

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

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

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR AN ORDER )  
REQUIRING OPERATORS TO BRING 388 )  
WELLS INTO COMPLIANCE WITH RULE )  
201.B AND ASSESSING APPROPRIATE )  
CIVIL PENALTIES, EDDY, CHAVES AND )  
OTERO COUNTIES, NEW MEXICO )

CASE NO. 12,811

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Oil Conservation Division

**ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

August 14th, 2003  
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, August 14th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
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Commission Hearing  
CASE NO. 12,811

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## A P P E A R A N C E S

## FOR THE COMMISSION:

KATHRYN BECKER  
 Associate General Counsel  
 Energy, Minerals and Natural Resources Department  
 1220 South St. Francis Drive  
 Santa Fe, New Mexico 87505

\* \* \*

## ALSO PRESENT:

DAVID K. BROOKS, JR.  
 Assistant General Counsel  
 Energy, Minerals and Natural Resources Department  
 1220 South St. Francis Drive  
 Santa Fe, New Mexico 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:08 a.m.:

3           CHAIRMAN WROTENBERY: That leaves us with Case  
4   12,811, the Application of the New Mexico Oil Conservation  
5   Division for an order requiring operators to bring 388  
6   wells into compliance with Rule 201.B and assessing  
7   appropriate civil penalties in Eddy, Chaves and Otero  
8   Counties, New Mexico.

9           This case is being heard *de novo* upon the  
10   Application of Kersey and Company, and I'll call for  
11   appearances at this point.

12           MS. BECKER: May it please the Commission, my  
13   name is Kathryn Becker, and I'm with the Energy, Minerals  
14   and Natural Resources Department, Office of the Secretary,  
15   and today I'm representing the Oil Conservation Division in  
16   this appeal.

17           CHAIRMAN WROTENBERY: Thank you, Ms. Becker.  
18           Anybody else here to make an appearance in this  
19   case?

20           Okay, Ms. Becker, you have witnesses today?

21           MS. BECKER: Two, yes.

22           CHAIRMAN WROTENBERY: We'll have them stand and  
23   be sworn at this point.

24           (Thereupon, the witnesses were sworn.)

25           CHAIRMAN WROTENBERY: Okay, Ms. Becker, it looks

1 like you can proceed.

2 MS. BECKER: Thank you. I have a brief opening.

3 We're here today because two oil companies,  
4 Kersey and Company and Kersey and Donohue, managed by Mr.  
5 Kenneth Wade, were not in compliance with OCD Rules.  
6 Specifically, they were not in compliance with Division  
7 Rule 201.B. And by written letters addressed to Mr. Wade  
8 in regards to both Kersey and Company and Kersey and  
9 Donohue, OCD provided notice on numerous occasions of the  
10 violations and requested that Mr. Wade bring his two  
11 companies into compliance.

12 Mr. Wade could have come into compliance one of  
13 three ways: The wells could have been properly lugged and  
14 abandoned, the wells could have been temporarily abandoned  
15 in accordance with the Rules, or the wells could have been  
16 put into production.

17 By the time of the OCD hearing which took place  
18 on March 21st and 22nd, 2002, Mr. Wade had not brought any  
19 of the three wells into compliance. As a result of this  
20 failure to take action, Kersey and Company and Kersey and  
21 Donohue are in violation of the Rule and still subject to  
22 the fines that were set out in the order of the Division  
23 and pursuant to NMSA 1978, Section 70-2-31 at \$1000 per  
24 well, per year in violation, which totals \$3000.

25 And madame Chair, I ask that you take notice of

1 the order of the Division that was entered on May 14th,  
2 2003.

3 CHAIRMAN WROTENBERY: We will do that.

4 Would you like to call your first witness?

5 MS. BECKER: With that I'd like to call Jane  
6 Prouty.

7 MS. PROUTY: Good morning.

8 JANE E. PROUTY,

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

11 DIRECT EXAMINATION

12 BY MS. BECKER:

13 Q. Would you please state your name?

14 A. Jane Prouty.

15 Q. And what is your position?

16 A. I manage the group that processes the monthly  
17 production reports for the Oil Conservation Division.

18 Q. Ms. Prouty, I'm going to show you what's been  
19 marked as OCD Exhibit 1. Do you recognize it?

20 A. Yes, it's a report I prepared.

21 Q. What kind of record is it?

22 A. It shows the production for five wells, three by  
23 Kersey and Company and two with Kersey and Donohue. In the  
24 far right it says Gas, Oil, Water, Injection. So where  
25 there are amounts, that is the amount that we have on

1 record.

2 Q. And would you identify the wells that are  
3 mentioned?

4 A. Well, Kersey and Company has the ASU Number 2 and  
5 the ASU A Number 1, on page 2, and the ASU A Number 1 on  
6 page 3. And Kersey and Company -- Well, excuse me. Did I  
7 just -- I think I just repeated one. ASU A Number -- Yeah,  
8 I misspoke on that.

9 Okay, one goes through the first page and a half,  
10 then the ASU A Number 1 on page 2, continuing on page 3,  
11 then the Texaco State Number 2 on page 4. And that  
12 continues through page 5.

13 And then Kersey and Donohue has the Federal  
14 Number 1 and Number 2.

15 Q. And was this record made by you with knowledge of  
16 those figures recorded?

17 A. Yes.

18 Q. So how is it generated?

19 A. I run a small program that goes into our ONGARD  
20 database and pulls -- a program I wrote goes in and pulls a  
21 copy to print out of all the production that we have in our  
22 system for those wells.

23 Q. How often is this done?

24 A. Upon request.

25 Q. And is it the regular practice of OCD to make and

1 keep such records?

2 A. It's our practice to maintain all of the data and  
3 then to pull it back out in a report like this when  
4 requested.

5 Q. So for example on page 1, when we're looking at  
6 ASU Well Number 2, there appear to be some months in which  
7 there is no reporting. Could you explain that?

8 A. Yes, if you -- The whole page has no gas, water  
9 or oil or injection under those columns, and then we have  
10 all of the months printed from January, 1997, forward.  
11 However, the month only prints if this particular well was  
12 reported on the C-115 in a zero amount or in any amount.  
13 So there are a few months, such as -- if you go to May,  
14 2000, you see that we don't have June, 2000, or July, 2000.  
15 And Kersey and Company may have sent us a C-115, but this  
16 particular well wasn't on that C-115 for that month.

17 And we have a compliance program where, when that  
18 happens, we notify the operators to encourage them to turn  
19 in a C-115, although it looks like this one never did come  
20 in. And there are several such gaps, small, but if we --  
21 this represents what we did receive.

22 Q. And so we're to understand that a blank in the  
23 continuance of months would mean there was no reporting on  
24 that well?

25 A. Yes, a missing month --

1 Q. A missing month.

2 A. -- was no reporting, and a blank is reported at  
3 zero for every volume.

4 Q. So is this a complete record of reported well  
5 production for each well from January, 1997, to May of  
6 2003?

7 A. Yes, it is. It's a complete record of everything  
8 that we have run on August 5th, as of August 5th.

9 Q. And what does this record show for those wells  
10 operated by Kersey and Company in terms of wells in  
11 production?

12 A. If you turn to page 2, for the first well, the  
13 ASU Number 2, in December of 2002, after a very long period  
14 of not producing anything, they reported two barrels of oil  
15 produced, and then nothing was reported for January and  
16 February of this year, but they have reported production, 2  
17 barrels, 2 barrels, 10 barrels, for March, April and May,  
18 and nothing else.

19 For the second well, the ASU A Number 1, there is  
20 no production at all reported, or injection.

21 And for the third well, generally there's  
22 production through July of 1999 with three months missing.  
23 And then there was no production reported, although the  
24 well was reported at zeroes through March of 2002, where it  
25 started reporting 6 barrels, 38, and then this year it's

1 reported 5 barrels or 2 barrels every month.

2 Q. And what does this record show for those wells  
3 operated by Kersey and Donohue?

4 A. Okay, the first well has had -- the Federal  
5 Number 1 has had no production or injection reported.

6 And the second well, the Federal Number 2, in  
7 January of 1999, had 3 MCF of gas reported. And then it  
8 continued to report gas, except for July of 1999 through  
9 November of 1999, and then it hasn't reported anything  
10 since, and it has no oil, water or injection reported in  
11 any of those months.

12 Q. So is this record the basis for the Division's  
13 position of noncompliance by both Kersey and Company and  
14 Kersey and Donohue?

15 A. Yes.

16 MS. BECKER: Thank you.

17 CHAIRMAN WROTENBERY: Just a second. Any  
18 questions, Commissioners?

19 COMMISSIONER BAILEY: No.

20 COMMISSIONER LEE: No.

21 CHAIRMAN WROTENBERY: I just wanted to ask about  
22 the Kersey and Donohue Federal Number 2. The order in Case  
23 12,811 had indicated that the testimony at the Division  
24 Hearing was that that well had been brought into  
25 compliance. Can Ms. Prouty shed any light on that

1 particular issue? I mean, because she's reporting that  
2 there wasn't any production.

3 MS. BECKER: I think Ms. -- also taking into  
4 compliance the order of the Division, that well was not  
5 fined. The well that was fined was the Federal Number 1.  
6 Number 2 was considered in compliance, and there is no fine  
7 assessed for that well.

8 CHAIRMAN WROTENBERY: Okay, I understand that,  
9 what I'm not understanding is that -- we just heard that  
10 there has been no production from that well, so I was just  
11 a little confused, based on the testimony regarding  
12 production --

13 MS. BECKER: Maybe --

14 CHAIRMAN WROTENBERY: -- about that well was  
15 brought into compliance.

16 MS. BECKER: And as you'll note, the last time  
17 that that well was even recorded was 11 November of 2001.  
18 Maybe Ms. Prouty could speak to why the reporting stopped.

19 THE WITNESS: The well was plugged effective  
20 September 21st, 2001. Our system accepted production  
21 through November because we processed it then, so that was  
22 how it was brought into compliance.

23 CHAIRMAN WROTENBERY: Thank you. If you said  
24 that, I missed it.

25 MS. BECKER: No, we didn't.

1 CHAIRMAN WROTENBERY: Okay, thank you. Okay, no  
2 further questions. Thank you for your testimony, Ms.  
3 Prouty.

4 MS. BECKER: I call Tim Gum.

5 TIM W. GUM,

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

8 DIRECT EXAMINATION

9 BY MS. BECKER:

10 Q. Please state your name.

11 A. Tim W. Gum.

12 Q. And what is your position?

13 A. I'm District Supervisor of the Oil Conservation  
14 Division Office in Artesia, New Mexico.

15 Q. And what does your job involve, Mr. Gum?

16 A. It is a supervisory position to ensure that the  
17 rules and regulations of the Oil Conservation Division are  
18 complied by the oil and gas industry.

19 MS. BECKER: Okay, excuse me for a minute. I  
20 omitted to ask that -- make an offer into evidence of  
21 Exhibit 1. May I do that at this time?

22 CHAIRMAN WROTENBERY: Yes, OCD Exhibit Number 1  
23 is admitted into evidence.

24 Q. (by Ms. Becker) Mr. Gum, I'm going to show you  
25 an exhibit marked as Exhibit 2. Do you recognize it?

1           A.    Yes, this is a letter that officially began the  
2   -- what's called the inactive well project that was in a  
3   mass mailout to all operators in May of 2000.

4           Q.    Is this the type that was sent to notify all  
5   operators of noncompliance with Division Rule 201.B?

6           A.    Yes, it was.

7           Q.    And was a letter of this type sent to Kersey and  
8   Company and Kersey and Donohue?

9           A.    Yes.

10          Q.    And why is there no record of a letter being kept  
11   for Kersey and Company and Kersey and Donohue?

12          A.    I'm not for sure why that there was no evidence  
13   that this letter was actually sent to them, but they were  
14   on the list, and they did respond as to this letter, yes.

15          Q.    My understanding is, this type of letter was sent  
16   out with an opportunity for the operator to check off  
17   spaces according to well information. Is that indicated on  
18   this letter?

19          A.    Yes, basically the purpose of the letter was  
20   twofold. It was to indicate to each individual operator  
21   this was what the OCD had as indicated on their records as  
22   was being in noncompliance. If the operator had  
23   documentation or other records to indicate that the well  
24   was in compliance, they would submit that documentation to  
25   the OCD. That was one purpose.

1 Another important purpose of this letter was to  
2 make a statement that the Rule 201.B would be enforced in  
3 the future.

4 Q. So the letter that you have before you is not  
5 addressed to Kersey and Company and Kersey and Donohue; is  
6 that correct?

7 A. That's correct.

8 Q. It's addressed to Bass Enterprises Production?

9 A. Yes, uh-huh.

10 Q. And yet it's your position that one of these was  
11 similarly sent to both of those oil companies?

12 A. Yes.

13 Q. And the reason that there's no copy is that there  
14 was -- Kersey and Company and Kersey and Donohue did not  
15 return this as filled out?

16 A. I'm not for sure why this was not in the record  
17 as being sent to Kersey and Donohue.

18 Q. And since in the record there is copy coming back  
19 having been filled out, would your understanding be that  
20 there was no return response by Kersey and Company --

21 A. Yes.

22 Q. -- and Kersey and Donohue?

23 A. That's correct.

24 MS. BECKER: Okay. I offer Exhibit 2 into  
25 evidence.

1 CHAIRMAN WROTENBERY: OCD Exhibit 2 is admitted  
2 into the record.

3 Q. (By Ms. Becker) Mr. Gum, I'm going to hand you  
4 what's been marked as Exhibit 3. Do you recognize that?

5 A. Yes, this was the second phase of this inactive  
6 well project in which this letter was sent out under my  
7 signature on September 8th, 2000.

8 Q. And was the letter sent by certified mail?

9 A. Yes, it was.

10 Q. Was the letter signed for?

11 A. Yes.

12 Q. By whom?

13 A. It looks like it's M.K. Kersey.

14 Q. And what was the purpose of this letter?

15 A. This was a follow-up letter to the May, 2000,  
16 letter in which we were asked -- based on the response that  
17 was given to the letter, this was a follow-up letter to  
18 indicate you either had to provide a work plan or to bring  
19 your wells into compliance within the stated time.

20 Q. And this letter is addressed to whom?

21 A. This is addressed to Kersey and Company.

22 MS. BECKER: I offer Exhibit 3 into evidence.

23 CHAIRMAN WROTENBERY: Exhibit 3 is admitted into  
24 evidence.

25 Q. (By Ms. Becker) Mr. Gum, I'm handing you what's

1     been marked as Exhibit Number 4. Do you recognize that?

2           A.    Yes, this is a very similar-type letter as to the  
3     previous letter.

4           Q.    And what's the difference?

5           A.    The difference is the name at the top, Kersey and  
6     Company, and E.A. Hanson, and a different mailing address.

7           Q.    And was this also sent by certified mail?

8           A.    Yes.

9           Q.    And was the letter signed for?

10          A.    Yes, also by M.E. Kersey.

11                MS. BECKER: I offer Exhibit 4.

12                CHAIRMAN WROTENBERY: Exhibit 4 is admitted.

13          Q.    (By Ms. Becker) Mr. Gum I'm now handing you  
14     what's been marked as Exhibit Number 5. Do you recognize  
15     that?

16          A.    Yes, this was a follow-up letter in the process  
17     of the inactive well project in which a stated deadline was  
18     stated to give an operator a time to bring the wells into  
19     compliance.

20          Q.    Is this letter -- Excuse me, who is this letter  
21     written by?

22          A.    The letter is written by myself.

23          Q.    And when did you write and send this letter?

24          A.    It was dated December the 26th, 2000.

25          Q.    And was this letter also sent by certified mail?

1 A. Yes, it was.

2 Q. And was it signed for?

3 A. Yes, it was signed for, and also by M.E. Kersey.

4 Q. Okay. And could you please explain your page 2?

5 A. Explain -- ?

6 Q. Page 2 of Exhibit 5?

7 A. This is a tabulation of the wells that were in  
8 noncompliance at the time this particular letter was sent  
9 out.

10 Q. And is it your understanding that by sending only  
11 one letter to Kersey and Company that you are addressing  
12 both Kersey and Company and Kersey and Donohue?

13 A. Yes.

14 Q. Why is that?

15 A. Kersey and Company operated several different  
16 wells for different people as in a partnership, and Kersey  
17 and Company was the operator of record.

18 Q. And so even though you addressed it to Kersey and  
19 Company, you also did provide information on wells that  
20 were operated both by Kersey and Company and Kersey and  
21 Donohue?

22 A. Yes, Kersey and Donohue, they were partners in  
23 the well, but Kersey and Company was the operator of  
24 record.

25 MS. BECKER: I offer Exhibit 5 into evidence.

1 CHAIRMAN WROTENBERY: Exhibit 5 is admitted into  
2 evidence.

3 Q. (By Ms. Becker) Mr. Gum, I'm handing you what's  
4 been marked as Exhibit Number 6. Do you recognize it?

5 A. This is a different letter in the process of the  
6 inactive well project under my signature. It was dated  
7 July the 25th, 2001.

8 Q. And the purpose of this letter was to do what?

9 A. To gain response to our previous correspondence,  
10 to offer opportunities for the operator to have additional  
11 opportunity to bring the wells into compliance through the  
12 single-well bond option. Again, the overall project  
13 purpose was to make sure that we were giving proper notice  
14 to the operator that we're still following up on the  
15 project.

16 Q. In the last paragraph on page 1 it says,  
17 "Recognizing the fact that the high level of field activity  
18 in the oil patch is making the availability of service  
19 equipment...problematic for some operators..." Did Kersey  
20 and Donohue ever express to you that they were having  
21 difficulty obtaining such equipment and try to obtain a  
22 single-well plugging bond?

23 A. No, they did not.

24 Q. And how can you be sure?

25 A. Because I was the one that was responsible for

1 this particular project, and I was tracking it myself.

2 Q. And is it your understanding that both Kersey and  
3 Company and Kersey and Donohue also did go on to hearing  
4 then?

5 A. Yes.

6 MS. BECKER: Madame Chair and the Commission, I  
7 alert you to pages 26 through 28 of the order of the  
8 Division that does indicate that Kersey and Company's  
9 wells, ASU Number 2 and ASU A Number 1 were found not in  
10 compliance and fined each \$1000, totaling \$2000. In  
11 addition, Kersey and Donohue's Federal Well Number 1, also  
12 out of compliance and fined \$1000 as a result of that  
13 order.

14 I offer Exhibit 6.

15 CHAIRMAN WROTENBERY: Exhibit 6 is admitted into  
16 evidence.

17 Q. (By Ms. Becker) And lastly, Mr. Gum, I'm handing  
18 you what's been marked as Exhibit Number 7. Do you  
19 recognize it?

20 A. (No response)

21 Q. Do you recognize Exhibit Number 7, Mr. --

22 A. Yes.

23 Q. And what kind of exhibit is this?

24 A. This is a series of Form C-103s, reporting intent  
25 to do work or subsequent reports of work that has been

1 done.

2 Q. And glancing through these forms, Mr. Gum, when  
3 were they signed and submitted?

4 A. They were submitted by the operator for Kersey  
5 and Company by Ken Wade, March of 2000, February -- or  
6 March of 2002, February of 2002, February, 2002, February,  
7 March -- It looks like it's in the time period of February  
8 and March, 2002.

9 Q. And are there any circumstances that would  
10 justify waiting until February or March, 2002, to file a  
11 notice of intent?

12 A. No, by the OCD rules and regulation, whenever  
13 that well becomes inactive, the proper form should be  
14 submitted at that time.

15 Q. In your estimation, how long is a reasonable time  
16 frame for an operator in southwestern New Mexico to plug a  
17 well?

18 A. Depending on the particular point in time and the  
19 long waiting list that the plugging companies have, wells  
20 can generally be plugged within a 30- to 90-day period if  
21 there is active participation by the operator to get the  
22 wells plugged.

23 Q. So how long did Mr. Wade have to plug or put into  
24 production his wells?

25 A. Mr. Wade has had, to this point in time,

1 approximately three years to bring these wells into  
2 compliance. He has not.

3 Q. And as of the date of the hearing on March 21st  
4 and 22nd of 2002, how long did Mr. Wade have to bring the  
5 wells of Kersey and Company and Kersey and Donohue into  
6 compliance?

7 A. Based on the order, or --

8 Q. Based on the time of the hearing, how long was  
9 Mr. Wade given --

10 A. Okay, he was given at that point in time a little  
11 over two years.

12 Q. So beginning from the first notice, which was  
13 issued when?

14 A. The first notice was in May of 2000, with the  
15 inactive well project.

16 Q. And the hearing was in March of 2002?

17 A. Okay, right, the first -- Case 12,811 was first  
18 scheduled for February 22nd. The first notice was February  
19 1st, so at that time he's already had an additional month  
20 there.

21 Q. So for clarity, there was a period of almost two  
22 years from the time of the original notice to the time the  
23 hearing went through for the wells to have been brought  
24 into compliance?

25 A. Yes.

1 Q. And are there any circumstances that would  
2 justify noncompliance by Kersey and Company or Kersey and  
3 Donohue?

4 A. Not to my knowledge.

5 Q. And is it your knowledge that Kersey and Company  
6 and Kersey and Donohue did not submit any subsequent  
7 reports of plug and abandonment for wells ASU 2, ASU A  
8 Number 1 or Federal Number 1 prior to the March hearing?

9 A. No, they did not.

10 MS. BECKER: Thank you, that's all my questions.

11 CHAIRMAN WROTENBERY: Thank you.

12 MS. BECKER: I do offer, excuse me, Exhibit  
13 Number 7.

14 CHAIRMAN WROTENBERY: Exhibit Number 7 is  
15 admitted into evidence.

16 EXAMINATION

17 BY COMMISSIONER BAILEY:

18 Q. I'm a little confused. Is the Kersey and Hanson  
19 well plugged, or is it producing?

20 A. It is still in noncompliance.

21 Q. The Kersey and Hanson?

22 A. I believe it is. Is that --

23 Q. That YD Number 3?

24 A. The which?

25 Q. YD Number 3?

1 A. The Y Number --

2 Q. It's on the second page of Exhibit 5.

3 MS. BECKER: The three wells -- I'll refer you to  
4 the order.

5 THE WITNESS: Let's see, 26 --

6 MS. BECKER: It's up there on page 26 through 28.

7 THE WITNESS: 26 what?

8 MS. BECKER: 26 through 28.

9 THE WITNESS: 26 --

10 MS. BECKER: Beginning with the Kersey and  
11 Company and Kersey and Donohue.

12 THE WITNESS: The wells that are listed in this  
13 particular order are still in noncompliance, but I'm having  
14 difficulty finding them. That's federal -- Okay, the YD  
15 Number 3, then, is in compliance, yes.

16 Q. (By Commissioner Bailey) It is?

17 A. Yes.

18 Q. It is --

19 A. Yes.

20 Q. -- producing?

21 A. I'm not for sure if it's producing or in -- but  
22 it is compliance, it's just not on this particular order.

23 Q. Because it is part of the final notice of Exhibit  
24 5, but --

25 A. Yes.

1 Q. -- since that time --

2 A. Since that time, these wells have been brought --  
3 some of the wells have been brought into compliance.

4 Q. Okay.

5 A. I think that the -- Right now there's only three  
6 wells that are in consideration.

7 Q. Okay, thank you.

8 EXAMINATION

9 BY CHAIRMAN WROTENBERY:

10 Q. Let's talk about the three wells that are under  
11 consideration one by one, just so that I can make sure I  
12 understand what the status was and what the timing was on  
13 the various actions.

14 The Kersey and Donohue Federal Well Number 1  
15 first --

16 A. Okay.

17 Q. -- okay? We had some correspondence from Mr.  
18 Wade indicating that that well was plugged on April 26th,  
19 2002.

20 A. So that was after the original hearing was held?

21 Q. Yes, but before the Division's order --

22 A. Yeah --

23 Q. -- was issued.

24 A. -- right.

25 Q. And I'm sorry if I got wells mixed up, but I

1 didn't understand your testimony concerning that well and  
2 the timing on the work on that well. Was it, in fact,  
3 plugged in April of 2002?

4 A. I'll have to look at the exhibit there that --

5 MS. BECKER: This is --

6 THE WITNESS: -- with all the C-103s, Exhibit  
7 Number 7, I believe. Yes, this particular well was plugged  
8 and abandoned, but there is not an official time stamp or  
9 date on this particular -- as part of Exhibit 7, but --  
10 This C-103 said that it was a subsequent report but that it  
11 would have to be done -- it could be done by April 1st of  
12 2002. So I have no records here to indicate that that well  
13 has physically been plugged.

14 Q. (By Chairman Wrotenbery) Okay, we're looking at  
15 a C-103. It's the last page of Exhibit 7. Is that what  
16 you're looking at as well?

17 A. No, this is for Well Number 2, the last page.

18 Q. Well Number 2, okay.

19 A. About, let's see --

20 Q. Federal Well Number 1.

21 A. The fourth page back is the KD Federal Number  
22 1 --

23 Q. Okay.

24 A. -- and there is a subsequent report that said  
25 that they should be able to have it plugged, but we have no

1 official approval that it has been done. The prior C-103  
2 indicated that they had an approved procedure to do the  
3 work, and that was an intent.

4 Q. Okay, so this document that we're looking at is a  
5 notice of intent to plug it?

6 A. Right. And that was approved by our office, but  
7 the second C-103 has not been approved.

8 Q. Has it been filed?

9 A. Other than filed yet.

10 Q. It has not been filed?

11 A. It has not been approved. We have no time stamp  
12 on it to indicate that we even received it, so --

13 Q. Okay, so we move to the next page, and that is a  
14 subsequent report on the KD Federal Number 1?

15 A. That's correct.

16 Q. And it shows a date of March 21st, '02.

17 A. That's correct.

18 Q. And where did you get this report?

19 A. I'm not for sure where this report came from. It  
20 looked like it was a fax from Ken Wade, and it was amongst  
21 these other C-103s. But you'll notice that some of the  
22 C-103s have been approved and reviewed by the District  
23 staff, but this one did not have any indication that it had  
24 been reviewed or approved.

25 Q. And would you read what item number 12 says, what

1 the report on the status of the plugging activity is --

2 A. Item number 12.

3 Q. -- in this case? Yes, on the C-103. Mr. Wade  
4 reported on the status of the well. Would you mind  
5 reviewing that information?

6 A. Which C-103 are we --

7 Q. The subsequent report on the KD Federal Number 1.

8 A. Okay.

9 Q. Just read it for us, just so we're all --

10 A. Well, we'll -- okay --

11 Q. -- we'll all know in the record what --

12 A. All right, well, we've contacted -- Is that the  
13 one?

14 Q. Yes.

15 A. Okay, "We've contracted with Mark Hammond to plug  
16 this well, but he has his equipment on plugging jobs in  
17 Texas and will not be finished for sometime. Hughes  
18 Drilling has promised that he can have this well plugged by  
19 April 1st, 2002. Mr. Hughes can be reached by telephone at  
20 505 748-2619."

21 Q. And was this the latest report you had on the KD  
22 Federal --

23 A. Yes.

24 Q. -- Number 1 from Mr. Wade?

25 A. That's right.

1 Q. So you didn't receive anything else that  
2 indicated that the plugging work had actually --

3 A. No.

4 Q. -- been completed?

5 A. And also there's been no subsequent follow-up on  
6 the cleanup to verify that the well has actually physically  
7 been plugged and abandoned.

8 Q. Okay, I guess that's all on the Federal Number 1,  
9 the Kersey and Donohue Federal Number 1.

10 Let's talk about the Kersey and Company ASU A  
11 State Number 1, because we had received previous  
12 correspondence from Mr. Wade indicating that this well was  
13 plugged in the period from May 3rd to May 9th of 2002,  
14 following Division-approved procedure, and that the  
15 plugging procedure was witnessed by Van Barton on your  
16 staff.

17 A. The ASU Number 2?

18 Q. I'm talking about the ASU A State Number 1.

19 A. Okay. Here again, there is an improved procedure  
20 under the intent section, under the subsequent report the  
21 same comments as were previously made on the Federal Number  
22 1.

23 In Exhibit 7, the second C-103, again for this  
24 particular well, it gives the same comments as we just  
25 discussed previously. Therefore, we have no record that

1 the well has physically been plugged and abandoned.

2 Q. Okay, thank you. And the ASU Federal Number 2 is  
3 the third well. Ms. Becker, you're shaking your head no?

4 MS. BECKER: At the time of the hearing in March,  
5 2002, that well was found not to be -- was found to be in  
6 compliance and therefore not fined.

7 The three wells that were fined at the time of  
8 the order and that are still present today are Kersey and  
9 Company's ASU A Number 1, Kersey and Company's Texaco State  
10 Number 2, and Kersey and Donohue's Federal Number 1.

11 CHAIRMAN WROTENBERY: I think -- Okay, let's get  
12 this straight because --

13 MS. BECKER: All right.

14 CHAIRMAN WROTENBERY: -- I think the Texaco State  
15 Well Number 2 was the one that was found to be in  
16 production and it wasn't fined by the Division, if I  
17 remember right. And I'm looking right now at page 26  
18 through 28 of the order.

19 MS. BECKER: On page 27, Section 111.C, both of  
20 those wells, the ASU Well Number 2 and ASU A Well Number 1,  
21 were not in compliance with the Rule at the time of the  
22 hearing.

23 Yes, they were later brought into compliance.  
24 However, we're looking at by the date of the hearing, and  
25 at that time both Kersey and Company's wells ASU Number --

1 Let's see, ASU A Number 1 was fined at that time --

2 CHAIRMAN WROTENBERY: Okay.

3 MS. BECKER: -- and the Texaco State Number 2 was  
4 fined, even though they brought it into production later  
5 that month. We hadn't had notice of it by the time of the  
6 hearing.

7 CHAIRMAN WROTENBERY: Okay, I think you're  
8 talking about Texaco State in one sentence and then about  
9 ASU Number 2 in another. The Texaco State was the one that  
10 was determined to have started producing in March of 2002,  
11 and so it was not assessed a penalty. If I'm reading 110  
12 correctly and --

13 MS. BECKER: Okay.

14 CHAIRMAN WROTENBERY: -- 111, the two wells that  
15 were fined --

16 MS. BECKER: Okay, that is correct.

17 CHAIRMAN WROTENBERY: Okay. -- were the ASU Well  
18 Number 2 and the ASU A Well Number 1. And the one I was  
19 just trying to ask about is the ASU A Number 1. I think I  
20 had stuck the word "Federal" in there because that's the  
21 way Mr. Wade had referred to it in one of his previous  
22 letters to us. But I just wanted to make sure that I  
23 understood what the status was on the ASU A Number 1.

24 THE WITNESS: At this point in time I'll say the  
25 well has not been plugged.

1 Q. (By Chairman Wrotenbery) Okay. And it does not  
2 show any production either, on Exhibit Number 1. I'll note  
3 that as well, so... We don't have any records that  
4 indicates that --

5 A. No.

6 Q. -- any work has been done --

7 A. No.

8 Q. -- on that particular well, with the possible  
9 exception of -- Mr. Wade's previous correspondence to us  
10 indicated that some work had been done there.

11 MS. BADA: (Nods)

12 THE WITNESS: The correspondence -- what was the  
13 date on the correspondence?

14 MS. BADA: July --

15 THE WITNESS: The latest date that we have any  
16 indication of any communication with Mr. Kersey was on  
17 February the 27th of 2002.

18 Q. (By Chairman Wrotenbery) Yes, and let me back  
19 up. Now I'm getting my numbers mixed up. Let me back up,  
20 because we had talked about the ASU A State Number 1 a  
21 minute ago. What I was trying to move on to is the ASU  
22 Number 2. That was the well that I was trying to ask about  
23 at this point.

24 And let me just ask you, what is the status of  
25 the ASU Well Number 2?

1           A.    We again have no indication that the well is in  
2 compliance. We had one C-103 in which he indicated that he  
3 was going to set a pumping unit and that would be set, but  
4 we have no indication that the well is actually on  
5 production.

6           Q.    Okay. Now what about Exhibit Number 1, which  
7 indicates that production was reported in December of 2002  
8 and then again in March through May of 2003?

9           A.    Well, if that's the case then that well is in  
10 compliance at that point in time.

11          Q.    Okay, we do -- As far as I understand it, on the  
12 ASU Number 2 what we do have in the record is production  
13 reports indicating some production in December, 2002, and  
14 then additional production in March through May of 2003.

15               MS. BECKER: Madame Chair --

16               CHAIRMAN WROTENBERY: Yes.

17               MS. BECKER: If I may shed some light, my  
18 understanding is that there is one C-103 for ASU Number 2  
19 stating that there was work that was going to be done, and  
20 that then a subsequent report was reported on March 21st,  
21 2002. Now, that was the same date as the hearing, and as a  
22 result that was not admitted at the time of the hearing.  
23 And so by the date of the hearing it was still viewed as a  
24 noncompliance.

25               However, that same month it was brought into

1 production as can be seen in Exhibit 1. At's still  
2 producing, it produced in March and through May. So it  
3 appears that it is now in compliance, but at the time of  
4 the hearing it was not.

5 CHAIRMAN WROTENBERY: Okay, thank you, Ms.  
6 Becker.

7 Q. (By Chairman Wrotenbery) We do have one C-103 in  
8 the record now as part of Exhibit 7 concerning this ASU  
9 Number 2, right?

10 A. Yes.

11 Q. And what does this C-103 indicate, Mr. Gum?

12 A. That Kersey and Company had located a pumping  
13 unit and that it would be set by March 25th, '02. And by  
14 setting a pumping unit it would allow the well to be in  
15 production and in compliance.

16 Here again, this was after the fact of the date  
17 of the date of the hearing. So at the time of the hearing  
18 this well was out of compliance.

19 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Gum.  
20 I think those are all the questions I had. Thank you very  
21 much for your testimony.

22 Anything else, Ms. Becker?

23 EXAMINATION

24 BY MS. BECKER:

25 Q. Yes, Mr. Gum, could you briefly highlight how the

1 C-103 process works with the intent to and subsequent  
2 reporting forms?

3 A. Basically the purpose of the C-103 is to first  
4 file an intent, getting -- or stating what the operator  
5 would plan to do. The OCD would then review it, see if  
6 it's correct, then they would approve the intent.

7 The subsequent report is actually a report of the  
8 final work as actually done, and that is also approved and  
9 put on record.

10 MS. BECKER: Thank you. I have no further  
11 questions of this witness.

12 CHAIRMAN WROTENBERY: You may be excused. Thank  
13 you, Mr. Gum.

14 Anything further?

15 MS. BECKER: In closing, I would highlight that  
16 at the time the original notice was sent to all operators  
17 in May of 2000, there were five wells that Kersey and  
18 Company and Kersey and Donohue had, operated by Mr. Wade  
19 under Kersey and Company.

20 And of those five wells, three at the time of the  
21 hearing were still out of compliance, and those were the  
22 ones that fines were issued.

23 If we were to look at today, only two would still  
24 be out of compliance. Mr. Wade continues to make efforts,  
25 however his efforts have been late and delayed in coming.

1           The wells operated by Kersey and Company and  
2           Kersey and Donohue could have been brought into compliance  
3           earlier, as requested to do so and as notice was given.  
4           There is almost a period of two years from the first date  
5           of notice to the date of the hearing, and wells ASU A  
6           Number 1 and ASU Number 2, operated by Kersey and Company,  
7           were inactive from May, 2000, to the date of the hearing,  
8           in violation of Division Rule 201.B.

9           Well Federal Number 1, operated by Kersey and  
10          Donohue, similarly was inactive from May, 2000, to the date  
11          of the hearing and in violation of Division Rule 201.B.

12          And as you heard today, both oil companies,  
13          through their manager, Mr. Wade, did receive several  
14          notices of the violation and a request to bring them into  
15          compliance in one of those three ways, by the Oil  
16          Conservation Division.

17          Prior to the hearing the three wells remained out  
18          of production, unplugged and not temporarily abandoned.  
19          The fines issued by the order of the Division are pursuant  
20          to law and they're not outstanding.

21          It's the position of the Division that the order  
22          of the Division is accurate and fair and should be  
23          affirmed.

24                 Thank you.

25                 CHAIRMAN WROTENBERY: Thank you, Ms. Becker.

1 Anything further in this particular matter?

2 I don't hear anything, so the Commission will  
3 take this case under advisement.

4 (Thereupon, these proceedings were concluded at  
5 9:55 a.m.)

6 \* \* \*

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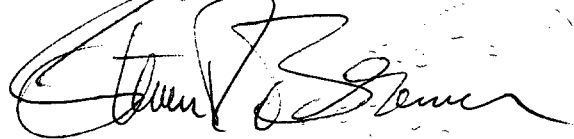
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL August 15th, 2003:



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006

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

CASE NO. 12,811  
(Closing of Session for Deliberation)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

RECEIVED

AUG 28 2003

August 14th, 2003  
Santa Fe, New Mexico

Oil Conservation Division

These matters came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, August 14th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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

## I N D E X

August 14th, 2003  
Commission Hearing  
CASE NO. 12,811  
(Closing of Session for Deliberation)

PAGE

REPORTER'S CERTIFICATE

5

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 9:56 a.m.:

3 CHAIRMAN WROTENBERY: Commissioners, at this  
4 point I will entertain a motion to go into closed executive  
5 session, during which the Commission will deliberate in  
6 connection with an administrative adjudicatory proceeding  
7 pending before the Commission.

8 COMMISSIONER BAILEY: I so move.

9 COMMISSIONER LEE: Second.

10 CHAIRMAN WROTENBERY: All in favor say aye.

11 COMMISSIONER BAILEY: Aye.

12 COMMISSIONER LEE: Aye.

13 CHAIRMAN WROTENBERY: Aye.

14 (Off the record at 9:56 a.m.)

15 (The following proceedings had at 10:12 a.m.):

16 CHAIRMAN WROTENBERY: Mr. Brenner, if you're  
17 ready, then I'll entertain a motion that we go back into  
18 open meeting.

19 COMMISSIONER BAILEY: I so move.

20 COMMISSIONER LEE: Second.

21 CHAIRMAN WROTENBERY: All in favor say aye.

22 COMMISSIONER BAILEY: Aye.

23 COMMISSIONER LEE: Aye.

24 CHAIRMAN WROTENBERY: Aye. And I'll note for the  
25 record that the only matter discussed by the Commission

1 while we were in closed executive session was the case we  
2 just heard, the Application of Kersey and Company for *de*  
3 *novo* hearing in Case 12,811.

4 And I don't believe we have any further business  
5 for today, so let's just call this meeting adjourned.  
6 Thank you.

7 (Thereupon, these proceedings were concluded at  
8 10:13 a.m.)

9 \* \* \*

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## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL August 15th, 2003.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006

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

CASE NOS. 13,100 and 12,811

AWAITING FINAL COMMISSION ACTION

NO EVIDENCE OR TESTIMONY TAKEN

RECEIVED

SEP 25 2003

Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

ORIGINAL

September 12th, 2003

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, September 12th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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

## I N D E X

September 12th, 2003  
Commission Hearing  
CASE NOS. 13,100 and 12,811  
(Awaiting final Commission Action -  
No evidence or testimony taken)

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\* \* \*

## A P P E A R A N C E S

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MINERALS AND NATURAL RESOURCES:

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1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:06 a.m.:

3           MR. BROOKS: Yes, we're deferring the final  
4   action matter till after the -- The Commission is deferring  
5   the final action matter until after the hearing, and we'll  
6   let you know before we take it before the Commission.

7           MS. BECKER: Fantastic, thank you.

8           MR. BROOKS: Thank you.

9           (Off the record)

10          MR. BRUCE: Madame Chair, before we begin on that  
11   case, there was one other item on the schedule for final  
12   action, which was the San Juan Coal Company-Dugan  
13   Production Corporation matter, and Mr. Kendrick is here on  
14   behalf of Dugan Production Corp. and I was here on behalf  
15   of San Juan.

16          Mr. Brooks had previously asked me, or inquired,  
17   because he had heard there had been a settlement agreement  
18   between the parties, and I just wanted to report that there  
19   had been. Mr. Kendrick knows a lot more about it than I  
20   do, but because of that settlement we would ask -- and  
21   perhaps it's already been done, but we would ask that any  
22   decision on that pending case -- I think it's 13,100 -- be  
23   deferred, and when the settlement finally occurs, then San  
24   Juan would request that that matter be dismissed.

25          CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

1           Mr. Kendrick, could you give us just a little bit  
2 of a summary --

3           MR. KENDRICK:   Sure --

4           CHAIRMAN WROTENBERY:  -- of the settlement?

5           MR. KENDRICK:  -- sure, Ned Kendrick for Dugan  
6 Production Company.

7           There has been a tentative settlement, and the  
8 date that we're trying to get a final settlement entered is  
9 mid-October, I think October 18th.  So if it's possible --  
10 We may or may not get this completed by the time of the  
11 next Commission Hearing, but we'll be very close by mid-  
12 October, and so we can report to you then if we're not --  
13 the status and -- you know, there's a very high probability  
14 we'll settle this before the November Commission meeting.  
15 So I think there's no desire on the part of San Juan Coal  
16 to pursue their Application pending completion of these  
17 settlement negotiations.

18           CHAIRMAN WROTENBERY:  Okay, that sounds good.  We  
19 will defer final action --

20           MR. KENDRICK:  Thank you.

21           (Off the record at 9:08 a.m.)

22                               \* \* \*

23           (The following proceedings had at 11:55 a.m.):

24           CHAIRMAN WROTENBERY:  We've got a couple of items  
25 of business.

1           We've got the minutes of the Oil Conservation  
2 Commission meeting held on August 14th, 2003.

3           Commissioners, have you had a chance to review  
4 those minutes?

5           COMMISSIONER BAILEY: Yes, I have, and I move  
6 that we adopt them.

7           COMMISSIONER LEE: Second.

8           CHAIRMAN WROTENBERY: All in favor say aye.

9           COMMISSIONER BAILEY: Aye.

10          COMMISSIONER LEE: Aye.

11          CHAIRMAN WROTENBERY: Aye. And I will sign those  
12 on behalf of the Commission.

13          And then we'll take just a few moments, because I  
14 believe we're going to hear a report from the Division on  
15 the Kersey and Company matter, so we'll wait just a moment.

16          (Off the record at 11:56 a.m.)

17          (The following proceedings had at 11:58 a.m.):

18          CHAIRMAN WROTENBERY: Okay, I believe that the  
19 Division has an update on Case 12,811. This is the  
20 Application of the New Mexico Oil Conservation Division for  
21 an order requiring operators to bring 388 wells into  
22 compliance with Rule 201.B and assessing appropriate civil  
23 penalties in Eddy, Chaves and Otero Counties, New Mexico.

24          MS. BECKER: Yes, madame Commissioner and  
25 honorable Chair, Commissioners, I am Kathryn Becker on

1     behalf of the Department, and I'm requesting an extension  
2     of time in this matter.

3             CHAIRMAN WROTENBERY:   Okay, then we will postpone  
4     any final action in this case until the October 16th  
5     Commission Hearing.   Will that work?

6             MS. BECKER:   It will.

7             CHAIRMAN WROTENBERY:   Okay, and we'll get more  
8     information from you --

9             MS. BECKER:   Yes.

10            CHAIRMAN WROTENBERY:   -- at that point, or  
11     before.

12            MS. BECKER:   Certainly.   It's actually in the  
13     best interest of both parties as an investigation was  
14     undertaken after the August 14th hearing to find out, in  
15     fact, if those -- two of the three wells had been, in fact,  
16     plugged, and so we're looking into that at this time so  
17     that we can procedurally set those apart.

18            CHAIRMAN WROTENBERY:   Sounds good.   Thank you  
19     very much, Ms. Becker.

20            (Thereupon, these proceedings were concluded at  
21     11:59 a.m.)

22                           \* \* \*

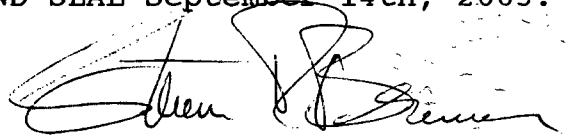
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                                  )    ss.  
COUNTY OF SANTA FE    )

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

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

WITNESS MY HAND AND SEAL September 14th, 2003.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006