

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

ORIGINAL

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

CASE NO. 14055

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST C&D MANAGEMENT COMPANY
d/b/a FREEDOM VENTURES COMPANY

CASE NO. 14000, de novo, Final Action
CASE NO. 14047, de novo, continued
CASE NO. 14001, de novo, continued
CASE NO. 14002, de novo, continued

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

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

July 30, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
Oil Conservation Commission, MARK E. FESMIRE, Chairman, on
Wednesday, July 30, 2008, at the New Mexico Energy, Minerals
and Natural Resources Department, 1220 South Saint Francis
Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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1 CHAIRMAN FESMIRE: At this time, let the record
2 reflect that it is Wednesday, July 30th, at 9:00 a.m. At this
3 time, we will go ahead and convene the regularly scheduled
4 meeting of the New Mexico Oil Conservation Commission. Let the
5 record reflect that all three commissioners, Commissioner
6 Baily, Commissioner Olson, and Commissioner Fesmire are
7 present. We therefore have a quorum.

8 The first order of business is to address the minutes
9 of the June 19, 2008, commission meeting and adopt those
10 minutes. Have the commissioners had the opportunity to review
11 the minutes as presented by the secretary?

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

14 CHAIRMAN FESMIRE: Is there a second?

15 COMMISSIONER OLSON: I've read them also, and I'll
16 second that.

17 CHAIRMAN FESMIRE: All those in favor signify by
18 saying "aye."

19 COMMISSIONER BAILEY: Aye.

20 COMMISSIONER OLSON: Aye.

21 CHAIRMAN FESMIRE: Let the record reflect that the
22 minutes were unanimously adopted, signed by the chairman, and
23 conveyed to the substitute secretary, Theresa Duran-Saenz.

24 The next order of business before the commission is a
25 final action in Case No. 14000, Application of Harvey E. Yates

1 Company for Expansion of the Unit Area in Otero County,
2 New Mexico. Have the commissioners had the chance to review
3 the order as presented by counsel?

4 COMMISSIONER BAILEY: Yes, I have, and I believe that
5 it accurately reflects the decisions that we made in that case.

6 CHAIRMAN FESMIRE: Commissioner Olson?

7 COMMISSIONER OLSON: Yeah. I agree with Commissioner
8 Baily, and I'll second that.

9 CHAIRMAN FESMIRE: So all those in favor of adopting
10 the order as presented by counsel, signing the order, and
11 transmitting it to the secretary, signify by saying "aye."

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER OLSON: Aye.

14 CHAIRMAN FESMIRE: Let the record reflect that the
15 order was unanimously adopted as presented by counsel, signed
16 by the commission, and transmitted to the secretary.

17 With that, we will go ahead and go off the record.

18 MS. BADA: Oh, I have one thing to clean up on that
19 while we're waiting. I just wanted to let Commissioner Bailey
20 and Commissioner Olson know that Gail MacQuesten and I have
21 been working on rearranging the rules in two parts, and we're
22 looking at potentially filing a petition in the next few weeks.
23 So I just wanted to let you know that, and if you would like
24 copies of them, let us know.

25 COMMISSIONER BAILEY: Please.

1 COMMISSIONER OLSON: And this is a reorganization?

2 CHAIRMAN FESMIRE: This is a re --

3 MS. BADA: Basically it's a repeal-and-replace.
4 We're moving things from old parts into new parts so that
5 they're not all scrunched into 15 parts. Like in Part I,
6 there's tax credits and abatement and all those things in one
7 part instead of having their own part where you can easily find
8 them.

9 COMMISSIONER OLSON: But it's not substantial
10 changes. It's like a renumbering and reordering. Okay.

11 MS. BADA: Making sure terms are used consistently.
12 For example, there are places we see OCD and there are places
13 we see Oil Conservation Division; there are places where we see
14 Division. We just tried to go through and make sure they were
15 all consistent and that we weren't using different terms in
16 different parts.

17 COMMISSIONER BAILEY: I'd like to have a copy when
18 you're done. Thank you.

19 MS. BADA: Happily.

20 COMMISSIONER OLSON: So do we have to adopt that as a
21 rule change?

22 MS. BADA: Yes, it has to be a rule change.

23 COMMISSIONER OLSON: I'd like a copy, too.

24 MS. BADA: Okay.

25 CHAIRMAN FESMIRE: Is there any other business we

1 need to address before the attorneys come back?

2 At this time, we'll go off the record waiting on
3 attorneys.

4 * * *

5 CHAIRMAN FESMIRE: Let's go back on the record. The
6 next case before the Commission is Case No. 14055, de novo
7 Application of New Mexico Oil Conservation Division for a
8 Compliance Order Against C&D Management Company doing business
9 as Freedom Ventures. Would the attorneys like to enter their
10 appearances at this time?

11 MR. SWAZO: Sonny Swazo on behalf of the OCD.

12 MR. PADILLA: Earnest Padilla on behalf of C&D
13 Management Company.

14 CHAIRMAN FESMIRE: Mr. Swazo, how many witnesses do
15 you have?

16 MR. SWAZO: Two witnesses, Mr. Commissioner.

17 CHAIRMAN FESMIRE: Are they present to be sworn?

18 MR. SWAZO: Yes, they are.

19 CHAIRMAN FESMIRE: Mr. Padilla, how many witnesses do
20 you have?

21 MR. PADILLA: One witness.

22 CHAIRMAN FESMIRE: And is he present to be sworn?

23 MR. PADILLA: He's present.

24 CHAIRMAN FESMIRE: Would the witnesses please rise
25 and be sworn?

1 [Witnesses sworn.]

2 CHAIRMAN FESMIRE: Mr. Swazo, do you have an opening
3 statement?

4 MR. SWAZO: Yes, I do, Mr. Chair. This is a
5 compliance action against C&D Management, a corporation that
6 operates wells in New Mexico. We will be addressing two
7 categories of violations: failure to file monthly production
8 reports and violations of the inactive well rule.

9 Compliance problems started when C&D acquired the
10 wells. Most were acquired in 2004. Once C&D acquired the
11 wells, it did not file monthly C-115 monthly production
12 reports. That's the reporting issue. Because there is no
13 reported activity, it appears the wells are also in violation
14 of the inactive well rule. That's the second type of
15 violation. But because the reports aren't up-to-date, we can't
16 tell if wells are really inactive or just not reporting. In
17 addition, in an Agreed Compliance Order with OCD, C&D agreed to
18 plug or produce five wells by September 20, 2007. That has not
19 happened.

20 So we are asking for the following: We are asking
21 that C&D bring reporting up-to-date by a certain date. If the
22 wells are inactive, bring them into compliance with Rule 201 by
23 plugging them, placing them on TA status, or returning them to
24 beneficial use. We ask that the order set a date certain for
25 compliance with Rule 201, authorize the OCD to plug the wells

1 and forfeit the applicable financial assurance if operator
2 fails to meet the deadline. We are also asking for penalties
3 because the reporting issues -- inactive well issues are
4 knowing and willful violations.

5 The OCD has been working with C&D Management since at
6 least May of 2006 to try and get C&D to comply with reporting
7 requirements. That's a little over two years. You will hear
8 testimony about the efforts to get C&D to comply with
9 reporting, including: cancellation of authority to transport
10 and inject after notice to the operator; filing a compliance
11 case on reporting and other issues; dismissing that case; and,
12 entering into an Agreed Compliance Order requiring reporting
13 and returning inactive wells to compliance. In that order,
14 there was also an agreement. C&D also agreed to payment of
15 penalties -- filing a new application which was the basis for
16 this case, and that was done on December 11, 2007; having this
17 case heard before a Division Hearing Examiner on January
18 24, 2008; entry of an order on March 3, 2008; and, now this de
19 novo hearing.

20 In this time frame, C&D has filed reports up to and
21 including December 2007. No reports have been filed for 2008,
22 and those reports have only been recently filed. Their defense
23 is that C&D is being run by Tom Kizer, and he acquired
24 controlling interest in the company in 2007. He blames the
25 prior owners, Chris and Darla Jeffries, for the compliance

1 issues and says no penalties should be assessed against him.

2 OCD's position is that this case is against a
3 corporation, not against any particular individual. We are
4 looking for penalties to be assessed against the corporation,
5 not against Mr. Kizer or the Jeffries. It doesn't matter who
6 owns the controlling interest in the corporation when the
7 violations occurred. But you will also hear testimony that
8 Mr. Kizer has been aware of the compliance issues since at
9 least March 2007 when OCD entered into an ACO with
10 C&D Management.

11 Kizer acquiesced with the OCD and the Jeffries and
12 continued to make regulatory filings with the OCD. He is upset
13 that the Notice of Hearing in this case, when it was before the
14 Division Examiner, was sent to the folks he says previously
15 held the controlling interest. That is a nonissue now because
16 Mr. Kizer has had notice of this hearing and this is a de novo
17 hearing.

18 But to explain the notice issue, you'll hear
19 testimony that OCD sent to the folks they were actively working
20 with on the compliance issues who were still making regulatory
21 filings on behalf of the corporation and were still listed as
22 officers of the corporation on the PRC website.

23 That concludes my opening statement.

24 CHAIRMAN FESMIRE: Thank you, Mr. Swazo.

25 Mr. Padilla, would you like to make an opening statement? If

1 so, now, or would you rather defer it?

2 MR. PADILLA: Oh, I'll give it now. Mr. Chairman,
3 members of the commission, some of what Mr. Swazo said to you
4 as to the issues are correct. There is a diversity between the
5 management of C&D Management Company originally owned by Chris
6 and Darla Jeffries, and now Mr. Tom Kizer.

7 Our story here today is that Mr. Kizer purchased the
8 shares of the corporation beginning in 2005. They were
9 ultimately transferred to him in February of 2007. In March of
10 2007, Mr. Jeffries entered into the Administrative Compliance
11 Order as -- signed the Administrative Compliance Order as vice
12 president of the company. At that time, he had no corporate
13 capacity. He had no authority to sign the Administrative
14 Compliance Order.

15 On top of that, the Administrative Compliance Order,
16 which we would like the Commission to take administrative
17 notice of, is that Mr. Jeffries at that time, and the testimony
18 will show, that at all times Mr. Jeffries took personal
19 responsibility for the compliance issues addressed in the
20 Administrative Compliance Order.

21 Now, the communications, as far as compliance, it's
22 our position, have been between the Division and the
23 Jeffries -- Chris Jeffries. The January hearing of 2008 held
24 before the Division to enforce the Administrative Compliance
25 Order also was noticed to Mr. Jeffries in Kentucky. By that

1 time, Mr. Kizer was trying to figure out what was going on with
2 this compliance issue. And so our position is that any
3 compliance issues, even though the Division had already been
4 communicating in the regular course of business with Mr. Kizer
5 at his Albuquerque address -- what we're conveying here is that
6 Mr. Kizer did not receive any notice of the January 2008
7 hearing.

8 Now, the terms of due process, yes, we're getting due
9 process here today. But in terms of assessment of penalties,
10 in terms of enforcement of compliance issues, there should
11 be -- and it is our position -- no penalties because they have
12 never been addressed to Mr. Kizer. Some time after the January
13 hearing, Mr. Kizer will tell you that he got wind of what had
14 happened and so then he started himself communicating with the
15 Division and came to me and asked for a de novo hearing. And
16 here we are today trying to address those issues.

17 Now, the issue of penalties, as far as Mr. Kizer is
18 concerned, is that this is a brand new deal for him, right now.
19 And this is really the first time that anyone has asked him for
20 assessment of penalties or to pay any kind of penalties for
21 other punitive types of reasons for not reporting.

22 Now, you'll also hear today of his efforts since
23 February of this year: What he has done to update in terms of
24 reporting and that sort of thing that Jeffries undertook to do.
25 So he is here initially trying to address those issues. And

1 we're here before the Commission simply because he never had a
2 chance to appear before the Division. So that's basically what
3 you're going to hear today. You're going to also see some
4 correspondence between Mr. Jeffries and Mr. Kizer -- or
5 essentially Mr. Jeffries said to Mr. Kizer, "Get off my back.
6 I'm doing all I can. Stay out of it."

7 And so he did until he found out about this hearing
8 in January of this year. So that's going to be our story. And
9 then we will ask that no penalties be assessed at the end of
10 the hearing. Thank you.

11 CHAIRMAN FESMIRE: Mr. Swazo, are you ready to call
12 your first witness?

13 MR. SWAZO: Yes, Mr. Chairman. I call Daniel Sanchez
14 to the stand.

15 CHAIRMAN FESMIRE: Mr. Sanchez, having been
16 previously sworn in this case, would you take the stand?

17 THE WITNESS: Yes, sir.

18 MR. SWAZO: Before I begin my questioning, I would
19 like to point out I did submit the exhibit packet pursuant to
20 OCD rules. Exhibit No. 1 -- I'm sorry, the OCC rules. The
21 first exhibit, or Exhibit No. 1, is the financial assurance
22 affidavit and supporting documents. Most of these wells are
23 federal and, therefore, they do not have financial assurance.
24 However, the operator has posted single-well financial
25 assurance for three state wells. The amounts required went up

1 effective January 1, 2008. And so the financial assurances
2 posted by the operator are in the old amounts.

3 The three wells that the operator has letters of
4 credit on are the Michael State No. 001 well and the letter of
5 credit is for \$7,038. And two \$5,000 letter of credits for the
6 Schneider No. 001 and the Muncy Federal No. 001.

7 Exhibit 40 is the original Affidavit of Notice and
8 publication for the original case. And the notice does include
9 the copy of publication. This case was actually published in
10 the Artesia Daily Press back on the 30th day of -- back in
11 December -- December 16, 2007. So it was published in the
12 Artesia Daily Press with regard to the original case.

13 DANIEL SANCHEZ

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

16 DIRECT EXAMINATION

17 BY MR. SWAZO:

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

19 A. Daniel Sanchez.

20 Q. And Mr. Sanchez, who whom are you employed?

21 A. With the New Mexico Oil Conservation Division.

22 Q. What is your title?

23 A. I'm the Compliance and Enforcement Manager.

24 CHAIRMAN FESMIRE: Would you like to approach the
25 witness, Mr. Swazo?

1 MR. SWAZO: I'm sorry, Mr. Chairman. I'm a little
2 nervous. Yes.

3 I am just handing the witness the witness exhibit
4 packet for witnesses who testify.

5 Q. (By Mr. Swazo): Mr. Sanchez, would you explain
6 your duties?

7 A. Yes. I supervise the four OCD district offices,
8 the Environmental Bureau here in Santa Fe, and I oversee
9 compliance and enforcement issues and programs within the
10 Division.

11 Q. Are you familiar with the compliance actions
12 taken against C&D Management?

13 A. Yes.

14 Q. And would you turn to Exhibit 2 and identify that
15 exhibit?

16 A. Exhibit 2 is the inactive well list for C&D
17 Operating.

18 Q. I'm sorry. You said inactive well list.

19 A. I'm sorry. I was on the wrong exhibit. Sorry
20 about that. It's the well list, the total well list, for C&D
21 Management, and it shows a total of 17 wells for C&D
22 Management.

23 Q. Are all of the wells the subject of this
24 compliance action?

25 A. Yes.

1 Q. And where is this list found?

2 A. On OCD online.

3 Q. And is it kept in the normal course of business?

4 A. Yes, it is.

5 Q. Is it accessible to the public?

6 A. Yes.

7 Q. And when was this list printed?

8 A. This particular list was printed on April
9 29, 2008.

10 Q. Why is it so out-of-date?

11 A. This one was the one that was printed before the
12 initial de novo hearing was scheduled, and it was cancelled.

13 Q. Have you had a chance to review the current well
14 list?

15 A. Yes, I have.

16 Q. And when did you review that list?

17 A. This morning.

18 Q. And does it show the same 17 wells?

19 A. Yes, it does.

20 Q. And if you look at the column marked

21 "Production/Injection," what does that column show on
22 Exhibit No. 2?

23 A. It shows the last time these wells reported
24 production or injection. For the majority of them, it was back
25 in March of 2006, and there are some later dates than that.

1 Q. Has that changed? When you looked at the current
2 well list, has that entry changed for those wells?

3 A. Yes, it has. They have come current through
4 December of 2007, in reporting for eight of the wells.
5 Actually, I believe five of the wells were current up to
6 December of 2007 and three of them were through September, I
7 believe it was.

8 CHAIRMAN FESMIRE: September of 2007?

9 THE WITNESS: September of 2007. Let me double-check
10 that.

11 Q. (By Mr. Swazo): It might be helpful if we go
12 through the last Production/Injection entry for the current
13 well list, and if you could provide the information for each
14 particular well.

15 So let's start with the Amoco No. 001?

16 A. Okay. The last production on Amoco No. 001 was
17 in December of 2007. The last production reported was December
18 of 2007.

19 Q. The Hastie No. 016?

20 A. December 2007.

21 Q. The 017?

22 A. December 2007.

23 Q. The 018?

24 A. December 2007.

25 Q. The 019?

- 1 A. August of 2007.
- 2 Q. The 020?
- 3 A. August 2007.
- 4 Q. The 021?
- 5 A. August 2007.
- 6 Q. The Michael State No. 001?
- 7 A. December 2007.
- 8 Q. The Muncy Federal No. 001?
- 9 A. December of 2000.
- 10 Q. So that hasn't changed?
- 11 A. That hasn't changed.
- 12 Q. Muncy Federal No. 002?
- 13 A. This one hasn't changed, either. It's showing
14 December 2003.
- 15 Q. The Saunders No. 012?
- 16 A. February 2002. No change.
- 17 Q. The Schneider No. 001?
- 18 A. November 2001. No change.
- 19 Q. The Scott Federal No. 001?
- 20 A. December 2003. No change.
- 21 Q. Now, I notice that there are four wells -- and
22 I'll refer to them as the Shearn wells since they have Shearn
23 in the first part of the names -- there's no entry for the last
24 Production/Injection column. Could you explain that?
- 25 A. Yes. All four of these wells have never actually

1 produced. They were dry holes, so they were never produced, so
2 they would never show any production.

3 Q. So in order for a well to be on this list -- in
4 order for a well to appear in the last Production/Injection
5 column, they would have had to report production at one time?

6 A. That's correct.

7 Q. Would you please identify Exhibit No. 3?

8 A. Exhibit No. 3 is the inactive well list for C&D
9 Management, and that one was as well reported on April 29th,
10 2008, and it shows 13 wells on the inactive well list for C&D.

11 Q. Now, how does a well get to be on the inactive
12 well list?

13 A. When a well has failed to report production or
14 injection for a year plus 90 days, it will fall on that list.

15 Q. Looking at Exhibit No. 3, how many of C&D's wells
16 are on the inactive well list?

17 A. All of them.

18 Q. Have you had a chance to review C&D's current
19 inactive well list?

20 A. Yes, I have.

21 Q. Has that list changed?

22 A. Yes, it has.

23 Q. And how has it changed?

24 A. There are only five wells listed on the inactive
25 well list at this time.

1 Q. And which are those wells?

2 A. They are the four -- no, I'm sorry, excuse me.
3 The Muncy Federal No. 001, the Muncy Federal No. 002, the
4 Saunders No. 012, the Schneider No. 001, and the Scott Federal
5 No. 001. And this report was pulled this morning as well.

6 Q. And where is this list found?

7 A. OCD online.

8 Q. Is it kept in the normal course of business?

9 A. Yes.

10 Q. And it's accessible to the public?

11 A. Yes, it is.

12 Q. Have OCD inspectors inspected C&D's wells?

13 A. Yes, they have.

14 Q. Are such inspections documented?

15 A. Yes, they are.

16 Q. Does OCD keep records of the inspections?

17 A. Yes.

18 Q. Are the records made in the normal course of
19 business?

20 A. Yes, they are.

21 Q. Was a record of OCD inspections of the wells
22 made?

23 A. Yes.

24 Q. And if you look at Exhibit No. 4 through 20,
25 could you please identify those Exhibits?

1 A. Exhibit No. 4 through 20 are copies of the well
2 inspection histories for each of the wells for C&D Management
3 Company's wells.

4 Q. And so each exhibit is for a particular well; is
5 that correct?

6 A. Yes.

7 Q. And how would you know which inspection is for
8 which well?

9 A. The well inspection history will have the API
10 number, and it will have the well name. It doesn't always show
11 the number so, on the bottom left-hand corner, we put the
12 number of the well as well. So there may be multiple Amocos,
13 so we put whatever number that would be on the bottom.

14 Q. And you've had a chance to review the well
15 inspection histories?

16 A. Yes.

17 Q. What do the well inspection histories show in
18 terms of production or capability of production?

19 A. At this time, most of them show that they were
20 capable of producing -- the majority of them. There were a
21 number that showed that they were incapable of production.

22 Q. Do you know when C&D started acquiring these
23 wells?

24 A. I believe it was November of 2004.

25 Q. And I notice that some of the dates predate their

1 ownership. So the inspections would include inspections prior
2 to C&D ownership?

3 A. Yes.

4 Q. That's because it's the history for well
5 inspections done for the well?

6 A. Yes.

7 Q. Now, if you look at the well inspection reports
8 for the Shearn wells, what do those reports show in terms of
9 production or capability of production?

10 A. I reviewed them earlier. The Shearn wells were
11 incapable of production at the last inspection. For the Shearn
12 Becky Federal No. 001, the last inspection back in September of
13 2007 showed that it was incapable of producing. The casing was
14 just above ground level with no wellhead.

15 For the Shearn Federal -- Freedom Federal No. 002,
16 the well is incapable of producing: casing is set and covered;
17 no production equipment on site. The Shearn Samantha Federal
18 No. 001: the well is incapable at this time and shows no
19 production; wellhead not connected to flowline; tubing in hole.

20 The Shearn Shilo Federal No. 001: the pumpjack is
21 incapable of operating; small unlined pit to the west; flowline
22 disconnected.

23 Q. Now, one way that an operator can be in
24 compliance with Rule 201 is if they have a well that is on
25 OCD-approved temporary abandonment status; is that correct?

1 A. Yes.

2 Q. Now, if you look at Exhibit No. 12 and
3 Exhibit No. 14.

4 A. Okay.

5 Q. For Exhibit No. 12, there's an entry for
6 January 14, 2008, and it indicates that the well is in TA
7 status. Is the well in TA status?

8 A. No. I was kind of curious about that, so I went
9 into the well file to check, and there have been no forms filed
10 to show that there was either an intent to TA or subsequently
11 showing that a TA was approved.

12 Q. Can you explain the process for an operator to
13 get a well on TA status?

14 A. Yes. When an operator wishes to get their well
15 on TA status, they'll submit a form -- I believe it's a
16 C-103 -- and it'll show an intent to TA. At that time, the
17 district office will approve it under the condition that the
18 well has mechanical integrity test performed on it, certain
19 conditions on that testing, and that it be witnessed by an OCD
20 inspector.

21 Once that test has been successfully passed, then
22 another C-103 will be submitted and a subsequent report showing
23 the TA, and the district office will approve it and give a time
24 frame for that TA.

25 Q. Did you see any of those documents in the well

1 file for this particular well?

2 A. No.

3 Q. If you look at Exhibit No. 14, there's an entry
4 there for September 28th, 2006, and it says, "TA status end
5 date, December 27, 2009."

6 Did you verify whether or not this well is actually
7 on OCD TA status?

8 A. Yes. Once again, there was no paperwork
9 indicating that there was ever a request to TA that well.
10 There was a previous TA that was approved, but the date of the
11 expiration on that was in 2005.

12 CHAIRMAN FESMIRE: May I ask a question, Mr. Swazo?
13 Why would this be in the RBDMS database as TA if it was not --
14 if it had not been TA'd?

15 THE WITNESS: All I can think of was that it was an
16 error in the entry. That's the reason I went back in to verify
17 what was in the well file. I couldn't find anything in the
18 well file that indicated there was a TA.

19 CHAIRMAN FESMIRE: Mr. Swazo, continue. I apologize.

20 Q. (By Mr. Swazo): If a well was TA'd, would there
21 be -- would the TA status appear on the inactive well list or
22 the well list?

23 A. It would not show up on the inactive well list,
24 but it would appear on the active list.

25 Q. And there was no indication that it had been

1 TA'd -- that these wells had been TA'd?

2 A. No.

3 Q. Would you turn to Exhibit 22? Would you identify
4 that exhibit?

5 A. Exhibit 22 is a copy of Rule 201 -- how to
6 properly abandon a well.

7 Q. And what does it generally require?

8 A. A well is in violation of Rule 201, if for more
9 than a year plus 90 days, it has not been producing or
10 injecting. It can be put on temporarily abandoned status or
11 properly plugged, and it would be off the Rule 201.

12 Q. Turn to Exhibit No. 24. Would you identify that?

13 A. This is an e-mail that was sent on March
14 16, 2007, to Mr. Tom Kizer, and it is basically stating that
15 Cheryl O'Connor, the attorney for the OCD at that time, was
16 going to send him a copy of the Agreed Compliance Order and
17 cover letter that was agreed to at the administrative
18 conference with the C&D on the 12th of March, I believe it was.

19 Q. How do you know that it was sent to Tom?

20 A. The e-mail address on it is Mr. Kizer's e-mail
21 address, and that address came from a business card that we
22 received from Mr. Kizer.

23 Q. Have you ever received any e-mails from
24 Mr. Kizer?

25 A. On a couple of occasions, yes.

1 Q. And from what e-mail address did they come from?

2 A. From the e-mail address shown on this particular
3 e-mail.

4 Q. If you turn to Exhibit 25, would you identify
5 that exhibit?

6 A. Exhibit 25 is the cover letter for the Agreed
7 Compliance Order that was entered into with C&D Management and
8 the OCD, and this was dated back on March 16, 2007.

9 Q. And who was copied on that letter?

10 A. Myself, Tim Gum, the District II Supervisor, Mike
11 Bratcher and Thomas Kizer, C&D Management.

12 Q. And so this was the letter that was referenced in
13 the previous e-mail?

14 A. Yes.

15 Q. Now, before we go any further, if you look at the
16 first paragraph -- the last sentence in the first paragraph --
17 it states, "The ACO recites the violations that occurred and
18 the penalties that have been imposed against Ameristate and
19 that Ameristate agrees to the findings set out therein."

20 A. Yes. Previous to this particular case with
21 C&D Management, we had another case with Ameristate, and it was
22 regarding some similar violations. And I believe that
23 Ms. O'Connor was using it as a template and just forgot to
24 change the name from Ameristate to C&D.

25 Q. Did you have a chance to read this letter before

1 it went out?

2 A. Yeah. And I did inform Ms. O'Connor that she
3 needed to change the names on it. And I don't know why it
4 didn't get done, but it went out like this.

5 Q. Would you please describe what an Agreed
6 Compliance Order is?

7 A. An Agreed Compliance Order is an agreement
8 between the OCD and an operator to resolve certain issues that
9 have come up over possible notice of violation or an agreement
10 to resolve certain acts of non-compliance.

11 Q. Would you please identify Exhibit No. 26?

12 A. Exhibit 26 is the Agreed Compliance Order between
13 C&D Management and the Oil Conservation Division.

14 Q. And who signed it?

15 A. For the OCD, I'm the one who signed off on it,
16 and for C&D Management, it was Christopher Jeffries, and he
17 signed it as vice president, and this was on March 21, 2007.

18 Q. You testified that you're familiar with the
19 compliance actions that were taken against C&D Management. Do
20 you recall the compliance actions that took place prior to this
21 Agreed Compliance Order?

22 A. Yes. Originally a letter -- or it might have a
23 been an e-mail -- was sent May 22, 2006, to C&D stating that
24 they needed to come up-to-date on their C-115 reporting. And
25 that gave them enough time to go ahead and make those updates

1 to those reports. Later when they didn't respond to that, and
2 we didn't get those reports, there was another letter sent out
3 cancelling their authority to transport until those reports had
4 been brought back up-to-date.

5 There was also an inspection of those wells made by
6 the district office, basically to verify whether or not those
7 wells were operating or not. A number of violations -- I
8 believe there were 24 violations -- came up from the 17 wells
9 during that inspection.

10 During that time, we were scheduled to come to a
11 hearing on those violations and the lack of compliance on the
12 reporting issues. That hearing was stayed, and we entered into
13 this agreement with C&D Management to go ahead and resolve the
14 issues instead of going to hearing. And within that
15 agreement -- what had happened was there was a total of \$24,000
16 in penalties.

17 During the agreement -- at that administrative
18 conference to settle the case -- we had agreed to waive \$18,000
19 of those penalties and went for 6,000 instead. 4,000 of that
20 would be payable if by a certain date -- I believe it was the
21 20th of September, 2007 -- the four Shearn wells had not been
22 plugged, and it gave C&D the opportunity to make the 6,000
23 remaining penalties paid over a two-payment period.

24 Q. And some of this background information is
25 actually contained in the Agreed Compliance Order?

1 A. Yes, it is.

2 Q. And the Agreed Compliance Order, or ACO, cites
3 Rule 201 and Rule 1115?

4 A. Yes, it does.

5 Q. And it also cites the basis for those violations?

6 A. Yes, it does.

7 Q. I'm sorry. With regard to the four Shearn wells,
8 there was a compliance settling?

9 A. Yes. Like I said, I believe it was
10 September 20th. Let me find out. September 20th, 2007.

11 Q. And what did C&D Management promise to do by
12 then?

13 A. At the time that the Agreed Compliance Order was
14 signed, C&D had let us know that they had an operator available
15 within two weeks from that administrative conference to go in
16 and start plugging those wells. So we assumed that by the time
17 the Agreed Compliance Order had been signed and returned, and
18 the process had gone through its paces, that the plugging of
19 those wells would be started.

20 Q. And so C&D Management said that they would start
21 the plugging within two weeks?

22 A. Two weeks.

23 Q. This Agreed Compliance Order was signed in March,
24 and they were given a deadline of September 20, 2007?

25 A. Yes. We gave them some extra time in case they

1 ran into problems getting equipment or something.

2 Q. And what was the consequence if they didn't meet
3 the deadline?

4 A. The original \$4,000 penalty, \$1,000 per well,
5 would be imposed, and they would have to pay that penalty.

6 Q. And that's what they agreed to?

7 A. Yes.

8 Q. Would you please look at Exhibit No. 27 and
9 identify this exhibit?

10 A. Exhibit 27 is a letter of violation sent out by
11 the Artesia district office on May 29, 2007, and it's on three
12 wells, all of them for violations of Rule 201, a lack of
13 reporting. And there was a corrective action due date given of
14 June 14, 2007, to correct that issue.

15 Q. And what address was that sent to?

16 A. That was sent to 4801 Lang Northeast, Suite 110,
17 Albuquerque, New Mexico.

18 Q. Now, you testified that under this LOV, C&D had a
19 compliance deadline of June 14, 2007?

20 A. Yes.

21 Q. Did they meet that deadline?

22 A. No, they did not.

23 Q. And would you please identify Exhibit 28?

24 A. Exhibit 28 is another letter of violation that
25 was issued through the Artesia district office on June 4, 2007,

1 on two wells. Once again, violations of Rule 201, lack of
2 reporting with a correction action due date of June 22, 2007.

3 Q. Did C&D Management meet that deadline?

4 A. No.

5 Q. Now, would you please turn to Exhibits No. 30, 33
6 and 35 and identify those exhibits?

7 A. Each of those is a sundry notice on a BLM form.
8 And there's a notice of intent to plug and abandon the Shearn
9 Becky Federal No. 001, the Shearn Freedom Federal No. 002, and
10 Shearn Shilo Federal No. 1.

11 Q. On what dates were those documents -- first of
12 all, who submitted them?

13 A. Darla Jeffries. She listed her title as
14 president, and it was submitted on March 12, 2007.

15 Q. Have you had a chance to review the well files
16 for those wells?

17 A. Yes.

18 Q. And have there been subsequent sundry notices
19 filed for those wells?

20 A. There have been more recent filings by Mr. Kizer.
21 There are also notices of intent to plug and abandon these
22 wells.

23 Q. And when were those documents filed?

24 A. These ones were filed on May 8, 2008.

25 Q. Would you please identify Exhibits No. 31 and 34?

1 A. Both these exhibits are also BLM forms. They are
2 well re-completion reports and logs.

3 Q. Who were they filed by?

4 A. It looks like Chris Jeffries on April 27, 2007.

5 Q. Did he give a title?

6 A. Vice president.

7 Q. And I want to go back real quickly to those
8 sundry notices, the notices of intent that were recently filed
9 by Mr. Kizer. Have those wells been plugged?

10 A. Not as of today.

11 Q. Are those the most recent files for those wells?

12 A. Yes, they are.

13 Q. Would you please identify Exhibit No. 36?

14 A. Exhibit 36 is a letter I received from C&D
15 Management on September 19th. It actually showed up on the
16 20th. It's dated September 19, 2007, and it was asking for an
17 extension of the plugging for the four Shearn wells and the
18 Muncy Federal No. 2.

19 Q. And in the letter does he indicate -- does C&D
20 Management indicate when they would have a rig available to rig
21 up on the wells?

22 A. The earliest available date was October 1 of
23 2007, according to the letter.

24 Q. And are any of those wells plugged?

25 A. No.

1 Q. Would you please identify Exhibit 37?

2 A. Exhibit 37 is a letter from C&D
3 Management/Freedom Ventures dated February 29th, 2008, signed
4 by Mr. Thomas Kizer. And it's to Mr. Richard Inge, which is an
5 inspector for the OCD out of the Artesia office. And it's
6 addressing the letters of violation that he had issued earlier
7 on a well in 2007 for repeated non-compliance, no production
8 reports, and he states that he's working with a Ms. Debbie
9 McKelvey -- McKelvey Oil Reporting Services is the address --
10 and that he's working with this woman to bring those reports
11 up-to-date.

12 Q. And does he indicate an e-mail address?

13 A. His e-mail address, yes. It's
14 oilfreedom@aol.com.

15 Q. Would you please look at Exhibit No. 39?

16 A. Okay.

17 Q. And could you identify it?

18 A. Exhibit 39 is a document from the PRC, Public
19 Regulation Commission, website showing C&D Management Company
20 as a business in New Mexico. And it shows their current
21 officers as being Darla Jeffries, president and Chris Jeffries,
22 vice president. And this was pulled off the website on
23 January 22nd, 2008, which was a couple days prior to the
24 original hearing on this issue.

25 Q. What address do they give? Or what address is

1 given for C&D Management?

2 A. 513 Don Lyle Road, Edmonton, Kentucky.

3 Q. And do you know where the PRC acquires this
4 information from?

5 A. Directly from the operator.

6 Q. Did you have a chance to review this record some
7 time after this? I mean, did you have a chance to review the
8 PRC website to determine whether or not this information has
9 changed?

10 A. Yes. I have a more current copy of April 10th of
11 2008, and the information still hasn't changed.

12 Q. In that document, and also in this document, does
13 Tomas Kizer's name appear anywhere?

14 A. No.

15 Q. Mr. Sanchez, in this case, you're asking for
16 civil penalties. Well, let me ask you this, Mr. Sanchez: What
17 exactly are you asking for in this case?

18 A. We're asking that C&D Management come into
19 compliance with Rule 201 on the wells that are still at issue.
20 We're asking them to comply with Rule 1115, the reporting
21 requirements. We're asking that the four Shearn wells be
22 plugged as originally agreed to in the Agreed Compliance Order.
23 If those wells do not get plugged, we're asking the Commission
24 to allow the OCD to plug those wells and forfeit the applicable
25 financial assurance from C&D. And we're asking for civil

1 penalties. The civil penalties we're asking for are \$4,000 for
2 not meeting the deadlines of the Agreed Compliance Order of the
3 plugging of four Shearn wells, and we're asking for \$1,000 per
4 month for the lack of reporting dating back to April of 2006
5 all the way to May of 2008. And that's a total of \$26,000. So
6 a total penalty amount of \$30,000.

7 Q. Now, I want to back up just a minute. You're
8 asking for an order requiring the operator to bring the wells
9 into compliance with Rule 201. Are you giving them a deadline?

10 A. I would like to see that done by the end of
11 August. We've had assurances from C&D that these wells would
12 be plugged over a long period of time. And I understand that
13 they are scheduled to be plugged next week. So I figure if we
14 give them until the end of August, that's plenty of time in
15 case they run into any issues trying to plug these wells.

16 Q. Are you also looking for a deadline, a set date,
17 for compliance with the reporting requirements?

18 A. Yes. Once again, we have had information from
19 the company that they do have the reports ready to be
20 submitted. So I would expect that those be submitted within
21 two weeks of this hearing.

22 Q. And what are you asking for, if anything, if the
23 operator fails to plug these wells? I'm sorry -- if the
24 operator fails to comply with the Commission's order. Are you
25 asking for anything?

1 A. Not at this time. I hadn't thought about that
2 yet.

3 Q. Now, you're asking for civil penalties. Can you
4 explain why they are an important part of the compliance
5 process?

6 A. I think the penalties -- what I've tried to do in
7 the past is avoid the use of penalties and work toward
8 compliance. It has worked very well with a large number of
9 operators. When we run into a situation where there's just a
10 total of lack of compliance, and OCD staff has worked very hard
11 to try to bring those into compliance and has shown good faith
12 effort to work with these operators, then I feel that penalties
13 are important as an incentive to come into compliance and
14 remain in compliance once that's happened.

15 Q. Do they help with enforcement?

16 A. Yes. I've seen over the past that they have
17 definitely helped with our enforcement efforts.

18 Q. What would happen if an operator thought that
19 there were no consequences to their non-compliance?

20 A. I think this is a good case. We've sent letters
21 to the company, and they would not respond. We've cancelled
22 their authority to transport. We didn't get a response. We've
23 had Agreed Compliance Orders, which the deadlines and
24 agreements in the Agreed Compliance Order were not met. I
25 believe if there were no consequences to the agreements that

1 are entered into, then no one would comply -- or very few
2 people would comply if they knew there were no consequences.

3 MR. SWAZO: With that, I have no other questions. I
4 pass the witness.

5 CHAIRMAN FESMIRE: Mr. Padilla, cross-examination?

6 CROSS-EXAMINATION

7 BY MR. PADILLA:

8 Q. Mr. Sanchez, let me ask you first about the
9 Shearn wells. Those are all federal wells; is that right?

10 A. Yes, sir.

11 Q. They're on a federal lease?

12 A. Yes, sir.

13 Q. What jurisdiction does the OCD have with respect
14 to wells on federal leases?

15 A. We have certain -- it depends on the type of
16 well. Injection wells, they are under the underground
17 injection control program through the EPA, which the OCD has
18 total jurisdiction over. On other wells that are federal
19 wells, the OCD still has the enforcement action and the
20 compliance issues that we would have with the State wells in
21 terms of cleanup and production.

22 Q. When you say "cleanup and production" -- well,
23 let me ask this first -- are any of the Shearn wells injection
24 wells?

25 A. No.

1 Q. How about the Muncy Federal? Is that an
2 injection well?

3 A. Not that I'm aware of.

4 Q. Does the OCD approve the plugging procedure for
5 plugging these wells, the federal wells, the five wells that
6 you're talking about and the wells that are listed in -- let me
7 direct your attention to -- I thought I put a tab in that, but
8 I didn't. I'm sorry.

9 Okay. On Exhibit No. 36 -- let me direct your
10 attention to that.

11 A. Okay.

12 Q. That's a letter addressed to you, right?

13 A. Yes, sir.

14 Q. By Mr. Jeffries?

15 A. Yes, sir.

16 Q. And it's dated December 19, 2007. Were you in
17 communication with the BLM or the federal agency dealing with
18 any compliance issues with regard to these federal wells?

19 A. The district office has -- over the last two
20 years, the OCD has been working in a collaborative effort with
21 the BLM on a number of issues regarding compliance, going from
22 everything from pit issues, cleanup on well sites, closing
23 wells, plugging wells.

24 When the BLM gets plugging procedures in, they will
25 share those with the local OCD office. And if we care to be

1 there for a plugging, or whatever other compliance issue that
2 comes up, we will be on location for those. But the OCD and
3 the BLM have been working together now for at least two years,
4 if not longer, not only with OCD people going onto BLM
5 properties and performing inspections, but BLM employees
6 looking at state leases and private leases during normal
7 business out and about in the field and stuff. They relay
8 information back and forth between the two agencies to pretty
9 much increase the enforcement and compliance that is going on
10 out in the oil fields right now.

11 Q. Do you have any agreement with the BLM over
12 shared responsibility, regulatory responsibility, over federal
13 wells?

14 A. I don't believe we have a mutual agreement or
15 mutual understanding on that at this time. It is, at this
16 point, an informal agreement that we have with them and that
17 we've been working with them on.

18 Q. Do you have anything in writing concerning these
19 five wells with the BLM?

20 A. No, I don't.

21 Q. Nothing saying, "Please get C&D Management
22 Company to plug these wells"?

23 A. No. But what we do on an informal basis is
24 information -- when wells are going to be coming up for
25 plugging, the BLM has started a program where they are no

1 longer issuing long-term TA status deadlines. They are giving
2 operators on certain wells that have been out of operation for
3 some time a shorter time frame -- six months, sometimes a
4 year -- depending on the individual circumstances. And those
5 are relayed to our district offices so that when we come upon
6 them, we are aware that they have specific dates to have those
7 wells either plugged or put back into production.

8 Q. On federal wells, what agency gives temporary
9 abandonment status?

10 A. The BLM.

11 Q. Now, you mentioned in your testimony something
12 about plugging procedures. Who issues that on federal wells?

13 A. That would be the BLM.

14 Q. Let me direct your attention to Exhibit No. 25,
15 which is a letter dated March 16, 2007.

16 A. Okay.

17 Q. Your testimony included testimony concerning the
18 mistake that was made on that letter to Ameristate. Do you
19 know who Ameristate was?

20 A. I remember the name, but I just don't -- it's
21 been a long time, so right off the top of my head I couldn't
22 answer that.

23 Q. When did you first notice this mistake?

24 A. At the time any of these letters that went out,
25 Cheryl O'Connor, the attorney at the time, would forward them

1 to me just before they went out just to basically edit and
2 review.

3 Q. Did Ms. O'Connor also craft the Administrative
4 Compliance Order?

5 A. Yes, she did.

6 Q. Were you present when that Administrative
7 Compliance Order, which is Exhibit 26, was negotiated?

8 A. Yes, I was.

9 Q. With whom did you negotiate?

10 A. With Chris Jeffries, and it was over the phone.

11 Q. Let me direct your attention to Exhibit 26 on
12 page 3 of 8, paragraph 13.

13 A. Okay.

14 Q. The very bottom line of that page states,
15 "Jeffries" -- starting at the second line at the bottom --
16 "Jeffries is representing C&D at this time and is taking
17 personal responsibility for those violations."

18 Can you explain to the Commission why "personal
19 responsibility" was written in that fashion in this sentence?

20 A. That part of the agreement was written by
21 Ms. O'Connor and I didn't question the language in that part of
22 it.

23 Q. Well, you're the compliance officer, right?

24 A. Yes, sir. That's right.

25 Q. You're the director of compliance?

1 A. Yes.

2 Q. Wouldn't that tell you that Mr. Jeffries was
3 taking personal responsibility for the violations that are
4 under consideration in the administrative order?

5 A. No. I read it as Mr. Jeffries accepting
6 responsibility as C&D Management to the issues that were
7 discussed in the administrative conference. And they were put
8 into at the Agreed Compliance Order. If there was an issue
9 with that, Mr. Jeffries, or anyone within C&D Management, had
10 the opportunity to review that agreement before they signed it.
11 And if they found it to be unacceptable, we would have worked
12 that out. And that wasn't the case.

13 Mr. Jeffries reviewed the document and had it for
14 several days. Anyone else involved with C&D Management could
15 have reviewed that document. And, instead, we did get it
16 signed and returned to us.

17 Q. The first part of that paragraph, subparagraph A,
18 says that Mr. Kizer purchased C&D from Chris and Darla
19 Jeffries, right?

20 A. Yes.

21 Q. And it also goes on to say that, with regard to
22 the last sentence, it says that "certain of the violations
23 predate the sale of the company."

24 A. Yes.

25 Q. And then it goes on to state that that is the

1 reason why Jeffries is taking personal responsibility, right?

2 A. I don't see where you're reading that.

3 Q. Well, it's a --

4 A. Like I said, you know, certain violations predate
5 the sale of the company and, therefore, Jeffries is
6 representing C&D at this time and is taking personal
7 responsibility for those violations.

8 Like I said, when we had the administrative
9 conference, he was representing C&D Operating. We weren't
10 talking to him as Mr. Chris Jeffries. We were talking to him
11 as C&D Management. And as C&D Management, he took
12 responsibility for the violations found and the responsibility
13 to bring those violations into compliance.

14 Q. Now, you have collected certain fines under this
15 administrative order, right?

16 A. Yes, sir.

17 Q. And from whom did you collect?

18 A. They came from C&D Management.

19 Q. Were they sent through Mr. Jeffries?

20 A. I believe he is the one who signed off on the
21 check -- that's subject to check.

22 Q. And that was out of the Kentucky, right?

23 A. Yes, sir.

24 Q. Now, in September when you sent this -- this
25 letter was sent to you on Exhibit 36, from Mr. Jeffries to you,

1 did you extend the deadline that was previously imposed for
2 plugging the wells listed on the letter?

3 A. No, I did not.

4 Q. And what happened after that?

5 A. At that time, I believe we went ahead and decided
6 that we were going to go ahead and take it to hearing. The
7 reason that I did not extend the request was at the original
8 admin conference, he had already told us that within two weeks
9 he was going to have -- he already had a plugger available.
10 And we told him up front, you know, if for some reason that
11 changes, you need to let us know well before the due date on
12 that so we can work with you on that. We didn't hear anything
13 from Mr. Jeffries or C&D Management at all during that time
14 until I got the letter which I received on the day that the
15 plugging was due.

16 Q. When was the first time you actually dealt with
17 Tom Kizer?

18 A. I'm thinking it was February or March of 2007.
19 I'd to have check that out, but I believe me and Ms. O'Connor
20 had a discussion with Mr. Kizer.

21 Q. Do you remember the nature of discussion?

22 A. Not really. Just that he was -- he had purchased
23 part of C&D Management, and he wanted to know what was going on
24 with the compliance issues.

25 Q. Do you remember a conversation or some

1 conversation regarding Mr. Kizer's assumption of responsibility
2 for violations?

3 A. No. Not off the top of my head.

4 Q. Do you remember Ms. O'Connor telling him that he
5 should not take responsibility for violations at that point?

6 A. I believe what she told him during that meeting
7 was that unless he was the actual operator of record, that we
8 would still be dealing with the C&D Management and their
9 corporate representatives.

10 Q. The representatives from Kentucky, right?

11 A. That's correct.

12 Q. And that would be Chris and Darla Jeffries?

13 A. Yes, sir.

14 Q. Let me ask you, did you testify at the
15 January 2008 hearing?

16 A. Yes, sir.

17 Q. Did you testify that Mr. Kizer had been given
18 notice of that hearing?

19 A. I believe I did. And -- well, about notice of
20 that hearing?

21 Q. Yes.

22 A. Oh, that. No, I don't remember. I don't
23 remember if he was given notice on that one or not. All I know
24 is that we had met with him prior to that. But I really don't
25 remember if he was noticed for that hearing or not.

1 Like I said, the current operator of record at the
2 time was still C&D Management under the names of Carla and
3 Chris Jeffries -- Darla and Chris Jeffries.

4 Q. In Kentucky?

5 A. In Kentucky.

6 CHAIRMAN FESMIRE: Can I clarify something? When you
7 say "in Kentucky," you're not limiting their authority. They
8 didn't limit their authority. They were just located in
9 Kentucky, right?

10 THE WITNESS: That's right, sir. They were located
11 in Kentucky. That was the address of record that we had for
12 the company.

13 Q. (By Mr. Padilla): Did the OCD, to your
14 knowledge, have an Albuquerque address for C&D Management?

15 A. Not for C&D Management. We had it for Freedom
16 Ventures. And that was the address that we used up until the
17 letters of violation went out. At that time, I'm not really
18 sure how the Albuquerque address was put in other than by
19 C&D Management. The OCD cannot change an address or include an
20 address. It has to come directly from the operator. So I
21 assumed whatever address came up as an Albuquerque address was
22 submitted by C&D Management.

23 Q. What do the bonds for these state wells -- what
24 address is shown on those?

25 A. That I'm not sure.

1 Q. At the January hearing, you were trying to --
2 part of the application was to take the bonds, right?

3 A. If the OCD had to go in and plug the wells, yes.

4 Q. Your Exhibit 27 and Exhibit 28, seems like --
5 well, let me ask this: Do those letters come out of your
6 Artesia office?

7 A. Yes.

8 Q. Why would the Artesia office have had an
9 Albuquerque address?

10 A. Like I said before, that's the one issue I can't
11 say. Because when they send these things out, they send them
12 out to the address of record. Sometimes there's two different
13 addresses of record: one of them where specific filings will
14 be sent to; others are somehow integrated into the RBDMS system
15 where the letters are generated. And the only way those can be
16 put in there is by the operator. The OCD does not have the
17 authority to change addresses. It has to come from the
18 operator. So the operator had to have given that address as
19 the address of record. So how it actually got in there, I do
20 not know. But I know it did have to come from the company.

21 Q. But it's an address of record, right?

22 A. That's correct.

23 Q. And going to your Exhibit 1, which is the notice
24 of hearing for January, that address was not given, right, for
25 use?

1 MR. SWAZO: Mr. Chair, I'm going to voice an
2 objection. I don't understand the relevance of this. If it's
3 purely a notice issue as far as due process notice, that is
4 being heard by this whole de novo hearing.

5 CHAIRMAN FESMIRE: Mr. Swazo, I think you can bring
6 that issue up on redirect. I'll go ahead and overrule the
7 objection.

8 THE WITNESS: I wasn't sure who the notice went out
9 to. I don't review the notices.

10 Q. (By Mr. Padilla): But you would agree with me
11 that is the address of record, right?

12 A. Yes. And like I said before, there could be more
13 than one address of record, and we run into that issue a number
14 of times.

15 Q. When you have more than one address of record,
16 and you have a hearing before the Division, do you normally
17 send paperwork on both addresses?

18 A. I don't do that part of the files, so I don't
19 know. That's done by the attorneys.

20 Q. You don't know?

21 A. No, sir.

22 Q. Let me direct your attention to Exhibit 14, which
23 is a well inspection history for the Saunders well.

24 A. Okay.

25 Q. You testified about the notation for 9/28/2006.

1 And it states, "TA status and date 12/27/09."

2 A. Yes, sir.

3 Q. Now, the OCD doesn't have anything to do with
4 that, does it?

5 A. Not if it was a federal well. But we do receive
6 the paperwork from the BLM on all these wells, and if there was
7 a date on there, we would have probably entered it into our own
8 system to keep track of the wells.

9 Q. Do you know whether or not this particular well
10 is authorized as a temporarily abandoned well until 2009 as
11 stated in that notation?

12 A. According to our well files, there is no
13 paperwork that was ever submitted to the BLM or to the OCD that
14 shows that that well is on temporary abandonment status.

15 Q. Did you check the federal records?

16 A. No. I did not check the federal records.

17 MR. PADILLA: I don't have any further questions,
18 Mr. Chairman.

19 CHAIRMAN FESMIRE: Why don't we go ahead and take a
20 break for ten minutes. We will reconvene at 20 to 11 at which
21 point, Mr. Swazo, you can begin your redirect.

22 MR. SWAZO: Thank you.

23 [Recess taken from 10:30 a.m. to 10:48 a.m., and
24 testimony continued as follows:]

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

1 is the continuation of Case No. 14055. Again, let the record
2 reflect that all three commissioners are present.

3 And I believe, Mr. Swazo, you were about to begin
4 your redirect examination, if you have one?

5 MR. SWAZO: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. SWAZO:

8 Q. Mr. Sanchez, Mr. Padilla questioned you about OCD
9 jurisdiction over the federal wells. Do the OCD rules also
10 apply to federal wells?

11 A. Yes, they do. Some of them do.

12 Q. What about with regards to Rule 201?

13 A. Yeah, they do.

14 Q. So a well operator who operates a federal well
15 would have no immunity from having an inactive well on federal
16 land?

17 MR. PADILLA: Calls for a legal conclusion.

18 Objection.

19 CHAIRMAN FESMIRE: I'm going to overrule that. He's
20 the enforcement and compliance manager. It's probably within
21 his purview.

22 THE WITNESS: No, he would not.

23 Q. (By Mr. Swazo): Could you please describe the
24 procedures with regard to the plugging of inactive wells on
25 federal lands? Describe the procedures with regard to OCD.

1 A. I don't believe I have all the details on exactly
2 how the process goes.

3 Q. Well, I'm sorry. Let me rephrase my question
4 because I asked it badly, and I really wanted to ask a
5 different -- I want to ask it in a different way.

6 Mr. Padilla talked about the BLM and TA status for
7 federal wells. Could you please describe the procedure as far
8 as how the well could be TA'd and in compliance with OCD
9 Rule 201?

10 A. Yes. The operator, again, files the proper
11 paperwork with the BLM as an intent to TA. The BLM, as the OCD
12 does, will send out an inspector. They will run a mechanical
13 integrity test on that well, and they'll go ahead and approve
14 it at that point.

15 Once again, the additional paperwork is sent in under
16 a notice of sundry, and that is the paperwork that will have
17 the actual approval and the time frame for the TA.

18 Q. At what point would a well meet OCD standards
19 with regard to TA status?

20 A. Whether it is on approved OCD status or approved
21 BLM status.

22 Q. And that's after an MIT has been done?

23 A. After an MIT has been performed, and the
24 paperwork has been submitted, and final approval has been
25 issued by either one of the agencies.

1 Q. Now, with regard to -- you had mentioned a
2 telephone conference. Did you in fact -- did OCD have a
3 conference, an administrative conference, with C&D Management?

4 A. Yes, we did.

5 Q. And who was present at the conference?

6 A. From what I remember, it was myself,
7 Cheryl O'Connor, and I believe we had Tim Gum and Mike Bratcher
8 on another line, because I'm almost positive it was held up
9 here, and they participated by phone.

10 Q. And what about C&D Management?

11 A. It was Mr. Jeffries.

12 Q. Did he physically appear or telephonically
13 appear?

14 A. Telephonically.

15 Q. Now, please look at Exhibit No. 26.

16 A. Okay.

17 Q. Page 3. Mr. Padilla questioned you about this
18 paragraph, paragraph 13. And was this information obtained
19 from Mr. Jeffries at the administrative conference?

20 A. Yes, it was.

21 Q. And Mr. Jeffries was actually making that
22 representation, that he was taking responsibility.

23 A. He made that representation for the company.

24 Q. That was not a determination that OCD made?

25 A. That's correct.

1 Q. Essentially what this is, is his explanation to
2 the violations?

3 A. Yes.

4 Q. Mr. Padilla questioned you about payments
5 received from C&D Management. Do you process those payments?

6 A. No. I don't even see them in most cases.

7 Q. So you don't know who sent them?

8 A. No. They wouldn't go to me.

9 Q. And with regard to the paperwork, who's
10 responsible for drafting the application and mailing it out?

11 A. The attorney.

12 Q. And the attorney would have determined which
13 addresses to send the documents to?

14 A. Yes.

15 MR. SWAZO: I don't have any other questions.

16 CHAIRMAN FESMIRE: Mr. Padilla, do you have anything
17 on recross?

18 MR. PADILLA: Yes, I do.

19 RECCROSS-EXAMINATION

20 BY MR. PADILLA:

21 Q. Mr. Sanchez, on the Administrative Compliance
22 Order, which is Exhibit No. 26, Mr. Swazo asked you questions
23 concerning paragraph 13. Does that state in any way that
24 Mr. Jeffries is taking personal responsibility on behalf of C&D
25 Management?

1 A. I believe it speaks for itself. Jeffries is
2 representing C&D at this time and is taking personal
3 responsibility for those violations.

4 Q. And it doesn't say on behalf of C&D Management,
5 right?

6 A. He is representing C&D Management.

7 Q. But he's not taking personal responsibility on
8 behalf of C&D Management?

9 A. I believe that would be a legal interpretation I
10 wouldn't be comfortable making.

11 Q. You said it speaks for itself.

12 A. I think it does. But you're trying to make it
13 sound like more of a legal argument, which I'd rather not get
14 into.

15 Q. It doesn't say in there.

16 A. All I see is that Jeffries is representing C&D
17 and is taking responsibility. Other operators that I have
18 worked with on Agreed Compliance Orders --

19 Q. I'm not asking you about other operators.

20 A. Well, I'm trying to clarify this statement by
21 doing so, if it's all right.

22 Q. I'm just asking what this paragraph says.

23 A. Okay, then. In my opinion, it says he is acting
24 as a C&D representative.

25 Q. And that's in your opinion?

1 A. In my opinion.

2 Q. Right.

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

4 CHAIRMAN FESMIRE: Commissioner Bailey?

5 EXAMINATION

6 BY COMMISSIONER BAILEY:

7 Q. You presented Exhibits 19 and -- well, 21 was not
8 presented even though it has the production reports for the
9 company.

10 A. Yes, ma'am.

11 Q. But you did say that there had been filings as of
12 December '07 for certain wells.

13 A. Yes, ma'am.

14 Q. Can we assume that the totals in Exhibit 21 under
15 2007 would be higher than zero for any of the wells that are
16 still in production?

17 A. I think that that would be a good assumption.
18 This particular exhibit was for the other witness, so I didn't
19 review it. And I wasn't questioned about it through my
20 attorney. So I really didn't have a chance to take a look at
21 that. What I was looking at was the actual active well list
22 for the company which shows the last production or injection
23 dates.

24 Q. Okay. But we don't have any handle at all in
25 this hearing on any production since those previous dates since

1 2006?

2 A. Not that I'm aware of. Ms. Prouty might be able
3 to clarify that question for you, though.

4 Q. What are the significant differences between the
5 BLM and the OCD requirements for temporary abandonment? Do you
6 know that?

7 A. From just what I've seen working with both,
8 they're pretty similar from my observations, but I haven't
9 worked directly with a BLM inspector on how they've gone
10 through it. But, you know, I go through the paperwork as it
11 comes in. Especially when we're looking at cases like these.
12 But it appears to be similar to the OCD's method of TA'ing a
13 well.

14 Q. So in your opinion, there's really no conflict
15 between the two agency requirements, and so what OCD enforces
16 is just as acceptable as what BLM enforces on federal lands?

17 A. Yes, ma'am.

18 Q. We've looked a lot at Exhibit 26, the compliance
19 order. Did you at any time ever receive a letter from
20 Mr. Kizer refuting any of the recitals that are shown in this
21 compliance order?

22 A. No, we did not.

23 Q. And so the statement in the famous paragraph 13
24 on page 3 that Kizer took over management in September of 2005
25 was never refuted or questioned by Mr. Kizer?

1 A. No, it was not.

2 COMMISSIONER BAILEY: That's all the questions I
3 have.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 EXAMINATION

6 BY COMMISSIONER OLSON:

7 Q. Mr. Sanchez, I guess we're coming back to those
8 production reports for 2007/2008 showing zero on
9 Exhibit No. 21. Has there ever been any indication of why they
10 failed to file reports?

11 A. Just here in our discussions at the time this
12 case got going, Mr. Jeffries was unaware of New Mexico
13 regulations. He assumed that the Kentucky regulations were
14 sufficient to address any of the issues we had. And they
15 didn't have reporting requirements in Kentucky.

16 COMMISSIONER BAILEY: I'd like to clarify that point
17 because that seems so peculiar to me that I went online and
18 found where Kentucky does require annual reporting of monthly
19 production as stated in KO -- 805 KOR1: 180 Production
20 Reporting, seen in the Kentucky Legislative Research Committee.

21 CHAIRMAN FESMIRE: That's not surprising.

22 COMMISSIONER BAILEY: I'd like to put that one to
23 rest right now. Kentucky does have reporting requirements.

24 THE WITNESS: And Mr. Jeffries' response to us was
25 that they did not, and he was going by Kentucky rules and

1 regulations.

2 Q. (By Commissioner Olson): But I guess, then, he
3 signed an agreement to provide records back in 2007; is that
4 correct? And at the same time why did he not file? Did he
5 give any indication of why he did not file anything after he
6 agreed to file reports?

7 A. No. He had no reason, and that was why we went
8 ahead and brought the rest of the case forward and had the
9 actual hearing in January of '08. We would get no response to
10 the deadlines that we had agreed to, no response to the
11 plugging issues other than the one letter requesting an
12 extension at the end of the time frame. It was just a lack of
13 response from the company.

14 Q. And so you're saying, though, that you understand
15 now that Mr. Kizer had filed for P&A in those wells with the
16 BLM back in -- I think you said May?

17 A. In May, yes.

18 Q. And why haven't they been P&A'd to date now?

19 A. I don't think the intents have been approved yet.
20 That might be a question that Mr. Kizer can clarify.

21 Q. Okay.

22 A. But I don't think they've been approved at this
23 point.

24 COMMISSIONER OLSON: I think that's all I have at the
25 moment.

EXAMINATION

1
2 BY CHAIRMAN FESMIRE:

3 Q. Mr. Sanchez, let's look at Exhibit 14 for just a
4 minute. It would seem to indicate, at least with respect to
5 this one well, that there is some sort of document -- either be
6 it federal or OCD -- approving the TA status. And you said
7 that you had checked the federal record of the well file on
8 this well, and there was no TA status submitted to the federal
9 agency, either.

10 A. I had checked the OCD well file which contains
11 any of the BLM documents that are submitted to the OCD. There
12 was one that showed a TA status with a deadline of 2005 in
13 there from the BLM. But after that there were no other forms
14 that were submitted for TA'ing the well.

15 Q. Okay. So it would not have been "officially" --
16 for lack of a better word -- TA'd by the OCD without that
17 document; is that correct?

18 A. That's correct.

19 Q. Who's responsible for forwarding that document?
20 Does the BLM forward it to us or does the operator file it?

21 A. The BLM usually forwards it to us. And they've
22 always been pretty good at getting them to us in a timely
23 manner.

24 Q. And Exhibit 12 on the Muncy Federal No. 001, in
25 January 2008, it indicates the well in TA status also, and you

1 found no documentation to support that?

2 A. None.

3 Q. On Exhibit 25 -- Exhibit 25 was a cover letter
4 for the Agreed Compliance Order, right?

5 A. Yes.

6 Q. And the Ameristate is a typo?

7 A. That's correct.

8 Q. And you talked to Mr. Jeffries after that, and he
9 understood that you were talking about C&D and not Ameristate?

10 A. Yes.

11 Q. So while this may have been a typo, it didn't
12 appear to signify a defect in the notice to C&D that they had a
13 problem?

14 A. No, it did not.

15 Q. To the best of your knowledge -- and, again, this
16 may be a question I need to ask Mr. Kizer -- to the best of
17 your knowledge, is Mr. Jeffries still with C&D?

18 A. That I do not know.

19 Q. I don't think we need to talk about Exhibit 26
20 anymore, do you?

21 A. I hope not.

22 Q. What is the federal time period for a TA? I
23 think you touched on that just quickly.

24 A. Currently, it's on a case-by-case basis. But
25 from our discussions with the BLM and this collaborative

1 effort, what they're trying to do is avoid having numerous
2 wells, even on BLM land, continue on TA status, just as a way
3 of holding on to the well or not having to deal with plugging
4 the well. And what we've seen over this past year is just
5 about every request for a TA status has been given no more than
6 a year. Most of them have been six months. And it's basically
7 saying, produce it or plug it by this time frame.

8 Q. And what is the OCD time period for temporary
9 abandoned status?

10 A. It's -- in the past, it's been five years.
11 Recently we've been going fewer years on those as well and it's
12 a case-by-case. It just really depends on the situation. But
13 we're cutting down on the time frame as well.

14 CHAIRMAN FESMIRE: I have no more questions.
15 Mr. Swazo, were there some of those exhibits that you want
16 to -- oh, I'm sorry.

17 COMMISSIONER OLSON: Just something that I was
18 looking at. Getting back to Exhibit 26, I notice on page 3, I
19 guess, in number 12, that the OCD had looked at a number of
20 violations other than things that you've mentioned here today,
21 such as violation of our pit rules for discharging into or
22 using -- the use of an unlined drilling pit and discharging
23 into a pit without a permit.

24 But at this point, you're just seeking penalties for
25 the reporting requirements and the P&A requirements and not for

1 other violations that have been noted?

2 THE WITNESS: Yes.

3 COMMISSIONER OLSON: Okay. That's all I have.

4 CHAIRMAN FESMIRE: Mr. Swazo, did you want to admit
5 some of these exhibits?

6 MR. SWAZO: Yes. I wanted to admit all of the
7 exhibits with the exception of Exhibits 38, 29 and 32.

8 CHAIRMAN FESMIRE: Mr. Padilla, you want to take a
9 second to see if you have any objection to those?

10 MR. PADILLA: Exhibits 38, 29 and 32?

11 MR. SWAZO: Yes.

12 CHAIRMAN FESMIRE: Those are the three that he's not
13 admitting at this time.

14 MR. PADILLA: Are you going to go through them
15 through another witness?

16 MR. SWAZO: Possibly.

17 CHAIRMAN FESMIRE: I think you're options are to
18 object, not demand.

19 MR. PADILLA: Oh, I'm just curious.

20 MR. SWAZO: And actually, 21 also. The reason being
21 is because I'm going to go ahead and introduce this exhibit
22 through Ms. Prouty.

23 CHAIRMAN FESMIRE: Okay. So, Mr. Padilla, if I
24 understand correctly, there's no objection to Exhibits 1
25 through 20, 22 through 28 --

1 MR. PADILLA: Mr. Chairman, I don't have any
2 objection to any of these things, but I do think, for example,
3 that he had Mr. Sanchez testify concerning, I believe, some of
4 these reports that were authored by Darla Jeffries, and I would
5 like to have them included in the record.

6 CHAIRMAN FESMIRE: You have that option on your case.

7 MR. SWAZO: I actually have no objection. If
8 Mr. Padilla would like to have those exhibits entered, I have
9 no objection and move for the admission of those exhibits as
10 well.

11 CHAIRMAN FESMIRE: You're not making this very easy.
12 Which reports by Darla Jeffries are you talking about?

13 MR. PADILLA: Well, specifically, I think,
14 Exhibit 32.

15 CHAIRMAN FESMIRE: What we can go ahead and do is
16 admit all Exhibits 1 through 40-E -- was that it?

17 MR. SWAZO: Yes.

18 MR. PADILLA: I have no objection, then.

19 CHAIRMAN FESMIRE: Okay. We'll go ahead and admit
20 all of the Oil Conservation Division's Exhibits 1 through 40-E
21 at this time.

22 [Applicant's Exhibits 1 through 40-E admitted into
23 evidence.]

24 CHAIRMAN FESMIRE: Mr. Swazo, do you have anything
25 with respect to the commissioner's questions?

1 MR. SWAZO: No, I don't.

2 CHAIRMAN FESMIRE: Mr. Padilla, do you have any?

3 MR. PADILLA: No.

4 CHAIRMAN FESMIRE: At this time, we will excuse this
5 witness. Mr. Swazo, you can call your next witness.

6 MR. SWAZO: I would like to call Jane Prouty to the
7 stand.

8 JANE PROUTY

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

11 DIRECT EXAMINATION

12 BY MR. SWAZO:

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

14 A. Jane Prouty.

15 Q. With whom are you employed?

16 A. The Oil Conservation Division.

17 Q. And what is your title?

18 CHAIRMAN FESMIRE: Hang on just a second.

19 Ms. Prouty, you've been previously sworn?

20 THE WITNESS: Yes, I have.

21 CHAIRMAN FESMIRE: Thank you.

22 Q. (By Mr. Swazo): And what is your title?

23 A. I'm the bureau chief of the automation and
24 records bureau.

25 Q. And what do your duties entail?

1 A. They include -- I'm responsible for processing of
2 well production and disposition and the electronic systems that
3 support our permits and the well production. I do our
4 statistics and data gathering. I'm in charge of electronic
5 delivery such as the inactive well report, the financial
6 assurance report, the -- most items via the web. I work with
7 the budget, and I think that include most of it.

8 Q. Well, as part of your duties, were you involved
9 with the compliance actions against C&D Management related to
10 its reporting?

11 A. Yes.

12 Q. Before we talk about that, could you please
13 describe the reporting process and how it works?

14 A. Okay. Operators report their production on the
15 C-115, and they can do that in any number of ways. It's
16 unlimited if they have -- if they choose to or have a software
17 package, they can use that package and the output of that --
18 whatever they choose to use -- is read by our system.

19 Most operators choose to use our Excel spreadsheet,
20 which is available on the web. And it looks exactly like a
21 C-115. So they use the Excel spreadsheet to put in the wells
22 for the month, the production, the disposition. And then they
23 get a user ID for the web, and that data from the spreadsheet
24 is attached by a little button and then validated whether all
25 the wells -- it goes through about probably 40 validations:

1 whether those wells are operated by that operator; whether the
2 well completions have been approved; whether that operator is
3 the right one; whether they missed any wells that should have
4 been reported; whether production balances to disposition --
5 that kind of thing.

6 So they press a button to validate it and if it
7 passes all the edits, then they immediately press a button to
8 submit the C-115, and then we approve it.

9 Q. So reporting is done online?

10 A. Yes, it is.

11 Q. What if an operator has an economic or other
12 hardship and needs to file or is unable to file online due to
13 that hardship, is there -- does the OCD provide any
14 alternatives?

15 A. Yes. In Rule 1115, if they have an economic or
16 other hardship, they just apply to the Division to file on
17 paper.

18 Q. How common is that?

19 A. We have a maximum of about ten who have ever
20 asked for it since that rule went into effect in 2005, and
21 maybe seven of them are still filing on paper.

22 Q. And C&D did not request that in this case?

23 A. No.

24 Q. When did online reporting start?

25 A. In November of 2004.

1 Q. Is there any help for operators with the online
2 reporting process?

3 A. Yes. The tools to do the filing are on our
4 website, and they can find them under a frequently asked
5 question or under the C-115 instructions in our forms areas.
6 So they can download the Excel spreadsheet; they download an
7 add-in to Excel that generates the file. There are
8 instructions on the C-115; for example, how you code water
9 versus how you code oil, that sort of the thing.

10 And then there are instructions on how to get a user
11 ID, and there are also instructions on how to file on the web.
12 We have flowcharts that we publish. So there's a lot of
13 material available on the web. Also, there are people who help
14 if anyone calls in. And that help has been given to C&D,
15 mainly by David Bradshaw when he was here.

16 Q. Now, with regard to the drafting of the C-115
17 reports, does an operator have to submit a C-115 report
18 immediately after it's drafted, or can an operator submit it at
19 some later date?

20 A. They're separate processes, so they can fill out
21 the C-115 and then at a later time sign onto the web and
22 submit -- validate and submit the report.

23 Q. Can a report that has been submitted and approved
24 be subsequently amended?

25 A. Yes. There's no limit to the time frame or the

1 number of amendments.

2 Q. Would you please turn to Exhibit No. 23 and
3 identify that for the record?

4 A. This is Rule 1115.

5 Q. And what does this rule generally require?

6 A. It says that the operator shall file a monthly
7 report for any well completion where the C-104 has been
8 approved. And that's the authorization to transport, and for
9 all injection, they should file a C-115.

10 Then it goes -- paragraph B talks about the time
11 frame to file and that's within, basically, 1 1/2 months after
12 the production month, and the third is that they are required
13 to file electronically except for the hardship requests that I
14 mentioned. Well, that's in paragraph B, the hardship request.
15 The third one is if the operator doesn't file, what actions
16 they might take and we might take.

17 Q. So this rule states that an operator has one
18 month and 15 days to file its report following a month of
19 production. So let's say if an operator was filing its
20 production report for March, when would that report be due?

21 A. May 15th, unless May 15 was a Saturday or a
22 Sunday or a holiday, and then it would be the business day
23 after that.

24 Q. And that's provided for in the rule?

25 A. Yes.

1 Q. Then is there a reason why an operator has one
2 month and 15 days do file its reports?

3 A. Yes. It's assumed to take a while to get the
4 information from the transporters. And this gives them a
5 chance to get that straightened out so they have all the
6 information they need to be able to fill out what happened to
7 the production and what was produced.

8 Q. So it takes into account the time that the
9 operator needs to acquire the information and enter it and file
10 it?

11 A. Yes.

12 Q. Why is it important to file reports?

13 A. One, the interest holders are dependent. That's
14 their only way of knowing what was produced out of the area
15 that they hold, that they own. The other is taxes and
16 royalties have to be paid on those amounts, and they have their
17 own deadlines, so that's important.

18 And then also, as you can tell from the news lately,
19 a lot of public entities spend a lot of time -- and private
20 entities -- assessing future revenues based on how much is
21 being produced, so they have to be on time and current -- what
22 volumes are coming in. Also, people want to know what
23 production is coming from what zones for further exploration,
24 so we need an accurate record of that. There are probably
25 other reasons, but those are the ones that come to mind.

1 Q. Is it also an important aspect of correlative
2 rights?

3 A. Yes. And I'm not even -- I've heard the term
4 correlative rights, but I'm not that familiar with it. If you
5 mean whether people got paid properly for what was produced,
6 that was what I was intending to refer to.

7 Q. What happens if no reports are filed?

8 A. If no reports are filed?

9 Q. I'm sorry. If no reports are filed.

10 A. If they're not filed, then the people with the
11 rights don't know if they're paid the proper amount, if they're
12 paid at all. They have nothing to compare against. The taxes
13 and royalties, although they are filed separately with those
14 divisions collecting taxes and royalties, they use our data to
15 compare against the production to make sure than an adequate
16 amount was paid. So they can't ascertain -- either they don't
17 know that they didn't get tax and royalty payments because they
18 have nothing to compare against. And then if they did get tax
19 and royalty payments, they don't know if they're the correct
20 amount.

21 Then the people doing projections for the State don't
22 have the information. And people trying to determine if this
23 or that zone is an active zone don't have anything to go on
24 from that.

25 Q. What about the impact to OCD?

1 A. We don't have, and we don't need, a fully
2 automated system to track late filings because most people
3 honor the deadline. So it's more labor-intensive than you
4 would think to determine -- to generate letters and contacts to
5 the people who didn't file. So we -- well, I -- query the data
6 for who was supposed to file, who did file, who didn't file,
7 generate letters, send them out, file them in a system. I put
8 in the letters that they need to contact me and let me know why
9 they didn't file. And then I need to take all those calls.

10 Usually people accidentally file a different month
11 and put the wrong month on there. So usually it's a quick
12 thing to get settled out. So it takes a long time to create --
13 determine who should get letters, make sure they actually had
14 wells to report that month and they didn't transfer their
15 wells, send the letters, and talk with each of the people to
16 solve whatever their problem was getting the items filed, then
17 re-query later whether everyone called me and everyone filed
18 and file all that information. So it's labor-intensive and
19 costly.

20 Q. And what happens if reports aren't filed timely,
21 if reports are filed late?

22 A. Everything -- it's almost the same as not having
23 the information. Because there's never -- all the consequences
24 of them not filing, period, happen. Wrong projections are
25 made, wrong assessments are made, interest owners don't believe

1 they're due anything because they think we're collecting the
2 data, as we should, on time. So they believe that nothing was
3 produced. And that's what's published on the web, that nothing
4 was produced when truly something was produced.

5 So our data is published to the industry, and anyone
6 who wants to pick it up -- PI and everybody -- and every
7 month people expect all of the data to be there after 45 days.

8 Q. Now, turn to Exhibit 21. Would you please
9 identify that exhibit?

10 A. This is a summary balancing report.

11 Q. And what does it show?

12 A. It shows one line per month of production and
13 disposition reporting. For example, the month of January 2005,
14 there were 1,205 MCF of gas produced by C&D, and the same
15 amount was transported. There was no gas used on lease or
16 anything else. There could be other categories like gas lift
17 or whatever.

18 Then it moves onto oil, and it shows that the
19 beginning of the month balance was 211 barrels, 69 additional
20 barrels were produced, so nothing was transported that month.
21 And that means 69 is added to 211 and it comes to 280 for the
22 end-of-month balance. So it shows one representative line for
23 every month.

24 Q. This document states summary balance and report.
25 By "summary," I take it that it means that it summarizes or

1 it's all the of the production from C&D wells for a particular
2 year -- I'm sorry -- month?

3 A. Yes.

4 Q. And when was this report issued?

5 A. It's dated in two places. At the top, you can
6 see April 29, 2008.

7 Q. And have you had a chance to review C&D's current
8 summary balance and reports?

9 A. Yes.

10 Q. What does it show?

11 A. It shows additional months reported after April.
12 Here, we go. I ran an updated report on July 26, and this one,
13 whereas the report on April 29 stopped at March 2006, the
14 current one goes to December of 2007.

15 Q. Have they filed -- has C&D Management filed any
16 reports for 2008?

17 A. No.

18 Q. But they did file a report for up to and
19 including December 2007?

20 A. Yes.

21 Q. Now, I wanted to talk about their reports and
22 when those reports were filed. Do you know when the report for
23 April 2006 was filed?

24 A. Yes. It was filed on June 6, 2008, at 9:44 p.m.

25 Q. And what about the report for May 2006?

1 A. June 7th, the following day.

2 Q. And what about the reports for June 2006 through
3 and including December 2007?

4 A. They were all filed June 17, 2008, a few seconds,
5 one after the other.

6 Q. Do operators have to file for wells that never
7 produced?

8 A. They do. It's always confusing. If we've
9 approved the C-104 for the well, from that moment on, they need
10 to report zero if it hasn't produced yet. If it was a dry hole
11 and never completed, then they don't need to report it on the
12 C-115. Or if they've plugged the zone, they don't need to
13 report it on the C-115.

14 Q. Now, could you please explain to the Commission
15 what steps your bureau was taking to get the operator to file
16 its reports?

17 A. I was first made aware that C&D wasn't filing due
18 to a call from Taxation and Revenue. The operator change took
19 place a very long time after C&D took operatorship, so I
20 wasn't -- they were a new operator to us. And when I learned
21 that they hadn't filed, I called Darla Jeffries and spoke with
22 her and asked her when the reports would be coming in. And
23 that was in May of 2006. I don't know if I said that. Excuse
24 me. Let me be sure. I had to write down the dates. March of
25 2006.

1 And I spoke to Darla, and she said that wasn't her
2 problem because there was a different operator of the wells.
3 And I told her that we weren't aware of that and no operator
4 change had taken place. So to us, she was the operator of the
5 wells, and she had to file the C-115s. And she agreed to do
6 that.

7 She didn't take any action. The first C-115 we ever
8 received from C&D was November 22, 2006, so in April and May
9 and June, David Bradshaw sent her e-mails and spoke with her in
10 2006 and worked with her. I don't know every action. Let's
11 see. He called her on May 3, 2006, and on July 17, 2006, and
12 he also sent e-mails.

13 David Bradshaw worked with Darla on -- let me get the
14 dates right -- to help her set up Debby McKelvey to file the
15 C-115s on April 11, 2006. Yeah, April 11th. And then the
16 first C-115 was actually filed in November. So we sent
17 contacts all during that time. I don't have copies of all of
18 those. I do have copies of all of the letters I've sent this
19 year. There's been six of them for delinquency 115s.

20 Q. Okay. I just want to clarify some dates. Do you
21 recall, generally, when you received that call from Tax and
22 Rev?

23 A. Actually, yes, because I still have the e-mail.
24 That was on March 3, 2006.

25 Q. And do you know when C&D Management became

1 operator of these wells?

2 A. Effective October 1st, 2004. Although they
3 didn't file th operator change -- the operator change they
4 submitted -- I don't know. I didn't look up what day they
5 submitted it. The form was generated April 13, 2005. So
6 between October 2004 and April 2005, the OCD wasn't aware of
7 this. But they did sign on in April 2005, because that's when
8 the operator change form was generated, and we approved it.
9 Usually there are a few days involved where everybody signs it.

10 We approved it on April 25, 2005. So it was the
11 following March that Taxation and Revenue said we don't have
12 reports back to October when they made this effective. And as
13 far as I know, it was that day that I called Darla and used the
14 phone number listed on the operator change form and spoke to
15 her, and that started the process of calling her.

16 Q. And so you testified that the first C-115 report
17 that they ever filed was in November 2006?

18 A. Yes.

19 Q. Are you involved in cancelling the authority of
20 operators to transport?

21 A. In the sense that the Rule 1115 says that if the
22 operator doesn't submit the C-115 within a certain time frame,
23 there -- authorization can be cancelled. It's in the letters
24 that I send. And if I don't receive responses, I let the
25 attorneys know that I didn't receive the response we requested

1 in the letter, and the attorneys initiate the letter.

2 Q. And did that happen with -- did OCD pursue that
3 matter?

4 A. Yes.

5 Q. And you've testified that you sent letters out
6 this year --

7 A. Yes.

8 Q. -- still trying to get compliance for reporting?

9 A. Yes.

10 Q. Do you know the exact dates?

11 A. Yes. This is looking like my desk. Okay.

12 February 11th I sent a letter for the reporting month of
13 October 2007. March 13th I sent a letter for the reporting
14 month of December 2007 and November 2007. And July I sent a
15 letter for February 2008 and March 2008.

16 Q. And what address was those letters sent to?

17 A. All of these were sent to 4801 Lang, Northeast,
18 Suite 110, Albuquerque, 87109.

19 Q. Is that C&D Management's operator-of-record
20 address?

21 A. Yes. This is the address. Our rules require the
22 operators to notify us of an address within 30 days of changing
23 an address, and they sign onto the web to do this or they
24 notify us in writing. And this is the address that is on the
25 web, or from this time frame.

1 Q. Actually, I misspoke. I meant address of record.
2 This is C&D Management's address of record?

3 A. Right.

4 Q. In this case -- now, I want to speak about the
5 operator administrator register form. What is an operator
6 administrator form?

7 A. It's the form that we use to -- we request that
8 an executive of the company sign a form authorizing someone
9 else or that person to use OCD online, or electronic reporting
10 system.

11 Q. Who was the operator administrator in this case?

12 A. There have been two. In order to do the operator
13 change transaction in early 2005, Darla Jeffries requested --
14 submitted an operator administrator form and signed it and
15 signed it as president and named herself as the operator
16 administrator. So she was the operator administrator at
17 that -- from late 2004 on.

18 And then I received a subsequent form from Thomas
19 Kizer, and he dated it March 21st, 2008, and he designated
20 himself as operator administrator.

21 Q. Now, there's a mailing address indicated on
22 Mr. Kizer's operator administrator form. Is that the same
23 address where you sent those letters?

24 A. Yes.

25 Q. And what address does he give for his e-mail

1 address?

2 A. oilfreedom@aol.com.

3 Q. So if I understand you correctly, Darla Jeffries
4 was the operator administrator until Mr. Kizer submitted the
5 subsequent operator administrator form?

6 A. Right.

7 Q. Can an operator administrator authorize other
8 individuals to submit forms on behalf of an operator?

9 A. Yes. That's the point. They can either use it
10 themselves or they can authorize other people in their company.

11 Q. And was that done in this case?

12 A. Yes. Darla Jeffries authorized Debbie McKelvey
13 to process for her. And that was -- she did that on
14 April 11, 2006.

15 Q. Was Ms. McKelvey C&D's -- I guess the title would
16 be "user"?

17 A. It's called "operator user."

18 Q. Has she been the operator user of C&D Management
19 continually since April 11, 2006?

20 A. No. She sent us two letters in 2007 stating that
21 she wished to be removed on September 22nd, 2007, and on
22 January 13, 2007.

23 Q. Was Ms. McKelvey removed as a result of those
24 letters?

25 A. Yes.

1 CHAIRMAN FESMIRE: What were those dates again?

2 THE WITNESS: One letter -- I don't know what day we
3 received it -- she dated it January 13th, 2007, and September
4 22nd, 2007.

5 Q. (By Mr. Swazo): After Ms. McKelvey was removed,
6 were any other operator users authorized?

7 A. No. But the reason Debbie McKelvey sent two
8 letters was that Darla Jeffries also set her up again on
9 March 2nd, 2007. So that's in between Debbie McKelvey's two
10 letters. So Debbie has always been the operator user except
11 for the times where she removed herself. So she removed
12 herself January 13th. Darla set her up on March 2nd, and then
13 Debbie removed herself on September 22nd.

14 Q. After Mr. Kizer submitted his operator
15 administrator, did he --

16 A. Thank you. Yes. I'm sorry. Yes. She was
17 reinstated. Mr. Kizer sent me a letter dated March 21st, 2008,
18 saying that Debbie McKelvey is authorized to prepare letters,
19 so I set her user ID to be used by C&D.

20 Q. And you testified that Mr. Kizer submitted his
21 operator administrator form on March 22nd, 2008?

22 A. I believe the two pieces of paper were faxed in
23 together. Yes. His operator administrator form and then a
24 letter to authorize Debbie McKelvey.

25 Q. Are you able to determine which person actually

1 submitted the C-115s that have been submitted thus far in this
2 case?

3 A. Yes. Our system captures that.

4 Q. And who was it?

5 A. Debbie McKelvey has submitted all of them.

6 Q. Does Ms. McKelvey own a business, or is she a
7 private party or --

8 A. Yes. Her business is called McKelvey Oil
9 Reports, LLC, in Hobbs, and I looked it up, and she currently
10 files C-115s for 13 operators.

11 Q. Have you dealt with her frequently with regard to
12 reporting the C-115 reports?

13 A. Yes.

14 Q. Now, I wanted to talk about penalties. In this
15 case, OCD is seeking penalties. Do you think civil penalties
16 are important?

17 A. I do. I've talked about that it's very
18 labor-intensive to track all of 600 operators and whether
19 they've reported all of the right wells, especially when there
20 are retroactive transactions like this where we don't even know
21 if someone is the operator of the well for five months later.

22 Almost all of our operators file on time. It's an
23 extremely high percentage. The months I've measured have been
24 99.5 percent. I can't say that's an average for every single
25 month. But people take that very, very seriously. And they

1 spend a lot of resources paying their staff to collect the data
2 on time and get it to us on time and complying. And they
3 expect us to demand that all operators meet that level of
4 compliance so that they're all on an even playing field.

5 And if we have operators who are producing and not
6 reporting to us and not making the amount of oil and gas
7 available to the public like other operators are doing, then
8 the operators who are complying with the rules are both
9 exposing themselves unnecessarily and then also paying money to
10 meet deadlines that are unnecessary. So they make it very
11 clear to us that they expect us to hold everyone to the same
12 standards. And we try to do that really hard in the C-115
13 area. Because otherwise, when we're giving out data, people
14 have no way of knowing what's included and what is not included
15 in there. So one is just to make it fair for all the operators
16 who do comply.

17 The other is, it gives out incorrect information.
18 And people are making judgments, revenue estimations,
19 estimations on whether to do explorations in certain areas,
20 based on incorrect data. So the way to ask everyone to take it
21 very seriously is to warn them in advance with the letters that
22 we send, to make sure they understand the guidelines through
23 the phone calls and instructions we have, and then to make sure
24 they comply with it.

25 Q. Do you think they are warranted in this case?

1 A. I do. I know I personally spoke with Darla in
2 March of 2006, so I know she was aware that -- even though she
3 said she hadn't been aware up until that time, from that point
4 forward, she was aware that C-115s were required. And they
5 hired an individual who makes a living filing C-115s for
6 companies who also knows the deadlines. So, without being
7 privy to the conversations, perhaps it took place that they
8 were due at certain time frames.

9 We worked a lot. We had teleconferences. We walked
10 her through how to do transactions. This was David Bradshaw
11 who did this. He walked her through how to set up Debbie
12 McKelvey the first time. We did everything we could. So they
13 were very aware -- C&D Management was very aware of the
14 requirements to file on time, and it took a lot of our time to
15 do that. I can't think of a reason where they might not have
16 known something. Because I, myself, was on the phone with them
17 in the first contact, and I know they knew the rules.

18 Q. And so you've been trying to get C&D to come into
19 compliance since 2006?

20 A. Yes -- for 2004. Because it was already
21 retroactive at that time.

22 MR. SWAZO: I don't have any other questions.

23 CHAIRMAN FESMIRE: You have a couple of exhibits. Do
24 you want to admit them?

25 MR. SWAZO: Not at this time.

1 CHAIRMAN FESMIRE: They're already admitted. I'm
2 sorry. Mr. Padilla, do you have any questions of this witness?

3 MR. PADILLA: Yes, I do.

4 CROSS-EXAMINATION

5 BY MR. PADILLA:

6 Q. Ms. McKelvey, you testified about correlative
7 rights. Can you give me a definition of correlative rights?

8 A. I'm Jane Prouty.

9 Q. I'm sorry, Ms. Prouty. Excuse me.

10 A. No. I think I testified I can't give you a
11 definition of correlative rights, so it would probably be a
12 problem if I did right now.

13 Q. You said that it was important, as I understood
14 your testimony, that C-115s be filed in order to protect
15 correlative rights. Is that a fair statement?

16 A. I don't think so, since I've said I don't know
17 what that means. Let me just try to be more clear. I'm the
18 person who receives calls from interest owners saying, "How do
19 I know if I got paid the right amount?"

20 And I look up data for them. When nothing has been
21 filed, they have no way of knowing. Those are the people I
22 work with. So without using the term, correlative rights,
23 people identify themselves to me as interest owners due
24 royalties. The Taxation and Revenue Department explains to me
25 that school districts aren't being paid and tax entities aren't

1 being paid if I can't find data for them.

2 So I didn't use the word correlative rights in my
3 answer because it's those who receive the -- the beneficiaries
4 of taxes, the royalty payers -- excuse me -- the royalty
5 beneficiaries and the private interest owners are the ones who
6 contact me.

7 Q. Do you know whether the purchasers of oil and gas
8 production automatically deduct taxes and pay those directly?
9 In other words, you take a company like Navajo Refinery. Do
10 you know whether they pay taxes straight out of the production?

11 A. I don't think it's straight out of production. I
12 think it's after it's processed. But, yes, the individual
13 operator does not -- well, let me say I don't know exactly,
14 because I'm not there. What I do know is when taxes are paid,
15 the Taxation and Revenue Department and the State Land Office
16 compare the taxes that are paid and the statements they are
17 given to our data. And that was why Taxation and Revenue
18 called me and said, "Why don't you have any C-115s? I can't
19 tell anything about this company."

20 So the process they go through is not part of Oil
21 Conservation Division's process. But the validation, the need
22 to have the data there, Taxation and Revenue and the Land
23 Office, have very formal reports they run through that matches
24 what the operator says they sold to Navajo Refining, in your
25 example, compared to what Navajo Refining reports. And in this

1 case, they don't have anything like that.

2 Q. Okay. So in other words, essentially your
3 testimony is that reporting is important, among other things,
4 for validation of production?

5 A. Definitely.

6 Q. Royalty payments?

7 A. And it's not validation of production, to my
8 knowledge. It's validation of transported volumes.

9 Q. Right. Do you know when Debra -- or Darla
10 Jeffries -- being the -- what do you call it -- the operator --
11 not the operator user, but the --

12 A. Administrator?

13 Q. Operator administrator.

14 A. When I received the operator administrator form
15 from Mr. Kizer. So I processed it on March 23rd. He signed it
16 March 21st, 2008.

17 Q. Okay. So up until that time, Darla Jeffries had
18 been the person at the wheel, in other words, as far as
19 reporting to the OCD?

20 A. She had authorized Debbie McKelvey, so -- but if
21 you're asking if she was the operator administrator, she was.

22 Q. If you had any correspondence to send to C&D
23 Management, where would you send it before Mr. Kizer filed his
24 administrator document?

25 A. As I said, we have one address that we use and

1 it's each operator's -- Rule, I think it's 100, says that
2 within 30 days of a change of address, they must notify the OCD
3 of the address. I use that address in our system. There are
4 two ways to get it in there. You can contact OCD in writing
5 and we enter it. On you can sign on to the web and update that
6 address.

7 So I don't know. And my system that generates the
8 letters -- it's just my queries, it's not a system -- it pulls
9 the current address of record. So that's why -- from the first
10 letter I had here today from me was February 11, so I know
11 February 11th the address was Albuquerque. I don't know prior
12 to that. I don't have copies with me.

13 Q. February 11, 2008?

14 A. That was the first letter I had that I mailed
15 this year.

16 Q. And since that time, you have been using the
17 Albuquerque address?

18 A. Probably since before. That's just the first
19 letter I have with me. I don't know when the address changed.

20 Q. Do you have anything there in front of you that
21 says -- uses a Kentucky address?

22 A. The change of operator done in 2005 has Darla as
23 the president with a Kentucky address. The operator
24 administrator form she submitted in order to do that has a
25 Kentucky address. I think those are the only two things I

1 referred to. They were done in 2004 -- no -- 2005.

2 Q. Does a David Bradshaw work for your bureau?

3 A. He doesn't now, but he did.

4 Q. Do you have any correspondence whether he was
5 corresponding to C&D Management using the Albuquerque address
6 in March of 2007?

7 A. David tended to send most things via e-mail and
8 he kept a spreadsheet on what he sent, but I didn't have a copy
9 of it. I think I could get it, but I don't have it. I
10 think -- I know he had many conversations with Darla herself,
11 training her on different things. So I believe he e-mailed to
12 her and then spoke to her on the phone. I know he had -- he
13 and Daniel participated in a conference with her in 2007 --
14 March -- asking about C-115s.

15 So I can't tell you about written correspondence that
16 he did specifically because I didn't look at copies of it. But
17 Darla was the person I heard of that he spoke with.

18 Q. If he used -- if he mailed something in March of
19 2007 to the Albuquerque address requesting C-115s, would that
20 address be an address of record at that time?

21 A. I'm not familiar with what he mailed. As I said,
22 he tended to e-mail. So I don't know for sure. He and I might
23 have had different -- as I said, we don't have a computer that
24 generates these. We do it ourselves. My practice is that I
25 pick the one address, but I can't swear where he got an address

1 or anything.

2 MR. PADILLA: May I approach the witness?

3 CHAIRMAN FESMIRE. You may, sir.

4 Q. (By Mr. Padilla): To be fair, Ms. Prouty, we
5 have an Exhibit No. 7. This I understand is a letter from --

6 MR. SWAZO: Mr. Chairman, I'm actually going to
7 object to the admission of any exhibits.

8 Rule 19.15.14.1211 B(2) specifically states, "In
9 cases to be heard by the Commission, each party shall include
10 copies of all exhibits that it proposes to offer in evidence at
11 the hearing with the pre-hearing statement."

12 I did not receive this exhibit list until now, and I
13 submitted my exhibit list to Mr. Padilla in April. And I'm
14 moving to exclude the admission of this exhibit or any exhibits
15 from this packet.

16 CHAIRMAN FESMIRE: Mr. Padilla?

17 MR. PADILLA: Mr. Chairman, most of these are
18 business records of the Oil Conservation Division.
19 Theoretically, I could ask for these to be -- for
20 administrative notice to be taken for most of these records.

21 In terms of the pre-hearing statement, we identified
22 pretty much what we were going to have and introduce at the
23 hearing. I don't think it's a mystery one way or the other,
24 you know. And I don't think it prejudices Mr. Swazo one way or
25 the other on not having had these.

1 What I'm asking Ms. Prouty to testify to is a letter
2 generated by the OCD. She testified about addresses of record,
3 and I'm simply asking her -- to help her out, really -- about
4 Mr. Bradshaw's communication to the Albuquerque office of C&D
5 Management.

6 CHAIRMAN FESMIRE: Mr. Padilla, if I remember the
7 pre-hearing statement correctly, you didn't have these listed
8 as exhibits, did you?

9 MR. PADILLA: I didn't have them all, but I generally
10 described what we would have in terms of correspondence and
11 things of that nature.

12 CHAIRMAN FESMIRE: But doesn't the rule call for a
13 copy of the exhibits?

14 MR. PADILLA: Yes, it does. But it also -- but I'm
15 also arguing that no one is prejudiced by not having had these
16 today.

17 MR. SWAZO: Well, I would say I'm at an unfair
18 disadvantage. Because Mr. Padilla has gained an advantage over
19 me because he's been able to look at the documents that I
20 submitted and he's had them for a couple of months. Meanwhile,
21 I'm -- this is given to me as a surprise right now. And I have
22 to prepare my case and look at his exhibits. So I think it
23 does create an unfair advantage in favor of Mr. Padilla.

24 CHAIRMAN FESMIRE: Mr. Padilla, I think the
25 Commission can take administrative notice of anything in the

1 OCD records. And I don't mind you providing copies of OCD
2 documents and to have them on the record. But just a quick
3 glance through here, there are things in here that are not part
4 of OCD records. There's some information from Wyoming, State
5 Land Office materials -- so what I'm going to do is allow you
6 over lunch to call out the things that we can take
7 administrative record of and we'll use them to help understand
8 your arguments.

9 But the other things that are not part of the record
10 and were not submitted in compliance of the rules with the
11 pre-hearing statement, I think we're going to have to not
12 admit. So why don't we go ahead and take a lunch break, come
13 back at 1 o'clock, and we will allow you to use copies of
14 anything that we could take administrative notice of, but the
15 other materials will not be admitted.

16 MR. PADILLA: All right.

17 CHAIRMAN FESMIRE: And we'll reconvene at 1 o'clock.

18 [Noon recess was taken from 11:58 a.m. to 1:10 p.m.]

19 CHAIRMAN FESMIRE: Let's go back on the record. This
20 is the continuation of Case No. 14055. I believe, Mr. Padilla,
21 you were about ready to continue your cross-examination?

22 MR. PADILLA: Yes. For the record, I've also gone
23 back and depleted my exhibits considerably, so the only records
24 we have left are OCD records. And Mr. Swazo, see if he has any
25 further objections. But I'll continue with my

1 cross-examination.

2 CHAIRMAN FESMIRE: Please, sir.

3 Q. (By Mr. Padilla): Ms. Prouty, I believe you
4 testified that you dealt with Darla Jeffries until about March
5 of 2008 of this year; is that correct?

6 A. No.

7 Q. Of record?

8 A. I think I was -- no -- I think she was the
9 operator administrator --

10 Q. Right.

11 A. -- until -- what that -- we don't keep track of
12 operator administrators. They -- how do I say -- if they are
13 existent or not. When someone has a need to sign on to our
14 system, they send in a new operator administrator form. But
15 Darla wasn't using the system. Debbie McKelvey was using the
16 system. So the operator administrator was Darla Jeffries until
17 Mr. Kizer sent in a form. But that's not of record or
18 anything. It's just who is the current operator administrator.

19 Q. But Darla Jeffries remained until 2008, even
20 though she had designated Debbie McKelvey.

21 A. Right. Until I received notification from
22 Mr. Kizer.

23 Q. Okay. What records do you have up to
24 December 2007 for C&D Management? I mean, in terms of C-115s?

25 A. Okay. Now I'm -- so -- up until which date,

1 please?

2 Q. The end of December 2007.

3 A. All right. At that point, C-115 -- no -- not all
4 of them. Some C-115s through the end of 2005 had been filed,
5 not all of them. Some were not filed until late April 2007.
6 No. Excuse me. You asked me at the 2007. Some were not filed
7 until March of 2008. No. That's not true. Those were
8 amendments. Okay. All initial filing -- by the end of 2007,
9 we had C-115 reports through March of 2006.

10 Q. Okay. What I'm trying to get at is who brought
11 up the records to date? Did Darla Jeffries bring them up to
12 the end -- brought them up to the end of December 2007? Who
13 filed corrections, or whatever it was, to complete the filings?
14 Did Darla Jeffries do it? And I know that Ms. McKelvey did it.
15 But in terms of under whose designation were the updates made
16 to the end of December 2007?

17 A. Any transaction -- until Mr. Kizer faxed in an
18 operator administrator form, Darla Jeffries was the operator
19 administrator.

20 Q. I realize that, but up to that time, the records
21 had been sporadic -- or maybe you got some, maybe you didn't --
22 and you dealt with or tried to get them from Ms. Jeffries,
23 right?

24 A. Well, I think you showed me a letter where we
25 mailed the letter to Mr. Kizer saying that he would be shut in

1 if he didn't submit a C-115 for March 2007.

2 Q. Okay. After March 2008, was there a filing of a
3 bunch of C-115s to complete C-115 reporting through the end of
4 December 2007?

5 A. Yes.

6 Q. When was that done?

7 A. Five reports were filed in March of 2008. Three
8 of those were amendments, so two new reports for the prior
9 period of time. And then in June of 2008, it looks like 21
10 were filed, but I could be wrong. I didn't do a real accurate
11 count.

12 Q. There were a bunch filed in June of 2008?

13 A. Right. The first filing -- okay. The first time
14 April 2006 was filed through December 2007 was in June of 2008.

15 Q. And that was done under Mr. Kizer's operator
16 administrator designation?

17 A. Yes.

18 Q. Through Ms. McKelvey?

19 A. Yes.

20 Q. Okay. Since that time, have you received any
21 other C-115 reports?

22 A. No.

23 Q. Okay. Have you had any communications with
24 Ms. McKelvey concerning 2008 reporting?

25 A. She e-mailed me yesterday and said that Mr. Kizer

1 told her he had sent C-115s to her office, but she wasn't
2 there.

3 Q. Where was she?

4 A. I don't know.

5 Q. She wasn't at her office, I take it?

6 A. I did bring her note -- but -- here we go.

7 Yesterday at 2:28:

8 "Jane, I'm filing C-115s for C&D Management and have
9 filed through December 2007. Mr. Kizer from C&D e-mailed me to
10 tell me that he had sent the necessary records for me to get
11 those reports caught up. However, I am on vacation and unable
12 to work on them. If the necessary records have been sent to my
13 office by C&D, I will work on getting those caught up when I
14 return. Let me know if you have any questions."

15 Q. Okay. Is there any deficiency beyond or before
16 December 31st, 2007, to your knowledge?

17 A. Currently?

18 Q. Yes.

19 A. Other than being filed, in general, two years
20 late, no. Not to my knowledge.

21 Q. Do you know the reason why Ms. McKelvey removed
22 herself as being the operator user some time between January
23 and September 2007?

24 A. Well, it was two times.

25 Q. Two times.

1 A. No, I don't.

2 Q. She didn't tell you?

3 A. She just made it very clear she was not -- let me
4 see. I brought those letters. She said she was not doing work
5 with them.

6 In January 2007, she said, "I will be no longer
7 assisting C&D Management with their C-115 filings or any other
8 matter. Please remove me." And her letter in September said,
9 "This is to notify you that I will no longer be filing C-115s
10 for C&D Management. Please remove my name as an online user."

11 Q. Did she send that letter by copy to Darla
12 Jeffries -- any of those letters?

13 A. No. Not that I see.

14 Q. Looking at Exhibit No. 21 submitted by the
15 Division -- do you have that in front of you?

16 A. Yes.

17 Q. You testified that this particular exhibit was
18 printed on April 29, 2008, right?

19 A. Yes.

20 Q. So a new report would reflect production through
21 the end of 2007, right?

22 A. Yes.

23 Q. It would complete the reporting for 2006 and
24 2007, correct?

25 A. Yes. I actually don't -- it would show filing.

1 I don't know if it shows production.

2 Q. Well, it would show filing, right?

3 A. Yes.

4 Q. Whether or not there was any production?

5 A. And there is, yes.

6 MR. PADILLA: Okay. That's all I have.

7 CHAIRMAN FESMIRE: Any redirect, Mr. Swazo?

8 MR. SWAZO: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. SWAZO:

11 Q. Debbie McKelvey is with McKelvey Oil Reports,
12 LLC; is that correct?

13 A. I just put it away. That's what her stationery
14 says, yes.

15 Q. Who's responsible for submitting an operator
16 administrator form?

17 A. The operator is. And then it says, "The operator
18 administrator registration form must be signed by the president
19 or vice president of the corporation."

20 And it goes on to describe that. Did you want to
21 hear the rest of that?

22 Q. Sure.

23 A. Okay. "The operator administrator
24 registration" -- well, it starts off: "The purpose of the form
25 is to identify one individual per operator whose name will be

1 deemed to be on each OCD permit or form filed electronically by
2 that Division."

3 And I'm skipping some. The form also identifies:

4 "One operator administrator will authorize users to
5 submit electronic permits or forms. The operator administrator
6 registration form must be signed by a president or a vice
7 president of the corporation, or by an employee of the
8 corporation duly authorized by corporate resolution or power of
9 attorney to approve and sign an Oil Conservation Division form
10 on behalf of the corporation if it does business in a corporate
11 form; a manager if it does business as a limited liability; a
12 partner if it does business as a partnership; or, the operator
13 individually if it is a sole proprietorship.

14 "The signature of the operator administrator affixed
15 to this form shall be deemed to appear on all electronically
16 filed forms as if actually so appearing."

17 Q. So if an operator wanted to change an operator
18 administrator, who would be responsible for filing that form?

19 A. Someone who met the conditions. Someone who was
20 a president or a vice president of the corporation or an
21 employee of the corporation duly authorized by power of
22 attorney, etc.

23 Q. Do you know what C&D Management's address of
24 record was in March of 2007?

25 A. No.

1 Q. The letters that you sent to C&D Management,
2 where would you have obtained those? The address where you
3 sent your letters to C&D Management, where would you have
4 obtained those addresses?

5 A. What I do -- and David worked for me, so probably
6 he did what I did -- we can e-mail them. But if we were
7 writing -- we would e-mail to two places: one, the e-mail ID
8 we have on the operator administrator form, plus the -- we can
9 keep track of e-mails as they come to us. So we would also
10 send a copy to the last person who e-mailed us, or multiple.

11 On the paper letters, we send out multiple copies.
12 What my process is, is I send a copy to the operator's -- the
13 address that I have from what they turned in on the web. Then
14 some come back to me, either by the post office, or the
15 operator will call and say this person died, or this person is
16 now the charge. This is the address where you'll find them.

17 So I don't resend the letter. I will send another
18 letter to the new address the company gave me -- the attorney's
19 name, whatever I'm given -- and anyone else. I usually don't
20 send a letter to the company filing on behalf because we don't
21 consider them to be responsible. But sometimes I've done that
22 as well. So initially we send one letter, but by the time it's
23 done, we may have sent several letters to any address we hear
24 about. I don't change the address of record based on that. I
25 just do send multiple letters trying to find someone.

1 Q. Did Mr. Kizer submit an operator administrator
2 form in March of 2007?

3 A. No.

4 Q. When was the earliest time he submitted an
5 operator administrator form?

6 A. March 21, 2008.

7 MR. SWAZO: I don't have any other questions.

8 CHAIRMAN FESMIRE: Mr. Padilla, anything on those
9 subjects?

10 RE-CROSS-EXAMINATION

11 BY MR. PADILLA:

12 Q. Ms. Prouty, the letter I showed you this morning
13 was dated March of 2007 sometime, right?

14 A. (Witness nods head.)

15 Q. And that was to the Albuquerque address?

16 A. (Witness nods head.)

17 Q. Is that a yes? You're nodding your head.

18 A. I'm sorry. Yes. Yes. That's two yeses.

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

20 CHAIRMAN FESMIRE: Okay. Commissioner Bailey?

21 COMMISSIONER BAILEY: No questions.

22 CHAIRMAN FESMIRE: Commissioner Olson?

23 COMMISSIONER OLSON: No questions.

24 //

25 //

EXAMINATION

1
2 BY CHAIRMAN FESMIRE:

3 Q. Ms. Prouty, for the record, we talked a little
4 bit about David, David Bradshaw. Could you, for the record,
5 tell us who David Bradshaw was and what he did.

6 A. He was a management analyst with OCD, and he took
7 over the compliance program. And one of his
8 responsibilities -- well, he processed all operator
9 administrator forms while he was here and set up new user IDs.
10 He consulted with operators with their questions on C-115s or
11 anything to do with OCD online filing. He handled the
12 compliance program and tracked compliance activities and
13 developed a nice system of charting the status of delinquent
14 C-115s so we always knew how many operators were in compliance
15 and weren't. And he was in charge of all of that. He
16 worked -- I believe he testified at some hearings based on the
17 letters he had sent. That's all I can think of.

18 Q. Who is the authorized operator administrator for
19 C&D now?

20 A. Thomas Kizer.

21 Q. Okay. And that changed in March of this year?

22 A. Yes.

23 Q. What was it immediately prior to that?

24 A. Darla Jeffries.

25 Q. Okay. So Darla Jeffries was up to March of 2008

1 and since then it's Mr. Kizer?

2 A. Yes.

3 Q. And I believe Mr. Padilla touched on this, but
4 you have no idea why Ms. McKelvey was un-appointed and then
5 reappointed in 2006?

6 A. It appeared that she un-appointed herself,
7 because she sent me the letter. Usually it's the operator who
8 will let me know that this person isn't attached to their
9 company anymore. So I don't know why, but she notified us each
10 time.

11 Q. But she did reappoint herself, then, later in
12 2006?

13 A. No. You can't do that. Darla Jeffries set her
14 up to be a user again in between those two letters.

15 CHAIRMAN FESMIRE: I have no further questions.
16 Mr. Swazo, anything on those subjects?

17 MR. SWAZO: No.

18 CHAIRMAN FESMIRE: Mr. Padilla?

19 MR. PADILLA: No.

20 CHAIRMAN FESMIRE: Ms. Prouty, thank you very much.

21 MR. SWAZO: With that, I rest my case.

22 CHAIRMAN FESMIRE: Mr. Padilla, are you ready to
23 present your witness?

24 MR. PADILLA: I'll call Tom Kizer at this time.

25 CHAIRMAN FESMIRE: Mr. Kizer, you've been previously

1 sworn in this case; is that correct?

2 THE WITNESS: Yes, sir.

3 THOMAS KIZER

4 after having been first duly sworn under oath,

5 was questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PADILLA:

8 Q. Mr. Kizer, state your full name, please.

9 A. Thomas Kizer, K-i-z-e-r.

10 Q. Where do you live, Mr. Kizer?

11 A. I live in the State of Nevada, in the City of Las
12 Vegas, Clark County.

13 Q. Mr. Kizer, do you -- what's your relationship to
14 C&D Management Company?

15 A. I was involved with oil and gas on the fringe,
16 doing things involved with tubulars --

17 Q. What's your position now?

18 A. Excuse me. I'm sorry. I'm the president of C&D
19 Management. I'm sorry.

20 Q. How long have you been president?

21 A. As of February 21st of 2007.

22 Q. How did you become involved with C&D Management
23 Company?

24 A. I was working with a gentleman by the name of
25 Bill Goodwin. He's the president of the Tennessee Oil and Gas

1 Association. And I was trying to work a project with his
2 organization. At the time, he had said he had somebody that he
3 might want to introduce me to that had some property located
4 here in New Mexico. And that gentleman was Mr. Jeffries. And
5 the property at the time was 740 acres of property in Eddy
6 County, in Artesia.

7 Q. And did you ultimately enter into a transaction
8 with --

9 A. At that time, what we did was -- I wasn't sure
10 about the purchase of the property and the like and the
11 circumstances that he was under and the like. What we did is I
12 didn't have the available funds for it. What I did was I said,
13 "Can I give you payments with it?"

14 And he says, "When we finish the payments, what we'll
15 do is we'll go ahead and transfer." And he said at the time
16 that he would go ahead and continue to manage the property and
17 work the property. But I didn't have any involvement with the
18 property. And this was back in 2005 when I met him.

19 And we had originally exchanged -- I had exchanged
20 some funds with him, but there was nothing that was transferred
21 other than the funds going towards payment, to the ultimate
22 transaction.

23 Q. Did you buy the outstanding shares or did you buy
24 the assets?

25 A. I bought the outstanding shares from Kentucky --

1 from C&D Kentucky. It was a Kentucky corporation that they had
2 started with. And they had licensed themselves to do business
3 in New Mexico as a foreign corporation under C&D Management,
4 which is Chris and Darla Jeffries and under Freedom Ventures.

5 Q. At that time, who were the officers of C&D
6 Management?

7 A. At the time, the officers were the president of
8 the company, Darla Jeffries, vice president was Chris Jeffries.

9 Q. Can you tell the Commission why you didn't just
10 purchase the assets instead of buying the shares?

11 A. Yes, I can. At the time when I came over,
12 Mr. Jeffries was working for a company by the name of Young Oil
13 out of Kentucky. Young Oil appeared to be a very reputable
14 company. He was the vice president of the company of Young
15 Oil. He held himself out as the president. I went back there
16 to meet with him.

17 Mr. Jeffries was starting another company by the name
18 of H Jet. He was the vice president of that company, very
19 knowledgeable of what he was doing in the business -- to me.
20 And he had established the Ogrid number out here in New Mexico.
21 He had established vendors that were working the wells. We had
22 accounts set up with them. And I thought I could come in, keep
23 everything status -- keep everything going the same rather than
24 change the company, and that, so I could just continue on. At
25 the time, I thought the company had a good reputation. Why not

1 keep it? There was nothing that was out of line, you know, at
2 that time. So there was really no need for me to change
3 anything that there was at that time.

4 Q. So when did you officially take over the company,
5 if there was a time that you took over?

6 A. We tried to get the transaction done before, but
7 as time goes on, Jeffries -- and, as you can see, he's not
8 here, so it tells you something -- but he didn't follow through
9 with a few of the things that he was supposed to be doing. And
10 I was trying to get the thing closed up because I had paid
11 him -- finished paying him the funds, and he had allowed his
12 corporation and that to be lapsed.

13 We were trying to move everything over to Wyoming
14 where I wanted to move the corporation, because I had no
15 involvement with Kentucky. And I wanted to move it to Wyoming
16 for tax purposes and the like there and have everything
17 transferred completely over and that. And also make sure that
18 we kept the foreign corporation of C&D in New Mexico. That was
19 the primary thing and that.

20 So we had established relationships with the Better
21 Business Bureau and a number of other things like that, so it
22 was important for me to try to keep that up. And he let the --
23 something lapsed in Kentucky. It couldn't get through.
24 Finally, he worked that and got it reinstated, and I got it to
25 my attorney in Wyoming, Mr. Bagley, who coordinated the

1 exchange and the like and that.

2 Q. After you moved the corporation -- well, let me
3 ask you this: When did you move the corporation to Wyoming?

4 A. It was in 2008. No, excuse me. It was 2007. It
5 was in March. We first had to take over the corporation in
6 Kentucky, so we could get a hold and take the corporation and
7 then it transferred into Wyoming, and that was on
8 March 8, 2007.

9 Q. Who were the officers of the corporation after
10 you moved it to Wyoming?

11 A. I was the only officer. I was president there.
12 I was the only officer.

13 Q. Have you had any other officers in the
14 corporation since that time?

15 A. None.

16 Q. What did you do about taking over the oil and gas
17 operations here in New Mexico after March of 2007?

18 A. Well, at that time in March of 2007, the OCD had
19 started a compliance matter with Chris at that time. And there
20 were a number of issues that they were getting -- I guess they
21 were negotiating. I wasn't privy to that, those conversations
22 at all. I was told not to get involved with them, that
23 Jeffries, he had e-mailed me and told me that it was his
24 responsibility, he's having conferences with Daniel and the
25 other people on the telephone to discuss --

1 Q. With you say Daniel, you're pointing --

2 A. Oh, excuse me. Mr. Sanchez and Ms. O'Connor. I
3 asked to get involved with it, and he said just stay out of it.
4 I'm fully responsible. I'm taking on the -- they're giving me
5 penalties and I'm giving them a plan of action of what I'm
6 doing to get the wells in order and bring everything
7 up-to-date. And I was asked not to get involved with it. Just
8 to sit aside and that.

9 And then there was the hearing that came up, and I
10 guess they had worked something out where he didn't have to
11 appear. I showed up anyway here in Santa Fe. And that day,
12 the case, it had been taken off there because they were going
13 to go and negotiate a deal.

14 At that time, Ms. O'Connor was here, Cheryl was here,
15 and she asked me to go up to the room and say hello. Because I
16 didn't really have any other purpose. So she asked me to come
17 into the room, into her office, and she was typing something.
18 She was getting ready to leave within the week. At that time,
19 Mr. Sanchez came in and introduced himself, and he was there
20 for a few minutes, and he was the gentleman I was going to be
21 dealing with and the like in the future and that.

22 I spoke with Ms. O'Connor, and she said at that
23 time -- she had Mr. Jeffries on the telephone line, and she was
24 talking about the agreement that they had negotiated before.
25 And she said to Mr. Jeffries -- she said to me, "Who's going to

1 take responsibility of these matters here?"

2 And she held the phone, and she covered up the phone
3 and she said, "Tom, you don't want the responsibility of these,
4 do you?"

5 And I said, "No, why would I take responsibility?"

6 She said, "Don't take responsibility of them."

7 So she was very kind. She was very nice. And that's
8 what she said and then she got back on the phone and talked to
9 him. She said, "You don't want responsibility."

10 And that's when she repeated to me, "Jeffries is
11 taking personal financial responsibility of these." And she
12 verbalized it and then she memorialized it in that No. 26.
13 Daniel wasn't there at that time. He had walked out already of
14 the room. I don't know why Ms. O'Connor isn't here to say it,
15 but that's what she did tell me on there. And that was the --
16 I didn't negotiate any of that agreement. I wasn't privy to
17 it. I wasn't given copies that they say that were e-mailed to
18 me.

19 And I went back and I e-mailed O'Connor asking her
20 for a copy of it April 21st. I have an e-mail. And it said
21 she's no longer with the OCD and that I'd have to get them from
22 Mr. Sanchez. I never got any of the things, any of the copies
23 of the agreement on there. I didn't find that there was any
24 cause to -- I could have changed the corporation and gone to a
25 different one and that. But here he had taken on the

1 responsibilities of those things before, so I didn't think
2 there was any cause to all of a sudden change the whole
3 corporate thing.

4 Here I had a company that's kind of set up going,
5 he's taking responsibility of these things, and that was it.
6 After that period of time, I didn't hear -- get any
7 communications at all from the organization whatsoever.

8 Q. Let me stop you there. What you're talking about
9 is the administrative Exhibit No. 26 issued by the OCD, right?

10 A. I'm sorry, sir?

11 Q. You're talking now about the agreement -- or the
12 Administrative Compliance Order?

13 A. Right. No. 26. The one that was made with
14 Mr. Jeffries.

15 Q. And that's dated the 26th day of March 2007?

16 A. It's the 26? He dated -- I think it says March
17 16th on here. And he signed it on March 21st, Jeffries did.

18 Q. Okay.

19 CHAIRMAN FESMIRE: 2007 or 2008?

20 THE WITNESS: This goes back to 2007.

21 Q. (By Mr. Padilla): Now, in March 21st, 2007, when
22 he signed this, was he vice president of C&D Management?

23 A. No. No. He wasn't.

24 Q. Did he have authority to bind C&D Management at
25 that time?

1 A. No, he didn't. Not in this capacity. No, he
2 didn't.

3 Q. Did you have any communication exchanges between
4 and after that time with Mr. Jeffries?

5 A. Yes. Before and after.

6 Q. What were they about?

7 A. Well, before it was, I was trying to get involved
8 with the negotiations, the communications, and he just said,
9 "Stay the F out of it. I'm taking full responsibility."

10 Later on, we went back with some e-mails back and
11 forth because I was trying to determine what he was completing
12 with the wells. And he said he had everything, it's under
13 control. He's communicating directly with the OCD. They're
14 going to get the wells plugged and their bringing the reports
15 up-to-date on that.

16 Q. What was your -- when did you actually become
17 more involved in terms of checking out compliance issues with
18 the OCD?

19 A. Well, during that period from after they had
20 signed the compliance order until probably November at that
21 time, I think these gentlemen communicated directly with Chris.
22 I didn't receive any information. Nobody talked to me. He was
23 the one conducting -- mainly it was issues regarding the
24 compliance order that he had signed on a personal basis. I
25 figured he was taking care of them on that.

1 And then as far as the other matters, I was just
2 letting the wells kind of go along, because what we would have
3 liked to have done is permitted and gone out and drilled some
4 more wells. And I was waiting for these matters to be cleared
5 up. So it was just sitting and waiting. Obviously, it wasn't
6 the right thing to do.

7 Q. This morning someone said -- the question was
8 asked whether or not you ever objected to the Administrative
9 Compliance Order entered in March of 2007?

10 A. No. And I had no written objection. As I say,
11 when we sat there and she told me about -- O'Connor told me
12 about what was going on, Jeffries appeared to be taking care of
13 things. Coming out of March in that area, there was no reason.
14 Everything was being done. I figured that he was going to take
15 and plug his wells. He had received funds to plug the wells.
16 He had funds. He had the resources. We made certain that he
17 had the resources to take care of the contamination matters,
18 made sure he had the resources to take care of the records and
19 everything.

20 So everything was moving along. Something went wrong
21 on his side. I don't know what it was on there. Something
22 went wrong in Kentucky, maybe with his other companies or
23 something. And then all of a sudden the communication just cut
24 off completely.

25 Q. Now, let's talk about the address. What's your

1 official mailing address?

2 A. The address that we have used here for C&D is
3 4806 Lang, Northeast, Suite 110 Albuquerque, New Mexico, 87109.

4 Q. You maintain an office there?

5 A. Yes, sir.

6 Q. And did you receive from the OCD certain
7 communications?

8 A. What I received at that office was actually
9 minimal. I got -- I received letters from Jane. I think maybe
10 from Dorothy --

11 Q. When you say "Jane," do you mean Ms. Prouty here?

12 A. Yes. I'm sorry -- regarding the C-115s and that.
13 And I got those over to Jeffries to make sure they got them
14 up-to-date. I received letters from Richard in the Oil
15 Conservation Division in Artesia, and I also received items
16 from the Bureau of Land Management in that office at that time.
17 And that was back in -- goes back as far as February of 2007
18 when we originally -- when we advised the folks of the address.

19 Q. When did you find out that there had be been, or
20 was going to be, a hearing in January of 2008 concerning
21 enforcement of the Administrative Compliance Order?

22 A. In February of -- February 29th -- there's a copy
23 of the fax in one of your exhibits there -- and it was under
24 his exhibits. I received a letter from Richard Inge?

25 CHAIRMAN FESMIRE: Inge.

1 THE WITNESS: Inge -- in Artesia. It was regarding a
2 couple of the State wells in there and having to do with the
3 filings with the C-115s. And so I wrote him back a letter
4 asking him about them because Jeffries was to have brought
5 those up, and I didn't know which ones he was referring to on
6 there. I didn't hear back from Richard.

7 Instead I received a fax from Sonny. That's the
8 first time I had heard from Sonny, and it was a complete order
9 stating that the bonds that were in our name were being -- and
10 it stated this was being done. And that was the order. That
11 was the first -- that was on March 4.

12 Q. (By Mr. Padilla): That was -- when you say
13 "Sonny," you're talking about Mr. Swazo?

14 A. Mr. Swazo, attorney Swazo. And I immediately got
15 on the phone and said, "What's -- why didn't anybody tell me
16 about this or anything?" I said, "I'll come out immediately.
17 I'll be there tomorrow."

18 And at that time, I think it was on a Wednesday, he
19 said he was going to be gone for the weekend, and we'd have to
20 make it the following week on March 12th. I showed up and the
21 two gentlemen here were there.

22 Q. When you say the "two gentlemen" --

23 A. Mr. Swazo and Sanchez here. And they were
24 present. And I had not received anything. I was -- I went in
25 the office, and I asked them what is all this about? And it's

1 clear that it originated from Jeffries not taking care of those
2 matters that he and O'Connor agreed to back in March.

3 Q. Do you know whether Mr. Jeffries appeared at the
4 January 2008 hearing?

5 A. Jeffries has not appeared for anything. He
6 hasn't appeared for anything. No, he didn't. He didn't tell
7 me about it, although I had talked to him before. I didn't
8 hear anything from this office, from the OCD. And I just heard
9 about it that day. And I immediately came, and I sat down in
10 the office with these gentlemen. And we sat, and we talked for
11 maybe 45 minutes. And I asked, "Well, what can I do? What can
12 be done about this?"

13 And they just said there is basically nothing that
14 can be done. That the time -- the period had run out that I
15 could do anything. That was number one. Number two, I asked
16 them, "Well, why didn't you send me anything?" I asked Sonny.

17 And Sonny said, "Well, I'm not required to go out and
18 find you," and that.

19 And he said -- I said, "I did this."

20 He showed me a couple of documents -- and I don't see
21 very well. I think one was one of the corporate documents from
22 the State, and the other one was a publishing that he had made
23 or a paper that he had filed in Artesia. And I didn't know
24 exactly how to respond. And they provided me with a copy of
25 it.

1 I went back down to Artesia, and that. And I went
2 back home, and I thought about it, and I thought, well, gosh
3 darn, these people have been sending me letters to Albuquerque
4 since May of 2007 -- maybe as early as March.

5 Q. When you say "those people," who are those
6 people?

7 A. Oh, I mean the OCD. I've been receiving them
8 from the Oil Conservation Division in Artesia and this office
9 here in 2007. And I started looking through things in terms of
10 how did they miss my address? And these people are taking my
11 bonds, they're taking property. And I came across the State
12 Land site there that was there. And I saw there that it said I
13 had given them notice on February 21st of 2007. And I printed
14 it out there. This was on March 19th. I printed it out, and I
15 was going to send it over to Mr. Swazo and the like.

16 And then I went back on the site days later, and I
17 saw that date had been modified, changed. So nothing else on
18 the entire website was changed except that date. That date
19 showed March 7th, 2008, as the last date that somebody used it.
20 That would show that that's the date that it was updated.
21 Somebody had changed the website during that time.

22 And I told Ernie, I sent him the letter and said,
23 "Listen, you guys had this notice. You guys at least had this
24 since that date."

25 I brought out -- I sent them copies of the bonds and

1 right on the capture bonds they have 4801 -- well, these are
2 the financial bonds that they're going to try to require me to
3 forfeit. They have the address of C&D Management. And I'm
4 saying, why is it that you couldn't send me a notice or
5 something with it? And I didn't really get a response.
6 Basically, I didn't get a response or anything with it.

7 Then I had to contact Ernie to find out if I had any
8 rights or anything on it, because I was told you don't have
9 anything. It's over. Forget it. And had I waited a little
10 longer, I may have blown the dates. As you can see, I came
11 right at the last moment and that.

12 So nobody has ever responded as far as why those
13 dates -- nothing else on that entire web page has ever changed
14 except that date. And the only thing I could figure -- and
15 it's complete speculation on my part and my opinion -- is that
16 somebody wanted to change that date to show that I had only did
17 it just in March of 2008 and they didn't have any previous
18 knowledge of it.

19 Q. Prior to that time, what had been shown on that
20 website?

21 A. February 21st of 2007. And then it changed to
22 March 7th of 2008. At the bottom of that website it has an
23 address of the administrator that I could contact with it. And
24 I did write him an e-mail. And he wrote me back an e-mail, and
25 he said, "I did not change it. It was changed by Dorothy

1 Phillips. She was ordered to change it on March 7th."

2 Q. Of what year?

3 A. Of 2008. I have the e-mails here and that that I
4 received from him. And he said he was ordered to change it by
5 Dorothy Phillips.

6 CHAIRMAN FESMIRE: If you have e-mails, who is he?

7 THE WITNESS: It's Joe Saiz or something? I have it.
8 Hold on. This is our original. Here it is. Here it is. His
9 name is Joe Mraz, M-r-a-z on here.

10 CHAIRMAN FESMIRE: And who does he work for?

11 THE WITNESS: It has here he's Joe Mraz. I found the
12 chart. His website is slo.state.newmexico -- state -- I guess
13 Land Management. I don't know what that is.

14 And he says, "I found that the changes were made on
15 the ONGUARD system base by Dorothy Phillips with the OCD on
16 March 7th, 2008. I cannot change that screen. Only Dorothy at
17 the OCD can change it. Do you have her number? Try and give
18 her a call there."

19 So I was -- the reason I was concerned was is that as
20 I said, if I'm going to be forfeiting property and the like, I
21 think it's fair that somebody at least advise me and let me
22 know. And there was a lot of paperwork that was submitted and
23 is evidence that you have in your files that we were going to
24 be submitting to show that there was another address in there
25 besides Kentucky, you know?

1 MR. PADILLA: Can I approach the witness?

2 THE WITNESS: I don't mean to argue the case, but --

3 CHAIRMAN FESMIRE: Why don't you let him finish? Are
4 you done?

5 THE WITNESS: But, yeah -- I'll let you guys go
6 ahead.

7 CHAIRMAN FESMIRE: You may approach, Mr. Padilla.

8 Q. (By Mr. Padilla): Mr. Kizer, let me show you
9 what we've marked as your Exhibit No. 6. What is that?

10 A. This is a letter from -- this is the letter from
11 Richard.

12 Q. Are there other papers attached there?

13 A. Yes. It's dated June 7th -- June 4th.

14 Q. Can you tell us briefly what's in that exhibit?

15 A. This exhibit is regarding the two state wells,
16 the Schneider -- yeah, the Schneider and the Michael lease
17 here. And it's regarding on the production here on what is
18 going on with the wells. This was the copy of the letter here
19 on February 29th of this year that I e-mailed Richard just to
20 follow up to try and get something moving with these
21 violations.

22 Because I was pretty clear that Chris -- Chris
23 finally told me over a telephone conversation. I said, "Chris,
24 are you going to get these wells done or not?"

25 CHAIRMAN FESMIRE: You mean Chris Jeffries?

1 THE WITNESS: Yeah. Chris Jeffries.

2 CHAIRMAN FESMIRE: Okay.

3 THE WITNESS: And he finally told me. He goes,
4 "Listen, I have no money. I'm not going to do it."

5 I said, "Well, you could have told me a long time
6 ago. I have given you money to do it. What happened to it?
7 Why didn't you tell me before? I'll go ahead and we'll try and
8 get something done with them."

9 CHAIRMAN FESMIRE: When was this conversation?

10 THE WITNESS: This was probably in January. He had
11 already known of this hearing.

12 CHAIRMAN FESMIRE: January of?

13 THE WITNESS: Of 2008.

14 Q. (By Mr. Padilla): Where are those letters
15 addressed?

16 A. These letters are addressed to C&D Management,
17 d.b.a. Freedom Ventures at 4801 Lang, Suite 110, Albuquerque,
18 New Mexico. There's another one here on May 29th of 2007 here,
19 addressed to the 4801 Lang Northeast.

20 Q. Did you receive letters or correspondence at any
21 time from the Artesia office of the Oil Conservation Division?

22 A. Yes, I did. That's where these letters are from.

23 Q. Okay. What else is in that exhibit, Mr. Kizer?

24 A. You have a letter here from Chris Jeffries to
25 Mr. Sanchez here on September 20th regarding a compliance here.

1 He's stating -- asking for more time from Mr. Sanchez. The
2 wells that they have listed here are the Shearns and the
3 Muncys. The Muncys -- they keep talking about four wells and
4 five wells. There are some orders that give the Shearns and
5 other ones include the Muncys. I know they only got permits on
6 the Shearns and not the Muncys on here.

7 The other has to do with the cashier's check that was
8 sent by Jeffries to -- not a cashier's check. It was -- this
9 is on OCD Exhibit No. 13 -- I guess part of the agreement that
10 he had was he was to pay them \$6,000 in increments of 3,000 and
11 3,000. Jeffries sent the first \$3,000 and the check was good,
12 I believe. I don't know what accounts or anything it
13 originated from.

14 But the second check that he sent to them I found
15 out, in 2008, that the check had bounced. That's when I
16 received a copy of this. This was in the compliance order.
17 And that check that bounced was from a company -- drawn on
18 Global Management. That's one of Jeffries' companies in
19 Kentucky -- for \$3,000. And that check was returned for
20 non-sufficient funds.

21 I talked to the attorney, Mr. Swazo, about this in
22 2008 at that time, and I contacted --

23 Q. Was that before or after the hearing?

24 A. I'm sorry?

25 Q. Before or after the hearing?

1 A. After the hearing. It was -- when we
2 communicated, it was probably in March then. And I told him I
3 would use all my efforts to get the money from Jeffries to make
4 that check good. And the check was here for ten days or so
5 before they found it. I got Jeffries to write a check. It was
6 a cashier's check. It was remitted by himself personally. It
7 wasn't on the C&D account, and it was sent to the OCD here on
8 it.

9 I didn't see other than the letter that they sent out
10 to Jeffries to try to recover that amount. You've got to push
11 the guy a little bit. And he came up with the money. He sent
12 the \$3,000. That was it on that.

13 Q. Were you being copied on this correspondence
14 between OCD --

15 A. I did not receive copies -- any correspondence
16 other than the C-115 violations and the things from Richard out
17 of Artesia. I didn't receive copies of any correspondence
18 between the OCD on St. Francis here and Mr. Jeffries regarding
19 any of the status of the wells or anything. I was told by
20 Mr. Jeffries at that time that he was handling them, that he
21 was taking care of them, that he was getting the appropriate
22 extensions, and that he was getting the reports up-to-date.

23 Later I found out that he didn't bring them all
24 up-to-date. That's when, here in March -- and then I
25 commissioned Ms. McKelvey to go back to June of 2006 and bring

1 them all up. And she brought them up to 2007. And the reason
2 she didn't have those filed up at that time, because we were
3 running into the problem -- at that time, I was pretty involved
4 in handling the reports and that. It was quite expensive to
5 get those reports up-to-date and everything, so I ran a little
6 bit behind with them. And she said she had run the time for
7 that month or two-month period, and then she just kind of let
8 them go there.

9 We have them. I have them with me. She's going to
10 file them. She's in Arkansas now. And she's going to go ahead
11 and get those filed on that. But I was the one that brought
12 them up-to-date.

13 Q. For what period?

14 A. For this year, 2008, from January 1st up to right
15 now.

16 Q. Have you given her all the data for her to
17 complete --

18 A. She has all the data. What we did was -- during
19 this same time in February --

20 Q. Of what year?

21 A. This year, 2008. The Bureau of Land Management
22 came out to the property, and they sealed our containers. We
23 couldn't ship.

24 CHAIRMAN FESMIRE: Your tanks?

25 THE WITNESS: Yeah. They sealed our tanks. The

1 reason for that was, is that, according to Tony Ferraro here,
2 we didn't have a bond, a federal bond.

3 Q. (By Mr. Padilla): Where does Tony Ferraro work?

4 A. Tony Ferraro works for the Bureau of Land
5 Management here in Santa Fe. And according to him, he said we
6 don't have any bonds on C&D Management. They don't exist.

7 And I said, "It's impossible. We had a blanket bond
8 for all our federal wells. How do you think all this stuff got
9 done?"

10 He says, "We don't have it. You get it. You find
11 it. You show it me, and I'll unplug your wells."

12 I don't even know where the bond is. We're looking
13 everywhere. Chris is not communicating with me to find out
14 what bank it might be. I went down, and I used some of the
15 information that was in your packets there regarding the wells.
16 Down in Artesia, I'm asking every bank there -- was asking
17 where this federal bond was, and nobody could find it.

18 Thirty-seven days later -- 37 days later -- Tony
19 says, "Oh, I'm sorry. We have it here in-house over here
20 on" -- in their building -- "we received a check. We received
21 it. We're pulling it."

22 So I had told -- I had told -- that we were going to
23 try and get the wells plugged before, but the BLM won't allow
24 me to plug them without the bond. And they're the ones -- and
25 I don't know where the bond is. And they finally came through

1 and said they located it in their house. "You're okay. Go
2 ahead and file your permits for plugging."

3 I got that faxed, and you have a copy of it. I sent
4 them a fax. That was on April 3rd or something. I went out
5 immediately, and I filed the next day for the permits for the
6 plugging. That's why that was a little bit delayed there.

7 We weren't having any production, you know. We were
8 shut in at that time. We were sealed in at that time by then.
9 So for 37 days during this process, the BLM came in and closed
10 us on there. Since then, what I've done with regarding
11 plugging the wells -- the bonds are good. We got the approvals
12 with them, and the fellow that's working with me is a gentleman
13 in Artesia that's lived there, and he works very closely with
14 Mike Bratcher down there.

15 And he -- unfortunately, he had a piece of casing
16 roll over his foot and crushed it -- his feet. So he was tied
17 up for a couple of weeks there. But it hasn't slowed us down
18 at all on there in terms of getting the wells ready for
19 plugging.

20 Q. What is your projection for plugging now?

21 A. I'm meeting tomorrow with Michael down in Artesia
22 because of this new pit rule that you have. We have to set up
23 a temporary pit next to these pluggings. And there's various
24 reports and that we were supposed to submit. I've been over to
25 the Bureau of Hydrology. They don't know exactly which ones

1 are required. He's given me a lot of information, saying that
2 we can't do a radius search on these certain wells. The OCD in
3 their recommendation of how to get these things -- pits and
4 that added to them -- Mike said it's kind of new to him. We're
5 going to have to go through it and everything.

6 Q. Mike who?

7 A. Mike Bratcher, down in the OCD. And so I told
8 him I'll bring in everything that I have to show him and
9 everything, and then if he says that's acceptable, we'll go
10 ahead and file the permits with him. He may require that I go
11 out and do them maybe a little differently. I may have to
12 require something. He said he hasn't done that many of them.
13 He said a lot of the independent guys haven't done them and the
14 larger companies are doing the closed-loop system on it.

15 But we're going to be using a liner on it, and we
16 will be taking that liner and disposing of it. So we don't
17 have a lot of the reports that are going to be necessary. So
18 he said we should be able to approve it pretty quickly. I've
19 got the guys ready to go, and I'm just waiting for them to okay
20 and talk to Mike on it. And he'll go over it with Darrell.
21 Darrell is overseeing --

22 Q. Do you have approved plugging permits from the
23 BLM?

24 A. Sorry, sir?

25 Q. Do you have approved plugging permits from the --

1 A. Yeah, I do. Like I said, those were approved
2 on -- I submitted them on April 4th. They didn't approve them
3 until May 8th on there.

4 Q. And what's been the delay since May 8th?

5 A. Since May 8th, that's when we had Mr. Finney had
6 that thing roll over on his foot and crushed it and that. And
7 then what we did, I had to get some pumpers and some fellows
8 lined up to schedule them in and that. And we were trying to
9 keep it within budget. You know, these four wells are going to
10 cost over \$50,000, and that was Jeffries' responsibility on
11 there.

12 So I had to get -- it's not something that I really
13 budgeted for. They only produce -- they don't produce that
14 much out there. You know, it's the lease that has the value to
15 them in the future.

16 Q. What's the status of the wells now? Can you tell
17 the Commission that?

18 A. Yeah. There's a total of 17 wells that are on
19 the property there. Of the 17 wells on here --

20 Q. Let's turn to Exhibit 26. That has at least two
21 wells.

22 A. All right. This Exhibit 26?

23 Q. Yes.

24 A. Oh, all right.

25 Q. On the first page.

1 A. Let's start here with the Amoco, what you're
2 looking at there, the Amoco wells?

3 Q. Yes.

4 A. The Amoco well is a gas -- and produces oil
5 there. What happened here is that -- and I have the police
6 reports here -- what occurred was there was vandalism out
7 there. From where the well is located to where the electrical
8 hookup is, it's about maybe 3/4, 1/2 mile to 3/4 mile. We had
9 some fellows that came out during the evening.

10 Where my lease is located is an interesting location.
11 It's as you come out of Artesia. It's right next to the
12 electrical plant. It's probably the first road that somebody
13 can make a left-hand turn on, and it's frequented a lot by guys
14 that go out drinking at night. Further down, there's more
15 wells and the people -- mine are the only wells out there, you
16 know, except for the big fellows. And they've got the big --
17 and they are covered with the fences and the like. So my wells
18 are kind of out there, exposed. And you can see about three
19 miles if anybody is coming with lights or anything.

20 So I'm speculating, of course. But what they went
21 out and did was they went out and cut about half of the 3/4
22 mile of the electrical wire, tore it out. We went and we fixed
23 it back up to get it together. We have the police reports.
24 Then they came back, and they tore the rest of it out on there.
25 They dragged it out. They dragged out our electrical boxes,

1 and they've taken a couple of motors from us out there on that
2 well.

3 So we're replacing them again. We've got the --
4 they're trenching them right now as we speak today. They'll
5 have the well set up probably by tomorrow or Friday on this.
6 We're putting in electrical wire, almost a mile of it out
7 there, new boxes and new motors and would like to get the well
8 going. The well was producing before until somebody pulled
9 everything out. It gets to be a little expensive to get those
10 things back up. But we've got the resources and that to do it.
11 So that's on the Amoco. It's been vandalized two or three
12 times now on there.

13 The next well that you have here is the Hastie. If I
14 could take the Hastie 016, 018, 019 and 021, they're all in the
15 same -- the 016, the 018, the 019 and the 021. All of those
16 wells were hooked up with a compressor out there. It was a
17 large compressor. It was a new compressor that I was buying,
18 and when news came down that our -- because all this
19 information was sent to the banks and that. News spreads out
20 there pretty quickly.

21 And I was making payments on this thing before out
22 there, and they thought Jeffries was out there. The fellows I
23 was making payments to, they came and they grabbed the
24 compressor, and they took it home for fear that we wouldn't pay
25 the balance of it on that. I have since paid them back again.

1 They put the compressor back on. And as of last week,
2 Monday -- the week before -- those wells are back into
3 production. They're back on the compressor. We're building
4 them up and we're producing gas and oil and the like right now
5 on those wells.

6 As far as the Hastie No. 017 here, a motor was taken
7 off that unit, and it appears we're going to probably have to
8 go down and bring in a workover rig and pump off the water on
9 that. I brought in Mr. Finny to do the consulting to look at
10 the wells and that. I'm not an engineer. My pumper, he knows
11 the wells, but he doesn't know enough to actually make those
12 kind of determinations. And Mr. Finny is out there. He's --
13 this would probably be a well that would go into production.
14 We just need to get it pumped off and that.

15 And as far as the Hastie No. 020, as we speak today,
16 this well was a well that was involved in the contamination
17 part of the original thing back in 2007 before that they had
18 with Jeffries. When they cleaned up the contamination, they
19 moved the pumpjack to the side and that, and they just never
20 put it back over the well. And that is being moved over. It
21 should be over on the well this afternoon.

22 CHAIRMAN FESMIRE: Who is they?

23 THE WITNESS: I'm sorry?

24 CHAIRMAN FESMIRE: Who is they?

25 THE WITNESS: I guess it was probably Jeffries. They

1 moved the -- he had a unit come in and move the pumpjack over
2 to another location on the lease so it appeared there was no
3 pumpjack on it. They had to clean. They had to go in and dig
4 about ten feet down for the contamination and that. And we've
5 got the pumpjack, and it's going back over the hole today on
6 there. So it should be -- this afternoon, it should be back up
7 and, with maybe some minor modifications, that well should be
8 back into production as well on that.

9 The Michaels, the State, the Michaels, that's a state
10 well. That well is pumped. It pumps a little water and that.
11 We're going to be going in that well in any case and reworking
12 it and trying to produce more oil on it -- excuse me. More gas
13 on it.

14 The two Muncy wells. I've heard them referred here
15 as one of them as a state well. I believe they're both federal
16 wells. The Muncy -- the two Muncys -- well, let me take the
17 two Muncys and the Scott in just a moment.

18 The Saunders well is producing gas. It has always
19 produced gas. It's produced gas for years. I never T&A'd it.
20 Nothing on it. That's been one of the things that provided a
21 little cash to us as income and that. The Saunders is working.

22 The Schneider well is a state well. That well was
23 producing gas, and it slowed down in the year 2007. And I just
24 recently received a letter here regarding the increase for the
25 bond to put for the depth of the bond. And I contacted the

1 offices, and Dorothy told me that I have to go over -- she
2 couldn't make that determination. Because I had proof. I have
3 graphs and that that the well was producing in the last year.
4 And so she said that I have to talk to Mikal, the attorney. I
5 have to talk to her to get approval so I don't have to increase
6 the bond. But there is a bond on it. But if it takes the
7 bonding to resolve it, so be it.

8 CHAIRMAN FESMIRE: Mr. Kizer, one of the problems is
9 that if you're not reporting production, it comes across on our
10 system as --

11 THE WITNESS: That I realize, sir. That I realize.
12 That I realize. But I have the reports and that, so -- I
13 realize that, of course. That's what I say, if it's something
14 like \$1,700, I'll put the bond -- my issue is that do I send
15 the money to you guys? Or do I send it -- if we increase the
16 bond at the bank, we increase it with the bank, right? That
17 was one of my questions I have for them.

18 CHAIRMAN FESMIRE: That's a question for your
19 attorney.

20 THE WITNESS: Well, I'll take the three wells that
21 I'm a little uncertain about what to do at this time. Although
22 we've talked about it and we've discussed it, that's the Muncy
23 Federal 001, the Muncy Federal 002, and the Scott Federal 001.
24 Right now with the plugging and all the other things that are
25 going on, it's going to take me 45 to 60 days to get out there

1 to get the resources to get these other three on there. We're
2 looking at doing the same thing, pulling rods, going through it
3 and pumping it. Based on the costs that we see to actually
4 plug a well, that we're running on these little shallow wells
5 at 400 or 500 feet, these have a much -- they're much deeper.
6 It's going to cost a heck of a lot more. I'd rather go in and
7 see if we can pull it and see if we can have that done.

8 Once Jeffries said, "I'm not doing anything; I am out
9 of here completely," I didn't have any problem at all to step
10 up with it. I had said that -- when I had started speaking
11 with the attorney here, I sent him weekly updates on what I was
12 doing out there. You don't have those. They were in the file
13 here. They covered about five or six weeks. I sent them
14 updates regarding the status of the BLM with the locating the
15 bond, what we were doing with the C-115s. On each issue, I was
16 giving them updates every week. I didn't get a response back.
17 So I guess he was just taking them in there, whatever it might
18 be. I was trying to let him know I was working on it to get it
19 done on there.

20 And as I said, I had not planned for this stuff at
21 that time in February with the resources. I have since gotten
22 them together, the resources, to get it completed and that, and
23 that's why we're moving forward as quickly as we can and that.

24 I was trying to avoid this stuff. I could have
25 easily moved this thing to another corporation a long time

1 before. And that wasn't my point. That wasn't it. When I sat
2 there in that office that day with Ms. O'Connor -- and I don't
3 know why she isn't here to talk, you know. She said, "Tom, you
4 don't want responsibility on this."

5 I says, "No."

6 And she goes, "Then, we'll write it" -- she was a
7 very nice lady. It's Jeffries. She knew it was Jeffries out
8 there. Jeffries has a terrible reputation in Artesia on it
9 and, unfortunately, now it reflects on me on there. He's left
10 a lot of accounts with a lot of the vendors, thousands and
11 thousands of dollars. And rather than just walking away from
12 them, I've been paying the vendors, because I need their
13 services. So I'm having to pay the vendors on there. So it's
14 getting a little expensive, but we'll get it done on there.

15 So -- did you have any other questions for me?

16 Q. You don't need a lawyer. Mr. Kizer, what's the
17 latest communications that you have had with Mr. Jeffries?

18 A. Oh. What we were -- I just received the other
19 day from Mrs. Jeffries. I was under the impression that I had
20 to file a C-103 with a notice of intent to plug and abandon --
21 to plug the wells out there. And then I called Mike and Mike
22 says no.

23 Q. Mike who?

24 A. Mike Bratcher out of the Oil Conservation
25 Division down in Artesia. He said, "No, Tom, you don't do it."

1 The BLM is responsible for that. Communicate with Mr. Blakley
2 and Mr. Amos, who I've been taking to this entire time.
3 They're with the BLM in Carlsbad.

4 But I had sent them an e-mail, and I received an
5 e-mail back yesterday just telling me to basically -- we don't
6 want -- Mr. Jeffries is not available. He won't -- he's out in
7 the field. He won't be available. You can't reach him by
8 e-mail or fax or pigeon or anything else. We don't want
9 anything to do with you. We don't have anything to do with C&D
10 and that. So they just basically wiped their hands pretty much
11 clean on it.

12 I think we are all pretty much taken by Mr. Jeffries.
13 I know -- I don't know when Sonny came in. Maybe if Sonny was
14 here, and he's the one that wrote up the agreement, it would
15 have been a little tighter. But when you sit down, and you
16 tell me that the guy's going to verbalize it, and she writes it
17 down that he's going to take personal responsibility, that's an
18 agreement. That's all I was looking at.

19 I wasn't concerned -- the 2005 and that stuff. I
20 didn't know that until it was later. I seen he's told
21 everybody back to 2005. But I didn't -- the year that I was
22 operating the wells. I was not operating the wells or
23 anything. But, you know, he pulled the wool over my eyes. He
24 got the local vendors, everybody else, and including the
25 attorney and these guys. These guys are good guys.

1 Q. And when you say good guys, who are you --

2 A. Yeah. They're good guys. I talked to them, you
3 know.

4 Q. Mr. Sanchez and Mr. Swazo?

5 A. They're good guys. They're doing their job. But
6 I thought that with O'Connor and -- she's a lawyer. I know
7 this organization can make any agreement they want. She tells
8 me the guy is personally responsible, that's all I needed.
9 That's okay. And everybody seems to be okay at that time. Now
10 later he hasn't kept up with his obligations and that, and I'm
11 stepping up to take care of them. I've stepped up to take care
12 of them.

13 Q. When will you complete plugging the wells?

14 A. Plugging the wells -- after I talk with Bratcher
15 down there tomorrow, we'll find out. He'll probably take a
16 couple of days to review that. And we'll get the pits --
17 they're going to be moving cement and stuff out probably next
18 week with it. We're going to try to get everything going this
19 week. But it depends on what Michael is going to do on there.
20 We basically have to just go down and pour some cement. It'll
21 take us about one day per well to do it, one day per well. So
22 it's about four days. So I will have them done before the time
23 period that Daniel had said before on there.

24 Q. Within 30 days?

25 A. Yeah. It'll be within 30 days. Yeah. And the

1 reports, as soon as Debbie gets back from her vacation and
2 that. I think she's worked with you guys before on there with
3 the reports and that.

4 CHAIRMAN FESMIRE: Debbie being Ms. McKelvey.

5 THE WITNESS: Ms. McKelvey. I'm sorry. But, one of
6 the things that really kind of -- you know, we're at this spot.
7 It originated back when Chris was there and the two parties
8 that made that agreement that they were talking there. And
9 Daniel read it later, that line 26. It's ambiguous.

10 To me, personally, it -- why would you even use the
11 words "personally responsible"? Why not use C&D all the way
12 through? I've got e-mails before and after -- if we got them
13 in as evidence -- we didn't, you know -- before. I'd be happy
14 to show them. I've given them to this gentleman. Everything
15 he's said he didn't --

16 Q. Who's "this gentleman."

17 A. Oh, Sonny. He's received everything that there
18 is. I've sent him everything so I don't think it should be a
19 surprise. He's litigating it, so, that's the way it is on
20 there. But I think we all got taken to the cleaners on this --
21 with this guy.

22 So -- and I'm not walking away. I haven't -- I've
23 never made an agreement with the OCD or any organization here
24 in New Mexico that I haven't kept my word with -- on it. And
25 I've never walked away from any of the obligations. I didn't

1 run out, cut and run, go try to change the corporation, try to
2 hide it and everything else on there.

3 Q. Going back to the plugging permits for four
4 wells, is there a procedure for plugging that was given to you
5 by the BLM?

6 A. Yeah. What we did is -- the procedure with the
7 BLM -- we basically tell them what we're going to be doing and
8 they approve it. That's inside the permits here. We modified
9 it a little bit, changing the class of cement, that type of
10 thing. And that's it. So, and then with the State we have to
11 do the pits.

12 Q. In all your dealings with federal wells, who have
13 you dealt with?

14 A. I've dealt with two gentlemen with the BLM. One
15 is a gentleman by the name of Jerry Amos, who is the field
16 supervisor. And the other is Jerry Blakely.

17 Q. Did they direct you to anyone for plugging the
18 wells or --

19 A. Oh, yes. They've been very, very helpful. They
20 referred me to some gentlemen out in Hobbs, a custom cement
21 group there. He referred me to Mr. Finny. Mr. Finny, if
22 you -- the Michael lease I got later. I purchased it from him.
23 So we went from 740 to 800 acres.

24 CHAIRMAN FESMIRE: When you say "I got," you mean C&D
25 purchased it after you purchased C&D?

1 THE WITNESS: Yeah. Chris went out and he made a
2 trade one day, and I had a cable tool workover rig there that I
3 could be using, and he went out and he swapped it with some
4 other guy. The guy's a real piece of work. But he went out
5 and he swapped it, and I ended up with 40 acres. And that's
6 the Michael lease.

7 And Mr. Darrell Finny was the gentleman who had that
8 lease before. And the BLM recommended Mr. Finny as a gentleman
9 whose word -- that he keeps his word. He knows -- he has a
10 very good knowledge of that field and the shallow wells. And
11 he's right next to me. And that's -- and I've known Darrell
12 for the last three years. And so he'll come out and oversee a
13 lot of the details on it. And then he was recommended by the
14 BLM, the fellows there. And the other -- and then Michael has
15 been very helpful as well out there -- Bratcher and that. He's
16 been very helpful.

17 Q. (By Mr. Padilla): What kind of forms do you have
18 to fill out in order to dig your pits?

19 A. It's a C-144 form, and it's a four- or five-page
20 form. And it used to be -- I guess they went out and just
21 dropped their debris.

22 CHAIRMAN FESMIRE: They used to go out and dig a
23 hole.

24 THE WITNESS: Dig a hole. And as of the last few
25 years, the OCD has been working on trying to get this. And

1 it's been modified the last few weeks. In fact, last week on
2 July 21st, you guys put out a new form on it. The form came up
3 and that's the form that I'm using, is the one that you had
4 last week. And Mike says keep your eye on it, because they may
5 change again. I don't know. They had them before and that was
6 one that showed up on the internet. And he said go ahead and
7 use that one. But the requirements on that form for an
8 independent doing just a shallow well of getting all the
9 hydrology reports, this report, that report -- there's a number
10 of reports that you have to obtain as an independent and that.

11 That's what I have been trying to work on to get
12 together with Mike and he says you may not need this form. You
13 may need this one. Come by on Thursday or Friday and we'll go
14 over so we know what needs to be done with it. Plus we do this
15 in Pennsylvania. I have some wells there. We do a similar
16 thing there. So I brought a packet of that information of what
17 we do there that might be useful to him. He can maybe use
18 it -- not as a template or anything -- but just additional
19 information.

20 Q. (By Mr. Padilla): You're not trying to apply
21 Pennsylvania rules?

22 A. No, no, no, no, no. And they've listed
23 everything that's there. They tell us to do a hydrology
24 report, but you go the Bureau of Hydrology, and they've never
25 even heard of your C-144 form. The first time the gentleman

1 saw it was yesterday, Mr. Alan Cutty, on there. I sat with him
2 for a few hours. And I'm instructed to go on to IWaters and to
3 figure out what wells are around me. And he says you can't do
4 it on their system because the system doesn't do a radius
5 check.

6 Q. What kind of wells?

7 A. Water wells. Water wells. He says you can't do
8 it. It can't be done. And he gave me a letter to take down to
9 Michael to show him. To show him it can't be done on the
10 system. And I'm maybe the first guy. There may be other
11 independents that are going to be coming to you to do this, you
12 know. And most of us are trying to do it on our own, trying to
13 keep down the costs and that. So there isn't a group around
14 that does their regulatory work, you know, with the filings and
15 that, other than the C-115.

16 Q. Mr. Kizer, when did you know that Mr. Jeffries
17 was not going to comply with anything?

18 A. When he finally told me in January. It got to
19 the point where he just finally came out and told me, "I don't
20 have any money."

21 He was having -- he said he was having some other
22 issues in Kentucky and this and that. I don't know if there is
23 any truth to them. But he said, "I don't have any money to do
24 it."

25 So I said, "Well, you know, can you help me defray

1 some of the costs, because I've got to get this thing going.
2 I've got Sonny and his group behind me here. I've got to do
3 something."

4 He says, "I'm not going to" -- and now he's not
5 taking any calls or anything.

6 Q. So is it fair to say that after you found out
7 that this hearing had occurred in January, you got on the ball
8 to do a lot of things?

9 A. The moment I got the fax from Sonny, you know.
10 When I said -- I had no clue even what was going on, not a
11 clue. They would have gone through and forfeited -- even the
12 banker, when I saw him, everybody seemed to have known. My
13 banker knew that my bonds were being pulled. In fact, he's
14 asked that I remove myself from their bank, you know, because
15 of that thing. I've sat down with him. He may reconsider.
16 But I can't pull the bonds or anything until this matter is
17 cleared. So I'll move them over to somebody else.

18 The fellows came out, and they pulled the compressor
19 off the lot there because they didn't think we were going to
20 pay -- they figured I was just walking from the project. And,
21 you know, I guess they were communicating with Jeffries during
22 the time. They could have picked up the phone and called me.
23 Somebody could have called -- picked up a phone and says, "Hey,
24 listen. This is coming down here against Jeffries on here."

25 Q. The application before the Commission states that

1 you willfully, C&D Management Company, willfully and knowingly
2 violated the rules of the OCD, including the failure to plug
3 and that sort of thing.

4 A. I don't know about that language, willfully and
5 knowingly. Those are very -- those are very -- legal, criminal
6 terms for willfully and knowingly doing something like that.

7 CHAIRMAN FESMIRE: Really? I never noticed that.

8 THE WITNESS: Yeah. They're using criminal language
9 there.

10 Q. (By Mr. Padilla): What's your opinion as to
11 whether or not you willfully and knowingly --

12 A. As I said, going back to the date that I sat in
13 there with Ms. Cheryl, and that's when she said how everything
14 was going to go. This is what we'll do. Don't take personal
15 responsibility. We'll do it so Jeffries gets it and you can
16 have a clean slate. Go. Good luck. You go out and do your
17 wells.

18 I've always tried to communicate with everyone. I've
19 been asked not to. I've been excluded from the negotiations.
20 They said they won't talk to me, for whatever reason -- the way
21 it was with Jeffries. I have to assume that they figured that
22 Jeffries was personally responsible. That's why they were
23 talking to him all the time and not including me in the mix,
24 you know?

25 I wasn't receiving anything about their discussions.

1 I did receive things from, you know, regarding the C-115s and
2 that, you know, the violations out at the wells and that.
3 That's as far as that was. Any of the other things that were
4 going on internally to make sure that Jeffries complied with
5 this, no. I didn't receive anything. And Jeffries wouldn't
6 have told me anyway.

7 Q. Was Jeffries communicating to you anything about
8 stage of compliance with --

9 A. He had stated that -- I was on him quite a bit
10 making sure that he was getting everything done. And he
11 basically said get off my ass -- which wasn't what he said --
12 Quit bothering me about it. I'm taking care of it with
13 everybody, and I'm getting everything done. And the e-mails --
14 you would have received copies and the like.

15 And then I had asked him, well, let me ask you -- I
16 asked Jeffries -- he talked to me when he said he didn't have
17 any money. And I asked him, well, did you ever tell these guys
18 that -- why didn't you ever tell me about this notice? Why
19 didn't you have those guys contact me?

20 And he then said -- he sent me an e-mail that he had
21 sent in communication with the attorney, Sonny -- Mr. Swazo,
22 excuse me -- that he had told him that he's no longer
23 responsible, to contact Kizer. And this is on January 19th.
24 On January 19th, there was an e-mail that Jeffries had said --
25 he sent me a copy of it -- it said communicate with Kizer. And

1 all somebody had to do is pick up the phone and tell me
2 something. By the time I heard it, it was too late. And
3 that's why we're here with the de novo.

4 And he says -- at that time, he said he had told
5 these people numerous times that you got to talk to Kizer. You
6 got to talk to Kizer on these matters. But I didn't hear from
7 anyone on it.

8 Q. But that was in January?

9 A. That was January 19th of 2008. I have the e-mail
10 here.

11 Q. When was the hearing in this case in January?

12 A. I think they had scheduled it -- it was the 23rd
13 or something. I think they had it on the 23rd. Hold on.

14 They had originally scheduled it, I think, in
15 early -- at another time, because of the 20-day period, you
16 guys moved it back. So it was heard on January 24th. And then
17 there was an order here in March 3rd and that.

18 MR. PADILLA: I don't think I have any more
19 questions. Pass the witness.

20 CHAIRMAN FESMIRE: Why don't we take a ten-minute
21 break. When we come back, Mr. Swazo, you can have your
22 cross-examination at that time.

23 [Recess taken from 2:32 p.m. to 2:44 p.m., and
24 testimony continued as follows:]

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

1 the record reflect that this is a continuation of Case
2 No. 14055, that all three commissioners are present and have
3 been present for the entire hearing. And I believe that,
4 Mr. Swazo, you were about to begin your cross-examination of
5 Mr. Kizer; is that correct?

6 MR. SWAZO: That's correct, sir.

7 CROSS-EXAMINATION

8 BY MR. SWAZO:

9 Q. Mr. Kizer, I wanted to clarify some of your
10 testimony because I was a little confused about it. Let's
11 start with your acquisition of C&D Management Company. If I
12 understand it correctly, you were essentially on a payment
13 plan. And once you paid off whatever amount you bought these
14 wells for, you would then assume ownership of the wells; is
15 that correct?

16 A. Partially, yes.

17 Q. Could you explain?

18 A. Okay. When I came out -- when I made the
19 payment -- when I came out and saw the property and that, I put
20 a down payment on it. But I said I didn't want to take over
21 the wells because I didn't know everything that was going on
22 with the wells and that. Plus, I didn't have the resources to
23 pay.

24 And Jeffries said, "That's fine. Make payments to
25 me. When you can, pay me. Just get me paid so I just know

1 that somebody's going to be taking over," and that. He said he
2 would continue to manage the wells. And he had two more wells
3 that he wanted to drill on that property. He had agreements
4 with people, investors, to drill two wells, the Becky and the
5 Freedom, and that if he got any revenue, any oil production
6 from there, that I wouldn't participate in it. I wouldn't get
7 a thing from it. And that he would take whatever there was
8 from it and that.

9 So I said, "That's fine. As long as you take care of
10 it if they don't work out."

11 He said, "They're shallow wells. I've got enough --
12 we've raised enough money on these wells."

13 "Okay. That's fine." And that -- it was a -- that
14 was basically it.

15 Now, when I had finished paying him off -- I had paid
16 him off well before I took the title on it because the issues
17 started to arise then. He had finished completing drilling the
18 wells, and he declared them dry. And then the OCD got
19 involved, and they starting bringing up contamination issues,
20 signage issues, all these other things.

21 And I said, "I'm not taking anything over" -- he was
22 still managing the property, working it and that -- "until you
23 get all these things in order," and that.

24 He said, "I'll take full responsibility. I'll take
25 over, and I'll go ahead and I'll do that."

1 And that was it. And then it was getting towards the
2 end of the year of 2006, and it had been going on for some
3 time. I thought we better get something exchanged here because
4 I don't know what Jeffries is up to on there. And we found out
5 that -- I'm trying to keep the corporation all the way through,
6 and they had failed to keep the corporation up in Kentucky and
7 the State of Kentucky dissolved the corporation on there. So
8 then I went back -- they went back and got reinstated, and we
9 got back on track to make the transfer and that.

10 Q. When did you make your first payment?

11 A. The first day I came out and saw him.

12 Q. And when was that?

13 A. I don't remember. I remember it was hot. It
14 must have been in 2005 sometime. I drove out from San Diego,
15 and I walked through the property, went over the wellhead, had
16 a scotch and a steak and said, "Okay. Here we go."

17 You know, that's pretty much it. You look around,
18 there's other oil wells. You see that there's potential there
19 for future things. Get these things, whatever there is, and
20 let's move forward.

21 Q. It's hot most of the time down there. Do you
22 remember what season it was?

23 A. I think it was during the summertime.

24 Q. Summer of 2005?

25 A. Yeah, 2005, yes.

1 Q. When did you make the last payment?

2 A. That last payment came in -- it was paid. I
3 could tell you, it was paid to the driller because Jeffries
4 didn't have the money to pay the driller to drill those two
5 wells. And he asked me if I could advance him the funds
6 against the driller. And I don't know what day they spudded
7 those wells out there, the Becky and the Freedom, but that was
8 the day that -- when I gave him -- I said, "Here's the money."

9 And I gave the driller the money because I basically
10 wanted him to get those wells up and over with on there so we
11 could start moving forward. So I gave the money to the driller
12 because the driller needed to buy some new bits or do
13 something.

14 Q. Do you remember what day that was?

15 A. When was the well spudded on those, then? It
16 must have been 2006. I don't know when they were spudded.

17 Q. Which wells are you talking?

18 A. The Becky and the -- the Shearn Becky and the
19 Freedom. It had to be in late 2006 or something.

20 Well, here -- I don't know. It May have been 2007.
21 I think it's 2007 here. That's when he was trying to plug
22 them, so it was before that, so it was probably in the year
23 2006 sometime.

24 Q. Do you recall what time?

25 A. I think it was in fall. I recall the weather

1 being pleasant.

2 Q. So what was your arrangement with Mr. Jeffries in
3 terms of -- what was your role with C&D Management until you
4 actually made the final payment?

5 A. I came in with C&D Management at the time -- when
6 we were talking, we were looking at developing the property
7 with -- and one of the things that I was going to be doing was
8 trying to raise funds with investors and the like with it. So
9 that's what I was trying to get involved with to raise funds to
10 get the properties going before it transferred over to bring in
11 money to drill some wells with C&D.

12 And I had told Chris at that time that because of the
13 company -- I wanted to try to keep the company all the way
14 through with the original C&D.

15 Q. Did your role change after you made the final
16 payment?

17 A. Did I what?

18 Q. Did your role at C&D Management Company change --

19 A. After the final payment, you guys were involved.
20 You guys started doing the compliance issues, and I was kind of
21 moved aside at that time, because he was out there trying to
22 finish the contamination, the signage issues and all those
23 things. And I was behind you guys trying to get him to get
24 these things completed to get the wells plugged and move on.

25 And so I was just kind of sitting on the side,

1 basically waiting for him to get out of the way and that. And
2 then you guys had the hearing, and he was just out there the
3 whole time. He didn't want to give up the management. He was
4 then, unfortunately for me, he was terminated from Young Oil as
5 the vice president of the company, and he wanted the property
6 back. And I said no. But he didn't have anything to do, so he
7 said, "I'll keep everything."

8 And he had these issues that he had to take care of,
9 so he was basically managing the property on there.

10 Q. So after the final payoff, before you actually
11 assumed full ownership of these wells, you were sitting on the
12 side?

13 A. Basically, I didn't get involved with a lot of
14 things. He was -- the man was vice president of an oil
15 company. He was running things out in -- he's pretty
16 knowledgeable of the field and the workings of it. He was
17 starting another company to do oil field service work. I was
18 just -- my background is, you know, is more in business and
19 sales, and he was more or less the guy that was running the
20 things. And I was out there watching, basically learning what
21 was going on. But, no, I wasn't making any decisions insofar
22 as, you know, let's pull rods, this and that, no.

23 Q. When did you assume full ownership of C&D
24 Management?

25 A. The full ownership, according to the records that

1 we had filed, was on February 21st, 2007.

2 Q. Now, I was confused about your testimony with --
3 I didn't even right down his last name -- but Joe with the
4 State Land Office?

5 A. Yeah. If you go onto the State Land Office
6 website, at the bottom of the website, it gives the name of the
7 gentleman and it's -- I have it right here. And if you had
8 given permission to have all these exhibits, you'd have it all
9 right there. Here. It's down here at the bottom of the web.
10 Would you care to see it?

11 Q. No. I just did not understand what you were
12 testifying to.

13 A. You didn't understand what I was testifying to?

14 Q. It was a little ambiguous.

15 A. Okay. I'll clarify it. When I spoke to you in
16 March -- or when I came out here on the 12th, you said you
17 didn't have any other address for me -- or you didn't have to
18 give me notice. It wasn't your responsibility to look for
19 people to find them.

20 And I said, "I'm really not that hard to find. You
21 can go to your site there. I'm right there on your site there.
22 I'm on the paperwork that you filed."

23 You know, if you're going to take my bond, you're
24 going to take the property and that -- I said I'm right on this
25 stuff here. And you kind of ignored it. You kind of

1 deaf-eared me with it, and you relied on the other stuff.

2 What I did was, I went back and I pulled up the
3 information, and I sent it to you. And here it shows here on
4 February 22, 2007, the Thomas Kizer C&D Management here with
5 the wells that's on here, the State Land Office data access
6 here, that the address is in Albuquerque on here. And that was
7 as of March 19th, okay?

8 CHAIRMAN FESMIRE: March 19th of what year?

9 THE WITNESS: Of 2008, this year. Then what occurred
10 here is I happened to go back on and I looked at it again on
11 March 29th, the exactly same site, and I see that the last
12 modification that somebody had entered -- nobody has touched
13 this site since February 22nd of 2007. And then it shows here
14 it was modified on March 7, 2008. But there's nothing changed
15 on the entire site.

16 In fact, when I showed you this, Mr. Swazo, in your
17 office, and I showed you my address, you said you tried to
18 contact it and call the phone number. And I said, well -- what
19 are you trying -- and I told you I think it goes to Jeffries'
20 old number. And I said were you trying to call me or send me
21 notice?

22 And that was the extent of it. I said, "The address
23 was here. You could send me notice. You're not going to phone
24 me the package."

25 And that was where you left it. But on March 29th, I

1 went back on the site, and the site had been modified to show a
2 date of March 7th. If you were to go on there and take a look
3 at that site and just go through it, you would say, Oh, it
4 looks like here the effective date here -- they probably gave
5 notice of the address here on March 7th and that. That's what
6 anybody would interpret and that. This is the only evidence
7 that I have that the OCD or somebody knew of my address on
8 there.

9 And that's when I went to the bottom of the website
10 there, and it says call to have Joe Mraz at the SOL here, the
11 State Land Office here. So I e-mailed him, and he said he is
12 not the one that changed it. He said Dorothy Phillips changed
13 it. And he sent me back an e-mail. And he said that she
14 changed it on the 7th of March. But here on the 19th, I still
15 show the 2007 date, but they said it was changed on the 7th.

16 And what concerned me at that time was that I hadn't
17 received any information whatsoever, and you weren't
18 communicating with me, and I'm sending you updates and the
19 like, and I'm still not getting any feedback. I didn't get any
20 feedback before. Nobody communicated with me. I was
21 accessible. I was there. Everybody elected not to me speak to
22 me for whatever reason. I don't know. I didn't know who to
23 speak to. You guys were talking with Jeffries and the like on
24 this.

25 If you're going to take my property and my bonds and

1 the money and everything that we have there, you know, you got
2 to at least let me know. And you've got the bonds sitting
3 right there with the capture bonds with, you know, 48 on. And
4 you said you don't have to look for people. That's what you
5 said: "I don't have to go look for you guys."

6 Q. Well, let me ask you this: What exhibit are you
7 exactly referring to in your testimony, sir?

8 A. On what?

9 Q. You just said that we had your address and you're
10 referring to that. You had --

11 A. I'll go right to the exhibit on here. Okay.
12 This exhibit. I can't show you. You guys can go on the
13 website, and you can see what the changes that are on it there
14 and the like. Let's go back to -- let's see which one you're
15 pulling the bonds on. I think it was your -- is was one of the
16 capture bonds that you have that you sent to the bank down in
17 New Mexico.

18 Q. You just said that a Mr. Mraz --

19 A. That's the website.

20 Q. Well, what -- you just testified about us having
21 your address. Where are you getting that information from?
22 What exhibit?

23 A. You won't allow my exhibit in. I'm telling you
24 the website.

25 CHAIRMAN FESMIRE: He's not the one who made the

1 decision on whether or not to allow those exhibits.

2 THE WITNESS: You can go directly to the State Land
3 database there. In fact, you even had it in your office that
4 day. And I've sent it to you. You say you don't know. Come
5 on, I've sent this to you three times on there. Hold on. I'll
6 get you the other one here. This is your --

7 Q. Just show me the documents, sir, where you're
8 saying that the State Land Office had your address. That's all
9 I want.

10 A. This one I've sent you three times.

11 Q. And so that's the document that you --

12 CHAIRMAN FESMIRE: Mr. Kizer, would you sit down,
13 please?

14 THE WITNESS: Yes, sir.

15 Q. (By Mr. Swazo): This is the document that you
16 claim we had your address for.

17 A. I don't know what you had.

18 Q. Didn't you just testify, sir, that this was your
19 address, and we should have had your address based on this
20 information?

21 A. Am I saying that?

22 Q. Yes.

23 A. I don't know how your organization works
24 internally. I do know this: that I was receiving letters from
25 everybody else from your organization at that 4801 address,

1 dating all the way back to March and May of 2007.

2 Q. But didn't you just say that we had your address
3 based on this information coming from this website?

4 A. You had it that day when I walked in your office.
5 I was here the other day. You had it in your hand.

6 Q. That is not true.

7 A. Yes, it is. And --

8 CHAIRMAN FESMIRE: Okay. Stop. He asks the
9 questions; you answer, okay?

10 Q. (By Mr. Swazo): This is a yes-or-no question.
11 Are you saying that we had your address based on this
12 information you had with the State Land Office?

13 A. Yes.

14 Q. Are you aware that we are not part of the State
15 Land Office?

16 A. I don't know if you are or not. No, I don't.

17 Q. Did you submit a sundry notice back on April
18 7th, 2008, to the OCD asking them to change the address
19 to 4801?

20 A. What date is that?

21 Q. April 7th, 2008.

22 A. Can I see it?

23 MR. SWAZO: May I approach?

24 CHAIRMAN FESMIRE: You may.

25 THE WITNESS: Did I send this to who?

1 Q. (By Mr. Swazo): Is that your handwriting?

2 A. Did you ask me who I sent this to? The Bureau of
3 Land Management in Carlsbad here. I sent it to the Bureau of
4 Land Management here changing the address on the wells. Jerry
5 Blakley told me I should sign this and send this in. I sent
6 this in with the permits on the 7th when I finally located my
7 bond on there. That's including the bond number there. I sent
8 this with the permits to him. I didn't send you anything like
9 this.

10 Can I have the exhibits back?

11 Q. I put them right there.

12 A. Thanks.

13 Q. Wasn't this document submitted to the OCD Artesia
14 office?

15 A. Not to my knowledge, no. It was all the permits.
16 There were four plugging permits that were set up on April 7th,
17 because on the 6th there I received finally the bond. You'll
18 see the bond numbers on there, the federal bond number, for the
19 blanket bond. And we just got it the day before. And I had
20 sent it to -- I had sent it down there. That's an original
21 stamp by the Bureau of Land Management in the right-hand
22 corner. I don't have that stamp.

23 MR. SWAZO: May I approach?

24 CHAIRMAN FESMIRE: You may, sir.

25 Q. (By Mr. Swazo): Isn't it stamped at the top by

1 the OCD in Artesia?

2 A. Yeah, but it's down here. Bureau of Land
3 Management, Carlsbad, April 26. I don't know what day you got
4 it. You got it the 29th.

5 Q. But it was received by OCD, correct?

6 A. I don't know if you guys received it. It wasn't
7 from me. I didn't send it to you.

8 Q. Isn't that your -- this is the document that you
9 submitted, though, with the BLM.

10 A. I submitted it to the BLM. They may have
11 forwarded it to you. I didn't send you copies, I don't think,
12 of the permits either. I told you that I had filed them.

13 Q. Mr. Kizer, you're an attorney by profession?

14 A. I was a licensed attorney in California, but I
15 haven't practiced in 15, 16 years.

16 Q. Is the Saunders No. 012 currently on OCD approved
17 TA status?

18 A. According to what Daniel testified --

19 Q. No. I don't want to --

20 A. I've never done anything, TA'd or done anything
21 with that well. There's never been any papers that we've filed
22 on that well.

23 Q. Is it true that the Muncy Federal No. 001 is not
24 on OCD TA status at this point, correct?

25 A. Correct.

1 Q. You've actually known about seeing these
2 reporting issues since at least March of 2007; is that correct?

3 A. Yeah. Right around there. It was in March of
4 2007, yes.

5 Q. And this conference that occurred between OCD and
6 Chris Jeffries, weren't you present during the telephone
7 conference?

8 A. Nope. Daniel testified that after it was done,
9 it was Michael Bratcher, it was him and O'Connor. I was not
10 present during it.

11 Q. This is a letter that you sent me on --

12 CHAIRMAN FESMIRE: Mr. Swazo, do you want to approach
13 the witness?

14 MR. SWAZO: May I approach?

15 CHAIRMAN FESMIRE: You may.

16 Q. (By Mr. Swazo): Is this a letter that you sent
17 me on March 30th, 2008?

18 A. Uh-huh.

19 Q. That's a yes?

20 A. Yeah.

21 Q. I'm sorry. Just for the record.

22 A. I sent you like five of them, yeah. Updates,
23 yes.

24 Q. Well, in this letter, didn't you state that, "I
25 was present during the telephone conference"?

1 A. Yes, in March. That was with -- that's when I
2 sat with O'Connor in her office, and she brought me up, and she
3 was talking to Jeffries on the phone. Daniel was there, but
4 then he had left. It wasn't like -- they were talking with
5 each other preparing the paperwork on what they were doing
6 because they had just dismissed the case downstairs and
7 O'Connor just made the appearance for it. And she knew I was
8 here and she said, "Why don't you just come up here while I'm
9 doing my paperwork and we'll talk."

10 And that's when he got Jeffries on the phone and
11 started going through it. And then she said, "You just bought
12 this here?" She said, "You don't want to accept responsibility
13 for this."

14 And I said, "No."

15 And she said, "Okay. Then we'll have him take it on
16 personal responsibility."

17 Q. And how long have you had your e-mail address?

18 A. Oilfreedom?

19 Q. Yes.

20 A. I would say since 2005.

21 Q. And you're testifying that you did not receive
22 this e-mail from Cheryl O'Connor?

23 A. I received that e-mail. I received the text of
24 it, but there was no attachment. In fact, here's the e-mail
25 that I have that I just -- Carol sent back to me here --

1 Cheryl. I had sent her an e-mail here on April 12th asking her
2 for the things here.

3 And she said, "I'm no longer with OCD" -- this is on
4 the 12th -- "but I'll forward you the e-mail to Mr. Sanchez,"
5 on there, "Compliance Enforcement Manager and Gail MacQuesten,
6 attorney. Hopefully they can PDF a copy of the signed
7 agreement. But it must go through a process at the Division.
8 So a photocopy may be what is sent. As I still work with the
9 State, I will still have the same address. Got your note," and
10 then there was some personal things that I had sent a --
11 because I went down to Hobbs, and I sent her a postcard from
12 down there and the like. And that was as of April 12th.

13 And she did send me -- I did get that e-mail, but
14 there was no attachment -- there was no attachment on it. And
15 that's why I went back, and I asked her. And this was the
16 e-mail from her sending back to me. She said contact David on
17 it -- I mean, Daniel, on it.

18 Q. Did you ever contact Daniel?

19 A. I don't recall if I did. We've never really
20 spoken except on two occasions. Once was when I met him with
21 Cheryl. The other time was when I met him with you here on
22 March 12, 2008.

23 Q. Did you ever contact Gail?

24 A. No.

25 Q. Were you aware that Agreed Compliance Orders are

1 available on the OCD online website?

2 A. I wasn't aware of it at that time, I don't think,
3 no. No. I didn't -- I had the dial-up thing and thing took --
4 no. I saw this stuff that was there, but I couldn't get access
5 to the stuff. Just like you can't get access to a lot of your
6 logs on there. I just couldn't get access to it and that.

7 Q. So when did you become aware that that was the
8 case that these records -- these orders were available to the
9 public?

10 A. Oh, I don't know. During the process of -- what
11 records? Your records, or the well records, whose records?

12 Q. This Agreed Compliance Order that you contacted
13 Cheryl O'Connor on, did you, once you became aware that they
14 were online -- well, when did you become that they were
15 available online?

16 A. I don't think it was -- I don't think I got it
17 online. I think I may have reached you, Daniel, and maybe he
18 dropped a copy in the mail or something. But I ended up with a
19 copy of it. I did contact someone. I didn't just ignore it.
20 I did get a copy of it, but it wasn't when it was said it was
21 done. It was probably in late April or something. I wasn't
22 putting my head in the sand, if that's what you're saying. I
23 took it, and I saw what it said.

24 Q. And the person who actually told you not to get
25 involved, wasn't that Chris?

1 A. Not to get involved? Yeah. You guys were having
2 a telephone conference, and I asked -- I tried to get involved
3 on that discussion because I knew that it would probably have
4 some bearing -- I wanted to find out what was really going on.
5 And he told me to just stay the out of everything and that it
6 was his responsibility and if I wanted to get in and mess --
7 start rocking this baby, I could and he would just walk.

8 Q. And you testified that he actually told you to
9 stay the F out of it?

10 A. I have the e-mail from him. Yes.

11 Q. And he had actually told you this at various
12 times?

13 A. Well, I was pushing. As I say, I was behind you
14 guys to get all this stuff done, the contamination issues, the
15 signage issues. I wanted to get involved with the property.
16 And if he didn't do these things, I realized you guys weren't
17 going to permit me to do anything else or to develop the field
18 anymore if all these issues were outstanding, you know, out
19 there. So I was pushing him to try to get everything done.

20 And he told me that he had funds. I tried to get him
21 more funds to do the things. He did a few of the things, but
22 he didn't follow up on getting, you know, the wells plugged.
23 And he was, you know, tardy with the other items there. The
24 girl -- admittedly, Debbie, she had a lot of stuff to catch up
25 with. The records that Chris and they had, that they had

1 brought in from the Matthews who owned it before and that, it
2 was kind of hard for him, to put them all together, I guess,
3 from everything that he had there.

4 Q. So the answer is yes, that he did tell you on
5 various occasions? He did tell you --

6 A. Oh, yeah. He says I've done this, I haven't done
7 that, we're getting the wells plugged on here.

8 Here's what he said -- he said, "Damn it, Tom, chill
9 out. This was done several days ago." This is regarding
10 logging on for changing the address and that. This is on March
11 10th of 2007, okay? "I got a conference call on Monday at
12 10 a.m., Central Time, between me and the OCD about the fines
13 charged to me that I am responsible for and a plan of action
14 that I am solely responsible for. And if you want to call on
15 it and get in on it, I guess maybe that's your right. But you
16 have things that are more difficult or severe" -- or
17 something -- "then it's your baby to rock, not mine. I will
18 get every single damn thing done and in compliance." And he
19 says up here, "Even for the approval here before you make any
20 actions, so get the F off my back."

21 That was days before you guys had your -- right
22 before you had your conference with him.

23 Q. Did you feel that you were getting the runaround
24 from Mr. Jeffries?

25 A. Well, you know, I don't know a lot of oil guys.

1 I know some of them. Some of them are pretty straightforward.
2 I thought that he was taking care of the things on that. I was
3 giving him funds, and things were moving -- they appeared to be
4 moving forward and that, until he didn't do the things and the
5 compliance -- that hearing was coming up on that.

6 And then he said, "I'll get it off the docket and
7 I'll make an agreement with them. I'm a Kentucky oil guy. I
8 know the oil and gas business. You don't. Stay out of it. I
9 know what I'm doing here."

10 I said, "Just get the things done. Get them done and
11 then that's it."

12 And he said, "I'll get it off the docket so there
13 isn't -- I'll make an agreement with them."

14 But I showed up anyway. Just like I showed up for
15 every other meeting here, but nobody -- this is the first time
16 I've been able to talk, so.

17 Q. At this time, you were purchasing the wells,
18 right?

19 A. Yeah. In 2007 we were just -- at that time, we
20 were just going through the thing. I just went -- on the 8th
21 everything went through in Wyoming at the same time you guys
22 were having that hearing. All those things were going on at
23 the same time -- the transfer, I had just got the shares and
24 everything. We were just moving over at that time on there.

25 And that's why, when we spoke with Cheryl, she said,

1 "The guy just sold, he sold it to him on there. The sale just
2 went through. You don't want any part of this, do you?"

3 I says, "No."

4 "Don't take any part of it," she said. "I'll write
5 it up that he's personally responsible."

6 "That's fine."

7 You know, she does arm's length transactions, she can
8 do what she liked.

9 Q. Well, if you were not getting any cooperation
10 from Mr. Jeffries, and this was actually property that you were
11 acquiring, how come you didn't inject yourself more into the
12 operation?

13 A. I did show up. I showed up for your hearing. I
14 did show up for the hearing. I did know when the conference
15 call was going on. I couldn't get in on it. I didn't even
16 know who to speak to. So I didn't know who to contact. You
17 guys were right in the middle of the negotiations. What am I
18 going to jump in and say -- I didn't even know how to approach
19 it at that time.

20 He had said he has things under control. Maybe the
21 guy will take care of it if he's got it under control and that.
22 After he came out of that conference, he said, "I'm taking care
23 of this stuff. We've got it. It's just got to be put on
24 paper, and you don't have to show up at this hearing."

25 I said, "I'm coming anyway. I'm coming in March of

1 2007, anyway."

2 That's when -- I wanted to show up and introduce
3 myself. It was never my intention to start an adversarial
4 relationship with this organization -- or any of them. I know
5 you guys are kind of partners, quasi-partners, with us to get
6 everything done. And that's all I'm trying to do. I know we
7 have to work together. Do you think I wanted to start out like
8 that? It's not my personality, believe me, to be adversarial
9 with people and the like. You don't know me that well, Sonny.
10 I'm not really that way.

11 And I really wanted to get -- I don't know when you
12 came in. I don't know when you first picked up this file or if
13 you guys even had a chance to even talk to Cheryl about it. I
14 don't know when you picked up the file, but when you picked it
15 up there had to be other people that had looked at this thing
16 before up there.

17 Everybody just missed it. You guys missed it. It
18 was right there in front of you. She told me he was taking
19 personal responsibility. She's the attorney for the OCD. I
20 got to go with that. That's it. That's all I needed to know.
21 I'm okay.

22 Q. And you had said during your testimony you did
23 not know why Cheryl was not here. Did you call her as a
24 witness?

25 A. No, I didn't.

1 Q. And you also testified that you did not know why
2 Chris Jeffries wasn't here. Did you call him as a witness?

3 A. I've tried to tell him to come on out. He won't
4 show up. He wouldn't come out in March. He wouldn't come
5 out -- do you know how many times he's promised to come out to
6 these wells out here to do, you know, to sit and meet? I must
7 have counted 10, 15 times that he's never shown up out there.
8 And as far as Cheryl, I think she has -- I don't know, maybe
9 you guys have attorney/client privilege. I don't know. But I
10 do know that's what she wrote. That's what she told me. If
11 she was here, I don't think she would say anything different,
12 you know?

13 Q. Did you try to subpoena Mr. Jeffries?

14 A. No. We didn't try to subpoena Mr. Jeffries. I
15 would like to address one thing. You asked me a question
16 before, and I didn't get to answer because I --

17 CHAIRMAN FESMIRE: Mr. Jeffries, your attorney will
18 have a chance to --

19 THE WITNESS: Oh, I'm sorry. You called me
20 Mr. Jeffries.

21 CHAIRMAN FESMIRE: I'm sorry. Mr. Kizer.

22 THE WITNESS: Yes. It's hurtful. That's hurtful.

23 Q. (By Mr. Swazo): Mr. Kizer, you've been aware of
24 Rule 115 -- or 1115, the reporting rule -- is that correct?

25 A. I'm aware of it, yes. I can't tell you exactly

1 the date.

2 Q. Well, you're aware that OCD rules require
3 operators to file monthly production reports; isn't that true?

4 A. Yep. I'm aware of that.

5 Q. And haven't you been aware of that since at least
6 March of 2007?

7 A. And they were filing reports in March of 2007.
8 You guys had in your requirement that Jeffries file them. And
9 that's when he started filing them.

10 Q. Now, you said you took ownership on February
11 21st, 2007?

12 A. From -- it was transferred over -- February 21st
13 to March 8th, when it went into Wyoming and they made the
14 approvals and that. So it was right during that period.

15 Q. Well, if you've known about the rule and you took
16 over ownership on February 21, 2007, why haven't you filed any
17 reports until recently?

18 A. Well, I can tell you. The order that you guys
19 had against -- or the agreement that you had with Jeffries, he
20 was filing the reports. He was filing them. That was one of
21 the requirements that you guys had. So he was filing the
22 reports. I had no reason not to think that he wasn't until --
23 when I had spoken to him, he was working with McKelvey. It was
24 the first I had heard that she -- and now it makes sense. She
25 did say that Jeffries wrote her some bad checks. And I think

1 that's why she stopped and came back on and that, and that's
2 why she had me pay all up front.

3 So I did go back and get them in order because I
4 realized that Jeffries hadn't brought them up-to-date with you
5 people completely. He did do it partially. He did do it
6 partially, and then I brought them up all the way to 2007, back
7 from 2006. I don't know why he stopped. He may have run out
8 of money. She stopped. Something went on with money there.

9 Q. But the -- isn't it true that the Agreed
10 Compliance Order is for reports that were delinquent up until
11 that point?

12 A. What order?

13 Q. The Agreed Compliance Order. The one that we've
14 been talking about with regards --

15 A. Up to that point in time that you had, that's
16 what he was doing. That's what he said he was doing.

17 Q. But the order was for reports that were
18 delinquent up until that period of time; isn't that correct?

19 A. I don't follow.

20 Q. The Agreed Compliance Order was for past
21 violations; isn't that true?

22 A. I haven't gone through it that carefully. You
23 guys have a lot of violations in there. You had things in
24 there that were already done, that he was -- that you weren't
25 holding him responsible for. You want me to read through it?

1 Q. Well, my point is this: Did you expect Chris
2 Jeffries to file reports for as long as C&D Management operated
3 these wells?

4 A. Forever?

5 Q. Yes.

6 A. Oh, no. Not at all.

7 Q. Well, when were you going to become responsible
8 and start filing the reports after you assumed ownership of C&D
9 Corporation?

10 A. This year. He was going to bring them up-to-date
11 and everything he had out there. I figured he was going to be
12 keeping handling them out there until he got all of his stuff
13 done. He told me he was working on it; he's getting everything
14 done out there.

15 And then finally he just said, "I don't have the
16 money. I'm washing my hands of it," and that's it.

17 Q. And with regards to Exhibit No. 26, paragraph 13,
18 which appears on page 3, the ACO states that Chris Jeffries was
19 assuming responsibility, not that OCD was holding him
20 responsible for that reporting period?

21 A. You're asking me a legal question, isn't it?
22 You're asking me to comment on that?

23 Q. Well, I think --

24 A. What I'm doing is I'm taking it into context also
25 what she told me at that time when I was sitting with Cheryl.

1 And how she drafted it is how she drafted it. I can tell you
2 exactly what she told me, okay? And that she was going to be
3 holding him personally responsible for it. He was volunteering
4 for it: "I'll be personally responsible.

5 I have e-mails from even before where he said he
6 would be personally responsible for it. And he must have told
7 you guys as well. You know, he must have told you guys as
8 well. He told everybody else. He communicated with Cheryl,
9 you know? You weren't there. Were you there during the
10 drafting? I know I'm not supposed to ask questions, but you
11 were there during the drafting of it.

12 Q. And isn't it true that the OCD has tried several
13 times to get you to come into compliance with the reporting
14 requirements of OCD Rule 1115 since 2007?

15 A. Yeah. And he has -- they did give him the
16 reports. He didn't bring them all the way up-to-date. And
17 when I heard that, I immediately did it.

18 Q. But I'm also talking about reports that occurred
19 on your watch?

20 A. Yeah. For example, right now, they're not in.
21 So I take full responsibility for that.

22 Q. But the OCD did send you letters to the effect --

23 A. Oh, yeah. I've never denied that. I've never
24 denied that.

25 Q. And you didn't file those reports by the

1 corrective due date in those letters; isn't that true?

2 A. You're going to have to go by example, by the
3 corrective date, yeah. They're tardy. They're tardy, okay?
4 She has the ones up to 2007. Now the ones for 2008 are tardy.
5 They're late. They're overdue.

6 Q. How many years did you practice as an attorney?

7 A. Probably about maybe seven, eight? Eight, yeah.

8 Q. And what was your primary practice?

9 A. I worked in California, and I did some
10 entertainment law, personal injury. I worked on some
11 international law and the like.

12 Q. Did you ever sue corporations?

13 A. Me?

14 Q. Yes.

15 A. No. I didn't sue anybody. I generally tried to
16 negotiate and try to work deals out. I'm not a big suer. I
17 try to get everybody to try to avoid suing each other and try
18 to work something out. No.

19 Q. Are you aware that personal service can be
20 effected on a company official, a corporate official?

21 A. Okay.

22 CHAIRMAN FESMIRE: Mr. Kizer, would you clarify that
23 answer, "Okay"?

24 THE WITNESS: Well, he's making a statement.

25 CHAIRMAN FESMIRE: Are you aware?

1 THE WITNESS: Yes. I am aware, yes. I don't think
2 you ever served me with anything, though. I've shown up for
3 everything you guys have had, and you haven't ever served me.
4 So, come on. I mean, I come knocking at your door asking for
5 this stuff. You didn't have to serve me. You just tell me;
6 I'll just show up.

7 Q. (By Mr. Swazo): What is your intention with
8 regards to the Muncy? Because the Agreed Compliance Order with
9 C&D Management states that that was one of five wells that C&D
10 intended to plug. In addition, there's been subsequent
11 correspondence with C&D Management where they still indicate
12 that you folks intend to plug that well.

13 A. That was one that -- I see you guys have it in
14 your other orders in here. You don't have the Muncy included
15 in that. And that's why I didn't permit it this time to go
16 through with it. And in speaking with the fellows out there,
17 the Muncy is a federal well. It's right next to the Muncy 002.
18 There's two of them out there.

19 What we're going to do is pull the stuff out and go
20 back in and try to rework the well in there. Historically, it
21 has production on it, and recently it just went flat. I talked
22 to Mr. Mathews, the prior owner of the lease, and he said that
23 the well, you know, it can produce. It's not any great
24 numbers, but it would probably be cheaper to get it producing
25 than it is to go through and plug it. And so I will need a

1 little time with that one because that's probably the last one.
2 The other ones I can get on a lot faster. That one will
3 probably take a little bit of work with it. Because it'll be
4 the Scott and the two Muncys.

5 Q. And with regard to these letters of violation
6 that Mr. Amos sent you in May and June of 2007, you testified
7 that you did not respond to those letters of violation until
8 February 29th when you sent him that written response.

9 A. Right. I didn't respond -- I had talked to
10 Jeffries about this before. These were the wells that Jeffries
11 was working on out there. And I just had them on my desk, and
12 I was going to file them and I just pulled out -- I sat down
13 and wrote a letter before I filed them. I thought it was going
14 to be pretty much the -- Jeffrey was out there working on them
15 and I just thought to get something on file, and that was it.
16 And then you came down with your avalanche that you had there.

17 But as far as the Schneider and the Michael, the
18 Michael is working on there, and we took over that in 2006 or
19 something. And the Schneider, we're going to pull the rods and
20 everything and pump off the water. We'll get that back into
21 production.

22 Q. Now, with regard to the Amoco No. 001, the Hastie
23 No. 016, the Hastie No. 017, the Hastie No. 020, when we met,
24 you never mentioned the vandalism, the fact that the compressor
25 had been taken, the fact that there had been no pumpjack on the

1 No. 020. When did these events happen?

2 A. I have a police report here when they happened
3 here, and I could also supply you with photographs on here. I
4 have a police report from the sheriff. It's happened on more
5 than one occasion on there. And we thought we'd get -- we
6 put -- when something like that happens, I just got to fix it,
7 right? I don't know if I have to report it. Somebody steals
8 the motor, I just put the motor back on.

9 It's occurring more than -- it's reoccurring. And
10 what it is, is they are -- and Daniel, you've probably heard --
11 they're stealing the wire out there for the copper that's in
12 it. A lot of people with the -- they have a meth problem out
13 there, and a lot of those guys are burning it and selling the
14 copper on it. And when you've got a mile of it -- they took
15 pieces of it to cut it because it was too much. And then they
16 had to bring in a truck on there.

17 And they're hitting us all the time. And the motors
18 go out there. And what do I do? The policemen out there, they
19 just recently had reports in the Artesia newspaper, and they
20 report them in a little blog there. But they've just got to be
21 replaced. I just got to replace them. And it's not cheap to
22 get all that wire. And the motors and everything else go and
23 the electrical boxes and that. As I said, I had to get
24 together the resources. And now with the plugging of the wells
25 and then paying back the back stuff that Jeffries hasn't paid

1 to the local vendors, which is almost \$75,000 to those fellows.

2 Q. When Chris told you that he was not going to
3 comply with the OCD in January, did you contact OCD at that
4 time?

5 A. Did I contact you? No. I didn't say he wasn't
6 going to comply. He told me he didn't have any money. He said
7 he didn't have any money, and he was going to walk from it. I
8 didn't know that you guys had this order that was going on. He
9 said he didn't have any money. And that's when I started
10 looking around -- well, I've got to raise money to get this
11 stuff moving forward. And, you know, you just don't show up
12 with 50,000, 60,000 overnight -- at least I don't.

13 Q. Did you enter into a contract with Debbie
14 McKelvey?

15 A. Yes, I did.

16 Q. When did you enter into that contract?

17 A. I think it was in March, I think. I have a copy
18 of it if you want to enter it as evidence, but you won't let
19 me. I think it's in my box. I sent you a copy of that. I
20 sent you updates every week.

21 CHAIRMAN FESMIRE: The contract was with who?

22 THE WITNESS: Debbie McKelvey for the filing of the
23 reports.

24 Q. (By Mr. Swazo): When did you correct the PRC
25 information concerning C&D's corporation?

1 A. PRC?

2 Q. Right. When did you provide the --

3 A. What's the acronym for the PRC?

4 Q. Public --

5 A. Oh, department of corporations. The way we --

6 CHAIRMAN FESMIRE: Clarify that. Not our "department
7 of corporations," the Public Regulatory Commission.

8 Q. (By Mr. Swazo): Well, PRC stands for Public
9 Regulation Commission?

10 A. Uh-huh.

11 Q. When did you update the corporation information
12 for C&D Management?

13 A. Okay. When we took over -- when I tried to get
14 the transition going through, the officers were the only thing
15 to change. The company was to remain the same so that I could
16 still operate here in New Mexico under C&D and Freedom Ventures
17 and keep the same corporate number and the origination date of
18 2004 and everything and that.

19 When my attorney, Bagley, got the information and
20 that, we basically sent it into the department of corporations.
21 And it has been like pulling teeth to get them to finally
22 accept what we were doing. And, finally -- I sent you copies,
23 11 pages of them -- finally, Mr. Bagley went through and he
24 gave them the statutes and the laws and rules in terms of
25 moving the corporation over. And then finally they came

1 through and gave us a form that was to be completed. And they
2 had to speak with one of the folks there at the PRC other than
3 one of the clerks and that. And they finally accepted it.

4 But we did go through quite a -- for months, off and
5 on, trying to get the thing accepted on there with the new
6 information to change it. And they said they would not change
7 it. They won't change the information on it even if it was the
8 other company on it. But I did not want to open up a new
9 company here to operate in New Mexico because I had -- you
10 know, I had the corporate number. I had the consistency of the
11 four years and the like. I wanted to show longevity and the
12 like when it comes to applying for any credit with any of the
13 vendors or anything of that nature. So it was tough.

14 Q. So when exactly did you start the process for
15 that?

16 A. We started it back in 2007. Attorney Bagley
17 started all that. And he kind of came on it, and then he kind
18 of left it and said let's wait for the answer. And by the time
19 he wrote a -- I started out writing a letter because I was
20 trying to save on some legal fees. And they kept throwing the
21 thing out and then finally he got further involved. And
22 finally, I just had to engage him completely to make certain
23 that it wasn't, you know, that somebody would take notice on
24 it.

25 And finally, he put together almost a brief for them

1 on why the company -- how a company can move from one state to
2 another and remain the same. But I told -- even when I saw --
3 Cheryl what we were doing and why I was doing it.

4 Like I say, I didn't come into this state to cause
5 trouble. I didn't want to have the appearance of being a
6 carpetbagger, you know?

7 Q. And when was that completed?

8 A. That was just completed back here in -- we
9 finally got the thing here in -- I have it right here. It was
10 April. It finally went through. Here it is. Public
11 Regulations here, offices here, C&D Management, same corporate
12 number, same everything here. They have here the date April
13 16.

14 CHAIRMAN FESMIRE: Of what year?

15 THE WITNESS: This year, sir. April 16th of this
16 year, sir.

17 MR. SWAZO: I don't have any further questions.

18 CHAIRMAN FESMIRE: Mr. Padilla?

19 MR. PADILLA: I have no questions.

20 CHAIRMAN FESMIRE: Commissioner Bailey?

21 EXAMINATION

22 BY COMMISSIONER BAILEY:

23 Q. You made your last payment on this company
24 February 21st, 2007. At that point, did Mr. Jeffries become
25 your employee?

1 A. No. I did not make a payment. I made it before
2 that time. I made the payment back in -- it was in, actually,
3 2006. And what we tried to do is -- you can go on -- you folks
4 can go on the Kentucky website for C&D Management, and you'll
5 see what occurred where they dissolved that corporation there
6 because the Jeffries didn't keep it up-to-date.

7 And that's the one we were trying to transfer over.
8 And I told him I'm not going to buy a darned thing because you
9 let the corporation lapse. And my whole intention was to try
10 to keep it through. So I had already paid him on that. I had
11 already paid him back in 2006 on that, but I wouldn't take it
12 because I couldn't get the stock.

13 Q. So at what point did Mr. Jeffries become an
14 employee?

15 A. He's never been an employee.

16 Q. You had no business/financial relationship with
17 him?

18 A. Financial? No. He was taking -- no.

19 Q. So he did all of the filings and all of the
20 appearances and all of the letters back and forth out of the
21 goodness of his heart?

22 A. No, no, no. He had the obligation to do them.
23 It was his responsibility based on 2007. I wasn't asking him
24 to do anything new. It was these things that he had before
25 that he had to get done.

1 Q. But the filings for late reporting --

2 A. Uh-huh.

3 Q. -- according to the agreement, was for delinquent
4 filings.

5 A. Uh-huh.

6 Q. Everything from that date forward became your
7 responsibility, then, as owner of the company?

8 A. Yeah. What he was going to do then, he said
9 because he had hired Debbie at that time that he was going to
10 keep her going with it -- on it. She charges like \$200 a
11 month, I think, and he had overpaid her, I think. And that was
12 just a credit against it. It was going to go on and he said
13 we'll go ahead and just keep -- the pumper was just sending the
14 paperwork to her. So it wasn't that much that was on there.
15 And I had also advanced him some money to get some other things
16 done as well there, you know, some minor things out in the
17 field.

18 Q. So you had paid him a certain amount of money?

19 A. No. I didn't pay him. I paid the vendors. I
20 was paying the vendors on that. There were -- the folks I&W,
21 they had to bring a dozer out. He didn't have the money for
22 it. I had paid for that. These are the things that he was
23 getting done. So he just took over that. No, he was not paid
24 a salary or anything, commissions, or anything on it. He took
25 on that responsibility to get that done. He took it on before

1 and he had -- truth be told, he raised a lot of money on these
2 wells that he was drilling, those two wells that he ended up --

3 Q. On your property?

4 A. What?

5 Q. On your property?

6 A. Yeah. It was still his then. He raised a lot of
7 money from investors on that. And when we drilled those
8 wells -- so he had a pretty -- he had a lot of money. He only
9 drilled them down to 600 feet. But he raised a heck of a lot
10 more --

11 Q. You were the legal owner?

12 A. Sorry?

13 Q. You were the legal owner?

14 A. No, I was not. Not back when he drilled the
15 wells.

16 Q. That was before?

17 A. That was before.

18 Q. 2000 --

19 A. 2007. Yeah. That was before. He drilled them
20 back in 2006.

21 Q. Okay. But you advanced him money to pay off --

22 A. Well, I was coming in to check -- he was running
23 short with cash, you know. So I advanced him some of the money
24 to get some of the things done on that.

25 Q. Okay. For all of his appearances and work with

1 OCD and paper filings, you did not give him any money for that?

2 A. Commissioner, he brought this on himself. He was
3 clearing up his own messes. I didn't -- these things that
4 existed -- O'Connor realized it -- these things that predated
5 my purchase on here. These things predated my purchase. When
6 I purchased it, he was just clearing them up on there.

7 Q. Do you have any continuing business relationship
8 with Mr. Jeffries?

9 A. No, ma'am.

10 Q. Why did you not refute some of the recitations in
11 this agreement --

12 A. That's a very good question.

13 Q. -- which are now coming through?

14 A. When I had received on there -- at that time,
15 when I had seen the -- when I finally got a copy and read over
16 it and that, I saw what she wrote. In fact, I even wrote on my
17 own personal copy "wrong" on the date. But I see that Jeffries
18 had wrote other things as well that said that I took over in
19 2005. It was his statement that he had with it. I didn't
20 write it out to you folks or anything. He knew that it wasn't
21 the date. I knew that it wasn't the date.

22 Q. But he was not the agency in charge of enforcing
23 action.

24 A. Sorry?

25 Q. He was not the agency in charge of enforcing

1 action.

2 A. I thought the agency was pursuing Mr. Jeffries
3 personally, not me. Not C&D. That's the way I interpreted it.
4 That's why when I sat down with O'Connor, she told me that's
5 the way we're going to do it. It predates. We'll be pursuing
6 him and he's agreed. And that's it. I didn't have anything to
7 do with it -- on it. And at that time, it wasn't really
8 adversarial at all. It wasn't a situation where -- you know,
9 he was going to be getting the things done. And that was it.

10 COMMISSIONER BAILEY: I have no more questions.

11 THE WITNESS: In retrospect -- in retrospect, yes. I
12 should have -- something should have been done at that time
13 with it.

14 CHAIRMAN FESMIRE: Okay. There are no more
15 questions. Commissioner Olson?

16 EXAMINATION

17 BY COMMISSIONER OLSON:

18 Q. Mr. Kizer, just as a follow-up on that, you're
19 saying that Mr. Jeffries wasn't employed, but he was still an
20 officer of C&D Management after February of 2007?

21 A. No. He was not an officer. You can -- if you
22 would like, you can go onto the Kentucky website and look it
23 up. They were no longer officers as of February 21st. I was
24 the president of the company then -- not Darla Jeffries, nor
25 Chris Jeffries, and they have not been since then.

1 Q. Well, I see on the exhibits that OCD had
2 presented, OCD Exhibit 30 and 33, and 35, that Darla Jeffries
3 was signing on March 12th of 2007 as president of C&D
4 Management.

5 A. What exhibit is that, sir?

6 Q. As an example, just look at OCD Exhibit No. 30.

7 A. Okay.

8 Q. So how is she signing as president of the company
9 when you had taken --

10 A. I don't know why she's signing as president of
11 the company on there. It's signed here on March 12th of 2007.
12 She marked it as president. This is when she was trying to get
13 the wells plugged. I think they did it just to expedite things
14 as a matter of -- just to expedite them for themselves there.
15 I didn't see these things. Just as the correspondence that
16 they have to the Jeffries in Kentucky where they address them
17 as vice president and president, I never saw those.

18 Q. But I guess you're saying as of
19 February 21st, 2007, you were the sole officer of C&D --

20 A. I was the sole officer that came in and then the
21 stock at that time, and then it was transferred -- everything
22 was transferred in Wyoming on --

23 Q. And then if I look the at the OCD Exhibit
24 No. 26 --

25 A. Uh-huh.

1 Q. -- which is the Agreed Compliance Order, that was
2 signed on March 26th of 2007, and it was signed by Jeffries as
3 vice president. So how could he be signing as vice president
4 if you are the sole officer of the company?

5 A. Well, I think that would be more of a question
6 for him. He didn't have authority to sign. He didn't have
7 authority to sign.

8 Q. But I guess you had testified earlier that you
9 had received this thing maybe in April of 2007?

10 A. Uh-huh.

11 Q. And if he is not an officer of the company, then
12 he has no authority to sign, authorize this, why didn't you
13 raise this issue?

14 A. Well, as I stated, it was an oversight on my
15 part. I had understood it to be that he was personally being
16 responsible for these. And I left it pretty much at that.
17 Everything was moving forward on that. I agreed that it
18 wasn't.

19 Q. Well, I guess, did you read this agreed order?

20 A. Yes. I may have pursued it, but I don't know if
21 I actually went into the detail that is was on it, you know.

22 Q. And did you notice --

23 A. This order was between Jeffries and this group
24 here. I wasn't privy to it when they were writing it. And now
25 you're asking me if I read it and everything, and you're

1 holding me responsible when the attorney of this agency is the
2 one that wrote it and she prepared it, and she sat there with
3 the fellows with it. And I'm now being held responsible to
4 what they agreed to on here.

5 Q. Well, we can look at page 8 of that exhibit, and
6 if you look at the acceptance of this, this was an agreement
7 between -- it wasn't an agreement between Mr. Jeffries and the
8 Division. It was an agreement between C&D Management and the
9 Division?

10 A. Uh-huh.

11 Q. And C&D Management is the operator of these
12 wells; isn't that correct?

13 A. C&D was the operator of them, yes, sir.

14 Q. And this agreement, would you agree, is between
15 C&D Management and the Division; isn't that correct?

16 A. It's with -- as Ms. O'Connor said, the violations
17 predated on here, the violations were predated and that was
18 attributable to him, personally. He was taking them on
19 personally on there.

20 Q. But if I look at page 8, the acceptance is
21 between C&D Management and the Division; isn't that correct?

22 A. That's what it says there. That's what they
23 completed on there.

24 Q. So if you had taken over the company on February
25 21st 2007, why didn't you notify the OCD of that pursuant to

1 Division rules?

2 A. We did. That was in February 22nd. That's why
3 you had this on here. We notified somebody on here on
4 2/22/2007 here. Now, if you're telling me it was the wrong
5 people, that may be the case. But, you know, I was receiving
6 letters shortly after that, so somebody had it. Was there
7 official filing on there? I don't recall doing that myself on
8 there, no.

9 Q. Well, I guess I'm just confused on this signature
10 issue. If Mr. Jeffries was no longer an officer of the
11 company, how could he be signing anything on behalf of C&D
12 Management?

13 A. He had no authority to do so, sir, no. Not from
14 me.

15 Q. But you had received this and you raised no
16 objections to him signing this on behalf of C&D Management.

17 A. I didn't have a written objection to it, no, sir,
18 that was on there. I had read it differently that he was
19 personally -- he had personally -- on it.

20 Q. But you would agree that C&D Management is the
21 operator of these wells?

22 A. C&D has been the operator since the day. I'm not
23 disputing that. We tried to carry the corporation all the way
24 through on it. As I say, if I was going to walk on the thing,
25 you know, I would try to change the corporation and everything

1 else. That was not my intention, sir. I haven't done that.
2 I've shown up for all the hearings and everything that I could
3 with it on here. And I was operating with what O'Connor had
4 told me. I did not anticipate sitting here in front of you
5 people. Not at all, ever.

6 Q. Well, it sounds like what you really have is a
7 dispute amongst yourself and former officers of the company,
8 then. The company hasn't changed. Just the officers have
9 changed.

10 A. Well, the officers -- yeah, but using the name
11 unauthorized, yes. But also it does say personal
12 responsibility in that agreement. And she sat there --
13 O'Connor even verbalized it to me, then she memorialized it.

14 Q. Again, but I'll point out, if you look at the
15 agreement, the agreement is between C&D Management and the
16 Division. It is not between C&D Management and Mr. Jeffries.

17 A. Okay. I'm sorry. I didn't draft it. And I
18 don't know if they would have even changed it even if I had.
19 If I had walked in here today and said -- told you -- that
20 Mr. Jeffries was taking on responsibility with no paperwork,
21 you wouldn't have believed me. Now, if I had walked in here
22 and said Mr. Jeffries was taking on responsibility with his
23 e-mails between ourselves, you wouldn't have believed me.

24 But she wrote it there. She's the one that wrote
25 that. And you take that in conjunction -- and these gentlemen

1 later, they communicated directly with Jeffries on what was
2 being done. Not with me.

3 Q. Again, I guess maybe --

4 A. I agree with you there. I'm not disputing it.
5 It's just the issue and that.

6 Q. So to make sure I understand what, I guess, the
7 purpose of why you're here. You're not here contesting the
8 allegations of the violations that have occurred to the rules.
9 The only thing that you're really contesting is you be assessed
10 a penalty?

11 A. Yeah. I'm concerned with the penalties that they
12 have with it on here. They're very severe. I've been
13 penalized now with having to take on all this luggage of his
14 that he has with it. I will get the job done for you fellows
15 here. I'll get the job done. We'll have it done. That's what
16 I would get those -- I will take care of those things on there.

17 And yes, I know what's happened here between January
18 and now, you know. We've got four months to two months or
19 whatever the other ones, yes, they are tardy. There's
20 nothing -- yes, she has them. It's the penalties that were
21 assessed before. They're very severe. And I've never even had
22 an opportunity to even go over it with those on there. And
23 argue the -- this is the first time I've had to do it.

24 Had I been given the opportunity the first time, it
25 would have been great. Had I been included in that

1 discussion -- they knew I was buying the company. They knew
2 it. I wasn't included in. Had I been included in January,
3 maybe we wouldn't be at this situation and maybe we could have
4 settled this thing up before without the penalties. I'm taking
5 on quite a financial burden with finishing the wells, taking on
6 his other things there and anything else associated. And it's
7 not that big of a field. These wells don't produce much all
8 right now. I'm hoping to develop the field.

9 As I say, it was never my intention to get here at
10 all -- to come into this town to work here in this state. And
11 that's why I kept the company. I tried to keep the company and
12 everything as status quo, and the like, so.

13 Q. But I'm just trying to understand. Your position
14 is you should be assessed no penalties? Is that what you're
15 position is?

16 A. Yes, yes.

17 COMMISSIONER OLSON: That's all I have.

18 EXAMINATION

19 BY CHAIRMAN FESMIRE:

20 Q. Mr. Kizer -- and notice I got the name right this
21 time -- I want to talk about a statement that you made about
22 knowing and willful. You were objecting to that being in the
23 Agreed Compliance Order?

24 A. Oh, yeah.

25 Q. Have you ever -- have you not seen that?

1 A. I've seen it. You know, I walked outside and I
2 wanted to come in and apologize. That's something I would say
3 at a bar. I'd like to retract that. It's what you have stated
4 there, and we have discussions about various things and that
5 just came out and I apologize.

6 Q. Do you think that's --

7 A. It's not appropriate.

8 Q. Do you think that's unreasonable for us to --

9 A. No. I can see that there are a lot of people
10 knowingly and willfully violate. One of your persons is
11 Mr. Jeffries.

12 Q. So you think Mr. Jeffries knowingly and willfully
13 violated --

14 A. He's definitely walked away from his obligations.
15 He's definitely left them. There's no doubt about that. He's
16 left me hanging with a lot of the things that were there. But
17 as far as I'm concerned, I have not willfully or -- I haven't
18 intentionally done anything at all. That's not my intention.
19 So I didn't come in here, as I say --

20 Q. But you think Mr. Jeffries did knowingly and
21 willfully violated the rules?

22 A. Did he? When somebody tells me I don't have the
23 money and I'm not going to be doing this.

24 Q. I'm asking you the question. Is that a yes?

25 A. Was that intention to begin with?

1 Q. Do you think he knowingly and willfully violated
2 the rules?

3 A. You know, when he first came in, he had the cash
4 to do the things, and I gave him some more money to get things
5 going. And why he didn't do it, I don't know. Maybe he saw an
6 opportunity that maybe he could, after he saw things, that
7 maybe he could get out, skirt out the side, try to -- or
8 whatever it is.

9 Q. I've got the ability to keep us here until I get
10 an answer.

11 A. Okay.

12 Q. Do you think he knowingly and willfully violated
13 the rules?

14 A. I don't know. I'm not in a position to answer
15 that.

16 Q. Okay. Have you ever seen that requirement in
17 administrative law before?

18 A. In administrative law? Probably so. It's
19 probably in some civil. I don't know if it's in
20 administrative, yes.

21 Q. Okay. Now, you operate in Pennsylvania, you say?

22 A. I also work in Pennsylvania.

23 Q. How many wells do you operate there?

24 A. We just have -- I have one, two in operation.
25 We're completing two of them right in the next couple of weeks

1 and we're starting a couple -- it'll be a total of six to
2 eight. By the end of the year, I should maybe have ten.

3 Q. Okay. And C&D doesn't operate them, you do?

4 A. No. It's under a completely different
5 corporation for the State of Pennsylvania.

6 Q. What's the name of that corporation?

7 A. Freedom Oil Ventures.

8 Q. Okay. And the name -- and that's different from
9 Freedom Ventures here in New Mexico?

10 A. Right. It's a completely different -- yeah.
11 It's an LLC. It originates out of Wyoming, and it's
12 incorporated to do business in the State of Pennsylvania.

13 Q. And do you have interests in Kentucky?

14 A. No, sir.

15 Q. Do you have any other oil and gas interests
16 anywhere?

17 A. No, sir.

18 Q. So these 17 wells and the four you've got in
19 Pennsylvania are the wells that you -- or corporations that you
20 own and operate; is that correct?

21 A. Yes, sir. At this time.

22 Q. Let's build a quick timeline. When did you first
23 purchase an interest in C&D?

24 A. As I said, back in 2005.

25 Q. And you said it was warm, it was in the summer?

1 A. Yeah. I think it was the summer of 2005. Well,
2 I didn't purchase it. I started to make a payment on it, you
3 know. I started to make a payment. I don't consider it a
4 purchase. I started to make payment.

5 Q. Did you buy the stock?

6 A. I bought the stock and that was completely --

7 Q. Did you buy all the stock?

8 A. Yes.

9 Q. You bought all the stock to C&D in the summer of
10 2005?

11 A. No. I bought -- I didn't -- February of 2007.

12 Q. Okay. The question I'm asking is: When did you
13 first purchase an interest in C&D?

14 A. I didn't have an interest in C&D at that time.
15 This is money going toward the purchase. I didn't have a
16 fractional interest; I didn't have a percentage interest; and,
17 it wouldn't transfer until I made the full payments.

18 Q. Okay. So what you did was sort of put it on
19 layaway?

20 A. That's a fair way of putting it, yeah.

21 Q. And you actually did not acquire an interest in
22 C&D until 2007?

23 A. Correct, sir.

24 Q. February of 2007?

25 A. Yes, sir.

1 Q. Okay. The transaction that occurred in 2005, can
2 you describe that to me?

3 A. I came out, drove out, went around the field to
4 take a look at the --

5 Q. And I know about the steak here. Let's just --

6 A. And that was it. We went back and I said, "I'll
7 take it."

8 And he said, "Give me a down payment," you know, some
9 good earnest money, and I wrote in a check.

10 Q. Did you memorialize that transaction --

11 A. We had it memorialized it in a Memorandum of
12 Understanding on it. Basically, that was to secure it on
13 there, and then we went our separate ways. And we started
14 going back and forth. I was asking more questions about the
15 property and the like starting to --

16 Q. What were the conditions of the Memorandum of
17 Understanding?

18 A. The conditions of the Memorandum of Understanding
19 was that I would take over the properties when payments were
20 made, and that he would complete the drilling of his two wells
21 that he had on there, and that he would take responsibility of
22 the outstanding vendors that he had at that time, and basically
23 bring everything up-to-date and then it would transfer.

24 Q. So between the summer of 2005, sometime when it
25 was hot, and -- was it February of 2007 -- when you complete

1 the purchase --

2 A. Yes, sir.

3 Q. -- did you memorialize your agreement, your final
4 agreement?

5 A. What we got into is, we were getting further into
6 it, and my attorney said, "You're getting the stock. That's
7 what you're going to want at the end. Let's just get the stock
8 transferred. And that's what you need. When you get the stock
9 transferred, you're done." And that was it.

10 Q. Okay. And that stock transfer occurred --

11 A. Excuse me. In November 2006, we did write
12 another -- we brought a -- we did write another Memorandum of
13 Understanding of what had to be done on that. And that was the
14 thing, getting those wells completed and making -- basically,
15 repetitive things.

16 Q. Did you bring those documents with you today?

17 A. Yeah.

18 Q. And can you tell me what the conditions of the
19 second memorandum were?

20 A. Sure. They go on here for --

21 Q. Let's talk about the second one.

22 A. Yeah, this is the one right here. Yeah. Parties
23 here -- binding effect and transfer --

24 Q. Transfer?

25 A. Yeah. When we were going to transfer.

1 Q. Typically what --

2 A. (Inaudible) -- binding agreement between the
3 parties.

4 Q. So that document didn't transfer anything?

5 A. No. It wasn't transferring.

6 Q. Okay.

7 A. And --

8 Q. So did anything happen between November 2006 and
9 February of 2007?

10 A. Oh, yeah.

11 Q. Oh, yeah?

12 A. Yeah. That's when these fellows started coming
13 in and started bringing a lot of issues.

14 Q. So at that time, you had no interest in the
15 company?

16 A. No.

17 Q. Okay. And they had notified C&D as a corporation
18 of this action?

19 A. Yes, they did.

20 Q. You're not contesting that notification, are you?

21 A. No, I didn't -- wasn't -- no.

22 Q. So all that started happening. What happened
23 between you and Mr. Jeffries between that time?

24 A. What do you mean, what happened?

25 Q. What happened fiscally? I mean, did you transfer

1 anything? Did you have any more contact with Mr. Jeffries?

2 A. No. We were in the process of getting the
3 company transferred, and that's when he transferred everything
4 before the hearing on March 8th, 2007.

5 Q. Okay. So during the period, November 2006 to
6 February 2007, did you physically transfer anything?

7 A. No.

8 Q. Did you fiscally transfer anything?

9 A. No.

10 Q. Did you in a business sense transfer anything?

11 A. No.

12 Q. So in February of 2007 -- and I believe you said
13 the date was the 21st?

14 A. February -- yeah.

15 Q. On the 21st of 2007, you transferred the stock
16 from Mr. and Mrs. Jeffries -- and I'm assuming that they were
17 100 percent owners at that point?

18 A. Yes, sir.

19 Q. Okay. And you transferred that stock to them on
20 February 21st -- I mean, they transferred that stock to you on
21 February 21st, 2007?

22 A. Yes.

23 Q. What was Mr. Jeffries' position with the company
24 at that time?

25 A. He was completely what he had started with these

1 fellows here.

2 Q. Okay. That's not answering my question. What
3 was Mr. Jeffries' position immediately after the transfer?

4 A. He didn't have a position with the company.

5 Q. Did you authorize him to act for C&D to complete
6 those transactions?

7 A. He was completing the requirements that he had
8 that they had -- for him with the signage and everything --

9 Q. And I think I agree with you, but he did that
10 with your authorization, did he not?

11 A. At what time?

12 Q. Let's say February 22nd, 2007, the day after the
13 transfer.

14 A. When he started working with the things on there,
15 he was going to be taking those things on. He went to go
16 complete them.

17 Q. Okay. So he was acting at that point with your
18 authorization; is that correct?

19 A. I don't think he was acting with my
20 authorization. He was just completing what he started before.

21 Q. Let's come about it a different way, then. Did
22 he act with your knowledge for C&D?

23 A. Did he act with my knowledge?

24 Q. He did act for C&D with your knowledge.

25 A. He wasn't doing anything with C&D. He was

1 completing the wells that he already started --

2 Q. Wasn't he --

3 A. -- per our agreement.

4 Q. Wasn't he doing the things that the vice
5 president of C&D would do? Wasn't he acting for C&D in several
6 capacities?

7 A. He didn't have a capacity. He wasn't in capacity
8 as vice president, no. He was acting as probably -- for lack
9 of any other word -- like a foreman of the property to make
10 sure that everything was getting done.

11 Q. You knew he was acting in some capacity for C&D;
12 is that correct?

13 A. Well, he was completing the wells, of course I
14 knew that.

15 Q. Okay.

16 A. He was doing what he knew what was required.

17 Q. And I assume sometime around the time that you
18 transferred the stock, the C&D board of directors met; is that
19 correct?

20 A. Well, it's just me.

21 Q. Did you meet? Being a lawyer, you know there's
22 certain formalities that you have to comply with.

23 A. Yeah, uh-huh.

24 Q. Did you meet? Did you hold a meeting?

25 A. I don't recall, no.

1 Q. Okay. Did you retain a lawyer to act for C&D?

2 A. For what purpose?

3 Q. For the purposes of making sure that the
4 corporation was sound, that the corporation, at least with
5 respect to the their filings with the different states, was
6 sound.

7 A. Yeah, that was Mr. Bagley.

8 Q. Did Mr. Bagley recommend that you hold a board of
9 directors meeting?

10 A. He may have included it in the minutes that we
11 had with it on there, I don't know. He has the books.

12 Q. He has the books --

13 A. Yeah.

14 Q. -- but you said you didn't hold a meeting.

15 A. Well, I don't know if we did or not. I don't
16 recall. I don't have any recollection of it, no.

17 Q. Okay. So you don't know whether you held the
18 initial -- an initial board of directors meeting?

19 A. No.

20 Q. Did you take any action to replace the vice
21 president?

22 A. No.

23 Q. Did you take any action to replace the president?

24 A. I was the president.

25 Q. You were the president. Were you elected

1 president by the board of directors?

2 A. It's a company I just took as president.

3 Q. You just became president by fiat, huh?

4 A. Yes.

5 Q. And you owned 100 percent of the stock?

6 A. Yes, sir.

7 Q. But you didn't take any action to replace the
8 officers, did you?

9 A. I'm not big, sir.

10 Q. You're not that big?

11 A. My company is not that big. There's not that
12 much activity (inaudible).

13 Q. As a corporation, you saw a significant value in
14 the corporate structure, and as a corporation, there are
15 certain formalities that they're required to adhere to; is
16 there not?

17 A. Certainly.

18 Q. Okay. And one of them is taking action as a
19 board of directors, right?

20 A. Okay.

21 Q. Okay. Is that acquiescent, or is that surrender?

22 A. I'll wait for the next question. I don't know
23 what your point is.

24 Q. The point I'm trying to make is Mr. and
25 Mrs. Jeffries were acting as the president and vice president

1 of C&D until February 21st, 2007, when 100 percent of the stock
2 was transferred to you; is that correct?

3 A. Correct.

4 Q. Okay. And at that point, you took no action to
5 replace the officers?

6 A. Just me, the president, yes.

7 Q. Just you. So externally, how was the world to
8 know that Mr. And Mrs. Jeffries were not still the officers --
9 especially Mr. Jeffries, in the active role that he was taking
10 with rehabilitating these properties and doing work on these
11 properties with at least your knowledge?

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. I'm acknowledging what you're saying.

15 Q. Okay. So let's turn that into a question. To
16 the world as a whole, would it not have appeared that Mr. and
17 Mrs. Jeffries were still the president and vice president of
18 the company?

19 A. I don't see why it would.

20 Q. Okay. Let's talk about Mr. Jeffries specially.
21 He had been vice president. He was doing exactly the same
22 thing he had been doing before. He was, in fact, signing
23 documents a month later on behalf of C&D.

24 A. Uh-huh.

25 Q. You knew about this document. You talked to

1 Lawyer O'Connor about it; is that correct?

2 A. Right. Yes. After the fact when it was signed,
3 yes.

4 Q. You at least had seen one provision in there.
5 Did you see the entire document?

6 A. I was concerned, basically, with that provision.
7 The other things were basically infractions and that were
8 being -- to him.

9 Q. So you knew about this document. You knew that
10 there was an agreement between C&D and the OCD, didn't you?

11 A. Yes, sir.

12 Q. Okay. And you knew that it was signed by
13 Christopher Jeffries as vice president?

14 A. I had seen that later, yes.

15 Q. So sometime after then and before now, you had
16 seen that and you knew he was acting as vice president.

17 A. Well, I saw he put his name as vice president,
18 yes.

19 Q. At that point or any time subsequent to that
20 discovery, did you take action to negate that agreement with
21 the OCD?

22 A. No. That's what you have both asked me and I
23 said no, that I regret that I didn't do there. I was working
24 with what, as I said, O'Connor had told me, and that was it.

25 Q. Okay. Now, a little while ago, when you were

1 talking about the lack of filings, you said, "They're not in,"
2 meaning they hadn't been filed, "so I take full
3 responsibility."

4 Are you representing to us that you personally are
5 taking financial responsibility, or are you taking
6 responsibility in your position as an employee of your
7 corporation?

8 A. I will -- these records that you have here since
9 January on here that she has not filed, that they're not filed
10 with you people --

11 Q. We're not talking about that. That was a
12 question that Commissioner Bailey asked you. But what I'm
13 saying is that you said you were taking personal responsibility
14 for that.

15 A. For what?

16 Q. For them not having been filed?

17 A. Who else is going to?

18 Q. Okay. Now, are you taking that -- do you mean
19 you will pay the fine yourself or the penalty yourself or that
20 it will come from the corporate assets?

21 A. I will sign as president of the company to make
22 sure that gets paid.

23 Q. Even though you had taken personal responsibility
24 for it right then when you turned to Ms. Prouty and said, "I
25 will take personal responsibility for that"?

1 A. I have no problem with.

2 Q. Isn't that the same kind of personal
3 responsibility that Mr. Jeffries was taking? He was taking
4 personal responsibility for getting it corrected?

5 A. I wasn't privy to that conversation. I know that
6 when I tell this lady here that I'll do it -- I've never done
7 anything -- I've never told you people I was going to do
8 something and not do it.

9 Q. Okay.

10 A. I've never done that sir. I've never done that
11 as many times as I've been --

12 Q. Can we get on with my questions?

13 A. Okay.

14 Q. Now, on January 19th of 2008, in your
15 conversation with Mr. Jeffries, you indicated that at that
16 point, he told you he had no more money and would do no more
17 for C&D; is that correct?

18 A. He said he didn't have any money. I asked him
19 when he was going to get -- we were talking about just the
20 status of things, everything done, and he -- I don't know if it
21 was the 19th, but it was in the month of January.

22 Q. Okay.

23 A. And he said -- he finally came out and said, "I
24 don't have the money to do it. I'm not going to do it."

25 Q. But up to January -- sometime around the 19th --

1 of 2008, you expected him to act for C&D to take on some of the
2 responsibility, or the responsibility, for accomplishing things
3 that were the actual physical responsibility of C&D; is that
4 correct?

5 A. No. See, I don't interpret that -- I say that
6 they were his responsibility. He drilled those wells. He took
7 them on. He told me before. He told me afterwards that he was
8 responsible, as well as he told Cheryl --

9 Q. Okay.

10 A. -- and she wrote it in there.

11 Q. So let's go back, then, to Exhibit 26. When
12 exactly did you become aware of Exhibit 26?

13 A. What's Exhibit 26?

14 Q. It's the Agreed Compliance Order?

15 A. When exactly?

16 Q. Yes.

17 A. I don't know exactly the date. It had to be
18 after the April 21st -- 12th or something -- because I had
19 not --

20 Q. April 21st of 2007?

21 A. 2007. It was in April.

22 Q. But it was prior to the discussion you had with
23 him on January 19th -- about January 19th, 2008?

24 A. Oh, of course.

25 Q. So the things that he was doing you had already

1 known were the responsibility of C&D, and he continued to do
2 them with your acquiescence in the name of C&D. He continued
3 to act for C&D, didn't he?

4 A. He was -- these are responsibilities that
5 predated.

6 Q. (Inaudible).

7 A. (Inaudible).

8 Q. -- Agreed Compliance Order which made that the
9 responsibility of C&D; is that correct?

10 A. I don't follow.

11 Q. You have seen the Agreed Compliance Order which
12 made those actions the responsibility of C&D; is that correct?

13 A. I had seen the compliance order, yes. The second
14 part of your question, no, I don't agree that that was the case
15 at all.

16 Q. Now, you changed your address, the official
17 address with the OCD on April of 2008; is that correct?

18 A. Well, at the time, I thought we were changing it
19 back in 2007. I guess that was not the right thing to be
20 doing.

21 Q. But the document Mr. Swazo asked you about was an
22 official address change with the OCD in April of 2008?

23 A. He didn't show me a document for that.

24 Q. Okay. But --

25 A. He showed me a document that I had sent to the

1 BLM that he was showing me that he received from them.

2 Q. Okay.

3 A. On there.

4 Q. Okay.

5 A. That showed an address.

6 Q. And then he represented to you that that was the
7 first time that the OCD had seen that change?

8 A. Okay.

9 Q. Okay. And that was an official form filed with
10 the BLM. Did you change your address with the BLM before that?

11 A. Jerry told me to send this document with that.
12 To my knowledge, no, we had not changed that.

13 Q. Okay.

14 A. I had not filed any permits or anything or
15 anything different with it, no.

16 Q. Okay. Now, you said that the corporation
17 structure for C&D was extremely valuable to you, more valuable,
18 I think -- and I may be misquoting you here, so please correct
19 me -- more valuable than the wells itself.

20 A. Not more valuable than the wells. The wells are
21 the foundation of what gives you your corporation. That's the
22 value.

23 Q. Okay.

24 A. I thought when I came here, I thought it was
25 important to keep continuity.

1 Q. Why is that?

2 A. Well, we had an Ogrid number that was with it;
3 the wells already had signage on them. What was it going to
4 cost to change everything over on it? We had vendors in the
5 area that knew us, that we had accounts with and that. You
6 folks knew us as C&D, the BLM knew us as C&D, and that. It
7 wasn't my intention to come in and just start, you know, just
8 changing a lot of the things and that.

9 Q. So the corporate structure had some significant
10 value to you?

11 A. Significant?

12 Q. Okay --

13 A. It is was just keeping the same name, keeping
14 continuity and the like with it, yeah.

15 Q. Okay. And I think that the record shows at least
16 arguably that C&D as a corporation, at least the people who had
17 been acting for C&D, prior to the address change, had notice of
18 the proceedings, did it not?

19 A. I don't follow.

20 Q. Well, the record -- doesn't the record show, at
21 least arguably, that the people who were acting for C&D had
22 notice of the proceedings that were brought against C&D?

23 A. What time frame are we talking about? All of
24 them?

25 Q. Prior to April of 2008.

1 A. Prior to April of 2008, the people that were
2 operating?

3 Q. Yes.

4 A. No, I was not the --

5 Q. Prior to January, about the 19th of 2008.

6 A. Was Jeffries aware of them? Are you asking me?

7 Q. Yes. That might be a better --

8 A. He said he sent them the records on it. Jeffries
9 never told me anything on there. So I don't know if he ever
10 received them or if he ever acknowledged receipt on them, or
11 personally -- signing for them personally on there.

12 Q. You did make one statement that kind of makes me
13 curious. You pointed to the OCD representatives and said,
14 "Aren't we quasi-partners? Aren't you quasi-partners?"

15 What did you mean by that?

16 A. Well, I think we kind of all have to work
17 together. They're overseeing the wells to make certain
18 they're -- administratively and everything is in order on that.
19 And our job is to get them pumped, get -- bring money in, get
20 the production and that. And their job is to make we do it
21 properly and that.

22 And the whole idea is you try to work together. If
23 you're doing something -- this is what I need to do to get the
24 permits and everything, make sure she gets her records and that
25 so everybody gets paid, the State gets paid, the funds go out

1 and everything. So everybody's got to work together. I don't
2 think it's meant to be an adversarial relationship. I don't
3 think that's the case.

4 I'd like to be able to pick up the phone and talk to
5 Daniel, and say, "I got a little issue here. What do I need to
6 do?"

7 And by and large, they're very instructive. This is
8 what you need to do to get -- whatever your objective is. So,
9 you know, maybe I'm using the wrong term, quasi, but if that's
10 the wrong term -- but I think that we have to work together to
11 get things done. And it wasn't my intention to come in here
12 and be adversarial with you people.

13 Q. Okay. And you were referring to Chris Jeffries
14 when you made this statement: You said that you didn't see
15 nothing out of line at the time. And I forgot the exact
16 context of that, but I was curious enough about that to write
17 it down and ask a question about this.

18 "Nothing out of the line at the time;" do you
19 remember what you mean by that comment?

20 A. One time when I originally came in, everything
21 seemed to be --

22 Q. No. This was after the signing.

23 A. After the signing?

24 Q. The signing of the agreement.

25 A. Well, everybody had seemed to be -- they had made

1 their agreement. Everybody was working together. He was
2 getting his things done; I was communicating with them; I was
3 talking to him. He said I'm talking and we're moving forward,
4 I'm getting things -- I'm getting the guys out, getting
5 everything pumped, Debbie is working on the filings on it, I'm
6 getting the things together to get these wells plugged.

7 Q. So after the agreement, you didn't see anything
8 wrong with Chris acting in whatever capacity he was acting in
9 at the time?

10 A. No. But that was 2007 and by the end of -- what
11 was that -- the end of -- mid-March, or whatever. And then
12 towards the last quarter, things started to deteriorate, and he
13 wasn't getting things done. I could just tell by the tone
14 that, you know, you're supposed to be getting things done and
15 it's not done on there. And when I was -- when I would be in
16 town or something, somebody would mention or something -- I
17 couldn't move forward. I couldn't do anything until he was
18 getting these wells done.

19 Q. Okay. Now, the proceedings that led to the
20 Agreed Compliance Order, did you get notice for those?

21 A. Sorry?

22 Q. Did you get notice of the proceedings that led to
23 the Agreed Compliance Order?

24 A. What?

25 Q. The letters of violation and the notice of

1 violation that led to the Agreed Compliance Order, Exhibit 26,
2 for the OCD?

3 A. The one here in January?

4 Q. No.

5 A. 2007?

6 Q. This is the one that was signed in --

7 A. No.

8 Q. You did not get it?

9 A. No, I did not get anything.

10 Q. But Mr. Jeffries did?

11 A. I assume he did, yeah. I had not seen -- no. I
12 didn't get any of that.

13 Q. Okay. And that was signed after the transaction
14 was completed?

15 A. Yeah. We were going through that period there
16 when everything was going on at the time.

17 Q. Okay. And later you became aware of the Agreed
18 Compliance Order. At the time you had some knowledge of it,
19 and then later you acquired a copy and read it, right?

20 A. Well, when they had set out their violations on
21 it, there were a number of issues that were on there and then
22 he --

23 Q. This is a real simple question, Mr. Kizer. Later
24 you said -- you have testified today that later you saw this
25 agreement and became aware of what was in it. At that time,

1 did you remove or rescind the agreement because it was between
2 OCD and--

3 A. No. That's what I've told the three of you. I
4 regret that I didn't. But everything was going well and I had
5 talked to -- as I said, O'Connor said he's responsible with it.
6 These are things that predated you on it.

7 FURTHER EXAMINATION

8 BY COMMISSIONER OLSON:

9 Q. Can I follow up with that? I thought you had
10 said earlier -- maybe I'm just confused on the timeline -- but
11 I thought you had said, or testified earlier, that you were
12 part of a discussion prior to the one when this was signed? Or
13 was that Ms. O'Connor?

14 A. No. The day that they were -- they had their own
15 private discussion. I was never privy to them. I wasn't
16 invited to them. I wasn't on the phone or anything. It was
17 the day of the hearing. She just invited her up to her room.
18 She was preparing and doing some other stuff, and she got
19 Jeffries on the phone. She said, "This is what we're going to
20 do. We're going to change this for you," and that, and that
21 was it.

22 There wasn't anything -- that's the day I met Daniel.
23 I came in. It wasn't anything formal. There wasn't a
24 scheduled meeting or anything. I just showed up on my own
25 accord here.

1 Q. But then you had knowledge, then, of what was
2 going on for the violations and actions?

3 A. I didn't -- no. She had them all in her thing,
4 and she was getting ready for another case. It wasn't that we
5 sat there and went over things.

6 Q. Wasn't that why you were in Santa Fe here because
7 of this issue? You had knowledge of this and you had concerns
8 about it?

9 A. I had concerns, yes, of course. I had concerns.
10 But they hadn't made an agreement yet.

11 Q. So how did you have knowledge that all of these
12 violations and all these actions were going on to be here in
13 Santa Fe?

14 A. It was printed in the newspaper in Artesia. And
15 I happened to be there that weekend when it came out on that.
16 And my pumper told me that you've got a hearing. That's how I
17 found out about it. I found out about it from your publication
18 and that down in Artesia. I was there that weekend, and my
19 pumper said you've got -- there's a hearing here.

20 Chris hadn't told me on there. And I approached
21 Chris about it, and so I said, "I'm showing up. Somebody's got
22 to show up. You gotta show up for that. That's it."

23 Q. I know. But I think that's different than what
24 you're saying that you didn't have knowledge of this before
25 hearing was coming up.

1 A. I didn't have knowledge of what the substance of
2 the thing. I knew there was something going on. I didn't know
3 what the violations and that were. I knew that there were
4 violations that he had before with the contamination and
5 signage and those types of things and that. But insofar as the
6 contract, I didn't have knowledge of that.

7 Q. So then you came to Santa Fe to find out what the
8 contents of it were; is that it?

9 A. Commissioner, I sat here and I wanted to hear --
10 they said it was going to be dismissed. And I was going on to
11 Artesia anyway to look at the wells, and I was concerned. I
12 wanted to show up for it. Somebody's got to show up for these
13 things. You just don't go and nobody shows up. So I showed
14 up. And I introduced myself to Ms. O'Connor and she was on her
15 way out, and that was it. She said, "Come on up and we'll talk
16 a little bit," and that. So it wasn't a formal meeting. It
17 was here. I was coming through and that was it.

18 Q. But that was prior to this being signed; is that
19 correct?

20 A. Well, I guess they had negotiated that on a
21 different day. I don't know. Yeah, that was March 12th. I
22 think it was March 12th they had a hearing -- they had a -- it
23 was on docket, and it was dismissed. And she -- it was before
24 you folks here, and it was acknowledged that it was dismissed,
25 and that they were working out an agreement, and she left the

1 room. And that was it. She came down just for that case and
2 that was it.

3 Q. Right. But then you had knowledge that they were
4 negotiating a settlement to this?

5 A. They had negotiated on about the 10th. They had
6 that conversation that I wasn't privy to. That's where Daniel,
7 Michael, and Chris were all on the line together. And that's
8 where Chris said I'm being assessed -- I've accepted this.
9 They are telling me what my fines are, and we're working out a
10 plan to finish the property. That was the e-mail that he had.

11 That's when he told me, "Don't get involved. I'm the
12 Kentucky oil guy. You're going to get in and you're going to
13 screw things up."

14 Q. What I'm getting at is you had knowledge that
15 they were trying to settle issues related to violations of C&D
16 Management of oil and gas wells in New Mexico?

17 A. Yeah.

18 Q. Okay.

19 FURTHER EXAMINATION

20 BY CHAIRMAN FESMIRE:

21 Q. What's at the Albuquerque address?

22 A. Sorry?

23 Q. What's at the Albuquerque address?

24 A. We took the Albuquerque -- it's located at 4801.
25 It's like a virtual office situation that I have. Because when

1 I come in, I generally spend most of my time down in Artesia at
2 the wells, but I have people that come in. And they won't go
3 down to Artesia a lot of times. So I've got an office down in
4 Albuquerque. I've got it -- from the airport standpoint, it's
5 close. I've been there since about 2005 in there.

6 Q. What's a virtual office?

7 A. A virtual office is you have office space. You
8 just don't use it all the time. It's a full building. It's a
9 full building and you go into it. There's secretaries and
10 everything. You have your phones and everything is there, the
11 mail. I take receipts for the corporation, everything is lined
12 up there. It's a legitimate -- it's not a post office. It's
13 two buildings, and that.

14 So you're able to come in, and it's a lot cheaper for
15 us to maintain the office there. And when I come in, I have an
16 office. Anybody comes in, I have use of all my facilities and
17 that. And they had just opened it at the time. And I didn't
18 know where to get an office at the time, and I thought I should
19 have something, and there. And the gal was kind enough to open
20 up for me so I've been there. I was one of her original
21 tenants there. So I've been there since.

22 And when I originally went in, I had rented a whole
23 office and that. I found out that I wasn't really using it.
24 All this stuff would come in, and she would send it to me
25 wherever I was or would I come in. And so then she said, "Tom,

1 you're wasting money."

2 So she said, I tell you what. Why don't you keep
3 this, keep that. We have -- if somebody calls on the phone,
4 everything goes in there. Everything is there.

5 Q. So you kind of have an office when you come into
6 town by arrangement with your landlord?

7 A. Yes. That's the -- they call it a virtual
8 office. They're used in Los Angeles a lot. They're used many
9 places, yeah.

10 Q. Who's your landlord there?

11 A. It's called Office Alternatives.

12 Q. Okay. Who's your landlord there?

13 A. Sue is the gal that takes care of everything for
14 me, and Maryann. They're the owners.

15 Q. Okay. And anything that was sent there you got?

16 A. Oh, yeah. They're very good about that. They
17 put phone calls directly through to me. Anything that is
18 there. So if you call in there, they'll put them right through
19 to me on there. Everything -- it's not something that if you
20 go in there -- it's a very legitimate facility. It's very
21 nice.

22 Q. Why would you be concerned that I wouldn't think
23 it was a legitimate facility?

24 A. Well, you make it sound maybe it's like I'm, you
25 know, I'm behind the corner and things. And, no, it's not like

1 that at all. It's a very nice facility. I bring clients in
2 there. My clients that come in, they come in and we meet
3 there. We have a conference room. There are a lot of
4 companies that are in there.

5 Q. What kind of clients do you have in the oil
6 business?

7 A. Sorry?

8 Q. What kind of clients?

9 A. If I have an investor that's come in maybe to
10 look at things. I have other businesses and other interests
11 and the like. People will come into Albuquerque. They don't
12 necessarily want to go all the way down to Artesia, so I'll
13 meet them here and there. And I don't really like to get them
14 into Las Vegas because they don't pay that much attention.
15 They get there and then they're gone. So here they'll sit with
16 me all day.

17 Q. How much C&D stock is outstanding? How much
18 treasury stock?

19 A. It's just the 1,000 shares, common.

20 Q. And it's all 1,000 shares in circulation?

21 A. Not in circulation.

22 Q. Well, I mean, you're holding them.

23 A. Yeah. Yes, sir.

24 Q. You made a statement that you paid off
25 Mr. Jeffries before you took title?

1 A. Yeah.

2 Q. You were saying title to the stock or title to
3 the properties?

4 A. What we wanted to do is when I paid him off, I
5 expected to have everything transferred then. But then he --
6 we went to go get the corporation to move it over, and they had
7 dissolved it in Kentucky, his corporation.

8 Q. "They" being the State of Kentucky?

9 A. To the state, because he had not paid his things.
10 And so we had to go through the process of getting it
11 reinstated. I was ready to go then. But everything wasn't
12 ready. And so --

13 Q. And when was that?

14 A. About 2006, November. Yeah. That was in
15 November of 2006.

16 Q. I'm sorry I interrupted you. You started to talk
17 some more about that.

18 A. No. That was it. Then they got it reinstated.
19 It took them awhile. They didn't get reinstated until January.

20 Q. Of 2007?

21 A. Of 2007. And then everything went to -- who was
22 handling it was my attorney in Wyoming, Mr. Bagley.

23 Q. And it took him a year to get everything
24 straightened out so that you could transfer it?

25 A. Well, as far as to New Mexico?

1 Q. Yes.

2 A. Well, the thing was, he was corresponding with
3 the PRC there telling them it was the same company. They kept
4 going no. They kept sending things back. No, first I went and
5 told them what the thing was, that we were just transferring a
6 change of the parties only, same company. And they just kept
7 dropping it in this deaf area, basically.

8 And then what we had to do, like I say, is basically
9 put together a small little brief and get it before the right
10 person to somebody else up high in their legal department to go
11 through and say, yes, they can do this. But it's not something
12 that's customarily done.

13 CHAIRMAN FESMIRE: I have no further questions.
14 Anything else from the Commission?

15 COMMISSIONER BAILEY: No.

16 COMMISSIONER OLSON: No.

17 CHAIRMAN FESMIRE: Mr. Swazo?

18 MR. SWAZO: I have no questions.

19 CHAIRMAN FESMIRE: Mr. Padilla?

20 MR. PADILLA: No questions.

21 CHAIRMAN FESMIRE: Thank you very much, Mr. Kizer.

22 THE WITNESS: What is the process now?

23 CHAIRMAN FESMIRE: Well, we'll have closing
24 statements.

25 THE WITNESS: Okay. All right.

1 CHAIRMAN FESMIRE: Mr. Swazo, are you prepared for a
2 closing statement?

3 MR. SWAZO: Briefly, Mr. Chairman. I just want to
4 point out several matters. I'll let the Commission read the
5 documents.

6 With regard to the ACO, what I want to point out is
7 that the ACO was for reports that were delinquent up until that
8 time. The hope was that C&D Management would come into
9 compliance and would maintain compliance with the reporting
10 requirements. That hasn't happened. So I just want the
11 Commission to realize that this document was drafted for
12 violations that were in effect at that time.

13 Also, I wanted to point out that there's been a lot
14 of focus on Mr. Jeffries taking responsibility. If you read
15 the ACO, actually that's a representation that Mr. Jeffries
16 made. That's not a determination that the OCD made. And if
17 you look at the entire document, the entire document is with
18 C&D Management Company, d.b.a. Freedom Ventures Company, and
19 not with Mr. Jeffries specifically.

20 Mr. Kizer made a lot of representations on the stand
21 regarding things that Mr. Sanchez or myself may or may not have
22 done. That's not evidence. I was not able to testify on that,
23 so I would ask the Commission not to draw any conclusions on
24 any of the statements that Mr. Kizer made.

25 With regard to any defects in notification which

1 we -- first of all, we don't believe that there were any
2 defects in the notification because notice was served on
3 corporate officers, and the actual administrative hearing was
4 published in the Artesia Daily Press, which is the area where
5 the wells were located. But even if defects were made in the
6 notice, that has been cured by this de novo hearing today.
7 Mr. -- C&D Management got their due process and they got that
8 due process today by having this hearing and being allowed to
9 present -- being allowed the opportunity to present their case.

10 And then one final thing is that I think it's very
11 important for penalties to be imposed in this case. The point
12 of penalties is to try to get operators -- to first of all, to
13 try to prevent operators from engaging in bad behavior -- but
14 if operators do engage in bad behavior, then penalizing them
15 for engaging in such behavior. That way in the future they
16 don't engage in that behavior.

17 In this case, C&D Management has been aware of the
18 reporting requirements since 2006, and an Agreed Compliance
19 Order was entered into -- they entered into an Agreed
20 Compliance Order with the OCD. They were fully aware of the
21 reporting requirements, and they still willfully disobeyed
22 those reporting requirements. And if I could just put it
23 simply -- knowing and willful in simple terms -- knowing and
24 willful simply means that the operator is aware of a violation
25 and allows the violation to occur. And that's exactly what

1 happened in this case.

2 You've heard testimony that C&D Management has been
3 aware of the reporting requirements for quite some time and yet
4 they still allowed the reporting violations to occur. And
5 based on that testimony, I ask that you folks impose the civil
6 penalties that we asked for during Mr. Sanchez' testimony.

7 I don't have any other closing statement at this
8 point.

9 CHAIRMAN FESMIRE: Mr. Padilla?

10 MR. PADILLA: Members of the Commission, I'm pretty
11 troubled with the notice of the Division's -- the notice issues
12 that have been involved in this hearing. It's true that it
13 appears as though, based on the questions of the Chairman, that
14 Mr. Jeffries may have had apparent authority to act as vice
15 president for the corporation when he signed the March of 2007
16 Administrative Compliance Order, but the fact of the matter is
17 that he was not a vice president. Darla Jeffries was not a
18 vice president. We didn't submit any type of resignation
19 documents here.

20 But the point is, is that this corporation had been
21 having problems in the State of Kentucky. That got
22 straightened out and eventually got transferred to the State of
23 Wyoming for favorable corporate reasons. The authority to do
24 business here in New Mexico was ultimately obtained in April of
25 2008 of this year.

1 But I think in terms of -- yes, there were issues,
2 but I think the evidence is clear that Mr. Kizer relied,
3 properly relied to his detriment, that Mr. Jeffries was going
4 to do what he said he was going to do. He didn't. His
5 conducted may meet the knowing and willful criteria, but if you
6 examine Mr. Kizer's conduct since the hearing that was had here
7 before the Division in January of 2008, he's been pretty
8 diligent. Bringing all the C-115s up-to-date is a problem.
9 It's time-consuming, especially when you have multiple years of
10 reporting. That really was on Jeffries' watch.

11 After January -- after this order was issued by the
12 Division, and as a result of the hearing where Mr. Jeffries did
13 not appear, I think you see a change in the compliance
14 requirements here and some due diligence. The testimony
15 that -- Mr. Kizer's testimony -- has been that he's ready to
16 plug these wells. They'll be plugged in 30 days, within the
17 time recommended by Mr. Sanchez this morning.

18 But we also have to go back and look at this
19 compliance order. It wasn't drafted by Mr. Kizer. It wasn't
20 even drafted by Mr. Jeffries. It was drafted by the Division's
21 attorney. She used some language here that probably is -- I
22 don't want to use the word, necessarily "ambiguous," but when
23 you use the wording "personally responsible," or words to that
24 effect, then I think Mr. Jeffries at that point is assuming
25 responsibility for violations that have occurred before then.

1 He's also accepting violations for any penalties that were
2 assessed under the Administrative Compliance Order.

3 Mr. Kizer is nowhere involved in any of this. And so
4 the ultimate conclusion that I reach here is that today we
5 finally got a hearing. This is the first time Mr. Kizer has
6 been given an opportunity to respond and where he's actually
7 invited despite the Division's exhibits here that contain the
8 Albuquerque address. The Albuquerque address is used here.
9 Ms. Prouty testified that -- I don't want to put words in her
10 mouth -- but they've used the Albuquerque address. That is
11 Mr. Kizer's address.

12 In fairness, I think the Division, or the Commission
13 I should say, needs to step back and look at this objectively
14 and not grandfather all this stuff and make it attributable to
15 Mr. Kizer. You know, it may appear, as I said before, that
16 Mr. Jeffries had apparent authority where there was some kind
17 of acquiescence -- I call it more reliance -- on Mr. Jeffries
18 performing. In September of 2007, it became evident that
19 Mr. Jeffries was beginning to drop the ball. He wasn't doing
20 what he was supposed to do. And those issues of compliance
21 were becoming more prominent. And I think by that time,
22 Mr. Kizer started becoming more aware and concerned that either
23 reporting or non-compliance that Mr. Jeffries had agreed to do
24 was not being performed.

25 Then we have the hearing in January. I think it's

1 elementary that as far as due process is concerned and that
2 sort of thing -- basic fairness, really. It's not so much
3 constitutional issues, but basic fairness to be able to address
4 the issue and come before a body that is going to take your
5 bonds and cause your wells to be plugged.

6 If you look at this exhibit, part of the exhibits --
7 in Exhibit 1-A, 1-B -- if you look at the single well bonds
8 here by the Division as a part of their Exhibit 1-A, they all
9 have the Albuquerque address. It would seem to me that if
10 you're going to take the bonds, at the very minimum, you have
11 to give or send a notice to the address for which the bonds are
12 listed. They're not -- there's no Kentucky address here. It's
13 Albuquerque, New Mexico. No evidence has been submitted by the
14 Division that the bonds were, or that notice of the hearing
15 was, given in Albuquerque. Ms. Prouty testified that very
16 often they will have to send to different addresses, multiple
17 addresses. I guess that's what her practice is. But it just
18 seems to me that when the proceeding becomes the taking or
19 capturing of those bonds that you have to have the right
20 address.

21 Now, I understand Mr. Swazo's problem is that he
22 can't be going around figuring out where everybody is. But
23 there's plenty of evidence here just in this exhibit and in the
24 one we submitted, which I asked to be submitted into evidence,
25 Exhibit 6 -- I forgot to do that. I don't know if Mr. Swazo

1 has a problem with it. But basically, all of the Division's
2 exhibits contain in some form or another the Albuquerque
3 address.

4 Now, starting from then, you look at compliance
5 issues. And I think the Division's practice and procedure has
6 been that you give a warning and then if the warning is not
7 complied with, then you administer a finding. This is the
8 first time that we have had -- or at least Mr. Kizer has had --
9 some defense and been able to present some defense to this
10 proceeding where all of a sudden, you know, the Division is
11 asking for \$30,000 immediately, based on the past. The past is
12 that they had dealings with Mr. Jeffries. Mr. Jeffries didn't
13 comply.

14 Obviously, if you're going to reach a conclusion that
15 a corporation is a corporation, you know, Mr. Kizer is probably
16 stuck with this thing. But it's not fair. It's not fair that
17 all of a sudden he's trying to plug the wells, he's trying to
18 do this compliance work, and all of a sudden you have, you
19 know, a big penalty that you have to pay.

20 And so I would ask the Commission to give him some
21 time to bring everything into compliance. If he doesn't do it,
22 then I would say maybe at that point penalties would be
23 appropriate. But today, based on his very first time to
24 address these issues, I would say the penalties are
25 inappropriate.

1 Thank you.

2 CHAIRMAN FESMIRE: Thank you, Mr. Padilla. I assume
3 it's the Commission's preference that we go into Executive
4 Session and deliberate tonight?

5 COMMISSIONER OLSON: Yes.

6 COMMISSIONER BAILEY: Yes.

7 CHAIRMAN FESMIRE: Okay. At this point, we'll go
8 into Executive Session for the sole purpose of deliberating in
9 Case No. 14057, and we will reopen the proceedings to the
10 public after we've made that decision this evening.

11 MR. PADILLA: Before we adjourn, I'm just wondering
12 about that Exhibit 6. I don't know whether Mr. Swazo has an
13 objection to Exhibit 6.

14 CHAIRMAN FESMIRE: Exhibit 6 of the --

15 MR. SWAZO: This is actually Respondent's
16 Exhibit No. 6, C&D Management's Exhibit 6.

17 CHAIRMAN FESMIRE: We can take administrative notice
18 of -- this is part of the OCD record, right?

19 MR. PADILLA: All of them are OCD as far as I recall.

20 MR. SWAZO: I actually don't have a problem with it,
21 but I have issues with -- this is all Exhibit 6; is that
22 correct?

23 MR. PADILLA: Yes.

24 CHAIRMAN FESMIRE: It says Exhibit 7 is attached to
25 it.

1 MR. PADILLA: Well, no. These are exhibits that
2 Mr. Swazo used at other hearings.

3 MR. SWAZO: Right. So I just want to make sure that
4 the record is clear that some of this information is actually
5 in our exhibit packet, but some of the information is also from
6 information from the exhibits that we entered at the lower
7 level hearing. And actually, it shows the exhibit
8 identification.

9 And I just don't want the Commission to be -- I want
10 the record to clearly reflect that this is not our exhibit.
11 This is part of their Exhibit No. 6.

12 CHAIRMAN FESMIRE: Oh, okay.

13 MR. PADILLA: Our only exhibit stamp is the one in
14 the front.

15 MR. SWAZO: The first page.

16 CHAIRMAN FESMIRE: Let's call the one marked
17 Exhibit 6 as C&D Exhibit 1, and the one marked OCD Exhibit 7 in
18 the case below as C&D Exhibit 2. And with that, Mr. Swazo,
19 would you object to admission into the record?

20 MR. SWAZO: Well, I just want to clarify something.
21 There's pages here that say C&D Management Company, OCD Exhibit
22 No. 14, OCD Exhibit No. 13, OCD Exhibit No. 1-A, and so on. It
23 goes on for several documents.

24 I just want to make clear that these are not -- OCD
25 is not tendering these documents in this hearing. This is

1 actually all of C&D Management's Exhibit 6. And I have no
2 objection other than that -- I have no objection to the
3 admission.

4 CHAIRMAN FESMIRE: The record will so reflect that
5 the exhibit stickers from the case below, Case No. 14055, are
6 null and void.

7 MR. PADILLA: Null and void.

8 CHAIRMAN FESMIRE: And they do not apply to this
9 hearing in Case No. 14057. Anything else?

10 [Respondent's Exhibits 1 and 2 admitted into
11 evidence.]

12 MR. SWAZO: That's it.

13 CHAIRMAN FESMIRE: Okay. With that, we will go into
14 Executive Session.

15 * * *

16 CHAIRMAN FESMIRE: Let the record reflect that it's
17 5:10 p.m. on Wednesday, July 30th, 2008. This is the regularly
18 scheduled July meeting of the New Mexico Oil Conservation
19 Commission. During the recess, during the break, during the
20 time that we were off the record, the Commission met in
21 Executive Session to discuss and deliberate Case No. 14057.

22 I'm sorry, Case No. 14055. If I have been saying
23 14057 all day, it should be Case No. 14055. And during that
24 time, we discussed nothing but 14055. The Commission has
25 reached a decision and instructed Counsel Bada to draft an

1 order that reflects that decision, to circulate it to the
2 Commissioners to be reviewed by them, and she's agreed to do
3 that.

4 So at this time, we will recess Case No. 14055, the
5 de novo Application of New Mexico Oil Conservation Through the
6 Enforcement and Compliance Manager for a Compliance Order
7 Against C&D Management Company d/b/a Freedom Ventures Company.

8 * * *

9 CHAIRMAN FESMIRE: We will proceed to the next item
10 on the docket, which is Case No. 14047, the Application of
11 Celero Energy II, LP for Expansion of a Waterflood Project,
12 Chaves County, New Mexico. That case will be continued to the
13 August 11th docket. August 11th. Is that correct?

14 COMMISSIONER BAILEY: August 14th.

15 CHAIRMAN FESMIRE: August 14th docket. The next case
16 before the Commission is Case No. 14001, the Application of
17 Chesapeake Energy Exploration, LLC, for Statutory Unitization
18 of the Quail Queen Unit Area, Lea County, New Mexico.

19 That case will also be continued to the August 14th
20 regularly scheduled meeting -- the September 11th Commission
21 meeting.

22 And the next case will be Case No. 14002. It's the
23 de novo Application of Chesapeake Energy, LLC, for Approval of
24 a Waterflood Project and Qualification of the Project for the
25 Recovered Oil Tax Rate Pursuant to the Enhanced Oil Recovery

1 Act, Lea County, New Mexico.

2 This case will also be continued to the
3 September 11th Commission meeting. Is there any other business
4 before the commission today?

5 COMMISSIONER BAILEY: No.

6 COMMISSIONER OLSON: No.

7 CHAIRMAN FESMIRE: At this time, the chair would
8 entertain a motion to adjourn.

9 COMMISSIONER BAILEY: I so move.

10 COMMISSIONER OLSON: I second.

11 CHAIRMAN FESMIRE: All those in favor?

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER OLSON: Aye.

14 CHAIRMAN FESMIRE: Aye. Let the record reflect that
15 the motion was unanimously passed and the Commission meeting
16 was adjourned at 5:15 p.m.

17 [Hearing adjourned.]

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2 **REPORTER'S CERTIFICATE**

3

4 I, JOYCE D. CALVERT, Provisional Court Reporter for
5 the State of New Mexico, do hereby certify that I reported the
6 foregoing proceedings in stenographic shorthand and that the
7 foregoing pages are a true and correct transcript of those
8 proceedings and was reduced to printed form under my direct
9 supervision.

10 I FURTHER CERTIFY that I am neither employed by nor
11 related to any of the parties or attorneys in this case and
12 that I have no interest in the final disposition of this
13 proceeding.

14 DATED this 30th day of July, 2008.

15

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19 _____
20 JOYCE D. CALVERT
21 New Mexico P-03
22 License Expires: 7/31/09
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STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

I, JOYCE D. CALVERT, a New Mexico Provisional Reporter, working under the direction and direct supervision of Paul Baca, New Mexico CCR License Number 112, hereby certify that I reported the attached proceedings; that pages numbered 1-238 inclusive, are a true and correct transcript of my stenographic notes. On the date I reported these proceedings, I was the holder of Provisional License Number P-03.

Dated at Albuquerque, New Mexico, 30th day of July, 2008.

Joyce Calvert

Joyce D. Calvert
Provisional License #P-03
License Expires: 7/31/09

Paul Baca

Paul Baca, RPR
Certified Court Reporter #112
License Expires: 12/31/08

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. _____ heard by me on _____
_____, Examiner
Oil Conservation Division