's S for SWD.

2 Q. Was the State's Government E #001 active at the
3 time of the incident when Mr. Smith says he saw the Quannah
4 trucks at the co-op disposal?

5 A. No, it was not.

6 Q. Would you turn to what's been marked as
7 Exhibit No. 12? What is this document?

8 A. This is the printout of the well inspection
9 history for RBDMS.

10 Q. And for what?

11 A. It's for the Government E.

12 Q. That is this well that we saw in the well
13 history?

14 A. Yes, ma'am.

15 Q. Can you tell us a little bit about these
16 inspection history reports? How does this information get
17 entered on to the report?

18 A. When the inspector makes his entry into the
19 computer system, it generates a report for that day that you're
20 doing your inspection.

21 Q. Okay. According to the entries on this
22 inspection report, can you tell when the State Government E was
23 out of commission?

24 A. According to these entries, January 25th, 2008,
25 "A pulling unit on well, flowing well back to tanks, 600 pounds

1 on tubing."

2 Q. Okay. And can you tell how long the well was out
3 of commission?

4 A. April 3rd, 2008 report shows, "No change in
5 status. Still back flowing well to tanks."

6 Q. Okay. So during the time period when Mr. Smith
7 says he saw the trucks at the private co-op, Louray's own
8 disposal well was not operating?

9 A. According to the inspections that have been
10 entered, that is correct.

11 Q. Mr. Brown, does adding water to a disposal system
12 without the knowledge of the operator of that system pose any
13 potential problems?

14 A. If the system has been sized for a certain amount
15 of water and you introduce more than what it's been sized to
16 handle, then yes, you can incur environment problems. You can
17 cause tank fillage at the SWD, the co-op SWD.

18 Q. What kinds of environmental problems?

19 A. You could actually run the tanks over if you've
20 introduced more volume than what it's been sized to handle.

21 Q. Would there be any concern about the nature of
22 the water being introduced into the system?

23 A. There would be. The co-op would have originally
24 tested water that is being used so that it's compatible, that
25 it's not a foreign water being brought in that has not be

1 tested for compatibility with the system.

2 Q. What kind of compatibility issues are there?

3 A. If you're bringing in waters in that are not
4 compatible, you can accelerate scale tendencies in the well.

5 MS. MACQUESTEN: Thank you, Mr. Brown.

6 Pass the witness.

7 MR. BROOKS: Mr. Padilla?

8 CROSS EXAMINATION

9 BY MR. PADILLA:

10 Q. Mr. Brown, did you ever speak with anyone with
11 Quannah, Inc.?

12 A. No, sir.

13 Q. Why not?

14 A. They were not on location during my inspection.
15 I was gathering information and taking photographs at that
16 time.

17 Q. Did you know where their operation is located?

18 A. Yes, sir, I do.

19 Q. Why didn't you go there and ask questions?

20 A. I guess in my information gathering part of it
21 would have been -- I did not see the trucks there. I gathered
22 the information. I passed it on to my supervisor. And in
23 turn, I passed it on to Gail MacQuesten.

24 Q. My question was: Why didn't you go ask questions
25 of Quannah Inc. employees and personnel?

1 A. I would have probably been more directed towards
2 Mr. Butler and the tank battery because of his facility than to
3 track down which truck or whose truck was in there at that
4 time.

5 Q. Did you speak with Mr. Butler?

6 A. No, I did not at that time. I was in
7 conversation with Mr. Smith at that time, and he had him on the
8 phone and was talking with him.

9 Q. Did you speak with Mr. Butler?

10 A. No, sir, I did not.

11 Q. Why not?

12 A. Again, I was gathering information at the time I
13 was out there.

14 Q. Were you taking Mr. Smith's word only?

15 A. No, sir. That's why I took the photographs and
16 passed it on to my supervisor and consulted Ms. MacQuesten on
17 that.

18 Q. If you're conducting an investigation, would it
19 be appropriate to go speak with the person who is purported of
20 offending or violating a rule?

21 A. After gathering all data, yes, I believe that
22 would be correct.

23 Q. When did you start your investigation?

24 A. I started it on February the 7th at 12:30 when I
25 received the phone call.

1 Q. Did you speak to the person who employed the
2 operator of the backhoe?

3 A. No, I did not.

4 Q. Do you know where they were located?

5 A. Yes, sir, I do.

6 Q. At any time, did you see any of the Quannah
7 trucks going over this area where you took photographs of
8 the -- of your Exhibits No. 7 and No. 6?

9 A. No, sir, I did not.

10 Q. How many times have you been on this well site
11 after February 7th?

12 A. Twice.

13 Q. When did you go the second time? Well, let me
14 ask you: You've been three times?

15 A. I've been by -- there is a well past this
16 battery. You have to drive by this battery to get to the
17 R #003, and that's the well I've gone to.

18 Q. At any time, did you see a Quannah truck or
19 trucks at this location?

20 A. No, sir, I have not.

21 Q. You've never seen any trucks -- any Quannah
22 trucks at this location, correct?

23 A. That's correct.

24 Q. Did you gauge any tanks or do any measurements or
25 anything of that sort?

1 A. No, sir.

2 Q. Tell me what Mr. Smith told you.

3 A. Mr. Smith told me on the phone call that I
4 received from him at 12:30 on the 7th that he had approached
5 two Quannah trucks that were unloading at that particular
6 battery. He had asked him where they had brought water from.
7 His indication was that it was coming from a different
8 facility. He had asked them not to be putting it into that
9 tank.

10 Q. Did you verify whether the trucks, in fact, had
11 any liquid in them?

12 A. I did not see the trucks, so that would be hard
13 to verify that they had liquid in them.

14 Q. Did Mr. Smith tell you whether he knew that the
15 trucks had water in them?

16 A. He did not tell me that he climbed up on the
17 truck and visually looked in to see what was in there, no.

18 Q. So it was just Mr. Smith's word to you that there
19 was water in those trucks; is that right?

20 A. That's correct.

21 Q. Did Mr. Smith tell you that Quannah trucks had
22 wrecked the gate as shown in Exhibit 6?

23 A. No, sir, he had not.

24 Q. Let me direct your attention to Exhibit No. 4.
25 If that valve was leaking as shown on that exhibit, how would

1 you approach that if not from the back side or from the side of
2 that valve?

3 A. To walk up to it?

4 Q. Yes.

5 A. From the north side of the battery?

6 Q. Yes.

7 A. I would walk in to it from that direction. Is
8 that -- did I understand your question? You said how would I
9 approach it?

10 Q. Right.

11 A. I would approach -- I would pull in the north
12 side of the battery, and there is an opening where a gate would
13 have been. There's no gate. But I would have walked into the
14 tank from the north side. The valve is on the south side of
15 the tank.

16 Q. Did it appear to you that that valve was leaking?

17 A. No, sir, It did not.

18 Q. Look at this shading there on the tank itself,
19 the gray shading to the right -- to the upper right of the
20 valve.

21 A. Yes, sir.

22 Q. How would that have been caused?

23 A. It was not -- when I took the picture, it was
24 just a stain on the tank.

25 Q. You don't know?

1 A. I don't know.

2 Q. And I understand your testimony is that the
3 ground was wet here?

4 A. Yes, sir. It was damp in front of the valve.

5 Q. Did your investigation -- you also testified that
6 as to Exhibit No. 8 that you had photographed those valves
7 there, right?

8 A. That's correct.

9 Q. And let me understand your testimony -- well, I
10 didn't understand your testimony about those valves. What
11 about the valve shown in that that has this sort of orange
12 color?

13 A. Exhibit 8 was just used to show that there had
14 been a new water transfer pump installed. That's what I was
15 testifying to in the two pictures, top and lower on 8, on
16 Exhibit 8. The bottom picture just shows that the old pump has
17 been slid off to one side. That was what I was trying to point
18 out.

19 Q. Do you know when that pump was replaced?

20 A. No, sir, I do not.

21 Q. Did you ask anyone about when it was replaced?

22 A. No, sir.

23 Q. Did you ask Quannah?

24 A. No, sir.

25 Q. Do you know whether Quannah was the contract

1 pumper for that facility?

2 A. Louis Edgett, it was my understanding, was the
3 contract pumper.

4 Q. Quannah? Or Louis Edgett?

5 A. I understood it to be Mr. Edgett was the pumper.

6 Q. Do you know whether -- well, you don't know what
7 happened to this old pump, right?

8 A. No, sir.

9 Q. And you don't know when the new pump was
10 replaced?

11 A. That's correct. I do not know.

12 Q. Do you know what the purpose of these pumps were
13 or are?

14 A. The purpose of the pump would be to transfer
15 water in that tank into the co-op system.

16 Q. Okay. You testified that you checked the Louray
17 Oil Company saltwater disposal well, the Government #001, and
18 it was shut down. Are you just simply theorizing or
19 speculating that because that well was down that Quannah or Mr.
20 Edgett is moving fluid from that well to this location? Is
21 that what you're testifying to?

22 A. What I testified to was off the inspection that
23 the inspector -- it was not me -- had made an inspection that
24 that particular well was down.

25 Q. And what relation is that or what -- how is that

1 relevant to this case?

2 A. I would think if the trucks that are trying to be
3 shown were Quannah trucks bringing this fluid into this
4 particular battery and their disposal was unavailable, they
5 were trying to off-load water at this tank.

6 Q. How do you make that leap without any further
7 investigation?

8 A. Probably be difficult, sir.

9 Q. You're just speculating here, right?

10 A. I'm going off of what I've been told from
11 Mr. Smith about the trucks that were off-loading into that tank
12 as I gather the information, as I do on any complaint or
13 request that I'm sent out on.

14 Q. Did Mr. Smith tell you about the Government #001
15 well?

16 A. No, sir, he did not.

17 Q. Did you follow any of the Quannah wells at all to
18 see where they were picking up water and where they were
19 disposing it?

20 A. No, sir, I have not.

21 MR. PADILLA: I have nothing else.

22 MR. BROOKS: Follow-up, Ms. MacQuesten?

23 REDIRECT EXAMINATION

24 BY MS. MACQUESTEN:

25 Q. Mr. Brown, Mr. Padilla asked you what Mr. Smith

1 told you, and I want to make sure I understand. You said
2 Mr. Smith said that the trucks were unloading into the tank?

3 A. That's correct.

4 Q. And just to clarify on those pictures that show
5 the right of way and that broken gate, Exhibit No. 6, if a
6 large truck was turning right off the highway to get on to the
7 lease road where that gate is, would they have been able to
8 make that turn?

9 MR. PADILLA: Objection. Calls for speculation.
10 He's not a truck driver.

11 MR. BROOKS: Well, the witness has been qualified as
12 an expert in practical matters in the oil field, so I will
13 overrule the objection and let him state his opinion, if he has
14 one.

15 A. It would be a tight turn to make from the road
16 without swinging out quite wide.

17 Q. (By Ms. MacQuesten): What does -- the wear on
18 the right of way and the dark marks across the asphalt, what
19 does that suggest to you?

20 A. It suggests that there was more than one or two
21 trips of vehicles in this area.

22 Q. And that they used that path on the right of way
23 to make that right turn?

24 A. Yes, ma'am.

25 Q. You were asked whether the valve on the south

1 side of the tank, the valve close to where Mr. Smith said he
2 saw the trucks, whether that was leaking. Let me ask you: Did
3 you see more water stains on the ground by the valve or out
4 where the trucks would have been?

5 A. They were outside the fenced area where the
6 trucks would have been.

7 MS. MACQUESTEN: No more questions. Thank you.

8 EXAMINATION

9 BY MR. BROOKS:

10 Q. Okay. I've forgotten your last name.

11 A. Brown.

12 Q. I do that regularly. It's a very bad habit I
13 have.

14 I may have missed something here as you went by.
15 This Mr. Smith, who is Mr. Smith?

16 A. Rex Smith with Energen. He's their field
17 representative for Energen Resources.

18 Q. Okay. And now, that's the Mr. Smith who was
19 sworn in as a witness?

20 A. That's correct.

21 Q. Now, Mr. Smith was the person who contacted you?

22 A. That's right.

23 Q. And it was at his request that you went out to
24 invest this matter?

25 A. That's right.

1 Q. You went out to the site once on February the
2 7th?

3 A. I was there on February 7th, yes.

4 Q. And you went out there again on April the 16th?

5 A. That's correct.

6 Q. Now, you said you went to the site twice after
7 February the 7th. Was April 16 one of those times?

8 A. No, sir. There was another time I was driving by
9 the battery to go to the R State #002 well.

10 Q. Yeah. I was going to ask you about that.

11 A. Okay.

12 Q. But there were a total of three times you went
13 out to the site after February the 7th? Or was it two times?

14 A. Two times after February 7th.

15 Q. One being the time you just drove by?

16 A. One being the time I just drove by.

17 Q. And the other being on April 16th when you took
18 the pictures?

19 A. That's correct.

20 Q. Okay. I think those are the only questions I
21 have.

22 Terry?

23 MR. WARNELL: I don't have any questions.

24 MR. BROOKS: Very good. The witness may stand down.

25 And Ms. MacQuesten, you may call your next witness.

1 MS. MACQUESTEN: I call Rex Smith.

2 REX HAROLD SMITH

3 after having been first duly sworn under oath,

4 was questioned and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MACQUESTEN:

7 Q. Would you please state your name for the record.

8 A. Rex Harold Smith.

9 Q. How are you employed?

10 A. With Energen Resources as a production foreman.

11 Q. And do your duties for Energen include operating
12 the Saunders co-op disposal system?

13 A. Yes, ma'am.

14 Q. And is Energen the operator of that system?

15 A. Yes, ma'am.

16 Q. What do you do to oversee that system?

17 A. Well, we just try to foresee problems and check
18 everything and how it's looking and how it's working and
19 everything. Try to get to problems before they are big
20 problems.

21 Q. Do you have occasion to inspect the various wells
22 that are part of that system?

23 A. Yes, ma'am.

24 Q. Would you describe for me, basically, how that
25 co-op system works?

1 A. Do we have a big plan in here anywhere?

2 Q. Only if there's one attached to the agreement.
3 There may be one in the co-op agreement document.

4 A. It's the back page of the affidavit from John
5 Cox. And we have -- there's pretty well just an outline of the
6 area. And we have one water -- main water line that comes down
7 on the east side of Highway 457 and comes across, and then we
8 have one that comes all the way down from the west side behind
9 the Saunders plant and into the disposal well at the south
10 side. And there's feeder lines off of each battery going into
11 the main lines.

12 Q. Okay. And is there more than one operator
13 participating in this?

14 A. Yes.

15 Q. And how many disposal wells are in this system?

16 A. Just one.

17 Q. Just one? Which well is that?

18 A. It's the Saunders #002.

19 Q. How is water transported from the participating
20 wells to the disposal well?

21 A. By transfer pumps and poly pipe.

22 Q. Is water ever trucked?

23 A. No, ma'am.

24 Q. Are you familiar about the State R lease?

25 A. Yes, ma'am.

1 Q. How?

2 A. My company owned it, and then we sold it to Kevin
3 Butler, and I had it when we owned it.

4 Q. And is that lease part of the Saunders Disposal
5 System, also?

6 A. Yes, ma'am, the co-op.

7 Q. Okay. I'd like you to think back to
8 February 7th, 2008. Did you happen to drive by the State R
9 lease that morning?

10 A. Yes, ma'am. I was on my way to -- we were
11 putting a new well on down the road from it. And it was about
12 7:20 when I went by the State R, and I noticed a dark-colored
13 truck backed up to the water tank. And I just made a mental
14 note that I needed to check that out after awhile. And I got
15 pretty busy. And my contract pumper, Kenny Tucker, came by
16 where I was working at my site, and I asked him if he would
17 check it out because I was busy and he was going by that way
18 pretty soon anyway.

19 Q. Why did you want to check it out?

20 A. See if they were dumping water.

21 Q. Did you go back to the State R lease that day?

22 A. Yes, ma'am.

23 Q. Why?

24 A. Because Kenny Tucker called me and said there was
25 one truck hooked up to the tank and one truck standing by to

1 unload.

2 Q. What time did you go back to the State R?

3 A. I'd say around 10 o'clock, maybe 10:30,
4 approximately.

5 Q. What did you see when you got there?

6 A. I saw a dark-colored truck backed up to the tank
7 unloading and a lighter-colored truck sitting there where he
8 could pull up when that one pulled off.

9 Q. Could you tell whose trucks they were?

10 A. They were Quannah Trucking.

11 Q. How do you know that?

12 A. They had signs on them.

13 Q. Now, you say the brown truck was hooked up and
14 unloading into the water tank?

15 A. Yes, ma'am.

16 Q. And how do you know it was unloading?

17 A. Because when I told him to quit, that man over
18 there turned his pump around and started loading the truck back
19 up.

20 Q. That man over there that is Mr. Buckingham?

21 A. I don't know.

22 MR. BROOKS: Could you identify him by the color of
23 his shirt?

24 THE WITNESS: No.

25 MR. BROOKS: Well, I mean, if he's over there --

1 there are several people over there. I want to be sure which
2 one you are referring to.

3 THE WITNESS: The darker striped shirt.

4 MR. BROOKS: Okay, thank you.

5 Q. (By Ms. MacQuesten): Now, you say you told him
6 to put the water back?

7 A. Yeah. Put it back in his truck and get out of
8 there.

9 Q. And what happened?

10 A. He put his pump in the other gear and loaded it
11 back up and left. And the full truck immediately left the
12 location.

13 Q. Did you see anything on the ground?

14 A. I saw some water spillage.

15 Q. Where was it?

16 A. It was under the leaks in the dark-colored truck.

17 Q. Under the dark-colored truck?

18 A. Yes, ma'am. It was leaking. The tank was
19 leaking and the pump, also.

20 Q. Were you aware -- at that time, back when you saw
21 the trucks there, were you aware of any problems to the water
22 tank or the valves to the water tank?

23 A. No.

24 Q. Did you look at the valves when you were out
25 there that day?

1 A. Not really.

2 Q. Okay. Did you notice any new equipment in the
3 area?

4 A. Just the new transfer pump is all.

5 Q. Is that the one we saw in the pictures?

6 A. Yes, ma'am.

7 Q. Since then, have you gone back?

8 A. Yes, ma'am. I go almost every day now.

9 Q. Why?

10 A. To see what is going on.

11 Q. When you've been out there since, have you looked
12 at the tank and the valves?

13 A. Yes, ma'am.

14 Q. Have you noticed any repairs or changes to the
15 valves?

16 A. No, ma'am.

17 Q. What did you do after you spoke to the fellow who
18 was in the Quannah truck?

19 A. I asked for his boss's phone number, and he gave
20 it to me, and I called him.

21 Q. Who did you call?

22 A. Ray Lopez. And, yep, I got pretty rowdy with
23 him. I told him if I ever saw another Quannah truck in there,
24 that he would be responsible for that. Because he knows better
25 now.

1 Q. Did you speak to anyone -- I take it, Mr. Lopez
2 is with Quannah?

3 A. Yes. I think he manages Quannah.

4 Q. Did you speak to anyone else at Quannah?

5 A. I talked to Louis Edgett on the phone.

6 Q. That same day?

7 A. Yes, ma'am.

8 Q. What did you talk to him about?

9 A. The same thing, dumping water.

10 Q. Did either of them give you an explanation as to
11 why the trucks were out there?

12 A. At first everything was, "Yes, sir. Yes, sir.
13 Yes, sir."

14 And then they started trying to conjure up some kind
15 of story they were fixing the tank or something. I don't know.

16 Q. Did they get more specific than that?

17 A. No. They were changing out a valve so they had
18 to unload it so they could change out a valve, but they weren't
19 unloading it.

20 Q. Did that make any sense to you?

21 A. Not really.

22 Q. Why not?

23 A. I didn't see any problems with the valves.

24 Q. What happened after you talked to them?

25 A. I went back to my project that I was working on,

1 which was a road under 457, and Maxey drove by while I was
2 working on that. And then I just called him and told him I
3 wanted him to go look at that.

4 Q. Did you go back to the site with Maxey?

5 A. Yes, ma'am.

6 Q. Before this incident, before you saw the Quannah
7 trucks out there, when was the last time you were at the
8 State R lease?

9 A. I feel like it was maybe a month before,
10 something like that.

11 Q. Okay.

12 A. I don't really know.

13 Q. Okay. Now, you've seen the photographs that
14 Maxey Brown took of the tire tracks leading from the lease road
15 to the south side of the water tank. It's the top picture in
16 Exhibit No. 7.

17 A. Yes, ma'am.

18 Q. Did you see those tracks when you were out there
19 with Mr. Brown?

20 A. Yes, ma'am.

21 Q. Had you seen them when you were out there about a
22 month before?

23 A. No.

24 Q. You've also seen the photograph of the gate being
25 down. It's the top picture in Exhibit No. 6. Did you see that

1 when you were out there with Mr. Brown?

2 A. Yes.

3 Q. Was the gate in that condition the last time you
4 were at the site?

5 A. No, ma'am.

6 Q. Can you think of any legitimate reason for truck
7 traffic to the back of the tank where you saw those trucks?

8 A. No.

9 Q. Have you noticed an increase in the amount of
10 water taken into the Saunders system?

11 A. Yes.

12 Q. How much?

13 A. Our system is a little bit undersized right now.
14 We have to haul about three loads away to the public disposal
15 under normal conditions. And during the -- from February 7th
16 on back, maybe 10 days, we hauled as many as eight loads to the
17 public disposal during that period.

18 Q. Eight days before February 7th?

19 A. 10 days -- 10 days, eight loads, yes, ma'am.

20 Q. Okay.

21 A. We didn't haul eight loads every day, but we
22 hailed eight several days, and there were several six-load
23 days and -- you know.

24 Q. After you saw the Quannah trucks at the site and
25 you made a phone call to Quannah, did you still have problems

1 with too much water in the Saunders system?

2 A. Yes. We still have a problem with too much
3 water, but it's back to three loads a day now.

4 Q. Okay. So you've been having the three-load-a-day
5 problem for some time, and then it went up to eight loads a day
6 for eight to 10 days before you saw the Quannah trucks. And
7 then after you talked to Quannah, the quantity went down again?

8 A. Yes, ma'am.

9 Q. Now, as operator of this system, are you
10 concerned if an unknown amount of water gets disposed into your
11 system?

12 A. Yes, ma'am.

13 Q. Why?

14 A. It makes it -- it can cause problems all
15 throughout the system if it's more than it's capable of moving.

16 Q. Do you have any concerns with the nature of the
17 water being --

18 A. Yes, ma'am. It can cause scales in the tanks and
19 corrosion also.

20 Q. So it's important to you as operator of the
21 system to know how much water is going in and the quality of
22 that water.

23 A. Yes, ma'am.

24 Q. There was some question from Mr. Padilla about
25 the co-op agreement. Are you familiar with the co-op agreement

1 at all? Is that part of your --

2 A. I can't recite it, but I kind of know what's in
3 there.

4 Q. Can you identify the co-op agreement?

5 A. Yes, ma'am.

6 Q. Is this the agreement that governs the co-op
7 system?

8 A. This is it right here.

9 Q. That's Exhibit No. 2?

10 A. Yes, ma'am.

11 MR. MACQUESTEN: Thank you, Mr. Smith. I don't have
12 any more questions right now.

13 MR. BROOKS: Mr. Padilla?

14 CROSS EXAMINATION

15 BY MR. PADILLA:

16 Q. Mr. Smith, have you ever seen this saltwater --
17 the Saunders Saltwater Disposal Agreement prior to this hearing
18 today?

19 A. Yes.

20 Q. When?

21 A. About two and a half years ago.

22 Q. Did you read it?

23 A. Pretty well.

24 Q. Do you know whether there had been any amendments
25 to it since you first read it?

1 A. Just maybe some operators' names is the only
2 amendments that I know of.

3 Q. Do you know whether there have been new
4 operators, changes?

5 A. Yes, sir.

6 Q. Do you know whether this version is the latest
7 version of this agreement?

8 A. I'm sure it is.

9 Q. How do you know that?

10 A. I mean, my landman, I don't think, would send me
11 an older version.

12 Q. Who's your landman?

13 A. John Cox.

14 Q. Is he the one responsible for this agreement?

15 A. Yes.

16 Q. Who asked you for this agreement?

17 A. Who asked me for it?

18 Q. Yes. How is it that you asked for this
19 agreement?

20 A. I think Ms. MacQuesten contacted John Cox. I'm
21 not sure.

22 Q. Other than out in the field, do you know who the
23 operators are?

24 A. Yes.

25 Q. Do you know whether those operators are parties

1 to this version of the agreement?

2 A. Yes.

3 Q. How do you know that?

4 A. We've been having a lot of trouble, and I'm
5 just -- I really think they are.

6 Q. You don't know that for sure, right?

7 A. I don't know that for sure, but --

8 Q. Would Mr. Cox know for sure?

9 A. Yes.

10 Q. Do you know when this operator agreement was
11 first entered into?

12 A. I think it was 1958.

13 Q. Do you know whether Atlantic Refining Company is
14 still a party to this agreement?

15 A. They're not.

16 Q. How about Magnolia Petroleum Company?

17 A. No.

18 Q. Are you familiar with the chain of title to this
19 thing?

20 A. Pretty well.

21 Q. You don't know for sure?

22 A. I know Magnolia's not around anymore.

23 MR. PADILLA: I renew my objection to the
24 introduction of this without Mr. Cox being here.

25 MR. BROOKS: Okay. It has not been tendered yet, so

1 we will discuss that when it is tendered.

2 Q. (By Mr. Padilla): Mr. Smith, on February 7th,
3 you said you went over to the State R #003, right?

4 A. That's at that battery. I didn't go to the #003
5 well.

6 Q. Well, you went to the battery after you talked
7 with your pumper, right?

8 A. Uh-huh.

9 Q. Do you know whether the dark-colored truck that
10 was there was a vacuum truck or not?

11 A. Yes, it was a vacuum truck.

12 Q. What does a vacuum truck do?

13 A. It loads with air pressure and unloads with air
14 pressure.

15 Q. Okay. Was the other truck that you saw there,
16 the light-colored truck a transport truck?

17 A. I think it may have been a transport truck. I'm
18 not sure.

19 Q. How do you know it was loaded with water?

20 A. Well, he was standing there ready to unload, and
21 then I told him that they wouldn't be unloading there, and he
22 needed to get out of there. He left.

23 Q. Who was driving the truck?

24 A. I don't know. It was a Spanish guy.

25 Q. But do you know for sure whether it was loaded or

1 whether it was an empty truck?

2 A. I assumed that they wouldn't sit there in line
3 for about an hour with an empty truck to unload, you know,
4 unless they wanted to unload it.

5 Q. That's just an assumption, right?

6 A. Yes, it is.

7 Q. All right. And how do you reach a conclusion
8 that they were unloading -- the dark-colored truck was
9 unloading?

10 A. Mr. Tucker called me on the phone and told me
11 they were unloading.

12 Q. Who's Mr. Tucker?

13 A. That's my contract pumper that called me and told
14 me to come over there.

15 Q. Did Mr. Tucker talk to anyone?

16 A. Yes.

17 Q. What did he say?

18 A. He talked to that man there, and he just kept
19 unloading after Kenny talked to him. And when I got there, I
20 told to him to turn that pump around and load that truck back
21 up and get out of there. And he did. He was there
22 approximately 20 minutes after he started loading the truck
23 back up.

24 Q. And you talked to Mr. Lopez. Your testimony is
25 you talked to Mr. Lopez after you talked to the truckers?

1 A. I don't know Mr. Lopez. Oh, yes. Yes, I did.

2 Q. You said a Ray Lopez.

3 A. Yes.

4 Q. And then you also talked to Louis Edgett, right?

5 A. Yes.

6 Q. Did you call Mr. Edgett a sorry son of a bitch?

7 A. Probably.

8 Q. Did you say he was a sorry son of a bitch in high

9 school?

10 A. No. I don't think so. I said, I remember you

11 from high school.

12 Q. Did you tell him that he was a sorry son of a

13 bitch in high school and he still was?

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

15 Q. When did you graduate from high school?

16 A. 1969.

17 Q. And you're sure you went to school with

18 Mr. Edgett?

19 A. Yes, I'm sure. He may have graduated in '71 or

20 something like that, but I remember him.

21 Q. Let me call your attention to Exhibit No. 8.

22 That's a picture of the pumps, right?

23 A. Yes.

24 Q. Do you know when those pumps were changed?

25 A. No.

1 Q. Did you have anything to do with the replacement
2 of those pumps?

3 A. No.

4 Q. Did you turn that pump off?

5 A. No.

6 Q. Did you threaten to turn that pump off?

7 A. I threatened to close my valve to the line.

8 Q. Was the pump running?

9 A. Yes.

10 Q. Did they tell you that would burn the pump if you
11 turned off your valve?

12 A. No.

13 Q. They didn't?

14 A. No.

15 Q. What would happen -- do you know about if a
16 pump -- if a valve was turned off and the pump was left to run,
17 what would happen?

18 A. It would eventually get hot and would start
19 leaking.

20 Q. Did you turn off your pump -- your value, I
21 should say?

22 A. No.

23 Q. Did you have any conversations with Mr. Butler?

24 A. Yes.

25 Q. What was the nature of your conversation?

1 A. I told him he needed to come out and see what was
2 going on out there.

3 Q. Did he come out?

4 A. Yes.

5 Q. And what happened of his coming out? Do you
6 know?

7 A. He came out at a later date. I don't remember
8 when it was, but he looked at it.

9 Q. And what conclusion did you all reach?

10 A. I don't know that we reached any conclusions.

11 Q. Did he meet with you when he came out?

12 A. Yes.

13 Q. What was the nature of your discussion?

14 A. All the tracks and everything that was going to
15 go to the back of that thing.

16 Q. Do you know whether there had been any pumping
17 units out there working on some of the Kevin Butler wells?

18 A. I'm sorry?

19 Q. Pulling units. I'm sorry.

20 A. Pulling units? At that time, I didn't. There's
21 been one since.

22 Q. But at that time, you didn't know?

23 A. No.

24 Q. Now, you testified about the tracks on the
25 highway as shown on Exhibit No. 6, right?

1 A. Exhibit what?

2 Q. 6.

3 A. Now, what was the question again?

4 Q. Well, I believe you testified that -- well, let
5 me ask you: I don't want to put any words in your mouth, but
6 you testified about how those tracks got on there on the
7 highway.

8 A. I don't remember testifying to that at all.

9 Q. Well, let me ask you, do you know how those
10 tracks got on there?

11 A. From trucks turning in.

12 Q. Do you know whether they were Quannah truck?

13 A. I do not know.

14 Q. Do you know whether the Quannah trucks were the
15 ones that knocked off that gate --

16 A. No.

17 Q. -- on Exhibit 6?

18 A. No, sir.

19 Q. Did you, prior to February 7th, see any Quannah
20 trucks at that location?

21 A. No.

22 Q. Did you gauge any of the tanks or any of that
23 sort of thing?

24 A. No.

25 Q. Can you gauge the tank batteries there?

1 A. I don't think the water tank has a ladder on it.

2 Q. Have you told people that you would put Quannah,
3 Inc. out of business?

4 A. I don't think I told him -- I think I told them I
5 was going to try.

6 Q. To put them out of business?

7 A. Yes.

8 Q. And why is that?

9 A. Because they have no ethics.

10 Q. How do you know they have no ethics?

11 A. Why does he not have a public disposal he can go
12 to to dump his water?

13 Q. How do you know he doesn't have a public
14 disposal?

15 A. Because the disposal operators have told me he
16 doesn't.

17 Q. Which operators have told you?

18 A. Danny Watson owns the only three disposal wells,
19 public disposal wells in that area, and he has chained their
20 tires together and called the cops on them for unloading there
21 because they won't pay him.

22 Q. Have you brought Mr. Watson to testify about
23 that?

24 A. No.

25 Q. Is Mr. Watson coming to testify about that here?

1 A. No, no.

2 Q. Have you asked that he be subpoenaed here?

3 A. No.

4 Q. Have you followed any of the Quannah trucks?

5 A. Yes.

6 Q. And did they go dumping somewhere else?

7 A. I followed them to unload -- or to get a load.

8 And then I had other things I had to do, so I left them. But I
9 know where they're getting the water now.

10 Q. To what? To dump at this location?

11 A. I think so.

12 Q. Did you follow them from that location to this
13 location?

14 A. No.

15 Q. What proof do you have that --

16 A. I don't have any.

17 Q. Do you have any proof?

18 A. No. I know where they were coming from when they
19 went to this tank, which direction they were coming from. And
20 I followed them back to where they came from to see where they
21 were getting the water.

22 Q. On February 7th?

23 A. Yes.

24 Q. You followed them all the way through?

25 A. Yes.

1 Q. Now, you followed the truck driven by
2 Mr. Buckingham on that day, right?

3 A. Yes.

4 Q. And, do you know, where else did they go?

5 A. Don't know.

6 Q. Did you have a conversation about two hours later
7 with Mr. Buckingham?

8 A. Yes.

9 Q. And what did Mr. Buckingham tell you?

10 A. I can't remember what it was about at all. I'm
11 sorry.

12 Q. And did you tell him anything?

13 A. I can't remember. I just told him I wanted to
14 see where he was getting the water.

15 Q. Was he offloading?

16 A. He was unloading.

17 Q. From where?

18 A. From a George R Brown water tank about six miles
19 from this tank.

20 Q. Did he come back to this --

21 A. He went out the front.

22 Q. He went out the other way somewhere else, right?

23 A. Yes.

24 Q. And did you follow him to his ultimate
25 destination?

1 A. No.

2 Q. You don't know.

3 A. No. I don't know what his ultimate designation
4 was.

5 Q. So you really don't have any proof of anything,
6 right?

7 A. Yeah, I do.

8 MS. MACQUESTEN: Object to that question.

9 MR. BROOKS: I'll sustain the objection,
10 argumentative.

11 Q. (Mr. Padilla): Well, you're pointing to the
12 roadway, right? In Exhibit No. 6, you have that in front of
13 you. You're pointing to that. Is that your proof?

14 MS. MACQUESTEN: I'm sorry. Objection,
15 clarification. Proof of what?

16 MR. PADILLA: Of the illegal dumping.

17 A. How about Exhibit 7?

18 Q. (By Mr. Padilla): What about it?

19 A. That road was not there a month before that.

20 Q. Did you see any Quannah trucks going through that
21 road?

22 A. Yes, on February 7th I did.

23 Q. Before then?

24 A. No. They beat that road out in 10 days before
25 February 7th.

1 Q. Did you see them 10 days before?

2 A. No.

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

4 MR. BROOKS: Redirect, Ms. MacQuesten?

5 REDIRECT EXAMINATION

6 BY MS. MACQUESTEN:

7 Q. Mr. Smith, I'd like to get back to the co-op
8 agreement, if I could.

9 A. Okay.

10 Q. And I understand that you are Energen's field
11 representative to administrator that agreement; is that right?

12 A. Yes, yes.

13 Q. And what is your understanding about who
14 participates in that agreement? Is it a limited number of
15 operators?

16 A. Yes.

17 Q. And of those operators, it's only certain wells
18 that they operate?

19 A. Yes.

20 Q. And again, how are those wells connected to the
21 co-op?

22 A. With pumps and pipelines.

23 Q. So only those wells that are connected by those
24 lines are legitimately part of this system?

25 A. Yes.

1 Q. And as the administrator of that co-op agreement,
2 is it part of your responsibility to make sure that only
3 acceptable water gets into the system?

4 A. Yes.

5 Q. And that's a requirement of the co-op agreement?

6 A. Yes.

7 Q. And it's also your responsibility to go out to
8 the lease sites?

9 A. Yes.

10 Q. And do you know anything about how the
11 participants pay to be part of this?

12 A. Yes.

13 Q. What is that arrangement?

14 A. Every month we total the cost of the complete
15 operation and divide it by the number of wells. And like,
16 Crown West has six wells; Kevin Butler has two wells;
17 Chesapeake has one well; Energen has 17. And that percentage
18 of the bill is what they pay.

19 Q. Okay. So it's based on the number of wells that
20 are participating in this system?

21 A. Yes.

22 MS. MACQUESTEN: Thank you. I think that's all I
23 have.

24

25

EXAMINATION

1

2 BY MR. BROOKS:

3

Q. Well, it's not a material point, I don't imagine,
4 but I believe you testified that you didn't recall seeing a
5 means of access to the top of this water tank?

6

A. It may have a straight up and down ladder on it.
7 I didn't look at this picture.

8

Q. Well, I may be a little confused. I'm just --
9 don't know anything about this but the picture, but if you look
10 at Exhibit No. 3, my understanding was the tank that's right
11 behind the backhoe in Exhibit No. 3 was the water tank. Am I
12 mistaken about that?

13

A. I'm wrong.

14

Q. Well, I thought one of us was.

15

A. Yes, I'm wrong.

16

Q. Okay. Now, let me ask you a couple of questions
17 about how this system ordinarily operates. Is it normal --
18 would it be a normal procedure when members of the co-op are
19 putting water into the system that they would truck it to a
20 tank on some other lease and pump it into the system there?

21

MR. BROOKS: Let the record reflect that the witness
22 is shaking his head.

23

A. No.

24

Q. (By Mr. Brooks): How would -- normally, how
25 would water get in the system in normal operations?

1 A. Through the heater-treater, and it would dump
2 water to the water tank, and the pumps would -- transfer
3 pump -- would pump it down the water line to the disposal
4 battery.

5 Q. So would that be water that was coming from that
6 particular lease?

7 A. Yes.

8 Q. Can you think of any reason why an operator that
9 was a participant in the system that had the right to put water
10 into the system would do so by using a truck to pump into the
11 tank?

12 A. No.

13 Q. This valve is way down at the bottom of the tank.
14 Is that -- now, this is something I really don't have any ideas
15 about, because I don't know how this equipment works. But it
16 looks like if you were putting water into it -- if you design a
17 tank to put water into, you would have a valve at the top of
18 the tank. Is that a valid observation?

19 A. Well, not necessarily.

20 Q. Okay. If you're pumping water into a valve at
21 the bottom of the tank, you would have to pump it under
22 pressure, would you not --

23 A. Yeah, about.

24 Q. -- to overcome the pressure of the water that's
25 in the tank?

1 A. Static pressure of the tank, which would be eight
2 pounds in a 16-foot tank.

3 Q. So that's not real large pressure?

4 A. No.

5 Q. Okay. Now, we're talking about a vacuum truck.
6 A vacuum truck is used to suck water out of a system. Of
7 course, it wouldn't be necessary to suck water. Well, I guess
8 it would, because it wouldn't be necessary to suck water out of
9 a tank if the valve were at the bottom of the tank, but I guess
10 it would be if it has to go up the line into the truck, right?

11 A. Uh-huh.

12 Q. But, of course, I never had thought of a vacuum
13 truck being used to put water into something, but now that I
14 think about it, once you get the water into the tank --

15 A. You have to unload it.

16 Q. -- I guess you've got to get it out some way; is
17 that a correct observation?

18 A. Yes.

19 Q. And would that be a normal procedure with a
20 vacuum truck --

21 A. Yes.

22 Q. -- that you would unload it in that manner?

23 A. Yes.

24 Q. Mr. Buckingham, was he driving the dark-colored
25 truck or the light-colored truck?

1 A. Yes. The dark one.

2 Q. Okay. And you said he left the site and then
3 went back to -- did you say he went back to unload somewhere
4 else? Or to pick up a load somewhere else?

5 A. No. His vacuum pump was pumping, which was
6 pressuring his tank up when he was hooked up to the tank. And
7 I told him to get to loading that truck back up and get it out
8 of there, and he went to change the air pump on his truck to
9 where it would suck into the tank instead of pressuring it up
10 to unload it.

11 Q. Okay. Now, I need to get all this. This may be
12 quite important, so I'm just judging from what I'm hearing so
13 far and where it seems to be going.

14 A. To put the pressure on --

15 Q. Please wait until I finish the question. So I
16 want to make clear that I know what you saw and on what you
17 base your conclusions.

18 When you were at the site, was the vacuum truck
19 hooked up to the tank, to the valve on the tank at the State R
20 site?

21 A. Yes. And both valves were open on the truck and
22 the tank.

23 Q. Now, you said that the vacuum truck was unloading
24 into the tank, right?

25 A. Yes.

1 Q. And how do you know that?

2 A. He told Kenny that, and Kenny was still there.

3 Q. "Kenny" being who?

4 A. Mr. Tucker.

5 Q. Okay. And Mr. Tucker is the man that works for
6 you?

7 A. Yes.

8 Q. And who told Kenny that? Mr. Buckingham?

9 A. Yes.

10 Q. Very good. But you didn't see anything when you
11 were on the site from which you concluded that the truck was
12 unloading, or did you?

13 A. No.

14 Q. And where did the truck go after it left the
15 site?

16 A. I don't know.

17 Q. I thought you said you followed it.

18 A. I think I followed him later. I don't think I
19 followed him just as he left.

20 Q. So you didn't follow him from the State R site to
21 some other location?

22 A. I don't think so.

23 Q. You saw the truck again some other time?

24 A. Yes.

25 Q. And you followed it then?

1 A. Uh-huh.

2 Q. So you can't draw any inferences based on where
3 it went other than -- any inference based on where it went
4 doesn't really have anything specific to do with its presence
5 at the State R site.

6 A. No.

7 MR. BROOKS: Okay. I think that's all I have.
8 Follow-up, Ms. MacQuesten?

9 REDIRECT EXAMINATION

10 BY MS. MACQUESTEN:

11 Q. Mr. Smith, when you talked to the man operating
12 the brown truck --

13 A. Yes.

14 Q. -- and you were under the impression that he was
15 unloading water from the truck into the tank --

16 A. Yes.

17 Q. -- could you say again what you told him?

18 A. I told him to turn his pump around and start
19 loading it. And he went up there and the sound changes. That
20 pump makes a loud noise. And when you switch directions, it
21 stops and then it starts up again.

22 Q. Did he say, "You don't understand. I'm trying to
23 take water out of the tank"?

24 A. Well, later, yeah.

25 Q. But did he say that at the time when you told

1 him?

2 A. No.

3 MS. MACQUESTEN: Thank you.

4 MR. BROOKS: Mr. Padilla, anything further for this
5 witness?

6 MR. PADILLA: No.

7 MR. BROOKS: The witness may stand down. And we will
8 take a 10-minute recess.

9 [Recess taken from 3:15 p.m. to 3:22 p.m., and
10 testimony continued as follows:]

11 MR. BROOKS: Let's go back on the record in
12 Case No. 14110.

13 Ms. MacQuesten, you may call your next witness.

14 MS. MACQUESTEN: I call Kevin Butler.

15 MR. BROOKS: Okay. You may proceed.

16 KEVIN O. BUTLER

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

19 DIRECT EXAMINATION

20 BY MS. MACQUESTEN:

21 Q. Would you please state your name for the record.

22 A. Kevin O. Butler.

23 Q. And are you associated with Kevin O. Butler &
24 Associates?

25 A. Yes, ma'am.

1 Q. In what capacity?

2 A. I own it.

3 Q. And is Kevin O. Butler & Associates the entity
4 that operates the State R lease that we've been talking about?

5 A. That's correct.

6 Q. Are you here to testify under a subpoena issued
7 by the OCD?

8 A. Yes, ma'am.

9 Q. Are you familiar with Quannah, Inc.?

10 A. Yes, ma'am.

11 Q. Do they do work for Kevin O. Butler & Associates?

12 A. They haul our waters.

13 Q. Do they do anything else?

14 A. I don't believe so. They're just water.

15 Q. Do they haul water on the State R lease?

16 A. No.

17 Q. Why not?

18 A. Well, it's like Energen's Rex Smith said.

19 There's no need, really, for us to dispose water from that
20 lease. It goes for the co-op unless there's issues or problems
21 out there and, you know, when there's work overs. And we use
22 it to load up and things like that, so --

23 Q. Were they authorized to haul water from any other
24 Kevin O. Butler location to the State R lease water tank?

25 A. No, ma'am.

1 Q. Did they have authority to work on the water tank
2 at the Kevin -- at the State R lease?

3 A. Well, at the time, my pumper, Mr. Edgett, he is
4 our pumper out there. And, you know, on an overall basis, he
5 has authority to do whatever he needs to if he can't get ahold
6 of me.

7 But a lot of times they do let us know when they're
8 going to do things and this and that. Obviously, sometimes you
9 can't, and, you know, we leave it up to the pumper at his
10 discretion to make calls if they need to do things without me,
11 and this and that. That certainly could have been the case
12 here. I don't know.

13 Q. Did Mr. Edgett or Quannah call you about working
14 on the water tank at the State R lease --

15 A. No.

16 Q. -- prior to the February 7th incident?

17 A. No.

18 Q. Did Mr. Edgett or Quannah call you to discuss the
19 need to clean up any spills at the site of the State R lease
20 prior to the February 7 incident?

21 A. No.

22 Q. How did you become aware of the February 7th
23 incident?

24 A. On February 7th, I was down at Houston at some
25 meetings, and Mr. Smith called me on the phone. And that was

1 when I was first aware of a possible situation out there.

2 Q. What was the substance of his conversation with
3 you?

4 A. Well, he explained to me that, you know,
5 ultimately, since I was the operator out there, we were
6 probably the one that was responsible for what was going on.
7 And when he told me, you know, he very briefly went through
8 with me what he thought had happened out there, that somebody
9 was -- or Quannah, for that matter -- was unloading water into
10 one of our water tanks out there and shooting it down to the
11 co-op SWD.

12 And that was total news to me. I didn't have any
13 idea. I mean, that's not even something we even think about.

14 But I think what kind of got my attention a little
15 bit was, apparently, there was a spill out there. And it
16 wasn't inside our battery or any of that. I think it was
17 outside of it. I hadn't seen any of this, but, I guess,
18 outside of the tank. And that's what I wanted to know, you
19 know. I was more concerned about that there was a spill. Was
20 it our fault, whose fault, this and that.

21 And Rex had implied to me at lease that, "Well, it
22 doesn't look like it came from the tank battery. It looks like
23 it came from the trucks that were out there unloading water
24 into your tanks."

25 And that was the first that I had heard of it.

1 Q. What did you do after you got that call?

2 A. I called my office and our field superintendent
3 and asked them to get in and find out what's going on and what
4 the issue is at hand.

5 Q. Who's the field superintendent?

6 A. Bruce Martin.

7 Q. What happened then?

8 A. I'm trying to think. I mean, I was in Houston
9 all that week. I know that -- I think Bruce got ahold of Louis
10 and, you know, I don't know exactly what transpired, but he did
11 ask Louis to put, you know -- e-mail us and just give us
12 something in writing so we had some documentation.

13 At that time, like I said, I was concerned with the
14 leak, and I tried to call the OCD because I've got a
15 relationship with them. I tried to call a guy there named Gary
16 Wink, but he wasn't around. That was the only thing I kind of
17 did. I think that happened on a Thursday -- I've got it on my
18 calender -- whatever the 7th was, Thursday or Friday.

19 Two days -- when I got back to Midland that Tuesday,
20 Bruce Martin, our superintendent, and I, we went out to see a
21 bunch of leases and went out to see this one, to meet Rex out
22 on location and get the story of what was kind of going on.

23 We tried to hook up with Louis, but I think he was
24 busy pumping other wells. It wasn't anything we demanded, but
25 if we could meet up with him, because he's a contract pumper

1 pumping a bunch of other -- doing a bunch of other work.

2 Q. You mentioned an e-mail from Mr. Martin or to
3 Mr. Martin?

4 A. I asked Bruce Martin to handle that. Yeah, I
5 think he got e-mails.

6 Q. Would you turn to -- there's an exhibit packet at
7 the desk there, and if you could turn there. I think it's
8 going to be the very last document, Exhibit 18. The pages may
9 be mixed up. So many people have gone through them. Let me
10 hand you a copy of Exhibit 18.

11 A. Okay.

12 Q. Can you tell me what this is?

13 A. I think this is -- the bottom part, at least, is
14 the e-mail that Louis e-mailed back to Bruce of what he
15 thought -- what he told Bruce happened out there in the field.
16 And we got it on the 11th, I guess, that Monday, after it
17 happened. I think we had asked for it right immediately after
18 that same day.

19 Q. And the top portion?

20 A. Was our field superintendent's e-mailing me that
21 he had gotten an e-mail from Bruce. And that's kind of how we
22 correspond. My relationship with Louis is more -- I let my
23 guys -- he works closer with Bruce Martin than he does with me.

24 Q. Now, the top portion of this e-mail appears to be
25 to you from Bruce Martin?

1 A. Uh-huh.

2 Q. And it refers to your visit to the State R
3 yesterday with him?

4 A. Yes, I guess.

5 Q. And that would have been what? The 12th?

6 A. Uh-huh. The 12th, I guess.

7 Q. Can you tell us about that visit?

8 A. We got out there, and Bruce and I went out there
9 to look at it just ourselves, without jumping to any
10 conclusions or pointing any fingers or anything, what we
11 thought our assessment of it was. And as we got out there,
12 Rex -- I can't remember if I called Rex or Rex called. He
13 thought I passed him on the highway or something. Anyway,
14 after we got to looking at it and everything and we headed back
15 into town, we ran into Rex Smith.

16 And you know, we visited with him for a little while.
17 It was the first time we had really met, and we just kind of
18 got, you know, what we thought might have happened or might not
19 have happened. We couldn't jump to any conclusions, but
20 something didn't smell right.

21 Q. Okay. Now, I'm looking at this e-mail from
22 Mr. Martin to you, and it talks about looking at the three-inch
23 value at the back of the tank. And it hasn't been replaced,
24 and there were not signs of leaking. Do you agree with that?

25 A. Yeah, I didn't notice anything. I think I

1 noticed like they had noticed. It looked like they had changed
2 transfer pump. The old one was laying there while the new one
3 was there.

4 Q. Do you know anything about that? The change of
5 the transfer pump?

6 A. No. But I do remember a couple of weeks earlier
7 Louis had told me it had burned up or something, the impellers
8 or something had burned out. And I had given him permission to
9 go ahead and get a new one out there, exchange that one or do
10 something to get it going right.

11 Q. At the time when the transfer pump burned out,
12 according to them, were the State R wells pumping water at that
13 time?

14 A. Yeah. They were pumping water. They pump water
15 every day. As a matter of fact at that time, he was
16 probably -- because I did see a few invoices -- I think he was
17 hauling some water off of it.

18 Q. Hauling water off of where?

19 A. The State R. Because our transfer pump wasn't
20 working properly to shoot it down to Rex's SWD, I believe.
21 Louis was out there a couple of times simply -- while we could
22 keep producing our wells -- picking up that water and hauling
23 it to another saltwater disposal well that I have.

24 Q. Once the transfer pump was replaced, would there
25 have been any need to haul water?

1 A. No.

2 Q. Mr. Martin's e-mail talks about, "The only
3 cleanup that had been done was outside the location where it
4 was obvious that multiple trucks had been turning around."

5 Do you agree with that statement?

6 A. Yeah. I was kind of curious what was going on
7 back there. I had never seen it like that before, either.
8 Ever. I mean, it looked like it had been beaten down there.
9 But I hadn't been out there in a few months, either.

10 Q. When you went out there, did you see any signs of
11 repair work being done or replacing the transfer pump?

12 A. No.

13 Q. Did you see any signs of leaking at the tank?

14 A. No. We could tell there was a leak outside of it
15 over on that back side like Mr. Brown said and all that.

16 Q. Which is the backside?

17 A. The south side.

18 Q. Okay.

19 A. Yeah. That was something new.

20 Q. By the tank itself or where the trucks were
21 turning around?

22 A. Not in the tank battery. Outside of the tank
23 where the trucks were turning around.

24 Q. Where the trucks were turning?

25 A. But when we had gotten out there, the guys had

1 already gotten the backhoes, and you could tell where they had
2 tried to clean it up.

3 Q. Have you visited the State R lease since going
4 out there with Mr. Martin?

5 A. I haven't. Bruce has a couple of times.

6 Q. Okay.

7 A. Yeah.

8 Q. When you went out there with Mr. Martin, did you
9 see the same truck tracks that other witnesses have described?
10 And I'll show you what's been marked as Exhibit No. 7 and have
11 you look at the top photograph. Talking about these truck
12 tracks.

13 A. Yes. I observed the same thing.

14 Q. Had you seen those before?

15 A. No.

16 Q. Can you think of any legitimate reason for truck
17 traffic to make those marks out there?

18 A. Not like that. I mean, if they were hauling a
19 little bit of water out there -- which I've probably got
20 invoices to back all that up -- it wouldn't have been like that
21 I don't think.

22 Q. Okay.

23 A. But it doesn't mean that he was out there.

24 Q. How would normal traffic go to that site?

25 A. From what I gather -- I mean, again, and I don't

1 pump it. But I imagine it just goes to the front where the
2 load lines are, you know, when the oil tanks come out there and
3 pick up.

4 But on occasion, I'm sure they can go back to the
5 back. They have a valve hookup back there on the south end of
6 it. They can unload on that. But, you know, there really is
7 no reason to. It's not a well that we haul water from.

8 Q. How does Quannah bill you for the work it does?

9 A. What?

10 Q. What kind of invoices or billing do you get for
11 their work at your locations?

12 A. If they do work, they just send us an invoice.

13 Q. Is it on each day of work or invoices for all the
14 work done in a month, or how does it --

15 A. If they're hauling water or doing anything, they
16 just send us an invoice for their time. Well, in most cases --
17 sometimes they do send us invoicing for their time. Like if
18 we're loading up a well, tubing or for using one of their
19 trucks, or testing or something like that, they'll bill you for
20 that time. Or if they're hauling water, we've got it worked
21 out that they just haul it for X fee.

22 Q. Have you been billed for work by Quannah on
23 February 7 at the State R?

24 A. Now that, I don't know. I'd have to look. I
25 know -- like I said earlier, I think we had gotten some bills

1 for when they were hauling water. But I don't think we've
2 gotten any of these during this time period.

3 Q. And you testified before that the hauling water
4 work had stopped once that pump was installed?

5 A. Correct.

6 Q. Have you gotten any bills from Quannah since
7 February 7 for more recent work?

8 A. Out on this lease?

9 Q. Yes.

10 A. I think we had a work over that they went out
11 there and did some work on it -- well, no. I don't think so,
12 because -- let's see. I think they called someone else out
13 there on this particular lease until this was all cleaned up.
14 But they've done other work for us on other leases.

15 Q. Okay. If they installed any equipment at the
16 site of a lease that you operate, how would that be billed?

17 A. If Quannah did or Louis did?

18 Q. Either one.

19 A. Well, I don't imagine Quannah does any work.
20 They just come up, pick up water, haul it away, whatever.

21 Usually, if Louis does any work on a lease, he just
22 bills the supply company or tells the supply company to bill it
23 to us.

24 Q. And then the supply company bills you directly?

25 A. Yeah. Sends us a bill. And a lot of times,

1 Louis will sign the invoice. We try to do that 99 percent of
2 the time. And if not, then I'll given him a call, or our
3 people will call him if that invoice isn't signed.

4 Q. Have you gotten any vendor invoices for equipment
5 at the State R lease related to the February 7th incident?

6 A. No. I got an invoice a little bit before it, I
7 believe -- I'd have to check it; I might even have it -- the
8 transfer pump when they did exchange it and do that. But
9 that's it.

10 Q. No bill for a valve or a part for a valve?

11 A. No.

12 Q. Have you received any invoices for cleanup work
13 done on or about February 7 at the State R?

14 A. Yeah, I do. I have not paid it, but I do have an
15 invoice from either Rex or somebody said R & B was out there?
16 I do have an invoice like for four hours they went out there
17 during -- some time during then.

18 Q. Did you authorize that cleanup either to them or
19 to Louis Edgett or Quannah?

20 A. No. But to say it again, Louis, he's got
21 authority to do that kind of stuff to an extent. And that was
22 probably within the realm of that. I mean, it's four hours.
23 But I didn't know of the spill.

24 Q. You said you haven't paid that yet?

25 A. No, I hadn't. Because I wanted to kind of see

1 what shakes out on everything. Because I don't know if that
2 spill was my fault, their fault or whose fault.

3 Q. Are you -- there's been -- you've been here for
4 the testimony today, right? You're not too happy about that.

5 A. I live here. It's a trip home early.

6 Q. And you know there's some concern about whether
7 that co-op agreement that has been introduced or that we're
8 offering into evidence is the actual co-op agreement. Would
9 you be familiar with the co-op agreement at all?

10 A. It's all legit. There's not a problem.

11 Q. Could you just take a look at it for me?

12 A. Okay.

13 Q. Is that the co-op agreement that you're a party
14 to?

15 A. It's kind of like Rex said. I'm sure it is. I
16 haven't looked at it since I bought the wells years and years
17 ago. But there's not been any substantial changes to it.

18 Q. And you've heard the description of what is in
19 that co-op agreement and its terms during the testimony today.

20 A. Yeah, I've heard. Yes.

21 Q. Did any of that strike you as unusual, or did you
22 take exception to anything that was said?

23 A. No. Rex pretty much has -- he's the operator of
24 the disposal well, and that's why when he called me, I reacted
25 the way I did.

1 He's got a big stick out there to do whatever he
2 needs to do and make sure that thing is running right. Because
3 he is the operator of it. We're certainly not.

4 Q. Are you aware of the provision in that agreement
5 that talks about the quality of the water that's in the system?

6 A. Oh, I'm not -- I mean, I'm sure that they've got
7 language in there. That's pretty standard.

8 Q. Why would you worry about the quality of water
9 going into a co-op disposal system? What are the concerns?

10 A. Well, I mean, I'm already concerned that he said
11 he's hauling three loads a day off. Because what, ultimately,
12 will happen is we all have to chip in and either, you know,
13 re-acidize or find another disposal well. And if you start
14 putting in other waters -- and I think Mr. Brown had said too
15 if you exceed the capacities of it, it can certainly be costly
16 to everybody. It's a function of just expenses.

17 MS. MACQUESTEN: Thank you. That's all I have.

18 MR. BROOKS: Mr. Padilla?

19 CROSS EXAMINATION

20 BY MR. PADILLA:

21 Q. Mr. Butler, how long have you had Mr. Edgett as
22 your contract pumper?

23 A. Gosh. I bet you it's been three or four years.
24 I'm not absolutely sure. He was working for someone else that
25 we had for a while. And he had left, and Louis pretty much

1 took his responsibilities.

2 Q. Have you had any problems with Mr. Edgett's work?

3 A. No.

4 Q. Have you ever heard of any allegations about
5 Mr. Edgett or any of his affiliated companies dumping water or
6 doing any of that sort of thing?

7 A. Have I heard?

8 Q. Yes.

9 A. Oh, I've heard some speculations, but, you know,
10 I'm not pointing fingers unless I see it happening.

11 With me? I don't know what you're talking about. If
12 you can rephrase that.

13 Q. No. I'm just curious whether you've heard
14 anything adverse --

15 A. No. Not adverse about Mr. Edgett. I've heard
16 some things about Quannah. But, you know -- and I never got
17 into it. I didn't know the relationship that Mr. Edgett really
18 had with Quannah or didn't. I mean, it had nothing to do with
19 what I'm -- you know.

20 Q. Does Mr. Edgett -- you've testified you gave
21 Mr. Edgett authority to change the transfer pump, right?

22 A. Yes. I sure did.

23 Q. And what other kind of authority does he have --
24 well, let me backtrack. Is there a dollar limit that, more or
25 less, Mr. Edgett has to clear with you before he --

1 A. Well, it just -- yes and no. I mean, it just
2 kind of depends on the situation. Depending on the severity of
3 it and if people are handy, he usually calls the office and,
4 "Hey, we got an issue here that's a pretty big deal."

5 Or if it's just something normal, it's not a big
6 deal. Now, I'll go and question it when I get the invoices a
7 lot of times, but that's about it.

8 Q. Assuming -- let me direct your attention to an
9 exhibit there in front of you, which is Exhibit 15, this
10 picture.

11 A. Okay.

12 Q. I understand that is the valve at the bottom of
13 the tank on the backside of the tank, right?

14 A. Okay.

15 Q. Assuming that was leaking, would Mr. Edgett have
16 authority to change that valve?

17 A. Yes. Something like that, sure.

18 Q. Now, with respect to the spill that was out there
19 that you were concerned about, was that cleaned up to your
20 satisfaction, or was it taken care of?

21 A. I know it looked like it was taken care of, but
22 he's the one you ought to ask if it's cleaned up to their
23 satisfaction.

24 Q. No. I understand that you were concerned about
25 it. And you're pointing to Mr. Brown, right?

1 A. Yes, that's correct.

2 Q. But as far as you're concerned as the operator of
3 that facility -- you obviously have some concern because you
4 don't want to get in trouble with Mr. Brown, right?

5 A. Correct.

6 Q. Right -- so was that cleaned up to your
7 satisfaction?

8 A. Yes. When I got out there, yes.

9 Q. And now, with respect to the R & B Company, you
10 also testified you haven't paid that invoice?

11 A. That's correct.

12 Q. Assuming everything is all right, it's going to
13 be paid in the normal course of business, I take it?

14 A. Well, I'm not going to -- what I think had
15 happened -- I mean, if it was a leak from our valve and from
16 our tank and spread out there to that, you bet I'll take care
17 of it and the quality of the work that is done.

18 But if it wasn't something -- if it ended up being
19 they were dumping water in there, and they had their own trucks
20 and their trucks were leaking, that's not going to be on me.

21 And I'll argue that all day long.

22 Q. And if the leak came from that broken pump --

23 A. Sure.

24 Q. -- or from this valve on the bottom of the tank,
25 then it's on your nickle?

1 A. Absolutely.

2 Q. Now, did you have any work over being done in
3 some of your wells?

4 A. Yeah. We do every day out there, yes.

5 Q. On the State R lease --

6 A. Yes.

7 Q. -- and the State R #003, do you have anything
8 done?

9 A. Not at this time. But, yes. I mean, around that
10 time period, I don't believe the rig was on there then.

11 Q. But before that time, did you have any --

12 A. Yes.

13 Q. Who ordered that?

14 A. Well, our super.

15 Q. Who ordered the work for the State R #003 on the
16 work over?

17 A. Okay. The "work," you mean who called the
18 companies to come out there and do things?

19 Q. Right.

20 A. I'm sure Bruce Martin did, our superintendent.
21 Or we've got another guy that works with us.

22 Q. And could they have come through the backside of
23 that facility to work on that lease?

24 A. No. They wouldn't do that at all.

25 Q. But you don't know that for sure?

1 A. No, I don't. But I certainly would ask them.
2 The roads don't lead to there anywhere.

3 Q. When the pump was replaced by Mr. Edgett, the
4 transfer pump, would it have been necessary to empty that tank?

5 A. I wouldn't think so, but I don't see why it
6 would.

7 Q. Okay. Do you know whether that pump leaked and
8 caused a spill out there?

9 A. No, I don't. I just remember Louis saying maybe
10 the seals went out on it or something. But you've got that
11 pump that sits in the middle of the tank battery.

12 MR. PADILLA: Okay. I don't have anything else.

13 MR. BROOKS: Redirect, Ms. MacQuesten?

14 REDIRECT EXAMINATION

15 BY MS. MACQUESTEN:

16 Q. Were you aware of the broken gate --

17 A. No.

18 Q. -- to the State R?

19 A. No.

20 Q. Have you gotten a bill for fixing the broken gate
21 out there?

22 A. No.

23 Q. Did you authorize the gate to be fixed out there?

24 A. No.

25 Q. This is the first you've heard of it?

1 A. This is the first I've heard of it.

2 Q. The water transfer pump that was replaced that
3 Mr. Padilla asked that might be leaking, where is that located
4 in relation to the area where you saw the spills on the ground?

5 A. Oh, it's not far away.

6 Q. It's not anywhere near where the --

7 A. It wouldn't be an issue.

8 MS. MACQUESTEN: That's all I have. Thank you.

9 EXAMINATION

10 BY MR. BROOKS:

11 Q. A couple of things: I'm a little fuzzy on here,
12 and I want to clarify about this pump replacement. I see the
13 pictures of the old and the new pump are Exhibit No. 8, right?

14 A. 8, okay.

15 Q. And why was the pump replaced?

16 A. I believe this old one that you can see is a
17 motor part on the dirt there.

18 Q. Right.

19 A. And I can't -- I'm pretty sure Louis had called
20 me like a month earlier or the first of January or something,
21 and the seals had gone bad on it --

22 Q. Yeah.

23 A. -- and it was leaking a little bit right there,
24 and it wouldn't give enough pressure to shoot down to the
25 disposal.

1 Q. Right. And do you know when the pump was
2 actually replaced?

3 A. I don't know exactly, but I do have an invoice
4 from the company that went out there, and I think it was around
5 February 4th or 5th, something like that.

6 Q. So it would have been just a short time before
7 this February 7th incident?

8 A. Correct, correct.

9 Q. Now, at what period of time was it that Quannah
10 was hauling water from the State R lease?

11 A. I would say the period from about when Louis
12 called me saying that this pump had gone out, the seals.

13 Q. Right.

14 A. I'd say that was 30 days prior. I actually
15 thought it was fixed way before then, because he called me, I
16 think, the day it happened, and I said to get it fixed
17 immediately.

18 Q. Okay. But this -- the pump replacement occurred
19 before February 7th because--

20 A. That's correct. I believe it did. My invoices
21 show that.

22 Q. Okay. Now, would there have been any reason to
23 be hauling water from the State R lease after the pump
24 replacement?

25 A. No, no.

1 Q. Okay. You were the one that -- or you or someone
2 with your company ordered R & B to clean up the spill; is that
3 correct?

4 A. No. I believe Louis called them.

5 Q. Okay. That was unclear, so I wanted to clarify.

6 A. I didn't know about it until after it was --

7 Q. Not you or anyone with Kevin O. Butler that
8 ordered R & B --

9 A. That's correct.

10 Q. Now, you know that the Oil Conservation has rules
11 about reporting spills, right?

12 A. Well, that's why immediately I tried to call Gary
13 Wink.

14 Q. Okay.

15 A. I've been on these rodeos before, so I called
16 Gary because I just wanted everything to be transparent about
17 it.

18 Q. Do you know if there was ever a form C-144 --

19 A. On a spill?

20 Q. Yeah. Do you know if that was --

21 A. No. I did not do that because I didn't know the
22 extent of this. I didn't know the extent of this. I knew it
23 wasn't oil. I didn't know if it was saltwater, fresh water.
24 We just didn't know what it was, and by the time I got out
25 there, two or three days later, they had it cleaned up. And I

1 didn't know the size of it either.

2 Q. Okay. Mr. Padilla asked Mr. Brown about this,
3 and I was going to ask Mr. Smith about it, but I forgot.
4 You're probably not the person to ask about it because you're
5 not a field man, but --

6 A. Try me. I used to be.

7 Q. -- Exhibit 4 --

8 A. 4?

9 Q. Yeah.

10 A. Okay.

11 Q. -- the staining that appears on the pump in
12 Exhibit No. 4, that seems to go up and to the right. In the
13 photograph, it would be to the left from the tank's point of
14 view.

15 A. This exhibit?

16 Q. Yes, I believe that's it.

17 A. Yes.

18 Q. Do you see the staining on the tank?

19 A. Yeah.

20 Q. Do you have a theory as to what could cause that?

21 A. I imagine that's just an old tank bottom leak or
22 something. Those are old galvanized bolted tanks which are 50
23 years old. And it's probably where they -- someone prior to
24 us -- had a leak at the tank and, you know, welded it or fixed
25 it up.

1 Q. Okay.

2 A. Just an old tank bottom or something.

3 MR. BROOKS: Thank you.

4 Ms. MacQuesten, any follow-up?

5 MS. MACQUESTEN: Nothing further. Thank you.

6 MR. BROOKS: Mr. Padilla?

7 MR. PADILLA: Nothing.

8 MR. BROOKS: The witness may stand down.

9 You may call your next witness.

10 MS. MACQUESTEN: I call Daniel Sanchez.

11 DANIEL SANCHEZ

12 after having been first duly sworn under oath,

13 was questioned and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. MACQUESTEN:

16 Q. Would you please state your name for the record.

17 A. Daniel Sanchez.

18 Q. And where are you employed?

19 A. With the New Mexico Oil Conservation.

20 Q. What is your title?

21 A. Compliance and Enforcement Manager.

22 Q. Do your duties include supervising the district
23 offices and overseeing enforcement activities at the OCD?

24 A. Yes, they do.

25 Q. And are you familiar with the investigation of

1 the possible illegal dumping at the State R lease?

2 A. Yes.

3 Q. You've been here for the testimony today?

4 A. Yes, I have.

5 Q. And you've heard about the Saunders Disposal
6 System?

7 A. Yes.

8 Q. Do you know which well is the disposal well for
9 that system?

10 A. It's the Saunders SWD #002.

11 Q. Is there an injection permit for that well?

12 A. Yes, there is.

13 Q. Is Exhibit 13 a copy of that permit?

14 A. Yes, it is. It was issued in 1958. And
15 originally it was issued under the name of the State SD Well
16 No. 5. It was later changed to the Saunders SWD.

17 Q. So you know that that is the same -- that that
18 permit is connected to the well that is --

19 A. To the well, yes.

20 Q. -- to the Saunders disposal well.

21 What is the OCD asking for in this case?

22 A. We're asking for a \$1,000 penalty for the
23 one-time incident. And we are also asking that authorization
24 to move produced water by Quannah be revoked, and at a minimum
25 be suspended for one year.

1 Q. Let me ask you about the penalty. Why \$1,000 for
2 one incident?

3 A. That's all we're allowed to issue is \$1,000 per
4 day per incident, and since we only have evidence -- or if the
5 evidence is supported, then we have one violation.

6 Q. Okay. You also talk about cancelling authority
7 to transport. If you can turn to what's been marked as Exhibit
8 14.

9 A. Okay.

10 Q. Is that a copy of the authorization that Quannah
11 has to transport waste?

12 A. Yes, it is.

13 Q. Why are you asking for that authority to be
14 cancelled rather than suspended?

15 A. Well, if the evidence supports our allegations,
16 this issue has come up before with other companies, and it's
17 been a big problem out in the oil field. As a matter of fact,
18 a number of operators in the south of the State have asked why
19 the OCD doesn't have inspectors out at night to try to catch
20 these illegal dumpings. There have been illegal dumpings in
21 old pits on roadways, just different areas.

22 Q. Now, you're speaking in general --

23 A. Yeah, in general.

24 Q. -- you're not saying that Quannah is doing that?

25 A. No. It's just a generalization. But -- and no

1 one else has been able to actually provide us with proof of who
2 is doing this. We have in the past caught two and have
3 witnesses come forth who have testified to those, and we have
4 taken action against those two other companies.

5 Q. Is it difficult to prosecute these cases?

6 A. Very.

7 Q. Why?

8 A. For one, you have to have witnesses who are
9 willing to come forth, and you have to be willing to build a
10 solid case against that operator.

11 Q. If the Examiner chooses to suspend the authority
12 rather than cancel it, do you have a recommendation on the
13 length of time for a suspension?

14 A. For one year.

15 Q. Why?

16 A. The OCD feels it's important to send a message
17 out to other operators, that if they are caught doing this,
18 that the consequences are a little bit more strict than \$1,000
19 for a single penalty.

20 Q. Does the \$1,000 per incident penalty work in a
21 case such as an illegal dumping case?

22 A. Not really, unless you have actual evidence of
23 multiple dumpings.

24 MS. MACQUESTEN: I have no other questions.

25 MR. BROOKS: Mr. Padilla?

CROSS EXAMINATION

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BY MR. PADILLA:

Q. Mr. Sanchez, have you handled any other complaints against Quannah, Inc.?

A. Not that I can remember.

Q. Let me understand what you're asking for: You're asking for a suspension or a revocation?

A. Revocation. But if the Hearing Examiner determines that's too harsh, then a suspension.

Q. For one year?

A. For one year.

Q. And why do you think that would be a fair thing to do?

A. Like I said before, I think it's important to send a message. This isn't a one-time case of dumping -- not for Quannah -- but for just out in the oil field in general. There have been a number of complaints about illegal dumping. No one knows who they are. No one has been able to come forward. Like I said, we had two cases where we were able to take action against those two operators.

But it is a problem out there. And it's a problem that's been brought to us by operators, not one that the OCD has perceived as a serious issue, but one that operators out there see as a serious issue.

Q. Why are you selecting Quannah as an example for

1 everybody?

2 A. I believe the very first one that we did we
3 suspended for six months. The second one, it was a fairly
4 hefty penalty. And I don't remember -- it's been a while --
5 but I don't remember if we did a suspension on that. But the
6 more that we see this happen -- and we do see it happen quite a
7 bit. Like I said, it's hard to go after someone when you don't
8 know who they are. It's very important to us that we send that
9 message. And this is as good a time as any to do that.

10 And this is a very -- well, like I said, if the facts
11 are supported and they're accepted, then I feel this is a very
12 strong case to support that action.

13 Q. Wouldn't it be fair to say that a first time
14 offender would -- well, let me ask this: In the other two
15 cases that you talked about where you had a six-month
16 suspension and a hefty fine the second time, had there been
17 prior complaints about those offenders?

18 A. There were complaints. They couldn't pin it down
19 to either one of those offenders. There were accusations, but
20 we didn't take those into account. We took into account what
21 we had as actual evidence at the time.

22 Q. In this case, you haven't had any prior
23 accusations, have you?

24 A. Not that I'm aware of.

25 Q. Did you call or talk to Quannah at all yourself?

1 A. No, I haven't.

2 Q. Did you ask Mr. Brown why he had not spoken with
3 Quannah?

4 A. No, I did not.

5 Q. Would you think that it would be appropriate for
6 somebody in Mr. Brown's position to have investigated or talked
7 to Quannah or Mr. Edgett himself?

8 A. I don't know. Mr. Brown is an inspector. He's
9 not necessarily a trained investigator. We dealt with this
10 case based on the information we got from the operator who was
11 on site when the alleged action took place and with the
12 evidence that was taken by Mr. Brown at the time.

13 Q. I understand the evidence. No one has been able
14 to definitively say there was dumping and that there had been
15 no prior dumping before; is that right? You've been here
16 listening to testimony.

17 A. I believe that Mr. Brown's testimony stated that
18 he did see it as dumping, so --

19 Q. And he only concluded that because Mr. Smith said
20 that, right?

21 A. I'm sorry. I was talking about Mr. Smith, the
22 representative from Energen. If I said Mr. Brown, I meant
23 Mr. Smith.

24 Q. And Mr. Brown wasn't able to verify any of what
25 Mr. Smith said, right?

1 A. He was just there as the inspector to take down
2 the information, yes.

3 Q. And Mr. Brown didn't speak to Mr. Butler or
4 Mr. Edgett or Mr. Lopez, right?

5 A. As far as I know, he did not.

6 Q. And you didn't either?

7 A. No, sir.

8 Q. Did anyone verify whether or not the truck that
9 was hooked up to the tank was a vacuum truck or not, to your
10 knowledge?

11 A. Not to my knowledge, no.

12 Q. Do you know the difference between a vacuum truck
13 and a transport truck?

14 A. No, I do not.

15 Q. Did you ask Mr. Brown what kind of truck was
16 hooked up to the tank?

17 A. He witnessed the truck being hooked up to the
18 tank, so no, I did not.

19 Q. So as I understand it, Mr. Brown never saw a
20 truck hooked up to the tank, right?

21 A. That's how I understand it as well.

22 MR. PADILLA: Nothing further.

23 MR. BROOKS: Redirect?

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REDIRECT EXAMINATION

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BY MS. MACQUESTEN:

Q. Mr. Sanchez, has the OCD taken enforcement action against every illegal dumping case that it has been aware of where we had a witness?

A. Yes.

MS. MACQUESTEN: That's all.

MR. BROOKS: I don't believe I have any questions for Mr. Sanchez.

I forgot to ask you last time, Terry.

MR. WARNELL: I had a handful of them last time. Nothing this time.

MR. BROOKS: Very good. The witness may stand down. And Ms. MacQuesten?

MS. MACQUESTEN: Mr. Examiner, that concludes the witness testimony.

MR. BROOKS: Do you want to offer any exhibits in evidence?

MS. MACQUESTEN: Yes, I would. I would move to admit Exhibits 1 through 18 at this time.

MR. BROOKS: Do we have some objections, Mr. Padilla?

MR. PADILLA: Well, I continue to object about the disposal system. I don't know what relevance it has. I don't think that obviously this, the State R #003, is tied to that disposal system. In terms of illegal dumping, I don't know

1 that it means anything or has any relevance here.

2 I primarily object when testimony is presented in a
3 very serious case as far as the repercussions to the people who
4 own Quannah and their livelihood, and you base testimony on an
5 affidavit.

6 Mr. -- the person who -- Mr. Cox, who signed that
7 affidavit, is not here. And to the extent that the Division is
8 relying on the system itself and on any evidence relating -- I
9 can understand Mr. Smith's testimony that this well is
10 connected to this disposal system and it's a co-op system.

11 But to the extent that there's any reliance on the
12 Division's part to include one way or the other that the water
13 quality and the kind of liquids that ought to be going into
14 that facility or that disposal system as relied on by the
15 Division and the repercussion that it has on the owners of
16 Quannah -- which is Mr. Edgett and Mr. Lopez -- who depend on
17 that business, I think it's entirely inappropriate not to bring
18 Mr. Cox to testify here.

19 The Division subpoenaed Mr. Butler here, and they
20 could have subpoenaed Mr. Cox to come and testify.

21 MR. BROOKS: Well, maybe you all can educate me.
22 Unfortunately, I was a judge in Texas for 12 years before I
23 came here, and I practiced law in Texas for quite a lot longer
24 than that before I came here. So unfortunately, I'm not as
25 familiar with New Mexico law as I ought to be.

1 In Texas, there's a business records affidavit
2 statute which permits you to admit where the affiant is only
3 giving evidence that the records are, in fact, the business
4 records of the organization. You can admit business records by
5 affidavit. I gather there's not an equivalent provision in
6 New Mexico law since nobody has referred to it.

7 MR. PADILLA: There's not an equivalent in New
8 Mexico, as far as I know. And generally, if you go to trial,
9 you are able to see exhibits that are going to be introduced at
10 trial beforehand. You have objections before you get to trial.
11 Here, we don't have the benefit of seeing the exhibits that are
12 going to be introduced one way or the other. Ours aren't
13 available to the other side.

14 Now, in terms of the affidavit of Dorothy Phillips
15 and other cases here, I don't have a problem with that because
16 Dorothy Phillips can be called from upstairs if there's a
17 question. Mr. Cox is quite a different deal, especially when
18 the Division is subpoenaing witnesses to appear here, as they
19 did Mr. Butler.

20 MR. BROOKS: Well, I agree with you that the
21 affidavit is hearsay and it's not admissible. We do have a
22 witness who has purported to identify the agreement itself; and
23 therefore, I'm going to admit that portion of Exhibit 2, which
24 is the agreement itself.

25 I haven't heard anything so far to indicate that its

1 contents are terribly material to this proceeding. But, of
2 course, I haven't heard your defense yet, so I don't if there
3 are some circumstances that shed some doubt as to whether or
4 not the witness is credible in terms of actually identifying
5 that this is in fact exactly the exhibit. And I'll take that
6 into consideration as going to the weight of the evidence.

7 With that, I will overrule the objection -- or I will
8 rule on the objection that that exhibit, as I stated on the
9 record, and the remaining Exhibits 1 and 3 through 18 will be
10 admitted.

11 Okay. Mr. Padilla, you may commence your case.

12 MR. PADILLA: We'll call Louis Edgett.

13 LOUIS EDGETT

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

16 DIRECT EXAMINATION

17 BY MR. PADILLA:

18 Q. State your full name.

19 A. My name is Louis Georgia Edgett.

20 Q. Mr. Edgett, where do you live?

21 A. I live in Lovington, New Mexico.

22 Q. Mr. Edgett, is this your first time to testify
23 before the Oil Conservation Division?

24 A. No, sir.

25 Q. When have you testified before?

1 A. It was on a Louray disposal. They had a question
2 about a spill, and it was all taken care of.

3 Q. Okay. Mr. Edgett, what is your relationship to
4 Quannah, Inc.?

5 A. I'm an owner of Quannah.

6 Q. Are you one of the owners?

7 A. Yes.

8 Q. Who's the other owner?

9 A. Greg Lopez.

10 Q. And he's sitting over here to my right?

11 A. The guy with the mustache and the light-colored
12 shirt.

13 Q. Mr. Edgett, there's been testimony over here
14 about illegal dumping. Quannah has been accused of illegal
15 dumping in this case. Tell us briefly what -- first of all,
16 let's -- has Quannah illegally dumped oil into the State R?

17 A. No water or oil, no, sir. We have not. We have
18 strict guidelines in place that if anyone does dump anything
19 illegally, they would be immediately fired upon finding out
20 about it.

21 And we only work our trucks in the daytime just so
22 there won't be any question about what we do. We work them
23 from 6 o'clock in the morning until probably 6:00 or 7:00 at
24 night. We try to get every truck back in unless there's
25 extenuating circumstances.

1 Q. Let's talk about your work on the State R #003.

2 A. Yes, sir.

3 Q. What do you do on that?

4 A. I'm a contract pumper for Kevin O. Butler on that
5 lease.

6 Q. And what are your duties on that well?

7 A. To gauge tanks and make sure there's no spills
8 and make sure the wells are pumping and correct any problems
9 there are.

10 Q. Let me take you back to February 7th, 2003.

11 A. Yes, sir.

12 Q. Did you have any work being done on that well --

13 A. Well, on the battery I did --

14 Q. -- at that facility?

15 A. -- on the State R #003.

16 Q. And what were you doing?

17 A. Well, I called Mr. Lopez to see if he had a
18 couple of trucks available because I wanted to go out there.
19 And during all the time that the pump was down, you know, the
20 tank would get pretty full, and that's when the valve would
21 start leaking, the valve and the flange behind the valve.

22 Q. Let's talk about -- what pump are you talking
23 about?

24 A. The transfer pump that transfers the water over
25 to the co-op disposal.

1 Q. Let's be more specific. Let me direct your
2 attention to the picture on this OCD exhibit. Let me direct
3 your attention to Exhibit No. 8.

4 A. Okay.

5 Q. Is that the pump we're talking about?

6 A. Yes.

7 Q. And when was that pump changed?

8 A. That pump was changed -- I've got it here on the
9 gauge report that I turn in to Kevin O. Butler's office. I do
10 reports every Monday and on the first. I have to have these
11 reports in on the first of every month.

12 The transfer pump was leaking on January 18th, 2008,
13 and put a new transfer pump on 1/26/2008.

14 Q. What did you -- what action did you take to
15 change that pump?

16 A. We had taken a pump off. The motor was still
17 good at that time. We had taken the pump off because a seal
18 was leaking on it, and I wanted to get that repaired.

19 Q. What was the condition of the old pump?

20 A. The seal was out of it, and it was leaking water.

21 Q. Was it leaking right in there?

22 A. You can't really see it in here. This has been
23 cleaned up. But this pump sits kind of on a mount because it's
24 up on a hill. And there's a decline that goes to the back of
25 the tank battery.

1 Q. Is it easier to describe the location of where
2 the pump is and that sort of thing on Exhibit 17 of the OCD?

3 A. Yes, No. 17.

4 Q. Right. Where is that pump on this exhibit?

5 A. It says water transfer pump, and it's got an
6 arrow pointing to it. And the separator that he's got drawn in
7 is actually to the south of the transfer pump because there's
8 nothing blocking the transfer pump to the back of the battery.

9 Q. Okay. So would it be further to the right or
10 further to the left?

11 A. It would be further to the left in looking at the
12 picture.

13 Q. Would it be more in line with the heater-treater?

14 A. Yes. It's in line with the heater-treater, not
15 the transfer pump.

16 Q. Okay. You say you changed that transfer pump on
17 the 26th of January; is that right?

18 A. Yes, sir.

19 Q. And --

20 A. I took it. I put the new one back on on the
21 26th.

22 Q. And before that time, what had been the condition
23 of the pump?

24 A. Like I say, it was -- the seal was leaking and
25 leaking down this little hill and to the back of the fence and

1 right through the back of the fence where they've got -- where
2 the spill was being cleaned up.

3 Q. Is that the area where they are saying "area of
4 truck"?

5 A. It's the round circle to the south of the truck
6 treater and spill area, is what they are saying.

7 Actually, the spill, there was only a small spill
8 right behind the tank, just very a little where a hose was
9 leaking or something. And the valve was leaking back there and
10 the flange, but only when the tank was full.

11 But anyway, right here, where the other circle is,
12 that's where the wet spot was, directly in line with the
13 transfer pump.

14 Q. Okay. How big of an area was the spill?

15 A. It went outside the fence probably five to ten
16 foot.

17 Q. What kind of work do you do on this facility that
18 you generally don't have to ask Mr. Butler's permission?

19 A. Well, basically, you know, if there's a
20 problem -- and especially a spill -- you immediately try to get
21 it repaired and get the facility back going.

22 Q. Now, there's been -- your contention here is that
23 you were going to change a valve on the big tank, right?

24 A. Yes, sir.

25 Q. Okay. When were you going to do that work?

1 A. That was on February 7th is when we were going to
2 do that work.

3 Q. What did you do that day to change that valve?

4 A. I had two trucks out there. Like I say, I called
5 Mr. Lopez about getting two trucks out. This water tank had
6 had some oil -- it had about a foot or so of oil floating on
7 top of this water, and I did not -- if that flange gave way, I
8 didn't want that oil out on the ground or the water -- but
9 anyway, we were going to go in there with the first truck and
10 tie on to it, pull the water off, and then down to the oil, and
11 take the second truck, suck the oil out, and put it back in the
12 oil tanks on the lease.

13 Q. Now, let me direct your attention to OCD
14 Exhibit No. 4. It's a picture.

15 A. These have been kind of scrambled during all the
16 testimony. Let's see if I can find them here.

17 Q. Mr. Edgett, was that the valve that you were
18 going to replace that day?

19 A. Yes. I was going to replace the valve and the
20 flange behind the valve where it bolts onto the tank. There's
21 four bolts that hold this flange on. There's a rubber gasket
22 behind it. And this tank has probably been out there since the
23 '50s or '60s and that rubber gasket behind it gets old and
24 cracked, and it will eventually leak.

25 Q. Why were you going to change that?

1 A. Do what?

2 Q. Why were you going to change that?

3 A. Well, it was leaking. You can see when it --
4 that's what this area -- you can see the spray area of the
5 water on the tank where it sprayed up, that dark area to the
6 right and up where this -- it's right there at the edge of the
7 valve, that flange. When you get the tank full, that water
8 would start spraying up.

9 Q. As a tank gets full, the pressure increases?

10 A. The hydrostatic pressure increases on the bottom
11 of the tank.

12 Q. And so was that the kind of thing you needed any
13 permission from Mr. Butler to do?

14 A. No. You know, I usually try to call, but I was
15 so busy. I was working on -- I had another rig going, and I
16 was busy on it. And I said, "We need to get it fixed."

17 So that's why I had Mr. Lopez call some truck out
18 there.

19 Q. Now, tell us about the trucks that were sent out
20 there.

21 A. Yes, sir. Like I said before, I sent two trucks
22 so we would save time. And I was going to have one truck pull
23 all the water off, because the oil floats on top of the water.
24 I was going to have one truck pull off all the water and hold
25 it and then the other truck come in and pull the oil off and

1 put it in the oil tank, and he could leave. But I wanted him
2 to hold the water in his tank while we repaired the flange.

3 Q. And what happened? Did you complete the work?

4 A. Well, I was out there, still out there on that
5 rig, and I got a phone call. And on the phone call, they
6 asked, you know, who this is. I said, "This is Louis Edgett."

7 And immediately -- it was Mr. Rex Smith -- and
8 immediately he just started cussing. He said, "Well, that's
9 the fucking problem. It's you."

10 And I said, "What are you talking about?"

11 He said, "You're a sorry SOB. You were a sorry SOB
12 in school, and you're still a sorry SOB."

13 And I said, "If you calm down, maybe I can see what's
14 going on."

15 At that time, I still didn't know what was going on.

16 And then Mr. Smith said, "There was two trucks out
17 here at the disposal."

18 And I said, "Well" -- I commenced to tell him what I
19 was doing. And he started ranting and raving again and cussing
20 me and said I wouldn't make a pimple on a chemical man's ass,
21 and I don't where he was getting all this information or what
22 he was saying about me.

23 And again, I told him, "If you'd quit and settle
24 down, I'll tell you -- explain to you what was going on."

25 And he was still ranting and raving and calling me a

1 sorry SOB, so -- he said he wanted Kevin O. Butler's number.

2 So I gave him Kevin O. Butler's number, and I hung up on him.

3 Q. Did he tell you that he had known you in high
4 school?

5 A. Yes. He said he knew me in high school. I don't
6 even know this man. I graduated in 1975. From his testimony,
7 he graduated in '69 or something.

8 Q. Had you ever met Mr. Smith?

9 A. No. I don't even know the man.

10 Q. Was there any water in the trucks that you sent
11 out there?

12 A. No. They were out there empty.

13 Q. Now, did you send a vacuum truck out there?

14 A. Yes. They were both vacuum trucks.

15 Q. And how does a vacuum truck work?

16 A. It works off -- like Rex was explaining, it works
17 off an air pump. The air sucks the air out of the tank, which
18 creates a vacuum to suck it on. And in reverse, it puts air
19 into the tank to pump it off.

20 Q. When you reverse it, is there a change in noise,
21 and that?

22 A. Oh, yes. The vacuum pumps make a lot of noise
23 and when you reverse them, you know when you turn it off and
24 turn it back on.

25 Q. What's your knowledge of how much had been sucked

1 out of that tank?

2 A. Well, from Mr. Buckingham, he got about half the
3 tank loaded up when Mr. Smith come up there and started cussing
4 him. I don't know exactly the words that was said between them
5 two, but something about he was going to shut the pump, you
6 know, close the valve on the pump and all that stuff.

7 And after I had hung up from Mr. Brown,
8 Mr. Buckingham had called me, and, you know, asked me what to
9 do. And I told him just to put the water back in the tank and
10 leave. And we'd do this at a later date and try to get it
11 solved.

12 Q. Have you solved it to the present time?

13 A. No. I wasn't going to do anything else to the
14 tank. The only thing that I did do is, I went back out there
15 two days later on the 9th. I've got the gauge sheets here
16 that, like I say, I turn in every Monday. So I can't fake
17 anything where I transferred the oil from the water tank back
18 to the stock tanks.

19 Q. How does oil get into that stock tank -- I mean,
20 into the water tank?

21 A. Well, the wells had been down for a little while,
22 and we were going to get them back on. And the gas, you know,
23 dies when the well dies, and the dump valves operate off of gas
24 pressure. And when you first kick a well back on, if the
25 heater-treater is what they call out of balance and --

1 sometimes water will dump to the oil tank, and oil will dump to
2 the water tank. And I assume that's how this got in there. I
3 cut the water tanks and found it on there.

4 Q. The oil in the tank?

5 A. Yeah, the oil in the water tank on the top of the
6 water.

7 Q. So it's not purely disposal water that's in that
8 tank from time to time?

9 A. No. It's water from what the wells produce.

10 Q. And there's oil in that water?

11 A. Well, on a facility that's operating correctly,
12 no, there's not supposed to be any oil in the water tank.

13 Q. Why did you -- could you explain, again, why
14 there was oil in that tank?

15 A. Like I say, the heater-treater, the dump valves
16 which dump the water to the water tank and the oil to the oil
17 tank, operate off the gas. And when the wells are down, the
18 gas -- there's no gas to operate the dump valves. And when you
19 first cut on the wells, it puts in an influx of water and oil
20 and -- before the gas comes back. And the heater-treater will
21 get out of balance, and, like I say, water might -- you know,
22 the treater will fill up with water or oil or vice versa and
23 push oil to the water tank or water to the oil tank.

24 Q. About how much oil was in that tank?

25 A. There was over a foot.

1 Q. And what does that translate to in terms of --

2 A. In a 500-barrel tank, it's 2.75 a foot, so
3 approximately 35 barrels.

4 Q. Had you -- you talked about having done some
5 other work on the wells there. What were you doing?

6 A. We were working on the #003 in January. We had
7 worked on it -- I don't have the other one -- we worked on it
8 in December also, but we worked on it in January.

9 Q. The #003?

10 A. Yes, sir.

11 Q. And is that shown on Exhibit 1 on --

12 A. See. You can see where it was pumping at the
13 first of the month.

14 Q. You're referring to Exhibit 1, right?

15 A. Do what?

16 Q. You are looking at Exhibit No. 1, right?

17 A. I'm looking at my gauge sheets that I do on the
18 lease.

19 Q. Okay. I understand that. But look at our
20 exhibits. Is that the same thing as your gauge sheets?

21 A. I hadn't seen any gauge sheets. On our exhibits?
22 Okay. That you handed me. I'm sorry.

23 Q. That's Exhibit 2.

24 A. That's John Cox.

25 MR. PADILLA: May I approach the witness, Your Honor?

1 MR. BROOKS: You may.

2 Q. (By Mr. Padilla): That's Exhibit 2.

3 A. I'm sorry. I'm nervous. I've got a lot riding
4 here.

5 Q. You're looking at Exhibit 2, right?

6 A. Exhibit 2, yes.

7 Q. What is that, first of all?

8 A. It's a gauge sheet that you have to do on each
9 lease every month or daily. Actually, this is daily.

10 Q. Is there some writing on that exhibit?

11 A. Yes.

12 Q. Did you put that writing there?

13 A. I put that writing in there.

14 Q. Over on the side, on the right-hand side of that
15 exhibit, you put "St R back into production."

16 A. Yes, sir.

17 Q. And you say, "Water production up."

18 A. Yes, sir.

19 Q. And that's from --

20 A. When you first turn the well back on, it -- when
21 a well sets, the fluid from the formation pools up inside the
22 well. And when you first turn it back on, you have a flush of
23 water. Usually it's water and then oil. Water is first.

24 Q. And what was that well doing then in terms of
25 water production?

1 A. On Exhibit 2, we turned it back on on the 26th,
2 and the 27th it was 198 barrels, but this is the two wells
3 together, State R #001 and #003. You can see the 65 above it
4 was the State R #001 by itself. But when we turned the well
5 back on, this is the water it was producing.

6 Q. Was there heavy equipment on that lease around
7 that time, sometime in January?

8 A. Yes, there was.

9 Q. What was on there?

10 A. There was a pulling unit.

11 Q. And what kind of equipment goes with a pulling
12 unit?

13 A. It's a truck with a derrick on it that pulls the
14 equipment out of the hole, the tubing and the rods.

15 Q. Is that a big truck?

16 A. Yes, it has the same frame as a truck, but it's
17 not a semi. It's all one body.

18 Q. Okay. Is that a very long truck?

19 A. Yes, Tandem axle.

20 Q. Do you know how that pulling unit got into that
21 lease?

22 A. Through the double gates in the exhibit. Okay.
23 Exhibit 6.

24 Q. Did you have to pull any water off during that
25 time, off the State R #003?

1 A. When the transfer pump was down, we had to pull
2 water off of the -- on these deeper wells, if it's down for a
3 long amount of time, you don't get the production you normally
4 would have pumping every day. So we didn't want to shut the
5 wells down when the transfer pump was down, so we were hauling
6 water off of it. And we hauled four loads off of it from the
7 18th to the 26th.

8 Q. Is that shown on Exhibit 1?

9 A. Yeah. This is the invoice where we hauled the
10 water off of the battery, State R #003 battery. Along with
11 every invoice is a driver's delivery ticket of what they did.

12 Q. How were you tying up to that lease, to the tank?

13 A. How were we -- we were tying into the valve in
14 question.

15 Q. The valve --

16 A. The three-inch valve at the back of the tank.

17 Q. Why were you going to the back of the tank?

18 A. Well, we're really not supposed to, but the front
19 valve in Exhibit -- let me get these in order -- in Exhibit 16,
20 the front valve is the one that you would normally tie them to
21 if you're going to pull water out, to keep from going behind
22 the tank.

23 But it's approximately 40 feet from the barbed-wire
24 fence, and you'd have to lay out two or three hoses or come
25 inside the gate, a narrow gate, into that valve, which is --

1 you'd have to back back out. And that's -- I really didn't
2 give them permission to go back there. He just did it.

3 Q. Can you hook up to unload water on the valve
4 shown on Exhibit 16?

5 A. Yes.

6 Q. And explain, again, why you didn't hook up to
7 that valve.

8 A. Because it was like 40 foot from the barbed-wire
9 fence from the main lease road. And you'd have to lay out two
10 or three hoses to hook up to it, and you'd have to pull the
11 hose through the barbed-wire fence and hook up to it and then
12 hook up to your truck. Either that, or come through the
13 gate -- go around and come through the narrow gate, and a
14 truck had to pull in or back in. A vacuum truck had to back in
15 and then pull back out. And it's hard to back in.

16 Q. Can you show the Examiner on Exhibit 17 where it
17 was hard to back in?

18 A. On Exhibit 17, you can see the WT for the water
19 tank. You can see the correlation of the barbed-wire fence
20 around the battery between the water tank and the oil tanks.
21 You can see how far it is from that valve to the edge of the
22 barbed-wire fence.

23 And then this gate here, you'd have to back in and
24 squeeze into the water tank from the other way if you went into
25 the gate.

1 Q. So it's easier to go in through the back?

2 A. Yes. Because it's only -- as you can see, it's
3 right there, three foot from the edge of the barbed-wire fence
4 in Exhibit 4.

5 Q. Now, when you took water from this tank, the
6 water you took out of the -- in January, where did you take
7 that water?

8 A. I took it to the Ed Meads Disposal, which is
9 Mr. Kevin O. Butler's, another disposal that he owns so he
10 wouldn't have to pay a disposal charge.

11 Q. Now, there's been some testimony here that we've
12 objected to, but I think we better explain it. Your Government
13 No. 1 has been down for some time and until the present time.

14 A. Yes, sir.

15 Q. Where do you take your water?

16 A. We've got three or four disposals that we haul
17 our water to. Mr. Lopez -- this was set in place -- when I was
18 running Quannah, before he took over -- that we had to have a
19 disposal ticket with every delivery ticket that come in. And
20 so, just for this purpose, it would show where you've taken
21 that water, where you got it from, and where you're taking it
22 to.

23 At the disposal, you have to fill out a disposal
24 ticket so the disposal can charge the trucking companies. And
25 we make our drivers staple a copy of the disposal ticket to

1 every delivery ticket so they'll know where they took it.

2 Q. And where do you take your water?

3 A. We take our water -- most of it, we take it to
4 Basin Alliance.

5 Q. Where is that?

6 A. It's over on 62180 Carlsbad Highway, and you turn
7 down -- I believe it's 483 by the electric plant, and it's
8 right off there.

9 Q. There's been some testimony here by Mr. Smith
10 that Danny Watson doesn't like you.

11 A. He doesn't.

12 Q. And have you had some dispute with Mr. Watson?

13 A. Yes, I have.

14 Q. And what has been that dispute?

15 A. Just like everybody else, I have times when
16 people don't pay. And you get behind in your bills. Everybody
17 does it who owns a business knows what I'm talking about. But
18 we were over 60 days in paying him for the saltwater disposal
19 going into his disposal, which is DKD.

20 He called me up, and we discussed it, and I told him
21 I'd gather up the money and bring him a check so we could keep
22 going into it. And this was one day, and the next day, one of
23 our trucks went in, and he went out there and chained the tires
24 together on the trailer so we couldn't move. Then the driver
25 would call me.

1 And he called me and told me that Danny Watson had
2 chained up my truck. And he had done this before, the same
3 exact thing, and I had paid him, and this is the second time.
4 And so I knew he couldn't do that legally, so I called the
5 sheriff's department to come out. I didn't go out this time.
6 I had the sheriff's department go out and talk to Mr. Watson
7 and tell him that he cannot chain up my truck.

8 Q. Did you pay Mr. Watson?

9 A. Mr. Watson is completely paid off.

10 Q. You just don't go there anymore?

11 A. I just don't go there anymore.

12 Q. Going back to the -- this particular facility,
13 why haven't you finished the work to change the valve?

14 A. Well, with all this going on -- and then I got a
15 letter from the Oil Conservation Division. I just decided --
16 what I'm doing is I keep the tank pumped down to two foot so
17 that the valve in that exhibit will not leak, and the flange
18 will not leak if I keep the tank level pumped down. And if
19 they wanted to come on location and check it, they could have
20 and seen that the level was all the way down.

21 Q. On February 7th, the backhoe was out there on
22 site also, right?

23 A. Yes, sir.

24 Q. When did you call the backhoe?

25 A. I had called him like a week before and told him

1 what I needed done, and he was busy on another job, and he just
2 showed up at that time. That was purely coincidence.

3 Q. Why were you cleaning up that site?

4 A. Well, from where the disposal -- the transfer
5 pump had been leaking. And from my assumption and what I
6 figured, there was no standing water an inch deep. Everything
7 that was coming up was soaked down, and from my assumption, I
8 figured it was less than five barrels and that I didn't have to
9 report. And that's what I've been told.

10 Anyway, I had him come out there to clean it up
11 because it had salted up a little bit, and I wanted to get it
12 cleaned up.

13 Q. Mr. Smith testified that a couple of hours later
14 he followed one of your trucks, and he said he found out where
15 you were getting the water from.

16 A. Yes, sir.

17 Q. And that was the HL Brown lease or something?

18 A. Yes, sir. The HL Brown Lease.

19 Q. Where do you take that water?

20 A. We take that water to Basin Alliance, or we take
21 it to the disposal over on 222.

22 Q. Do you have a route that you go through?

23 A. Yes. There's a shortcut from that lease over to
24 the Artesia Highway that takes us right back over to 222, and
25 we can unload over there, because we have leases over there

1 that we haul water to.

2 Q. Do your trucks -- let me have you look at the
3 highway scene here on Exhibit No. 7.

4 Was it your trucks that went off the highway like
5 that?

6 A. Went off the highway?

7 Q. On Exhibit 7?

8 A. I have no idea if that was our trucks or not when
9 we went in there. Are you going off Exhibit 7?

10 Q. Right.

11 A. I wasn't there when these were made, so I can't
12 answer that.

13 Q. To your knowledge, did your drivers knock the
14 gate down?

15 A. No, sir. I never was advised by anyone. I just
16 went out and found the gate, had the roustabout come out and
17 put it back up.

18 Q. When did you see this gate like this for the
19 first time?

20 A. The first time was on February 7th.

21 Q. And you went out there that day because --

22 A. Of everything that was going on, yes, sir.

23 Q. And that's fixed now?

24 A. Yes, sir. I had a roustabout come out and repair
25 it.

1 Q. Did Mr. Brown ever call you?

2 A. No. If I may, on these tracks also, when the
3 pulling units are on the location, we load -- Quannah was
4 loading and testing the wells. We would get water from this
5 tank in question, and that's where we would load the water
6 also.

7 Q. From the backside?

8 A. From the backside. Load the water, take it over
9 to the well to load the well with. And if we didn't use all of
10 it, we would come back and put it back in that tank, what we
11 did not use.

12 Q. How far is the other well that you were working
13 on?

14 A. It's just 1500 foot. It's just a location away
15 from the battery.

16 Q. Because these wells are tied to the system that
17 has been testified to, there's no need for trucking, as
18 Mr. Butler testified?

19 A. No, no.

20 Q. So is there room in the front side for big
21 trucks?

22 A. Well, it's just a lease road that goes right by
23 it. There's -- big trucks go by it. There's room.

24 Do you mean pulling inside the gate?

25 Q. Pulling inside the gate.

1 A. A truck will fit, but you have to back up and go
2 forward and back up and go forward to get in there to the tank.

3 Q. So that's why you went through the backside?

4 A. Well, that's like saying that's why the truck
5 drivers went through the backside. I didn't actually give them
6 permission to go to the backside. They just started that.

7 Q. Tell us again how you keep the pressure down on
8 this tank so it won't --

9 A. On the valve? The transfer pump pumps the water
10 out of the tank, which will lower the level. So I keep the
11 level down between one or two foot of this valve so the
12 hydrostatic pressure won't make it leak.

13 Q. Does that put more water into the system,
14 generally?

15 A. No. It'll be the same amount, but there's been
16 twice that the tanks were full. One time is when we got the
17 transfer pump got back -- was put back on. And that's when all
18 this lead occurred. There was probably 450 barrels of water in
19 the tank. And when I drove up on location, that valve in the
20 back was leaking. So I turned the pump on and pumped the water
21 across -- you know, when we got the new transfer pump on, we
22 turned it on. The tank was full. And we probably pumped 400
23 barrels over there overnight. And we probably did that twice.

24 Q. Now, at what time period did you do that?

25 A. That was -- we did that -- I know we did it once

1 in January, and I know we did it once in February.

2 Q. Do you remember whether it was the early part
3 of -- before February 7th?

4 A. Oh, it was before February 7th. It was right --
5 it might have been at the end of January, you know, when we got
6 the pump back on, right here on the 26th. I know that's one
7 time we did it, because the tank was full. We got the new
8 transfer pump on, and we turned it on to pump all the water
9 across.

10 As you can see from the water production, you know,
11 we quit hauling on the 24th, and we had -- the tank level was
12 up. And then we quit hauling on the 24th and the 25th, and the
13 26th the production from the wells went into the water tank,
14 and that's why it was full.

15 Q. Do you have to manually go out there and start
16 the transfer pump to keep that water level down?

17 A. Well, we have a timer on it. You can set the
18 timer, and you can pump. But that's what we do every day. We
19 pump it down and get that level down so it won't be high when
20 we come back the next morning.

21 Q. Right now, would there be any oil in that tank?

22 A. No. We got all the oil off of it on the 9th.

23 Q. What did you do with the oil?

24 A. I put it back in the oil tank. It showed up
25 in -- let me get the right exhibit -- on Exhibit 3 on the 9th

1 where we put the oil back into the oil tank.

2 Q. That's the February -- Exhibit 3 is what?

3 A. February 9th. It is --

4 Q. And that's --

5 A. -- the gauge sheet that I have to turn in every
6 Monday and then on the 1st.

7 Q. And so you went back out there, and that's why
8 you have 37.8 barrels?

9 A. Yeah. I had a truck transfer the oil from the
10 water tank to the oil tank. That's why there's a production of
11 37.8 barrels. If you see before, it was 10.8. That was the
12 regular production at that time. And you can see the day after
13 and the days after it was approximately the same oil
14 production. That's why there's that 37.8 barrels of oil into
15 the battery.

16 Q. And, now, if you went out there, there wouldn't
17 be any?

18 A. There would probably be an inch or so on top,
19 because you can't always get all of it unless you drain the
20 tank completely.

21 Q. Do you have anything else to add to your
22 testimony, Mr. Edgett?

23 A. Just that this is the first time I've been
24 persecuted for trying to do my job. I don't know if Mr. Smith
25 has a vendetta against me or what -- or what he's got, saying I

1 went to school with him. He's apparently a lot older than I
2 am. I graduated in 1975. So I don't know what he's trying to
3 do or what's going on here.

4 Q. Did you illegally put oil or water --

5 A. We don't --

6 Q. -- in that tank?

7 A. We don't ever dump anything illegally, and if we
8 do, it is without my knowledge.

9 MR. PADILLA: I have nothing further.

10 MR. BROOKS: Thank you.

11 Mr. Hall, did you need something from the Examiner or
12 any of these parties?

13 MR. HALL: Are you addressing that to me? I'm just
14 observing today.

15 MR. BROOKS: That's fine. I just thought maybe you
16 were waiting, and I didn't want you to have to wait any longer
17 than necessary, since it's late in the day.

18 I think this can go on for a while. So let's go
19 ahead and take a break for about 10 minutes.

20 [Recess taken from 4:55 p.m. to 5:02 p.m., and
21 testimony continued as follows:]

22 MR. BROOKS: Well, do we have everybody? We need to
23 proceed, I guess. So I really think that we would need to
24 finish up today, if possible. Because for no other reason, the
25 room is not available tomorrow since they are having a water

1 meeting in it, and I'm supposed to be in that meeting.

2 We will at least go until 6:30 and see if we can get
3 this thing wrapped up.

4 You passed the witness, right?

5 MR. PADILLA: I passed the witness.

6 MR. BROOKS: Cross examination, Ms. MacQuesten?

7 CROSS EXAMINATION

8 BY MS. MACQUESTEN:

9 Q. Mr. Edgett, did I understand your testimony that
10 you believe that the liquid that was found in the area where
11 the trucks were later seen came from the transfer pump when it
12 was leaking?

13 A. One of the leaks was, yes.

14 Q. And how far is it from the transfer pump area
15 over to the area where the spill was later found?

16 A. It's approximately 20 foot to the fence right
17 there where it was found.

18 Q. And then the part of the spill that was outside
19 of the fence?

20 A. That was from the transfer pump where it went
21 across the fence, yes, ma'am.

22 Q. So further than 20 feet, because we have the
23 pictures of the backhoe on the other side of the fence cleaning
24 up that spill?

25 A. You can't get any correlation on that distance

1 from that far away.

2 Q. But it's outside of the fence that they're
3 cleaning up?

4 A. Yes, ma'am.

5 Q. Do you agree with Mr. Brown's testimony that the
6 size of that spill that was being cleaned up was about 20 by 30
7 feet?

8 A. I don't think it was that big. I stepped it off,
9 and I didn't get that amount. And there was no standing water.

10 Q. I'd like you to look at Exhibit No. 8. It's the
11 picture of the old pump and the new pump.

12 A. Yes, ma'am.

13 Q. And I'm just curious if this was the source of
14 the leak that was being cleaned up. Do you see any evidence of
15 a spill or leak at the pump?

16 A. No. That's my job to keep it clean. There's not
17 going to be a spill there. If I see a spill, I clean it up.

18 Q. I didn't hear you say that you had cleaned up any
19 spill at that pump.

20 A. Well, sure, you did. The backhoe was in there
21 cleaning the spill outside, and they had orders to clean the
22 inside, too, if there was any on the inside.

23 Q. Were the people who were going to clean up the
24 spill the same people who went out with the backhoe?

25 A. Yes.

1 Q. Well, you heard Mr. --

2 A. The people with the backhoe.

3 Q. You heard Mr. Brown's testimony. He showed up at
4 the same time as the people with the backhoe.

5 A. Yes, ma'am.

6 Q. And we didn't hear any testimony about any
7 cleanup at the pump. I see a lot of footprints here and a lot
8 of undisturbed ground. I don't see a recent cleanup at this
9 site.

10 But it's your testimony that the leak from this pump
11 traveled 20 feet to the fence and then outside the fence and
12 then caused that spill area that was being cleaned up?

13 A. Yes, ma'am. That's exactly what happened.

14 Q. And that spill was out there on February 7th, and
15 it would have -- the cause of the spill would have ended on
16 January 26th when that pump was replaced, right?

17 A. Well, it was -- at the ground, it hadn't been
18 cleaned up. I called him earlier to have it cleaned up, and he
19 hadn't gotten out there.

20 Q. There was enough fluid coming from those pumps to
21 travel that distance and cause that much contamination outside
22 the fence, and it's your testimony you think that was less than
23 five barrels?

24 A. Yes, ma'am.

25 Q. How do you calculate that?

1 A. Well, if I could take you out there, I could show
2 you. I could take one drum of water and pour it right down on
3 top of this pump, and I can show you where it travels and how
4 far it travels. And I can guarantee you one drum, which is 55
5 gallons, will travel from this pump all the way outside the
6 fence.

7 Q. And it's your testimony that this land out here
8 has enough distance height that that water is just going to
9 roll down hill to this spot?

10 A. Well, from here to that table, if there's a mound
11 this high, which way is the water going to run?

12 Q. Where is the mound?

13 A. At the pump. The -- it declines down that way.

14 Q. Okay. I'll leave it to everyone to look at the
15 pictures on that. Now, I understand you don't think it was a
16 big enough spill to report to OCD?

17 A. No, ma'am.

18 Q. Did you think it was a big enough spill to report
19 to Kevin O. Butler?

20 A. I called Kevin about the transfer pump leaking,
21 and he gave me the okay to get a new pump.

22 Q. Did you tell him about the spill that you think
23 was caused by the transfer pump and that you needed to clean
24 that up?

25 A. I didn't. No, ma'am, I did not. I told him it

1 was leaking, and it made a little spill. That's all I told
2 him.

3 Q. Now, when the trucks went out on February 7th,
4 when Mr. Smith saw the trucks and all this commotion started,
5 it's your testimony that they went out there in order to change
6 that valve on the tank?

7 A. Change the valve and to change the flange that's
8 hooked to the tank.

9 Q. And the idea was that they would pull the fluids
10 out of the tank, fix the valve, put the water back in the tank,
11 and take the oil to the oil tank?

12 A. Yes, ma'am.

13 Q. Who was going to fix the valve and the flange?

14 A. R & B Roustabouts, the same people as the
15 backhoe.

16 Q. Were they there?

17 A. No. They hadn't showed up yet before all this
18 happened. I cancelled everything. I called them and told them
19 not to show up.

20 Q. Wait a minute. I thought you testified before
21 that you were surprised that they were there that day because
22 you had told them to go clean the spill up the week before --

23 A. The backhoe.

24 Q. -- and it was only circumstances that they showed
25 up.

1 A. The backhoe. I was surprised he was there
2 because he was supposed to come out. There's a difference
3 between a roustabout truck and a backhoe.

4 Q. Okay. When did you call the roustabout folks and
5 tell them, "Don't go out there today"?

6 A. That same day when all this was happening. When
7 I called Mr. Buckingham and told him to leave, I called them
8 and told them not to come out.

9 Q. When were they supposed to come out? Did you
10 have a set time?

11 A. That day.

12 Q. Okay. Now, as I recall, Mr. Smith testified that
13 he first saw a Quannah truck out there about 7:20 in the
14 morning.

15 A. I don't know what time they showed up.

16 Q. Was it your intention that the Quannah trucks
17 wait out there until the roustabout showed up to fix the valve?

18 A. We hadn't even gotten to that point yet. We were
19 just starting -- going to suck the water out of the tank.

20 Q. Okay. But I'm just trying to get a sense of the
21 timing here because we've accounted for time up through at
22 least the middle of the day. How long does it take --

23 A. It wasn't the middle of the day when Mr. Smith
24 called me.

25 Q. Okay. Was it --

1 A. It was in the morning. It was approximately -- I
2 can't tell you the exact time, but it was somewhere between
3 8 o'clock and 9 o'clock. It was right in there.

4 Q. Mr. Smith called you between 8 and 9?

5 A. Yes, ma'am.

6 Q. According to his testimony, he didn't go out
7 there until Kenneth Tucker told him there was a problem, and he
8 went out about mid-morning.

9 A. It's kind of like his testimony that I went to
10 school with him.

11 Q. So you're disagreeing with his testimony?

12 A. Yes, I am. And I don't know the exact dates. If
13 you're trying to pinpoint me on -- not date, but time, I cannot
14 tell you. I was at another pulling unit trying to get them
15 started and going and everything okay on it.

16 Q. Okay. How long would it take to pull the water
17 out of that tank and pull the oil out of that tank?

18 A. By the time they got there and loaded the water
19 and the other truck come in -- the other one come in and pull
20 the oil out, it would probably take an hour and a half, two
21 hours to get all that done.

22 Q. Okay. So you'd hope that the roustabout folks
23 would show up -- if your trucks are there at 7:30, you'd hope
24 they'd show up by 9:30 or 10:30.

25 A. Sure. You would hope, but they don't always show

1 up on time. The way the oil field is right now, you're lucky
2 to get any business done.

3 Q. And you were content to have your folks sit there
4 with your trucks until--

5 A. Yes, ma'am. We waited, just like going and
6 loading the well. We have to wait two hours sometimes before
7 they get their well back on. It's downtime. You have to wait.

8 Q. How far did the trucks get in the process before
9 Mr. Smith stopped them?

10 A. I wasn't on the location, so Mr. Buckingham said
11 it was about half loaded.

12 Q. Okay. They were still in the process of taking
13 water out? It was the truck that was dealing with the water --

14 A. Yes.

15 Q. -- not the oil truck?

16 A. Yes.

17 Q. The oil truck was waiting?

18 A. Yes.

19 Q. Now, it's your testimony that they went back two
20 days later on the 9th to complete the -- taking the water and
21 oil out?

22 A. Yes.

23 Q. But they did not fix the valve at that time?

24 A. No. I wasn't going to fix anything. I just
25 wanted to get the oil out of the water tank so if that valve

1 shown in the exhibit gave way or started leaking, the oil
2 wouldn't be on the ground. It would be in the oil tank --
3 Exhibit 4.

4 Q. Well, you've been aware of the -- you're saying
5 you realized that there was a problem with the valve because of
6 the problem with the transfer pump, right? And you've known
7 about that for some time. I'm just curious why it was so
8 important to get out there two days after this incident with
9 Mr. Smith.

10 A. Because I wasn't aware of the oil until a few
11 days before I wanted all this to be done. I was going to kill
12 two birds with one stone. I was going to get the oil out,
13 return it, and then fix that valve at the same time.

14 Q. So when they went out on the 9th, what did they
15 do? Did they take the water and haul it off?

16 A. No. I went over the top of the -- went inside
17 the battery. I had them back in there -- like I told you, it
18 was so hard to get in there, go over the top, suck the oil out,
19 and put it in the oil tank.

20 Q. So you sucked it off the top --

21 A. Yes.

22 Q. -- instead of going --

23 A. -- oil off the water tank, put it back in the oil
24 tank.

25 Q. Okay. Now, this would have been on the 9th. It

1 was two days after you had that very unpleasant phone
2 conversation with Mr. Smith, right?

3 A. Yes, ma'am.

4 Q. Were you concerned that if you went back out
5 there on that location with your trucks that you might run into
6 Mr. Smith or someone else?

7 A. We went back out there several times on the
8 pulling unit loading the wells, and Brian is a consultant that
9 works for Bruce that works for Kevin O. Butler had called
10 Quannah out there to pour it down the well, and they were out
11 there all the time during that month.

12 Q. But were they working on the water tank, though?

13 A. Well, when we go -- let me explain this to you.
14 Instead of the -- if we go to load a Kevin O. Butler well, you
15 have to have water to pump down the well, or whatever you want
16 to do to it. Instead of going and having Mr. Kevin O. Butler
17 buy the water from a fresh water facility, we load it from his
18 water tanks and use his own water out thereon his well.

19 Q. Okay.

20 A. And we've done that several times during January
21 and February, loaded water out of the tank to load the well,
22 the State R #003 and the State R #001.

23 Q. When you received the unpleasant phone call from
24 Mr. Smith on the 7th, did you call Mr. Butler and tell him
25 about it?

1 A. Yes, I did. I didn't call Mr. Butler. I called
2 Bruce. I called Bruce. Like I say, gave Rex Kevin's number so
3 he could call him. I wasn't trying to hide anything.

4 And after I got off the phone with Rex, I called
5 Bruce and told him exactly what was going on, and Bruce wanted
6 me to send him an e-mail, and I sent him an e-mail when I got
7 back in.

8 Q. Okay. Did you tell him, "I'm going to be back on
9 that site. I need to take the oil off the top of that water
10 tank"?

11 A. I told him the valve was bad and that we needed
12 to do something about it, and I told him it had oil on the
13 tank. I also told Brian that was out there on the well.

14 Q. Did you tell him, "This is what I'm planning to
15 do in case Mr. Smith called up upset about me being there"?

16 A. No, I did not.

17 Q. And why is it that you haven't fixed the valve
18 yet?

19 A. I wasn't going to fix it until all this was over
20 with.

21 Q. I didn't see in your exhibits any bills to Kevin
22 O. Butler for the time spent on the 7th. Have you billed him
23 for that?

24 A. No, I have not. We didn't do the job.

25 Q. Did you bill him for your time and the time for

1 the two trucks being out there?

2 A. No. If we didn't do the job, I can't bill
3 Mr. Butler for something that we didn't do. If we didn't
4 complete the job, we can't bill him for it.

5 Q. How about the work done on the 9th? Did you bill
6 him for that?

7 A. No, I did not.

8 Q. Why not?

9 A. I didn't think that Mr. Butler needed to be
10 billed for that, for all the trouble that I was causing him on
11 his lease or was being caused on his lease.

12 Q. What trouble were you causing him?

13 A. Well, persecuted for trying to do my job.

14 Q. Sir, are you going to bill him for the time for
15 the two trucks on the 7th?

16 A. No, I'm not.

17 Q. Why not?

18 A. Greg's been running the company for a while. I
19 have nothing to do with the day-to-day of Quannah Trucking.
20 But if it was me, I would not. No, I would not bill him for
21 the time spent. Like I say, it was a job that was not
22 completed.

23 If I went out to build a house, and I just drove out
24 there and didn't do it and come back to the house, I wouldn't
25 charge you for building it.

1 Q. But you would bill him once the job was
2 completed?

3 A. If I completed the job, which has not been
4 completed.

5 Q. Okay. Do you consider the job on taking the oil
6 off the tank completed?

7 A. Yes, ma'am.

8 Q. But you're not billing for that because --

9 A. It only took about an hour to do that job, and we
10 were down in that area, anyway.

11 Q. And I understand that you don't know anything
12 about that gate coming down?

13 A. I didn't know. I just saw it, and I had it
14 repaired.

15 Q. Whose gate is that? Is that the operator's gate
16 or the landowner's gate?

17 A. I think it's the landowner's gate, but the
18 landowner usually wants the operator, because we're going in
19 and out of it, to have it repaired.

20 Q. Are you billing anyone for that?

21 A. R & B Roustabouts repaired it. I don't know if
22 he's been billed for it or not.

23 Q. How does it work? Would R & B bill Kevin O.
24 Butler & Associates directly for that?

25 A. Oh, yeah. They did the job for Kevin O. Butler.

1 Q. So you called and had them fix it on his behalf?

2 A. Yes. Yes. Because the rancher had cows in there
3 and didn't want them getting out.

4 Q. Did you call Mr. Butler and tell him about the
5 gate problem?

6 A. No, I did not. I assumed I had the authority to
7 protect the people on the highway from running into a cow.

8 Q. You didn't think that, given the fact that nasty
9 phone calls had been made and the OCD was looking into this,
10 that he might be interested in the fact that the gate was down?

11 A. Kevin O. Butler?

12 Q. Right.

13 A. Well, I had discussed it with Bruce. I don't go
14 directly to Mr. Butler. I go through Bruce, which is -- at
15 that time, he had just come on board with Kevin O. Butler.

16 Q. Okay. So did you talk to him about the gate
17 problem?

18 A. I don't think I talked to him about the gate. I
19 just had it done. It only took about an hour and a half to get
20 it done and put back up.

21 MS. MACQUESTEN: No other questions. Thank you.

22 MR. BROOKS: Okay. Redirect, Mr. Padilla?

23 MR. PADILLA: None.

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EXAMINATION

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BY MR. BROOKS:

Q. That crew that was to come out on February the 7th, what were they supposed to do?

A. They were supposed to clean up the mess that the transfer pump had made from the leak.

Q. Now, you distinguished between the roustabout truck and the backhoe.

A. Well, there wasn't a roustabout truck on the -- there was one coming out, but it hadn't made it there. I told him not to come out because we weren't going to empty the tanks.

Q. Now, the backhoe was to clean up the mess?

A. The mess on the --

Q. What was the roustabout truck to do?

A. They were there to take the back hatch off so we could take the bolts out of the flange on that valve and replace the gasket and replace the valve.

Q. Okay. So that was part of the valve replacement operation that they were going to do?

A. Yes, sir.

Q. So when you said not to do the valve operation that day, you called off the roustabout --

A. They couldn't -- wouldn't have been able to charge Kevin O. Butler. I turned them around. I didn't want

1 them to --

2 Q. Mr. Butler testified about some invoice that he
3 had received that he was holding until the situation was
4 clarified, and I'm a little vague on what that was for. Do you
5 know what invoice that was?

6 A. I don't remember what Mr. Butler said about the
7 invoice.

8 Q. But you didn't bill him for any work that you did
9 February 7th?

10 A. No.

11 Q. Okay. I really think that -- oh, yeah. There's
12 one other matter. I didn't really understand it when you
13 testified to it, and I probably won't again when I read the
14 transcript, so I thought I better ask.

15 A. All right.

16 Q. You were talking about some additional water that
17 went into -- that I would gather went into the system, but it
18 seemed to me you were suggesting might have explained why
19 Energen was having more water -- finding more water in their
20 system. Is that correct?

21 A. Yes. We just got the wells back on, and they
22 were producing a flush of water.

23 Q. And was this after you put the wells back on,
24 after you replaced the pump?

25 A. Well, as you can see, Exhibit 2 --

1 Q. Your Exhibit 2?

2 A. Yes, sir.

3 Q. Yeah.

4 A. -- you can see the water production. That's when
5 we got the well back on and that's how much water was being
6 pumped across over to the --

7 Q. These dates are January, right?

8 A. Yes, sir.

9 Q. Okay. And did you work out the quantities that
10 would explain the difference between three truck loads and six
11 or eight truck loads?

12 A. Yes, sir, definitely. Because we had these wells
13 down, and there was no water going from Kevin O. Butler for
14 approximately three or four months until we could get a rig to
15 work on the wells.

16 Q. How much water is a truck load?

17 A. 130 barrels.

18 MR. BROOKS: Think that's all my questions.

19 Terry.

20 MR. WARNELL: I have a couple, please.

21 MR. BROOKS: Okay.

22 EXAMINATION

23 BY MR. WARNELL:

24 Q. In looking at OCD's Exhibit No. 6, the gate --

25 A. Yes, sir.

1 Q. -- that gate looks in sad, sad repair. As a
2 matter of fact, it looks as though -- I'm assuming this is half
3 of a swinging gate.

4 A. Yes, sir.

5 Q. It is maybe a half or a quarter of the half of a
6 swinging gate.

7 A. You can't see the other part that's bent down
8 underneath.

9 Q. They were able to straighten that and pick that
10 up and --

11 A. Actually what they did -- this is not the first
12 time this gate's been hit. This is probably the second or
13 third time, but this time it just went over, but, anyway, I
14 think what they did is took these poles and cemented them back
15 in and took this part of the gate, put it on the other side and
16 put a wire gate up where you could go in and out.

17 Q. Okay. I was curious about that. Thank you.

18 I'm also curious about what we've been referring to,
19 the pump on OCD's Exhibits No. 8, the motor and the pump.

20 A. Yes, sir.

21 Q. I'm curious as to the fact that it looks very
22 obvious to me that the old motor and pump are considerably
23 larger than the new motor and pump.

24 A. That pump was sitting there in February -- well,
25 actually, I took over from Steve Smith in February, but I don't

1 know when they replaced this pump. This pump has been sitting
2 there for years. That has nothing to do with the transfer pump
3 I put on.

4 Q. So that wasn't the pump that was there --

5 A. No, sir.

6 Q. -- that you rolled over?

7 A. No, sir. That pump has been there for -- I don't
8 know how long.

9 Q. Exhibit -- OCD Exhibit No. 15 --

10 A. Yes, sir.

11 Q. -- that's the flange that you're saying has the
12 seal behind it that's leaking, so I guess all that shading I
13 see there almost from a 12 o'clock straight up from the flange
14 over to 3 or 4 o'clock, that's --

15 A. Yes. You can see right where it started, where
16 it sprayed up behind that flange and sprayed over and run down
17 the tank.

18 Q. Okay. And then one more question, I think, on
19 OCD -- the next one, No. 16. Could you explain to me, please,
20 what that little two-inch line is -- or whatever size the pipe
21 is -- going up the side of this tank?

22 A. Okay. That's probably the fill line. Let me
23 find that picture here.

24 Q. Number 16. This is -- I'm assuming this is the
25 front side of --

1 A. I haven't found 16 yet.

2 Q. -- the water tank.

3 A. 16. Here it is. Yes, sir. That's the fill line
4 from the heater-treater.

5 Q. That's the fill line from the heater-treater?

6 A. To the water tank where it dumps the water from
7 the wells. It goes into the heater-treater, and then it dumps
8 into the water tank.

9 Q. And what would -- what's your feeling about the
10 black stain on the side of the tank?

11 A. That was before I started pumping these wells.

12 Q. That was probably oil at some time in the past?

13 A. It looks like the tank has been run over at one
14 time or another.

15 Q. And if it did run over, the oil on top --

16 A. The oil on top run down the front of it, yes,
17 sir.

18 Q. Which would kind of imply that that tank is
19 setting there at a bit of an angle probably, going towards the
20 inside of the location?

21 A. The well -- the tanks are supposed to be set
22 level. But the lid -- most tanks are domed, and the lid is
23 down below. And it comes out the lid right there in the front.

24 MR. WARNELL: That's all I have. Thank you.

25 THE WITNESS: Okay.

1 MR. BROOKS: Follow up, Mr. Padilla?

2 MR. PADILLA: None.

3 MR. BROOKS: Ms. MacQuesten?

4 MS. MACQUESTEN: No, thank you.

5 MR. BROOKS: The witness may stand down.

6 And Mr. Padilla, you may call your next witness.

7 MR. PADILLA: We'll call Greg Lopez next.

8 GREG LOPEZ

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

11 DIRECT EXAMINATION

12 BY MR. PADILLA:

13 Q. Mr. Lopez, will you state your full name.

14 A. Gregorio Lopez.

15 Q. Mr. Lopez, you're called Greg?

16 A. Yes, sir.

17 Q. Mr. Lopez, where do you live?

18 A. I live in Hobbs, New Mexico.

19 Q. What is your connection with Quannah, Inc.?

20 A. I am part owner and the managing partner. I have
21 full responsibility.

22 Q. Let me take you to February 7th, 2008, and ask
23 you whether you dispatched -- did you dispatch a truck out to
24 the State R #003?

25 A. Yes, I did.

1 Q. Can you tell us how that occurred?

2 A. I had received a phone call from Louis, and he
3 asked me to set up a job where they were going to go out, and
4 we had trouble with the flange. It's a rubber gasket, which
5 you've been told. They get hard, brittle. It's real common on
6 bolted tanks. He wanted to try to replace that because when
7 you try to tighten it up, nine times out of ten that gasket
8 finishes breaking, and you've got a big mess.

9 So he wanted to try to fix that, and he also had some
10 oil he wanted to transfer. So we were going to drain the tank,
11 transfer the oil, fix the leak, put it all back together.
12 While we were there, we were going to replace that three-inch
13 valve. I don't know whether the valve was good or bad. All I
14 know is that it doesn't make any sense to replace a gasket and
15 not to replace a brass valve -- or a three-inch valve. Because
16 they are usually -- they usually go bad as soon as you make
17 repairs or as soon as you start moving stuff around.

18 Q. When you dispatched the trucks, did you tell them
19 to go through the backside or the front side, or did you have
20 any instructions as to how to get there?

21 A. I told them what we had to do. They probably
22 went through the three-inch valve simply because when you start
23 draining a two-inch valve, it takes a long time. It's a whole
24 lot faster with a three-inch. We were going to go ahead and do
25 this job anyway. I didn't see any problem with it, so we went

1 ahead, and I just told them, get it out and get it done, and
2 let's get it done as quick as possible.

3 Q. Did you know that they were coming through
4 backside?

5 A. Yes, I did. I knew that that's the game plan we
6 had set up.

7 Q. Did you send empty trucks there?

8 A. Yes.

9 Q. How were you going to coordinate the job in terms
10 of emptying the tank and that sort of thing?

11 A. Well, as soon as we were going to take care --
12 get the job done, we have a whole lot of other wells we pick up
13 on -- well, not a whole lot, but we got five other wells to
14 pick up on 457 or right off of there. So when they got done
15 with that job, they all had specific orders to go to other
16 leases. Donald's was to go to HL Brown's. The other guy's was
17 to go to Goodranch Road and pick up a load from over there.

18 Q. So about what time did you -- were the trucks
19 there, do you know?

20 A. Well, they left -- we get to the shop at
21 6 o'clock. They go out, they do their pre-trip inspection,
22 they fill up with diesel and everything else. Normally, they
23 don't roll out of the yard until 7 o'clock -- from 6:45 to
24 7 o'clock -- and then they get to the location. I figure they
25 were there about 8, 8:30.

1 Q. How far away from your yard?

2 A. It's 68 miles from Hobbs to the location, give or
3 take a couple of miles. Say 65.

4 Q. When they leave your yard, are the trucks empty?

5 A. Yes, normally. Sometimes they're full, and
6 they'll go by the disposal if they are going to other jobs.
7 But on this case, they were both empty.

8 Q. Do you keep trucks loaded at night?

9 A. Yes. Recently, yes.

10 Q. In your yard?

11 A. Yes.

12 Q. But these two trucks left your yard empty?

13 A. Empty.

14 Q. And they went 68 miles to Lovington? Or where?

15 A. It's actually -- if you'll picture Tatum and
16 Lovington, it's like half -- about 10 miles north and west
17 about 14 miles.

18 Q. Between Lovington and Tatum?

19 A. Yes, but it's west.

20 Q. Okay. So --

21 A. So if you to go Lovington, you make a left, you
22 go towards Artesia, you hit 457, it's about 13, 14 miles. Then
23 you go north to mile marker 10. So that's ten miles.

24 Q. So what's your best estimate as to when the
25 trucks arrived at the location?

1 A. Anywhere from 8 to 8:30. The second truck
2 probably arrived late because he knew he didn't have to be
3 there, that Donald was going to be there first.

4 Q. Why did Donald have to be there first? And
5 you're referring to Mr. Buckingham?

6 A. Yes. Buckingham. He's kind of like one of my
7 senior drivers. And I kind of -- he's done a lot of vacuum
8 truck operating, so he knows what we're going to do. I wanted
9 him to be there first. He correlates the job with the pumper
10 if he comes up for the next truck driver.

11 Q. In terms of changing the valve itself, did you
12 have anything to do with that, or your job was merely to empty
13 the tanks?

14 A. That's it. I knew that the roustabout crew was
15 coming. And we correlated that the roustabout crew would be
16 there. It was going to take us probably about two hours, an
17 hour of half to empty the tanks and then transfer the oil.

18 Q. Did you talk to the roustabout crew at all
19 yourself?

20 A. No. I talked to Louis and told him, "Don't
21 forget to call off the crew."

22 At this point, after we had talked to Mr. Rex -- and
23 he was very upset. He told me not to ever -- he better not see
24 another Quannah truck on that location. We're not going to go
25 out there unless it's a loaded test or something different.

1 But as far as being at the battery -- and I told Louis, I said,
2 "Don't forget to call off the gang."

3 I'm sure he called the gang off because they didn't
4 show up.

5 Q. And you're talking about the roustabouts?

6 A. Yes, the roustabouts. We call them gangs. I'm
7 sorry.

8 Q. Now, what was your discussion with Mr. Smith?

9 A. I received a phone call, and he asked me kind of
10 who I was, and I'm -- I don't come across real good on the
11 phone sometimes. That's probably why he thought my name was
12 Ray.

13 And I told him who I was, that I was Greg Lopez, and
14 I was manager for Quannah, what could I do for him. And he
15 proceeded to tell me what he thought was going on out there.
16 And I tried to interject a little bit, but he kept on, so I
17 just tried to let him finish it all.

18 And then he started telling me how much of a sorry
19 SOB Edgett was several times. And then I heard another person
20 in the background, and he started making comments about, "He
21 ain't no better than that sorry crooked SOB Kevin O. Butler."

22 And I said, "Who is this? Who is in the truck with
23 you?"

24 "Well, it's just" --

25 And I said, "No. If he wants to make comments, he

1 should tell me his name."

2 And that's when he said Kenny somebody.

3 And so then I said, "Okay, look. If you got any
4 problems, let's try to work this out."

5 "No" -- da, da, da.

6 And he was still upset.

7 So I said, "Okay. Well, you do what you have to do,
8 sir. I apologize if we caused any inconvenience." And then we
9 hung up. Neither one of us hung up on each other. We just
10 hung up.

11 Q. What did you tell your trucker at that point?

12 A. I told them at that point to get their b-u-t-t
13 out of there. I told Donald, "Donald, you got the HL Brown
14 stuff? Go back and check it out."

15 I told Omar, "Omar, head to the Chaparral."

16 Q. And were they picking up water somewhere?

17 A. Yes.

18 Q. And did they pick up water somewhere?

19 A. Yes. They both had other loads they had to pick
20 up. This job was not going to take all day. And I have to
21 correlate my trucks. With the price of diesel, our prices that
22 we set up for Kevin O. Butler and we have told all our
23 customers were set prior to the price of diesel going up, okay?

24 So with Mr. Butler, we don't charge him a fuel
25 surcharge. So I need to try to get everything routed just

1 right to where I'm not losing any money, you know. And when
2 those prices are set the way they are, you have to honor them.
3 Because we have bid them out and everything. And they didn't
4 have anything to do the price of diesel going up.

5 Q. So Mr. Buckingham's truck went to HL Brown?

6 A. He was supposed to go check on the HL Brown
7 stuff. He was going to check the State Com #009 and the
8 Feather.

9 Q. And did he load any water at those locations, do
10 you know?

11 A. I don't know if he did or not. I can't remember,
12 to tell you the truth.

13 Q. Assuming he did, or at some point or another he
14 gets a load; is that right?

15 A. Yes.

16 Q. Where does he take it?

17 A. We take ours -- we've got several disposals. He
18 can turn around and go back down that road and then go -- let
19 me just put it this way: He can take it over to the H and M
20 Disposal, which is three miles north of Lovington. And it
21 would have been 16 or 17 miles for him to drive it. Or he
22 could have taken it to the Judah, which is on 222, which is
23 probably 25 miles away. But if he was going to pick up a load
24 from the Judah, then I would have sent him to the Judah for him
25 to dispose of it there, picks up the second load, and it's just

1 like all -- it's like a puzzle, you know.

2 Q. Okay.

3 A. And there's another place, the Basin Alliance.

4 The Basin Alliance is probably 16, 17 miles away.

5 Q. So you dispose of the water -- are those public
6 locations?

7 A. Yes. And H and M, it's right by one of the DKDs.
8 I think it's #002.

9 Q. Now, do you recall dispatching Quannah trucks to
10 State R #003 to offload oil when the pump was down --

11 A. Yes.

12 Q. -- or water?

13 A. Yeah. Yes. The four loads? Yes.

14 Q. Four loads.

15 A. Yes, I did.

16 Q. And those are shown on the Quannah Exhibit No. 1?

17 A. Yes.

18 Q. It's there somewhere?

19 A. Yes.

20 Q. Those are four invoices with the driver ticket?

21 A. Driver ticket.

22 Q. And do you know how the drivers were entering the
23 property in order to take those loads?

24 A. They were probably going through the back. I
25 couldn't have told you for sure. But they were going in,

1 and they've all told me, "Greg, you have to go off of the road
2 to get your truck into there."

3 So if they came from up north for the their last load
4 coming this way, they would have to make a left. If they came
5 from the south, then they'd still -- either way, they would
6 have to go off the road and come back in. And I'm sure -- you
7 know, somebody knocked that gate down. None of them reported
8 it to me. So I don't know if it was our drivers. It could
9 have been anybody, the pulling unit. It would have -- could
10 have been anybody.

11 That's not a big -- I don't want to so it's not a big
12 deal, but that happens a lot in the oil field. Because these
13 gates, the ranchers, a lot of times they just put them too
14 narrow. And you're going to knock them down. As long as you
15 put them up, most of the time the ranchers don't say nothing.

16 Q. In terms of the -- have you seen the pictures as
17 shown? Let me refer you to OCD Exhibit No. 6, the one that
18 shows the fallen gate and the highway.

19 A. Yes, sir.

20 Q. Do you know whether your truckers were the ones
21 coming alongside the highway through the side there?

22 A. I'll say yes, they were part of this right here,
23 going off the main road to make the turn. I'll say yes.
24 Because just common sense tells me this is a narrow road. This
25 road is like Santa Fe roads. They're all narrow. You're going

1 to have to make a wide turn to get an 18-wheeler in there.

2 Q. So you --

3 A. Especially when some of our trucks have the long
4 wheel base on the tractor.

5 Q. Let me ask you: Did the trucks you had -- the
6 one Mr. Buckingham was driving -- did they have a long trailer
7 on it?

8 A. Yes.

9 Q. Well, tractor, I should say.

10 A. Yes. 16 I don't think does, but the 5 does,
11 yeah.

12 Q. Now, Mr. Edgett also testified that while they
13 were reworking some of the wells, the -- I believe the SR #001
14 and the #003, that they were taking some water from this
15 tank --

16 A. Yes, sir.

17 Q. -- to load the wells.

18 A. Yes, sir. That's a standard procedure. Because
19 most companies, they want to know what kind of water is going
20 in there. So if they don't want to purchase fresh water, they
21 would rather have the water coming out of their well and go
22 back down their well. That way, there's no bugs or nothing
23 that gets in there and starts creating different scales and so
24 on.

25 Q. So you were using the same produced water in the

1 same well?

2 A. Yes. It came from the well.

3 Q. And you were taking it from this tank?

4 A. Yes. From this tank.

5 Q. And do you know whether your drivers were coming
6 from the front side or the backside?

7 A. Like I said, knowing my drivers, they were
8 probably going out the backside. I don't doubt it.

9 Q. And that's easier because --

10 A. You cannot back in here. The reason why they did
11 it with Louis was because he was there to get them in there.
12 You cannot back in there with -- I had a truck with a trailer.
13 We went -- they came over there. I told them to come over and
14 help me pull this pump off. We go to take it in so they can
15 put a new pump on the skid. And he backed in there. He
16 couldn't back out. And this is a 16-foot trailer. I had to
17 get in there, and they had to watch me on each side. And
18 that's a 16-foot trailer, so a 40-foot trailer with another 16
19 feet of truck, you know, it's going to be real hard.

20 Q. At this location?

21 A. Yes, sir. At this location.

22 Q. Mr. Edgett explained that. Can you explain that
23 on Exhibit 17 again, the difficulty of backing a truck in there
24 to the front side? And it's the schematic.

25 A. Okay. The way it sits, the north side of this

1 location -- well, you can see where it's north. This road
2 comes in. First thing you don't want to do is you don't want
3 to get on the grass because the ranchers get upset and all. So
4 when they come here, this gate here isn't about 10 or 12 feet
5 wide.

6 Q. When you are saying "the gate here" --

7 A. On the north side.

8 Q. And you're talking about the space between the
9 water -- where it says water transfer tank --

10 A. Yes, sir.

11 Q. -- and the X showing the oil tank?

12 A. Yes. The water tank is a little bit further to
13 the west. The oil tank, they're sitting up on top of like a
14 foundation, you know. And that foundation comes out further,
15 and it impedes the way you can go in and out. You can get in
16 real easy with a regular truck, but even then, you got to watch
17 the way you come out, you know.

18 I'm talking about just a regular half-ton pickup.
19 With an 18-wheeler, it's too hard. One guy cannot do it. I
20 tell them not to because they're going to knock something down,
21 they're going to hurt something, they're going to bust a truck
22 up. I tell them don't. I tell them, "Let's do something
23 different, but let's not do that."

24 So sitting there trying to -- maybe I should have
25 specified, "Hey, let's just take and get a poly hose, and we'll

1 rig it up from that pump this way, you know."

2 Q. All the way from the gate?

3 A. Right. All the way from the front of that tank
4 all the way out. I'll take the blame for that because I didn't
5 do that. Maybe I should have done that.

6 Q. So would you have to carry extra equipment --

7 A. Yes.

8 Q. -- or extra hoses and that kind of thing?

9 A. Yes.

10 Q. But in terms of loading through the two-inch line
11 and a three-inch line --

12 A. Oh, there's no comparison. It's just so much
13 faster through a three-inch. I mean, it's just common sense,
14 you know. Your restriction is a lot less.

15 Q. Mr. Lopez, do you own any other business other
16 than your interest in Quannah, Inc.?

17 A. Yes, sir. I've got a used equipment business,
18 and I've got a junking business.

19 Q. And what would suspension for one year or
20 revocation of the transport license do to your livelihood in
21 this case?

22 A. It would shut us down totally. The water has to
23 be hauled. And we've got several companies. We've probably
24 got 30, 35 different companies. And I'll have to find some
25 other way to replace that revenue.

1 But we would be totally -- for a week suspension,
2 none of our customers could afford to wait. You can ask
3 Mr. Butler. He's here. There's no way he could afford to wait
4 for me to be suspended for one week to haul his water. Because
5 that water is going to go in the ground if he waits on me.
6 He'll have to get somebody else to haul it.

7 Q. When you go to the public disposal sites, do you
8 pass that cost on to your customers?

9 A. It is in the bid that we put in. Some wells, we
10 go all the way from a dollar a barrel all the way up to -- the
11 most expensive one we've got is \$3.50, and that's because it's
12 over in Carlsbad. And nine times out of ten -- actually, in
13 our case, it's -- with the exception of one customer --
14 everybody else, it's in the price.

15 Q. In terms of dumping illegally, as Quannah is
16 accused of doing, do you have any advantage of doing that in
17 this operation?

18 A. No. I'm pretty well known through my junking
19 business, and most people -- that's how I met Mr. Butler before
20 I had anything to do with Quannah. And I'm pretty well known,
21 and I have a lot of people that are with us today that have
22 told me, "I want you to haul my water because you did a hell of
23 a" -- excuse my language -- "did a heck of a job for us in your
24 junking, took care of me, got me out of trouble" -- da, da,
25 da -- "Take care of me here."

1 Q. But I mean in terms --

2 A. And my reputation means a lot to me. And for
3 somebody to accuse me -- I was very, very, very upset. My wife
4 had to really, really calm me down. I said, "This is bull.
5 We're sitting here doing everything by the law, by the book,
6 and because somebody's got a vendetta against somebody else" --

7 And that's all it could be. With the way the
8 language that was spoken to me and spoken to the other people,
9 my employees, that's all it could be. He's got a vendetta
10 against him for some reason, one reason or another. And what
11 it is, I don't know. But the thing about it is, I'm the one
12 who's going to lose here. I'm the one who's going to lose the
13 most.

14 Q. In terms of -- I asked you earlier, and I'm not
15 sure you answered my question, but in terms of profit advantage
16 of dumping water --

17 A. Oh, there's none.

18 Q. -- in this system, would there be any advantage
19 to you to do that?

20 A. No.

21 Q. Going over to the HL Brown lease and --

22 A. No. Because that would have been him having to
23 backtrack where his next well, if I'm not mistaken, was over on
24 222. So it would have been more profitable for me to send him
25 from the HL Brown to the 222 Judah Disposal, and he would have

1 dumped it there and then picked up one of the two wells we have
2 over there that we take care of. And at this time, we had more
3 wells that we took care of.

4 Q. Now, in terms of when you have a vacuum truck
5 and, say, you have a spill. Is there a chance that you'll have
6 a spill while you're dumping water, pushing water into tanks
7 such as this?

8 A. Yes. You can have a line rupture. You can have
9 the gasket that's in your casing nipple, or your cam lock can
10 be worn out and it'll be dripping or something. Your cam lock
11 itself can be worn out. If a vacuum tank is leaking, it's
12 going to blow it. Because that thing will build up 30 pounds.

13 Q. It's going to blow what?

14 A. It'll blow the tank up. Just a small hole can
15 make it into a big hole real quick.

16 Q. So giving the equipment that you have, could you
17 have had a leak that day off of your equipment while you were
18 offloading the -- draining the tank on the vacuum when you're
19 going into the truck?

20 A. No, I don't think so. I haven't seen the
21 pictures where the leak is that's in question, but when I was
22 there to pull that pump off, that pump was leaking bad. And we
23 had the valves shut off at the tank, and that valve wasn't
24 sealed off completely. And that pump was leaking bad.

25 Q. It was just --

1 A. It was just going straight to the back of the
2 tank and going out the fence just a little bit.

3 Q. Which valve? Is that the one --

4 A. The valve that's on the front part of the tank.
5 But it's the valve that comes -- the line that comes from the
6 heater-treater to dump it into the water tank on Exhibit 16.

7 Q. This valve was leaking here?

8 A. Yes. It wouldn't -- when we went to pull the
9 pump off, I said, "Okay. Let's isolate that line."

10 So they closed the line off. It wouldn't close off
11 all the way. It would close off, but it wasn't sealing. It
12 was still leaking. Because I got mad at the pumper, I said,
13 "How come you didn't isolate that line?"

14 He said, "It is, Greg."

15 So I went over there, and we bumped it with a cheater
16 pipe to try to, you know -- so the valve itself was bad.

17 Q. The valve on the front side?

18 A. Of the tank.

19 Q. What's that got to do with changing the valve on
20 the back as far as leaking?

21 A. Well, it's leaking -- your suction line for your
22 transfer pump is this line right here, and it's coming from
23 this valve.

24 MR. BROOKS: I'm sorry, Mr. Lopez. You're pointing
25 at something.

1 THE WITNESS: We're still talking about --

2 MR. BROOKS: Could you go over what you said again,
3 and explain it to where we can figure out what you're referring
4 to since we don't have something on the board to point out?

5 THE WITNESS: Okay. I went up, and Louis asked me to
6 stop, pick up the pump, bring it in, so they can get a new
7 pump. I said, "Okay. Let's do it."

8 So when I stopped there, I came over there, and the
9 pump was leaking. And I called the pumper to ask him how come
10 he didn't isolate the valve, and he had said it was. So I went
11 over there. It was isolated. It was leaking a little more, so
12 we tapped on it. We never could get it sealed off totally.

13 Finally, we put a plug on the end of it to keep it
14 from leaking any further. But I had to pull that line loose
15 from the transfer pump. Okay. This line feeds the transfer
16 pump.

17 MR. BROOKS: Which line?

18 THE WITNESS: The line coming off of the top of
19 the -- the front of the tank that feeds the transfer pump.

20 MR. WARNELL: The smaller two-inch line?

21 THE WITNESS: Yes, sir. That's where it's getting
22 the suction into your transfer pump. From the transfer pump,
23 it goes straight into your disposal line.

24 MR. BROOKS: Okay.

25 THE WITNESS: Okay. And that's the one that feeds

1 the pump, so if it was never totally sealed off because the
2 valve is bad, that's why that pump just kept leaking.

3 MR. WARNELL: But aren't there two valves at the pump
4 if you look on Exhibit 8?

5 THE WITNESS: Yes. Okay. One is for downstream, and
6 one is for -- one is for discharge, and one is for suction.

7 Q. (By Mr. Padilla): Which one are you talking
8 about? The one on the ground, or the one next to the tank?

9 A. The one right here on the ground.

10 Q. And that's the one you couldn't shut off?

11 A. Right. We had to put a plug in it to pull the
12 stuff off.

13 Q. And because of the--

14 A. The one at the tank is no good.

15 Q. Because the one at the transfer pump, because
16 this was still going to the one at the transfer pump, or the
17 leak at the transfer pump was still occurring?

18 A. It was still leaking. If you would put these two
19 together, the only difference is this line. Okay? There's
20 just --

21 Q. For the record, when you say the "two together,"
22 what are you talking about?

23 A. Excuse me. Exhibit 8 and Exhibit 16. Okay? If
24 you'll put these like this, okay, either one. This is
25 basically the way it's hooked up. This line is coming off the

1 front of this tank and goes to the transfer pump, and it's this
2 line right here.

3 MR. WARNELL: Which line is the transfer pump? The
4 one that goes --

5 THE WITNESS: The one that goes to the middle of
6 the --

7 MR. WARNELL: Of the blue housing?

8 THE WITNESS: Yes.

9 MR. WARNELL: And that's a valve right there?

10 THE WITNESS: Yes.

11 MR. WARNELL: Doesn't that valve operate the same --

12 THE WITNESS: It's just an open and shut valve. It's
13 a plug valve.

14 MR. WARNELL: Is that the valve in question? Or is
15 the valve in question by the tank?

16 THE WITNESS: Neither one of them was --

17 MR. WARNELL: Of these two valves in --

18 THE WITNESS: Right. This one, right here, we could
19 not get sealed off. And this one at the tank we could not
20 close all the way. So what we did is, when we took the
21 plumbing off here, we put a plug on the end here to keep it
22 from -- to when we got the pump back installed.

23 Q. (By Mr. Padilla): How much water was coming out
24 of the --

25 A. Out of the seal? Probably a quarter-inch stream,

1 an eighth-inch stream, which is bad to me. I was a mechanic
2 for 25 years, and any leak on a pump like that, it's bad,
3 especially when you got it running. It'll just spray it out
4 everywhere.

5 Q. Did you see on Exhibit -- the valve on
6 Exhibit No. 4?

7 A. Okay.

8 Q. Did you see that valve leaking -- the one at the
9 back of the tank, did you see that leaking and spraying up?

10 A. No. I never saw it leaking and spraying.

11 Q. And when you were there, was it wet around that
12 valve?

13 A. Yeah. It was wet there, but I didn't -- you
14 know, I didn't really look to see where the water was coming
15 from. I just presumed that it was going over there from the
16 transfer pump.

17 Q. Mr. Lopez, do you have anything else to add to
18 your testimony?

19 A. I just -- I'm a hardworking guy. And my dad
20 taught me a long time ago that you make money a little bit at a
21 time. You make it a lot of the time just a little bit at a
22 time. And be honest about it, and you'll be okay. You'll make
23 it.

24 We're trying to be honest, and we're trying to do the
25 job the right way, and we do a good job. And you don't have

1 any complaints from us. You will never find us dumping at
2 night. I think we've worked at night a couple of times, and
3 that was at a dairy. We never left the dairy.

4 We do not go after rigs or none of that stuff. Most
5 of my hands are the hands that have already -- most of them are
6 up there in age. They don't want the extra money. They just
7 want to make a good amount of money and live comfortable. And
8 any kind of suspension would devastate us. We would not be
9 able to come back.

10 MR. PADILLA: Pass the witness.

11 MR. BROOKS: Ms. MacQuesten?

12 CROSS EXAMINATION

13 BY MS. MACQUESTEN:

14 Q. So Quannah has done work at a dairy?

15 A. Yes.

16 Q. So the Quannah trucks can do things other than
17 haul oil field waste?

18 A. We didn't haul oil field waste. It was just
19 water that we were hauling at the dairy.

20 Q. Well, that's what I mean. You can do work that
21 isn't covered by the authorization issued by the OCD?

22 A. As far as I know, as long as it's wastewater, you
23 can haul, it, right?

24 Q. Yeah. What I'm saying is if we were to suspend
25 your authority to transport, it would only be to transport oil

1 field waste. There's other things that Quannah can do.

2 A. I don't know what it would be.

3 Q. What did you do at the dairy?

4 A. We hauled waste. Their pump was down.

5 Q. What kind of a pump?

6 A. It was a transfer pump where they transferred
7 their white wastewater pit, and they transferred their water.
8 It went from there over to their fields.

9 Q. And it wasn't an oil field waste, right?

10 A. No.

11 Q. So you can transport things that are --

12 A. No. I couldn't survive on that. That's one job
13 in a year and a half that I've been with Quannah. I couldn't
14 survive on that.

15 Q. Can you use the vacuum trucks for work other than
16 transporting waste? Any site work you can do with those?

17 A. Pick up spills. It's all related to the oil
18 field.

19 Q. I have --

20 A. There's not enough industry there to do anything
21 other than what we're doing with those vacuum trucks and
22 transports.

23 Q. I want to go back to your description of what
24 happened on February 7th --

25 A. Okay.

1 Q. -- because I'm not sure I understand. You said
2 that the trucks went there empty. They were going -- one truck
3 was going to take the water out of the tank. And there was a
4 discussion about waiting for the roustabout to come and fix the
5 valve?

6 A. Yes.

7 Q. But then you said it wasn't a problem because
8 they could go and pick up water from other wells?

9 A. My guys.

10 Q. Your guys? Was the plan to wait around until the
11 roustabout fixed the valve, and put the water back in the tank,
12 or was the plan to leave and take that water somewhere else?

13 A. They were going to put the water back in the
14 tank.

15 Q. Okay.

16 A. The second truck was just there to transfer the
17 oil.

18 Q. Right.

19 A. So the second truck would have transferred the
20 oil and left.

21 Q. Right.

22 A. And then as soon as the roustabout got done
23 fixing the leak, then Mr. Buckingham over there would have
24 dumped his water back into the tank, and he would have gone to
25 HL Brown and picked it up and then moved on.

1 Q. So they were going to wait and finish this job --

2 A. One of them was.

3 Q. -- the water truck?

4 A. Yes.

5 Q. I wasn't sure whether they were going to take the
6 water and pick up something else and do something with the
7 water.

8 A. No.

9 Q. Okay. You testified that when Rex Smith called,
10 he said something to the effect he didn't want to see any
11 Quannah trucks back on that site.

12 A. He said, "If I ever saw another Quannah truck
13 here, there will be hell to pay," or he was going to notify the
14 officials and come down on us like a ton of bricks.

15 He was upset. I tried to calm him down a little bit,
16 you know. It didn't work. So we didn't -- he also -- one of
17 the things he did tell me was -- he said, "I know you're not
18 directly involved in this. I'm not after you guys or nothing.
19 I'm just trying to get the situation taken care of."

20 And he said -- the way he made it sound, like he
21 didn't know Louis Edgett was part owner in Quannah at the time.

22 Q. I thought the conversation included some insults.

23 A. Oh, yeah. Sure, sure.

24 Q. Why was he connecting --

25 A. I don't know. You know, I mean, Louis Edgett, he

1 cussed him out to me. He cussed Kevin -- well, actually it was
2 the other guy that cussed Kevin O. Butler and said he was no
3 better than Kevin O. Butler. Neither one of them -- they were
4 two peas in a pod or, you know, they had a few other little --

5 Q. Okay.

6 A. They were very upset.

7 Q. All this angry conversation about, "I don't want
8 to see Quannah trucks on the site again" -- and yet Quannah
9 trucks were back there at least on the 9th, right?

10 A. Only to do something different. We were not
11 going to touch that tank. They weren't going to come close to
12 that tank unless if Bruce knew about it, who is Mr. Butler's
13 superintendent or somebody else knew about it. I wasn't going
14 to send anybody out there to do anything on my own.

15 Q. But weren't they at that tank to take the oil off
16 the top of that tank?

17 A. Yes.

18 Q. So they were on that tank.

19 A. Yes. And I made a decision not to charge
20 Mr. Butler for that load. Because he went up to get a load of
21 water from one of the other wells, and he stopped by there.
22 They transferred the oil. He went on, and I ate it. And I've
23 done that for a lot of customers where sometimes they may be
24 upset with us, you do something in good faith. You scratch my
25 back, I scratch yours. You help me, I help you.

1 Q. Well, given all the problems, I mean, you had
2 this very unpleasant phone call and everything, you didn't
3 think to call Kevin O. Butler and say, "We're going to be back
4 there. Please let Mr. Smith know if he calls that we have a
5 legitimate reason to be there"?

6 A. There's a chain of command in the oil field. We
7 don't bother Mr. Butler unless it's a major catastrophe,
8 something that's happened to Bruce that we can't get ahold of
9 him, and there's 100 barrels of oil on the ground or something.
10 Then we go to him. My job is to go to the pumper. From the
11 pumper he goes to the superintendent or his boss, and from
12 there they take care of it with Mr. Butler.

13 Q. Why not call Mr. Martin and say, "Bruce, we had a
14 problem with Rex, and please call him and tell him that we were
15 there legitimately"?

16 A. That was Mr. Edgett's decision. He made that
17 decision whether he called Bruce and told him he was going to
18 do that or not. I don't know. But that was on him. Because
19 we're doing work for Mr. Edgett at this time.

20 Q. You were aware that Mr. Butler was listed as a
21 witness in this case, right?

22 A. No, I was not.

23 Q. Okay. He was listed on the pre-hearing
24 statement, however. I would ask the Hearing Examiners to take
25 notice of that.

1 A. It wouldn't have mattered.

2 Q. This hearing today would be the first time he
3 would hear that you didn't intend to bill him for any of these
4 events, right?

5 A. Uh-huh.

6 Q. You didn't think that would be important to
7 mention?

8 A. Mr. Edgett, right there, took care of that with
9 Bruce.

10 Q. Okay.

11 A. I told Mr. Edgett we would not be billing him for
12 this. He takes care of it with Bruce. Bruce passed it on. If
13 he thinks it's pertinent, he'll tell Mr. Butler about it. If
14 he doesn't, he won't. That's strictly up to Bruce.

15 MS. MACQUESTEN: No other questions. Thank you.

16 MR. BROOKS: I don't believe I have any questions.
17 Terry.

18 MR. WARNELL: No, sir.

19 MR. BROOKS: I'm sorry. I should have let you do
20 redirect first, but since we didn't have any questions, go
21 ahead.

22 MR. PADILLA: I don't have any.

23 MR. BROOKS: Very good. The witness may stand down.
24 And you may call your next witness.

25 MR. PADILLA: We'll call Don Buckingham, then.

1 MR. BROOKS: For the record, I verify that Kevin O.
2 Butler was named as a witness in the pre-hearing statement.
3 Counsel, as requested, we take official notice.

4 DON BUCKINGHAM
5 after having been first duly sworn under oath,
6 was questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PADILLA:

9 Q. Mr. Buckingham, would you please state your name.
10 A. Don Buckingham.
11 Q. Where do you live?
12 A. Lovington, New Mexico.
13 Q. Who do you work for?
14 A. Quannah, Incorporated.
15 Q. How long have you worked for Quannah?
16 A. Oh, two years. Right at two years.
17 Q. Mr. Buckingham, let me call your attention to
18 February 7th. Were you dispatched to the SR #003 well by
19 Mr. Lopez?
20 A. The State R #003, yes. Yes, but there's a little
21 time discrepancy here, because there are so many things going
22 on. I was first dispatched to the King Low. Before I get to
23 that, all the other trucks are based out of Hobbs. My truck
24 comes out of Lovington, and I'm usually out of the yard by
25 6 o'clock. These other guys don't leave until 6:30, whatever

1 time they fuel up and whatever.

2 But the prior day before, Greg had already told me
3 what I was going to do. I was going to go to the King Low. I
4 picked it up and took it to the H & M. My next well was the
5 Denali, which is out towards Loco Hills. I was on my way to
6 Loco Hills when Greg called me and diverted me back over to the
7 State R. He had forgotten to call me that morning and add that
8 on.

9 And so in the same conversation, he asked me if I
10 would take -- there's a shortcut that goes from the Carlsbad
11 Highway and comes out right by the Saunders plant, which is a
12 mile and a half, two miles from the State R. But on that road,
13 we have two wells that we haul, and he asked me to go by and
14 check those two wells and see if there was a load of water on
15 them.

16 So I came back through there. I checked the UTP, and
17 it didn't have a load. I went down to the -- what's that
18 middle one? The Feather? I checked the Feather. It didn't
19 have a load. The next one in line is the State Com #009. And
20 I brain-farted or something, and I drove right past it and
21 never stopped to check it.

22 So I went on out and come out on the highway right
23 there by the Saunders plant, went on down and was pulling in --
24 I was going to pull into the location, and I called Louis
25 because I saw that the post was bent over. And he said, "Yeah,

1 somebody" -- he had found it that morning, and somebody had
2 knocked it over.

3 So I went on in, and I asked -- and it's kind of
4 funny. I asked him, I says, "I'm not going to have to back in
5 through that gate to get to that north valve."

6 And he said, "No" -- I think he used the word "pecker
7 woods" -- "the other pecker woods have been driving around the
8 back and loading back there."

9 So I could just go ahead and hook up back there. So
10 I pulled in there, backed up to the load --

11 Q. About what time did you pull up in there?

12 A. Oh, it was 9:30, quarter to 10:00, somewhere.
13 Because I was already halfway to Loco Hills.

14 Q. Were you empty, or how much --

15 A. I was empty.

16 Q. You were empty?

17 A. Uh-huh.

18 Q. You hooked up to the well?

19 A. Well, I hooked up to that water tank at the
20 battery.

21 Q. Did you have to back up, or how did you do that?

22 A. Yes. I just made a look around where these other
23 guys had been and backed straight up to the load line.

24 Q. And how far from the fence were you?

25 A. I could reach through the fence and hook my brass

1 up to it. I mean, it was right there.

2 Q. So when did you have the encounter with
3 Mr. Smith?

4 A. It was about 10 minutes later. I went up to
5 check the tank. It was about -- if I recall right -- I wanted
6 to make sure I could hold all the water was in it. There was
7 about four-and-a-half feet, if I remember, between four and
8 four-and-a-half feet of water in there.

9 So I pulled up, started loading, and what I usually
10 do when I first start loading -- I was told there was about a
11 foot of oil in it. So three foot in a 500 barrel tank is about
12 115 barrels. So I knew I had plenty of room to hold the water.

13 So I started loading. And I walk around the
14 location. And I walked around the two -- you got that where
15 the tank battery is. I walked around two oil tanks, and I
16 called Louis again, and I told him -- in fact, I was on the
17 phone with Louis whenever -- I guess his name is Kenny -- drove
18 up. And I told him, I says, "I don't know how long it's been
19 since you've been back behind these oil tanks, but there's" --
20 that bolted tank, there was an oil leak on the bottom flange on
21 the far southeast corner, which nobody's going to see unless
22 they walk around the back. And I asked him if he was aware of
23 it. And he said, no, he wasn't aware of it.

24 Q. Who is Kenny?

25 A. Kenny works for -- I guess he works for Rex.

1 Kenny Tucker.

2 But, anyway, I told Louis, and I walked around -- and
3 I told him about that. And I walked back over there and
4 checked my load line. That's when Kenny come up.

5 Q. Now, the oil sits on top of the water in the
6 tank, right?

7 A. Right.

8 Q. And you're draining off the bottom?

9 A. Pulling the water off the bottom.

10 Q. How do you know when you get ready to --

11 A. When you get close, you start -- you just close
12 your suction valve on the tank, and you open your drain valve,
13 and you can see. All you gotta do is close the valve and if
14 you have water, you got water. You'll know as soon as you hit
15 oil. It'll be oil coming out.

16 Q. So how do you know in terms of when you're
17 getting close?

18 A. Well, you can look at your tank. You got 130
19 barrel tank and halfway is going to be 65 barrels. The
20 information I got, there was a foot of oil. That's going to be
21 35 barrels, so it's going to be two-thirds full.

22 Q. Who gave you the information there was 65
23 barrels?

24 A. Louis did whenever I called him and told him
25 about the fence post being bent over.

1 Q. So he told you about how much there was in there?

2 A. Uh-huh. He said -- because Greg didn't really
3 tell me what I was going to do. He just told me to go over
4 there and pull the water off the bottom of the oil. And he had
5 no idea how much was there, or at least he didn't tell me.

6 Q. Did you know when the other truck was coming?

7 A. He said he'd be meeting me there. That's all I
8 knew.

9 Q. Okay. And who told you that there was another
10 truck coming?

11 A. Greg. He said he had another truck coming over
12 there too.

13 Q. Okay. And then you are draining the tank, and
14 Mr. Smith comes along, right?

15 A. Right.

16 Q. What kind of conversation did you have?

17 A. I walked over there and asked him what was going
18 on. And he said, "Are you loading or unloading?"

19 I says, "I'm loading and unloading."

20 I don't know what part he heard me say. All I can
21 gather is that he just heard the unloading part. Because he
22 got right back in his pickup and got on the phone, and I assume
23 he called Rex.

24 Q. Did you have a chance to explain to him what you
25 were doing there?

1 A. No.

2 Q. So then you called who?

3 A. After Rex got over there, I called Louis.

4 Q. What did Louis tell you?

5 A. Well, this is -- let me get into this other
6 conversation when Rex shows up. I think Rex was there when the
7 second truck showed up. And he was there for, oh, maybe five
8 minutes. And Rex come over. Rex got there before the other
9 truck did, so he come over there and wondered what the fuck I
10 was doing. And I --

11 Q. Were those his words?

12 A. Exactly. Probably plus a few more.

13 Q. What did you tell him?

14 A. I told him exactly that. I'm loading and
15 unloading.

16 Q. And then he went off?

17 A. No. He gets -- he asked me who my boss was. And
18 I told him -- well, I can't remember if he asked me who my boss
19 was or who the pumper was or what. But, anyway, I gave him
20 Louis' number. And he called Louis. But prior to that, he --
21 and I can't understand the hostility. I mean, because it was
22 nothing but hostility right off the bat. And I told him Louis
23 was the pumper for that lease. And he asked me, "Louis
24 Edgett?"

25 And I said, "Yes."

1 He said, "Well, that thieving cock sucker. I've
2 known that son of a bitch since he was in school. And he
3 wasn't worth a shit then, and he ain't worth nothing now."

4 And I said, you know, "Whoa." Because I don't know
5 what triggered that. So he asked me for his phone number. So
6 I said "Yeah," and I gave him his phone number, and he called
7 Louis.

8 Well, he called Louis. I didn't know that he was
9 talking to Louis because he's walking up and down the perimeter
10 of the outside of the fence, and he's cussing and ranting and
11 all this other stuff.

12 And then I called Louis. Louis carries two phones.
13 So I called Louis, and that one was busy, so I called the other
14 phone. And Louis answered, and I told him what was going on.
15 And he told me, "Yeah." He was on the phone with Rex then.

16 So I asked him, "Well, what do you want me to do?"
17 Because I was half loaded.

18 And he says, "Well, let's just scratch this whole
19 project, unload it, and go about our business, and we'll do
20 this another day."

21 So before I get that done, Rex is down on the other
22 end, and I come to find out -- I heard him talking to whoever
23 it was on the phone that he was going to close the manifold
24 valve, which is the discharge line going into their saltwater
25 disposal system. And I could see the pump over there.

1 And that was another thing I forgot to ask Louis.
2 "Well, if we're going to do this, we need to shut that pump
3 off."

4 But I had forgotten to ask him. And I overheard Rex
5 telling somebody that he was going to shut that valve. And I
6 walked up there to him and said, "Hey, man, if you're going to
7 close that valve, I need to shut this pump off."

8 So I called Louis again, and he said, "Yeah, go ahead
9 and shut the valve off."

10 In the time I'm on the phone, Rex says, "I don't give
11 a shit" -- because I told him that it's going to burn the pump
12 up or blow the seal or whatever, because I could see it was a
13 new pump.

14 And he said, "Well, I don't give a shit if it" --
15 well, that's not the word he used. He said, "I don't give a
16 fuck if it burns the whole fucking location down."

17 He said all this other shit, so I just turned around
18 and walked over and shut the pump off and went back over and
19 switched my valves.

20 Q. You shut the transfer pump off?

21 A. I shut the switch off. It's got a HOA switch on
22 it. I turned it off.

23 Q. Okay. Go on.

24 A. And then since Louis had told me to unload, I
25 went over there -- went back over to my truck, and I

1 switched -- there's a two-way valve on that vacuum pump. If
2 you turn it one direction, it sucks. If you turn the valve
3 around, it switches the little valves inside there, and it
4 turns around and blows air back into the tank.

5 So I went back over there -- and Rex admitted to this
6 earlier in his testimony -- that the thing was making a lot of
7 noise. Okay? That vacuum pump makes a lot of noise when it's
8 vacuuming, when it's sucking. Okay? I went over there and
9 switched the direction on the valve and turned it to blow so I
10 can unload it. And it instantly quieted down.

11 So I turned around and unloaded the tank back into
12 the tank. I got just about done, because one thing you don't
13 want to do is blow air into a tank with oil in it because all
14 it's going to do is emulsify. All those air bubbles will be in
15 there, and you'll never get that oil separated without adding
16 chemical to it.

17 So I was standing there watching it when it got down
18 close to empty. And as soon as it started hitting air, I
19 throttled my valve down a little bit, and I let it blow as much
20 water as I could out of there with minimal air. I got it down
21 pretty close, then went over and shut the valve on the tank.

22 Q. How can you see that you're nearing the end of
23 the cycle?

24 A. You can't. The site glass starts at about 10
25 barrels, so you've got to be standing there on top of it. As

1 soon as it hits air, your hose is going to start jumping.

2 Q. So you shut it off then?

3 A. Yes.

4 Q. What did you do then?

5 A. I disconnected my hose. The bad thing about when
6 you're blowing a tank, you can't always get everything out of
7 your hose. So I went over there, and I bled the air off of it.
8 And then I cracked the fitting -- the dogs on the brass on the
9 tank and cracked the ones up on the truck. And I pulled it
10 off. And there's always going to be a little bit of water in
11 that hose when you're unloading like that.

12 When I pulled that hose loose, there was maybe --
13 well, that hose won't even hold five gallons, I don't think, if
14 it's full. It's only about a 10-foot hose. And there was
15 maybe two or three gallons in it when I unhooked it, and that
16 was what I spilled on the ground when I unhooked it.

17 Q. Was the ground wet around there?

18 A. When I got there, no.

19 Q. When you were looking around, was there evidence
20 of an oil spill that had to get cleaned up?

21 A. Oil spill, no. There was no oil spill.

22 Q. How about water?

23 A. Well, it looked like there had been at some time,
24 because you could see the crystals, the salt crystals around
25 the little -- there was a little puddle there outside the

1 fence. And it looked like in the -- that goes back to the
2 second call I made to Louis when I went back there, and I
3 called him.

4 I asked him, I says -- when I drove back there, I was
5 talking to him when I asked him about having to back in the
6 other way. And I said, "Man, it looks like somebody else has
7 been back in there."

8 And he said, "Yeah, a couple weeks ago we had to haul
9 water out of there, and that ground was wet back there. And
10 they rutted it up some when they were hauling that water out of
11 there."

12 Q. Now, you shut down your operation there. And
13 what did you do next?

14 A. I took off.

15 Q. Where did you go?

16 A. I took off. I think I -- I had an Angel haul. I
17 went and hauled the Angel.

18 Q. Is that a lease?

19 A. Yes. It's another one where we haul water from.
20 And I think Greg had forgotten about that one. He had given me
21 that one too.

22 Q. And did you have a later encounter with
23 Mr. Smith?

24 A. Yes. I came back. I went and hauled it. Picked
25 it up. Took it to Basin Alliance. Came back up Ark Junction

1 through Lovington and come back up 457 to the gas plant. Went
2 back in there to check the State Com #009, which is the one I
3 forgot to check when I went in through there.

4 And I got in there. I backed -- I didn't actually
5 back up. I just pulled up along side. And I got out of there,
6 and I grabbed my brass to go around the side, and I see this
7 pickup following me back from the direction that I came.

8 So I stood there for a minute, waiting until he
9 showed up. And I saw it was Rex. And I laid my brass on the
10 back of the -- because I hadn't even checked the tank yet
11 because I was assuming there would be a load of water in there.

12 And he pulled up there, and he said, "So this is
13 where you're getting your water, huh?"

14 And I said, "What?"

15 He said, "This is where you are getting water that
16 you're hauling to the State R."

17 And I said, "No. If I was -- if I had done that, why
18 would I be back?"

19 You know, and I asked him, I said, "There's a jar
20 right over there by the gate post. Do you see a run ticket in
21 that."

22 Because there wasn't a run ticket in there. I hadn't
23 even stopped there, and I hadn't even checked the tank either.
24 And he says -- then he brings up the fact how come I was coming
25 across there, then, if you weren't -- and I told him, I says,

1 "I took a short cut across there to take it."

2 And he says, "No, you're not going to drive that road
3 through there."

4 And he brings up this thing again about Louis being a
5 thieving son of a bitch. He says, "I'm going to nail his
6 hide."

7 And I'm trying to think, you know, there's got to be
8 a basis for this hatred somewhere. And I don't know -- I don't
9 know where it's coming from. And he keeps hounding on.

10 I said, "What do you want me to tell you? That I
11 picked it up at the" -- and I thought of the first well I could
12 think of, DQ State Peanut Buster Parfait. And he didn't think
13 it was funny. But there actually is a well, but it's way down
14 by -- way down by West Eunice, because I've been by it before.

15 Q. So that ended that or did you --

16 A. Yeah. This, that, and the other, and he said,
17 "Well" -- then he got his pen out and started writing down the
18 lease name on it. He says, "Well, I think HL Brown will be
19 interested in knowing that you've been hauling his water and
20 disposing of it illegally."

21 And I says, "Well, whatever you think, man, you know?
22 I'm not going to convince you of anything else."

23 He says, "Well, I'm going to drive around here a
24 little bit."

25 So he took off south on down that road past the

1 Feather and the ATP. So I went back over there, screwed my
2 brass in the load line off the water tank. Went over there to
3 gauge the tank. And shit, there wasn't a load in that one,
4 either. So I came back out, unhooked, and took off back
5 following Rex. Because I had to go back and do that other one
6 at Loco Hills, the one I had been diverted off of before. And
7 it's only like five miles across there, rather than going 20
8 back around the other way.

9 So I get up there right at the corner, right before I
10 turn to get to the ATP, and he's sitting there on the phone
11 talking to somebody. And I just went like that when I went by.
12 That was the last time I saw him.

13 Q. Did you load up that day some more?

14 A. I went out to the Denali and loaded it.

15 Q. And where did you take that load?

16 A. To the Judah, which is three miles south of
17 there, which is a public disposal right on 222.

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

19 MR. BROOKS: Ms. MacQuesten.

20 CROSS EXAMINATION

21 BY MS. MACQUESTEN:

22 Q. So Kevin Tucker and Rex Smith both came by the
23 State R lease to ask you what you were doing?

24 A. Yes.

25 Q. On different occasions?

1 A. Within 10 minutes of each other.

2 Q. And to each person, each of them, you said, "I'm
3 loading and unloading"?

4 A. Loading and unloading.

5 Q. And it's your testimony you think they only heard
6 the unloading part?

7 A. That's the only thing I can figure out. That's
8 the only thing that makes sense. I don't know -- I don't know
9 where all the hatred came from. I mean, it was like it was
10 instantaneous.

11 Q. So both of these men were unhappy when they
12 talked to you?

13 A. Yes. Kenny kind of backed down. Once Rex got
14 there, Kenny took off.

15 Q. But you've got two unhappy men wanting to know
16 why you're there, and your explanation is that you were loading
17 and unloading?

18 A. I was loading and unloading.

19 Q. Why not tell them you're there to fix the tank?

20 A. They didn't give me a chance. I mean, it was --

21 Q. Well, loading and unloading didn't work with the
22 first guy. The second, you gave the same explanation to?

23 A. I gave the same explanation to. He didn't ask
24 unloading what and doing what. He didn't give me a chance to
25 delve deeper into the explanation.

1 Q. But that was--

2 A. You kind of would have had to have been there to
3 understand it. It was -- every other word out of his mouth was
4 a cuss word. And I don't -- to this day, I don't understand
5 what the problem was.

6 Q. Did I understand you to say that when you were on
7 the site that day, you didn't see spills on the ground in the
8 area where --

9 A. There was nothing when I went there, no.

10 Q. And that the only liquid would have been two or
11 three gallons from the hose, perhaps, that you were --

12 A. That I actually put there, yeah.

13 Q. But there wasn't anything there other than that?

14 A. Nothing there, no.

15 Q. Have you seen the photographs that we have? Look
16 at Exhibit No. 5. That's that one. The picture in the
17 right-hand corner. That one. You have it right now.

18 A. That's wet?

19 Q. Was that there, the dark stains?

20 A. As far as I can tell, it wasn't, no. Because I
21 drove right through there, made a loop through there. There
22 was no water on the ground when I went through there. Because
23 I looked -- on a vacuum truck -- and Rex made mention that the
24 tank was leaking.

25 On a vacuum truck, if you got a leak in your tank,

1 you're going to lose suction and you're not going to be able to
2 load. Okay? And then on the other hand, if you can't get it
3 unloaded, it's going to squirt out all over the ground. Well,
4 there's no holes in that tanker. So I don't understand what he
5 was referring to there.

6 Then he said something -- I'll bring something else
7 up too. He said he had seen -- the truck I drive has a red
8 trailer and purple Mack, and that's the only non-white truck
9 that Quannah has. He made mention that he come back and saw it
10 a 7 o'clock in the morning. I'm sorry. But it wasn't there
11 because I was over way at the State line loading the King Low
12 for Spinel Top. So I don't understand that part of it either.

13 MS. MACQUESTEN: Okay. I have no other questions.

14 MR. BROOKS: Mr. Padilla?

15 REDIRECT EXAMINATION

16 BY MR. PADILLA:

17 Q. Mr. Buckingham, there was 65 barrels of water in
18 that tank and oil; is that your testimony?

19 A. That --

20 Q. That you had to unload.

21 A. Yes. I was about half loaded. I was about half
22 loaded. I had checked to see if I had hit oil yet, and I
23 hadn't hit oil yet.

24 Q. So the tank was approximately how full?

25 A. It was going to be about two foot that I pulled

1 off of it, so there was probably still two, two-and-a-half foot
2 left in it.

3 Q. So, in total, the tank wasn't that full on that
4 day, right?

5 A. No. Because from the testimony of Louis, he says
6 he keeps it down to two, three, four foot. There's not way, in
7 a 500-barrel tank. You fill it up, 500 barrels, that's a lot
8 of water.

9 Q. And that pump was running at the time?

10 A. At the time, the pump was running. And I forgot
11 to ask him because this other stuff had come up. And then when
12 Rex said he was going to close that discharge valve going into
13 his system, that's when I called Louis back and asked him about
14 that pump.

15 MR. PADILLA: Okay. Nothing further.

16 MR. BROOKS: I don't believe I have any questions.

17 Terry, do you have any questions? Okay, very good.

18 You may stand down.

19 Would Counsel like to make closing statements? If
20 so, we'll do them tonight. If you want to submit them in
21 writing, you may do that too. Whatever your preference.

22 MR. PADILLA: I'll go now.

23 MR. BROOKS: Okay. It's yours.

24 MR. PADILLA: I think the evidence is pretty clear in
25 this case. I think our witnesses explained everything

1 logically in terms of what was going on in that well. The
2 January production as shown as Exhibits 2 and 3 -- and the most
3 important thing on Exhibit 3 is the oil, the 37 barrels of oil
4 that was put back in that tank. That's shown on -- I believe
5 it was February 9th.

6 MR. BROOKS: Yes.

7 MR. PADILLA: There was oil on top of that. It's
8 logical why you had a second truck there. Mr. Smith testified
9 he didn't know but that he just assumed -- was his testimony --
10 was that the second truck was loaded, ready to offload a load.
11 There's no evidence.

12 I think Mr. Lopez pretty much admitted that trucks
13 had been coming through the backside of that. And the
14 explanation is clear: You don't back an 18-wheeler into the
15 space there in front of that facility to load or unload. And
16 not only that, the system is designed for no trucking, but
17 there were at least four trips in there that trucks came in to
18 offload oil when that pump was not operating. And then they
19 also came in there when they were reworking wells. And you see
20 the water from that system, the same water -- not water from a
21 different source -- the same water to use to load up the well.

22 So, in short, I don't want to spend a lot of time. I
23 think the evidence is very clear here. There's no knowing
24 violation here. Nothing -- the investigation that Mr. Brown
25 did, with all due respect, is worthless. He didn't talk to

1 anybody. He didn't talk to Mr. Butler. He didn't talk to
2 Mr. Lopez or Mr. Edgett.

3 He never went out there to look to see whether they
4 had run tickets or anything like that to investigate whether or
5 not there was an explanation. That is sort of an investigation
6 that is just bad, when you don't go to the source to say, "I
7 want to see your run tickets here."

8 He says he's not an investigator. Well, I'm sorry.
9 That's what he does. What's the difference between an
10 investigator and an inspector that he calls himself? He ought
11 to go out there and find out if he wants to accuse somebody and
12 not take the word of Mr. Smith, who apparently uses a lot of
13 bad language here.

14 I can see why Mr. Smith was upset. I mean,
15 there's -- if somebody is unloading -- but he has no proof.
16 Nobody has any proof here. This is a total witch hunt. And
17 what's at stake here is that the Division is going to put
18 somebody out of business here if it grants this application for
19 no reason. The fine, I'm sure they could live with it. But a
20 year's suspension would throw somebody into bankruptcy here.

21 You have numerous trucks sitting out there idle.
22 Ms. MacQuesten says, "Well, they could go haul from a dairy, so
23 there's jobs out there." Maybe once every year and a half.

24 The oil business today is very busy. But the cost of
25 doing business out there is equally bad in terms of the cost of

1 diesel and operation. But it's still a livelihood. You can't,
2 on this whimsical evidence, suspend an operation that is
3 really, again, bad -- for lack of a better word. I mean, no
4 run tickets, no investigation. Let me prove that you're going
5 out there and dumping somewhere else.

6 The testimony that we put on is that there's no
7 profit of going to this system and dumping at this system, none
8 whatsoever.

9 We have the testimony about the pump, the leaking
10 pump, and how that pump -- and how that got down, you know. We
11 have a spill. And that spill really has nothing to do with
12 this case of illegal dumping. I mean, it's logical that if you
13 have a leaking pump and it's going to run downhill, you're
14 going to have some kind of a spill.

15 It wasn't reported to the OCD. Perhaps it should
16 have been reported. But I think it doesn't matter how you look
17 at this testimony. You have Mr. Butler's testimony, totally
18 neutral. He's concerned, obviously. It's his lease. But
19 there is nothing here to say these guys over here went and
20 dumped illegally in the night or any time during the day, when
21 there's no evidence that they were seen, other than this one
22 occasion. At no time were they seen here.

23 You have a lot of speculation about who knocked over
24 the gate. What does that prove? Nothing. You come through
25 the side road -- they're coming in through there. What does

1 that prove? Nothing.

2 Now, they brought this thing about Louray Oil
3 Company, about the Government No. 001 being down. Well, the
4 testimony here has been, again, they go to the public disposal
5 systems. They pass that cost on. There's no profit motive
6 here to ruin your business and illegally dump.

7 And even if they did on one occasion, let's even
8 assume that this whimsical evidence leads to some conclusion
9 that there was illegal dumping. And you're going to close down
10 this business for one time on Mr. Sanchez' testimony that says,
11 "We've got to make an example of somebody out there, and we
12 pick on these guys right here." No other reason. "We're going
13 to show that these guys over here are illegally dumping. We're
14 going to send a message out to the world that you can't
15 illegally dump."

16 That's not an excuse to close up this operation on
17 this kind of evidence. We have Mr. Sanchez over here, and he
18 says, "No. I've never been over there. And, no, I accepted
19 what Mr. Brown did."

20 And Mr. Brown never went to the source, never went to
21 anything, except to Mr. Smith over here, who's got some agenda.
22 Maybe he's pissed off. Maybe he thinks they did dump there.
23 But where's the evidence of the three or four truckloads? It's
24 in Exhibit 3. That's where it is, Exhibits 2 and 3. There's
25 where the three truckloads are, when you get the other wells

1 back into production.

2 And simultaneously, you're taking water from there,
3 from that lease. You're hauling it away. So how in the world
4 does all that lead to the conclusion that you have illegal
5 dumping? You don't have that in this case at all. No smoking
6 gun except some kind of assumption. And that's an assumption
7 on Mr. Brown's part.

8 He goes and has this Louray thing -- somehow he ties
9 it into that. Or Mr. Smith's -- maybe Mr. Smith, who works for
10 Energen, thinks it's a better company or something and that
11 makes his word better than these folks here. They're just
12 trying to make a living, and all of a sudden, you have some
13 bigger operator saying, "These guys are illegally dumping."

14 And you don't have any evidence of anything.
15 Mr. Brown didn't go try to follow up on anything, check to find
16 out anything. It's sort of a ridiculous case. We've been here
17 all day long, and I hope that the Division does not come up
18 with this conclusion that there's been illegal dumping here.
19 Because on this evidence, this is totally ridiculous. I think
20 even Ms. MacQuesten is somehow caving in on this thing with the
21 last two witnesses here in terms of saying -- having some
22 explanation. Because there's none. There isn't any
23 explanation for the conclusion to be reached by this
24 application if it's granted.

25 Thank you.

1 MR. BROOKS: Thank you. Perhaps Ms. MacQuesten would
2 limit her cross examination at the end of the day due to the
3 lateness of the hour. Ms. MacQuesten?

4 MS. MACQUESTEN: And the low blood sugar.

5 MR. BROOKS: Would you like to make a closing
6 statement?

7 MS. MACQUESTEN: Mr. Smith was the person responsible
8 for overseeing the Saunders disposal facility. On
9 February 7th, he saw a truck at the State R lease and was
10 concerned, asked Kenneth Tucker to look into it, got a call
11 back from Kenneth that it needed some further investigation,
12 and went out to the site.

13 At that point, he saw the trucks there, and he spoke
14 to the trucker, and the trucker said that he was unloading.
15 Rex told him to get out of there, don't unload.

16 "Get that water back in your truck."

17 And sure enough, the trucker switched the pump and
18 transferred whatever he was doing.

19 Now, we hear from Quannah that that's not true. But
20 look at what they say, that their trucker is out there, and
21 when he's confronted by Kenneth Tucker and by Rex Smith, two
22 men concerned about what's going on out there, the explanation
23 he gives is, "Oh, I was loading and unloading. They must have
24 heard one part of that."

25 It seems difficult to believe that if two people who

1 were concerned about what was going on -- particularly
2 Mr. Smith, who was extremely upset -- that that was the only
3 explanation given.

4 Let's assume for the moment, though, that that
5 version of the events is true. If that were true, if Quannah's
6 version of the events were true, what else would have happened?
7 And I would suggest that if they had been confronted with an
8 angry individual such as Rex Smith, who then called Quannah and
9 used some pretty choice words in his discussion with Quannah
10 representatives about what had happened, that someone might
11 have tried to clear that up, that they would have called Rex or
12 Energen, or if the situation was too volatile, they would have
13 someone else call. Have Kevin Butler call and say, "These
14 folks are out there legitimately."

15 The problem with that, though, is that they never
16 told Kevin Butler what they were doing out there. It seems
17 also that if they were out there legitimately, that there would
18 be bills to Kevin Butler, invoices, some kind of documentation
19 to him saying, "We were out there to fix this valve. We were
20 out there to clean this site."

21 And yet, we don't have that.

22 It would also seem to be true that if this was all
23 started because of a leaky valve, that that valve wouldn't by
24 this time be replaced, and there would be some evidence that
25 that was a cause of this. But none of those things have

1 happened.

2 So I think Mr. Padilla calls this a witch hunt, but
3 the circumstances are such that Mr. Smith was legitimately
4 concerned and did not get a legitimate explanation from anyone
5 from Quannah. And although we've heard a lot today about
6 trying to justify what Quannah was doing, and we have a
7 completely different version of the events from Quannah, but we
8 don't have the evidence that would go along with that
9 explanation. I would ask you to take a look at that and the
10 inconsistencies when you evaluate the evidence.

11 Thank you.

12 MR. BROOKS: Thank you, Ms. MacQuesten.

13 If there's nothing further, Case No. 14110 will be
14 taken under advisement.

15 MR. PADILLA: I don't know if I moved the admissions
16 of Exhibits 1 through 3.

17 MR. BROOKS: I do not recall. I will withdraw that
18 last statement. Are there any objections?

19 MS. MACQUESTEN: No, there are no objections.

20 MR. BROOKS: Quannah's Exhibits 1 through 3 will be
21 admitted.

22 Case No. 14110 will now be taken under advisement.
23 And this docket is adjourned.

24 [Hearing concluded.]

25

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14110
heard by me on Apr 17 2009.

David K. Brooks Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.



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